

Substitute for SENATE BILL No. 394

By Committee on Judiciary

3-6

1 AN ACT concerning children and minors; enacting the Kansas foster
2 parents' bill of rights act; relating to foster care; family foster homes;
3 amending K.S.A. 2013 Supp. 38-2212, 38-2213 and 38-2258 and
4 repealing the existing sections.
5

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

7 New Section 1. (a) The provisions of this act shall be known and may
8 be cited as the Kansas foster parents' bill of rights act.

9 (b) (1) The Kansas department for children and families and
10 department of health and environment recognize that foster parents play an
11 integral role in the state's effort to care for dependent children displaced
12 from their homes. Foster parents have the right to be treated by the Kansas
13 department for children and families, department of health and
14 environment and other partners in the care of abused and neglected
15 children with dignity, respect and trust as a provider of foster care. Foster
16 parents shall treat all children in their care, each child's birth family and all
17 members of the child professional team with dignity and respect.

18 (2) The department of health and environment shall provide written
19 notification of the rights enumerated in this section to foster parents at the
20 time of initial licensure and at the time of each licensure renewal following
21 the initial licensure period.

22 (3) The Kansas department for children and families shall make its
23 policies available to foster parents and the public by publishing the
24 prevention and protection services policy procedure manual on the
25 department's public website.

26 (c) (1) The Kansas department for children and families shall provide
27 foster parents with pre-service training. The Kansas department for
28 children and families, department of health and environment or the child
29 placement agency shall provide training at appropriate intervals to meet
30 mutually assessed needs of the child and to improve foster parent skills.

31 (2) The Kansas department for children and families shall provide to
32 foster parents, prior to and during placement, information which is
33 pertinent to the care and needs of the child and to protect the foster family
34 to the extent allowed under state and federal law. The Kansas department
35 for children and families shall provide foster parents information regarding
36 the number of times a child has been removed and the reasons therefor, to

1 the extent permitted by law, and may also provide the names and phone
2 numbers of the previous foster parents if the previous foster parents have
3 authorized such release.

4 (3) The Kansas department for children and families will, when
5 appropriate and feasible, arrange for pre-placement visits between foster
6 children and family foster home parents.

7 (4) Foster parents may ask questions about the child's case plan,
8 encourage a placement or refuse a placement. In the event foster parents
9 refuse a placement, such refusal shall not serve as the sole determining
10 factor with respect to a subsequent placement of a child with such foster
11 parents when such placement is in the best interests of the child. After a
12 placement of a child with foster parents, the Kansas department for
13 children and families shall update the foster parents as new relevant
14 information about the child, the child's parents and other relatives is
15 gathered.

16 (5) Foster parents shall be informed in a timely manner by the Kansas
17 department for children and families of all case plan meetings concerning
18 the children placed in their homes, and shall be allowed and encouraged to
19 participate in such meetings and provide input concerning the case plan.
20 Foster parents shall be informed by the Kansas department of health and
21 environment concerning their licensure as a family foster home.

22 (6) The Kansas department for children and families will, when
23 appropriate and feasible, establish reasonably accessible respite care for
24 children in foster care for short periods of time, in consultation with the
25 foster parents. Foster parents shall follow all policies and procedures
26 established by the Kansas department for children and families for
27 requesting and using respite care.

28 (7) Foster parents shall treat all information received from the Kansas
29 department for children and families about the child and the child's family
30 as confidential. Information necessary for the medical or psychiatric care
31 of the child may be provided to the appropriate practitioners. Foster
32 parents may share information necessary with school personnel in order to
33 secure a safe and appropriate education for the child. Additionally, foster
34 parents shall share information they may learn about the child and the
35 child's family, and concerns that arise in the care of the child, with the
36 caseworker and other members of the child professional team.

37 (8) Recognizing that placement changes are difficult and detrimental
38 to the health and well-being of children, foster parents may request all
39 available information, whenever possible, before deciding whether or not
40 to accept a child for placement.

41 (d) (1) Foster parents shall be permitted to continue the practice of
42 their own family values and routines while respecting the child's cultural
43 heritage. All discipline shall be consistent with state law and rules and

1 regulations. Visitations between the child and the child's siblings or
2 biological family should be scheduled at a time that meets the needs of the
3 child, the biological family members and the foster family, whenever
4 possible. Recognizing that visitation is an important right of children in
5 foster care, foster parents shall be flexible and cooperative with family
6 visits. Recognizing the importance of a positive relationship between birth
7 parents and foster parents, whenever possible, foster parents shall assist in
8 assuring frequent and positive parent-child visitation by providing
9 supervision for visits and transporting children to and from visits, all
10 consistent with the child's case plan.

