

HOUSE BILL No. 2175

By Committee on Child Welfare and Foster Care

Requested by Representative Howerton

1-30

1 AN ACT concerning children and minors, relating to the revised Kansas
2 code for care of children; requiring that notification of a parent's rights
3 be provided to parents of a child who is the subject of an investigation
4 of abuse or neglect or has been removed from the home by a law
5 enforcement officer; providing for an agreement between the secretary
6 and a parent of a child when a child is removed from the home during
7 an investigation of abuse or neglect; requiring the secretary to complete
8 a written report when an investigation is closed; allowing a parent to
9 withhold certain information unless otherwise ordered by a court;
10 amending K.S.A. 38-2217 and 38-2229 and K.S.A. 2024 Supp. 38-
11 2226 and repealing the existing sections.

12

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

14 New Section 1. (a) The secretary for children and families or a law
15 enforcement officer shall provide a written and verbal notification to a
16 parent of a child upon first contact with such parent when the secretary has
17 received a report of abuse or neglect of such child and has decided to open
18 an investigation related to such report or a law enforcement officer has
19 taken such child into custody pursuant to K.S.A. 38-2231, and
20 amendments thereto.

21 (b) The notification provided to a parent as required by subsection (a)
22 shall include:

23 (1) A written summary that:

24 (A) Is brief and easily understood;

25 (B) is written or read aloud in a language that such parent
26 understands; and

27 (C) contains the following information:

28 (i) The secretary's procedures for conducting an investigation of child
29 abuse or neglect, including:

30 (a) A description of the circumstances under which the secretary
31 would request the court to remove a child from the home;

32 (b) an explanation that the law requires, when appropriate under
33 K.S.A. 38-2226, and amendments thereto, a joint effort to be conducted by
34 the secretary and the appropriate law enforcement agency that may result
35 in criminal investigations or charges; and

- 1 (c) an explanation that any statement or admission made by the parent
- 2 to anyone or publicly through electronic means may be used against such
- 3 parent in criminal or child in need of care proceedings;
- 4 (ii) the parent's right to file a complaint with the secretary;
- 5 (iii) the ability to request a review of files subject to K.S.A. 38-2210
- 6 and 38-2211, and amendments thereto;
- 7 (iv) the parent's right to review all records of the investigation unless
- 8 the review would jeopardize an ongoing criminal investigation or the
- 9 child's safety, pursuant to section 3, and amendments thereto;
- 10 (v) the parent's right to seek legal counsel;
- 11 (vi) references to this code and rules and regulations governing child
- 12 abuse and neglect and how the parent may obtain copies of such code and
- 13 rules and regulations;
- 14 (vii) how the parent may access a child that has been removed from
- 15 the home;
- 16 (viii) the same information provided verbally under paragraph (2);
- 17 and
- 18 (ix) a description of the allegations that the secretary is investigating;
- 19 and
- 20 (D) encourages the parent to document each contact with the
- 21 secretary or child that is related to the investigation, including paperwork
- 22 and electronic communications;
- 23 (2) a verbal notification to the parent of such parent's right to:
- 24 (A) Not speak with the secretary without legal counsel being present;
- 25 (B) receive assistance from an attorney;
- 26 (C) have a court-appointed attorney if:
- 27 (i) The parent is indigent; and
- 28 (ii) the secretary seeks a court order for protective custody pursuant
- 29 to K.S.A. 38-2242, and amendments thereto, or removal of a child from
- 30 the home;
- 31 (D) record any interaction or interview, with the understanding that
- 32 the recording may be subject to disclosure to the secretary, law
- 33 enforcement agency or another party under a court order;
- 34 (E) refuse to allow the secretary to enter the home or interview the
- 35 child without a court order pursuant to K.S.A. 38-2229, and amendments
- 36 thereto;
- 37 (F) have legal counsel present before allowing the secretary to enter
- 38 the parent's home or interview the child;
- 39 (G) withhold any medical or mental health records of the parent or
- 40 child, unless disclosure of such records is ordered by a court pursuant to
- 41 K.S.A. 38-2217, and amendments thereto;
- 42 (H) withhold any medical or psychological examination of the child,
- 43 unless such examination is ordered by a court;

