

MINUTES OF THE HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE.

The meeting was called to order by Chairperson Ward Loyd at 1:30 p.m. on March 17, 2003, in Room 526-S of the Capitol.

All members were present except:

Committee staff present:

Jill Wolters - Revisor of Statutes  
Mitch Rice - Revisor of Statutes  
Jerry Ann Donaldson - Legislative Research Department  
Martha Dorsey - Legislative Research Department  
Nicoletta Buonasera - Legislative Research Department  
Marilyn Revell for Committee Secretary

Conferees appearing before the committee:

Secretary Roger Werholtz—Kansas Department of Corrections (KDOC) (written testimony)  
Senator David Adkins  
Candy Shively, Deputy Secretary—Integrated Services Delivery Kansas Department of Social and Rehabilitation Services (SRS)  
Sue McKenna, Assistant Director—Foster Care and Adoption Services (SRS)  
Gary Brunk, Kansas Action for Children (written testimony)  
Jeff Burkhead, Executive Director-Kansas Press Association (written testimony)

Others attending:

Chairperson Loyd called the attention of the members to a memo at their desks from Secretary Werholtz, KDOC, ([Attachment 1](#)) in response to a number of questions addressed to him.

**SB 67 - Open records after a child fatality.**

**Chairperson Loyd opened the hearing on SB 67.**

Senator Adkins was recognized to speak in support of **SB 67** ([Attachment 2](#)). This legislation addresses a gap in our child protection laws. It is designed to enhance accountability. A Federal statute, dealing with child abuse protection, mandates that “states generally are to keep information regarding child protection actions confidential”. There are two exceptions that allow disclosure; 1) when a child dies as a result of abuse or neglect, or 2) when a child suffers a near fatality (rendered in a medical condition to be considered serious or critical by a doctor) as a result of abuse or neglect. **SB 67** is a result of the death of Brian Edgar, a young boy who died at the hands of adoptive parents after being placed with them as a result of decisions made by our states child protection agency. Under current law, the records and reports in the possession of our social service agency concerning Brian’s care are not subject to public disclosure. **SB 67** will open these records to reasonable public disclosure allowing questions to be answered--what went wrong? And how can we prevent it from happening again? The Department of Social and Rehabilitation Services is in support of this bill, realizing they would be given the opportunity to appropriately explain the difficult decisions of their staff and others would be allowed to more fully understand the challenges that face our child protection agencies.

Candace Shively, Deputy Secretary-SRS spoke in support of **SB 67** ([Attachment 3](#)). In 1992, the Legislature established the Child Death Review Board, a multi-agency, multi-disciplinary board that meets monthly with the Attorney General to examine the circumstances surrounding the deaths of Kansas children. The Board issues a public report to the legislature every year and provides immediate feedback to SRS, law enforcement, prosecutors, Kansas Department of Health and Environment (KDHE), coroners, etc. as appropriate to improve services or safeguard living children. SRS offered a balloon with Senator Adkins assistance, to amend **SB 67** as follows: 1) Provide law enforcement, prosecutors or courts the discretion to limit disclosure when necessary to protect a pending criminal investigation, to avoid

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE at 1:30 p.m. on March 17, 2003, in Room 526-S of the Capitol.

prosecution, or to protect the privacy of vulnerable individuals; 2) include provisions allowing public access to adoption records and reports; and, 3) identify the courts as the final arbiter when determining if records should be released.

Sue McKenna, Assistant Director-Foster Care and Adoption Services (SRS) was recognized to answer questions about internal definitions of Substantiated/Unsubstantiated. The “preponderance of the evidence”, “more likely than not”, comprises the meaning of substantiated—usually done by the social worker in consultation with the supervisor.

Chairperson Loyd called the committee’s attention to written testimony in support of **SB 67** submitted by Gary Brunk, Kansas Action for Children (Attachment 4); Jeff Burkhead, Executive Director of the Kansas Press Association (Attachment 5).

Steve Christian, Program Director-Child Welfare, National Conference of State Legislators was introduced to testify from a neutral position. He appeared to provide background information regarding federal laws that govern confidentiality and child welfare information. The primary federal statute that governs confidentiality of child welfare reports and records is the Child Abuse Prevention and Treatment Act (CAPTA). These requirements are imposed as a condition for receiving federal funds. Kansas received approximately \$250,000 per year. Information must be disclosed regarding child fatalities or near fatalities; this includes findings and background information to support those findings. The Legislature has discretion as to the types of information that must be disclosed, the timing of the disclosures, the information that would not be disclosed and circumstances which would prevent disclosure. Another important statute is Title IV-E, the Social Security Act. It concerns information about children who are receiving federally subsidized adoption and foster care assistance. Kansas receives \$49 million per year under this option. This statute broadly protects all information concerning children in this program and disclosure can only be made under certain specified purposes. In cases of fatality or near fatality, information is required to be disclosed except in those situations when CAPTA directs permissive disclosure, and in the latter situation the information is protected under Title IV-E. Neither statutory provision directly addresses the extent to which any court proceeding involving a juvenile is required either to be open or closed. (Attachment 6)

**Chairperson Loyd closed the hearing on SB 67.**

The meeting was adjourned at 3:20 p.m. The next meeting is scheduled for March 18, 2003.

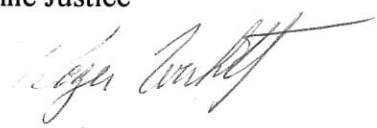
# KANSAS

KANSAS DEPARTMENT OF CORRECTIONS  
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

## MEMORANDUM

TO: Representative Ward Loyd, Chair  
House Committee on Corrections and Juvenile Justice

FROM: Roger Werholtz, Secretary of Corrections 

CC: Rep. Donald Betts  
Rep. Jim Ward  
Martha Dorsey

DATE: March 12, 2003

RE: Follow-up Information in Response to Committee Members' Requests

On Monday, March 10, 2003, members of the House Committee on Corrections and Juvenile Justice requested a variety of information and materials. I am providing copies of readily available information that I believe is responsive to committee members' requests. Enclosed are:

1. A one page summary of the construction options that the Department has mentioned in various fiscal notes;
2. A summary of VOI/TIS funds received by the state and how they have been expended or allocated;
3. A copy of a report authored by Dr. Robert Reitz, former Regional Mental Health Director for Prison Health Services in Kansas;
4. a page from testimony to the Senate Ways and Means Public Safety budget committee given by Roger Haden, Deputy Secretary of Corrections, that identifies some mental health indicators that are descriptive of mental health services and their use in the Kansas Department of Corrections.

I have also forwarded a copy of the Offender Programs Evaluation, Volume IV to Reps. Betts and Ward in response to their questions about offender programs. I would like to advise the members of the committee that we hope to release Volume V of this document in the next two to three weeks.

If you require further information, we will do our best to provide it.

