

HOUSE BILL No. 2445

By Joint Committee on Corrections and Juvenile Justice Oversight

1-15

1 AN ACT concerning children and minors; relating to the revised Kansas
2 code for care of children; definitions; use of detention facility;
3 amending K.S.A. 2019 Supp. 38-2202 and 38-2260 and repealing the
4 existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2019 Supp. 38-2202 is hereby amended to read as
8 follows: 38-2202. As used in the revised Kansas code for care of children,
9 unless the context otherwise indicates:

10 (a) "Abandon" or "abandonment" means to forsake, desert or, without
11 making appropriate provision for substitute care, cease providing care for
12 the child.

13 (b) "Adult correction facility" means any public or private facility,
14 secure or nonsecure, that is used for the lawful custody of accused or
15 convicted adult criminal offenders.

16 (c) "Aggravated circumstances" means the abandonment, torture,
17 chronic abuse, sexual abuse or chronic, life threatening neglect of a child.

18 (d) "Child in need of care" means a person less than 18 years of age
19 at the time of filing of the petition or issuance of an ex parte protective
20 custody order pursuant to K.S.A. 2019 Supp. 38-2242, and amendments
21 thereto, who:

22 (1) Is without adequate parental care, control or subsistence and the
23 condition is not due solely to the lack of financial means of the child's
24 parents or other custodian;

25 (2) is without the care or control necessary for the child's physical,
26 mental or emotional health;

27 (3) has been physically, mentally or emotionally abused or neglected
28 or sexually abused;

29 (4) has been placed for care or adoption in violation of law;

30 (5) has been abandoned or does not have a known living parent;

31 (6) is not attending school as required by K.S.A. 72-977 or 72-1111,
32 and amendments thereto;

33 (7) except in the case of a violation of K.S.A. 41-727, K.S.A. 74-
34 8810(j), K.S.A. 79-3321(m) or (n), or K.S.A. 2019 Supp. 21-6301(a)(14),
35 and amendments thereto, or, except as provided in paragraph (12), does an
36 act which, when committed by a person under 18 years of age, is

1 prohibited by state law, city ordinance or county resolution, but which is
2 not prohibited when done by an adult;

3 (8) while less than 10 years of age, commits any act that if done by an
4 adult would constitute the commission of a felony or misdemeanor as
5 defined by K.S.A. 2019 Supp. 21-5102, and amendments thereto;

6 (9) is willfully and voluntarily absent from the child's home without
7 the consent of the child's parent or other custodian;

8 (10) is willfully and voluntarily absent at least a second time from a
9 court ordered or designated placement, or a placement pursuant to court
10 order, if the absence is without the consent of the person with whom the
11 child is placed or, if the child is placed in a facility, without the consent of
12 the person in charge of such facility or such person's designee;

13 (11) has been residing in the same residence with a sibling or another
14 person under 18 years of age, who has been physically, mentally or
15 emotionally abused or neglected, or sexually abused;

16 (12) while less than 10 years of age commits the offense defined in
17 K.S.A. 2019 Supp. 21-6301(a)(14), and amendments thereto;

18 (13) has had a permanent custodian appointed and the permanent
19 custodian is no longer able or willing to serve; or

20 (14) has been subjected to an act that would constitute human
21 trafficking or aggravated human trafficking, as defined by K.S.A. 2019
22 Supp. 21-5426, and amendments thereto, or commercial sexual
23 exploitation of a child, as defined by K.S.A. 2019 Supp. 21-6422, and
24 amendments thereto, or has committed an act which, if committed by an
25 adult, would constitute selling sexual relations, as defined by K.S.A. 2019
26 Supp. 21-6419, and amendments thereto.

27 (e) "Citizen review board" is a group of community volunteers
28 appointed by the court and whose duties are prescribed by K.S.A. 2019
29 Supp. 38-2207 and 38-2208, and amendments thereto.

