



# DCF Legislative Testimony

**November 14, 2024**

**TESTIMONY OF:** Tanya Keys, Deputy Secretary, Department for Children and Families

**TESTIMONY ON:** Review of Neglect Definitions and Proposed Changes

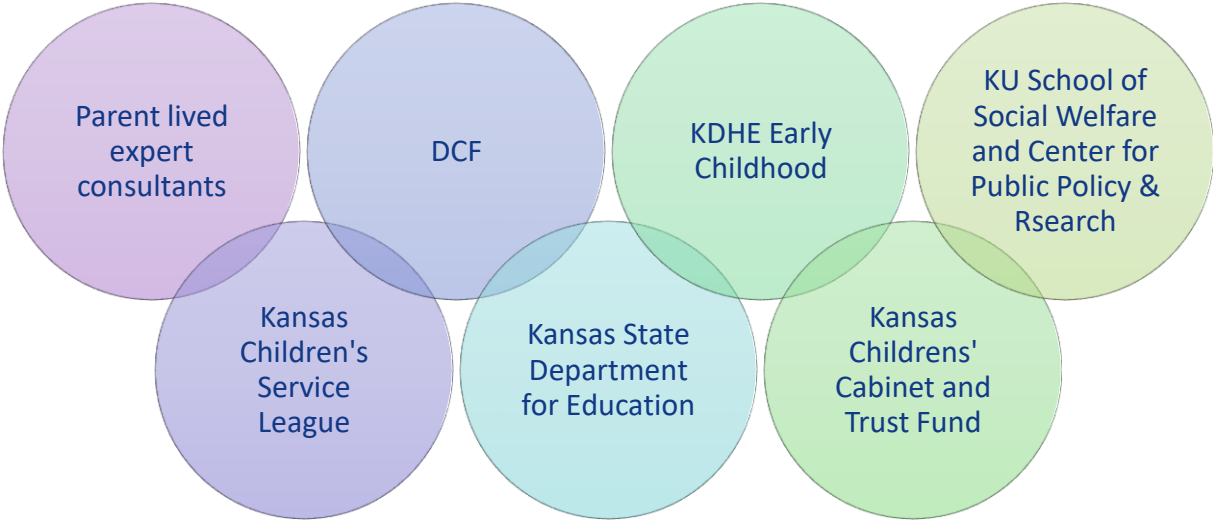
## DCF | Review of Other States Definitions of Neglect

Chair Concannon and members of the committee. Thank you for the opportunity to provide testimony on the work of the Kansas Thriving Families, Safer Children work team and DCF program managers to study laws in other states that distinguish that poverty, economic insecurity or hardship is not neglect. Similar information in this testimony was provided on October 31, 2024, to the Child Welfare, Reimagined prevention workgroup.