## Expansion Options

Location	Custody Level	Number of Beds	Cost	Cost Per Bed	Remarks
Winfield Correctional Facility - Central Unit	Minimum	52	\$ 35,000	\$ 673	Housing additional inmates in C and B Dorms
Norton Correctional Facility - East Unit	Minimum	16	15,000	938	Double bunking additional areas within the unit
Lansing Correctional Facility - South Unit	Minimum	250	1,900,000	7,600	Renovate Rush building on OSH grounds for inmate housing
Winfield Correctional Facility - Central Unit	Minimum	150	1,500,000	10,000	Renovate Firm Building & const. new visiting, indus. And inside rec
Lansing Correctional Facility - East Unit	Minimum	256	4,600,000	17,969	Construct a new housing unit and renovate support space
Hutchinson Correctional Facility - South	Minimum	256	4,900,000	19,141	Construct a new housing unit and renovate support space
El Dorado Correctional Facility - Central	Minimum	256	5,200,000	20,313	Construct a new housing unit and renovate support space
Total		1,236	\$ 18,150,000	14,684	
El Dorado Correctional Facility - Central	Max/Med	128/256	7,123,830	27,827	New Housing Unit
El Dorado Correctional Facility - Central	Max/Med	256/512	14,365,214	28,057	Two new housing units, power plant upgrades and storage bldg.



## VOI/TIS Grant Status as of October 2002

<b>Total Amount Awarded (FFY 96-01)</b>	<b>\$27,245,469</b>
<b>Project</b>	<b>VOI/TIS Amount</b>
<b>Completed Projects</b>	
NCF housing unit - 200 medium security beds	\$ 4,190,379
Labette expansion - 100 conservation camp beds	718,889
LCF-East expansion - 100 minimum security beds	179,159
Programming for drug testing	133,747
Hair specimen testing	32,680
Lease of male beds - 100 medium security	695,300
<b><i>Funds expended on completed projects</i></b>	<b>\$ 5,950,154</b>
<b>Ongoing Projects and/or Projects Committed But Not Yet Complete</b>	
Maximum security juvenile facility - 150 juvenile offender beds	\$ 5,500,000
ECF housing unit - 200 medium security beds	5,559,765
Female conservation camp - 17 private facility beds (through FY 2003)	934,214 *
Day reporting centers (through FY 2003)	2,566,290 *
Lease of male beds - up to 125 medium security beds (new contract)	1,027,125 **
<b><i>Funds expended and/or committed</i></b>	<b>\$ 15,587,394</b>
<b>Total Expended or Committed to Date</b>	<b>\$ 21,537,548</b>
<b>FY 2004 Budget Request</b>	
Day reporting centers	\$ 2,289,600
Lease of male beds- up to 125 medium security beds	2,058,750
Female conservation camp (allocated resource level only)	424,322
<b><i>Amounts included in FY 04 budget</i></b>	<b>\$ 4,772,672</b>
<b>Expenditures beyond FY 2004</b>	<b>\$ 935,249</b>
<b>Total Expended, Committed &amp; Planned</b>	<b>\$ 27,245,469</b>

\*Amounts include estimated actual FY 02 expenditures which may be adjusted somewhat.

\*\*Assumes contract effective date of January 1, 2003.

**A Retrospective Analysis of Trends in Inmates With  
Mental Illness in the Kansas Department of  
Corrections, 1995-1999**

**January 21, 2000**

**Robert Reitz, Ph.D.  
Regional Mental Health Director  
Prison Health Services**

## Introduction

The number of persons with mental illness in correctional institutions has become an increasing concern throughout much of country. The U. S. Department of Justice's Bureau of Justice Statistics (July 1999) reported that over one quarter of a million men and women in prisons and jails in 1998, or 16% of the incarcerated population, have or have had a major mental illness. They further found that inmates with a mental illness were more likely to be in prison for a violent offense, to be homeless in the 12 months prior to arrest, and to have used alcohol or drugs at the time of their arrest.

A review of studies examining the prevalence of mental illness in prisoners by Pinta (1999) found estimates ranging from 7.6% to nearly 37%, with the average of 14.7% of the inmate population having a serious mental illness. Pinta also found that female inmates are nearly twice as likely as the average prison inmate to have a mental illness. In examining studies in which the prevalence of other mental disorders such as anxiety disorders and severe personality disorders that result in marked impairment in functioning within in a prison environment, Pinta suggests that as many of 27% of the male prison population and 47% of the female prison population have a significant mental disorder.

In a large scale review of inmates in the Kansas Department of Corrections in both 1996 and 1997, Reitz (1998) found that the number of inmate with a serious mental disorder increased from 793 (10.4% of the entire population) in October, 1996 to 965 (12.2%) in October, 1997. The overall change in the number of inmates with a serious mental illness in one year alone was 21.7%, despite having only a 3.7% increase in the average daily prison population. Reitz also noted increases in several

other indicators that show the impact of increases in mental disorder in the inmate population. For example, during the period from 1995 to 1997 there was an increase in the number of inmates placed in special housing during to crisis of 108%. From 1995 to 1997, the percentage of inmates placed on psychotropic medication nearly doubled from 6.9% to 11%.

More recently, there have been a number events in the Kansas Department of Corrections that suggests that not only has the department has managed a population with a greater number of inmates with mental illness, but a population in which the severity if mental illness has increased as well. For example, in September of 1999, KDOC opened a new treatment unit for inmates with mental illness. The Treatment and Reintegration Unit at Lansing Correctional Facility was designed to serve the needs of inmates with a serious mental disorder who has completed the program at Larned Correctional Mental Health Facility, but who required a gradual reintegration into a general population environment. While it was thought that an additional 118 beds designated for treatment of this population would reduce pressures to transfer inmates to Larned Correctional Mental Health Facility, the number of inmates requiring transfer to LCMHF remains high.

Although there is a great deal of anecdotal reports that have suggested that there is an increase in the number of inmates with mental illness in the Kansas Department of Corrections and that the management difficulties presented by these inmates have increased as well, this report attempts to document some of the known data that has been systematically collected since 1995. The data will show that the demand for



mental health services by inmates with mental illness has grown dramatically in the past five years.

### **Psychotropic Medications**

One measure of the number of inmates with serious mental disorders in the Kansas Department of Corrections is the use of psychotropic medications. These medications are most frequently prescribed by psychiatrists for treating individuals with a major mental illness such as depression, bipolar disorder, schizophrenia, and other illnesses. From January 1995 to December of 1999 the number of inmates on psychotropic medications rose from 466 to 1174, a 151% increase. As a percentage of the inmate population, this represents a change from 7.39% to 13.58 %, with nearly one in seven inmates currently receiving medication for a major mental illness. Table 1 shows changes in the annual average number of inmates on psychotropic medications. As the data toward the end of 1999 continue to show increases in the numbers of

**Table 1. Average Number of Inmates Receiving Psychotropic Medication**

	1995	1996	1997	1998	1999
Average # of Inmates	509	668	833	951	1051
% of total population	7.57%	9.14%	10.78%	12.02%	12.51%

inmates on medication, it is not expected that we have reached a plateau in the number of inmates who will require psychotropic medication.

### **Initial Mental Health Evaluations**

A second indicator of the number of inmates with significant mental health concerns is the percentage of inmates receiving a screening mental health evaluation upon admission. Once screened at admission by a medical staff member, all inmates who indicate having either a current mental health issue or a history of treatment for a mental

health issue are evaluated by a mental health professional to determine whether treatment is required. While only 16.7 % of all inmates entering KDOC in 1995 required further mental health assessment, by December 1999, 46% or nearly half of all newly admitted inmates required further assessment. Table 2 shows the trend in inmates presenting current or previous mental health issues over the past five years. The largest apparent increase appears to have been in 1997.

