

## HOUSE BILL No. 2273

By Representative Welshimer

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AN ACT concerning children in need of care; relating to the definition of abuse; concerning the termination of parental rights; amending K.S.A. 38-1502 and 38-1583 and repealing the existing sections; also repealing K.S.A. 38-1502d and 38-1583a.

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

Section 1. K.S.A. 38-1502 is hereby amended to read as follows: 38-1502. As used in this code, unless the context otherwise indicates:

(a) "Child in need of care" means a person less than 18 years of age who:

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

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

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

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

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

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

(7) except in the case of a violation of K.S.A. 41-727, subsection (j) of K.S.A. 74-8810 or subsection (m) or (n) of K.S.A. 79-3321, and amendments thereto, or, except as provided in subsection (a)(12) of K.S.A. 21-4204a and amendments thereto, does an act which, when committed by a person under 18 years of age, is prohibited by state law, city ordinance or county resolution but which is not prohibited when done by an adult;

(8) while less than 10 years of age, commits any act which if done by an adult would constitute the commission of a felony or misdemeanor as defined by K.S.A. 21-3105 and amendments thereto;

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

(10) is willfully and voluntarily absent at least a second time from a court ordered or designated placement, or a placement pursuant to court order, if the absence is without the consent of the person with whom the

1 child is placed or, if the child is placed in a facility, without the consent  
2 of the person in charge of such facility or such person's designee;

3 (11) has been residing in the same residence with a sibling or another  
4 person under 18 years of age, who has been physically, mentally or emo-  
5 tionally abused or neglected, or sexually abused; or

6 (12) while less than 10 years of age commits the offense defined in  
7 K.S.A. 21-4204a and amendments thereto.

8 (b) "Physical, mental or emotional abuse" means the infliction of  
9 physical, mental or emotional injury or the causing of a deterioration of  
10 a child and may include, but shall not be limited to, maltreatment or  
11 exploiting a child to the extent that the child's health or emotional well-  
12 being is endangered. *Such abuse shall not be based on the lack of em-  
13 ployment or the lack of financial means of the child's parents or other  
14 custodian.*

15 (c) "Sexual abuse" means any act committed with a child which is  
16 described in article 35, chapter 21 of the Kansas Statutes Annotated and  
17 those acts described in K.S.A. 21-3602 or 21-3603, and amendments  
18 thereto, regardless of the age of the child.

19 (d) "Parent," when used in relation to a child or children, includes a  
20 guardian, conservator and every person who is by law liable to maintain,  
21 care for or support the child.

22 (e) "Interested party" means the state, the petitioner, the child, any  
23 parent, *any grandparent of the child* and any person found to be an in-  
24 terested party pursuant to K.S.A. 38-1541 and amendments thereto.

25 (f) "Law enforcement officer" means any person who by virtue of  
26 office or public employment is vested by law with a duty to maintain  
27 public order or to make arrests for crimes, whether that duty extends to  
28 all crimes or is limited to specific crimes.

29 (g) "Youth residential facility" means any home, foster home or struc-  
30 ture which provides 24-hour-a-day care for children and which is licensed  
31 pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated.

32 (h) "Shelter facility" means any public or private facility or home  
33 other than a juvenile detention facility that may be used in accordance  
34 with this code for the purpose of providing either temporary placement  
35 for the care of children in need of care prior to the issuance of a dispo-  
36 sitional order or longer term care under a dispositional order.

37 (i) "Juvenile detention facility" means any secure public or private  
38 facility used for the lawful custody of accused or adjudicated juvenile  
39 offenders which must not be a jail.

40 (j) "Adult correction facility" means any public or private facility, se-  
41 cure or nonsecure, which is used for the lawful custody of accused or  
42 convicted adult criminal offenders.

43 (k) "Secure facility" means a facility which is operated or structured

1 so as to ensure that all entrances and exits from the facility are under the  
2 exclusive control of the staff of the facility, whether or not the person  
3 being detained has freedom of movement within the perimeters of the  
4 facility, or which relies on locked rooms and buildings, fences or physical  
5 restraint in order to control behavior of its residents. No secure facility  
6 shall be in a city or county jail.

7 (l) "Ward of the court" means a child over whom the court has ac-  
8 quired jurisdiction by the filing of a petition pursuant to this code and  
9 who continues subject to that jurisdiction until the petition is dismissed  
10 or the child is discharged as provided in K.S.A. 38-1503 and amendments  
11 thereto.

12 (m) "Custody," whether temporary, protective or legal, means the  
13 status created by court order or statute which vests in a custodian,  
14 whether an individual or an agency, the right to physical possession of  
15 the child and the right to determine placement of the child, subject to  
16 restrictions placed by the court.

17 (n) "Placement" means the designation by the individual or agency  
18 having custody of where and with whom the child will live.

19 (o) "Secretary" means the secretary of social and rehabilitation  
20 services.

21 (p) "Relative" means a person related by blood, marriage or adoption  
22 but, when referring to a relative of a child's parent, does not include the  
23 child's other parent.

