

HOUSE BILL No. 2642

AN ACT concerning the commission on judicial performance; relating to access to court records; immunity from liability; amending K.S.A. 20-3002, 20-3202, 20-3204, 20-3205, 20-3206, 25-4169a, 59-2122, 60-3104 and 60-31a04 and K.S.A. 2007 Supp. 38-2211, 38-2309 and 59-2979 and repealing the existing sections.

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

Section 1. K.S.A. 20-3002 is hereby amended to read as follows: 20-3002. (a) ~~On and after January 1, 2003, through December 31, 2004, the court of appeals shall consist of 11 judges whose positions shall be numbered one to 11. On and after January 1, 2005, through December 31, 2007, the court of appeals shall consist of 12 judges whose positions shall be numbered one to 12. On and after January 1, 2008, through December 31, 2008 2009, the court of appeals shall consist of 13 judges whose positions shall be numbered one to 13. On and after January 1, 2009 2010, the court of appeals shall consist of 14 judges whose positions shall be numbered one to 14. Judges of the court of appeals shall possess the qualifications prescribed by law for justices of the supreme court.~~

(b) Judges of the court of appeals shall be selected in the manner provided by K.S.A. 20-3003 through 20-3010, and amendments thereto. Each judge of the court of appeals shall receive an annual salary in the amount prescribed by law. No judge of the court of appeals may receive additional compensation for official services performed by the judge. Each such judge shall be reimbursed for expenses incurred in the performance of such judge's official duties in the same manner and to the same extent justices of the supreme court are reimbursed for such expenses.

(c) The supreme court may assign a judge of the court of appeals to serve temporarily on the supreme court.

(d) Any additional court of appeals judge position created by this section shall be considered a position created by the supreme court and not a civil appointment to a state office pursuant to K.S.A. 46-234, and amendments thereto.

Sec. 2. K.S.A. 20-3202 is hereby amended to read as follows: 20-3202. ~~On and after July 1, 2006:~~ (a) The commission shall consist of thirteen members appointed by the judicial council. The council shall appoint commission members of outstanding competence and reputation. Six members of the commission shall be non-lawyers and six members of the commission shall be lawyers, justices or judges. The judicial council shall appoint the chair of the commission, who shall be a lawyer, justice or judge. At least one non-lawyer commission member and at least one lawyer, justice or judge commission member shall reside in each congressional district. The rules of the commission shall provide that the terms of the commission members are staggered.

(b) For the purposes of K.S.A. 20-3201 through 20-3207, and amendments thereto, the commission shall not be subject to the Kansas open meetings act as provided in K.S.A. 75-4317 et seq., and amendments thereto.

(c) As used in K.S.A. 20-3201 through 20-3207, and amendments thereto:

(1) "Lawyer" means an attorney registered as active pursuant to supreme court rule.

(2) "Judge" means: a current or retired Kansas judge of the district court ~~and~~; a current or retired judge of the Kansas court of appeals; *and a retirant serving as a judge under written agreement with the Kansas supreme court pursuant to K.S.A. 20-2622, and amendments thereto.*

(3) "Justice" means a current or retired justice of the Kansas supreme court.

Sec. 3. K.S.A. 20-3204 is hereby amended to read as follows: 20-3204. ~~On and after July 1, 2006:~~ (a) The commission shall, with the aid of professionals where appropriate:

~~(a) Create surveys of court users who have directly observed the judge's or justice's performance or interacted with the judge or justice, including attorneys, litigants, jurors and other persons the commission deems appropriate~~

(1) *Conduct surveys of such persons as the commission determines to be appropriate who have had sufficient experience with a judge or justice to form an opinion about the performance of the judge or justice, such as attorneys, litigants, jurors, witnesses, court staff and others.* The surveys shall be dispersed, collected and tabulated by an independent organiza-

tion or in any other manner that insures confidentiality. The surveys shall ask those surveyed to evaluate the judges and justices on such judge's or justice's ability, integrity, impartiality, communication skills, professionalism, temperament and administrative capacity suitable to the jurisdiction and level of court;

