

SENATE BILL No. 404

By Committee on Judiciary

2-11

1 AN ACT concerning children and minors; relating to the revised code for
2 care of children; termination of parental rights; children conceived as a
3 result of sexual assault; amending K.S.A. 2019 Supp. 23-3203, 38-2269
4 and 38-2271 and repealing the existing sections.

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

7 New Section 1. (a) As used in this act, unless the context requires
8 otherwise:

9 (1) "Aggravated indecent liberties" means an act meeting the
10 elements of K.S.A. 2019 Supp. 21-5506(b)(1), and amendments thereto, or
11 an act in any other jurisdiction that is in substantial conformity with the
12 elements of K.S.A. 2019 Supp. 21-5506(b)(1), and amendments thereto,
13 unless there is a finding that the act involved non-forcible conduct, both
14 parties to the act were at least 14 years of age and neither party was more
15 than four years older than the other party.

16 (2) "Child" means a person allegedly conceived and born as a result
17 of rape, aggravated indecent liberties or incest.

18 (3) "Conviction" includes a judgment of guilt entered upon a plea of
19 guilty or no contest.

20 (4) "Incest" means an act meeting the elements of K.S.A. 2019 Supp.
21 21-5604, and amendments thereto, or an act committed in any other
22 jurisdiction that is substantial conformity with the elements of K.S.A.
23 2019 Supp. 21-5604, and amendments thereto.

24 (5) "Petitioner" means an alleged victim of sexual assault or, if the
25 alleged victim is a minor, a person on such minor's behalf, who files a
26 petition for termination of the parent-child legal relationship of the other
27 parent as provided in this section.

28 (6) "Rape" means an act meeting the elements of K.S.A. 2019 Supp.
29 21-5503, and amendments thereto, or an act committed in any other
30 jurisdiction that is in substantial conformity with the elements of K.S.A.
31 2019 Supp. 21-5503, and amendments thereto.

32 (7) "Respondent" means a person against whom a petition for
33 termination of the parent-child legal relationship is filed as provided in this
34 section.

35 (8) "This act" means sections 1 through 7, and amendments thereto.

36 New Sec. 2. (a) The petitioner may bring an action at any time during

1 the child's minority to terminate the parental rights of the respondent if the
2 child is alleged to have been conceived as a result of the act of rape,
3 aggravated indecent liberties or incest whether or not a conviction has
4 occurred.

5 (b) (1) Except as otherwise provided in this act, any proceeding under
6 this act shall be in accordance with chapter 60 of the Kansas Statutes
7 Annotated, and amendments thereto.

8 (2) Trial of all issues in actions under this act shall be to the court.

9 (c) (1) An action under this act may be brought in the county in
10 which the child, the petitioner or the respondent resides or is found.

11 (2) A petition under this act may be filed only in a court that has
12 jurisdiction to make a child-custody determination with respect to the child
13 under the uniform child custody jurisdiction and enforcement act, K.S.A.
14 23-37,101 et seq., and amendments thereto.

15 (d) If the child is an Indian child, the court shall ensure compliance
16 with the Indian child welfare act, 25 U.S.C. § 1901 et seq.

17 (e) (1) All pleadings shall be captioned, "In the matter of the
18 termination of the parental rights of _____ (name of
19 respondent)."

20 (2) All pleadings, motions, briefs and orders shall include the first
21 and last name of the petitioner and respondent. In all pleadings, motions,
22 briefs and orders, the child shall be referred to by initials only or by given
23 name and last initial.

24 (3) The verified petition filed under this act shall allege facts
25 sufficient to show the following:

26 (A) The respondent is the parent of the child;

27 (B) the respondent committed rape, aggravated indecent liberties or
28 incest against the petitioner;

29 (C) the child was conceived as a result of the act of rape, aggravated
30 indecent liberties or incest; and

31 (D) termination of the parent-child legal relationship of the
32 respondent with the child is in the best interests of the child.

33 (4) The petition or an attached affidavit shall include the information
34 required by K.S.A. 23-37,209, and amendments thereto.