11 (2) Foster parents shall provide care that is respectful of the child's
12 cultural identity and needs. The Kansas department for children and
13 families shall provide foster parents relevant information on specific
14 religious or cultural practices of the child.

15 (3) Foster parents shall use discipline methods which are consistent
16 with policies, rules and regulations adopted by the Kansas department for
17 children and families and department of health and environment.

18 (e) (1) Upon request by a former foster parent, the department for
19 children and families shall provide general information, if available, on the
20 child's progress if the child is at the time of the request in the custody of
21 the secretary for children and families and provision of such information is
22 agreed to by the child and the child's placement.

23 (2) Recognizing the importance of placement stability to the health
24 and well-being of children, foster parents shall be given 30 days' written
25 notice of any plan to move a child in their care to a different placement in
26 accordance with K.S.A. 2013 Supp. 38-2258, and amendments thereto.

27 (3) Foster parents have the right to be considered, when appropriate,
28 as a placement option when a child who was formerly placed with the
29 foster parents has re-entered the child welfare system.

30 (4) If a foster child becomes free for adoption and the foster parents
31 desire to adopt the child, they shall inform the caseworker in a timely
32 manner. If they do not choose to pursue adoption, foster parents shall make
33 every effort to support and encourage the child's placement in a permanent
34 home, including, but not limited to, providing information on the history
35 and care needs of the child and accommodating transitional visitation.

36 (f) Foster parents shall be informed in advance of all court hearings
37 and reviews pertaining to a child in their care, and shall be informed of
38 their right to attend and participate as allowable by applicable state and
39 federal law. Foster parents have the right to complete the foster parent
40 court report form and submit such form to the court.

41 (g) (1) Foster parents have access to the appeals and grievance
42 processes pursuant to state law and regulations and policies of the Kansas
43 department for children and families and department of health and

1 environment.

2 (2) Foster parents have the right to contact the Kansas department for
3 children and families or department of health and environment regarding
4 any concerns or grievances about management decisions or delivery of
5 service issues.

6 (h) Foster parents shall have access to policies of the Kansas
7 department for children and families which are posted on the agency's
8 website. Foster parents shall have access to rules and regulations regarding
9 their licensure which are posted on the Kansas department of health and
10 environment website. Foster parents shall comply with the licensure
11 requirements and policies of their licensing agency and child placing
12 agency.

13 (i) For the purposes of this section, foster parent means a resource
14 family providing care to children in foster care in a family foster home, as
15 defined in section 2, and amendments thereto.

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

18 New Sec. 2. (a) A family foster home is a child care facility that is a
19 private residence, including any adjacent grounds, in which a licensee
20 provides care for 24 hours a day for one or more children in foster care and
21 for which a license is required under the provisions of K.S.A. 65-501 et
22 seq., and amendments thereto.

23 (b) This section shall be part of and supplemental to article 5 of
24 chapter 65 of the Kansas Statutes Annotated, and amendments thereto.

25 Sec. 3. K.S.A. 2013 Supp. 38-2212 is hereby amended to read as
26 follows: 38-2212. (a) *Principle of appropriate access.* Information
27 contained in confidential agency records concerning a child alleged or
28 adjudicated to be in need of care may be disclosed as provided in this
29 section. Disclosure shall in all cases be guided by the principle of
30 providing access only to persons or entities with a need for information
31 that is directly related to achieving the purposes of this code.

32 (b) *Free exchange of information.* Pursuant to K.S.A. 2013 Supp. 38-
33 2210, and amendments thereto, the secretary and juvenile intake and
34 assessment agencies shall participate in the free exchange of information
35 concerning a child who is alleged or adjudicated to be in need of care.

36 (c) *Necessary access.* The following persons or entities shall have
37 access to information from agency records. Access shall be limited to
38 information reasonably necessary to carry out their lawful responsibilities,
39 to maintain their personal safety and the personal safety of individuals in
40 their care, or to educate, diagnose, treat, care for or protect a child alleged
41 to be in need of care. Information authorized to be disclosed pursuant to
42 this subsection shall not contain information which identifies a reporter of
43 a child who is alleged or adjudicated to be a child in need of care.

