

SENATE BILL No. 160

By Committee on Judiciary

2-5

1 AN ACT concerning the revised Kansas code for care of children; relating
2 to termination of parental rights; amending K.S.A. 2014 Supp. 38-2269
3 and repealing the existing section.
4

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

6 Section 1. K.S.A. 2014 Supp. 38-2269 is hereby amended to read as
7 follows: 38-2269. (a) When the child has been adjudicated to be a child in
8 need of care, the court ~~may terminate parental rights or appoint a~~
9 ~~permanent custodian~~ shall take action pursuant to subsection (h) within six
10 months when the court finds by clear and convincing evidence that the
11 parent is unfit by reason of conduct or condition which renders the parent
12 unable to care properly for a child and the conduct or condition is unlikely
13 to change in the foreseeable future.

14 (b) In making a determination of unfitness the court shall consider,
15 but is not limited to, the following, if applicable:

16 (1) Emotional illness, mental illness, mental deficiency or physical
17 disability of the parent, of such duration or nature as to render the parent
18 unable to care for the ongoing physical, mental and emotional needs of the
19 child;

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

22 (3) the use of intoxicating liquors or narcotic or dangerous drugs of
23 such duration or nature as to render the parent unable to care for the
24 ongoing physical, mental or emotional needs of the child;

25 (4) physical, mental or emotional abuse or neglect or sexual abuse of
26 a child;

27 (5) conviction of a felony and imprisonment;

28 (6) unexplained injury or death of another child or stepchild of the
29 parent or any child in the care of the parent at the time of injury or death;

30 (7) failure of reasonable efforts made by appropriate public or private
31 agencies to rehabilitate the family;

32 (8) lack of effort on the part of the parent to adjust the parent's
33 circumstances, conduct or conditions to meet the needs of the child; and

34 (9) whether the child has been in extended out of home placement as
35 a result of actions or inactions attributable to the parent and one or more of
36 the factors listed in subsection (c) apply.

1 (c) In addition to the foregoing, when a child is not in the physical
2 custody of a parent, the court, shall consider, but is not limited to, the
3 following:

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

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

8 (3) failure to carry out a reasonable plan approved by the court
9 directed toward the integration of the child into a parental home; and

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

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

14 (d) A finding of unfitness may be made as provided in this section if
15 the court finds that the parents have abandoned the child, the custody of
16 the child was surrendered pursuant to K.S.A. 2014 Supp. 38-2282, and
17 amendments thereto, or the child was left under such circumstances that
18 the identity of the parents is unknown and cannot be ascertained, despite
19 diligent searching, and the parents have not come forward to claim the
20 child within three months after the child is found.

21 (e) If a person is convicted of a felony in which sexual intercourse
22 occurred, or if a juvenile is adjudicated a juvenile offender because of an
23 act which, if committed by an adult, would be a felony in which sexual
24 intercourse occurred, and as a result of the sexual intercourse, a child is
25 conceived, a finding of unfitness may be made.

26 (f) The existence of any one of the above factors standing alone may,
27 but does not necessarily, establish grounds for termination of parental
28 rights.

29 (g) *A finding of unfitness shall be made as provided in this section if,*
30 *after a reasonable plan approved by the court directed toward the*
31 *integration of the child into a parental home has been in place for six*
32 *months, the court finds that a parent has failed to carry out such plan on*
33 *two occasions after such plan has been in place for six months.*

34 ~~(g)~~ (h) (1) If the court makes a finding of unfitness, *within six months*
35 *after making such finding,* the court shall consider whether termination of
36 parental rights as requested in the petition or motion is in the best interests
37 of the child. In making the determination, the court shall give primary
38 consideration to the physical, mental and emotional health of the child. If
39 the physical, mental or emotional needs of the child would best be served
40 by termination of parental rights, the court shall ~~so order~~ *terminate*
41 *parental rights and take action in accordance with subsection (h)(2).* *If the*
42 *physical, mental or emotional needs of the child would best be served by*
43 *not terminating parental rights, the court shall not terminate parental*

1 *rights and shall take action in accordance with subsection (h)(3). A*
2 *termination of parental rights under the code shall not terminate the right*
3 *of a child to inherit from or through a parent. Upon such termination all*
4 *rights of the parent to such child, including, such parent's right to inherit*
5 *from or through such child, shall cease.*

6 (2) If the court terminates parental rights, the court ~~may~~ *shall*
7 authorize adoption pursuant to K.S.A. 2014 Supp. 38-2270, and
8 amendments thereto, appointment of a permanent custodian pursuant to
9 K.S.A. 2014 Supp. 38-2272, and amendments thereto, or continued
10 permanency planning.

11 (3) If the court does not terminate parental rights, the court ~~may~~ *shall*
12 authorize appointment of a permanent custodian pursuant to K.S.A. 2014
13 Supp. 38-2272, and amendments thereto, or continued permanency
14 planning.

15 ~~(i)~~ (i) If a parent is convicted of an offense as provided in ~~subsection~~
16 ~~(a)(7)~~ of K.S.A. 2014 Supp. 38-2271(a)(7), and amendments thereto, or is
17 adjudicated a juvenile offender because of an act which if committed by an
18 adult would be an offense as provided in ~~subsection (a)(7)~~ of K.S.A. 2014
19 Supp. 38-2271(a)(7), and amendments thereto, and if the victim was the
20 other parent of a child, the court may disregard such convicted or
21 adjudicated parent's opinions or wishes in regard to the placement of such
22 child.

23 ~~(j)~~ (j) A record shall be made of the proceedings.

24 ~~(k)~~ (k) When adoption, proceedings to appoint a permanent custodian
25 or continued permanency planning has been authorized *by the court*, the
26 person or agency awarded custody of the child shall within 30 days submit
27 a written plan for permanent placement which shall include measurable
28 objectives and time schedules. *Such written plan shall include a*
29 *permanency goal that will be accomplished within one year and the court*
30 *shall insure that such permanency goal is met.*

31 Sec. 2. K.S.A. 2014 Supp. 38-2269 is hereby repealed.

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