- 1 (I) refuse to submit to a drug test; and
2 (J) consult with legal counsel prior to entering into any agreement
3 pursuant to section 2, amendments thereto; and
4 (3) if the secretary determines that removal of the child may be
5 warranted, a written proposed child placement resources form, developed
6 in a form and manner by the secretary to comply with this paragraph, that:
7 (A) Instructs the parent to return the form to the secretary after
8 identifying:
9 (i) At least three individuals who are a relative or potential kinship
10 caregiver; and
11 (ii) any adult, particularly an adult residing in the child's community,
12 who could be a relative or potential kinship caregiver for the child as
13 identified by the child, if developmentally appropriate;
14 (B) includes instructions regarding where to submit such form that is
15 available 24 hours a day, either in person or by electronic means; and
16 (C) includes information regarding when background checks may be
17 conducted and completed during the investigation process.
18 (c) The secretary shall document in the child's agency file that the
19 verbal notification required by subsection (b)(2) was provided to the
20 parent.
21 (d) The secretary shall develop and adopt a form for the purpose of
22 verifying that the parent received the written summary and verbal
23 notification required by this section. The secretary shall provide a copy of
24 such form to such parent or such parent's attorney, if represented by an
25 attorney.
26 (e) If a parent does not receive the written summary and verbal
27 notification required by this section, any information obtained from the
28 parent and any other information that would not have been discovered
29 without such information shall not be admissible for use against the parent
30 in any civil proceeding.
31 (f) The secretary shall develop the necessary materials to comply with
32 this section and provide such materials to law enforcement agencies for
33 such agencies to use to comply with this section.
34 (g) The secretary shall post on a publicly accessible website the
35 written summary and verbal notification that is required by this section to
36 be provided to parents.
37 (h) This section shall be a part of and supplemental to the Kansas
38 revised code for care of children.
39 New Sec. 2. (a) When a child has been removed from the home by a
40 law enforcement officer or an emergency court order during an
41 investigation of abuse or neglect by the secretary or a parent is receiving
42 services from the secretary, such parent may enter into an agreement with
43 the secretary. Such agreement shall be included in the child's case plan and

1 include the following:

2 (1) The respective duties of such parent and the secretary during the
3 investigation of abuse or neglect;

4 (2) the conditions under which the parent may have access to the
5 child, including how often the parent may visit or communicate with the
6 child and the circumstances under which the parent's visits or
7 communications may occur;

8 (3) subject to subsections (f), (g) and (h), the date when the
9 agreement will terminate unless the investigation has terminated at a date
10 earlier than 30 days from the date that the agreement is executed or the
11 agreement has been extended to a subsequent date as agreed upon between
12 the parent and the secretary; and

13 (4) any other terms that the secretary determines are necessary for the
14 safety and welfare of the child.

15 (b) An agreement under this section shall contain the following
16 statement in boldface type and capital letters in the parent's preferred
17 language: "YOUR AGREEMENT IS NOT AN ADMISSION OF CHILD
18 ABUSE OR NEGLECT ON YOUR PART AND CANNOT BE USED
19 AGAINST YOU AS AN ADMISSION OF CHILD ABUSE OR
20 NEGLECT.

21 THIS AGREEMENT IS ENTIRELY VOLUNTARY. THE
22 AGREEMENT SHALL NOT LAST LONGER THAN 30 DAYS. THE
23 AGREEMENT MAY BE RENEWED NOT MORE THAN TWO TIMES
24 AND FOR NOT MORE THAN 30 DAYS EACH TIME."

25 (c) An agreement shall be in writing and signed by the parent entering
26 into the agreement with the secretary. The secretary shall provide a written
27 copy of such signed agreement to such parent.

28 (d) Before entering into the agreement, the secretary shall notify the
29 parent of such parent's right to consult with an attorney and provide a
30 reasonable time for such parent to perform such consultation.

31 (e) An initial agreement shall terminate on the 30th day after the date
32 that such agreement is signed.