35 (5) If a party alleges in an affidavit or a pleading under oath that the
36 health, safety or liberty of a party or child would be jeopardized by
37 disclosure of identifying information, the information shall be sealed and
38 may not be disclosed to the other party or the public unless the court
39 orders the disclosure to be made after a hearing in which the court takes
40 into consideration the health, safety or liberty of the party or child and
41 determines that the disclosure is in the interest of justice. The provisions of
42 this paragraph shall expire on July 1, 2025, unless the legislature reviews
43 and continues this provision pursuant to K.S.A 45-229, and amendments

1 thereto, prior to July 1, 2025.

2 (f) A docket fee shall not be assessed in an action under this section.

3 (g) Summons, notice of hearings and other process may be served by
4 one of the following methods:

5 (1) Personal and residence service is completed by service in
6 substantial compliance with the provisions of K.S.A. 60-303, and
7 amendments thereto. Personal service upon an individual outside the state
8 is completed by service in substantial compliance with the applicable
9 provisions of K.S.A. 60-308, and amendments thereto.

10 (2) Service by return receipt delivery is completed upon mailing or
11 sending only in accordance with K.S.A. 60-303(c), and amendments
12 thereto.

13 (3) Service may be made by first-class mail, addressed to the
14 individual to be served at the usual place of residence of the person with
15 postage prepaid and is completed upon the person appearing before the
16 court in response thereto. If the person fails to appear, the summons, notice
17 or other process shall be delivered by personal service, residential service,
18 certified mail service or publication service.

19 (4) If a person who is a party to the proceedings under this act is
20 confined in a state, local or federal correctional facility, juvenile
21 correctional or detention facility, state or federal hospital or other
22 institution, service shall be made by return receipt delivery to addressee
23 only to both the person in charge of the facility or institution and the
24 confined person in care of the person in charge or the designee of the
25 person in charge of the facility or institution. Personal service on a
26 confined person who is present in the courtroom cures any defect in notice
27 to the person in charge of the facility or institution.

28 (5) If service cannot be completed after due diligence using any other
29 method provided in this subsection, service may be made by publication in
30 accordance with this subsection. Before service by publication, the
31 petitioner, or someone on behalf of the petitioner, shall file an affidavit
32 stating that the affiant has made a reasonable but unsuccessful effort to
33 ascertain the name and residence of the respondent. The notice shall be
34 published once a week for two consecutive weeks in the newspaper
35 authorized to publish legal notices in the county where the petition is filed.
36 If a person cannot be served by other means and due diligence has
37 revealed with substantial certainty that the person is residing in a particular
38 locality, publication shall also be in a newspaper authorized to publish
39 legal notices in that locality.

40 New Sec. 3. (a) In order to protect the privacy of the child, the court
41 records for proceedings pursuant to this act shall be confidential and shall
42 not be disclosed except to:

43 (1) The court having jurisdiction over the proceeding, including the

1 presiding judge and any court personnel designated by the judge;
2 (2) the parties to the proceedings and their attorneys;
3 (3) the child;
4 (4) the child's appointed guardian ad litem; and
5 (5) any other person or entity when authorized by a court order,
6 subject to any conditions imposed by the order.

7 (b) Proceedings pursuant to this act shall be closed to all persons
8 except the parties, the parties' attorneys, the guardian ad litem and officers
9 of the court.

10 (1) Other persons may be permitted to attend with the consent of the
11 parties or by order of the court, if the court determines that such
12 attendance would be in the best interests of the child or the conduct of the
13 proceedings, subject to such limitations as the court determines to be
14 appropriate.

15 (2) The court may exclude any person if the court determines that
16 such person's exclusion would be in the best interests of the child or the
17 conduct of the proceedings.

18 (c) The provisions of this section shall expire on July 1, 2025, unless
19 the legislature reviews and continues this provision pursuant to K.S.A 45-
20 229, and amendments thereto, prior to July 1, 2025.