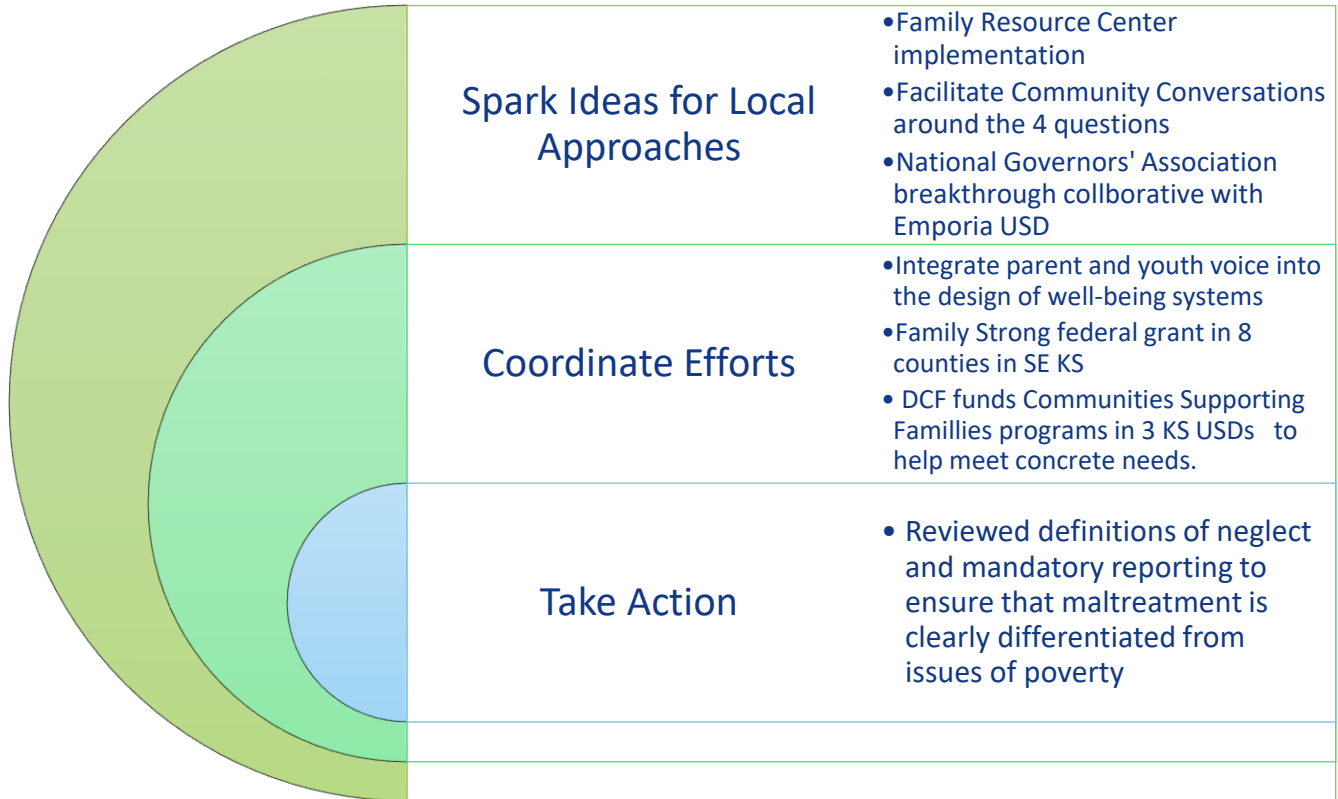
## Background

Since 2021, Kansas has been involved in peer learning with about 20 other states and implementation efforts of [Thriving Families, Safer Children](#) sponsored by the U.S. Children’s Bureau, Annie E. Casey Foundation, Casey Family Programs, and Prevent Child Abuse America.

The focus is creating and enhancing networks of community-based supports and aligning public resources to provide a full prevention continuum that strengthens community protective factors and parent and caregiver capacities. Kansas Partners and priorities include:



Project Priorities:



In the national context, [Congressional HR8813, \(6/25/24\)](#) Preventing Child Welfare Entry Caused by Poverty Act, proposes to expand that Title IV-B funds can be expended for programs to prevent foster care, especially to address child welfare involvement caused by poverty and adds to existing federal law that:

(G)(i) services providing nonrecurring short-term benefits (including supports related to housing instability, utilities, transportation, and food assistance, among other basic needs) that address immediate needs related to a specific crisis, situation, or event affecting the ability of a child to remain in a home established for the child that is not intended to meet an ongoing need; and

(ii) for purposes of this subpart, an expenditure for a service described in clause (i) may be treated as an expenditure for any 1 or more of family support services, family preservation services, family reunification services.

## Review for Opportunities to Adjust the Kansas Definition of Neglect

As it relates to distinguishing circumstances of economic hardship or poverty from neglect, K.S.A 38-2202 defines neglect as follows:

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

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

(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. [38-2217](#)(a)(2), and amendments thereto.

Review of other states by the Thriving Families, Safer Children work team identified opportunities for Kansas to strengthen language to distinguish that lack of financial means is not neglect. In general, differences in strength of language includes:

- States use of the word "**refusal**" rather than Kansas use of the word 'failure.'
- States use and define **harm and imminent harm**; Kansas defines harm, but not the phrase best interest of child (law enforcement custody).
- At least two states require a judicial determination of a balance of harm - before a child is removed that "**Any imminent harm to the child outweighs the harm the child will experience as a result of removal.**"
- Some states do not consider **truancy** a harm resulting in entry into foster care.

Many states were reviewed, and the ones below appeared to have highlights or language more detailed than Kansas that sparked affinity in the Thriving Families workgroup.