33 (f) Upon the expiration of an agreement, the secretary may for good
34 cause enter into not more than two additional agreements related to the
35 same investigation. Upon the parties entering into an additional agreement
36 under this subsection, the secretary shall:

37 (1) Reevaluate the terms and conditions of the original agreement;
38 and

39 (2) notify the parent of their right to:

40 (A) Refuse to enter into the agreement; and

41 (B) be represented by an attorney or a court-appointed attorney if:

42 (i) The parent is indigent; and

43 (ii) the secretary subsequently seeks a court order to require the

1 parent to participate in services.

2 (g) An additional agreement provided by subsection (f) shall
3 automatically terminate on the 30th day after the date that such agreement
4 is signed.

5 (h) This subsection shall not be construed to affect any other
6 agreements that may be entered into between the secretary and a parent.

7 (i) Before closing an investigation that relates to an agreement
8 described in this section, the secretary shall develop a plan with the parent
9 who entered into the agreement for the safe return of the child to the parent
10 or to another person who is legally entitled to possession of the child, as
11 appropriate.

12 (j) This section shall be a part of and supplemental to the Kansas
13 revised code for care of children.

14 Sec. 3. K.S.A. 38-2217 is hereby amended to read as follows: 38-
15 2217. (a) *Physical or mental care and treatment.* (1) When a child less
16 than 18 years of age is alleged to have been physically, mentally or
17 emotionally abused or neglected or sexually abused *and is in the custody*
18 *of the secretary*, no consent shall be required to medically examine the
19 child to determine whether the child has been abused or neglected. Unless
20 the child is alleged or suspected to have been abused by the parent or
21 guardian, the investigating officer shall notify or attempt to notify the
22 parent or guardian of the medical examination of the child.

23 (2) When the health or condition of a child who is subject to
24 jurisdiction of the court requires it, the court may consent to the
25 performing and furnishing of hospital, medical, surgical or dental
26 treatment or procedures, including the release and inspection of medical or
27 dental records. A child, or parent of any child, who is opposed to certain
28 medical procedures authorized by this subsection may request an
29 opportunity for a hearing thereon before the court. Subsequent to the
30 hearing, the court may limit the performance of matters provided for in
31 this subsection or may authorize the performance of those matters subject
32 to terms and conditions the court considers proper.

33 (3) The custodian or agent of the custodian is the personal
34 representative for the purpose of consenting to disclosure of otherwise
35 protected health information and may give consent to the following:

36 (A) Dental treatment for the child by a licensed dentist;

37 (B) diagnostic examinations of the child, including, but not limited to,
38 the withdrawal of blood or other body fluids, x-rays and other
39 laboratory examinations;

40 (C) releases and inspections of the child's medical history records;

41 (D) immunizations for the child;

42 (E) administration of lawfully prescribed drugs to the child;

43 (F) examinations of the child, including, but not limited to, the

1 withdrawal of blood or other body fluids or tissues for the purpose of
2 determining the child's parentage; and

3 (G) subject to limitations in K.S.A. 59-3075(e)(4), (5) and (6), and
4 amendments thereto, medical or surgical care determined by a ~~physician~~
5 *person licensed to practice medicine and surgery by the state board of*
6 *healing arts* to be necessary for the welfare of such child, if the parents are
7 not available or refuse to consent.

8 (4) When the court has adjudicated a child to be in need of care, the
9 custodian or an agent designated by the custodian is the personal
10 representative for the purpose of consenting to disclosure of otherwise
11 protected health information and shall have authority to consent to the
12 performance and furnishing of hospital, medical, surgical or dental
13 treatment or procedures or mental care or treatment other than inpatient
14 treatment at a state psychiatric hospital, including the release and
15 inspection of medical or hospital records, subject to terms and conditions
16 the court considers proper and subject to the limitations of K.S.A. 59-3075
17 (e)(4), (5) and (6), and amendments thereto.

18 (5) Any ~~health care~~ *healthcare* provider who in good faith renders
19 hospital, medical, surgical, mental or dental care or treatment to any child
20 or discloses protected health information as authorized by this section shall
21 not be liable in any civil or criminal action for failure to obtain consent of
22 a parent.