(b) (2) develop clear, measurable performance standards upon which the survey questions are based;

(c) (3) develop dissemination plans that:

(A) Protect confidentiality when the judicial performance evaluation is used only for self-improvement;

(B) make the judicial performance evaluation results widely available when they are to be used to assist voters in evaluating the performance of judges and justices subject to retention elections; and

(C) make public recommendations regarding whether or not to retain judges and justices subject to retention elections;

(4) develop a procedure for judges and justices to receive and respond to survey results before such results are made public;

(5) establish a mechanism to incorporate evaluation results in designing judicial education programs; and

(6) adopt rules for implementation of the judicial performance evaluation process, subject to approval by the Kansas supreme court.

(b) *The supreme court, the Kansas judicial council, the commission on judicial performance, and the staff or any committee of the commission shall be immune from suit and liability in any civil action for any act, error or omission occurring within the scope of their official duties pursuant to article 32 of chapter 20 of the Kansas Statutes Annotated, and amendments thereto.*

(c) *Any agent under contract with the commission on judicial performance shall be indemnified and held harmless by the state in any cause of action arising out of such agent's use of information provided by the state within the scope of their contractual duties. Any such agent shall not be indemnified or held harmless by the state in any cause of action arising out of such agent's intentional or negligent acts.*

Sec. 4. K.S.A. 20-3205 is hereby amended to read as follows: 20-3205. ~~On and after July 1, 2006,~~ (a) The surveys of court users, survey results and judicial performance evaluation results are confidential and shall not be disclosed except *as provided in subsection (d) or in accordance with the rules of the commission or the Kansas supreme court.*

(b) *Any statute or rule that restricts public access to certain types of court records or certain types of information contained in court records shall not prohibit the commission or agents of the commission from having access to the names and addresses of appropriate persons named in such records and other information necessary for the discharge of the commission's duties pursuant to article 32 of chapter 20 of the Kansas Statutes Annotated, and amendments thereto. No confidential information found in such court records shall be revealed to any other person by the commission or agents of the commission.*

(c) The evaluation of judges subject to political elections shall be used solely for self-improvement. A judge subject to political elections shall not reveal data from any portion of the survey or the results of the survey.

(d) *Judicial performance evaluation results of a retirant serving as a judge under written agreement with the Kansas supreme court pursuant to K.S.A. 20-2622, and amendments thereto, shall be public and shall be used by the Kansas supreme court for the determination of a continuing agreement pursuant to K.S.A. 20-2622, and amendments thereto.*

Sec. 5. K.S.A. 20-3206 is hereby amended to read as follows: 20-3206. ~~On and after July 1, 2006,~~ Upon certification by the commission to the judicial council that: (a) Funding is not adequate to support a judicial evaluation program of high quality; (b) the Kansas supreme court has failed to ~~adopt~~ *approve* appropriate rules as set forth in this act; or (c) in the opinion of the commission the program is no longer of appropriate value, then the program may be reduced in scope or discontinued as determined by the judicial council.

Sec. 6. K.S.A. 25-4169a is hereby amended to read as follows: 25-4169a. (a) No officer or employee of the state of Kansas, any county, any unified school district having 35,000 or more pupils regularly enrolled, any city of the first class or the board of public utilities of the city of

Kansas City, Kansas, shall use or authorize the use of public funds or public vehicles, machinery, equipment or supplies of any such governmental agency or the time of any officer or employee of any such governmental agency, for which the officer or employee is compensated by such governmental agency, to expressly advocate the nomination, election or defeat of a clearly identified candidate to state office or local office. The provisions of this section prohibiting the use of time of any officer or employee for such purposes shall not apply to an incumbent officer campaigning for nomination or reelection to a succeeding term to such office or to members of the personal staff of any elected officer. *The provisions of this section shall not apply to the statutory duties of the commission on judicial performance pursuant to article 32 of chapter 20 of the Kansas Statutes Annotated, and amendments thereto.*

(b) Any person violating the provisions of this section shall be guilty of a class C misdemeanor.