- 1 (1) A child named in the report or records, a guardian ad litem
2 appointed for the child and the child's attorney.
- 3 (2) A parent or other person responsible for the welfare of a child, or
4 such person's legal representative.
- 5 (3) A court-appointed special advocate for a child, a citizen review
6 board or other advocate which reports to the court.
- 7 (4) A person licensed to practice the healing arts or mental health
8 profession in order to diagnose, care for, treat or supervise: (A) A child
9 whom such service provider reasonably suspects may be in need of care;
10 (B) a member of the child's family; or (C) a person who allegedly abused
11 or neglected the child.
- 12 (5) A person or entity licensed or registered by the secretary of health
13 and environment or approved by the secretary of ~~social and rehabilitation~~
14 ~~services for children and families~~ to care for, treat or supervise a child in
15 need of care.
- 16 (6) A coroner or medical examiner when such person is determining
17 the cause of death of a child.
- 18 (7) The state child death review board established under K.S.A. 22a-
19 243, and amendments thereto.
- 20 (8) An attorney for a private party who files a petition pursuant to
21 subsection (b) of K.S.A. 2013 Supp. 38-2233, and amendments thereto.
- 22 (9) A foster parent, prospective foster parent, permanent custodian,
23 prospective permanent custodian, adoptive parent or prospective adoptive
24 parent. In order to assist such persons in making an informed decision
25 regarding acceptance of a particular child, to help the family anticipate
26 problems which may occur during the child's placement, and to help the
27 family meet the needs of the child in a constructive manner, the secretary
28 shall seek and shall provide the following information to such person's as
29 the information becomes available to the secretary:
 - 30 (A) Strengths, needs and general behavior of the child;
 - 31 (B) circumstances which necessitated placement;
 - 32 (C) information about the child's family and the child's relationship to
33 the family which may affect the placement;
 - 34 (D) important life experiences and relationships which may affect the
35 child's feelings, behavior, attitudes or adjustment;
 - 36 (E) medical history of the child, including third-party coverage which
37 may be available to the child; and
 - 38 (F) education history, ~~to include~~ *including* present grade placement,
39 special strengths and weaknesses.
- 40 (10) The state protection and advocacy agency as provided by
41 subsection (a)(10) of K.S.A. 65-5603 or subsection (a)(2)(A) and (B) of
42 K.S.A. 74-5515, and amendments thereto.
- 43 (11) Any educational institution to the extent necessary to enable the

1 educational institution to provide the safest possible environment for its
2 pupils and employees.

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

5 (13) Any other federal, state or local government executive branch
6 entity or any agent of such entity, having a need for such information in
7 order to carry out such entity's responsibilities under the law to protect
8 children from abuse and neglect.

9 (d) *Specified access.* The following persons or entities shall have
10 access to information contained in agency records as specified.
11 Information authorized to be disclosed pursuant to this subsection shall not
12 contain information which identifies a reporter of a child who is alleged or
13 adjudicated to be a child in need of care.

14 (1) Information from confidential agency records of the department
15 ~~of social and rehabilitation services for children and families~~, a law
16 enforcement agency or any juvenile intake and assessment worker of a
17 child alleged or adjudicated to be in need of care shall be available to
18 members of the standing house or senate committee on judiciary, house
19 committee on corrections and juvenile justice, house committee on
20 appropriations, senate committee on ways and means, legislative post audit
21 committee and any joint committee with authority to consider children's
22 and families' issues, when carrying out such member's or committee's
23 official functions in accordance with K.S.A. 75-4319, and amendments
24 thereto, in a closed or executive meeting. Except in limited conditions
25 established by $\frac{2}{3}$ of the members of such committee, records and reports
26 received by the committee shall not be further disclosed. Unauthorized
27 disclosure may subject such member to discipline or censure from the
28 house of representatives or senate. The secretary ~~of social and~~
29 ~~rehabilitation services for children and families~~ shall not summarize the
30 outcome of department actions regarding a child alleged to be a child in
31 need of care in information available to members of such committees.

32 (2) The secretary ~~of social and rehabilitation services for children~~
33 ~~and families~~ may summarize the outcome of department actions regarding
34 a child alleged to be a child in need of care to a person having made such
35 report.

36 (3) Information from confidential reports or records of a child alleged
37 or adjudicated to be a child in need of care may be disclosed to the public
38 when:

39 (A) The individuals involved or their representatives have given
40 express written consent; or

41 (B) the investigation of the abuse or neglect of the child or the filing
42 of a petition alleging a child to be in need of care has become public
43 knowledge, provided, however, that the agency shall limit disclosure to

1 confirmation of procedural details relating to the handling of the case by
2 professionals.

3 (e) *Court order.* Notwithstanding the provisions of this section, a
4 court of competent jurisdiction, after in camera inspection, may order
5 disclosure of confidential agency records pursuant to a determination that
6 the disclosure is in the best interests of the child who is the subject of the
7 reports or that the records are necessary for the proceedings of the court
8 and otherwise admissible as evidence. The court shall specify the terms of
9 disclosure and impose appropriate limitations.