23 (6) Nothing in this section shall be construed to mean that any person
24 shall be relieved of legal responsibility to provide care and support for a
25 child.

26 (7) (A) *If a parent does not consent to the release of the child's prior*
27 *medical, psychological or psychiatric records or to a medical,*
28 *psychological or psychiatric examination of the child or other medical*
29 *procedure as requested by the secretary and the court has probable cause*
30 *to believe that releasing such records or conducting such an examination*
31 *of the child or other medical procedure is necessary to protect such child*
32 *from abuse or neglect, then the court shall order such records to be*
33 *released or examination or procedure to be conducted at a time and place*
34 *designated by the court.*

35 (B) *The court shall not issue an order or conduct a hearing under*
36 *this section ex parte, unless the court has probable cause to believe that*
37 *conducting a full hearing would endanger or harm the physical health or*
38 *safety of the child.*

39 (C) *A court order described in this paragraph shall include written*
40 *findings of fact whether evidence is sufficient to support an order issued.*

41 (D) *Upon the request of a party of an action initiated under this*
42 *section, the court shall provide a copy of an order rendered under this*
43 *section to such party.*

1 (b) *Care and treatment requiring court action.* (1) If it is brought to
2 the court's attention, while the court is exercising jurisdiction over the
3 person of a child under this code, that the child may be a mentally ill
4 person as defined in K.S.A. 59-2946, and amendments thereto, or a person
5 with an alcohol or substance abuse problem as defined in K.S.A. 59-
6 29b46, and amendments thereto, the court may:

7 (1)(A) Direct or authorize the county or district attorney or the person
8 supplying the information to file the petition provided for in K.S.A. 59-
9 2957, and amendments thereto, and proceed to hear and determine the
10 issues raised by the application as provided in the care and treatment act
11 for mentally ill persons or the petition provided for in K.S.A. 59-29b57,
12 and amendments thereto, and proceed to hear and determine the issues
13 raised by the application as provided in the care and treatment act for
14 persons with an alcohol or substance abuse problem; or

15 (2)(B) authorize that the child seek voluntary admission to a treatment
16 facility as provided in K.S.A. 59-2949, and amendments thereto, or K.S.A.
17 59-29b49, and amendments thereto.

18 (2) The application to determine whether the child is a mentally ill
19 person or a person with an alcohol or substance abuse problem may be
20 filed in the same proceedings as the petition alleging the child to be a child
21 in need of care, or may be brought in separate proceedings. In either event,
22 the court may enter an order staying any further proceedings under this
23 code until all proceedings have been concluded under the care and
24 treatment act for mentally ill persons or the care and treatment act for
25 persons with an alcohol or substance abuse problem.

26 Sec. 4. K.S.A. 2024 Supp. 38-2226 is hereby amended to read as
27 follows: 38-2226. (a) *Investigation for child abuse or neglect.* The
28 secretary and law enforcement officers shall have the duty to receive and
29 investigate reports of child abuse or neglect for the purpose of determining
30 whether the report is valid and whether action is required to protect a
31 child. Any person or agency ~~which~~ that maintains records relating to the
32 involved child ~~which~~ that are relevant to any investigation conducted by
33 the secretary or law enforcement agency under this code shall provide the
34 secretary or law enforcement agency with the necessary records to assist in
35 investigations. In order to provide such records, the person or agency
36 maintaining the records shall receive from the secretary or law
37 enforcement:

38 (1) A written request for information; and

39 (2) a written notice that the investigation is being conducted by the
40 secretary or law enforcement. If the secretary and such officers determine
41 that no action is necessary to protect the child but that a criminal
42 prosecution should be considered, such law enforcement officers shall
43 make a report of the case to the appropriate law enforcement agency.

