

**HOUSE BILL No. 2189**

By Representative Thomas

1-26

1 AN ACT concerning children and minors; relating to children in the  
2 custody of the secretary for children and families; providing for an  
3 extension or re-entry of custody for persons up to 21 years of age;  
4 amending K.S.A. 38-2202 and 38-2203 and repealing the existing  
5 sections.

6  
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 38-2202 is hereby amended to read as follows: 38-  
9 2202. As used in the revised Kansas code for care of children, unless the  
10 context otherwise indicates:

11 (a) "Abandon" or "abandonment" means to forsake, desert or, without  
12 making appropriate provision for substitute care, cease providing care for  
13 the child.

14 (b) "Adult correction facility" means any public or private facility,  
15 secure or nonsecure, that is used for the lawful custody of accused or  
16 convicted adult criminal offenders.

17 (c) "Aggravated circumstances" means the abandonment, torture,  
18 chronic abuse, sexual abuse or chronic, ~~life-threatening~~ *life-threatening*  
19 neglect of a child.

20 (d) "Child in need of care" means a person less than 18 years of age  
21 at the time of filing of the petition or issuance of an ex parte protective  
22 custody order pursuant to K.S.A. 38-2242, and amendments thereto, who:

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

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

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

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

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

32 (6) is not attending school as required by K.S.A. 72-3421 or 72-3120,  
33 and amendments thereto;

34 (7) except in the case of a violation of K.S.A. 41-727, ~~K.S.A. 74-~~  
35 ~~8810(j), K.S.A. or 79-3321(m) or (n), and amendments thereto,~~ or K.S.A.  
36 2022 Supp. 21-6301(a)(14), and amendments thereto, or, except as

1 provided in paragraph (12), does an act which, when committed by a  
2 person under 18 years of age, is prohibited by state law, city ordinance or  
3 county resolution, but which is not prohibited when done by an adult;

4 (8) while less than 10 years of age, commits any act that, if done by  
5 an adult, would constitute the commission of a felony or misdemeanor as  
6 defined by K.S.A. 2022 Supp. 21-5102, and amendments thereto;

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

9 (10) is willfully and voluntarily absent at least a second time from a  
10 court ordered or designated placement, or a placement pursuant to court  
11 order, if the absence is without the consent of the person with whom the  
12 child is placed or, if the child is placed in a facility, without the consent of  
13 the person in charge of such facility or such person's designee;

14 (11) has been residing in the same residence with a sibling or another  
15 person under 18 years of age, who has been physically, mentally or  
16 emotionally abused or neglected, or sexually abused;

17 (12) while less than 10 years of age commits the offense defined in  
18 K.S.A. 2022 Supp. 21-6301(a)(14), and amendments thereto;

19 (13) has had a permanent custodian appointed and the permanent  
20 custodian is no longer able or willing to serve; or

21 (14) has been subjected to an act that would constitute human  
22 trafficking or aggravated human trafficking, as defined by K.S.A. 2022  
23 Supp. 21-5426, and amendments thereto, or commercial sexual  
24 exploitation of a child, as defined by K.S.A. 2022 Supp. 21-6422, and  
25 amendments thereto, or has committed an act which, if committed by an  
26 adult, would constitute selling sexual relations, as defined by K.S.A. 2022  
27 Supp. 21-6419, and amendments thereto.

28 (e) "Citizen review board" is a group of community volunteers  
29 appointed by the court and whose duties are prescribed by K.S.A. 38-2207  
30 and 38-2208, and amendments thereto.

31 (f) "Civil custody case" includes any case filed under chapter 23 of  
32 the Kansas Statutes Annotated, and amendments thereto, the Kansas  
33 family law code, article 11 of chapter 38 of the Kansas Statutes Annotated,  
34 and amendments thereto, determination of parentage, article 21 of chapter  
35 59 of the Kansas Statutes Annotated, and amendments thereto, adoption  
36 and relinquishment act, or article 30 of chapter 59 of the Kansas Statutes  
37 Annotated, and amendments thereto, guardians and conservators.

38 (g) "Court-appointed special advocate" means a responsible adult  
39 other than an attorney guardian ad litem who is appointed by the court to  
40 represent the best interests of a child, as provided in K.S.A. 38-2206, and  
41 amendments thereto, in a proceeding pursuant to this code.

42 (h) "Custody" whether temporary, protective or legal, means the  
43 status created by court order or statute that vests in a custodian, whether an

1 individual or an agency, the right to physical possession of the child and  
2 the right to determine placement of the child, subject to restrictions placed  
3 by the court.

