

Session of 2023

## HOUSE BILL No. 2194

By Committee on Child Welfare and Foster Care

1-26

1 AN ACT concerning children and minors; relating to the revised Kansas  
2 code for care of children; enacting the Representative Gail Finney  
3 memorial foster care bill of rights; establishing certain rights for  
4 children in need of care and foster parents.

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

7 Section 1. (a) This section shall be known and may be cited as the  
8 Representative Gail Finney memorial foster care bill of rights.

9 (b) Consistent with the policy of the state expressed in K.S.A. 38-  
10 2201 et seq., and amendments thereto, in order to ensure proper care and  
11 protection of a child in need of care in the child welfare system, unless  
12 otherwise ordered by the court, such child shall have the right to:

13 (1) Live in a safe, comfortable placement, in accordance with K.S.A.  
14 38-2255, and amendments thereto:

15 (A) Where such child lives in the least restrictive environment;

16 (B) where such child shall be treated with respect, have a place to  
17 store belongings and receive healthy food, adequate clothing and  
18 appropriate personal hygiene products;

19 (C) with siblings when possible; and

20 (D) upon proper investigation and consideration in accordance with  
21 K.S.A. 38-2242, and amendments thereto, with a relative, kinship care  
22 placement or someone from such child's community with similar religious  
23 beliefs or ethnic heritage;

24 (2) have visits with family;

25 (3) have as few placements as possible;

26 (4) have and maintain belongings by:

27 (A) Making a list of belongings to have when placed out of home;

28 (B) providing such list of belongings to such child's case manager;

29 (C) bringing such belongings when placed out of home; and

30 (D) if going on a visit or to a new placement, having belongings  
31 packed and transportable for the visit or move;

32 (5) have access to all appropriate school supplies, services, tutoring,  
33 extra-curricular, cultural and personal enrichment activities;

34 (6) attend school daily in accordance with K.S.A. 38-2218, and  
35 amendments thereto;

36 (7) receive a high school diploma if such child has earned the

defining kinship caregivers; adding kinship caregivers in statutes in the child in need of care code that grant rights to foster parents; amending K.S.A. 38-2202, 38-2258 and 38-2261 and repealing the existing sections.

1 standard credits in accordance with K.S.A. 38-2285, and amendments  
2 thereto;

3 (8) be notified of all hearings held pursuant to the revised Kansas  
4 code for care of children, when age or developmentally appropriate;

5 (9) attend, in person or virtually, all court hearings held pursuant to  
6 the revised Kansas code for care of children, when age or developmentally  
7 appropriate;

8 (10) address the court regarding any proposed placement or  
9 placement change in accordance with K.S.A. 38-2262, and amendments  
10 thereto, when age or developmentally appropriate;

11 (11) have a guardian ad litem represent the best interests of the child,  
12 in accordance with K.S.A. 38-2205, and amendments thereto, and contact  
13 such child regularly;

14 (12) request an attorney who will represent the position of the child,  
15 if different than the determinations of the guardian ad litem, in accordance  
16 with K.S.A. 38-2205, and amendments thereto;

17 (13) have privacy to send and receive unopened mail and make and  
18 receive phone calls;

19 (14) have regular and private contact with and access to case  
20 managers, attorneys and advocates;

21 (15) access accurate and necessary information for such child's well-  
22 being from case managers and guardians and any person who is by law  
23 liable to maintain, care for or support the child;

24 (16) have as few changes in case managers as possible;

25 (17) contact a case manager's supervisor if there is a conflict that  
26 cannot be resolved between such child and such child's case manager; and

(18) report a violation of this section without fear of punishment, interference,  
coercion or retaliation;

(19) ~~(18)~~ when transitioning out of the child welfare system:

28 (A) Be an active participant in developing a transition plan, as  
29 defined in K.S.A. 38-2202, and amendments thereto;

30 (B) have services and benefits explained;

31 (C) have a checking or savings account;

32 (D) learn to manage money, when age or developmentally  
33 appropriate;

34 (E) learn job skills that are age or developmentally appropriate; and

35 (F) be involved in life skills training and activities.

