

SENATE BILL No. 67

AN ACT relating to children and minors; concerning open records in the event of a child fatality; relating to immediate intervention programs; amending K.S.A. 38-1508 and 38-1635 and K.S.A. 2003 Supp. 38-1507 and repealing the existing sections.

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

Section 1. K.S.A. 2003 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 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 *received by the department of social and rehabilitation services, a law enforcement agency or any juvenile intake and assessment worker* 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. *The secretary of social and rehabilitation services shall not summarize the outcome of department actions regarding a child alleged to be a child in need of care in information available to members of such committees.*

(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.

~~(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.~~

(h) (1) *Notwithstanding any other provision of law to the contrary, except as provided in paragraph (2), in the event that child abuse or neglect results in a child fatality or near fatality, reports or records of a child in need of care received by the department of social and rehabilitation services, a law enforcement agency or any juvenile intake and assessment worker shall become a public record and subject to disclosure pursuant to K.S.A. 45-215, and amendments thereto. Within seven days of receipt of a request in accordance with the procedures adopted under K.S.A. 45-220, and amendments thereto, the secretary shall notify any affected individual that an open records request has been made concerning such records. The secretary or any affected individual may file a motion requesting the court to prevent disclosure of such record or report, or any select portion thereof. If the affected individual does not file such motion within seven days of notification, and the secretary has not filed a motion, the secretary shall release the reports or records. In reviewing such motion, the court shall consider the effect such disclosure may have upon an ongoing criminal investigation, a pending prosecution, or the privacy of the child, if living, or the child's siblings, parents or guardians. Nothing herein is intended to require that an otherwise privileged communication lose its privileged character. If the court grants such motion, the court shall make written findings on the record justifying the closing of the records. For reports or records requested pursuant to this subsection, the time limitations specified in this subsection shall control to the extent of any inconsistency between this subsection and K.S.A. 45-218, and amendments thereto. As used in this section, "near fatality" means an act that, as certified by a person licensed to practice medicine and surgery, places the child in serious or critical condition.*

(2) *Nothing in this subsection shall allow the disclosure of reports, records or documents concerning the child and such child's biological parents which were created prior to such child's adoption.*

(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:

(a) The judge and members of the court staff designated by the judge of the court having the child before it in any proceedings;

(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 K.S.A. 38-1507 and amendments thereto;

(c) the department of social and rehabilitation services;

(d) any individual, or public or private agency authorized by a properly constituted authority to diagnose, care for, treat or supervise a child who is the subject of a report or record of child abuse or neglect and specifically includes the following: Physicians, psychiatrists, nurses, nurse practitioners, psychologists, licensed social workers, child development specialists, physician assistants, community mental health workers, alco-

hol and drug abuse counselors, and licensed or registered child care providers. Teachers, administrators and school paraprofessionals shall have access but shall not copy materials in the file;

(e) law enforcement officers or county or district attorneys or their staff when necessary for the discharge of their official duties in investigating or prosecuting a report of known or suspected child abuse or neglect;

(f) any member 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; ~~and~~

(g) any juvenile intake and assessment worker;

(h) *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 purposes 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*

(i) *as provided in subsection (h) of K.S.A. 38-1507, and amendments thereto.*

Sec. 3. K.S.A. 38-1635 is hereby amended to read as follows: 38-1635. (a) Except as provided in subsection (b), each county or district attorney may adopt a policy and establish guidelines for an immediate intervention program by which a respondent may avoid prosecution as a juvenile offender. In addition to the county or district attorney adopting policies and guidelines for the immediate intervention programs, the court, the county or district attorney and the director of the intake and assessment center, pursuant to a written agreement, may develop local programs to:

(1) Provide for the direct referral of cases by the county or district attorney or the intake and assessment worker, or both, to youth courts, restorative justice centers, citizen review boards, hearing officers, or other local programs as sanctioned by the court.

(2) Allow intake and assessment workers to issue a summons, as defined in subsection (e).

(3) Allow the intake and assessment centers to directly purchase services for the juveniles and the juvenile's family.

(4) Allow intake and assessment workers to direct the release of a juvenile prior to a detention hearing after the completion of the intake and assessment process if the juvenile intake and assessment worker has reason to believe that if released the juvenile will appear for further proceedings and will not be dangerous to self or others.

(b) An immediate intervention program shall provide that a respondent is ineligible for such program if the respondent ~~has been previously adjudicated to be a juvenile offender, or~~ faces pending charges as a juvenile offender, for committing acts which, if committed by an adult, would constitute:

(1) A violation of K.S.A. 8-1567 and amendments thereto and the respondent: (A) Has previously participated in an immediate intervention program instead of prosecution of a complaint alleging a violation of that statute or an ordinance of a city in this state which prohibits the acts prohibited by that statute; (B) has previously been adjudicated of a violation of that statute or a violation of a law of another state or of a political subdivision of this or any other state, which law prohibits the acts prohibited by that statute; or (C) during the time of the alleged violation was involved in a motor vehicle accident or collision resulting in personal injury or death; or

(2) a violation of an off-grid crime, a ~~person felony, or a felony or misdemeanor committed when the respondent was illegally possessing a firearm or using a deadly weapon in the commission of such crime~~ *severity level 1, 2 or 3 felony for nondrug crimes or drug severity level 1 or 2 felony for drug crimes.*

(c) An immediate intervention program may include a stipulation, agreed to by the respondent, the respondent's attorney and the attorney general or county or district attorney, of the facts upon which the charge is based and a provision that if the respondent fails to fulfill the terms of

the specific immediate intervention agreement and the immediate intervention proceedings are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts.

(d) The county or district attorney may require the parent or guardian of a juvenile offender to be a part of the immediate intervention program for the juvenile offender.

(e) “Summons” means a written order issued by an intake and assessment worker directing that a respondent appear before a designated court at a stated time and place and answer to a charge pending against the respondent.

(f) The provisions of this section shall not be applicable in judicial districts that adopt district court rules pursuant to K.S.A. 20-342, and amendments thereto, for the administration of immediate intervention programs by the district court.

Sec. 4. K.S.A. 38-1508 and 38-1635 and K.S.A. 2003 Supp. 38-1507 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

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

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.