4 (i) "Extended out of home placement" means a child has been in the  
5 custody of the secretary and placed with neither parent for 15 of the most  
6 recent 22 months beginning 60 days after the date at which a child in the  
7 custody of the secretary was removed from the child's home.

8 (j) "Educational institution" means all schools at the elementary and  
9 secondary levels.

10 (k) "Educator" means any administrator, teacher or other professional  
11 or paraprofessional employee of an educational institution who has  
12 exposure to a pupil specified in K.S.A. 72-6143(a), and amendments  
13 thereto.

14 (l) "Harm" means physical or psychological injury or damage.

15 (m) "Interested party" means the grandparent of the child, a person  
16 with whom the child has been living for a significant period of time when  
17 the child in need of care petition is filed, and any person made an  
18 interested party by the court pursuant to K.S.A. 38-2241, and amendments  
19 thereto, or Indian tribe seeking to intervene that is not a party.

20 (n) "Jail" means:

21 (1) An adult jail or lockup; or

22 (2) a facility in the same building or on the same grounds as an adult  
23 jail or lockup, unless the facility meets all applicable standards and  
24 licensure requirements under law and there is: (A) Total separation of the  
25 juvenile and adult facility spatial areas such that there could be no  
26 haphazard or accidental contact between juvenile and adult residents in the  
27 respective facilities; (B) total separation in all juvenile and adult program  
28 activities within the facilities, including recreation, education, counseling,  
29 health care, dining, sleeping and general living activities; and (C) separate  
30 juvenile and adult staff, including management, security staff and direct  
31 care staff such as recreational, educational and counseling.

32 (o) "Juvenile detention facility" means any secure public or private  
33 facility used for the lawful custody of accused or adjudicated juvenile  
34 offenders that must not be a jail.

35 (p) "Juvenile intake and assessment worker" means a responsible  
36 adult authorized to perform intake and assessment services as part of the  
37 intake and assessment system established pursuant to K.S.A. 75-7023, and  
38 amendments thereto.

39 (q) "Kinship care placement" means the placement of a child in the  
40 home of an adult with whom the child or the child's parent already has  
41 close emotional ties.

42 (r) "Law enforcement officer" means any person who by virtue of  
43 office or public employment is vested by law with a duty to maintain

1 public order or to make arrests for crimes, whether that duty extends to all  
2 crimes or is limited to specific crimes.

3 (s) "Multidisciplinary team" means a group of persons, appointed by  
4 the court under K.S.A. 38-2228, and amendments thereto, that has  
5 knowledge of the circumstances of a child in need of care.

6 (t) "Neglect" means acts or omissions by a parent, guardian or person  
7 responsible for the care of a child resulting in harm to a child, or  
8 presenting a likelihood of harm, and the acts or omissions are not due  
9 solely to the lack of financial means of the child's parents or other  
10 custodian. Neglect may include, but shall not be limited to:

11 (1) Failure to provide the child with food, clothing or shelter  
12 necessary to sustain the life or health of the child;

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

17 (3) failure to use resources available to treat a diagnosed medical  
18 condition if such treatment will make a child substantially more  
19 comfortable, reduce pain and suffering, or correct or substantially diminish  
20 a crippling condition from worsening. A parent legitimately practicing  
21 religious beliefs who does not provide specified medical treatment for a  
22 child because of religious beliefs shall, not for that reason, be considered a  
23 negligent parent; however, this exception shall not preclude a court from  
24 entering an order pursuant to K.S.A. 38-2217(a)(2), and amendments  
25 thereto.

26 (u) *"Non-minor dependent" means an individual who is least 18*  
27 *years of age but less than 21 years of age and, except for the age*  
28 *requirement, meets the definition of a child in need of care in subsection*  
29 *(d).*

30 (v) "Parent" when used in relation to a child or children, includes a  
31 guardian and every person who is by law liable to maintain, care for or  
32 support the child.

33 ~~(w)~~(w) "Party" means the state, the petitioner, the child, any parent of  
34 the child and an Indian child's tribe intervening pursuant to the Indian  
35 child welfare act.

36 ~~(x)~~(x) "Permanency goal" means the outcome of the permanency  
37 planning process, which may be reintegration, adoption, appointment of a  
38 permanent custodian or another planned permanent living arrangement.

39 ~~(y)~~(y) "Permanent custodian" means a judicially approved permanent  
40 guardian of a child pursuant to K.S.A. 38-2272, and amendments thereto.

41 ~~(z)~~(z) "Physical, mental or emotional abuse" means the infliction of  
42 physical, mental or emotional harm or the causing of a deterioration of a  
43 child and may include, but shall not be limited to, maltreatment or

1 exploiting a child to the extent that the child's health or emotional well-  
 2 being is endangered.

