

HOUSE BILL No. 2622

By Representative Otto

1-17

9 AN ACT concerning children and minors; relating to children in need of
10 care; amending K.S.A. 38-1585 and K.S.A. 2005 Supp. 38-1505 and
11 38-1507 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 2005 Supp. 38-1505 is hereby amended to read as
15 follows: 38-1505. (a) *Appointment of guardian ad litem; duties.* Upon the
16 filing of a petition the court shall appoint a person who is an attorney to
17 serve as guardian *ad litem* for a child who is the subject of proceedings
18 under this code. The guardian *ad litem* shall make an independent in-
19 vestigation of the facts upon which the petition is based and shall appear
20 for and represent the best interests of the child. When the child's position
21 is not consistent with the determination of the guardian *ad litem* as to the
22 child's best interest, the guardian *ad litem* shall inform the court of the
23 disagreement. The guardian *ad litem* or the child may request the court
24 to appoint a second attorney to serve as attorney for the child, and the
25 court, on good cause shown, may appoint such second attorney. The at-
26 torney for the child shall allow the child and the guardian *ad litem* to
27 communicate with one another but may require such communications to
28 occur in the attorney's presence.

29 (b) *Attorney for parent or custodian.* A parent or custodian of a child
30 alleged or adjudged to be a child in need of care may be represented by
31 an attorney, other than the guardian *ad litem* or a second attorney ap-
32 pointed for the child as provided in subsection (a), in connection with all
33 proceedings under this code, *including the investigation conducted by the*
34 *department.* If at any stage of the *investigation or* proceedings a parent
35 desires but is financially unable to employ an attorney, the court shall
36 appoint an attorney for the parent. It shall not be necessary to appoint
37 an attorney to represent a parent who fails or refuses to attend the hearing
38 after having been properly served with process in accordance with K.S.A.
39 38-1534 and amendments thereto. A parent or custodian who is not a
40 minor, a mentally ill person as defined in K.S.A. 59-2946 and amendments
41 thereto or a disabled person as defined in K.S.A. 77-201 and amendments
42 thereto may waive counsel either in writing or on the record.

43 (c) *Attorney for parent who is a minor, mentally ill or disabled.* The

1 court shall appoint an attorney for a parent who is a minor, a mentally ill
2 person as defined in K.S.A. 59-2946 and amendments thereto or a disa-
3 bled person as defined in K.S.A. 77-201 and amendments thereto, unless
4 the court determines that there is an attorney retained who will appear
5 and represent the interests of the person in the proceedings under this
6 code.

7 (d) *Continuation of representation.* A guardian *ad litem* appointed to
8 represent the best interests of a child or a second attorney appointed for
9 a child as provided in subsection (a), or an attorney appointed for a parent
10 or custodian shall continue to represent the client at all subsequent hear-
11 ings in proceedings under this code, including any appellate proceedings,
12 unless relieved by the court upon a showing of good cause or upon trans-
13 fer of venue.

14 (e) *Fees for counsel.* A guardian *ad litem*, second attorney appointed
15 pursuant to subsection (a) or attorney appointed for parties to proceed-
16 ings under this section shall be allowed a reasonable fee for their services,
17 which may be assessed as an expense in the proceedings as provided in
18 K.S.A. 38-1511 and amendments thereto.

19 Sec. 2. K.S.A. 2005 Supp. 38-1507 is hereby amended to read as
20 follows: 38-1507. (a) *Principle of appropriate access.* Information con-
21 tained in confidential agency records concerning a child alleged or ad-
22 judicated to be in need of care may be disclosed as provided in this
23 section. Disclosure shall in all cases be guided by the principle of provid-
24 ing access only to persons or entities with a need for information that is
25 directly related to achieving the purposes of this code.

26 (b) *Free exchange of information.* Pursuant to K.S.A. 2005 Supp. 38-
27 1505c, and amendments thereto, the secretary, agents of the secretary
28 and juvenile intake and assessment agencies shall participate in the free
29 exchange of information concerning a child who is alleged or adjudicated
30 to be in need of care.

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

39 (1) A child named in the report or records, a guardian *ad litem* ap-
40 pointed for the child and the child's attorney.