24 (q) "Court-appointed special advocate" means a responsible adult  
25 other than an attorney guardian *ad litem* who is appointed by the court  
26 to represent the best interests of a child, as provided in K.S.A. 38-1505a  
27 and amendments thereto, in a proceeding pursuant to this code.

28 (r) "Multidisciplinary team" means a group of persons, appointed by  
29 the court or by the state department of social and rehabilitation services  
30 under K.S.A. 38-1523a and amendments thereto, which has knowledge  
31 of the circumstances of a child in need of care. A multidisciplinary team  
32 may serve as a community services team.

33 (s) "Jail" means:

34 (1) An adult jail or lockup; or

35 (2) a facility in the same building or on the same grounds as an adult  
36 jail or lockup, unless the facility meets all applicable standards and licen-  
37 sure requirements under law and there is (A) total separation of the ju-  
38 venile and adult facility spatial areas such that there could be no haphaz-  
39 ard or accidental contact between juvenile and adult residents in the  
40 respective facilities; (B) total separation in all juvenile and adult program  
41 activities within the facilities, including recreation, education, counseling,  
42 health care, dining, sleeping, and general living activities; and (C) separate  
43 juvenile and adult staff, including management, security staff and direct

1 care staff such as recreational, educational and counseling.

2 (t) “Kinship care” means the placement of a child in the home of the  
3 child’s relative or in the home of another adult with whom the child or  
4 the child’s parent already has a close emotional attachment.

5 (u) “Juvenile intake and assessment worker” means a responsible  
6 adult authorized to perform intake and assessment services as part of the  
7 intake and assessment system established pursuant to K.S.A. 75-7023, and  
8 amendments thereto.

9 (v) “Abandon” means to forsake, desert or cease providing care for  
10 the child without making appropriate provisions for substitute care.

11 (w) “Permanent guardianship” means a judicially created relationship  
12 between child and caretaker which is intended to be permanent and self-  
13 sustaining without ongoing state oversight or intervention by the secre-  
14 tary. The permanent guardian stands in loco parentis and exercises all the  
15 rights and responsibilities of a parent. A permanent guardian may be  
16 appointed after termination of parental rights or without termination of  
17 parental rights, if the parent consents and agrees to the appointment of  
18 a permanent guardian. Upon appointment of a permanent guardian, the  
19 child shall be discharged from the custody of the secretary.

20 (x) “Aggravated circumstances” means the abandonment, torture,  
21 chronic abuse, sexual abuse or chronic, life threatening neglect of a child.

22 (y) “Permanency hearing” means a notice and opportunity to be  
23 heard is provided to interested parties, foster parents, preadoptive parents  
24 or relatives providing care for the child. The court, after consideration of  
25 the evidence, shall determine whether progress toward the case plan goal  
26 is adequate or reintegration is a viable alternative, or if the case should  
27 be referred to the county or district attorney for filing of a petition to  
28 terminate parental rights or to appoint a permanent guardian.

29 (z) “Extended out of home placement” means a child has been in the  
30 custody of the secretary and placed with neither parent for 15 of the most  
31 recent 22 months beginning 60 days after the date at which a child in the  
32 custody of the secretary was removed from the home.

33 (aa) “Educational institution” means all schools at the elementary and  
34 secondary levels.

35 (bb) “Educator” means any administrator, teacher or other profes-  
36 sional or paraprofessional employee of an educational institution who has  
37 exposure to a pupil specified in subsection (a) of K.S.A. 2000 Supp. 72-  
38 89b03 and amendments thereto.

39 (cc) “Neglect” means acts or omissions by a parent, guardian or per-  
40 son responsible for the care of a child resulting in harm to a child or  
41 presenting a likelihood of harm and the acts or omissions are not due  
42 solely to the lack of financial means of the child’s parents or other cus-  
43 todian. Neglect may include but shall not be limited to:

1 (1) Failure to provide the child with food, clothing or shelter neces-  
2 sary to sustain the life or health of the child;

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

7 (3) failure to use resources available to treat a diagnosed medical  
8 condition if such treatment will make a child substantially more com-  
9 fortable, reduce pain and suffering, correct or substantially diminish a  
10 crippling condition from worsening. A parent legitimately practicing reli-  
11 gious beliefs who does not provide specified medical treatment for a  
12 child because of religious beliefs shall not for that reason be considered  
13 a negligent parent; however, this exception shall not preclude a court from  
14 entering an order pursuant to subsection (a)(2) of K.S.A. 38-1513, and  
15 amendments thereto.

16 (dd) "Community services team" means a group of persons, ap-  
17 pointed by the court or by the state department of social and rehabilita-  
18 tion services for the purpose of assessing the needs of a child who is  
19 alleged to be a child in need of care.