**Table 2- Percentage of Inmates Screened with Mental Health Issues by Year**

Year	1995	1996	1997	1998	1999
Percentage w/ mental health issues	16.7	19.9	20.3	29.9	30.3

While anecdotal reports often provide somewhat unreliable data that are hard to generalize from these reports, it has been suggested by those performing these screening evaluations that inmates increasingly enter prison: (1) having previously been seen for a psychotropic medication issue in a county jail, (2) having a history of some type of harm to self that resulted in a mental health contact, or (3) having been seen by a mental health professional for treatment as a condition of probation.

#### **LCMHF Transfers**

Inmates presenting symptoms of a major mental disorder and who are unable to maintain an adequate level of functioning in general population are transferred currently to Larned Correctional Mental Health Facility. An increased rate of transfers to LCMHF may be associated with a greater number of inmates within the Kansas Department of Corrections that are in need of this level of care. Between 1995 and 1999, the number of inmates transferred from general population facilities and LCMHF increased from 64

transfers in 1995 to 127 transfers in 1999, or a 98% during the past five years. This increase in inmate transfers does not simply reflect the growth of the number of inmates in KDOC alone, but is likely due to an increase in the number of inmates requiring more intensive services than can be offered in general population facilities.

### **Crisis Placements**

Another indication of the severity of need of inmates with mental illness in the Kansas Department of Corrections is the number of crisis placements made in order to manage an inmate in a psychological emergency. Inmates having problems with situational anxiety, acute symptoms of psychosis (e.g., auditory hallucinations, delusions of persecution), or serious depression, including suicidal ideation, can be placed in a protective environment in which their behavior can be observed and enhanced treatment can be provided for short term emergencies. Any inmate whose mental health emergency cannot be quickly resolved is transferred to LCMHF or Larned State Security Hospital. In 1995 an average of 41.64 crisis placements occurred each month. By 1999 an average of 56.67 crisis placements occurred each month, representing a 36.1% increase in the past five years.

As the increase of inmates requiring crisis placements has not increased at the same rate as the number of inmates placed on psychotropic medication, it is difficult to conclude that inmates with serious mental health concerns have had dramatically more behavioral problems. While the average number of crisis placements has grown, it is difficult to know categorically what impact these increases have had on day-to-day operations at most facilities. Again, anecdotal information suggests that there has been an increase in the number of inmates with mental illness that have assaulted staff,

have destroyed property, or have required significantly greater lengths of time to stabilization in emergencies.

### **Conclusions**

While it can be argued that improved screening and a greater awareness of the issues of the mentally ill in prison may have lead to the perception that there are more mentally ill in prison now than before, both data presented above from the Kansas Department of Corrections and data recently published by the Bureau of Justice Statistics all suggest that the number of inmates being seen in prisons today that suffer from a mental illness is increasing. Whether these changes are the result of de-institutionalization of our state psychiatric hospitals or less credence given by courts for insanity pleas remains to be seen. It is clear, however, that the trend that has been seen the past five years has not slowed or reversed itself. As a consequence, we need to continue to be prepared to serve this difficult to manage population.



## References

- Bureau of Justice Statistics (July 1999). Mental health and treatment of inmates and Probationers. Washington, DC: U. S. Department of Justice.
- Pinta, E. R. (September/October 1999). The prevalence of serious mental disorders among U. S. prisoners. Correctional Mental Health Report, 1(3), 33-47.
- Reitz, R. M. (January 1998). Mentally disordered offenders in the Kansas Department of Corrections: Recent Trends. An unpublished manuscript.

- Treatment of inmates with infectious diseases has increased by nearly 98% (includes HIV, Hep C, et.al.) (TB patients have decreased by 6%)
- Cardiac Vascular/Hypertension encounters have increased 8%
- Number of inmates 55 years of age or older being seen in clinics has increased by 25%

#### Mental Health Indicators – Calendar Years 2000-2002

- Psychiatry contacts have increased nearly 30% and average over 18,000 per year. These include initial and follow-up interviews, medication reviews, crisis case management, etc.
- High Risk Indicators which include deaths, suicide gestures and attempts, involuntary medication, forced medication, etc., have decreased nearly 15%;
- The number of various therapeutic interventions and encounters has increased nearly 60%. These interventions include individual and group counseling, sex offender treatment, domestic abuse counseling, aftercare counseling, etc.
- The number of inmates prescribed psychotropic medications averages over 20%.

#### Significant Cost Escalations:

- Staffing costs (nursing shortage)
- Pharmaceuticals
- Off-site costs

**Cost Control Measures:** A 1997 study commissioned by the National Institute of Corrections (NIC), outlined several options for controlling medical care costs for correctional systems. Among those ideas were the following:

- Telemedicine: use of videoconferencing equipment for specialty treatment or consultations. Currently PHS provides some psychiatric services to all of the Department's correctional facilities by this method. Cost effectiveness of this method for medical care depends on the volume of consultations or referrals. Michigan estimates a minimum of 83-124 per month is needed for their system to break even.
- Implement inmate co-pays – the Department has implemented inmate co-pays since 1995: \$2.00 charge for initial sick call; inmate purchase of certain OTC medications. During FY 2002 the Department collected \$33,798 from inmate co-pay and has collected over \$245,500 since 1995.
- Implement Computerized Records Management – we have completed full implementation of an electronic medical records (EMR) system;
- Implement a Managed Care model – Kansas, though its providers, utilizes such a managed care approach;
- Contracting with professional providers – Kansas has employed this method since 1989;
- Consolidation of services where feasible – currently PHS employs a “Center of Excellence” concept to accomplish this where feasible. Oncology patients primarily are located in EDCF; dialysis patients at LCF, etc.

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SENATOR DAVID ADKINS

**Testimony in Support of Senate Bill 67**  
**“The Brian Edgar Child Protection Enhancement Act”**  
**By Senator David Adkins**

Mr. Chairman and members of the committee:

Thank you for this opportunity to appear before you and urge your favorable consideration of Senate Bill 67. This bill, if enacted, would remove the cloud of secrecy that currently prevents public disclosure of information regarding whether the state appropriately met its obligations to a child entrusted to its care when that child dies or nearly dies as a result of abuse and or neglect.

As a father and a citizen I have an obligation to do whatever I can to make sure that children in my community have a healthy start in life. As a legislator I have a responsibility to advocate for the enactment of public policy that creates the greatest possible opportunities for our children and to work to enact laws that hold those who rob our children of their futures strictly accountable for their actions. I believe Senate Bill 67 fills a significant hole in our child protection laws and will greatly enhance the accountability of state agencies, contractors and personnel.

Before being adopted, Brian Edgar, lived for 10 months in a Kansas City, Kansas foster home. The nine year old boy loved to talk on a toy telephone to imaginary friends and play with the dogs. Brian lived at a foster home run by Sister Peg Driscoll and Sister Anna Mary Lawrence, members of the Sisters of Charity of Leavenworth. For eleven years they have provided a home to 14 foster children. Brian came to live on the sisters' 36 acre property in western Kansas City, KS after leaving another foster home in September of 1999. Brian was adopted by Neil and Christy Edgar in June 2000.

