

SENATE BILL No. 108

By Committee on Judiciary

Proposed Amendments to Senate Bill No. 108
Senator Rucker
Senate Judiciary Committee
February 25, 2019
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Office of Revisor of Statutes

1 AN ACT concerning ~~children; relating to crimes and punishment;~~
2 involuntary manslaughter; abuse of a child; ~~revised code for care of~~
3 ~~children; presumption of unfitness;~~ amending K.S.A. 2018 Supp. 21-
4 5405, 21-5602 and 38-2271 and repealing the existing sections.

crimes, punishment and criminal procedure; relating to

strike in lines 2-3 and 4

and

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

7 Section 1. K.S.A. 2018 Supp. 21-5405 is hereby amended to read as
8 follows: 21-5405. (a) Involuntary manslaughter is the killing of a human
9 being committed:

WHEREAS, The provisions of K.S.A. 2018 Supp.
21-5405 and 21-5602, as amended by this act, shall
be known as Mireya's law.
Now, therefore:

- 10 (1) Recklessly;
11 (2) in the commission of, or attempt to commit, or flight from any
12 felony, other than an inherently dangerous felony as defined in K.S.A.
13 2018 Supp. 21-5402, and amendments thereto, that is enacted for the
14 protection of human life or safety or a misdemeanor that is enacted for the
15 protection of human life or safety, including acts described in K.S.A. 8-
16 1566 and 8-1568(a), and amendments thereto, but excluding the acts
17 described in K.S.A. 8-1567, and amendments thereto;
18 (3) in the commission of, or attempt to commit, or flight from an act
19 described in K.S.A. 8-1567, and amendments thereto;
20 (4) during the commission of a lawful act in an unlawful manner; or
21 (5) in the commission of, or attempt to commit, or flight from an act
22 described in K.S.A. 8-1567, and amendments thereto, while:
23 (A) In violation of any restriction imposed on such person's driving
24 privileges pursuant to article 10 of chapter 8 of the Kansas Statutes
25 Annotated, and amendments thereto;
26 (B) such person's driving privileges are suspended or revoked
27 pursuant to article 10 of chapter 8 of the Kansas Statutes Annotated, and
28 amendments thereto; or
29 (C) such person has been deemed a habitual violator as defined in
30 K.S.A. 8-285, and amendments thereto, including at least one violation of
31 K.S.A. 8-1567, and amendments thereto, or violating an ordinance of any
32 city in this state, any resolution of any county in this state or any law of
33 another state, which ordinance, resolution or law declares to be unlawful
34 the acts prohibited by that statute.
35 (b) Involuntary manslaughter as defined in:
36 (1) Subsection (a)(1), (a)(2) or (a)(4) is a:

- 1 (A) Severity level 5, person felony, *except as provided in subsection*
- 2 *(b)(1)(B); and*
- 3 (B) severity level 3, person felony, *if the victim is under the age of six*
- 4 *years;*
- 5 (2) subsection (a)(3) is a severity level 4, person felony; and
- 6 (3) subsection (a)(5) is a severity level 3, person felony.

7 Sec. 2. K.S.A. 2018 Supp. 21-5602 is hereby amended to read as
 8 follows: 21-5602. (a) Abuse of a child is knowingly:

- 9 (1) Torturing or cruelly beating any child under the age of 18 years;
- 10 (2) shaking any child under the age of 18 years which results in great
- 11 bodily harm to the child; or
- 12 (3) inflicting cruel and inhuman corporal punishment upon any child
- 13 under the age of 18 years.

14 (b) Abuse of a child is a:

- 15 (1) Severity level 5, person felony, *except as provided in subsection*
- 16 *(b)(2); and*
- 17 (2) ~~severity level 3,~~ *person felony, if the victim is under the age of six*
- 18 *years.*

4

19 (c) A person who violates the provisions of this section may also be
 20 prosecuted for, convicted of, and punished for any form of battery or
 21 homicide.

22 ~~Sec. 3. K.S.A. 2018 Supp. 38-2271 is hereby amended to read as~~
 23 ~~follows: 38-2271. (a) It is presumed in the manner provided in K.S.A. 60-~~
 24 ~~414, and amendments thereto, that a parent is unfit by reason of conduct or~~
 25 ~~condition which renders the parent unable to fully care for a child, if the~~
 26 ~~state establishes, by clear and convincing evidence, that:~~

Remove Section 3, K.S.A. 2018
 Supp. 38-2271, leave current law

27 ~~(1) A parent has previously been found to be an unfit parent in~~
 28 ~~proceedings under K.S.A. 2018 Supp. 38-2266 et seq., and amendments~~
 29 ~~thereto, or comparable proceedings under the laws of another jurisdiction;~~

30 ~~(2) (A) a parent has twice before been convicted of a crime specified~~
 31 ~~in article 34, 35, or 36 of chapter 21 of the Kansas Statutes Annotated,~~
 32 ~~prior to their repeal, or articles 54, 55 or 56 of chapter 21 of the Kansas~~
 33 ~~Statutes Annotated, or K.S.A. 2018 Supp. 21-6104, 21-6325, 21-6326 or~~
 34 ~~21-6418 through 21-6421, and amendments thereto, or comparable~~
 35 ~~offenses under the laws of another jurisdiction, or an attempt or attempts to~~
 36 ~~commit such crimes, and the victim was under the age of 18 years; or~~