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

43 (3) A court-appointed special advocate for a child, a citizen review

- 1 board or other advocate which reports to the court.
- 2 (4) A person licensed to practice the healing arts or mental health
3 profession in order to diagnose, care for, treat or supervise: (A) A child
4 whom such service provider reasonably suspects may be in need of care;
5 (B) a member of the child's family; or (C) a person who allegedly abused
6 or neglected the child.
- 7 (5) A person or entity licensed or registered by the secretary of health
8 and environment or approved by the secretary of social and rehabilitation
9 services to care for, treat or supervise a child in need of care.
- 10 (6) A coroner or medical examiner when such person is determining
11 the cause of death of a child.
- 12 (7) The state child death review board established under K.S.A. 22a-
13 243, and amendments thereto.
- 14 (8) An attorney for a private party who files a petition pursuant to
15 subsection (b) of K.S.A. 38-1529, and amendments thereto.
- 16 (9) A foster parent, prospective foster parent, permanent custodian,
17 prospective permanent custodian, adoptive parent or prospective adop-
18 tive parent. In order to assist such person's in making an informed deci-
19 sion regarding acceptance of a particular child, to help the family antic-
20 ipate problems which may occur during the child's placement, and to
21 help the family meet the needs of the child in a constructive manner, the
22 secretary shall seek and shall provide the following information to such
23 person's as the information becomes available to the secretary:
- 24 (A) Strengths, needs and general behavior of the child;
25 (B) circumstances which necessitated placement;
26 (C) information about the child's family and the child's relationship
27 to the family which may affect the placement;
28 (D) important life experiences and relationships which may affect the
29 child's feelings, behavior, attitudes or adjustment;
30 (E) medical history of the child, including third-party coverage which
31 may be available to the child; and
32 (F) education history, to include present grade placement, special
33 strengths and weaknesses.
- 34 (10) The state protection and advocacy agency as provided by sub-
35 section (a)(10) of K.S.A. 65-5603 or subsection (a)(2)(A) and (B) of K.S.A.
36 74-5515, and amendments thereto.
- 37 (11) Any educational institution to the extent necessary to enable the
38 educational institution to provide the safest possible environment for its
39 pupils and employees.
- 40 (12) Any educator to the extent necessary to enable the educator to
41 protect the personal safety of the educator and the educator's pupils.
- 42 (13) Any other federal, state or local government executive branch
43 entity or any agent of such entity, having a need for such information in

1 order to carry out such entity's responsibilities under the law to protect
2 children from abuse and neglect.

3 (d) *Specified access.* The following persons or entities shall have ac-
4 cess to information contained in agency records as specified. Information
5 authorized to be disclosed pursuant to this subsection shall not contain
6 information which identifies a reporter of a child who is alleged or ad-
7 judicated to be a child in need of care, *except as provided in paragraph*
8 *(4).*

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

27 (2) The secretary of social and rehabilitation services may summarize
28 the outcome of department actions regarding a child alleged to be a child
29 in need of care to a person having made such report.

30 (3) Public disclosure of information from confidential reports or re-
31 cords of a child alleged or adjudicated to be a child in need of care shall
32 be limited to:

33 (A) Confirmation of factual details with respect to how the case was
34 handled, provided, however, that the information does not violate the
35 privacy of the child, or the child's siblings, parents or guardians.

36 (B) Confidential information may be released to the public only with
37 the express written permission of the individuals involved or their
38 representatives.

39 (4) *Confidential information may be released to a parent identifying*
40 *the person or persons who made a report alleging abusive or neglectful*
41 *behavior on the part of that parent toward the child.*

42 (e) *Court order.* Notwithstanding the provisions of this section, a
43 court of competent jurisdiction, after in camera inspection, may order

1 disclosure of confidential agency records pursuant to a determination that
2 the disclosure is in the best interests of the child who is the subject of
3 the reports or that the records are necessary for the proceedings of the
4 court and otherwise admissible as evidence. The court shall specify the
5 terms of disclosure and impose appropriate limitations.

6 (f) (1) Notwithstanding any other provision of law to the contrary,
7 except as provided in paragraph (2), in the event that child abuse or
8 neglect results in a child fatality or near fatality, reports or records of a
9 child in need of care received by the department of social and rehabili-
10 tation services, a law enforcement agency or any juvenile intake and as-
11 sessment worker shall become a public record and subject to disclosure
12 pursuant to K.S.A. 45-215, and amendments thereto. Within seven days
13 of receipt of a request in accordance with the procedures adopted under
14 K.S.A. 45-220, and amendments thereto, the secretary shall notify any
15 affected individual that an open records request has been made concern-
16 ing such records. The secretary or any affected individual may file a mo-
17 tion requesting the court to prevent disclosure of such record or report,
18 or any select portion thereof. If the affected individual does not file such
19 motion within seven days of notification, and the secretary has not filed
20 a motion, the secretary shall release the reports or records. In reviewing
21 such motion, the court shall consider the effect such disclosure may have
22 upon an ongoing criminal investigation, a pending prosecution, or the
23 privacy of the child, if living, or the child's siblings, parents or guardians.
24 Nothing herein is intended to require that an otherwise privileged com-
25 munication lose its privileged character. If the court grants such motion,
26 the court shall make written findings on the record justifying the closing
27 of the records. For reports or records requested pursuant to this subsec-
28 tion, the time limitations specified in this subsection shall control to the
29 extent of any inconsistency between this subsection and K.S.A. 45-218,
30 and amendments thereto. As used in this section, "near fatality" means
31 an act that, as certified by a person licensed to practice medicine and
32 surgery, places the child in serious or critical condition.