On December 29<sup>th</sup> of last year, Brian watched a Mickey Mouse video with his family before his adoptive parents stuffed a sock in his little mouth which they then sealed with duct tape. He small body was then bound with a belt around his chest and arms and he was put to bed. Early on the morning of December 30<sup>th</sup> Brian Edgar's lifeless body was taken to the KU Med Center where it was determined he had died of suffocation. He had gagged on the sock and choked to death on his own vomit.

Brian's adoptive parents and his nineteen-year-old babysitter have now been charged with murder. Brian's parents have also been charged with abusing their 16 and 12 year old sons and 9 year old daughter. The Edgars adopted all four. Brian's siblings, a nine-year-old girl and a twelve-year-old boy, told authorities that their parents and babysitter routinely bound them before bed and put Neosporin on the marks each morning to minimize scarring. The surviving children

H. Corr & J.J.  
3-17-03  
Attachment 2

are in protective custody.

On the day that Brian's body was taken to the hospital his mother awakened the Edgar's two youngest children early and directed them to clean the house. They picked up tape and socks after being told their brother was not breathing. The evidence they collected was later destroyed.

In addition to Brian's mother and babysitter, five women who were members of Brian's church, including two of his aunts, have been charged with abusing four children, including Brian and two of his siblings and a 12 year old boy who was a friend of the children. The State of Kansas decided to place Brian in this living hell. The circumstances of his death haunt many of us.

Why did this boy suffer so? Could his death, his torture, have been prevented? What can we learn from his tragic death to prevent any such deaths in the future? How can we better hold our child protection agencies, contractors and personnel accountable for the precious lives entrusted to their care and whose futures are determined by their decisions? These are questions worth asking in the wake of Brian Edgar's death and they are questions which deserve answers.

After any disaster it is appropriate to ask the question—what went wrong and how can we prevent it for happening again? We owe it to Brian Edgar and the other children entrusted to the care of the state, indeed, we owe it to every Kansan, to answer that question.

Unfortunately, under current Kansas law, the records and reports in the possession of our state's social service agency concerning Brian's case are not subject to public disclosure.

I am pleased that the Department of Social and Rehabilitation Services shares my goal of enacting laws to open these records to public disclosure. They know that disclosure of records in cases of a child fatality or near fatality would also allow the agency to appropriately explain the difficult decisions of their staff and hopefully allow more Kansans to fully understand the challenges that face our child protection agencies.

I have attached to this testimony a "balloon amendment" that I would respectfully ask the committee to favorably consider before reporting this bill to the full House.

We can never know what it is Brian Edgar might have grown up to be. The circumstances of his death defy my comprehension. Brian Edgar was a son of Kansas. His memory deserves to be honored. I refuse to accept that we cannot learn something valuable from how his case was handled that might prevent a future tragedy. I am reassured that SRS does not oppose this legislation. I am hopeful Brian's tragic death will prompt us to enact this bill thereby throwing back the cloak of secrecy and shining the light of day on records which should, under the circumstances, be available for the closest public scrutiny.

I urge your favorable consideration of SB 67 with the amendments suggested.

Thank you.



Respectfully,

David Adkins

Attachments:

Photograph of nine-year-old Brian Edgar

Editorial from Kansas City Star, 2/2/03 "Kansas Should Open Records on Children"

Editorial from Salina Journal, 2/1/03 "Spotlight Can Protect Children"

Kansas City Star Column by Barbara Shelly, 1/04/03 "No Place for Secrets in This Case"

Kansas City Star Article by Grace Hobson, 1/05/03 "Edgar Case Raises Questions About Kansas Adoption System"

## Open records for children

**B**y a unanimous vote, the Kansas Senate has said that state records should become public whenever a child dies or nearly dies from abuse or neglect. This strong message of support should be heard in the House as well.

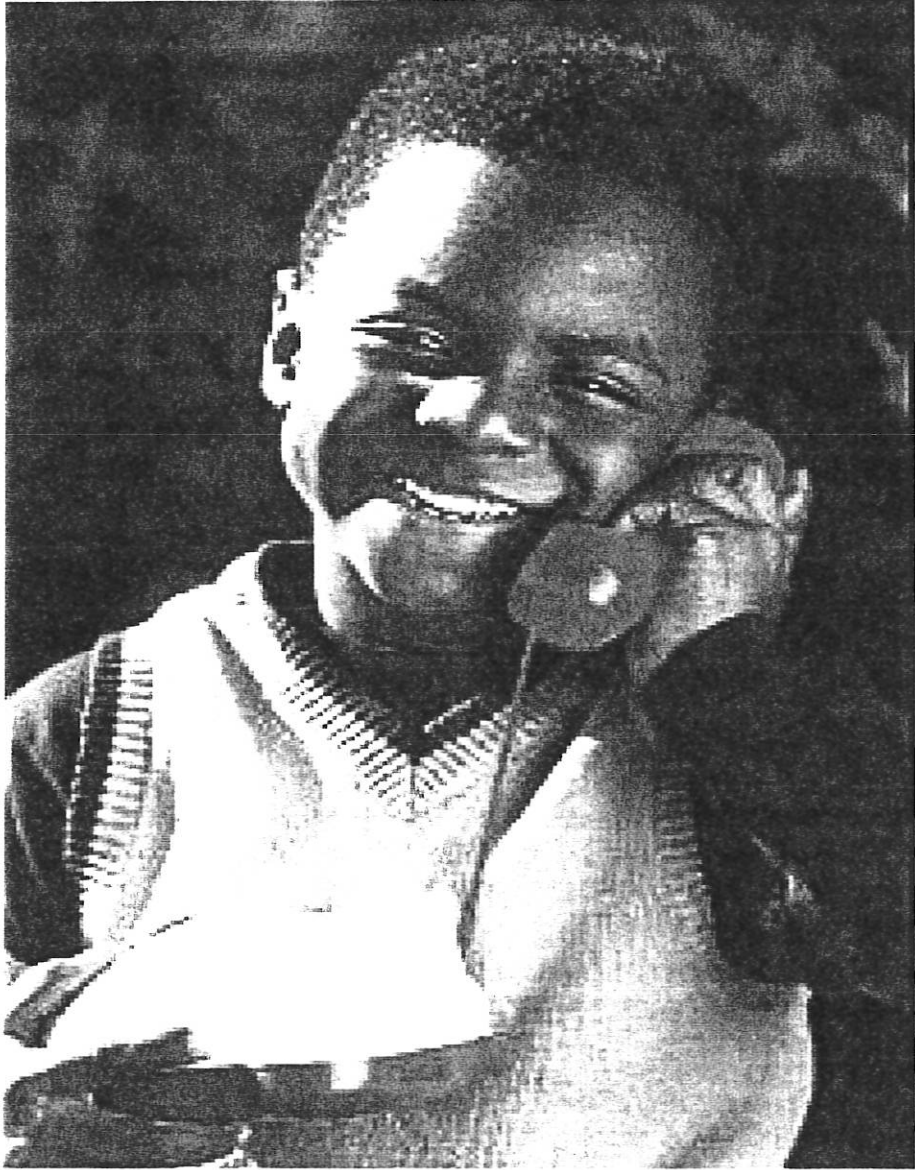
Senate Bill 67, by Republican Sen. David Adkins of Leawood, would let the public see if the state took actions that put children in its custody at risk. By opening records, lawmakers will shed light on whether a death could have been prevented. The information could help save other children.