10 (f) (1) Notwithstanding any other provision of law to the contrary,
11 except as provided in paragraph (4), in the event that child abuse or
12 neglect results in a child fatality or near fatality, reports or records of a
13 child alleged or adjudicated to be in need of care received by the secretary,
14 a law enforcement agency or any juvenile intake and assessment worker
15 shall become a public record and subject to disclosure pursuant to K.S.A.
16 45-215, and amendments thereto.

17 (2) Within seven days of receipt of a request in accordance with the
18 procedures adopted under K.S.A. 45-220, and amendments thereto, the
19 secretary shall notify any affected individual that an open records request
20 has been made concerning such records. The secretary or any affected
21 individual may file a motion requesting the court to prevent disclosure of
22 such record or report, or any select portion thereof. If the affected
23 individual does not file such motion within seven days of notification, and
24 the secretary has not filed a motion, the secretary shall release the reports
25 or records. If such motion is filed, the court shall consider the effect such
26 disclosure may have upon an ongoing criminal investigation, a pending
27 prosecution, or the privacy of the child, if living, or the child's siblings,
28 parents or guardians. The court shall make written findings on the record
29 justifying the closing of the records and shall provide a copy of the journal
30 entry to the affected parties and the individual requesting disclosure
31 pursuant to the Kansas open records act, K.S.A. 45-215 et seq., and
32 amendments thereto.

33 (3) For reports or records requested pursuant to this subsection, the
34 time limitations specified in this subsection shall control to the extent of
35 any inconsistency between this subsection and K.S.A. 45-218, and
36 amendments thereto. As used in this section, "near fatality" means an act
37 that, as certified by a person licensed to practice medicine and surgery,
38 places the child in serious or critical condition.

39 (4) Nothing in this subsection shall allow the disclosure of reports,
40 records or documents concerning the child and such child's biological
41 parents which were created prior to such child's adoption. Nothing herein
42 is intended to require that an otherwise privileged communication lose its
43 privileged character.

1 Sec. 4. K.S.A. 2013 Supp. 38-2213 is hereby amended to read as
2 follows: 38-2213. (a) *Principle of limited disclosure.* Information
3 contained in confidential law enforcement records concerning a child
4 alleged or adjudicated to be in need of care may be disclosed as provided
5 in this section. Disclosure shall in all cases be guided by the principle of
6 providing access only to persons or entities with a need for information
7 that is directly related to achieving the purposes of this code.

8 (b) *Free exchange of information.* Pursuant to K.S.A. 2013 Supp. 38-
9 2210, and amendments thereto, a law enforcement agency shall participate
10 in the free exchange of information concerning a child who is alleged or
11 adjudicated to be in need of care.

12 (c) *Access to information in law enforcement records.* In order to
13 discharge their official duties, the following persons or entities shall have
14 access to confidential law enforcement records concerning a child alleged
15 or adjudicated to be in need of care.

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

18 (2) The secretary.

19 (3) The commissioner of juvenile justice.

20 (4) Law enforcement officers or county or district attorneys or their
21 staff.

22 (5) Any juvenile intake and assessment worker.

23 (6) Members of a court-appointed multidisciplinary team.

24 (7) Any other federal, state or local government executive branch
25 entity, or any agent of such entity, having a need for such information in
26 order to carry out such entity's responsibilities under law to protect
27 children from abuse and neglect.

28 (8) Persons or entities allowed access pursuant to subsection (f) of
29 K.S.A. 2013 Supp. 38-2212, and amendments thereto.

30 (d) *Necessary access.* The following persons or entities shall have
31 access to information from law enforcement records when reasonably
32 necessary to carry out their lawful responsibilities, to maintain their
33 personal safety and the personal safety of individuals in their care, or to
34 educate, diagnose, treat, care for or protect a child alleged or adjudicated
35 to be in need of care. Information authorized to be disclosed in this
36 subsection shall not contain information which identifies a reporter of a
37 child alleged or adjudicated to be a child in need of care.

38 (1) Any individual, or public or private agency authorized by a
39 properly constituted authority to diagnose, care for, treat or supervise a
40 child who is the subject of a report or record of child abuse or neglect,
41 including physicians, psychiatrists, nurses, nurse practitioners,
42 psychologists, licensed social workers, child development specialists,
43 physician assistants, community mental health workers; and alcohol and

1 drug abuse counselors, and licensed or registered child care providers.