21 New Sec. 4. (a) (1) The respondent is entitled to be represented by an
22 attorney in connection with all proceedings under this act. If at any stage
23 of the proceedings the respondent desires but is financially unable to
24 employ an attorney, the court shall appoint an attorney to represent the
25 respondent. A respondent who is not a minor, a mentally ill person or a
26 disabled person may waive counsel either in writing or on the record.

27 (2) The court shall appoint an attorney for the respondent who is a
28 minor, a mentally ill person or a disabled person unless the court
29 determines that there is an attorney retained who will appear and represent
30 the interests of the respondent in the proceedings under this act.

31 (b) If requested by a party or upon the court's own motion, the court
32 may appoint an attorney to serve as guardian ad litem for the child. The
33 guardian ad litem shall make an independent investigation of the facts
34 upon which the petition is based and shall appear for and represent the best
35 interests of the child. When the child's position is not consistent with the
36 determination of the guardian ad litem as to the child's best interests, the
37 guardian ad litem shall inform the court of the disagreement. The guardian
38 ad litem or the child may request the court to appoint a second attorney to
39 serve as attorney for the child, and the court, on good cause shown, may
40 appoint such second attorney. The attorney for the child shall allow the
41 child and the guardian ad litem to communicate with one another but may
42 require such communications to occur in the attorney's presence.

43 (c) An attorney appointed pursuant to this act shall be allowed a

1 reasonable fee for services.

2 (d) As used in this section:

3 (1) "Mentally ill person" means the same as in K.S.A. 59-2946, and
4 amendments thereto; and

5 (2) "disabled person" means the same as in K.S.A. 77-201, and
6 amendments thereto.

7 New Sec. 5. (a) (1) After the filing of a petition under this act, the
8 court, on motion of the petitioner, may enter an order temporarily
9 restraining the respondent from following, harassing, telephoning,
10 contacting or otherwise communicating with the petitioner or the child
11 during the pendency of the action. Such restraining order may be granted
12 ex parte and may be served on the respondent by personal service. The
13 respondent may request a hearing to modify the temporary order.

14 (b) The court shall enter temporary orders regarding service of
15 pleadings, motions and other documents between the parties.

16 New Sec. 6. (a) (1) The court shall hear a petition to terminate the
17 parent-child legal relationship of the respondent no more than 60 days
18 after service of the petition or from the first appearance date, whichever is
19 later, unless both parties consent to an extension or the court finds good
20 cause to extend the hearing.

21 (2) Parentage shall be determined pursuant to the Kansas parentage
22 act, K.S.A. 23-2201 et seq., and amendments thereto.

23 (b) If the parties consent, the court may enter an order of termination
24 pursuant to this section with a finding of the elements required by
25 subsection (c).

26 (c) (1) Upon the finding of parentage, the court shall terminate the
27 parent-child legal relationship of the respondent and issue a protective
28 order preventing respondent from having future contact with the petitioner
29 and the child if the court finds by clear and convincing evidence, and
30 states the reasons for its decision, that:

31 (A) The respondent committed an act of rape, aggravated indecent
32 liberties or incest against the petitioner, as evidenced by either:

33 (i) When a criminal conviction occurred, a showing that the
34 respondent was convicted of an act of rape, aggravated indecent liberties
35 or incest against the petitioner or was convicted of a crime in which the
36 underlying factual basis was rape, aggravated indecent liberties or incest
37 against the petitioner; or

38 (ii) when a criminal conviction did not occur, clear and convincing
39 evidence that the respondent committed an act of rape, indecent liberties or
40 incest against the petitioner;

41 (B) the child was conceived as a result of the act described in
42 subparagraph (A); and

43 (C) termination of the parent-child relationship is in the best interests

1 of the child. There shall be a rebuttable presumption that terminating the
2 parental rights of the parent who committed the act described in
3 subparagraph (A) is in the best interests of the child. The court shall not
4 presume that having only one remaining parent is contrary to the child's
5 best interests.

