

HOUSE BILL No. 2103

By Committee on Children and Families

1-26

1 AN ACT concerning children in need of care; relating to termination of
2 parental rights; amending K.S.A. 2010 Supp. 38-2269 and repealing
3 the existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2010 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 when the court finds by clear and convincing
10 evidence that the parent is unfit by reason of conduct or condition which
11 renders the parent unable to care properly for a child and the conduct or
12 condition is unlikely to change in the foreseeable future.

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

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

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

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

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

26 (5) conviction of a felony and imprisonment;

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

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

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

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

36 (c) In addition to the foregoing, when a child is not in the physical

1 custody of a parent, the court; shall consider, but is not limited to, the
2 following:

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

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

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

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

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

13 (d) A finding of unfitness may be made as provided in this section if
14 the court finds that the parents have abandoned the child, the custody of
15 the child was surrendered pursuant to K.S.A. 2010 Supp. 38-2282, and
16 amendments thereto, or the child was left under such circumstances that
17 the identity of the parents is unknown and cannot be ascertained, despite
18 diligent searching, and the parents have not come forward to claim the
19 child within three months after the child is found.

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

25 (f) The existence of any one of the above factors standing alone
26 may, but does not necessarily, establish grounds for termination of
27 parental rights. *The court shall not terminate parental rights of any*
28 *parent, unless:*

29 (1) (A) *The parent has a prior felony conviction or certain*
30 *misdemeanor conviction which relates to parenting duties or*
31 *responsibilities; or*

32 (B) *the child has a prior felony or misdemeanor conviction; or*

33 (2) *the parent has been declared incompetent by a court of proper*
34 *jurisdiction.*

35 (g) (1) If the court makes a finding of unfitness, the court shall
36 consider whether termination of parental rights as requested in the
37 petition or motion is in the best interests of the child. In making the
38 determination, the court shall give primary consideration to the physical,
39 mental and emotional health of the child. If the physical, mental or
40 emotional needs of the child would best be served by termination of
41 parental rights, the court shall so order. A termination of parental rights
42 under the code shall not terminate the right of a child to inherit from or
43 through a parent. Upon such termination all rights of the parent to such

1 child, ~~including~~, such parent's right to inherit from or through such child,
2 shall cease.

3 (2) If the court terminates parental rights, the court may authorize
4 adoption pursuant to K.S.A. 2010 Supp. 38-2270, and amendments
5 thereto, appointment of a permanent custodian pursuant to K.S.A. 2010
6 Supp. 38-2272, and amendments thereto, or continued permanency
7 planning.

8 (3) If the court does not terminate parental rights, the court may
9 authorize appointment of a permanent custodian pursuant to K.S.A. 2010
10 Supp. 38-2272, and amendments thereto, or continued permanency
11 planning.

12 (h) If a parent is convicted of an offense as provided in subsection
13 (a)(7) of K.S.A. 2010 Supp. 38-2271, and amendments thereto, or is
14 adjudicated a juvenile offender because of an act which if committed by
15 an adult would be an offense as provided in subsection (a)(7) of K.S.A.
16 2010 Supp. 38-2271, and amendments thereto, and if the victim was the
17 other parent of a child, the court may disregard such convicted or
18 adjudicated parent's opinions or wishes in regard to the placement of such
19 child.

20 (i) A record shall be made of the proceedings.

21 (j) When adoption, proceedings to appoint a permanent custodian or
22 continued permanency planning has been authorized, the person or
23 agency awarded custody of the child shall within 30 days submit a
24 written plan for permanent placement which shall include measurable
25 objectives and time schedules.

26 Sec. 2. K.S.A. 2010 Supp. 38-2269 is hereby repealed.

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

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