State	Language or phrasing not present in current Kansas law related to differentiate circumstances of adversity or poverty from neglect. <i>Red italicized font</i> highlights different language than KS.
Iowa	<p>Because of the work with 7 Judges, 4 questions, KS experienced several conversations and a few presentations by Iowa.</p> <p>“[t]he failure on the part of a person responsible for the care of a child to provide for the adequate food, shelter, clothing, medical or mental health treatment, supervision, or other care necessary for the child’s health and welfare <i>when financially able to do so or when offered financial or other reasonable means to do so.</i>”</p> <p>This definition distinguishes between the lack of financial resources to provide for a child, and the willful failure to use available resources when financial resources are not a barrier to provide appropriate care for a child.</p> <p>In order for the court to order a removal the court is required to find by <i>“substantial evidence” the need for removal outweighs the potential harm removal would cause the child including “physical, emotional, social and mental trauma” the removal may cause the child.</i> (House File 2507)</p>
Indiana	<p>Uses the word refusal (instead of failure) when describing standards.</p> <p><b>1)</b>the child’s physical or mental condition is seriously impaired or seriously endangered as a result of the inability, <i>refusal</i>, or neglect of the child’s parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision:  <b>(A)</b>when the parent, guardian, or custodian is financially able to do so; or  <b>(B)</b>due to the failure, refusal, or inability of the parent, guardian, or custodian to seek financial or other reasonable means to do so.</p>
Louisiana	<p>“The inability of a parent or caretaker to provide for a child <i>due to inadequate financial resources shall not, for that reason alone, be considered neglect.</i>”</p>
Texas	<p>At the time of the workgroup research, Texas was changing the definition of neglect to <i>“blatant disregard”</i> and <i>increasing the standard for the harm from “substantial risk” to “immediate danger.”</i></p>
Virginia	<p>22VAC40-705-30  <i>In situations where the neglect is the result of family poverty and there are no outside resources available to the family, the parent or caretaker</i></p>

	<p><i>shall not be determined to have neglected the child; however, the local department may provide appropriate services to the family.</i></p>
<p>Washington</p>	<p>In addition to the sentence the acts or omissions are not due solely to the lack of financial means of the child's parents or other custodian, Washington goes on to more specifically set forth that <i>the inability of a parent or caretaker to provide for a child due to inadequate financial resources shall not, for that reason alone, be considered neglect. The existence of community or family poverty does not by itself constitute neglect.</i></p> <p>HB 1227 was described as tightening the standards for removing children from their parents and ensure that disability, poverty, inadequate housing and other conditions that don't necessarily pose an imminent threat to a child's physical safety cannot be the only reasons to take kids away. The bill also would make it easier for relatives to foster children who can't remain safely with their parents. Language limited that discretion by requiring evidence that removal "is necessary to prevent imminent physical harm," including harm from neglect. (regarding a decision to remove a child)</p> <p><i>(A) The facts must show a causal relationship between the particular conditions in the home and imminent harm to the child. The existence of community or family poverty, isolation, age of the parent, crowded or inadequate housing, substance abuse, prenatal drug or alcohol exposure, mental illness, disability or special needs of the parent or child or other non-conforming behavior does not by itself constitute imminent harm, and</i></p> <p><i>(B) Any imminent harm to the child outweighs the harm the child will experience as a result of removal.</i> (note: this language in (B) resembles <b>Washington and Iowa</b>)</p> <p>Also: A law enforcement officer may take, or cause to be taken, a child into custody without a court order if there is probable cause to believe that taking the child into custody is necessary <b>to prevent imminent physical harm</b> to the child due to child abuse or neglect, including that which results from sexual abuse, sexual exploitation, or a pattern of severe neglect, and the child would be seriously injured.</p>
<p>Wisconsin</p>	<p>Statutory language defines neglect and indicates: 48.13(10): The child's parent, guardian, or legal custodian neglects, refuses or is unable <i>for reasons other than poverty</i> to provide necessary care, food, clothing,</p>

