

As Further Amended by House Committee

As Amended by House Committee

Session of 2023

HOUSE BILL No. 2299

By Committee on Child Welfare and Foster Care

2-6

1 AN ACT concerning children and minors; relating to children in need of  
2 care; directing the secretary for children and families to consider foster  
3 parents as prospective adoptive parents under certain circumstances;  
4 requiring the secretary to report on certain data on adoptions;  
5 **providing for retroactivity; making orders granting custody for**  
6 **adoption subject to the federal Indian child welfare act; amending**  
7 **K.S.A. 38-2203 and 38-2270 and repealing the existing—section—**  
8 **sections.**  
9

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

11 **Section 1. K.S.A. 38-2203 is hereby amended to read as follows:**  
12 **38-2203. (a) Proceedings concerning any child who may be a child in**  
13 **need of care shall be governed by this code, except in those instances**  
14 **when the court knows or has reason to know that an Indian child is**  
15 **involved in the proceeding, in which case, the Indian child welfare act**  
16 **of 1978, 25 U.S.C. § 1901 et seq., applies. The Indian child welfare act**  
17 **may apply to: The filing to initiate a child in need of care proceeding,**  
18 **K.S.A. 38-2234, and amendments thereto; ex parte custody orders,**  
19 **K.S.A. 38-2242, and amendments thereto; temporary custody hearing,**  
20 **K.S.A. 38-2243, and amendments thereto; adjudication, K.S.A. 38-**  
21 **2247, and amendments thereto; burden of proof, K.S.A. 38-2250, and**  
22 **amendments thereto; disposition, K.S.A. 38-2255, and amendments**  
23 **thereto; permanency hearings, K.S.A. 38-2264, and amendments**  
24 **thereto; termination of parental rights, K.S.A. 38-2267, 38-2268 and**  
25 **38-2269, and amendments thereto; establishment of permanent**  
26 **custodianship, K.S.A. 38-2268 and 38-2272, and amendments thereto;**  
27 **orders granting custody for adoption, K.S.A. 38-2270, and amendments**  
28 **thereto; the placement of a child in any foster, pre-adoptive and**  
29 **adoptive home and the placement of a child in a guardianship**  
30 **arrangement under article 30 of chapter 59 of the Kansas Statutes**  
31 **Annotated, and amendments thereto.**

32 **(b) Subject to the uniform child custody jurisdiction and**  
33 **enforcement act, K.S.A. 2022 Supp. 23-37,101 through 23-37,405, and**  
34 **amendments thereto, the district court shall have original jurisdiction**

1 of proceedings pursuant to this code.

2 (c) The court acquires jurisdiction over a child by the filing of a  
3 petition pursuant to this code or upon issuance of an ex parte order  
4 pursuant to K.S.A. 38-2242, and amendments thereto. When the court  
5 acquires jurisdiction over a child in need of care, jurisdiction may  
6 continue until the child has: (1) Become 18 years of age, or until June  
7 1 of the school year during which the child became 18 years of age if  
8 the child is still attending high school unless there is no court  
9 approved transition plan, in which event jurisdiction may continue  
10 until a transition plan is approved by the court or until the child  
11 reaches the age of 21; (2) been adopted; or (3) been discharged by the  
12 court. Any child 18 years of age or over may request, in writing to the  
13 court, that the jurisdiction of the court cease. The court shall give  
14 notice of the request to all parties and interested parties and 30 days  
15 after receipt of the request, jurisdiction will cease.

16 (d) When it is no longer appropriate for the court to exercise  
17 jurisdiction over a child, the court, upon its own motion or the motion  
18 of a party or interested party at a hearing or upon agreement of all  
19 parties or interested parties, shall enter an order discharging the child.  
20 Except upon request of the child pursuant to subsection (c), the court  
21 shall not enter an order discharging a child until June 1 of the school  
22 year during which the child becomes 18 years of age if the child is in  
23 an out-of-home placement, is still attending high school and has not  
24 completed the child's high school education.

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

28 (f) A court's order issued in a proceeding pursuant to this code,  
29 shall take precedence over such orders in a civil custody case, a  
30 proceeding under article 31 of chapter 60 of the Kansas Statutes  
31 Annotated, and amendments thereto, protection from abuse act, or a  
32 comparable case in another jurisdiction, except as provided by K.S.A.  
33 2022 Supp. 23-37,101 through 23-37,405, and amendments thereto,  
34 uniform child custody jurisdiction and enforcement act.