6 (2) If parentage cannot be established and the court finds by clear and
7 convincing evidence that the child was conceived as a result of the act
8 described in subparagraph (A), the court shall enter an order granting sole
9 legal custody to the petitioner and denying all contact between the child
10 and the respondent.

11 (e) Termination of the parent-child legal relationship pursuant to this
12 section is an independent basis for termination of parental rights, and the
13 court need not make any of the considerations or findings described in
14 K.S.A. 59-2136, and amendments thereto, or K.S.A. 2019 Supp. 38-2269,
15 and amendments thereto.

16 New Sec. 7. (a) A termination of parental rights under this act shall
17 not terminate the right of a child to inherit from or through a parent.

18 (b) A respondent whose parental rights are terminated pursuant to this
19 act has no right to:

20 (1) The allocation of parental responsibilities, including legal custody,
21 residency, parenting time or decision-making responsibilities for the child;

22 (2) make medical treatment decisions or any other decisions on behalf
23 of the child;

24 (3) inherit either from or through the child; and

25 (4) notification of, or standing to object to, the adoption of the child.

26 (c) Termination of parental rights under this act shall not relieve the
27 respondent of any obligation to pay child support, unless waived by the
28 petitioner and approved by the court. In cases in which child support
29 obligations are not waived, the court, as informed by the wishes of the
30 petitioner, shall determine if entering an order to pay child support is in the
31 best interests of the child. If an order of support is in the best interests of
32 the child, the court shall determine the amount to be paid for child support
33 by following the Kansas child support guidelines adopted by the supreme
34 court pursuant to K.S.A. 20-165, and amendments thereto.

35 (1) All child support payments shall be made through the Kansas
36 payment center.

37 (2) Modification of the child support order shall be pursuant to
38 K.S.A. 23-3001 et seq., and amendments thereto.

39 (3) If child support is ordered or terminated, a separate journal entry
40 or judgment form shall be made and provided to the entity enforcing the
41 child support by the clerk of the court. The journal entry or judgment form
42 shall be entitled: "In the matter of _____ (obligee's name) and
43 _____ (obligor's name)." The journal entry or judgment form shall

1 contain no reference to this proceeding except the facts necessary to
2 establish personal jurisdiction over the parent, the name, date of birth and
3 social security number of each child and findings of fact and conclusions
4 of law directly related to the child support obligation.

5 (4) Registration of the child support order shall be completed
6 pursuant to K.S.A. 38-2279, and amendments thereto.

7 (d)(1) The court may order a respondent whose parent-child legal
8 relationship has been terminated to provide the respondent's genetic,
9 medical and social history to be shared with the child, as appropriate, and
10 with the petitioner. The court may order that a respondent's failure to
11 comply with the request for information under this subsection in a timely
12 manner constitutes contempt of court.

13 (2) The Kansas department for children and families shall adopt rules
14 and regulations establishing procedures to determine how the information
15 is collected, who can access the information, when the information can be
16 accessed, when and how the information is updated and how the
17 information is stored.

18 Sec. 8. K.S.A. 2019 Supp. 23-3203 is hereby amended to read as
19 follows: 23-3203. (a) In determining the issue of legal custody, residency
20 and parenting time of a child, the court shall consider all relevant factors,
21 including, but not limited to:

22 (1) Each parent's role and involvement with the minor child before
23 and after separation;

24 (2) the desires of the child's parents as to custody or residency;

25 (3) the desires of a child of sufficient age and maturity as to the
26 child's custody or residency;

27 (4) the age of the child;

28 (5) the emotional and physical needs of the child;

29 (6) the interaction and interrelationship of the child with parents,
30 siblings and any other person who may significantly affect the child's best
31 interests;

32 (7) the child's adjustment to the child's home, school and community;

33 (8) the willingness and ability of each parent to respect and appreciate
34 the bond between the child and the other parent and to allow for a
35 continuing relationship between the child and the other parent;

36 (9) evidence of domestic abuse, including, but not limited to:

37 (A) A pattern or history of physically or emotionally abusive
38 behavior or threat thereof used by one person to gain or maintain
39 domination and control over an intimate partner or household member; or

40 (B) an act of domestic violence, stalking or sexual assault;

41 (10) *evidence of an act of sexual assault*;

42 (11) the ability of the parties to communicate, cooperate and manage
43 parental duties;

1 ~~(11)~~(12) the school activity schedule of the child;
2 ~~(12)~~(13) the work schedule of the parties;
3 ~~(13)~~(14) the location of the parties' residences and places of
4 employment;

5 ~~(14)~~(15) the location of the child's school;

6 ~~(15)~~(16) whether a parent is subject to the registration requirements
7 of the Kansas offender registration act, K.S.A. 22-4901 et seq., and
8 amendments thereto, or any similar act in any other state, or under military
9 or federal law;

10 ~~(16)~~(17) whether a parent has been convicted of abuse of a child,
11 K.S.A. 21-3609, prior to its repeal, or K.S.A. 2019 Supp. 21-5602, and
12 amendments thereto;

13 ~~(17)~~(18) whether a parent is residing with an individual who is
14 subject to registration requirements of the Kansas offender registration act,
15 K.S.A. 22-4901 et seq., and amendments thereto, or any similar act in any
16 other state, or under military or federal law; and

17 ~~(18)~~(19) whether a parent is residing with an individual who has been
18 convicted of abuse of a child, K.S.A. 21-3609, prior to its repeal, or K.S.A.
19 2019 Supp. 21-5602, and amendments thereto.

20 (b) To aid in determining the issue of legal custody, residency and
21 parenting time of a child, the court may order a parent to undergo a
22 domestic violence offender assessment conducted by a certified batterer
23 intervention program and may order such parent to follow all
24 recommendations made by such program.

25 Sec. 9. K.S.A. 2019 Supp. 38-2269 is hereby amended to read as
26 follows: 38-2269. (a) When the child has been adjudicated to be a child in
27 need of care, the court may terminate parental rights or appoint a
28 permanent custodian when the court finds by clear and convincing
29 evidence that the parent is unfit by reason of conduct or condition which
30 renders the parent unable to care properly for a child and the conduct or
31 condition is unlikely to change in the foreseeable future.

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

34 (1) Emotional illness, mental illness, mental deficiency or physical
35 disability of the parent, of such duration or nature as to render the parent
36 unable to care for the ongoing physical, mental and emotional needs of the
37 child;

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

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

43 (4) physical, mental or emotional abuse or neglect or sexual abuse of

1 a child;

2 (5) conviction of a felony and imprisonment;

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

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

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

9 (9) whether, as a result of the actions or inactions attributable to the
10 parent and one or more of the factors listed in subsection (c) apply, the
11 child has been in the custody of the secretary and placed with neither
12 parent for 15 of the most recent 22 months beginning 60 days after the
13 date on which a child in the secretary's custody was removed from the
14 child's home.

15 (c)(1) In addition to the foregoing, when a child is not in the physical
16 custody of a parent, the court, shall consider, but is not limited to, the
17 following:

18 ~~(1)(A)~~ Failure to assure care of the child in the parental home when
19 able to do so;

20 ~~(2)(B)~~ failure to maintain regular visitation, contact or
21 communication with the child or with the custodian of the child;

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

24 ~~(4)(D)~~ failure to pay a reasonable portion of the cost of substitute
25 physical care and maintenance based on ability to pay.

26 (2) In making the above determination, the court may disregard
27 incidental visitations, contacts, communications or contributions.

28 (d) A finding of unfitness may be made as provided in this section if
29 the court finds that the parents have abandoned the child, the custody of
30 the child was surrendered pursuant to K.S.A. 2019 Supp. 38-2282, and
31 amendments thereto, or the child was left under such circumstances that
32 the identity of the parents is unknown and cannot be ascertained, despite
33 diligent searching, and the parents have not come forward to claim the
34 child within three months after the child is found.