2 (2) School administrators shall have access to but shall not copy law
3 enforcement records and may disclose information to teachers,
4 paraprofessionals and other school personnel as necessary to meet the
5 educational needs of the child or to protect the safety of students and
6 school employees.

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

13 (e) *Legislative access.* Information from law enforcement records of a
14 child alleged or adjudicated to be in need of care shall be available to
15 members of the standing house or senate committee on judiciary, house
16 committee on corrections and juvenile justice, house committee on
17 appropriations, senate committee on ways and means, legislative post audit
18 committee and any joint committee with authority to consider children's
19 and families' issues, when carrying out such member's or committee's
20 official functions in accordance with K.S.A. 75-4319, and amendments
21 thereto, in a closed or executive meeting. Except in limited conditions
22 established by $\frac{2}{3}$ of the members of such committee, records and reports
23 received by the committee shall not be further disclosed. Unauthorized
24 disclosure may subject such member to discipline or censure from the
25 house of representatives or senate.

26 (f) *Court order.* Notwithstanding the provisions of this section, a
27 court of competent jurisdiction, after in camera inspection, may order
28 disclosure of confidential law enforcement records pursuant to a
29 determination that the disclosure is in the best interests of the child who is
30 the subject of the reports or that the records are necessary for the
31 proceedings of the court and otherwise admissible as evidence. The court
32 shall specify the terms of disclosure and impose appropriate limitations.

33 Sec. 5. K.S.A. 2013 Supp. 38-2258 is hereby amended to read as
34 follows: 38-2258. (a) Except as provided in *subsection (d)(2)* of K.S.A.
35 2013 Supp. 38-2258~~(d)(2)~~ and 38-2259, and amendments thereto, if a child
36 has been in the same foster home or shelter facility for ~~six~~ *three* months or
37 longer, or has been placed by the secretary in the home of a parent or
38 relative, the secretary shall give *30 days'* written notice of any plan to
39 move the child to a different placement unless the move is to the selected
40 preadoptive family for the purpose of facilitating adoption. The notice
41 shall be given to: (1) The court having jurisdiction over the child; (2) the
42 petitioner; (3) the attorney for the parents, if any; (4) each parent whose
43 address is available; (5) the foster parent or custodian from whose home or

1 shelter facility it is proposed to remove the child; (6) the child, if 12 or
2 more years of age; (7) the child's guardian ad litem; (8) any other party or
3 interested party; and (9) the child's court appointed special advocate.

4 (b) The notice shall state the placement to which the secretary plans
5 to transfer the child and the reason for the proposed action. The notice
6 shall be mailed by first class mail 30 days in advance of the planned
7 transfer, except that the secretary shall not be required to wait 30 days to
8 transfer the child if all persons enumerated in subsection (a)(2) through (8)
9 consent in writing to the transfer.

10 (c) Within 14 days after receipt of the notice, any person enumerated
11 in subsection (a)(2) through (8) receiving notice as provided above may
12 request, either orally or in writing, that the court conduct a hearing to
13 determine whether or not the change in placement is in the best interests of
14 the child concerned. When the request has been received, the court shall
15 schedule a hearing and immediately notify the secretary of the request and
16 the time and date the matter will be heard. The court shall give notice of
17 the hearing to persons enumerated in subsection (a)(2) through (9). If the
18 court does not receive a request for hearing within the specified time, the
19 change in placement may occur prior to the expiration of the 30 days. The
20 secretary shall not change the placement of the child, except for the
21 purpose of adoption, unless the change is approved by the court.

22 (d) When, after the notice set out above, a child in the custody of the
23 secretary is removed from the home of a parent after having been placed in
24 the home of a parent for a period of six months or longer, the secretary
25 shall request a finding that: (1) (A) The child is likely to sustain harm if
26 not immediately removed from the home;

27 (B) allowing the child to remain in home is contrary to the welfare of
28 the child; or

29 (C) immediate placement of the child is in the best interest of the
30 child; and

31 (2) reasonable efforts have been made to maintain the family unit and
32 prevent the unnecessary removal of the child from the child's home or that
33 an emergency exists which threatens the safety to the child.

34 (e) The secretary shall present to the court in writing the efforts to
35 maintain the family unit and prevent the unnecessary removal of the child
36 from the child's home. In making the findings, the court may rely on
37 documentation submitted by the secretary or may set the date for a hearing
38 on the matter. If the secretary requests such finding, the court, not more
39 than 45 days from the date of the request, shall provide the secretary with a
40 written copy of the findings by the court for the purpose of documenting
41 these orders.

42 Sec. 6. K.S.A. 2013 Supp. 38-2212, 38-2213 and 38-2258 are hereby
43 repealed.

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