### PROTECTING CHILDREN

Kansas law keeps the records confidential to protect children's privacy. But the law also shields the state from scrutiny. The public has a right to know if the state is properly screening foster and adoption parents to prevent abuse.

Adkins' bill also makes it clear the Department of Social and Rehabilitation Services must share its information with the state health department, which makes background checks on child-care providers.

The House should quickly approve the legislation and send it to the governor.



**KansasCity.com**

Posted on Sun, Feb. 02, 2003

## **Kansas should open records on children**

Of the many questions about the asphyxiation death of 9-year-old Brian Edgar, one of the most troubling is how he was adopted by parents now charged with his murder.

How did a foster child, a ward of the state, end up with his siblings in a home where prosecutors say they were routinely bound and gagged? What checks of the family were made before Neil and Christy Edgar adopted Brian?

The public has a right to know if state workers didn't do their jobs and if that contributed to a child's death. But in Kansas, information relating to the state's efforts to protect children in its care is kept from public scrutiny. Even when a child dies.

Lawmakers should pass Sen. David Adkins' bill to open up state placement records when a child dies or suffers a "life threatening injury."

Open records would ensure that mistakes are punished and fixed, helping to avoid tragedies in the future. State workers also would have a defense from public accusations if they followed proper procedures in placing children in foster or adoptive homes.

Legislators could improve Adkins' bill by allowing for disclosure in more instances. One idea is for records to be made public any time a child suffers abuse that requires medical attention or whenever felony child abuse charges are filed. But even as is, Adkins' legislation is better than the Missouri law on which it is based.

Following the deaths of 8-year-old Gary and Larry Bass of Kansas City at the hands of their mother, Missouri lawmakers three years ago opened up records for cases in which an abused child dies or suffers critical injuries.

But a loophole gives the Missouri Social Services Department discretion to withhold the records. That is not in the public's interest.

Under Adkins' bill, Kansas would have no choice but to release the records.

Kansas lawmakers should approve Senate Bill 67 quickly, before another heinous case leaves a child harmed or dead and the public in the dark.

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2-5

Posted at 9:33 AM on Saturday, February 1, 2003

## Spotlight can protect children

By **TOM BELL**  
The Salina Journal

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### THE ISSUE

State foster care

### THE ARGUMENT

Records must be open to investigators

Police say 9-year-old Brian Edgar suffered horribly at the hands of his adopted parents. Investigators say Neil and Christy Edgar, pastors at a Kansas City, Kan., church, suffocated the boy when they bound and gagged him before putting him to bed. Brian's baby sitter and five other church members also face child abuse charges in Wyandotte County.

Child abuse is a particularly horrid crime, and when it leads to death it represents a failure of our social system. That is especially true in this case, because Brian was in the state's foster care system before the Edgars adopted him.

What went wrong? How could a state system designed to protect our children actually allow a child to fall into the hands of abusers?

Is it incompetence? Systemic problems? The result of a horrible mistake?

We may never know. Records of children in state care are locked down so tight they cannot be seen by the public or by investigative agencies. Only a court can order them opened.

Such secrecy is defensible in many cases. Privacy is important to protect children and their families.

But such secrecy is inexcusable when it prevents state officials from answering questions when their actions might have contributed to a child's injuries or death.

Brian's case prompted Sen. David Adkins to try changing this shortcoming in state law. The Leawood Republican has introduced a bill that would allow records unsealed when a child in state care is killed or suffers life-threatening injuries.

Such a move makes sense. Greater access to these records allows investigators and other public officials to determine whether our system slipped or if it functioned properly. In some cases, access might exonerate state officials wrongly accused of failing to protect our children.

Let's shine more light on our foster care system, starting with the passage of Adkins' bill.

KansasCity.com

Posted on Sat, Jan. 04, 2003

## No place for secrets in this case

By BARBARA SHELLY  
Columnist

Once again a child here has died a gruesome death.

Try to imagine a 9-year-old boy bound and gagged, perhaps with a sock stuffed in his mouth. Think of that child choking on his vomit and fear. According to the Wyandotte County coroner, those were Brian Edgar's final moments.

Blame may or may not extend beyond the adults present when he died. His adoptive parents, Neil and Christy Edgar, have been charged with the murder of Brian, and with abusing their three other adopted children. A 19-year-old woman, who authorities said might have been a baby sitter, also is charged with Brian's murder.

Nick Tomasic, Wyandotte County district attorney, has said the Edgar children frequently were bound and gagged before bedtime. Disagree though we may on appropriate forms of discipline, most people would call that child abuse. It was tragic treatment for the four children, all of whom had been adopted out of foster care.

But who knew, or who should have known, what was going on in the home of Neil and Christy Edgar, both pastors of a Pentecostal church called God's Creation?

This is where we run out of answers.

Kansas officials, citing state law, will not release Brian's history, or details of his adoption in 2000.

The law needs to be changed. Its rationale -- to protect a child's privacy -- defies logic. This child is dead. Who is being protected and how are the interests of other children being served?

Richard Wexler, executive director of the National Coalition for Child Protection Reform, summarized the situation:

"Why was Brian in foster care in the first place? It's a secret. How long was he in foster care? It's a secret. Most important: Were there any previous complaints against the Edgars? It's a secret. Without that kind of information, how can anyone know if this was a tragedy no one could have foreseen or a tragedy anyone could have foreseen?"

The Edgar family itself was full of secrets. They used an address for a small house in Wyandotte County, yet police on Friday searched a \$350,000 Johnson County home, which they said the Edgars had been renting. Neighbors at both locations said they rarely saw the children. A brother of Neil Edgar said he didn't know the couple had adopted Brian. The four children didn't go to school outside of the home.

Without access to records, it is impossible to know what warning signals, if any, were present before the adoptions of the four children were finalized. The state prohibits corporal punishment and discourages

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homeschooling for children in its custody, said Roberta Sue McKenna, assistant director of the department that oversees child protection services. Adoptions would be unlikely to be finalized if prospective parents insisted on those practices, she said.

But there are people who can con even the keenest social worker. Mary Bass, another parent who kept her abused children out of school and out of sight, deceived Missouri child welfare workers for years before she starved two of her sons to death.

To the world, Neil and Christy Edgar were an upstanding couple. Leaders and members of their church have rallied to their defense. The accusations, some supporters insist, are a lie.

But a child in the Edgar's care died in a hideous way. That is the truth, which no deceptions, secrets or sealed files can erase.

To leave a comment for Barbara Shelly, call **(816) 234-4800** and enter **4594**, or send e-mail to [bshelly@kcstar.com](mailto:bshelly@kcstar.com).

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KansasCity.com

Posted on Sun, Jan. 05, 2003

## Edgar case raises questions about Kansas adoption system

By GRACE HOBSON  
The Kansas City Star

The Kansas officials who gave a boy named Brian to Neil and Christy Edgar for adoption in 2000 had policies to make sure his new parents would provide a loving home.

But whether any of the state's policies were followed has not been disclosed. Kansas law, unlike Missouri's, shields such case files from public view -- even after a child has died.

