

**SENATE BILL No. 108**

By Committee on Judiciary

2-6

1 AN ACT concerning ~~children; relating to crimes and punishment; crimes,~~  
2 ***punishment and criminal procedure; relating to*** involuntary  
3 manslaughter; abuse of a child; ~~revised code for care of children;~~  
4 ~~presumption of unfitness;~~ amending K.S.A. 2018 Supp. 21-5405; ***and***  
5 21-5602 ~~and 38-2271~~ and repealing the existing sections.

6  
7 ***WHEREAS, The provisions of K.S.A. 2018 Supp. 21-5405 and 21-***  
8 ***5602, as amended by this act, shall be known as Mireya's law.***

9 ***Now, therefore:***

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

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

14 (1) Recklessly;

15 (2) in the commission of, or attempt to commit, or flight from any  
16 felony, other than an inherently dangerous felony as defined in K.S.A.  
17 2018 Supp. 21-5402, and amendments thereto, that is enacted for the  
18 protection of human life or safety or a misdemeanor that is enacted for the  
19 protection of human life or safety, including acts described in K.S.A. 8-  
20 1566 and 8-1568(a), and amendments thereto, but excluding the acts  
21 described in K.S.A. 8-1567, and amendments thereto;

22 (3) in the commission of, or attempt to commit, or flight from an act  
23 described in K.S.A. 8-1567, and amendments thereto;

24 (4) during the commission of a lawful act in an unlawful manner; or

25 (5) in the commission of, or attempt to commit, or flight from an act  
26 described in K.S.A. 8-1567, and amendments thereto, while:

27 (A) In violation of any restriction imposed on such person's driving  
28 privileges pursuant to article 10 of chapter 8 of the Kansas Statutes  
29 Annotated, and amendments thereto;

30 (B) such person's driving privileges are suspended or revoked  
31 pursuant to article 10 of chapter 8 of the Kansas Statutes Annotated, and  
32 amendments thereto; or

33 (C) such person has been deemed a habitual violator as defined in  
34 K.S.A. 8-285, and amendments thereto, including at least one violation of  
35 K.S.A. 8-1567, and amendments thereto, or violating an ordinance of any  
36 city in this state, any resolution of any county in this state or any law of

1 another state, which ordinance, resolution or law declares to be unlawful  
2 the acts prohibited by that statute.

3 (b) Involuntary manslaughter as defined in:

4 (1) Subsection (a)(1), (a)(2) or (a)(4) is a:

5 (A) Severity level 5, person felony, *except as provided in subsection*  
6 *(b)(1)(B); and*

7 (B) *severity level 3, person felony, if the victim is under the age of six*  
8 *years;*

9 (2) subsection (a)(3) is a severity level 4, person felony; and

10 (3) subsection (a)(5) is a severity level 3, person felony.

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

13 (1) Torturing or cruelly beating any child under the age of 18 years;

14 (2) shaking any child under the age of 18 years which results in great  
15 bodily harm to the child; or

16 (3) inflicting cruel and inhuman corporal punishment upon any child  
17 under the age of 18 years.

18 (b) Abuse of a child is a:

19 (1) Severity level 5, person felony, *except as provided in subsection*  
20 *(b)(2); and*

21 (2) *severity level—3 4, person felony, if the victim is under the age of*  
22 *six years.*

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

26 ~~Sec. 3.—K.S.A. 2018 Supp. 38-2271 is hereby amended to read as~~  
27 ~~follows: 38-2271. (a) It is presumed in the manner provided in K.S.A. 60-~~  
28 ~~414, and amendments thereto, that a parent is unfit by reason of conduct or~~  
29 ~~condition which renders the parent unable to fully care for a child, if the~~  
30 ~~state establishes, by clear and convincing evidence, that:~~

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

34 ~~(2) (A) a parent has twice before been convicted of a crime specified~~  
35 ~~in article 34, 35, or 36 of chapter 21 of the Kansas Statutes Annotated,~~  
36 ~~prior to their repeal, or articles 54, 55 or 56 of chapter 21 of the Kansas~~  
37 ~~Statutes Annotated, or K.S.A. 2018 Supp. 21-6104, 21-6325, 21-6326 or~~  
38 ~~21-6418 through 21-6421, and amendments thereto, or comparable~~  
39 ~~offenses under the laws of another jurisdiction, or an attempt or attempts to~~  
40 ~~commit such crimes, and the victim was under the age of 18 years; or~~