35 ~~(e) If a person is convicted of a felony in which sexual intercourse~~
36 ~~occurred, or if a juvenile is adjudicated a juvenile offender because of an~~
37 ~~act which, if committed by an adult, would be a felony in which sexual~~
38 ~~intercourse occurred, and as a result of the sexual intercourse, a child is~~
39 ~~conceived, A finding of unfitness may be made as provided in this section~~
40 ~~if the court finds by clear and convincing evidence that a parent has~~
41 ~~committed one of the following acts, or a comparable act under the laws~~
42 ~~of another jurisdiction, which resulted in the conception of the child:~~

43 (1) Rape, K.S.A. 21-3502, prior to its repeal, or K.S.A. 2019 Supp.

1 21-5503, and amendments thereto;

2 (2) aggravated indecent liberties, K.S.A. 21-3504, prior to its repeal,
3 or K.S.A. 2019 Supp. 21-5506(b)(1), and amendments thereto, unless the
4 court finds by clear and convincing evidence that the act involved non-
5 forcible conduct, both parties were at least 14 years of age and neither
6 party was more than four years older than the other party; or

7 (3) incest, K.S.A. 21-3602 or 21-3603, prior to their repeal, or K.S.A.
8 2019 Supp. 21-6504, and amendments thereto.

9 (f) The existence of any one of the above factors standing alone may,
10 but does not necessarily, establish grounds for termination of parental
11 rights.

12 (g) (1) If the court makes a finding of unfitness, the court shall
13 consider whether termination of parental rights as requested in the petition
14 or motion is in the best interests of the child. In making the determination,
15 the court shall give primary consideration to the physical, mental and
16 emotional health of the child. If the physical, mental or emotional needs of
17 the child would best be served by termination of parental rights, the court
18 shall so order. A termination of parental rights under the code shall not
19 terminate the right of a child to inherit from or through a parent. Upon
20 such termination all rights of the parent to such child, including, such
21 parent's right to inherit from or through such child, shall cease.

22 (2) If the court terminates parental rights, the court may authorize
23 adoption pursuant to K.S.A. 2019 Supp. 38-2270, and amendments
24 thereto, appointment of a permanent custodian pursuant to K.S.A. 2019
25 Supp. 38-2272, and amendments thereto, or continued permanency
26 planning.

27 (3) If the court does not terminate parental rights, the court may
28 authorize appointment of a permanent custodian pursuant to K.S.A. 2019
29 Supp. 38-2272, and amendments thereto, or continued permanency
30 planning.

31 (h) If a parent is convicted of an offense as provided in K.S.A. 2019
32 Supp. 38-2271(a)(7), and amendments thereto, or is adjudicated a juvenile
33 offender because of an act, which if committed by an adult, would be an
34 offense as provided in K.S.A. 2019 Supp. 38-2271(a)(7), and amendments
35 thereto, and if the victim was the other parent of a child, the court may
36 disregard such convicted or adjudicated parent's opinions or wishes in
37 regard to the placement of such child.

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

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

1 Sec. 10. K.S.A. 2019 Supp. 38-2271 is hereby amended to read as
2 follows: 38-2271. (a) It is presumed in the manner provided in K.S.A. 60-
3 414, and amendments thereto, that a parent is unfit by reason of conduct or
4 condition which renders the parent unable to fully care for a child, if the
5 state establishes, by clear and convincing evidence, that:

6 (1) A parent has previously been found to be an unfit parent in
7 proceedings under K.S.A. 2019 Supp. 38-2266 et seq., and amendments
8 thereto, or comparable proceedings under the laws of another jurisdiction;

9 (2) a parent has twice before been convicted of a crime specified in
10 article 34, 35, or 36 of chapter 21 of the Kansas Statutes Annotated, prior
11 to their repeal, or articles 54, 55 or 56 of chapter 21 of the Kansas Statutes
12 Annotated, or K.S.A. 2019 Supp. 21-6104, 21-6325, 21-6326 or 21-6418
13 through 21-6421, and amendments thereto, or comparable offenses under
14 the laws of another jurisdiction, or an attempt or attempts to commit such
15 crimes and the victim was under the age of 18 years;