30 (f) "Civil custody case" includes any case filed under chapter 23 of
31 the Kansas Statutes Annotated, and amendments thereto, the Kansas
32 family law code, article 11 of chapter 38 of the Kansas Statutes Annotated,
33 and amendments thereto, determination of parentage, article 21 of chapter
34 59 of the Kansas Statutes Annotated, and amendments thereto, adoption
35 and relinquishment act, or article 30 of chapter 59 of the Kansas Statutes
36 Annotated, and amendments thereto, guardians and conservators.

37 (g) "Court-appointed special advocate" means a responsible adult
38 other than an attorney guardian ad litem who is appointed by the court to
39 represent the best interests of a child, as provided in K.S.A. 2019 Supp.
40 38-2206, and amendments thereto, in a proceeding pursuant to this code.

41 (h) "Custody" whether temporary, protective or legal, means the
42 status created by court order or statute that vests in a custodian, whether an
43 individual or an agency, the right to physical possession of the child and

1 the right to determine placement of the child, subject to restrictions placed
2 by the court.

3 (i) "Extended out of home placement" means a child has been in the
4 custody of the secretary and placed with neither parent for 15 of the most
5 recent 22 months beginning 60 days after the date at which a child in the
6 custody of the secretary was removed from the child's home.

7 (j) "Educational institution" means all schools at the elementary and
8 secondary levels.

9 (k) "Educator" means any administrator, teacher or other professional
10 or paraprofessional employee of an educational institution who has
11 exposure to a pupil specified in K.S.A. 72-89b03(a), and amendments
12 thereto.

13 (l) "Harm" means physical or psychological injury or damage.

14 (m) "Interested party" means the grandparent of the child, a person
15 with whom the child has been living for a significant period of time when
16 the child in need of care petition is filed, and any person made an
17 interested party by the court pursuant to K.S.A. 2019 Supp. 38-2241, and
18 amendments thereto, or Indian tribe seeking to intervene that is not a party.

19 (n) "Jail" means:

20 (1) An adult jail or lockup; or

21 (2) a facility in the same building or on the same grounds as an adult
22 jail or lockup, unless the facility meets all applicable standards and
23 licensure requirements under law and there is: (A) Total separation of the
24 juvenile and adult facility spatial areas such that there could be no
25 haphazard or accidental contact between juvenile and adult residents in the
26 respective facilities; (B) total separation in all juvenile and adult program
27 activities within the facilities, including recreation, education, counseling,
28 health care, dining, sleeping and general living activities; and (C) separate
29 juvenile and adult staff, including management, security staff and direct
30 care staff such as recreational, educational and counseling.

31 (o) "Juvenile detention facility" means any secure public or private
32 facility used for the lawful custody of accused or adjudicated juvenile
33 offenders that ~~must~~ shall not be a jail.

34 (p) "Juvenile intake and assessment worker" means a responsible
35 adult authorized to perform intake and assessment services as part of the
36 intake and assessment system established pursuant to K.S.A. 75-7023, and
37 amendments thereto.

38 (q) "Kinship care placement" means the placement of a child in the
39 home of an adult with whom the child or the child's parent already has
40 close emotional ties.

41 (r) "Law enforcement officer" means any person who by virtue of
42 office or public employment is vested by law with a duty to maintain
43 public order or to make arrests for crimes, whether that duty extends to all

1 crimes or is limited to specific crimes.

2 (s) "Multidisciplinary team" means a group of persons, appointed by
3 the court under K.S.A. 2019 Supp. 38-2228, and amendments thereto, that
4 has knowledge of the circumstances of a child in need of care.