36 (c) Consistent with the policy of the state expressed in K.S.A. 38-  
37 2201 et seq., and amendments thereto, in order to ensure active  
38 participation of foster parents as an integral, indispensable and vital role in  
39 the state's efforts to care for children in the custody of the secretary, unless  
40 otherwise ordered by the court, such foster parents shall have the right to:

and kinship caregivers

and kinship caregivers

41 (1) Be treated by the Kansas department for children and families and  
42 other child welfare system stakeholders with dignity, respect and trust as a  
43 primary provider of care and support and a member of the professional

- 1 team caring for a child in the custody of the secretary;
- 2 (2) not be discriminated against on the basis of religion, race, color,  
3 creed, gender, marital status, national origin, age or physical handicap in  
4 accordance with K.S.A. 44-1001, et seq., and amendments thereto, and  
5 federal law;
- 6 (3) continue with such foster parents' own family values and beliefs and kinship caregivers'  
7 with consideration given to the special needs of children who have  
8 experienced trauma and separation from their biological families, if the  
9 values and beliefs of the child and the biological family are respected and  
10 not infringed upon;
- 11 (4) make decisions concerning the child consistent with the policies,  
12 procedures and other directions of the Kansas department for children and  
13 families and within the limits of state and federal law;
- 14 (5) receive standardized preservice training by the Kansas department  
15 for children and families or the department's designee and at appropriate  
16 intervals to meet mutually assessed needs of the child and such foster  
17 parents; and kinship caregivers'
- 18 (6) receive timely financial reimbursement and be notified of any  
19 costs or expenses for which such foster parents may be eligible for  
20 reimbursement in accordance with K.S.A. 38-2216, and amendments  
21 thereto; and kinship caregivers'
- 22 (7) receive information regarding services and contact the Kansas  
23 department for children and families or the department's designee during  
24 regular business hours and, in the event of an emergency, by telephone  
25 after business hours;
- 26 (8) receive any information on issues concerning the child and known  
27 to the Kansas department for children and families or the department's  
28 designee that is relevant to the care of the child or that may jeopardize the  
29 health and safety of the foster family or the child or alter the manner in  
30 which care and services should be administered prior to the placement of  
31 such child; , the kinship care placement
- 32 (9) discuss known information regarding the child prior to placement  
33 and be provided additional information from the Kansas department for  
34 children and families as such information becomes available under state  
35 and federal law; and kinship caregivers'
- 36 (10) refuse placement of a child in such foster parents' home or  
37 request the removal of a child from such foster parents' home after  
38 providing reasonable notice; and kinship caregivers'
- 39 (11) receive any available information through the Kansas department  
40 for children and families regarding the number of times a child has been  
41 placed and the reasons for such placements, and receive the names and  
42 phone numbers of any previous placements if such placements have  
43 authorized such a release by law;

1 (12) receive information from the Kansas department for children and  
2 families that is relevant to the care of a child when the child is placed with  
3 such foster parents;

and kinship caregivers

4 (13) provide input and participate in the case planning process for the  
5 child and participate in and be informed about the planning of visitation  
6 between the child and the child's biological family, recognizing that  
7 visitation with the biological family is important, in accordance with  
8 K.S.A. 38-2255, and amendments thereto;

9 (14) communicate with the child's child welfare case management  
10 provider and share and obtain relevant and appropriate information  
11 regarding such child's placement;

12 (15) communicate with members of the child's professional team,  
13 including, but not limited to, such child's child welfare management  
14 provider, therapists, physicians and teachers as allowed by rules and  
15 regulations and state and federal law, for the purpose of participating in  
16 such child's case plan;

17 (16) be notified in advance of any court hearing or review where the  
18 case plan or permanency of the child is an issue, including periodic  
19 reviews held by the court, in accordance with the revised Kansas code for  
20 care of children;

21 (17) be considered as a placement option, if a child who was formerly  
22 placed with such parents is in the custody of the secretary again;

or kinship caregivers

23 (18) continue contact and communication with a child subsequent to  
24 the child's placement from such foster parents' home, subject to the  
25 approval of the child and the child's biological parents, if such biological  
26 parents' rights have not been terminated;

and kinship caregivers

27 (19) direct questions to the department for children and families  
28 regarding information, concerns, policy violations and a corrective action  
29 plan relating to licensure as a family foster home;

30 (20) have the rights described in this section be given full  
31 consideration when the Kansas department for children and families  
32 develops and approves policies regarding placement and permanency;

33 (21) submit a report to the court pursuant to K.S.A. 38-2261, and  
34 amendments thereto; and

35 (22) request a court hearing regarding a change of placement notice  
36 pursuant to K.S.A. 38-2258, and amendments thereto, if a child has been  
37 placed with the same foster parents for six months or longer.

