

CHAPTER 57
SENATE BILL No. 118

AN ACT concerning children and minors; relating to children in need of care; amending K.S.A. 2006 Supp. 38-2219 and 38-2249 and repealing the existing sections.

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

Section 1. K.S.A. 2006 Supp. 38-2249 is hereby amended to read as follows: 38-2249. (a) In all proceedings under this code, the rules of evidence of the code of civil procedure shall apply, except that no evidence relating to the condition of a child shall be excluded solely on the ground that the matter is or may be the subject of a physician-patient privilege, psychologist-client privilege or social worker-client privilege.

(b) The judge presiding at all hearings under this code shall not consider, read or rely upon any report not properly admitted according to the rules of evidence, except as provided by K.S.A. 2006 Supp. 38-2219, and amendments thereto.

(c) In any proceeding in which a child less than 13 years of age is alleged to have been physically, mentally or emotionally abused or neglected or sexually abused, a recording of an oral statement of the child, or of any witness less than 13 years of age, made before the proceeding began, is admissible in evidence if:

(1) The court determines that the time, content and circumstances of the statement provide sufficient indicia of reliability;

(2) no attorney for any party or interested party is present when the statement is made;

(3) the recording is both visual and aural and is recorded on film, videotape or by other electronic means;

(4) the recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;

(5) the statement is not made in response to questioning calculated to lead the child to make a particular statement or is clearly shown to be the child's statement and not made solely as a result of a leading or suggestive question;

(6) every voice on the recording is identified;

(7) the person conducting the interview of the child in the recording is present at the proceeding and is available to testify or be cross-examined by any party or interested party; and

(8) each party or interested party to the proceeding is afforded an opportunity to view the recording before it is offered into evidence.

(d) On motion of any party to a proceeding pursuant to the code in which a child less than 13 years of age is alleged to have been physically, mentally or emotionally abused or neglected or sexually abused, the court may order that the testimony of the child, or of any witness less than 13 years of age, be taken:

(1) In a room other than the courtroom and be televised by closed-circuit equipment in the courtroom to be viewed by the court and the parties and interested parties to the proceeding; or

(2) outside the courtroom and be recorded for showing in the courtroom before the court and the parties and interested parties to the proceeding if:

(A) The recording is both visual and aural and is recorded on film, videotape or by other electronic means;

(B) the recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;

(C) every voice on the recording is identified; and

(D) each party and interested party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom.

(e) At the taking of testimony under subsection (d):

(1) Only an attorney for each party, interested party, the guardian *ad litem* for the child or other person whose presence would contribute to the welfare and well-being of the child and persons necessary to operate the recording or closed-circuit equipment may be present in the room with the child during the child's testimony;

(2) only the attorneys for the parties may question the child; and

(3) the persons operating the recording or closed-circuit equipment

shall be confined to an adjacent room or behind a screen or mirror that permits such person to see and hear the child during the child's testimony, but does not permit the child to see or hear such person.

(f) If the testimony of a child is taken as provided by subsection (d), the child shall not be compelled to testify in court during the proceeding.

(g) (1) Any objection to a recording under subsection (d)(2) that such proceeding is inadmissible must be made by written motion filed with the court at least seven days before the commencement of the adjudicatory hearing. An objection under this subsection shall specify the portion of the recording which is objectionable and the reasons for the objection. Failure to file an objection within the time provided by this subsection shall constitute waiver of the right to object to the admissibility of the recording unless the court, in its discretion, determines otherwise.

(2) The provisions of this subsection shall not apply to any objection to admissibility for the reason that the recording has been materially altered.