5 (t) "Neglect" means acts or omissions by a parent, guardian or person
6 responsible for the care of a child resulting in harm to a child, or
7 presenting a likelihood of harm, and the acts or omissions are not due
8 solely to the lack of financial means of the child's parents or other
9 custodian. Neglect may include, but shall not be limited to:

10 (1) Failure to provide the child with food, clothing or shelter
11 necessary to sustain the life or health of the child;

12 (2) failure to provide adequate supervision of a child or to remove a
13 child from a situation that requires judgment or actions beyond the child's
14 level of maturity, physical condition or mental abilities and that results in
15 bodily injury or a likelihood of harm to the child; or

16 (3) failure to use resources available to treat a diagnosed medical
17 condition if such treatment will make a child substantially more
18 comfortable, reduce pain and suffering, or correct or substantially diminish
19 a crippling condition from worsening. A parent legitimately practicing
20 religious beliefs who does not provide specified medical treatment for a
21 child because of religious beliefs shall, not for that reason, be considered a
22 negligent parent; however, this exception shall not preclude a court from
23 entering an order pursuant to K.S.A. 2019 Supp. 38-2217(a)(2), and
24 amendments thereto.

25 (u) "Parent" when used in relation to a child or children, includes a
26 guardian and every person who is by law liable to maintain, care for or
27 support the child.

28 (v) "Party" means the state, the petitioner, the child, any parent of the
29 child and an Indian child's tribe intervening pursuant to the Indian child
30 welfare act.

31 (w) "Permanency goal" means the outcome of the permanency
32 planning process, which may be reintegration, adoption, appointment of a
33 permanent custodian or another planned permanent living arrangement.

34 (x) "Permanent custodian" means a judicially approved permanent
35 guardian of a child pursuant to K.S.A. 2019 Supp. 38-2272, and
36 amendments thereto.

37 (y) "Physical, mental or emotional abuse" means the infliction of
38 physical, mental or emotional harm or the causing of a deterioration of a
39 child and may include, but shall not be limited to, maltreatment or
40 exploiting a child to the extent that the child's health or emotional well-
41 being is endangered.

42 (z) "Placement" means the designation by the individual or agency
43 having custody of where and with whom the child will live.

1 (aa) "Qualified residential treatment program" means a program
2 designated by the secretary for children and families as a qualified
3 residential treatment program pursuant to federal law.

4 (bb) "Reasonable and prudent parenting standard" means the standard
5 characterized by careful and sensible parental decisions that maintain the
6 health, safety and best interests of a child while at the same time
7 encouraging the emotional and developmental growth of the child, that a
8 caregiver shall use when determining whether to allow a child in foster
9 care under the responsibility of the state to participate in extracurricular,
10 enrichment, cultural and social activities.

11 (cc) "Relative" means a person related by blood, marriage or
12 adoption.

13 (dd) "Runaway" means a child who is willfully and voluntarily absent
14 from the child's home without the consent of the child's parent or other
15 custodian.

16 (ee) "Secretary" means the secretary for children and families or the
17 secretary's designee.

18 (ff) "Secure facility" means a facility, other than a staff secure facility
19 ~~or juvenile detention facility~~, that is operated or structured so as to ensure
20 that all entrances and exits from the facility are under the exclusive control
21 of the staff of the facility, whether or not the person being detained has
22 freedom of movement within the perimeters of the facility, or that relies on
23 locked rooms and buildings, fences or physical restraint in order to control
24 behavior of its residents. No secure facility shall be in a city or county jail.
25 *A secure facility shall include a juvenile detention facility only for the*
26 *purposes described in K.S.A. 2019 Supp. 38-2260, and amendments*
27 *thereto.*

28 (gg) "Sexual abuse" means any contact or interaction with a child in
29 which the child is being used for the sexual stimulation of the perpetrator,
30 the child or another person. Sexual abuse shall include, but is not limited
31 to, allowing, permitting or encouraging a child to:

32 (1) Be photographed, filmed or depicted in pornographic material; or
33 (2) be subjected to aggravated human trafficking, as defined in
34 K.S.A. 2019 Supp. 21-5426(b), and amendments thereto, if committed in
35 whole or in part for the purpose of the sexual gratification of the offender
36 or another, or be subjected to an act that would constitute conduct
37 proscribed by article 55 of chapter 21 of the Kansas Statutes Annotated or
38 K.S.A. 2019 Supp. 21-6419 or 21-6422, and amendments thereto.

