

HOUSE BILL No. 2095

By Representative Burroughs

1-28

AN ACT concerning children in need of care; relating to records and reports; amending K.S.A. 38-1508 and K.S.A. 2002 Supp. 38-1507 and repealing the existing sections.

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

Section 1. K.S.A. 2002 Supp. 38-1507 is hereby amended to read as follows: 38-1507. (a) Except as otherwise provided, in order to protect the privacy of children who are the subject of a child in need of care record or report, all records and reports concerning children in need of care, including the juvenile intake and assessment report, received by the department of social and rehabilitation services, a law enforcement agency or any juvenile intake and assessment worker shall be kept confidential except: (1) To those persons or entities with a need for information that is directly related to achieving the purposes of this code, or (2) upon an order of a court of competent jurisdiction pursuant to a determination by the court that disclosure of the reports and records is in the best interests of the child or are necessary for the proceedings before the court, or both, and are otherwise admissible in evidence. Such access shall be limited to in camera inspection unless the court otherwise issues an order specifying the terms of disclosure.

(b) The provisions of subsection (a) shall not prevent disclosure of information to an educational institution or to individual educators about a pupil specified in subsection (a) of K.S.A. 72-89b03 and amendments thereto.

(c) When a report is received by the department of social and rehabilitation services, a law enforcement agency or any juvenile intake and assessment worker which indicates a child may be in need of care, the following persons and entities shall have a free exchange of information between and among them:

- (1) The department of social and rehabilitation services;
- (2) the commissioner of juvenile justice;
- (3) the law enforcement agency receiving such report;
- (4) members of a court appointed multidisciplinary team;
- (5) an entity mandated by federal law or an agency of any state authorized to receive and investigate reports of a child known or suspected

1 to be in need of care;

2 (6) a military enclave or Indian tribal organization authorized to re-
3 ceive and investigate reports of a child known or suspected to be in need
4 of care;

5 (7) a county or district attorney;

6 (8) a court services officer who has taken a child into custody pursuant
7 to K.S.A. 38-1527, and amendments thereto;

8 (9) a guardian ad litem appointed for a child alleged to be in need of
9 care;

10 (10) an intake and assessment worker;

11 (11) any community corrections program which has the child under
12 court ordered supervision;

13 (12) the department of health and environment or persons authorized
14 by the department of health and environment pursuant to K.S.A. 65-512,
15 and amendments thereto, for the purpose of carrying out responsibilities
16 relating to licensure or registration of child care providers as required by
17 article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments
18 thereto; and

19 (13) members of a duly appointed community services team.

20 (d) The following persons or entities shall have access to information,
21 records or reports received by the department of social and rehabilitation
22 services, a law enforcement agency or any juvenile intake and assessment
23 worker. Access shall be limited to information reasonably necessary to
24 carry out their lawful responsibilities to maintain their personal safety and
25 the personal safety of individuals in their care or to diagnose, treat, care
26 for or protect a child alleged to be in need of care.

27 (1) A child named in the report or records.

28 (2) A parent or other person responsible for the welfare of a child,
29 or such person's legal representative.

30 (3) A court-appointed special advocate for a child, a citizen review
31 board or other advocate which reports to the court.

32 (4) A person licensed to practice the healing arts or mental health
33 profession in order to diagnose, care for, treat or supervise: (A) A child
34 whom such service provider reasonably suspects may be in need of care;
35 (B) a member of the child's family; or (C) a person who allegedly abused
36 or neglected the child.

37 (5) A person or entity licensed or registered by the secretary of health
38 and environment or approved by the secretary of social and rehabilitation
39 services to care for, treat or supervise a child in need of care. In order to
40 assist a child placed for care by the secretary of social and rehabilitation
41 services in a foster home or child care facility, the secretary shall provide
42 relevant information to the foster parents or child care facility prior to
43 placement and as such information becomes available to the secretary.

1 (6) A coroner or medical examiner when such person is determining
2 the cause of death of a child.

3 (7) The state child death review board established under K.S.A. 22a-
4 243, and amendments thereto.

5 (8) A prospective adoptive parent prior to placing a child in their care.

6 (9) The department of health and environment or person authorized
7 by the department of health and environment pursuant to K.S.A. 65-512,
8 and amendments thereto, for the purpose of carrying out responsibilities
9 relating to licensure or registration of child care providers as required by
10 article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments
11 thereto.