Nine-year-old Brian Edgar's death has left some people frustrated that a public accounting of the case is not forthcoming, and it has raised questions about Kansas' transition to a privatized foster care and adoption system.

"I don't know whose confidentiality they are protecting," said Deann Lovell, former president of Foster Children of Johnson County. "The child is dead. ...All they're doing is protecting themselves. We as the taxpayers have the right to know who's not doing their job."

Kansas officials said they, too, were frustrated by the state's public information blackout. The state will hold staffers accountable for any lapses -- if there were any -- in the case, said Roberta Sue McKenna, Kansas' assistant director for foster care and adoption.

"I want the next child we take into custody to benefit from the pain this little boy experienced," said McKenna, the state's top adoption official. "I'm absolutely and totally committed to that."

Last week Neil and Christy Edgar and an acquaintance, Chasity L. Boyd, were charged with first-degree murder in Brian's death. Prosecutors said the boy suffocated after he was gagged and his mouth was taped shut.

McKenna said she and other officials at the state's Department of Social and Rehabilitation Services would review its records of Brian's adoption.

The records should show whether the state's policies were followed. They call for social workers to study the prospective adoptive home and visit the family monthly once a child has been placed there; for investigators to check the parents' backgrounds; and for social workers to scrutinize the parents' attitudes about discipline and child-rearing in training classes.

Even critics of Kansas' privatized child-welfare system say Brian's case is a rare exception and agree that most children who are placed in foster care or adopted through the state are safe.

One percent or less of foster children are found to be abused when in state care, according to reports from state monitors.

Two or three suspicious deaths have occurred in Kansas' foster care system in the past 10 years, but no charges have been filed, McKenna said. Among children who have been adopted from the state's foster

care system, Brian is the second to die in at least 10 years. The previous case occurred in 1995 in Wichita.

McKenna, however, cautioned that no system was fail-safe. Social workers make critical decisions about vulnerable children every day, under pressure to work fast so that a child does not linger in a troubled home or miss an opportunity to get adopted.

"There are no crystal balls," McKenna said.

The Kansas Child Death Review Board, which examines the death of every child younger than 18 in the state, will conduct an in-depth review of the Edgar case. The board, led by a representative of the Kansas attorney general's office, comprises a pediatrician, state officials, child advocates, an investigator, a prosecutor, an educator, a forensic pathologist and a coroner.

The board's annual report, which will be released late this year, will offer recommendations stemming from any problems found in the Edgar case. As required by Kansas confidentiality laws, the board will not specifically mention Brian or refer to his case by name, McKenna said.

McKenna said she could not talk about the Edgar case specifically, because under Kansas law foster care and adoption records were closed.

She said, however, the state infrequently allowed those who strongly believed in corporal punishment to adopt a child.

Also, had social workers known that the Edgars planned to homeschool Brian, that would have raised another flag. An adoption by homeschooling parents would not have been allowed unless a top official approved it, McKenna said. State officials want foster and adoptive children to have regular contact with adults outside their families, she said.

"It would have been a big deal," McKenna said of the Edgars' decision to homeschool Brian.

The state has had more layers of oversight on cases since private agencies began overseeing adoption in 1996, McKenna said. Now, the contractors' social workers and state social workers are involved in the cases, she said.

McKenna acknowledges that the public does not know what social workers did or did not do for Brian Edgar, because the law keeps that information closed to the public. Police and prosecutors will have access to the records, and it is possible that details will come out in court, she said.

McKenna said she would like to see the law changed to allow her to talk about such cases.

"I recommend more openness," she said. "How we design that, I don't know. Certainly a child death as a trigger point (to open records) makes sense to me."

Some Kansas lawmakers are talking about making changes, as well.

Sen. David Adkins, a Leawood Republican, said that he was outraged by the Edgar case and that state law should be changed so records could be viewed in such cases.

"It is a visceral, gut-wrenching situation," he said.

First, he said, the effect of federal laws on such a proposed change in Kansas law should be examined.

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"We owe it to every child who is on a waiting list to be adopted to make certain we are not turning innocent children over to lives lived in hell," Adkins said.

"State bureaucrats can put on their game face and hide behind the cloak of secrecy, but that doesn't get us the answers we need to address the problems of the future."

Current law, he said, does not allow officials to demonstrate "they did everything humanly possible to prevent this kind of tragedy. If that's the case, the people involved in these cases should have the ability to be exonerated."

Another senator from Johnson County, Republican Karin Brownlee of Olathe, said she was unaware that records in such unique situations were not open.

"Maybe that's something we need to look at this session to see if it would warrant having them opened in very rare situations," Brownlee said.

"This is one of those situations where we need to be sure the proper individuals are held accountable for the way they did their jobs," she added. "I think typically Kansas adoption laws are thought to be quite good when it comes to making adoption available, but this is a very unusual situation."

Rep. Sue Storm, an Overland Park Democrat, took a more cautious approach.

"Certainly we don't want to protect SRS (Social and Rehabilitation Services Department) or the adoption agency, but at the same time when the whole situation is unfolding, I don't think, based on that, that the law should be changed."

Storm said more information was needed.

### **Tumultuous times**

The road to Kansas' privatized foster and adoption system has been rocky -- and Brian's adoption was made final at an especially troubled time.

Kansas in 1996 awarded Wichita-based Lutheran Social Services the first statewide contract for adoption, requiring it to find permanent families for the state's foster children for whom it was no longer safe to return home.

Lutheran soon ran into financial troubles, as the number of foster children awaiting adoption and the costs to care for them soared.

By the summer of 2000, Lutheran was threatening bankruptcy. The state had to bail it out with a \$9 million payment, and even then, Lutheran paid its contractors only 74 cents on the dollar owed.

When the adoption contract came up for renewal, the state awarded the work to the Kansas Children's Service League.

Just a month before, in June 2000, Lutheran made final Neil and Christy Edgar's adoption of Brian.

"We all know now that was in the midst of tremendous turmoil," said Susan Lambiase, associate director of Children's Rights, a New York-based child-advocacy group that sued the Kansas child-protection system in 1989 and monitored its child-welfare system until this summer.

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"One has to question whether they dropped the ball," Lambiase said.

Lutheran closed its doors in the fall and is liquidating its assets to pay its bills.

McKenna said Lutheran provided excellent services despite its financial problems.

Marc Bloomingdale, Lutheran's acting chief executive officer, said the agency had thorough policies and reviews in place to make sure adoptions were handled properly. Supervisors met weekly with social workers, and a quality-assurance team reviewed case files randomly to make sure policies were followed.

Lutheran's caseloads were low -- 20 children to every social worker. The state's caseloads could be as high as 60 children to every social worker before the system was privatized, McKenna said.

Tina Long, spokeswoman for the Kansas Children's Service League, the contractor responsible for getting 1,646 Kansas children adopted, said the league would work with the state if it turned out that mistakes were made when Brian was adopted.

"We're going to review everything that we can get our hands on and look at what happened in this case and learn from it," Long said.

McKenna and Lambiase said states were beginning to open records to provide for more accountability.

"If we were not able to find out what happened in this instance, whether the children were seen before the adoption was finalized, whether there was a proper investigation, then we don't know if the agency is doing a service to the children it's supposed to protect," Lambiase said.