3 ~~(z)~~(aa) "Placement" means the designation by the individual or  
 4 agency having custody of where and with whom the child will live.

5 ~~(aa)~~(bb) "Qualified residential treatment program" means a program  
 6 designated by the secretary for children and families as a qualified  
 7 residential treatment program pursuant to federal law.

8 ~~(bb)~~(cc) "Reasonable and prudent parenting standard" means the  
 9 standard characterized by careful and sensible parental decisions that  
 10 maintain the health, safety and best interests of a child while at the same  
 11 time encouraging the emotional and developmental growth of the child,  
 12 that a caregiver shall use when determining whether to allow a child in  
 13 foster care under the responsibility of the state to participate in  
 14 extracurricular, enrichment, cultural and social activities.

15 ~~(ee)~~(dd) "Relative" means a person related by blood, marriage or  
 16 adoption.

17 ~~(dd)~~(ee) "Runaway" means a child who is willfully and voluntarily  
 18 absent from the child's home without the consent of the child's parent or  
 19 other custodian.

20 ~~(ee)~~(ff) "Secretary" means the secretary for children and families or  
 21 the secretary's designee.

22 ~~(ff)~~(gg) "Secure facility" means a facility, other than a staff secure  
 23 facility or juvenile detention facility, that is operated or structured so as to  
 24 ensure that all entrances and exits from the facility are under the exclusive  
 25 control of the staff of the facility, whether or not the person being detained  
 26 has freedom of movement within the perimeters of the facility, or that  
 27 relies on locked rooms and buildings, fences or physical restraint in order  
 28 to control behavior of its residents. No secure facility shall be in a city or  
 29 county jail.

30 ~~(gg)~~(hh) "Sexual abuse" means any contact or interaction with a child  
 31 in which the child is being used for the sexual stimulation of the  
 32 perpetrator, the child or another person. Sexual abuse shall include, but is  
 33 not limited to, allowing, permitting or encouraging a child to:

34 (1) Be photographed, filmed or depicted in pornographic material; or  
 35 (2) be subjected to aggravated human trafficking, as defined in  
 36 K.S.A. 2022 Supp. 21-5426(b), and amendments thereto, if committed in  
 37 whole or in part for the purpose of the sexual gratification of the offender  
 38 or another, or be subjected to an act that would constitute conduct  
 39 proscribed by article 55 of chapter 21 of the Kansas Statutes Annotated or  
 40 K.S.A. 2022 Supp. 21-6419 or 21-6422, and amendments thereto.

41 ~~(hh)~~(ii) "Shelter facility" means any public or private facility or  
 42 home, other than a juvenile detention facility or staff secure facility, that  
 43 may be used in accordance with this code for the purpose of providing

1 either temporary placement for children in need of care prior to the  
2 issuance of a dispositional order or longer term care under a dispositional  
3 order.

4 ~~(ii)~~(jj) "Staff secure facility" means a facility described in K.S.A. 65-  
5 535, and amendments thereto: (1) That does not include construction  
6 features designed to physically restrict the movements and activities of  
7 juvenile residents who are placed therein; (2) that may establish reasonable  
8 rules restricting entrance to and egress from the facility; and (3) in which  
9 the movements and activities of individual juvenile residents may, for  
10 treatment purposes, be restricted or subject to control through the use of  
11 intensive staff supervision. No staff secure facility shall be in a city or  
12 county jail.

13 ~~(jj)~~(kk) "Transition plan" means, when used in relation to a youth in  
14 the custody of the secretary, an individualized strategy for the provision of  
15 medical, mental health, education, employment and housing supports as  
16 needed for the adult and, if applicable, for any minor child of the adult, to  
17 live independently and specifically provides for the supports and any  
18 services for which an adult with a disability is eligible including, but not  
19 limited to, funding for home and community based services waivers.

20 ~~(kk)~~(ll) "Youth residential facility" means any home, foster home or  
21 structure that provides 24-hour-a-day care for children and that is licensed  
22 pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated, and  
23 amendments thereto.