1 (b) *Joint investigations.* When a report of child abuse or neglect
2 indicates: (1) That there is serious physical harm to, serious deterioration
3 of or sexual abuse of the child; and (2) that action may be required to
4 protect the child, the investigation shall be conducted as a joint effort
5 between the secretary and the appropriate law enforcement agency or
6 agencies, with a free exchange of information between them pursuant to
7 K.S.A. 38-2210, and amendments thereto. If a statement of a suspect is
8 obtained by either agency, a copy of the statement shall be provided to the
9 other.

10 (c) *Investigation of certain cases.* Suspected child abuse or neglect
11 ~~which~~ that occurs in an institution operated by the Kansas department of
12 corrections shall be investigated by the attorney general or secretary of
13 corrections. Any suspected child abuse or neglect in an institution operated
14 by the Kansas department for aging and disability services, or by persons
15 employed by the Kansas department for aging and disability services or
16 the Kansas department for children and families, or of children of persons
17 employed by either department, shall be investigated by the appropriate
18 law enforcement agency.

19 (d) *Coordination of investigations by county or district attorney.* If a
20 dispute develops between agencies investigating a reported case of child
21 abuse or neglect, the appropriate county or district attorney shall take
22 charge of, direct and coordinate the investigation.

23 (e) *Investigations concerning certain facilities.* Any investigation
24 involving a facility subject to licensing or regulation by the secretary of
25 health and environment shall be promptly reported to the state secretary of
26 health and environment.

27 (f) *Cooperation between agencies.* Law enforcement agencies and the
28 secretary shall assist each other in taking action—~~which~~ that is necessary to
29 protect a child regardless of which agency conducted the initial
30 investigation.

31 (g) *Cooperation between school personnel and investigative*
32 *agencies.* (1) Educational institutions, the secretary and law enforcement
33 agencies shall cooperate with each other in the investigation of reports of
34 suspected child abuse or neglect. The secretary and law enforcement
35 agencies shall have access to a child in a setting designated by school
36 personnel on the premises of an educational institution. Attendance at an
37 interview conducted on such premises shall be at the discretion of the
38 agency conducting the interview, giving consideration to the best interests
39 of the child. To the extent that safety and practical considerations allow,
40 law enforcement officers on such premises for the purpose of investigating
41 a report of suspected child abuse or neglect shall not be in uniform.

42 (2) The secretary or a law enforcement officer may request the
43 presence of school personnel during an interview if the secretary or officer

1 determines that the presence of such person might provide comfort to the
2 child or facilitate the investigation.

3 (h) *Visual observation required.* ~~As part of any investigation~~
4 ~~conducted pursuant to this section~~ *When the secretary or law enforcement*
5 *opens an investigation of abuse or neglect, the secretary or the law*
6 *enforcement agency, or such agency's designee, that is conducting the*
7 *investigation shall, as soon as possible, visually observe the child who is*
8 *the alleged victim of abuse or neglect. In the case of a joint investigation*
9 *conducted pursuant to subsection (b), the secretary and the investigating*
10 *law enforcement agency, or the designees of the secretary and such*
11 *agency, shall both visually observe the child who is the alleged victim of*
12 *abuse or neglect. All investigation reports shall include the date, time and*
13 *location of any visual observation of a child that is required by this*
14 *subsection.*

15 (i) *Child abuse review and evaluation referrals.* (1) Upon
16 investigation by law enforcement or assignment by the secretary of any
17 investigation of physical abuse or physical neglect conducted pursuant to
18 this section that concerns a child five years of age or younger, the
19 secretary, the law enforcement agency or the agency's designee shall make
20 a CARE referral for such child.

21 (2) In any other investigation of physical abuse, emotional abuse,
22 medical neglect or physical neglect conducted pursuant to this section, the
23 secretary, the law enforcement agency or the agency's designee may make
24 a CARE referral for such child.