	<p>medical or dental care or shelter so as to seriously endanger the physical health of the child. This definition is used when determining whether or not a child can be taken into custody and or found to be “in need of protection or services” as it relates to the juvenile court system.</p>
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As a result of the review of other states, DCF’s 2025 legislative agenda will include a bill that among other things will distinguish that poverty is not neglect and prevent separation of a child from family solely due to poverty. Stated another way, avoid conflating the consequences of poverty with neglect, by excluding conditions or circumstances related to poverty or a lack of financial resources. We look forward to conversation and collaboration with legislators and stakeholders on the language for bill that would contain components and spirit such as the following:

**38-2202. Definitions.**

(z) "Neglect" means acts or omissions by a parent, guardian or person responsible for the care of a child resulting in harm to a child, or presenting a likelihood of harm, and the acts or omissions are not due solely to the lack of financial means of the child's parents or other custodian. *The inability of a parent or caretaker to provide for a child due to inadequate financial resources shall not, for that reason alone, be considered neglect. The existence of community or family poverty does not by itself constitute neglect.*

*Language  
Resembles  
Washington State*

Neglect may include, but shall not be limited to:

(1) ~~refusal failure~~ to provide the child with food, clothing or shelter necessary to sustain the life or health of the child *when the parent, guardian, or person responsible is financially able to do so or when offered financial or other reasonable means to do so;*

*Language resembles  
Indiana.*

(2) ~~refusal 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) ~~refusal 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. [38-2217\(a\)\(2\)](#), and amendments thereto.

Further, in K.S.A. 38-2234 Pleadings, and 38-2243(a)

(7) If the petition requests removal of the child from the child's home, in addition to the information required by K.S.A. 38-2234 (a)(6), and amendments thereto, the petition shall specify the facts demonstrating that allowing the child to remain in the home would be contrary to the welfare of the child or that placement is in the best interests of the child and the child is likely to ~~sustain~~ *experience imminent* harm if not removed from the home.

(A) *The facts must show a causal relationship between the particular conditions in the home and imminent harm to the child. The existence of community or family poverty, isolation, age of the parent, crowded or inadequate housing, substance abuse, prenatal drug or alcohol exposure, mental illness, disability or special needs of the parent or child or not meeting requirements of compulsory school attendance set forth in K.S.A. 72-1113 does not by itself constitute imminent harm; and*

*Resembles  
Washington  
and Iowa*

(B) *Any imminent harm to the child outweighs the harm the child will experience as a result of removal.*

K.S.A 38-2243(a)

(A) *If the court finds that the elements require removal of the child, the court shall further consider:*

(i) *Whether participation by the parents, guardians, or legal custodians in any prevention services would prevent or eliminate the need for removal and, if so, shall inquire of the parent whether they are willing to participate in such services. If the parent agrees to participate in the prevention services identified by the court that would prevent or eliminate the need for removal, the court shall place the child with the parent. The court shall not order a parent to participate in prevention services over the objection of the parent, however, parents shall have the opportunity to consult with counsel prior to deciding whether to agree to proposed prevention services as a condition of having the child return to or remain in the care of the parent; and*

(ii) *Whether the issuance of a temporary order of protection directing the removal of a person or persons from the child's residence would prevent the need for removal of the child.*

*Any imminent harm to the child outweighs the harm the child will experience as a result of removal.*



Thank you for the opportunity to provide information on the work to review and adjust Kansas statutory definitions of neglect. The articles and resource list below were also provided to the Child Welfare, Reimagined prevention sub-group as reference. We look forward to further dialogue and collaboration on bill language.

- [Distinguishing-Poverty.pdf \(ncjfcj.org\)](#)
- [Poverty and Neglect Are Not the Same — It's Time to Realign Our Response - APHSA](#)
- [Separating Poverty from Neglect | Child Welfare Information Gateway](#)
- [Family Poverty is Not Child Neglect Act is Reintroduced \(imprintnews.org\)](#)
- [Thriving Families Safer Children | Kansas Children's Cabinet and Trust Fund \(kschildrenscabinet.org\)](#)
- [First-of-its-Kind National Partnership Aims to Redesign Child Welfare into Child- and Family Well-Being Systems | The Administration for Children and Families \(hhs.gov\)](#)
- [Thriving Families, Safe children - Casey Family Programs](#)
- [Schools of Social Work: December 2022 / January 2023 \(socialworkers.org\)](#)