24 Sec. 2. K.S.A. 38-2203 is hereby amended to read as follows: 38-  
25 2203. (a) Proceedings concerning any child who may be a child in need of  
26 care shall be governed by this code, except in those instances when the  
27 court knows or has reason to know that an Indian child is involved in the  
28 proceeding, in which case, the Indian child welfare act of 1978, 25 U.S.C.  
29 § 1901 et seq., applies. The Indian child welfare act may apply to: The  
30 filing to initiate a child in need of care proceeding, K.S.A. 38-2234, and  
31 amendments thereto; ex parte custody orders, K.S.A. 38-2242, and  
32 amendments thereto; temporary custody hearing, K.S.A. 38-2243, and  
33 amendments thereto; adjudication, K.S.A. 38-2247, and amendments  
34 thereto; burden of proof, K.S.A. 38-2250, and amendments thereto;  
35 disposition, K.S.A. 38-2255, and amendments thereto; permanency  
36 hearings, K.S.A. 38-2264, and amendments thereto; termination of  
37 parental rights, K.S.A. 38-2267, 38-2268 and 38-2269, and amendments  
38 thereto; establishment of permanent custodianship, K.S.A. 38-2268 and  
39 38-2272, and amendments thereto; the placement of a child in any foster,  
40 pre-adoptive and adoptive home and the placement of a child in a  
41 guardianship arrangement under article 30 of chapter 59 of the Kansas  
42 Statutes Annotated, and amendments thereto.

43 (b) Subject to the uniform child custody jurisdiction and enforcement

1 act, K.S.A. 2022 Supp. 23-37,101 through 23-37,405, and amendments  
2 thereto, the district court shall have original jurisdiction of proceedings  
3 pursuant to this code.

4 (c) (1) The court acquires jurisdiction over a child by the filing of a  
5 petition pursuant to this code or upon issuance of an ex parte order  
6 pursuant to K.S.A. 38-2242, and amendments thereto. *Except as provided*  
7 *in paragraphs (3) and (4)*, when the court acquires jurisdiction over a child  
8 in need of care, jurisdiction may continue until the child has:

9 (1)(A) Become 18 years of age, or until June 1 of the school year  
10 during which the child became 18 years of age if the child is still attending  
11 high school unless there is no court approved transition plan, in which  
12 event jurisdiction may continue until a transition plan is approved by the  
13 court or until the child reaches the age of 21;

14 (2)(B) been adopted; or

15 (3)(C) been discharged by the court.

16 (2) Any child 18 years of age or over may request, in writing to the  
17 court, that the jurisdiction of the court cease. The court shall give notice of  
18 the request to all parties and interested parties and 30 days after receipt of  
19 the request, jurisdiction will cease.

20 (3) *Upon written request by the child to the court, the court shall not*  
21 *issue an order terminating jurisdiction over such child:*

22 (A) *Before June 1 of the school year during which the child becomes*  
23 *18 years of age if the child is in an out-of-home placement, is still*  
24 *attending high school and has not completed a high school education; or*

25 (B) *who is a non-minor dependent in the custody of the secretary*  
26 *while in out-of-home placement and is transitioning to adulthood.*

27 (4) (A) *Such non-minor dependent shall participate in case planning,*  
28 *attend school or work and make efforts toward independence as*  
29 *determined by the secretary and receive independent living services from*  
30 *the independent living program administered by the secretary. If such non-*  
31 *minor dependent fails to comply with the provisions of this paragraph, the*  
32 *secretary may petition the court to terminate jurisdiction.*

33 (B) *The court shall not have jurisdiction over such non-minor*  
34 *dependent after such non-minor dependent either been absent from*  
35 *placement for 30 calendar days or attains 21 years of age.*

36 (d) When it is no longer appropriate for the court to exercise  
37 jurisdiction over a child *pursuant to subsection (c)*, the court, upon its own  
38 motion or the motion of a party or interested party at a hearing or upon  
39 agreement of all parties or interested parties, shall enter an order  
40 discharging the child. ~~Except upon request of the child pursuant to~~  
41 ~~subsection (c), the court shall not enter an order discharging a child until~~  
42 ~~June 1 of the school year during which the child becomes 18 years of age~~  
43 ~~if the child is in an out-of-home placement, is still attending high school~~

1 ~~and has not completed the child's high school education.~~

2 (e) When a petition is filed under this code, a person who is alleged to  
3 be under 18 years of age shall be presumed to be under that age for the  
4 purposes of this code, unless the contrary is proved.

5 (f) A court's order issued in a proceeding pursuant to this code, shall  
6 take precedence over such orders in a civil custody case, a proceeding  
7 under article 31 of chapter 60 of the Kansas Statutes Annotated, and  
8 amendments thereto, protection from abuse act, or a comparable case in  
9 another jurisdiction, except as provided by K.S.A. 2022 Supp. 23-37,101  
10 through 23-37,405, and amendments thereto, uniform child custody  
11 jurisdiction and enforcement act.

12 Sec. 3. K.S.A. 38-2202 and 38-2203 are hereby repealed.

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