(1) The secretary shall provide written and oral notification of the rights created under this section and information for filing complaints to foster youth, foster parents and kinship caregivers.  
(2) The secretary shall make the rights created under this section digitally available on the secretary's website.  
(3) Each child welfare management provider shall make physical and digital copies of the rights created under this section available.  
(e) This section shall not be construed to create a private right of action independent of the revised Kansas child in need of care code, but may be enforced through equitable relief as a part of the corresponding revised Kansas child in need of care code case.  
(f)

38 (d) This section shall be a part of and supplemental to the revised  
39 Kansas code for care of children.

40 Sec. 2. This act shall take effect and be in force from and after its  
41 publication in the statute book.

Insert Attachments  
Sec. 5 K.S.A. 38-2202 , 38-2258 and 38-2261 are hereby repealed.  
Sec. 6

**Sec. 3**

**38-2202. Definitions.** As used in the revised Kansas code for care of children, unless the context otherwise indicates:

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

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

(c) "Aggravated circumstances" means the abandonment, torture, chronic abuse, sexual abuse or chronic, life threatening neglect of a child.

(d) "Child in need of care" means a person less than 18 years of age at the time of filing of the petition or issuance of an ex parte protective custody order pursuant to K.S.A. 2022 Supp. [38-2242](#), and amendments thereto, who:

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

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

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

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

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

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

(7) except in the case of a violation of K.S.A. [41-727](#), K.S.A. [74-8810\(j\)](#), K.S.A. [79-3321\(m\)](#) or (n), or K.S.A. 2022 Supp. [21-6301\(a\)\(14\)](#), and amendments thereto, or, except as provided in paragraph (12), does an act which, when committed by a person under 18 years of age, is prohibited by state law, city ordinance or county resolution, but which is not prohibited when done by an adult;

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

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

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

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

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

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

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

(e) "Citizen review board" is a group of community volunteers appointed by the court and whose duties are prescribed by K.S.A. 2022 Supp. [38-2207](#) and [38-2208](#), and amendments thereto.

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

(g) "Court-appointed special advocate" means a responsible adult other than an attorney guardian ad litem who is appointed by the court to represent the best interests of a child, as provided in K.S.A. 2022 Supp. [38-2206](#), and amendments thereto, in a proceeding pursuant to this code.

(h) "Custody" whether temporary, protective or legal, means the status created by court order or statute that

vests in a custodian, whether an individual or an agency, the right to physical possession of the child and the right to determine placement of the child, subject to restrictions placed by the court.

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

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

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

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

(m) "Interested party" means the grandparent of the child, a person with whom the child has been living for a significant period of time when the child in need of care petition is filed, and any person made an interested party by the court pursuant to K.S.A. 2022 Supp. [38-2241](#), and amendments thereto, or Indian tribe seeking to intervene that is not a party.

(n) "Jail" means:

(1) An adult jail or lockup; or

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

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

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

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

(r) "Law enforcement officer" means any person who by virtue of office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

(s) "Multidisciplinary placement for a child in need of care with whom the child or the child's parent already has close emotional ties." Supp.

(t) "Neglect" means a child resulting in harm to a child to the

lack of financial means of (s) to:

(1) Failure to provide of the

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

(3) failure to use resources available to treat a diagnosed medical condition if such treatment will make a child substantially more comfortable, reduce pain and suffering, or correct or substantially diminish a crippling condition from worsening. A parent legitimately practicing religious beliefs who does not provide specified medical treatment for a child because of religious beliefs shall, not for that reason, be considered a negligent parent; however, this exception shall not preclude a court from entering an order pursuant to K.S.A. 2022 Supp. [38-2217\(a\)\(2\)](#), and amendments thereto.

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

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

(w) "Permanency goal" means the outcome of the permanency planning process, which may be reintegration,

adoption, appointment of a permanent custodian or another planned permanent living arrangement.

(x) "Permanent custodian" means a judicially approved permanent guardian of a child pursuant to K.S.A. 2022 Supp. [38-2272](#), and amendments thereto.

(y) "Physical, mental or emotional abuse" means the infliction of physical, mental or emotional harm or the causing of a deterioration of a child and may include, but shall not be limited to, maltreatment or exploiting a child to the extent that the child's health or emotional well-being is endangered.

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

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

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

(cc) "Relative" means a person related by blood, marriage or adoption.