25 (j) *Report required for closed investigations.* *When the secretary*
26 *determines that an investigation shall be closed, whether such*
27 *investigation results in a referral to the county or district attorney, the*
28 *secretary shall make a complete written report of the investigation*
29 *conducted and findings of such investigation. Such report shall be*
30 *included in the file of the child who is the subject of the investigation.*

31 Sec. 5. K.S.A. 38-2229 is hereby amended to read as follows: 38-
32 2229. (a) (1) *A person shall not interfere with an investigation of child*
33 *abuse or neglect being conducted under this code.*

34 (2) *If the secretary is denied access to the child who is the subject of*
35 *an investigation in the home, school or other place and the court*
36 *determines there is probable cause to believe that access is necessary to*
37 *protect the child from abuse or neglect, the court shall order that the*
38 *secretary be granted access to the child to interview, examine and*
39 *investigate, except that the secretary may have access to the child when*
40 *the secretary:*

41 (A) *Has probable cause to believe the child has been harmed;*

42 (B) *has probable cause to believe that the child is a missing person*
43 *or a verified missing person entry for the child can be found in the*

1 national crime information center missing person system;

2 (C) reasonably believes the child is a victim of human trafficking,
3 aggravated human trafficking or commercial sexual exploitation of a
4 child; or

5 (D) reasonably believes the child is experiencing a behavioral health
6 crisis and is likely to cause harm to self or others.

7 (3) (A) The court shall not issue an order or conduct a hearing under
8 this section ex parte unless the court has probable cause to believe that
9 conducting a full hearing would endanger or harm the physical health or
10 safety of the child.

11 (B) A court order described by paragraph (2) shall include written
12 findings of fact whether evidence is sufficient to support an order issued.

13 (C) Upon the request of a party to a proceeding initiated under this
14 section, the court shall provide a copy of an order issued under this
15 section to such party.

16 (b) (1) The secretary, a law enforcement officer, or a multidisciplinary
17 team appointed pursuant to K.S.A. 38-2228, and amendments thereto, may
18 request disclosure of documents, reports or information in regard to a
19 child; who is the subject of a report of abuse or neglect; by making a
20 written verified application to the district court. Upon a finding by the
21 court that there is probable cause to believe the information sought will
22 assist in the investigation of a report of child abuse or neglect, the court
23 may issue a subpoena, subpoena duces tecum or an order for the
24 production of the requested documents, reports or information and
25 directing the documents, reports or information to be delivered to the
26 applicant at a specific time, date and place.

27 ~~(b)~~(2) The time and date of delivery shall not be sooner than five days
28 after the service of the subpoena or order, excluding Saturdays, Sundays,
29 holidays; and days on which the office of the clerk of the court is not
30 accessible. The court issuing the subpoena or order shall keep all
31 applications filed pursuant to this subsection and a copy of the subpoena or
32 order in a special file maintained for that purpose. Upon receiving service
33 of a subpoena, subpoena duces tecum or an order for production pursuant
34 to this section, the person or agency served shall give oral or written notice
35 of service to any person known to have a right to assert a privilege or
36 assert a right of confidentiality in regard to the documents, reports or
37 information sought at least seven days before the date of delivery.

38 ~~(e)~~(3) Any parent, child, guardian ad litem, person or entity
39 subpoenaed or subject to an order of production or person or entity who
40 claims a privilege or right of confidentiality may request in writing that the
41 court issuing the subpoena or order of production quash the subpoena,
42 subpoena duces tecum or order for production issued pursuant to this
43 section. The request shall automatically stay the operation of the subpoena,

1 subpoena duces tecum or order for production, and the documents, reports
2 or information requested shall not be delivered until the issuing court has
3 held a hearing to determine if the documents, reports or information are
4 subject to the claimed privilege or right of confidentiality; and whether it is
5 in the best interests of the child for the subpoena or order to produce to be
6 honored. The request to quash shall be filed with the district court issuing
7 the subpoena or order at least 24 hours prior to the specified time and date
8 of delivery, excluding Saturdays, Sundays, holidays, ~~or~~ and days on which
9 the office of the clerk of the court is not accessible, and a copy of the
10 written request ~~must~~ shall be given to the person subpoenaed or subject to
11 the order for production at least 24 hours prior to the specified time and
12 date of delivery.

13 Sec. 6. K.S.A. 38-2217 and 38-2229 and K.S.A. 2024 Supp. 38-2226
14 are hereby repealed.

15 Sec. 7. This act shall take effect and be in force from and after its
16 publication in the statute book.