12 (10) The state protection and advocacy agency as provided by sub-
13 section (a)(10) of K.S.A. 65-5603 or subsection (a)(2)(A) and (B) of K.S.A.
14 74-5515, and amendments thereto.

15 (11) Any educational institution to the extent necessary to enable the
16 educational institution to provide the safest possible environment for its
17 pupils and employees.

18 (12) Any educator to the extent necessary to enable the educator to
19 protect the personal safety of the educator and the educator's pupils.

20 (13) The secretary of social and rehabilitation services.

21 (14) A law enforcement agency.

22 (15) A juvenile intake and assessment worker.

23 (16) The commissioner of juvenile justice.

24 (e) Information from a record or report of a child in need of care
25 shall be available to members of the standing house or senate committee
26 on judiciary, house committee on appropriations, senate committee on
27 ways and means, legislative post audit committee and joint committee on
28 children and families, carrying out such member's or committee's official
29 functions in accordance with K.S.A. 75-4319 and amendments thereto,
30 in a closed or executive meeting. Except in limited conditions established
31 by $\frac{2}{3}$ of the members of such committee, records and reports received
32 by the committee shall not be further disclosed. Unauthorized disclosure
33 may subject such member to discipline or censure from the house of
34 representatives or senate.

35 (f) Nothing in this section shall be interpreted to prohibit the secre-
36 tary of social and rehabilitation services from summarizing the outcome
37 of department actions regarding a child alleged to be a child in need of
38 care to a person having made such report.

39 (g) Disclosure of information from reports or records of a child in
40 need of care to the public shall be limited to confirmation of factual details
41 with respect to how the case was handled that do not violate the privacy
42 of the child, if living, or the child's siblings, parents or guardians. Further,
43 confidential information may be released to the public only with the ex-

1 press written permission of the individuals involved or their representa-
2 tives or upon order of the court having jurisdiction upon a finding by the
3 court that public disclosure of information in the records or reports is
4 necessary for the resolution of an issue before the court.

5 (h) Nothing in this section shall be interpreted to prohibit a court of
6 competent jurisdiction from making an order disclosing the findings or
7 information pursuant to a report of alleged or suspected child abuse or
8 neglect which has resulted in a child fatality or near fatality if the court
9 determines such disclosure is necessary to a legitimate state purpose. In
10 making such order, the court shall give due consideration to the privacy
11 of the child, if, living, or the child's siblings, parents or guardians.

12 (i) Information authorized to be disclosed in subsections (d) through
13 (g) shall not contain information which identifies a reporter of a child in
14 need of care.

15 (j) Records or reports authorized to be disclosed in this section shall
16 not be further disclosed, except that the provisions of this subsection shall
17 not prevent disclosure of information to an educational institution or to
18 individual educators about a pupil specified in subsection (a) of K.S.A.
19 72-89b03 and amendments thereto.

20 (k) Anyone who participates in providing or receiving information
21 without malice under the provisions of this section shall have immunity
22 from any civil liability that might otherwise be incurred or imposed. Any
23 such participant shall have the same immunity with respect to participa-
24 tion in any judicial proceedings resulting from providing or receiving
25 information.

26 (l) No individual, association, partnership, corporation or other entity
27 shall willfully or knowingly disclose, permit or encourage disclosure of
28 the contents of records or reports concerning a child in need of care
29 received by the department of social and rehabilitation services, a law
30 enforcement agency or a juvenile intake and assessment worker except
31 as provided by this code. Violation of this subsection is a class B
32 misdemeanor.

33 (m) (1) *Notwithstanding any other provision of this section to the*
34 *contrary, the records and reports concerning a child in need of care shall*
35 *be available to members of the Kansas legislature pursuant to the provi-*
36 *sions of this subsection.*

37 (2) *Such records and reports shall be made available to such legisla-*
38 *tors if a child is placed in foster care and:*

39 (A) *Is the victim of a fatality;*

40 (B) *is the victim of a near fatality;*

41 (C) *is the victim of a substantiated allegation of sexual abuse or phys-*
42 *ical abuse;*

43 (D) *if the victim of a kidnapping or aggravated kidnapping, pursuant*

1 to K.S.A. 21-3420 or 21-3421, and amendments thereto;
2 (E) is missing for 72 hours and a report has been filed with law en-
3 forcement; or

4 (f) such child's foster parent is arrested for and charged with the
5 commission of a felony.

