

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

IN THE INTEREST OF:

Name: _____ Case No. _____
Year of Birth _____ A male female

PETITION

Pursuant to K.S.A. 38-2234

Petitioner, the State of Kansas by and through the County/District Attorney or designee Other: _____, states as follows:

1. **CHILD:**

Name: _____ Year of Birth: _____ SSN: xxx-xx-_____
Address: _____ see cover sheet
Phone: _____ unknown

2. **MOTHER:**

Name: _____ Year of Birth: _____ SSN: xxx-xx-_____
Address: _____ see cover sheet
Phone: _____ unknown

3. **FATHER:**

Name: _____ Year of Birth: _____ SSN: xxx-xx-_____
Address: _____ see cover sheet
Phone: _____ unknown

4. **CUSTODIAN (if other than a parent):**

Name: _____
Address: _____
Phone: _____

5. **MATERNAL GRANDPARENTS:**

Name: _____

Address: _____

Phone: _____

Name: _____

Address: _____

Phone: _____

6. **PATERNAL GRANDPARENTS:**

Name: _____

Address: _____

Phone: _____

Name: _____

Address: _____

Phone: _____

JURISDICTION

7. a. The Indian Child Welfare Act **is applicable** **is not applicable** **applicability is not determined.**
- b. The Court has jurisdiction to make a child custody determination pursuant to K.S.A. 23-37,204(a), and amendments thereto.
- c. The Court has jurisdiction of the parties and the subject matter of this proceeding pursuant to K.S.A. 38-2203, and amendments thereto.

VENUE

8. Pursuant to K.S.A. 38-2204, and amendments thereto, venue in _____ County, Kansas is proper.

STATUTORY BASIS

9. The child is a child in need of care because the child:

- is without adequate parental care, control or subsistence and it is not due solely to the lack of financial means of the child's parents or other custodian. K.S.A. 38-2202(d)(1).
- is without the care or control necessary for the child's physical, mental or emotional health. K.S.A. 38-2202(d)(2).
- has been physically, mentally or emotionally abused or neglected or sexually abused. K.S.A. 38-2202(d)(3).
- has been placed for care or adoption in violation of law. K.S.A. 38-2202(d)(4).
- has been abandoned or does not have a known living parent. K.S.A. 38-2202(d)(5).
- is not attending school as required by K.S.A. 72-3421 or 72-3120, and amendments thereto. K.S.A. 38-2202(d)(6).
- 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. 21-6301(a)(14), and amendments thereto, or, except as provided in K.S.A. 38-2202 (d)(12), and amendments thereto, has committed 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. K.S.A. 38-2202(d)(7).
- while less than 10 years of age, has committed an act that if done by an adult would constitute the commission of a felony or misdemeanor as defined by K.S.A. 21-5102 and amendments thereto. K.S.A. 38-2202(d)(8).
- is willfully and voluntarily absent from the child's home without the consent of the child's parents or other custodian. K.S.A. 38-2202(d)(9).
- 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. K.S.A. 38-2202(d)(10).
- 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. K.S.A. 38-2202(d)(11).
- is less than 10 years of age and has committed the offense defined in K.S.A. 21-6301(a)(14) and amendments thereto. K.S.A. 38-2202(d)(12).
- has had a permanent custodian appointed and the permanent custodian is no longer able or willing to serve. K.S.A. 38-2202(d)(13).
- has been subjected to an act that would constitute human trafficking or aggravated human trafficking, as defined by K.S.A. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by K.S.A. 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. 21-6419, and amendments thereto. K.S.A. 38-2202(d)(14).

FACTS ALLEGED

10. This Petition is based on the following facts:

Child/Parent/Party /Custodian Details

- a. _____, Year of Birth: _____, is an unemancipated **male** **female** child. There **is** **is not** reason to know that the child is an Indian child. The tribal affiliation **is** **may be** with _____.
The child's tribal registration number is _____.
- b. _____, Year of Birth: _____ **see cover sheet** **unknown**, is the child's mother and has a duty to support the child. The mother **does** **does not** claim Indian heritage. The tribal affiliation **is** **may be** with _____.
The mother's tribal registration number is _____.
The mother **is** **is not** presently obligated by court order to pay child support.
- c. _____, Year of Birth: _____ **see cover sheet** **unknown**, is the child's father and has a duty to support the child. The father **does** **does not** claim Indian heritage. The tribal affiliation **is** **may be** with _____.
The father's tribal registration number is _____. The father **is** **is not** presently obligated by court order to pay child support.
- d. At the time of and immediately prior to the child being taken into custody, the child was residing at _____. Other persons residing with the child and their relationship to the child include: _____
_____.

e. The specific factual allegations are (*The specific allegations upon which the petitioner relies must be stated, including known dates, times and locations.*):

11. Reasonable efforts that have been provided to prevent removal of the child from the child's home are as follows:

and/or

An emergency exists necessitating out of home placement as follows:

12. **The child is likely to sustain harm if not immediately removed from the home, it is contrary to the child's welfare to remain in the home and/or immediate placement out of the home is in the best interest of the child** due to the following:

13. A copy of the prevention plan for the child is attached.

REMEDY REQUESTED

Petitioner requests the Court:

- a. Find the child to be a child in need of care and issue appropriate orders of custody.
- b. Find _____ is the mother of the child in interest, has a duty to support the child and **is the obligor in an existing court order to pay child support** **issue a child support order.**
- c. Find _____ is the father of the child in interest, has a duty to support the child and **is the obligor in an existing court order to pay child support** **issue a child support order.**
- d. Issue other such orders as justice and equity require.