35 ~~Section 1~~ Sec. 2. K.S.A. 38-2270 is hereby amended to read as  
36 follows: 38-2270. (a) When parental rights have been terminated and it  
37 appears that adoption is a viable alternative, the court shall enter one of the  
38 following orders:

39 (1) An order granting custody of the child, for adoption proceedings,  
40 to the secretary or a corporation organized under the laws of the state of  
41 Kansas authorized to care for and surrender children for adoption as  
42 provided in K.S.A. 38-112 et seq., and amendments thereto. ~~The person,~~  
43 secretary or corporation shall have authority to place the child in a family

1 home; and give consent for the legal adoption of the child which shall be  
2 the only consent required to authorize the entry of an order or decree of  
3 adoption. *When deciding who will adopt the child, the secretary or*  
4 *corporation shall be guided by the best interests of the child.*

5 (2) An order granting custody of the child to proposed adoptive  
6 parents and consenting to the adoption of the child by the proposed  
7 adoptive parents. **The court shall be guided by the best interests of the**  
8 **child.** *Any prior custody order, including, but not limited to, custody of the*  
9 *secretary or corporation, shall cease upon the court granting custody of*  
10 *the child to the proposed adoptive parents under this subsection.*

11 ~~(b) In making an order under subsection (a), the court shall give~~  
12 ~~preference, to the extent that the court finds it is in the best interests of the~~  
13 ~~child, first to granting such custody for adoption to a relative of the child~~  
14 ~~and second to granting such custody to a person with whom the child has~~  
15 ~~close emotional ties.~~ **(1)** *When a child is placed in the custody of the*  
16 *secretary for purposes of adoption under subsection (a)(1) or when a*  
17 **parent has relinquished their rights to the secretary for adoption**  
18 **purposes, the secretary shall give preference, subject to the best interests**  
19 **of the child, according to paragraphs (2) and (3).**

20 **(2) If a child has been in the custody of the secretary for less than**  
21 **one cumulative year, the secretary shall give preference, first, to**  
22 **granting such custody for adoption to a relative of the child and**  
23 **second, to granting such custody to a person with whom the child has**  
24 **close and healthy attachments.**

25 **(3) If a child has been in the custody of the secretary for one**  
26 **cumulative year or more, the secretary shall give preference to a**  
27 **placement that maintains the child's close and healthy attachments. The**  
28 **secretary shall consider the foster parent as a prospective adoptive parent**  
29 **when:**

30 ~~(A)~~ **(A)** *The child has lived more than half of the child's lifetime with*  
31 *the foster parent;*

32 ~~(B)~~ **(B)** *the child has lived more than two years with the foster parent;*  
33 *or*

34 ~~(C)~~ **(C)** *the secretary otherwise determines it is in the best interests of*  
35 *the child.*

36 (c) *If a foster parent considered by the secretary under subsection ~~(b)~~*  
37 *~~(1) or (b)(2)~~ **(b)(3)(A) or (b)(3)(B)** is not selected by the secretary, the*  
38 *foster parent may request direct placement of the child by the court under*  
39 *subsection (a)(2) and may appeal that decision to the court of appeals.*

40 (d) *To implement the provisions of this section, the secretary shall:*

41 (1) *Develop and enforce adoption selection policies that comply with*  
42 *subsection (b) and ensure caregiver and sibling attachments are*  
43 *appropriately considered;*

1 (2) review policies and update to reduce time to adoption  
2 permanency;

3 (3) apply adoption selection policies consistently;

4 (4) develop and provide training for contractors and employees;

5 (5) collect data regarding best interest staffing conducted under this  
6 section, including, but not limited to, data on **the number of:**

7 (A) ~~How many best interest staffing decisions are~~  
8 ~~appealed~~ **Prospective adoptive parents who request the secretary to**  
9 **reconsider an initial adoptive placement decision;**

10 (B) ~~how many best interest staffing decisions are overturned~~ **initial**  
11 **adoptive placement decisions that the secretary overturns after**  
12 **reconsidering the initial adoptive placement decision; and**

13 (C) ~~how many best interest staffing appeals go to court~~ **prospective**  
14 **parents who request the court to review the secretary's adoptive**  
15 **placement decision; and**

16 (6) on or before the first day of the regular legislative session of  
17 2024, and every year thereafter; prepare and submit a report to the  
18 legislature on compliance with this subsection.

19 (e) ~~Discharge upon adoption.~~—When an adoption decree has been filed  
20 with the court in the child in need of care case, the secretary's custody shall  
21 cease, the court's jurisdiction over the child shall cease and the court shall  
22 enter an order to that effect.

23 (f) **The amendments made to this section by this act shall be**  
24 **construed and applied retroactively to all proceedings pending before**  
25 **a court on the effective date of this act.**

26 Sec. ~~2~~. **3.** K.S.A. **38-2203 and 38-2270** ~~is~~ **are** hereby repealed.

27 Sec. ~~3~~. **4.** This act shall take effect and be in force from and after its  
28 publication in the ~~statute book~~ **Kansas register.**