

## HOUSE BILL No. 2908

By Representatives Sharp and Landwehr

2-13

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AN ACT concerning rights of foster parents; amending K.S.A. 38-1507 and 38-1541 and repealing the existing sections.

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

New Section 1. (a) This section shall be known and may be cited as the foster parents bill of rights.

(b) The goal of this section shall be to: (1) Promote the health and welfare of Kansas' children in need of care by treating foster parents with dignity, respect, trust and consideration as a primary provider of foster care and a member of the professional team caring for children. (2) Preserve Kansas' foster homes by allowing foster parents or such foster parents' advocates to represent the foster parents' interests in any actions taken against the foster care license or which effects such foster parents' ability to care for children in need of care placed in such foster parents' homes.

(c) The department of social and rehabilitation services, department of health and environment and providers under contract with the state to supply care and services to Kansas' children in need of care, hereinafter referred to collectively as the department, shall provide the foster parents with a clear explanation and understanding of the role of the department and the role of the members of the child's birth family in a child's foster care.

(d) Prior to placement of a child in foster care, the department shall inform the foster parents of background and issues relative to the child to be placed in such foster parent's home that may jeopardize the health and safety of the foster family, or alter or effect the manner in which foster care is administered.

(e) The department shall provide a clear, written explanation of the plan concerning the placement of a child in the foster parent's home prior to placement in the foster home. For emergency placements where time does not allow prior preparation of such explanations, the department shall provide such explanation as soon as practicable. This explanation shall include, but is not limited to, all information regarding the child's health, the child's contact with such child's birth family and the child's cultural heritage.

1 (f) Prior to placement, the department shall allow the foster parents  
2 to review all available written information concerning the child and allow  
3 the foster parents to assist in determining if such child would be a proper  
4 placement for the prospective foster family. For emergency placements  
5 where time does not allow prior review of such information, the depart-  
6 ment shall provide information as soon as practicable.

7 (g) The department shall permit the foster parents to refuse place-  
8 ment within their home, or to request, upon reasonable notice to the  
9 department, the removal of a child from their home for any reason, with-  
10 out threat of reprisal.

11 (h) The department shall notify the foster parents, in writing and by  
12 any other means the department may see fit, of all scheduled meetings,  
13 case plans, foster care reviews, service care review meetings and staffing  
14 meetings concerning the foster child. The foster parents shall be permit-  
15 ted to attend and actively participate in any such meetings and in the  
16 planning and decision-making process regarding the child in foster care.

17 (i) The department shall solicit the input of the foster parents con-  
18 cerning the plan of services for the child. Such input shall be considered  
19 in the department's ongoing development of the child's foster care plan.

20 (j) The department shall provide timely, written notification to the  
21 foster parents of changes in the case plan or changes in the placement  
22 pursuant to K.S.A. 38-1565 and 38-1567, and amendment thereto. The  
23 department shall further provide the reason for the change of placement,  
24 except in the instances of emergency change of placement, in which case  
25 the department shall provide the foster parents with written notification  
26 of any change within seven days.

27 (k) The department shall provide the foster parents with all infor-  
28 mation regarding the child, the child's family background and the child's  
29 health history, in a timely manner. On an ongoing basis, the foster parents  
30 shall receive additional or necessary information, that is relative to the  
31 care of the child. Confidential information received by the foster parents  
32 shall be maintained as such by the foster parents, except as necessary to  
33 promote or protect the health and welfare of the child.

34 (l) The department shall inform the foster parents on the mainte-  
35 nance of a permanent record for each child containing all relevant infor-  
36 mation as to the medical, educational and social history of the child. The  
37 department shall make a reasonable effort to ensure that a permanent  
38 record is maintained and travels with the child if the child is moved be-  
39 tween foster care placements. The permanent record shall include but is  
40 not limited to: The child's medical history; the child's family background  
41 and social history; the child's therapeutic and psychiatric history; the  
42 child's educational history; and the names and addresses of any of the  
43 child's service providers.

1 (m) Upon written request by the foster parents detailing a reasonable  
2 need for such information, the department shall provide the foster par-  
3 ents with written authorization to contact and obtain information from  
4 any of the child's past or present care providers or service providers,  
5 including but not limited to, the child's previous foster parents, doctors,  
6 psychiatrists, psychologists or educators. Confidential information re-  
7 ceived by the foster parents shall be maintained as such by the foster  
8 parents, except as necessary to promote or protect the health and welfare  
9 of the child.