She added, however, that cases like Brian's sometimes pushed lawmakers to open records.

Since a Missouri law changed in 2000, Missouri's social services director has been allowed to open Division of Family Services records to the public in abuse cases in which a child died or nearly died.

A Missouri child fatality task force recommended the change in 1999, the year that 8-year-old Larry and Gary Bass died from burns and starvation in Kansas City.

Missouri lawmakers outraged over the Bass boys' deaths endorsed the change as part of comprehensive child-protection legislation that also stiffened penalties for people found guilty of child abuse.

"I think we really saw it (the bill) as a way to strengthen the whole system and to allow us to share information as it became available," said Denise Cross, the director of Division of Family Services.

Kansas officials hope a better system for children comes from Brian Edgar's tragic death.

"I owe it to this little boy," McKenna said.

The Star's John L. Petterson and Donna McGuire contributed to this report.

To reach Grace Hobson, call **(816) 234-7744** or send e-mail to [ghobson@kcstar.com](mailto:ghobson@kcstar.com).

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SENATE BILL No. 67

By Senator Adkins

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AN ACT relating to children and minors; concerning open records in the event of a child fatality; amending K.S.A. 38-1508 and K.S.A. 2002 Supp. 38-1507 and repealing the existing sections.

K.S.A. 59-2122 and

*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 au-

authorized to receive and investigate reports of a child known or suspected to be in need of care;

(6) a military enclave or Indian tribal organization authorized to receive and investigate reports of a child known or suspected to be in need of care;

(7) a county or district attorney;

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

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

(10) an intake and assessment worker;

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

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

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

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

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

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

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

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

(5) A person or entity licensed or registered by the secretary of health and environment or approved by the secretary of social and rehabilitation services to care for, treat or supervise a child in need of care. In order to assist a child placed for care by the secretary of social and rehabilitation services in a foster home or child care facility, the secretary shall provide relevant information to the foster parents or child care facility prior to



placement and as such information becomes available to the secretary.

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

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

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

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

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

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

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

(13) The secretary of social and rehabilitation services.

(14) A law enforcement agency.

(15) A juvenile intake and assessment worker.

(16) The commissioner of juvenile justice.

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

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

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

Confidential information may be released to the public only with the express written permission of the individuals involved or their representatives or upon order of the court having jurisdiction upon a finding by the court that public disclosure of information in the records or reports is necessary for the resolution of an issue before the court. *The provisions of subsection (a) and this subsection shall not apply in the event of a life threatening injury or the death **near fatality or fatality** of a child. Information from reports or records of a child in need of care shall become a public record subject to public disclosure when such child suffers ~~life threatening injury or death~~ **a near fatality or fatality** as a result of alleged child abuse or neglect.*

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

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

(j) Records or reports authorized to be disclosed in this section shall not be further disclosed, except that the provisions of this subsection 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.

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

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

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

The information shall become an open record and disclosed upon request pursuant to K.S.A. 45-215 et seq. within 30 days of the allegation if the fatality or near fatality is alleged to have been the result of child abuse or neglect and occurred on or after January 1, 2002. A public agency or its employees acting in good faith in disclosing or declining to disclose information under this section are immune from criminal or civil liability that might otherwise be incurred or imposed for that action. Information which the law enforcement officer in charge of the investigation or the prosecutor determines might impede an ongoing criminal investigation or jeopardize a pending prosecution shall not be disclosed. Information which a court determines, upon motion of the secretary or any affected individual, might unnecessarily invade the privacy of surviving siblings, innocent family members or innocent foster parents shall not be released. In making this determination the court shall liberally construe this language in favor of disclosure.

- 1 (a) The judge and members of the court staff designated by the judge  
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  
attorneys, subject to the restrictions imposed by subsection (a)(2)(C) of  
5 K.S.A. 38-1507 and amendments thereto;
- 6 (c) the department of social and rehabilitation services;
- 7 (d) any individual, or public or private agency authorized by a prop-  
8 erly constituted authority to diagnose, care for, treat or supervise a child  
9 who is the subject of a report or record of child abuse or neglect and  
10 specifically includes the following: Physicians, psychiatrists, nurses, nurse  
11 practitioners, psychologists, licensed social workers, child development  
12 specialists, physician assistants, community mental health workers, alco-  
13 hol and drug abuse counselors, and licensed or registered child care pro-  
14 viders. Teachers, administrators and school paraprofessionals shall have  
15 access but shall not copy materials in the file;
- 16 (e) law enforcement officers or county or district attorneys or their  
17 staff when necessary for the discharge of their official duties in investi-  
18 gating or prosecuting a report of known or suspected child abuse or  
19 neglect;
- 20 (f) any member of the standing house or senate committee on judi-  
21 ciary, house committee on appropriations, senate committee on ways and  
22 means, legislative post audit committee and joint committee on children  
23 and families, carrying out such member's or committee's official func-  
24 tions; ~~and~~
- 25 (g) any juvenile intake and assessment worker; ~~and~~
- 26 (h) *the department of health and environment or persons au-*  
27 *thorized by the department of health and environment pursuant to*  
28 *K.S.A. 65-512, and amendments thereto, for the purposes of carry-*  
*ing out responsibilities relating to licensure or registration of child*  
31 *care providers as required by article 5 of chapter 65 of the Kansas*  
32 *Statutes Annotated, and amendments thereto; and*
- 33 ~~(i) the public in the event of life threatening injury or death a  
near fatality or fatality of a child.~~

The information shall become an open record and disclosed upon request pursuant to K.S.A. 45-215 et seq. within 30 days of the allegation if the fatality or near fatality is alleged to have been the result of child abuse or neglect and occurred on or after January 1, 2002. A public agency or its employees acting in good faith in disclosing or declining to disclose information under this section are immune from criminal or civil liability that might otherwise be incurred or imposed for that action. Information which the law enforcement officer in charge of the investigation or the prosecutor determines might impede an ongoing criminal investigation or jeopardize a pending prosecution shall not be disclosed. Information which a court determines, upon motion of the secretary or any affected individual, might unnecessarily invade the privacy of surviving siblings, innocent family members or innocent foster parents shall not be released. In making this determination the court shall liberally construe this language in favor of disclosure.

Sec. 3. 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, 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.



Kansas Department of

# Social and Rehabilitation Services

Janet Schalansky, Secretary

**House Corrections and Juvenile Justice**  
March 17, 2003

**SB 67 - Open records in the event of a child fatality**

**Integrated Service Delivery**  
Candy Shively, Deputy Secretary



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H. Corr & J.J.  
3-17-03  
Attachment 3

**Kansas Department of Social and Rehabilitation Services  
Janet Schalansky, Secretary**

House Corrections and Juvenile Justice  
March 17, 2003

**SB 67 - Open records in the event of a child fatality**

Representative Loyd and members of the Committee, I am Candy Shively, Deputy Secretary of Social and Rehabilitation Services.

The federal Child Abuse Prevention and Treatment Act (CAPTA) at 42 USC 5106a(b)(A)(vi) was amended in 1996 to require states to have a process which allowed disclosure in cases of child abuse or neglect which resulted in a child fatality or near fatality. In Kansas that process is found in K.S.A. 38-1507. In 1997 subsection (h) was added to provide, "Nothing in this section shall be interpreted to prohibit a court of competent jurisdiction from making an order disclosing the findings or information pursuant to a report of alleged or suspected child abuse or neglect which has resulted in a child fatality or near fatality if the court determines such disclosure is necessary to a legitimate state purpose. In making such order the court shall give due consideration to the privacy of the child, if living, or the child's siblings, parents or guardians."