Sec. 7. K.S.A. 2007 Supp. 38-2211 is hereby amended to read as follows: 38-2211. (a) *Access to the official file.* The following persons or entities shall have access to the official file of a child in need of care proceeding pursuant to this code:

(1) The court having jurisdiction over the proceedings, including the presiding judge and any court personnel designated by the judge.

(2) The parties to the proceedings and their attorneys.

(3) The guardian *ad litem* for a child who is the subject of the proceeding.

(4) A court appointed special advocate for a child who is the subject of the proceeding or a paid staff member of a court appointed special advocate program.

(5) Any individual, or any public or private agency or institution, having custody of the child under court order or providing educational, medical or mental health services to the child or any placement provider or potential placement provider as determined by the secretary or court services officer.

(6) A citizen review board.

(7) The commissioner of juvenile justice or any agents designated by the commissioner.

(8) Any other person when authorized by a court order, subject to any conditions imposed by the order.

(9) *The commission on judicial performance in the discharge of the commission's duties pursuant to article 32 of chapter 20 of the Kansas Statutes Annotated, and amendments thereto.*

(b) *Access to the social file.* The following persons or entities shall have access to the social file of a child in need of care proceeding pursuant to this code:

(1) The court having jurisdiction over the proceeding, including the presiding judge and any court personnel designated by the judge.

(2) The attorney for a party to the proceeding.

(3) The guardian *ad litem* for a child who is the subject of the proceeding.

(4) A court appointed special advocate for a child who is the subject of the proceeding or a paid staff member of a court appointed special advocate program.

(5) A citizen review board.

(6) The secretary.

(7) The commissioner of juvenile justice or any agents designated by the commissioner.

(8) Any other person when authorized by a court order, subject to any conditions imposed by the order.

(c) *Preservation of records.* The Kansas state historical society shall be allowed to take possession for preservation in the state archives of any court records related to proceedings under the Kansas code for care of children whenever such records otherwise would be destroyed. No such records in the custody of the Kansas state historical society shall be disclosed directly or indirectly to anyone for 70 years after creation of the records, except as provided in subsections (a) and (b). Pursuant to subsections (a)(8) and (b)(8), a judge of the district court may allow inspection for research purposes of any court records in the custody of the Kansas

state historical society related to proceedings under the Kansas code for care of children.

Sec. 8. K.S.A. 2007 Supp. 38-2309 is hereby amended to read as follows: 38-2309. (a) *Official file*. The official file of proceedings pursuant to this code shall consist of the complaint, process, service of process, orders, writs and journal entries reflecting hearings held, judgments and decrees entered by the court. The official file shall be kept separate from other records of the court.

(b) The official file shall be open for public inspection, unless the judge determines that opening the official file for public inspection is not in the best interests of a juvenile who is less than 14 years of age. Information identifying victims and alleged victims of sex offenses, as defined in article 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, shall not be disclosed or open to public inspection under any circumstances. Nothing in this section shall prohibit the victim or alleged victim of any sex offense from voluntarily disclosing such victim's identity. An official file closed pursuant to this section and information identifying the victim or alleged victim of any sex offense shall be disclosed only to the following:

- (1) A judge of the district court and members of the staff of the court designated by the judge;
- (2) parties to the proceedings and their attorneys;
- (3) any individual or any public or private agency or institution: (A) Having custody of the juvenile under court order; or (B) providing educational, medical or mental health services to the juvenile;
- (4) the juvenile's court appointed special advocate;
- (5) any placement provider or potential placement provider as determined by the commissioner or court services officer;
- (6) law enforcement officers or county or district attorneys, or their staff, when necessary for the discharge of their official duties;
- (7) the Kansas racing commission, upon written request of the commission chairperson, for the purpose provided by K.S.A. 74-8804, and amendments thereto, except that information identifying the victim or alleged victim of any sex offense shall not be disclosed pursuant to this subsection;
- (8) juvenile intake and assessment workers;
- (9) the commissioner; ~~and~~
- (10) any other person when authorized by a court order, subject to any conditions imposed by the order; *and*
- (11) *the commission on judicial performance in the discharge of the commission's duties pursuant to article 32 of chapter 20 of the Kansas Statutes Annotated, and amendments thereto.*