39 (hh) "Shelter facility" means any public or private facility or home,
40 other than a juvenile detention facility or staff secure facility, that may be
41 used in accordance with this code for the purpose of providing either
42 temporary placement for children in need of care prior to the issuance of a
43 dispositional order or longer term care under a dispositional order.

1 (ii) "Staff secure facility" means a facility described in K.S.A. 65-
2 535, and amendments thereto: (1) That does not include construction
3 features designed to physically restrict the movements and activities of
4 juvenile residents who are placed therein; (2) that may establish reasonable
5 rules restricting entrance to and egress from the facility; and (3) in which
6 the movements and activities of individual juvenile residents may, for
7 treatment purposes, be restricted or subject to control through the use of
8 intensive staff supervision. No staff secure facility shall be in a city or
9 county jail.

10 (jj) "Transition plan" means, when used in relation to a youth in the
11 custody of the secretary, an individualized strategy for the provision of
12 medical, mental health, education, employment and housing supports as
13 needed for the adult and, if applicable, for any minor child of the adult, to
14 live independently and specifically provides for the supports and any
15 services for which an adult with a disability is eligible including, but not
16 limited to, funding for home and community based services waivers.

17 (kk) "Youth residential facility" means any home, foster home or
18 structure that provides 24-hour-a-day care for children and that is licensed
19 pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated, and
20 amendments thereto.

21 Sec. 2. K.S.A. 2019 Supp. 38-2260 is hereby amended to read as
22 follows: 38-2260. (a) *Valid court order*. During proceedings under this
23 code, the court may enter an order directing a child who is the subject of
24 the proceedings to remain in a present or future placement if:

25 (1) The child and the child's guardian ad litem are present in court
26 when the order is entered;

27 (2) the court finds that the child has been adjudicated a child in need
28 of care pursuant to K.S.A. 2019 Supp. 38-2202(d)(6), (d)(7), (d)(8), (d)(9),
29 (d)(10) or (d)(12), and amendments thereto, and that the child is not likely
30 to be available within the jurisdiction of the court for future proceedings;

31 (3) the child and the guardian ad litem receive oral and written notice
32 of the consequences of violation of the order; and

33 (4) a copy of the written notice is filed in the official case file.

34 (b) *Application*. Any person may file a verified application for
35 determination that a child has violated an order entered pursuant to
36 subsection (a) and for an order authorizing holding the child in a secure
37 facility. The application shall state the applicant's belief that the child has
38 violated the order entered pursuant to subsection (a) without good cause
39 and the specific facts supporting the allegation.

40 (c) *Ex parte order*. After reviewing the application filed pursuant to
41 subsection (b), the court may enter an ex parte order directing that the
42 child be taken into custody and held in a secure facility designated by the
43 court, if the court finds probable cause that the child violated the court's

1 order to remain in placement without good cause. Pursuant to K.S.A. 2019
2 Supp. 38-2237, and amendments thereto, the order shall be served on the
3 child's parents, the child's legal custodian and the child's guardian ad litem.

4 (d) *Preliminary hearing.* Within 24 hours following a child's being
5 taken into custody pursuant to an order issued under subsection (c), the
6 court shall hold a preliminary hearing to determine whether the child
7 admits or denies the allegations of the application and, if the child denies
8 the allegations, to determine whether probable cause exists to support the
9 allegations.

10 (1) Notice of the time and place of the preliminary hearing shall be
11 given orally or in writing to the child's parents, the child's legal custodian
12 and the child's guardian ad litem.

13 (2) At the hearing, the child shall have the right to a guardian ad litem
14 and shall be served with a copy of the application.

15 (3) If the child admits the allegations or enters a no contest statement
16 and if the court finds that the admission or no contest statement is
17 knowledgeable and voluntary, the court shall proceed without delay to the
18 placement hearing pursuant to subsection (f).