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

36 Sec. 3. K.S.A. 38-1585 is hereby amended to read as follows: 38-
37 1585. (a) It is presumed in the manner provided in K.S.A. 60-414, and
38 amendments thereto, that a parent is unfit by reason of conduct or con-
39 dition which renders the parent unable to fully care for a child, if the
40 state establishes by clear and convincing evidence that:

41 (1) A parent has previously been found to be an unfit parent in pro-
42 ceedings under K.S.A. 38-1581 et seq. and amendments thereto, or com-
43 parable proceedings under the laws of another state, or the federal

1 government;

2 (2) a parent has twice before been convicted of a crime specified in
3 article 34, 35, or 36 of chapter 21 of the Kansas Statutes Annotated; or
4 comparable offenses under the laws of another state, the federal govern-
5 ment or any foreign government; or an attempt or attempts to commit
6 such crimes and the victim was under the age of 18 years;

7 (3) *a parent has been convicted of driving under the influence of al-*
8 *cohol or drugs as specified in K.S.A. 8-1567, and amendments thereto, or*
9 *comparable offenses of an ordinance of any city, resolution of any county,*
10 *or law of another state, the federal government or any foreign government,*
11 *with a child under the age of 14 years in the vehicle at the time of the*
12 *offense;*

13 (4) *a parent has been convicted of a crime under K.S.A. 65-4159, 65-*
14 *4160 or 65-4161, and amendments thereto, for conduct related to cocaine,*
15 *under subsection (b)(5) of K.S.A. 65-4107, and amendments thereto, or*
16 *phencyclidine, under subsection (e)(5) of K.S.A. 65-4107, and amend-*
17 *ments thereto;*

18 (5) *a parent has been twice before convicted of a crime under K.S.A.*
19 *65-4159, 65-4160 or 65-4161, and amendments thereto, for conduct re-*
20 *lated to methamphetamine, under subsection (d)(3) of K.S.A. 65-4107,*
21 *and amendments thereto;*

22 (6) *a parent has been convicted of child endangerment under K.S.A.*
23 *21-3608, and amendments thereto;*

24 ~~(3)~~ (7) on two or more prior occasions a child in the physical custody
25 of the parent has been adjudicated a child in need of care as defined by
26 subsection (a)(3) of K.S.A. 38-1502, and amendments thereto;

27 ~~(4)~~ (8) the parent has been convicted of causing the death of another
28 child or stepchild of the parent;

29 ~~(5)~~ (9) the child has been in an out-of-home placement, other than
30 kinship care, under court order for a cumulative total period of one year
31 or longer and the parent has substantially neglected or willfully refused
32 to carry out a reasonable plan, approved by the court, directed toward
33 reintegration of the child into the parental home;

34 ~~(6)~~ (10) (A) the child has been in an out-of-home placement, other
35 than kinship care, under court order for a cumulative total period of two
36 years or longer; (B) the parent has failed to carry out a reasonable plan,
37 approved by the court, directed toward reintegration of the child into the
38 parental home; and (C) there is a substantial probability that the parent
39 will not carry out such plan in the near future;

40 ~~(7)~~ (11) a parent has been convicted of capital murder, K.S.A. 21-
41 3439 and amendments thereto, murder in the first degree, K.S.A. 21-
42 3401 and amendments thereto, murder in the second degree, K.S.A. 21-
43 3402 and amendments thereto or voluntary manslaughter, K.S.A. 21-3403

1 and amendments thereto, or if a juvenile has been adjudicated a juvenile
2 offender because of an act which if committed by an adult would be an
3 offense as provided in this subsection, and the victim of such murder was
4 the other parent of the child; or

5 ~~(9)~~ (12) the parent has been granted immunity from prosecution for
6 abandonment of such child under subsection (b) of K.S.A. 21-3604, and
7 amendments thereto.

8 (b) The burden of proof is on the parent to rebut the presumption.
9 If a parent has been convicted of capital murder, K.S.A. 21-3439 and
10 amendments thereto or murder in the first degree, K.S.A. 21-3401 and
11 amendments thereto as provided in subsection (a)(7), the burden of proof
12 is on the parent to rebut the presumption by clear and convincing evi-
13 dence. In the absence of proof that the parent is presently fit and able to
14 care for the child or that the parent will be fit and able to care for the
15 child in the foreseeable future, the court shall now terminate the parents
16 parental rights in proceedings pursuant to K.S.A. 38-1581 et seq. and
17 amendments thereto.

18 New Sec. 4. Whenever an appeal has been taken from an order,
19 judgment, decree or decision of a district magistrate in a termination of
20 parental rights under K.S.A. 38-1583, and amendments thereto, the dis-
21 trict judge to which the appeal is assigned by the chief judge, without
22 unnecessary delay, shall proceed to hear and determine all issues in the
23 matter de novo and shall allow and may require pleadings to be filed or
24 amended. The right to file new pleadings shall not be abridged by the
25 pleadings filed, or by the failure to file pleadings, in the proceedings
26 before the district magistrate judge; nor shall the trial or the issues to be
27 considered by the district judge be abridged or restricted by any failure
28 to appear or by the evidence introduced, or the absence or insufficiency
29 thereof, in the proceedings before the district magistrate judge.

30 Sec. 5. K.S.A. 38-1585 and K.S.A. 2005 Supp. 38-1505 and 38-1507
31 are hereby repealed.

32 Sec. 6. This act shall take effect and be in force from and after its
33 publication in the statute book.