20 Sec. 2. K.S.A. 38-1583 is hereby amended to read as follows: 38-  
21 1583. (a) When the child has been adjudicated to be a child in need of  
22 care, the court may terminate parental rights when the court finds by  
23 clear and convincing evidence that the parent is unfit by reason of conduct  
24 or condition which renders the parent unable to care properly for a child  
25 and the conduct or condition is unlikely to change in the foreseeable  
26 future. *The court shall not consider the lack of employment or the lack of*  
27 *financial means of the child's parent when making a determination*  
28 *hereunder.*

29 (b) In making a determination hereunder the court shall consider,  
30 but is not limited to, the following, if applicable:

31 (1) Emotional illness, mental illness, mental deficiency or physical  
32 disability of the parent, of such duration or nature as to render the parent  
33 unlikely to care for the ongoing physical, mental and emotional needs of  
34 the child;

35 (2) conduct toward a child of a physically, emotionally or sexually  
36 cruel or abusive nature;

37 (3) excessive use of intoxicating liquors or narcotic or dangerous  
38 drugs;

39 (4) physical, mental or emotional neglect of the child;

40 (5) conviction of a felony and imprisonment;

41 (6) unexplained injury or death of another child or stepchild of the  
42 parent;

43 (7) reasonable efforts by appropriate public or private child caring

1 agencies have been unable to rehabilitate the family; and

2 (8) lack of effort on the part of the parent to adjust the parent's cir-  
3 cumstances, conduct or conditions to meet the needs of the child.

4 (c) In addition to the foregoing, when a child is not in the physical  
5 custody of a parent, the court, in proceedings concerning the termination  
6 of parental rights, shall also consider, but is not limited to the following:

7 (1) Failure to assure care of the child in the parental home when able  
8 to do so;

9 (2) failure to maintain regular visitation, contact or communication  
10 with the child or with the custodian of the child;

11 (3) failure to carry out a reasonable plan approved by the court di-  
12 rected toward the integration of the child into the parental home; and

13 (4) failure to pay a reasonable portion of the cost of substitute physical  
14 care and maintenance based on ability to pay.

15 In making the above determination, the court may disregard incidental  
16 visitations, contacts, communications or contributions.

17 (d) The rights of the parents may be terminated as provided in this  
18 section if the court finds that the parents have abandoned the child, *the*  
19 *custody of the child was surrendered pursuant to K.S.A. 38-15,100, and*  
20 *amendments thereto*, or the child was left under such circumstances that  
21 the identity of the parents is unknown and cannot be ascertained, despite  
22 diligent searching, and the parents have not come forward to claim the  
23 child within three months after the child is found.

24 (e) The existence of any one of the above standing alone may, but  
25 does not necessarily, establish grounds for termination of parental rights.  
26 The determination shall be based on an evaluation of all factors which  
27 are applicable. In considering any of the above factors for terminating the  
28 rights of a parent, the court shall give primary consideration to the phys-  
29 ical, mental or emotional condition and needs of the child. If presented  
30 to the court and subject to the provisions of K.S.A. 60-419, and amend-  
31 ments thereto, the court shall consider as evidence testimony from a  
32 person licensed to practice medicine and surgery, a licensed psychologist  
33 or a licensed social worker expressing an opinion relating to the physical,  
34 mental or emotional condition and needs of the child. The court shall  
35 consider any such testimony only if the licensed professional providing  
36 such testimony is subject to cross-examination.

37 (f) A termination of parental rights under the Kansas code for care  
38 of children shall not terminate the right of the child to inherit from or  
39 through the parent. Upon such termination, all the rights of birth parents  
40 to such child, including their right to inherit from or through such child,  
41 shall cease.

42 (g) If, after finding the parent unfit, the court determines a compel-  
43 ling reason why it is contrary to the welfare or not in the best interests

1 of the child to terminate parental rights or upon agreement of the parents,  
2 the court may award permanent guardianship to an individual providing  
3 care for the child, a relative or other person with whom the child has a  
4 close emotional attachment. Prior to awarding permanent guardianship,  
5 the court shall receive and consider an assessment as provided in K.S.A.  
6 59-2132 and amendments thereto of any potential permanent guardian.  
7 Upon appointment of a permanent guardian, the court shall discharge  
8 the child from the custody of the secretary.

9 (h) If a parent is convicted of an offense as provided in subsection  
10 (7) of K.S.A. 38-1585 and amendments thereto or is adjudicated a juvenile  
11 offender because of an act which if committed by an adult would be an  
12 offense as provided in subsection (7) of K.S.A. 38-1585 and amendments  
13 thereto, and if the victim was the other parent of a child, the court may  
14 disregard such convicted or adjudicated parent's opinions or wishes in  
15 regard to the placement of such child.

16 (i) If the secretary has documented to the court a compelling reason  
17 why custody for adoption, custody for permanent guardianship, nor cus-  
18 tody for placement with a fit and willing relative are currently a viable  
19 option, the court may order custody to remain with the secretary for  
20 continued permanency planning and another planned permanent living  
21 arrangement.

22 Sec. 3. K.S.A. 38-1502, 38-1502d, 38-1583 and 38-1583a are hereby  
23 repealed.

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

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