41 ~~(B) a parent has been convicted of involuntary manslaughter, K.S.A.~~  
42 ~~2018 Supp. 21-2405, and amendments thereto, or abuse of a child, K.S.A.~~  
43 ~~2018 Supp. 21-5602, and amendments thereto, or a comparable offense~~

1 ~~under the laws of another jurisdiction, or an attempt or to commit such~~  
2 ~~crime, and the victim was under the age of six years;~~

3 ~~(3) on two or more prior occasions a child in the physical custody of~~  
4 ~~the parent has been adjudicated a child in need of care as defined by~~  
5 ~~K.S.A. 2018 Supp. 38-2202(d)(1), (d)(3), (d)(5) or (d)(11), and~~  
6 ~~amendments thereto, or comparable proceedings under the laws of another~~  
7 ~~jurisdiction;~~

8 ~~(4) the parent has been convicted of causing the death of another~~  
9 ~~child or stepchild of the parent;~~

10 ~~(5) the child has been in an out-of-home placement, under court order~~  
11 ~~for a cumulative total period of one year or longer and the parent has~~  
12 ~~substantially neglected or willfully refused to carry out a reasonable plan,~~  
13 ~~approved by the court, directed toward reintegration of the child into the~~  
14 ~~parental home;~~

15 ~~(6) (A) the child has been in an out-of-home placement, under court~~  
16 ~~order for a cumulative total period of two years or longer; (B) the parent~~  
17 ~~has failed to carry out a reasonable plan, approved by the court, directed~~  
18 ~~toward reintegration of the child into the parental home; and (C) there is a~~  
19 ~~substantial probability that the parent will not carry out such plan in the~~  
20 ~~near future;~~

21 ~~(7) a parent has been convicted of capital murder, K.S.A. 21-3439,~~  
22 ~~prior to its repeal, or K.S.A. 2018 Supp. 21-5401, and amendments~~  
23 ~~thereto, murder in the first degree, K.S.A. 21-3401, prior to its repeal, or~~  
24 ~~K.S.A. 2018 Supp. 21-5402, and amendments thereto, murder in the~~  
25 ~~second degree, K.S.A. 21-3402, prior to its repeal, or K.S.A. 2018 Supp.~~  
26 ~~21-5403, and amendments thereto, voluntary manslaughter, K.S.A. 21-~~  
27 ~~3403, prior to its repeal, or K.S.A. 2018 Supp. 21-5404, and amendments~~  
28 ~~thereto, human trafficking or aggravated human trafficking, K.S.A. 21-~~  
29 ~~3446 or 21-3447, prior to their repeal, or K.S.A. 2018 Supp. 21-5426, and~~  
30 ~~amendments thereto, or commercial sexual exploitation of a child, K.S.A.~~  
31 ~~2018 Supp. 21-6422, and amendments thereto, or comparable proceedings~~  
32 ~~under the laws of another jurisdiction or, has been adjudicated a juvenile~~  
33 ~~offender because of an act which if committed by an adult would be an~~  
34 ~~offense as provided in this subsection, and the victim of such murder was~~  
35 ~~the other parent of the child;~~

36 ~~(8) a parent abandoned or neglected the child after having knowledge~~  
37 ~~of the child's birth or either parent has been granted immunity from~~  
38 ~~prosecution for abandonment of the child under K.S.A. 21-3604(b), prior~~  
39 ~~to its repeal, or K.S.A. 2018 Supp. 21-5605(d), and amendments thereto;~~  
40 ~~or~~

41 ~~(9) a parent has made no reasonable efforts to support or~~  
42 ~~communicate with the child after having knowledge of the child's birth;~~

43 ~~(10) a father, after having knowledge of the pregnancy, failed without~~

1 reasonable cause to provide support for the mother during the six months  
2 prior to the child's birth;

3 ~~(11) a father abandoned the mother after having knowledge of the~~  
4 ~~pregnancy;~~

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

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

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

19 ~~Sec. 4-3. K.S.A. 2018 Supp. 21-5405; and 21-5602 and 38-2271 are~~  
20 ~~hereby repealed.~~

21 ~~Sec. 5-4. This act shall take effect and be in force from and after its~~  
22 ~~publication in the statute book.~~