An in depth review of every child death is critically important if we are to learn what we need to know to prevent all preventable deaths. We have an absolute duty to safeguard the lives and health of all Kansas children. In 1992 this body established the Child Death Review Board (K.S.A. 22a-241 et seq.) This multi-agency, multi-disciplinary board meets monthly under the auspices of the Attorney General to examine the circumstances surrounding the deaths of Kansas children. Members bring a wide variety of experience and perspectives on children's health, safety and maltreatment to bear on their goals of identifying patterns and risk factors, improve data and communication on the issue of child deaths and develop prevention strategies. The Board issues a public report to the legislature every year and provides immediate feedback to SRS, law enforcement, prosecutors, KDHE, coroners, etc as appropriate to improve services or safeguard living children. The Board does not release information which would identify individuals and is not immediately involved in death scene investigations.

SRS is not opposed to more openness and it is not the privacy of SRS that is at stake. The impact of this bill on the privacy of the child and family must be considered. We can not protect children in isolation but are dependent upon the support of the communities we serve. Openness will enhance understanding of the challenges and complexities of child protection, foster care and adoption. We also believe that openness tends to increase



efficiency and accountability for all branches of government. The challenge is to carefully balance openness with the privacy of those individuals involved in a child welfare case.

We have prepared a balloon with suggested amendments for your consideration. These amendments address the issue of openness and privacy :

- Provide law enforcement, prosecutors or courts the discretion to limit disclosure when necessary to protect a pending criminal investigation, to avoid prosecution, or to protect the privacy of vulnerable individuals
- Include provisions allowing public access to adoption records and reports
- Identify the courts as the final arbiter when determining if records should be released.

We have worked with the bill's author, Senator Adkins, and believe he is in agreement with the concepts if not the exact language contained in the balloon.

Thank you and I will stand for questions.



Making a difference for Kansas children.

Kansas Action for Children, Inc.  
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March 17, 2003

To: House Corrections and Juvenile Justice Committee  
From: Gary Brunk  
Re: Senate Bill No. 67, as amended

Kansas Action for Children supports adoption of Senate Bill No. 67.

When a child dies or comes close to dying because of abuse or neglect we have a responsibility to do anything in our power to understand the antecedents of such a tragic outcome. That understanding is an urgent moral responsibility: we need to use that knowledge to inform efforts to improve the child welfare system in ways that will prevent future fatalities.

We believe that shedding light on issues that can help improve the child welfare system is the intent of this bill, which is why we support it.

We also want to underscore how important it is to not only strengthen the relevant statutes but to also strengthen the infrastructure of services that can prevent abuse and neglect. Much needs to be done in this area in Kansas. The attached KAC report, *Best Interest of the Child: Emerging Issues in Child Welfare*, reviews some of the improvements we believe Kansas needs to pursue.

**EXECUTIVE DIRECTOR**  
Gary Brunk

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3-17-03  
Attachment 4

A Member of the National  
Association of Child Advocates



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March 17, 2003

House Corrections and Juvenile Justice

Rep. Ward Loyd, chairman

Testimony in support of SB 67

Chairman Loyd and members of the Corrections and Juvenile Justice Committee,

All you have to do is read the terrible account of Brian Edgar's case in Kansas City, Kan., to realize that SB 67 must be approved.

Kansas Press Association commends Sen. Adkins for introducing this legislation, and encourages the House Corrections and Juvenile Justice Committee to move this bill forward.

SB 67 would put Kansas in step with others states and, more importantly, would open up state placement records in the case where a child dies or suffers a life-threatening injury. Opening these records would ensure that mistakes, like those that occurred in the Brian Edgar case, are corrected, helping to prevent future tragedies.

This bill would also give state workers a defense from public accusations if they followed proper procedures in placing children in foster and adoptive homes.

Certainly, protecting a child's privacy is important, but when a child is killed or seriously injured, the records should be open. Access is essential for the public to be assured that safeguards are working. As The Kansas City Star said in an editorial, the public access that SB 67 would provide offers Kansas children the best protection.

Please give your support to SB 67.

Sincerely,

Jeff Burkhead, executive director

H. Corr & J.J.  
3-17-03  
Attachment 5

Outline of Testimony  
Steve Christian - Program Director  
National Conference of State Legislatures  
Before the House Corrections and Juvenile Justice Committee  
Kansas Legislature  
Monday, March 17, 2003

Child Welfare

**CONFIDENTIALITY OF INFORMATION IN CHILD ABUSE AND NEGLECT CASES**

**I. Federal restrictions on disclosure of child abuse information imposed as a condition of eligibility for federal funds**

**A. Child Abuse Prevention and Treatment Act (CAPTA): grants to states for improvements to child protection system**

1. Kansas receives about \$250,000 per year
2. CAPTA allows disclosure of "reports and records" only to list of authorized recipients
3. State law may authorize disclosure to other "entities or classes of persons" pursuant to a "legitimate state purpose."
4. Kansas has extensive list of authorized recipients, including educators, legislators, physicians, law enforcement, coroners, etc.
5. Options for Legislature are limited:
  - Amend list of authorized recipients, subject to "legitimate state purpose"
  - Make disclosure to some or all recipients mandatory or discretionary
  - Restrict disclosure to certain types of information or certain circumstances
  - No authority for blanket public disclosure, except the following:
6. CAPTA mandates public disclosure of "findings or information" about cases of child fatalities or near-fatalities
  - Issues for Legislature:
    - Law should mandate, not just allow disclosure, in accordance with federal law;
    - Law should be specific about what information shall be disclosed. Otherwise, agency may release only what it wants to.
      - Example: name of child; agency response, findings and determination as to all reports of abuse or neglect involving the child and the basis for each such response, findings and determination; other actions taken as a result of each such report; description of services provided to child and family

H. Corr & J.J.  
3-17-03  
Attachment 6

1. 26 states have constitutional provisions requiring courts to be open
  2. 21 of these states, however, have laws, rules or policies that close juvenile court proceedings, in apparent violation of state constitution
  3. National Center for State Courts survey (2000):
    - All juvenile court proceedings are open: 1 state (Oregon)
    - Presumably open, with judicial discretion to close: 10 states
    - Presumably closed, with judicial discretion to open: 10 states
    - Closed: 30 states, including Kansas
- C. Arguments for and against:
1. For: more accountability
  2. Against: exposes children to further trauma
- D. State experiences
1. NY opened juvenile courts in 1997, after high profile fatality. Courts, child welfare agency, advocates and other observers have hailed it a success.
  2. MN did pilot project in selected counties; NCSC did evaluation and found neither harm to children nor high level of public attention to cases; state has since opened courts statewide
  3. IL opens courts to the press, but not the public; supported by judiciary, child welfare agency and others.
- E. Issues for Legislature
1. Mandatory or presumptive openness?
  2. If presumptive, should there be guidelines for judicial discretion?
  3. Should court files be confidential?
  4. How should the court handle information confidential under IV-E?