(c) *Social file*. Reports and information received by the court, other than the official file, shall be privileged and open to inspection only by attorneys for the parties, juvenile intake and assessment workers, court appointed special advocates and juvenile community corrections officers or upon order of a judge of the district court or appellate court. The reports shall not be further disclosed without approval of the court or by being presented as admissible evidence.

(d) *Preservation of records*. The Kansas state historical society shall be allowed to take possession for preservation in the state archives of any court records related to proceedings under the Kansas juvenile justice code or the revised Kansas juvenile justice code whenever such records otherwise would be destroyed. The Kansas state historical society shall make available for public inspection any unexpunged docket entry or official file in its custody concerning any juvenile 14 or more years of age at the time an offense is alleged to have been committed by the juvenile. No other such records in the custody of the Kansas state historical society shall be disclosed directly or indirectly to anyone for 70 years after creation of the records, except as provided in subsections (b) and (c). A judge of the district court may allow inspection for research purposes of any court records in the custody of the Kansas state historical society related to proceedings under the Kansas juvenile justice code or the revised Kansas juvenile justice code.

(e) Relevant information, reports and records, shall be made available to the department of corrections upon request, and a showing that the

former juvenile has been convicted of a crime and placed in the custody of the secretary of corrections.

Sec. 9. K.S.A. 59-2122 is hereby amended to read as follows: 59-2122. (a) The files and records of the court in adoption proceedings shall not be open to inspection or copy by persons other than the parties in interest and their attorneys, ~~and~~ representatives of the state department of social and rehabilitation services, *and the commission on judicial performance in the discharge of the commission's duties pursuant to article 32 of chapter 20 of the Kansas Statutes Annotated, and amendments thereto*, except upon an order of the court expressly permitting the same. As used in this section, "parties in interest" shall not include genetic parents once a decree of adoption is entered.

(b) The department of social and rehabilitation services may contact the adoptive parents of the minor child or the adopted adult at the request of the genetic parents in the event of a health or medical need. The department of social and rehabilitation services may contact the adopted adult at the request of the genetic parents for any reason. Identifying information shall not be shared with the genetic parents without the permission of the adoptive parents of the minor child or the adopted adult. The department of social and rehabilitation services may contact the genetic parents at the request of the adoptive parents of the minor child or the adopted adult in the event of a health or medical need. The department of social and rehabilitation services may contact the genetic parents at the request of the adopted adult for any reason.

Sec. 10. K.S.A. 2007 Supp. 59-2979 is hereby amended to read as follows: 59-2979. (a) The district court records, and any treatment records or medical records of any patient or former patient that are in the possession of any district court or treatment facility shall be privileged and shall not be disclosed except:

(1) Upon the written consent of (A) the patient or former patient, if an adult who has no legal guardian; (B) the patient's or former patient's legal guardian, if one has been appointed; or (C) a parent, if the patient or former patient is under 18 years of age, except that a patient or former patient who is 14 or more years of age and who was voluntarily admitted upon their own application made pursuant to subsection (b)(2)(B) of K.S.A. 59-2949 and amendments thereto shall have capacity to consent to release of their records without parental consent. The head of any treatment facility who has the records may refuse to disclose portions of such records if the head of the treatment facility states in writing that such disclosure will be injurious to the welfare of the patient or former patient.

(2) Upon the sole consent of the head of the treatment facility who has the records if the head of the treatment facility makes a written determination that such disclosure is necessary for the treatment of the patient or former patient.

(3) To any state or national accreditation agency or for a scholarly study, but the head of the treatment facility shall require, before such disclosure is made, a pledge from any state or national accreditation agency or scholarly investigator that such agency or investigator will not disclose the name of any patient or former patient to any person not otherwise authorized by law to receive such information.