16 (3) on two or more prior occasions a child in the physical custody of
17 the parent has been adjudicated a child in need of care as defined by
18 K.S.A. 2019 Supp. 38-2202(d)(1), (d)(3), (d)(5) or (d)(11), and
19 amendments thereto, or comparable proceedings under the laws of another
20 jurisdiction;

21 (4) the parent has been convicted of causing the death of another
22 child or stepchild of the parent;

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

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

34 (7) a parent has been convicted of capital murder, K.S.A. 21-3439,
35 prior to its repeal, or K.S.A. 2019 Supp. 21-5401, and amendments
36 thereto, murder in the first degree, K.S.A. 21-3401, prior to its repeal, or
37 K.S.A. 2019 Supp. 21-5402, and amendments thereto, murder in the
38 second degree, K.S.A. 21-3402, prior to its repeal, or K.S.A. 2019 Supp.
39 21-5403, and amendments thereto, voluntary manslaughter, K.S.A. 21-
40 3403, prior to its repeal, or K.S.A. 2019 Supp. 21-5404, and amendments
41 thereto, human trafficking or aggravated human trafficking, K.S.A. 21-
42 3446 or 21-3447, prior to their repeal, or K.S.A. 2019 Supp. 21-5426, and
43 amendments thereto, or commercial sexual exploitation of a child, K.S.A.

1 2019 Supp. 21-6422, and amendments thereto, or comparable proceedings
 2 under the laws of another jurisdiction or, has been adjudicated a juvenile
 3 offender because of an act, which if committed by an adult, would be an
 4 offense as provided in this subsection, and the victim of such murder was
 5 the other parent of the child;

6 (8) a parent abandoned or neglected the child after having knowledge
 7 of the child's birth or either parent has been granted immunity from
 8 prosecution for abandonment of the child under K.S.A. 21-3604(b), prior
 9 to its repeal, or K.S.A. 2019 Supp. 21-5605(d), and amendments thereto;

10 ~~or~~

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

13 (10) a father, after having knowledge of the pregnancy, failed without
 14 reasonable cause to provide support for the mother during the six months
 15 prior to the child's birth;

16 (11) a father abandoned the mother after having knowledge of the
 17 pregnancy;

18 (12) a parent has been ~~convicted of~~ *shown to have committed one of*
 19 *the following acts, or a comparable act under the laws of another*
 20 *jurisdiction, which resulted in the conception of the child:*

21 (A) Rape, K.S.A. 21-3502, prior to its repeal, or K.S.A. 2019 Supp. 21-
 22 5503, and amendments thereto, or comparable proceedings under the laws
 23 of another jurisdiction resulting in the conception of the child;

24 (B) *aggravated indecent liberties, K.S.A. 21-3504, prior to its repeal,*
 25 *or K.S.A. 2019 Supp. 21-5506(b)(1), and amendments thereto, unless the*
 26 *court finds by clear and convincing evidence that the act involved non-*
 27 *forcible conduct, both parties were at least 14 years of age and neither*
 28 *party was more than four years older than the other party; or*

29 (C) *incest, K.S.A. 21-3602 or 21-3603, prior to their repeal, or K.S.A*
 30 *2019 Supp. 21-5604, and amendments thereto; or*

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

35 (b) The burden of proof is on the parent to rebut the presumption of
 36 unfitness by a preponderance of the evidence. In the absence of proof that
 37 the parent is presently fit and able to care for the child or that the parent
 38 will be fit and able to care for the child in the foreseeable future, the court
 39 shall terminate parental rights in proceedings pursuant to K.S.A. 2019
 40 Supp. 38-2266 et seq., and amendments thereto.

41 Sec. 11. K.S.A. 2019 Supp. 23-3203, 38-2269 and 38-2271 are
 42 hereby repealed.

43 Sec. 12. This act shall take effect and be in force from and after its

- 1 publication in the statute book.