37 ~~(B) a parent has been convicted of involuntary manslaughter, K.S.A.~~
 38 ~~2018 Supp. 21-2405, and amendments thereto, or abuse of a child, K.S.A.~~
 39 ~~2018 Supp. 21-5602, and amendments thereto, or a comparable offense~~
 40 ~~under the laws of another jurisdiction, or an attempt or to commit such~~
 41 ~~crime, and the victim was under the age of six years;~~

42 ~~(3) on two or more prior occasions a child in the physical custody of~~
 43 ~~the parent has been adjudicated a child in need of care as defined by~~

- 1 ~~K.S.A. 2018 Supp. 38-2202(d)(1), (d)(3), (d)(5) or (d)(11), and~~
2 ~~amendments thereto, or comparable proceedings under the laws of another~~
3 ~~jurisdiction;~~
- 4 ~~(4) the parent has been convicted of causing the death of another~~
5 ~~child or stepchild of the parent;~~
- 6 ~~(5) the child has been in an out-of-home placement, under court order~~
7 ~~for a cumulative total period of one year or longer and the parent has~~
8 ~~substantially neglected or willfully refused to carry out a reasonable plan,~~
9 ~~approved by the court, directed toward reintegration of the child into the~~
10 ~~parental home;~~
- 11 ~~(6) (A) the child has been in an out-of-home placement, under court~~
12 ~~order for a cumulative total period of two years or longer; (B) the parent~~
13 ~~has failed to carry out a reasonable plan, approved by the court, directed~~
14 ~~toward reintegration of the child into the parental home; and (C) there is a~~
15 ~~substantial probability that the parent will not carry out such plan in the~~
16 ~~near future;~~
- 17 ~~(7) a parent has been convicted of capital murder, K.S.A. 21-3439,~~
18 ~~prior to its repeal, or K.S.A. 2018 Supp. 21-5401, and amendments~~
19 ~~thereto, murder in the first degree, K.S.A. 21-3401, prior to its repeal, or~~
20 ~~K.S.A. 2018 Supp. 21-5402, and amendments thereto, murder in the~~
21 ~~second degree, K.S.A. 21-3402, prior to its repeal, or K.S.A. 2018 Supp.~~
22 ~~21-5403, and amendments thereto, voluntary manslaughter, K.S.A. 21-~~
23 ~~3403, prior to its repeal, or K.S.A. 2018 Supp. 21-5404, and amendments~~
24 ~~thereto, human trafficking or aggravated human trafficking, K.S.A. 21-~~
25 ~~3446 or 21-3447, prior to their repeal, or K.S.A. 2018 Supp. 21-5426, and~~
26 ~~amendments thereto, or commercial sexual exploitation of a child, K.S.A.~~
27 ~~2018 Supp. 21-6422, and amendments thereto, or comparable proceedings~~
28 ~~under the laws of another jurisdiction or, has been adjudicated a juvenile~~
29 ~~offender because of an act which if committed by an adult would be an~~
30 ~~offense as provided in this subsection, and the victim of such murder was~~
31 ~~the other parent of the child;~~
- 32 ~~(8) a parent abandoned or neglected the child after having knowledge~~
33 ~~of the child's birth or either parent has been granted immunity from~~
34 ~~prosecution for abandonment of the child under K.S.A. 21-3604(b), prior~~
35 ~~to its repeal, or K.S.A. 2018 Supp. 21-5605(d), and amendments thereto;~~
36 ~~or~~
- 37 ~~(9) a parent has made no reasonable efforts to support or~~
38 ~~communicate with the child after having knowledge of the child's birth;~~
- 39 ~~(10) a father, after having knowledge of the pregnancy, failed without~~
40 ~~reasonable cause to provide support for the mother during the six months~~
41 ~~prior to the child's birth;~~
- 42 ~~(11) a father abandoned the mother after having knowledge of the~~
43 ~~pregnancy;~~

1 ~~(12) a parent has been convicted of rape, K.S.A. 21-3502, prior to its~~
2 ~~repeal, or K.S.A. 2018 Supp. 21-5503, and amendments thereto, or~~
3 ~~comparable proceedings under the laws of another jurisdiction resulting in~~
4 ~~the conception of the child; or~~

5 ~~(13) a parent has failed or refused to assume the duties of a parent for~~
6 ~~two consecutive years next preceding the filing of the petition. In making~~
7 ~~this determination the court may disregard incidental visitations, contacts,~~
8 ~~communications or contributions.~~

9 ~~(b) The burden of proof is on the parent to rebut the presumption of~~
10 ~~unfitness by a preponderance of the evidence. In the absence of proof that~~
11 ~~the parent is presently fit and able to care for the child or that the parent~~
12 ~~will be fit and able to care for the child in the foreseeable future, the court~~
13 ~~shall terminate parental rights in proceedings pursuant to K.S.A. 2018~~
14 ~~Supp. 38-2266 et seq., and amendments thereto.~~

15 Sec. 4. K.S.A. 2018 Supp. 21-5405, ~~21-5602 and 38-2271~~ are hereby
16 repealed.

and

17 Sec. 5. This act shall take effect and be in force from and after its
18 publication in the statute book.