Sec. 2. K.S.A. 2006 Supp. 38-2219 is hereby amended to read as follows: 38-2219. Evaluation of development or needs of child. (a) *Of the child.* (1) *Psychological or emotional.* During proceedings under this code, the court, on its own motion or the motion of the guardian *ad litem* for the child, a party or interested party, may order an evaluation and written report of the psychological or emotional development or needs of a child who is the subject of the proceedings. The court may refer the child to a state institution for the evaluation if the secretary advises the court that the facility is a suitable place to care for, treat or evaluate the child and that space is available. The expenses of transportation to and from the state facility may be paid as a part of the expenses of temporary care and custody. The child may be referred to a mental health center or qualified professional for evaluation and the expenses of the evaluation may be considered as expenses of the proceedings and assessed as provided in this code. If the court orders an evaluation as provided in this section, a parent of the child shall have the right to obtain an independent evaluation at the expense of the parent.

(2) *Medical.* During proceedings under this code, the court may order an examination and report of the medical condition and needs of a child who is the subject of the proceedings. The court may also order a report from any physician who has been attending the child stating the diagnosis, condition and treatment afforded the child.

(3) *Educational.* During proceedings under this code, the court may order the chief administrative officer of the school which the child attends or attended to provide to the court information that is readily available which the school officials believe would properly indicate the educational needs of the child. The order may direct that the school conduct an educational needs assessment of the child and send a report of the assessment to the court. The educational needs assessment may include a meeting involving any of the following: The child's parents; the child's teachers; the school psychologist; a school special services representative; a representative of the secretary; the child's court-appointed special advocate; the child's foster parents, legal guardian and permanent custodian; a court services officer; and other persons that the chief administrative officer of the school or the officer's designee considers appropriate.

(b) *Physical, psychological or emotional status of parent or custodian.* During proceedings under this code, the court may order: (1) An examination, evaluation and report of the physical, mental or emotional status or needs of a parent, a person residing with a parent or any person being considered as one to whom the court may grant custody; and

(2) written reports from any qualified person concerning the parenting skills or ability to provide for the physical, mental or emotional needs and future development of a child by a parent or any person being considered as one to whom the court may grant custody.

~~(c) *Court consideration.* Written reports and other materials relating to the examinations and evaluations under subsections (a) and (b) may be considered by the court after an adjudication or entry of an order of informal supervision, if introduced as evidence. If requested by any party or interested party in attendance, the court shall require the person preparing the report or other material to appear and testify.~~

~~(d)~~ (c) *Confidentiality of reports.* (1) *Reports of court ordered examination or evaluation.* No confidential relationship of physician and patient, psychologist and client or social worker and client shall arise from

an examination or evaluation ordered by the court.

(2) *Report from private physician, psychologist or therapist.* When any interested party or party to proceedings under this code wishes the court to have the benefit of information or opinion from a physician, psychologist, registered marriage and family therapist or social worker with whom there is a confidential relationship, the party or interested party may waive the confidential relationship but restrict the information to be furnished or testimony to be given to those matters material to the issues before the court. If requested, the court may make an *in camera* examination of the proposed witness or the file of the proposed witness and excise any matters that are not material to the issues before the court.

(d) *Reports prepared by a court-appointed special advocate or by the secretary.* All reports prepared by a court-appointed special advocate or by the secretary shall be filed with the court and shall be made available as provided in subsection (e).

(e) *Availability of reports.* (1) All reports provided for in this section shall be filed with the court and shall be made available to counsel for any party or interested party prior to any scheduled hearing on any matter addressed by the report. If any party or interested party is not represented by counsel, the report shall be made available to that party.

(2) All reports provided for in this section may be read by the court at any stage of a proceeding under this code, but no fact or conclusion derived from a report shall be used as the basis for an order of the court unless the information has been admitted into evidence following an opportunity for any party or interested party to examine, under oath, the person who prepared the report. If the court is in possession of a report that has not been offered into evidence, the court shall inquire whether there is an objection to admitting the report into evidence. If there is no objection, the court may admit the report into evidence.

Sec. 3. K.S.A. 2006 Supp. 38-2219 and 38-2249 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved March 28, 2007.

Published in the *Kansas Register* April 5, 2007.
