

SENATE BILL No. 241

By Committee on Ways and Means

2-6

AN ACT concerning children; relating to children in need of care; definitions; amending K.S.A. 38-1502 and repealing the existing section; also repealing K.S.A. 38-1502d.

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 child is placed or, if the child is placed in a facility, without the consent

- 1 of the person in charge of such facility or such person's designee;
- 2 (11) has been residing in the same residence with a sibling or another
- 3 person under 18 years of age, who has been physically, mentally or emo-
- 4 tionally abused or neglected, or sexually abused; or
- 5 (12) while less than 10 years of age commits the offense defined in
- 6 K.S.A. 21-4204a and amendments thereto.
- 7 (b) "Physical, mental or emotional abuse" means the infliction of
- 8 physical, mental or emotional injury or the causing of a deterioration of
- 9 a child and may include, but shall not be limited to, maltreatment or
- 10 exploiting a child to the extent that the child's health or emotional well-
- 11 being is endangered.
- 12 (c) "Sexual abuse" means any act committed with a child which is
- 13 described in article 35, chapter 21 of the Kansas Statutes Annotated and
- 14 those acts described in K.S.A. 21-3602 or 21-3603, and amendments
- 15 thereto, regardless of the age of the child.
- 16 (d) "Parent," when used in relation to a child or children, includes a
- 17 guardian, conservator and every person who is by law liable to maintain,
- 18 care for or support the child.
- 19 (e) "Interested party" means the state, the petitioner, the child, any
- 20 parent, *any grandparent* and any person found to be an interested party
- 21 pursuant to K.S.A. 38-1541 and amendments thereto.
- 22 (f) "Law enforcement officer" means any person who by virtue of
- 23 office or public employment is vested by law with a duty to maintain
- 24 public order or to make arrests for crimes, whether that duty extends to
- 25 all crimes or is limited to specific crimes.
- 26 (g) "Youth residential facility" means any home, foster home or struc-
- 27 ture which provides 24-hour-a-day care for children and which is licensed
- 28 pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated.
- 29 (h) "Shelter facility" means any public or private facility or home
- 30 other than a juvenile detention facility that may be used in accordance
- 31 with this code for the purpose of providing either temporary placement
- 32 for the care of children in need of care prior to the issuance of a dispos-
- 33 itional order or longer term care under a dispositional order.
- 34 (i) "Juvenile detention facility" means any secure public or private
- 35 facility used for the lawful custody of accused or adjudicated juvenile
- 36 offenders which must not be a jail.
- 37 (j) "Adult correction facility" means any public or private facility, se-
- 38 cure or nonsecure, which is used for the lawful custody of accused or
- 39 convicted adult criminal offenders.
- 40 (k) "Secure facility" means a facility which is operated or structured
- 41 so as to ensure that all entrances and exits from the facility are under the
- 42 exclusive control of the staff of the facility, whether or not the person
- 43 being detained has freedom of movement within the perimeters of the

1 facility, or which relies on locked rooms and buildings, fences or physical
2 restraint in order to control behavior of its residents. No secure facility
3 shall be in a city or county jail.

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

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

14 (n) “Placement” means the designation by the individual or agency
15 having custody of where and with whom the child will live.

16 (o) “Secretary” means the secretary of social and rehabilitation
17 services.

18 (p) “Relative” means a person related by blood, marriage or adoption
19 but, when referring to a relative of a child’s parent, does not include the
20 child’s other parent.

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

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

30 (s) “Jail” means:

31 (1) An adult jail or lockup; or

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

42 (t) “Kinship care” means the placement of a child in the home of the
43 child’s relative or in the home of another adult with whom the child or

1 the child's parent already has a close emotional attachment.

2 (u) "Juvenile intake and assessment worker" means a responsible
3 adult authorized to perform intake and assessment services as part of the
4 intake and assessment system established pursuant to K.S.A. 75-7023, and
5 amendments thereto.

6 (v) "Abandon" means to forsake, desert or cease providing care for
7 the child without making appropriate provisions for substitute care.

8 (w) "Permanent guardianship" means a judicially created relationship
9 between child and caretaker which is intended to be permanent and self-
10 sustaining without ongoing state oversight or intervention by the secre-
11 tary. The permanent guardian stands in loco parentis and exercises all the
12 rights and responsibilities of a parent. A permanent guardian may be
13 appointed after termination of parental rights or without termination of
14 parental rights. If the parent consents and agrees to the appointment of
15 a permanent guardian, *a finding of unfitness is not necessary*. Upon ap-
16 pointment of a permanent guardian, the child shall be discharged from
17 the custody of the secretary.

18 (x) "Aggravated circumstances" means the abandonment, torture,
19 chronic abuse, sexual abuse or chronic, life threatening neglect of a child.

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

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

31 (aa) "Educational institution" means all schools at the elementary and
32 secondary levels.

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

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

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

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

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

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

18 Sec. 2. K.S.A. 38-1502 and 38-1502d are hereby repealed.

19 Sec. 3. This act shall take effect and be in force from and after its
20 publication in the statute book.

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