10 (n) The department shall provide, upon request by the foster parents,  
11 information regarding the progress of a foster child previously placed in  
12 the foster parents' home after the child has either been moved to another  
13 foster care placement or leaves foster care. Information provided pur-  
14 suant to this subsection shall only be provided from information already  
15 in possession of the department at the time of the request.

16 (o) The department shall notify the foster parents of all court hearings  
17 concerning the foster child. This notification shall include, but is not lim-  
18 ited to, notice of the date and time of the court hearing, the name of the  
19 judge or officer hearing the case, the location of the hearing, the court  
20 docket number of the case and the purpose of the hearing. Such notifi-  
21 cation shall be made upon the department's receiving this information,  
22 or at the same time that notification is issued to the child's birth parents.

23 (p) The department shall consider the foster parents as the possible  
24 first choice adoptive parents or permanent guardian for the foster child,  
25 who after being in the foster parents' home for 12 months, becomes  
26 available for adoption or guardianship. This subsection shall be subject to  
27 the provisions of K.S.A. 38-1584, and amendments thereto, unless adop-  
28 tion by the foster parents is deemed to be in the best interest of the child.

29 (q) The department shall contact the previous foster parents of a  
30 child, who after being released from the foster care system, comes back  
31 into foster care. Contact shall be made first to the foster parents with  
32 whom the child resided for the longest period of time, second, to the  
33 foster parents with whom the child was last placed in foster care, third,  
34 to each and every foster parent with preference being given first to the  
35 duration of the child's stay in the foster home and then to the child's most  
36 recent placement until a previous foster parent accepts continued place-  
37 ment or no placement can be found with a previous foster parent.

38 (r) The department shall give the previous foster parents, determined  
39 by subsection (q), the right to continue foster care of a child who comes  
40 back into foster care, unless the department can document a justified  
41 reason why the previous foster parents should not resume care of the  
42 child. The previous foster parents shall be considered an interested party.

43 (s) The department shall provide the foster parents with a clear ex-

1 planation and understanding of the role of the department in actions  
2 taken against a foster parents' license or ability to care for children in  
3 need of care.

4 (t) Child abuse and neglect investigations involving the foster parents  
5 shall be investigated pursuant to the department's child protective serv-  
6 ices policy, except that the department shall notify the foster parents of  
7 any charges brought against the foster parents within 14 days of the com-  
8 mencement of the department's investigation. The department shall ad-  
9 vise the foster parents as to the results of any such investigation, in a  
10 timely manner.

11 (u) The department shall provide the foster parents written notifi-  
12 cation concerning any meetings, hearings or reviews of the foster parents'  
13 license or ability to care for a foster child currently placed or recently  
14 removed from the foster parents' home.

15 (v) The department shall allow the foster parents who are the subject  
16 of an abuse and neglect investigation to present evidence on the foster  
17 parents behalf or to have an advocate present evidence and testimony on  
18 the accused foster parents behalf at any meetings, hearings or reviews of  
19 the foster parents' license or ability to care for a foster child currently  
20 placed or recently removed from the foster parents' home.

21 (w) After exhausting all administrative remedies, the foster parents  
22 who believe that such foster parents' license was revoked or a foster child  
23 was removed by the department without just cause, may petition the court  
24 in which the foster child's child in need of care case was adjudicated to  
25 review the department's decision. The court shall have the discretion to  
26 review the department's decision and reinstate the foster parents' license  
27 and mandate reinstatement of the placement of the child in the foster  
28 parents' home or both if the court finds that such placement is in the  
29 child's best interest.

30 (x) Upon request, the department shall provide the foster parents  
31 copies of all information relative to the foster parents' family and foster  
32 care services contained in the personal foster home record.

33 Sec. 2. K.S.A. 38-1507 is hereby amended to read as follows: 38-  
34 1507. (a) Except as otherwise provided, in order to protect the privacy of  
35 children who are the subject of a child in need of care record or report,  
36 all records and reports concerning children in need of care, including the  
37 juvenile intake and assessment report, received by the department of  
38 social and rehabilitation services, a law enforcement agency or any juve-  
39 nile intake and assessment worker shall be kept confidential except: (1)  
40 To those persons or entities with a need for information that is directly  
41 related to achieving the purposes of this code, or (2) upon an order of a  
42 court of competent jurisdiction pursuant to a determination by the court  
43 that disclosure of the reports and records is in the best interests of the

1 child or are necessary for the proceedings before the court, or both, and  
2 are otherwise admissible in evidence. Such access shall be limited to in  
3 camera inspection unless the court otherwise issues an order specifying  
4 the terms of disclosure.