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

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

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

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

(1) Be photographed, filmed or depicted in pornographic material; or

(2) be subjected to aggravated human trafficking, as defined in K.S.A. 2022 Supp. [21-5426\(b\)](#), and amendments thereto, if committed in whole or in part for the purpose of the sexual gratification of the offender or another, or be subjected to an act that would constitute conduct proscribed by article 55 of chapter 21 of the Kansas Statutes Annotated or K.S.A. 2022 Supp. [21-6419](#) or [21-6422](#), and amendments thereto.

(hh) "Shelter facility" means any public or private facility or home, other than a juvenile detention facility or staff secure facility, that may be used in accordance with this code for the purpose of providing either temporary placement for children in need of care prior to the issuance of a dispositional order or longer term care under a dispositional order.

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

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

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

**History:** L. 2006, ch. 200, § 2; L. 2008, ch. 169, § 1; L. 2009, ch. 99, § 1; L. 2010, ch. 75, § 5; L. 2011, ch. 30, § 155; L. 2012, ch. 162, § 60; L. 2013, ch. 120, § 31; L. 2015, ch. 94, § 12; L. 2016, ch. 102, § 9; L. 2018, ch. 107, § 8; L. 2019, ch. 43, § 3; May 2.

**Sec. 4**

**38-2258. Change of placement; notice; opportunity for hearing; removal from home of parent, findings by court.** (a) Except as provided in K.S.A. 2022 Supp. [38-2255\(d\)\(2\)](#) and [38-2259](#), and amendments thereto, if a child has been in the same foster home or shelter facility for six months or longer, or has been placed by the secretary in the home of a parent or relative, the secretary shall give written notice of any plan to move the child to a different placement unless the move is to the selected preadoptive family for the purpose of facilitating adoption. The notice shall be given to: (1) The court having jurisdiction over the child; (2) the petitioner; (3) the attorney for the parents, if any; (4) each parent whose address is available; (5) the foster parent or custodian from whose home or shelter facility it is proposed to remove the child; (6) the child, if 12 or more years of age; (7) the child's guardian ad litem; (8) any other party or interested party; and (9) the child's court appointed special advocate.

(b) The notice shall state the placement to which the secretary plans to transfer the child and the reason for the proposed action. The notice shall be mailed by first class mail 30 days in advance of the planned transfer, except that the secretary shall not be required to wait 30 days to transfer the child if all persons enumerated in subsection (a)(2) through (8) consent in writing to the transfer.

(c) Within 14 days after receipt of the notice, any person enumerated in subsection (a)(2) through (8) receiving notice as provided above may request, either orally or in writing, that the court conduct a hearing to determine whether or not the change in placement is in the best interests of the child concerned. When the request has been received, the court shall schedule a hearing and immediately notify the secretary of the request and the time and date the matter will be heard. The court shall give notice of the hearing to persons enumerated in subsection (a)(2) through (9). If the court does not receive a request for hearing within the specified time, the change in placement may occur prior to the expiration of the 30 days. The secretary shall not change the placement of the child, except for the purpose of adoption, unless the change is approved by the court.

(d) When, after the notice set out above, a child in the custody of the secretary is removed from the home of a parent after having been placed in the home of a parent for a period of six months or longer, the secretary shall request a finding that: (1) (A) The child is likely to sustain harm if not immediately removed from the home;

(B) allowing the child to remain in home is contrary to the welfare of the child; or

(C) immediate placement of the child is in the best interest of the child; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety to the child.

(e) The secretary shall present to the court in writing the efforts to maintain the family unit and prevent the unnecessary removal of the child from the child's home. In making the findings, the court may rely on documentation submitted by the secretary or may set the date for a hearing on the matter. If the secretary requests such finding, the court, not more than 45 days from the date of the request, shall provide the secretary with a written copy of the findings by the court for the purpose of documenting these orders.

**History:** L. 2006, ch. 200, § 53; L. 2008, ch. 169, § 13; L. 2010, ch. 75, § 13; L. 2011, ch. 91, § 20; July 1.

, kinship care placement



Sec. 5

**38-2261. Reports made by foster parents.** The secretary shall notify the foster parent or ~~parents~~ that the foster parent or ~~parents~~ have a right to submit a report. Copies of the report shall be available to the parties and interested parties. The report made by foster parents shall be on a form created and provided by the Kansas department for children and families.

**History:** L. 2006, ch. 200, § 56; L. 2014, ch. 115, § 64; July 1.

kinship caregivers

kinship caregivers