

HOUSE BILL No. 2240

By Representative Huy

2-7

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; *and* legislative post audit committee ~~and joint committee~~
28 ~~on children and families~~, carrying out such member's or committee's of-
29 ficial functions in accordance with K.S.A. 75-4319 and amendments
30 thereto, in a closed or executive meeting. Except in limited conditions
31 established by $\frac{2}{3}$ of the members of such committee, records and reports
32 received by the committee shall not be further disclosed. *Further, if in-*
33 *dividual members of the legislature are given written authority by the*
34 *parents or guardian of the child, the department of social and rehabili-*
35 *tation services shall allow the legislator to review and copy the file and*
36 *records concerning the child. Such review and copying shall take place*
37 *within 10 business days of the request and shall be at a location requested*
38 *by the legislator. Prior to reviewing and copying the file and records, the*
39 *legislator shall be required to sign a form stating the confidentiality laws*
40 *governing the file and records and the penalties for further release of the*
41 *information. Unauthorized disclosure may subject such member to dis-*
42 *cipline or censure from the house of representatives or senate.*

43 (f) Nothing in this section shall be interpreted to prohibit the secre-

1 tary of social and rehabilitation services from summarizing the outcome
2 of department actions regarding a child alleged to be a child in need of
3 care to a person having made such report.

4 (g) Disclosure of information from reports or records of a child in
5 need of care to the public shall be limited to confirmation of factual details
6 with respect to how the case was handled that do not violate the privacy
7 of the child, if living, or the child's siblings, parents or guardians. Further,
8 confidential information may be released to the public only with the ex-
9 press written permission of the individuals involved or their representa-
10 tives or upon order of the court having jurisdiction upon a finding by the
11 court that public disclosure of information in the records or reports is
12 necessary for the resolution of an issue before the court.

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

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

23 (j) Records or reports authorized to be disclosed in this section shall
24 not be further disclosed, except that the provisions of this subsection shall
25 not prevent disclosure of information to an educational institution or to
26 individual educators about a pupil specified in subsection (a) of K.S.A.
27 72-89b03 and amendments thereto.

28 (k) Anyone who participates in providing or receiving information
29 without malice under the provisions of this section shall have immunity
30 from any civil liability that might otherwise be incurred or imposed. Any
31 such participant shall have the same immunity with respect to participa-
32 tion in any judicial proceedings resulting from providing or receiving
33 information.

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

41 Sec. 2. K.S.A. 38-1508 is hereby amended to read as follows: 38-
42 1508. All records and reports concerning child abuse or neglect received
43 by law enforcement agencies shall be kept separate from all other records

1 and shall not be disclosed to anyone except:

2 (a) The judge and members of the court staff designated by the judge
3 of the court having the child before it in any proceedings;

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

7 (c) the department of social and rehabilitation services;

8 (d) any individual, or public or private agency authorized by a prop-
9 erly constituted authority to diagnose, care for, treat or supervise a child
10 who is the subject of a report or record of child abuse or neglect and
11 specifically includes the following: Physicians, psychiatrists, nurses, nurse
12 practitioners, psychologists, licensed social workers, child development
13 specialists, physician assistants, community mental health workers, alco-
14 hol and drug abuse counselors, and licensed or registered child care pro-
15 viders. Teachers, administrators and school paraprofessionals shall have
16 access but shall not copy materials in the file;

17 (e) law enforcement officers or county or district attorneys or their
18 staff when necessary for the discharge of their official duties in investi-
19 gating or prosecuting a report of known or suspected child abuse or
20 neglect;

21 (f) any member of the standing house or senate committee on judi-
22 ciary, house committee on appropriations, senate committee on ways and
23 means, legislative post audit committee and joint committee on children
24 and families, carrying out such member's or committee's official func-
25 tions. *Further, if individual members of the legislature are given written*
26 *authority by the parents or guardian of the child, the law enforcement*
27 *agency shall allow the legislator to review and copy the records and re-*
28 *ports concerning the child. Such review and copying shall take place*
29 *within 10 business days of the request and shall be at a location requested*
30 *by the legislator. Prior to reviewing and copying the records and reports,*
31 *the legislator shall be required to sign a form stating the confidentiality*
32 *laws governing the file and records and the penalties for further release*
33 *of the information; and*

34 (g) any juvenile intake and assessment worker.

35 Sec. 3. K.S.A. 38-1508 and K.S.A. 2002 Supp. 38-1507 are hereby
36 repealed.

37 Sec. 4. This act shall take effect and be in force from and after its
38 publication in the statute book.

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