(4) Upon the order of any court of record after a determination has been made by the court issuing the order that such records are necessary for the conduct of proceedings before the court and are otherwise admissible as evidence.

(5) In proceedings under this act, upon the oral or written request of any attorney representing the patient, or former patient.

(6) To appropriate administrative or professional staff of the department of corrections whenever patients have been administratively transferred to the state security hospital or other state psychiatric hospitals pursuant to the provisions of K.S.A. 75-5209 and amendments thereto. The patient's or former patient's consent shall not be necessary to release information to the department of corrections.

(7) To the state central repository at the Kansas bureau of investigation for use only in determining eligibility to purchase and possess firearms or qualifications for licensure pursuant to the personal and family protection act.

(8) *To the commission on judicial performance in the discharge of the commission's duties pursuant to article 32 of chapter 20 of the Kansas Statutes Annotated, and amendments thereto.*

(9) As otherwise provided for in this act.

(b) To the extent the provisions of K.S.A. 65-5601 through 65-5605, inclusive, and amendments thereto are applicable to treatment records or medical records of any patient or former patient, the provisions of K.S.A. 65-5601 through 65-5605, inclusive, and amendments thereto shall control the disposition of information contained in such records.

(c) Willful violation of this section is a class C misdemeanor.

Sec. 11. K.S.A. 60-3104 is hereby amended to read as follows: 60-3104. (a) An intimate partner or household member may seek relief under the protection from abuse act by filing a verified petition with any district judge or with the clerk of the court alleging abuse by another intimate partner or household member.

(b) A parent of or an adult residing with a minor child may seek relief under the protection from abuse act on behalf of the minor child by filing a verified petition with any district judge or with the clerk of the court alleging abuse by another intimate partner or household member.

(c) The clerk of the court shall supply the forms for the petition and orders, which shall be prescribed by the judicial council.

(d) Service of process served under this section shall be by personal service and not by certified mail return receipt requested. No docket fee shall be required for proceedings under the protection from abuse act.

(e) If the court finds that the plaintiff's address or telephone number, or both, needs to remain confidential for the protection of the plaintiff, plaintiff's minor children or minor children residing with the plaintiff, such information shall not be disclosed to the public, but only to authorized court or law enforcement personnel *and to the commission on judicial performance in the discharge of the commission's duties pursuant to article 32 of chapter 20 of the Kansas Statutes Annotated, and amendments thereto.*

Sec. 12. K.S.A. 60-31a04 is hereby amended to read as follows: 60-31a04. (a) A person may seek relief under the protection from stalking act by filing a verified petition with the district judge or clerk of the court in the county where the stalking occurred. A verified petition must allege facts sufficient to show the following:

- (1) The name of the stalking victim;
- (2) the name of the defendant;
- (3) the dates on which the alleged stalking behavior occurred; and
- (4) the acts committed by the defendant that are alleged to constitute stalking.

(b) A parent or an adult residing with a minor child may seek relief under the protection from stalking act on behalf of the minor child by filing a verified petition with the district judge or with the clerk of the court in the county where the stalking occurred.

(c) The clerk of the court shall supply the forms for the petition and orders, which shall be prescribed by the judicial council.

(d) Service of process served under this section shall be by personal service. No docket fee shall be required for proceedings under the protection from stalking act.

(e) The victim's address and telephone number shall not be disclosed to the defendant or to the public, but only to authorized court or law enforcement personnel *and to the commission on judicial performance in the discharge of the commission's duties pursuant to article 32 of chapter 20 of the Kansas Statutes Annotated, and amendments thereto.*

Sec. 13. K.S.A. 20-3002, 20-3202, 20-3204, 20-3205, 20-3206, 25-4169a, 59-2122, 60-3104 and 60-31a04 and K.S.A. 2007 Supp. 38-2211, 38-2309 and 59-2979 are hereby repealed.

Sec. 14. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.