19 (4) If the child denies the allegations, the court shall determine
20 whether probable cause exists to hold the child in a secure facility pending
21 an evidentiary hearing pursuant to subsection (e). After hearing the
22 evidence, if the court finds that: (A) There is probable cause to believe that
23 the child has violated an order entered pursuant to subsection (a) without
24 good cause; and (B) placement in a secure facility is necessary for the
25 protection of the child or to assure the presence of the child at the
26 evidentiary hearing pursuant to subsection (e), the court may order the
27 child held in a secure facility pending the evidentiary hearing.

28 (e) *Evidentiary hearing.* The court shall hold an evidentiary hearing
29 on an application within 72 hours of the child's being taken into custody.
30 Notice of the time and place of the hearing shall be given orally or in
31 writing to the child's parents, the child's legal custodian and the child's
32 guardian ad litem. At the evidentiary hearing, the court shall determine by
33 a clear and convincing evidence whether the child has:

34 (1) Violated a court order entered pursuant to subsection (a) without
35 good cause;

36 (2) been provided at the hearing with the rights enumerated in
37 subsection (d)(2); and

38 (3) been informed of:

39 (A) The nature and consequences of the proceeding;

40 (B) the right to confront and cross-examine witnesses and present
41 evidence;

42 (C) the right to have a transcript or recording of the proceedings; and

43 (D) the right to appeal.

1 (f) *Placement.* (1) If the child admits violating the order entered
2 pursuant to subsection (a) or if, after an evidentiary hearing, the court finds
3 that the child has violated such an order, the court shall immediately
4 proceed to a placement hearing. The court may enter an order awarding
5 custody of the child to:

6 (A) A parent or other legal custodian;

7 (B) a person other than a parent or other person having custody, who
8 shall not be required to be licensed under article 5 of chapter 65 of the
9 Kansas Statutes Annotated, and amendments thereto;

10 (C) a youth residential facility; or

11 (D) the secretary, if the secretary does not already have legal custody
12 of the child.

13 (2) The court may authorize the custodian to place the child in a
14 secure facility, if the court determines that all other placement options have
15 been exhausted or are inappropriate, based upon a written report submitted
16 by the secretary, if the child is in the secretary's custody, or submitted by a
17 public agency independent of the court and law enforcement, if the child is
18 in the custody of someone other than the secretary. The report shall detail
19 the behavior of the child and the circumstances under which the child was
20 brought before the court and made subject to the order entered pursuant to
21 subsection (a).

22 (3) The authorization to place the child in a secure facility pursuant to
23 this subsection shall expire 60 days, inclusive of weekend and legal
24 holidays, after its issue. The court may grant extensions of such
25 authorization for two additional periods, each not to exceed 60 days, upon
26 rehearing pursuant to K.S.A. 2019 Supp. 38-2256, and amendments
27 thereto.

28 (4) *If the child is placed in a secure facility that is a juvenile
29 detention facility pursuant to this subsection, authorization for such
30 placement shall expire 24 hours after its issue. No extensions of such
31 authorization shall be granted.*

32 (g) *Payment.* The secretary shall only pay for placement and services
33 for a child placed in a secure facility pursuant to subsection (f) upon
34 receipt of a valid court order authorizing secure care placement.

35 (h) *Limitations on facilities used.* Nothing in this section shall
36 authorize placement of a child in an adult jail or lockup.

37 (i) *Time limits, computation.* Except as otherwise specifically
38 provided by subsection (f), Saturdays, Sundays, legal holidays, and days
39 on which the office of the clerk of the court is not accessible shall not be
40 counted in computing any time limit imposed by this section.

41 Sec. 3. K.S.A. 2019 Supp. 38-2202 and 38-2260 are hereby repealed.

42 Sec. 4. This act shall take effect and be in force from and after its
43 publication in the statute book.