ADVISORY NOTICES TO PARENTS AND CUSTODIAN

If you do not appear in court the court will be making decisions without your input which could result in:

- the permanent or temporary removal of the child from the custody of the parent or present legal guardian;
- an order requiring one or both parents to pay child support until the permanent termination of one or both of the parents' parental rights;
- the permanent termination of one or both of the parents' parental rights; and
- the appointment of a permanent custodian for the child.

If you cannot attend the hearing you may send a written response to the petition to the clerk of the court.

You may receive further notices of other hearings, proceedings and actions in this case which you may attend. These notices will be sent to you by first-class mail to your last known address or an address you provide to the court. It is your responsibility to keep the court informed of your current address.

Petitioner Signature
Printed Name: _____
Address: _____
Telephone #: _____
Fax #: _____
E-mail: _____

VERIFICATION

(optional)

STATE OF KANSAS)
)
COUNTY OF _____)

ss:

COMES NOW _____, of lawful age, being first duly sworn and under oath, and states:

I am the applicant above named, and I have read and understand the above and foregoing Petition, and believe that all of the content thereof is true and correct.

Petitioner Signature
Printed Name: _____
Address: _____
Telephone #: _____
Fax #: _____
E-mail: _____

Subscribed and sworn to before me this ____ day of _____, _____.

Notary Public/Clerk of the Court/Deputy

REQUEST FOR ADDITIONAL SUMMONS AND SERVICE BY EXCEPTION

Pursuant to **K.S.A. 38-2235(a)(1)** **K.S.A. 38-2236(a)(4)**, and amendments thereto, the undersigned requests a summons and copy of the petition also be served on the following individuals:

Petitioner Signature
Printed Name: _____
Address: _____
Telephone #: _____
Fax #: _____
E-mail: _____

Witnesses:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

(The specific allegations upon which the petitioner relies must be stated, including known dates, times and locations.)

Authority

K.S.A. 38-2234.

Notes on Use

K.S.A. 38-2203(c) provides that the court acquires jurisdiction over a child by the filing of a petition or issuance of an *ex parte* protective custody order. A Child in Need of Care case is typically commenced by the filing of this petition. Any individual may file a petition. K.S.A. 38-2233(b).

A cover sheet (Form 111) shall be filed with the petition. S. Ct. Rule No. 123. In addition to the information the statute requires in the petition, the form also provides space for information which will facilitate proceedings and findings. K.S.A. 38-2234(a)(1) and (a)(2) require the following information. All other information in the form pertaining to the child or parents is recommended but optional and may be left blank or deleted:

1. the name, date of birth and residence address of the child;
2. the name and residence address of the child's parents;
3. the name and address of the child's nearest known relative if no parent can be found;
4. the name and residence address of any persons having custody or control of the child;
5. the basis for the petition in the language of the statutory definition;
6. the specific factual allegations that form the basis for the petition. The events and circumstances that support the petition must be included, stating any known dates, times and locations.

In the statutory definition of "child in need of care," K.S.A. 38-2202(d)(6) references K.S.A. 72-977 and 72-1111; however, in 2017 the contents of K.S.A. 72-977 and 72-1111 were transferred to K.S.A. 72-3421 and 72-3120 respectively. While the definition in K.S.A. 38-2202(d)(6) still includes incorrect statutory references, to provide clarity this form has been updated to include correct statutory references.

K.S.A.38-2234 requires that the petition contain a request for child support, unless a child support order is already in place or the secretary requests omission of the request, in writing. If the petition requests that custody of the child be granted to the secretary, or requests removal of the child from the home, then reasonable efforts information and/or contrary to welfare information are required. K.S.A. 38-2234(a)(8) requires that the petition must have an attached copy of the prevention plan, if any, that has been prepared for the child. Parent advisory notices are required by K.S.A. 38-2234(a)(9) and (10). All of the foregoing are included in this form.

If proceeding pursuant to K.S.A. 38-2233, the petition shall include a request that the court find that reintegration is not a viable alternative and a request to terminate parental rights of an infant surrendered pursuant to K.S.A. 38-2282, Newborn Infant Protection Act. An expedited hearing shall be granted on such a petition.

Indian child

The state and the secretary should be pursuing information required by the Indian Child Welfare Act (ICWA), 25 U.S.C. 1901 *et seq.* at this time. When a court has reason to know a child involved in a child in need of care proceeding is an Indian child, the Indian Child Welfare Act (ICWA) applies; notice requirements, findings and procedure are dictated by ICWA, and the ICWA forms must be used. The court “has reason to know” a child is an Indian child if:

- “(1) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child;
- (2) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;
- (3) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child;
- (4) The court is informed that the domicile or residence of the child, the child’s parents, or the child’s Indian custodian is on a reservation or in an Alaska Native village;
- (5) The court is informed that the child is or has been a ward of a Tribal court; or
- (6) The court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe.” 25 C.F.R. 23.107(c).

In addition to the federal ICWA statutes, all federal regulations (found at 25 C.F.R. 23) must be followed. The court should also consult the BIA December 2016 guidelines (www.bia.gov/bia/ois/dhs/icwa).