6 (3) In order to review such records and reports, such legislator shall
7 file a written request with the secretary of social and rehabilitation serv-
8 ices and the attorney general stating the reasons such records and reports
9 should be made available to such legislator. The records and reports shall
10 be made available to such legislator within 72 hours of the filing of the
11 request.

12 (4) Records and reports in this subsection shall include any records
13 and reports concerning such child issued by private entities that have
14 contracted with the department of social and rehabilitation services.

15 Sec. 2. K.S.A. 38-1508 is hereby amended to read as follows: 38-
16 1508. (a) All records and reports concerning child abuse or neglect re-
17 ceived by law enforcement agencies shall be kept separate from all other
18 records and shall not be disclosed to anyone except:

19 ~~(a)~~ (1) The judge and members of the court staff designated by the
20 judge of the court having the child before it in any proceedings;

21 ~~(b)~~ (2) the guardian *ad litem* and the parties to the proceedings and
22 their attorneys, subject to the restrictions imposed by subsection (a)(2)(C)
23 of K.S.A. 38-1507 and amendments thereto;

24 ~~(c)~~ (3) the department of social and rehabilitation services;

25 ~~(d)~~ (4) any individual, or public or private agency authorized by a
26 properly constituted authority to diagnose, care for, treat or supervise a
27 child who is the subject of a report or record of child abuse or neglect
28 and specifically includes the following: Physicians, psychiatrists, nurses,
29 nurse practitioners, psychologists, licensed social workers, child devel-
30 opment specialists, physician assistants, community mental health work-
31 ers, alcohol and drug abuse counselors, and licensed or registered child
32 care providers. Teachers, administrators and school paraprofessionals
33 shall have access but shall not copy materials in the file;

34 ~~(e)~~ (5) law enforcement officers or county or district attorneys or their
35 staff when necessary for the discharge of their official duties in investi-
36 gating or prosecuting a report of known or suspected child abuse or
37 neglect;

38 ~~(f)~~ (6) any member of the standing house or senate committee on
39 judiciary, house committee on appropriations, senate committee on ways
40 and means, legislative post audit committee and joint committee on chil-
41 dren and families, carrying out such member's or committee's official
42 functions; and

43 ~~(g)~~ (7) any juvenile intake and assessment worker.

1 **(b) (1)** *Notwithstanding any other provision of this section to the con-*
2 *trary, such records and reports concerning child abuse and neglect shall*
3 *be available to members of the Kansas legislature pursuant to the provi-*
4 *sions of this subsection.*

5 **(2)** *Such records and reports shall be made available to such legisla-*
6 *tors if a child is placed in foster care and;*

7 **(A)** *Is the victim of a fatality;*

8 **(B)** *is the victim of a near fatality;*

9 **(C)** *is the victim of a substantiated allegation of sexual abuse or phys-*
10 *ical abuse;*

11 **(D)** *is the victim of a kidnapping or aggravated kidnapping, pursuant*
12 *to K.S.A. 21-3420 or 21-3421, and amendments thereto;*

13 **(E)** *is missing for 72 hours and a report has been filed with law en-*
14 *forcement; or*

15 **(F)** *such child's foster parent is arrested for and charged with the*
16 *commission of a felony.*

17 **(3)** *In order to review such records and reports, such legislator shall*
18 *file a written request with the secretary of social and rehabilitation serv-*
19 *ices and the attorney general stating the reasons such records and reports*
20 *should be made available to such legislator. The records and reports shall*
21 *be made available to such legislator within 72 hours of the filing of the*
22 *request.*

23 **(4)** *Records and reports in this subsection shall include any records*
24 *and reports concerning such child issued by private entities that have*
25 *contracted with the department of social and rehabilitation services.*

26 **Sec. 3.** *K.S.A. 38-1508 and K.S.A. 2002 Supp. 38-1507 are hereby*
27 *repealed.*

28 **Sec. 4.** *This act shall take effect and be in force from and after its*
29 *publication in the Kansas Register.*

30
31
32
33
34
35
36
37
38
39
40
41
42
43