5 (b) The provisions of subsection (a) shall not prevent disclosure of  
6 information to an educational institution or to individual educators about  
7 a pupil specified in subsection (a) of K.S.A. ~~2000~~ 2001 Supp. 72-89b03  
8 and amendments thereto.

9 (c) When a report is received by the department of social and reha-  
10 bilitation services, a law enforcement agency or any juvenile intake and  
11 assessment worker which indicates a child may be in need of care, the  
12 following persons and entities shall have a free exchange of information  
13 between and among them:

- 14 (1) The department of social and rehabilitation services;
- 15 (2) the commissioner of juvenile justice;
- 16 (3) the law enforcement agency receiving such report;
- 17 (4) members of a court appointed multidisciplinary team;
- 18 (5) an entity mandated by federal law or an agency of any state au-  
19 thorized to receive and investigate reports of a child known or suspected  
20 to be in need of care;
- 21 (6) a military enclave or Indian tribal organization authorized to re-  
22 ceive and investigate reports of a child known or suspected to be in need  
23 of care;
- 24 (7) a county or district attorney;
- 25 (8) a court services officer who has taken a child into custody pursuant  
26 to K.S.A. 38-1527, and amendments thereto;
- 27 (9) a guardian ad litem appointed for a child alleged to be in need of  
28 care;
- 29 (10) an intake and assessment worker;
- 30 (11) any community corrections program which has the child under  
31 court ordered supervision;
- 32 (12) the department of health and environment or persons authorized  
33 by the department of health and environment pursuant to K.S.A. ~~50-512~~  
34 ~~[65-512]~~ 65-512, and amendments thereto, for the purpose of carrying  
35 out responsibilities relating to licensure or registration of child care pro-  
36 viders as required by chapter 65 of article 5 of the Kansas Statutes An-  
37 notated, and amendments thereto; and
- 38 (13) members of a duly appointed community services team.

39 (d) The following persons or entities shall have access to information,  
40 records or reports received by the department of social and rehabilitation  
41 services, a law enforcement agency or any juvenile intake and assessment  
42 worker. Access shall be limited to information reasonably necessary to  
43 carry out their lawful responsibilities to maintain their personal safety and

1 the personal safety of individuals in their care or to diagnose, treat, care  
2 for or protect a child alleged to be in need of care.

3 (1) A child named in the report or records.

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

6 (3) A court-appointed special advocate for a child, a citizen review  
7 board or other advocate which reports to the court.

8 (4) A person licensed to practice the healing arts or mental health  
9 profession in order to diagnose, care for, treat or supervise: (A) A child  
10 whom such service provider reasonably suspects may be in need of care;  
11 (B) a member of the child's family; or (C) a person who allegedly abused  
12 or neglected the child.

13 (5) A person or entity licensed or registered by the secretary of health  
14 and environment or approved by the secretary of social and rehabilitation  
15 services to care for, treat or supervise a child in need of care. In order to  
16 assist a child placed for care by the secretary of social and rehabilitation  
17 services in a foster home or child care facility, the secretary shall provide  
18 relevant information to the foster parents or child care facility prior to  
19 placement and as such information becomes available to the secretary.

20 (6) A coroner or medical examiner when such person is determining  
21 the cause of death of a child.

22 (7) The state child death review board established under K.S.A. 22a-  
23 243, and amendments thereto.

24 (8) A prospective adoptive parent prior to placing a child in their care.

25 (9) The department of health and environment or person authorized  
26 by the department of health and environment pursuant to K.S.A. ~~50-512~~  
27 ~~[65-512]~~ 65-512, and amendments thereto, for the purpose of carrying  
28 out responsibilities relating to licensure or registration of child care pro-  
29 viders as required by chapter 65 of article 5 of the Kansas Statutes An-  
30 notated, and amendments thereto.

31 (10) The state protection and advocacy agency as provided by sub-  
32 section (a)(10) of K.S.A. 65-5603 or subsection (a)(2)(A) and (B) of K.S.A.  
33 74-5515, and amendments thereto.

34 (11) Any educational institution to the extent necessary to enable the  
35 educational institution to provide the safest possible environment for its  
36 pupils and employees.

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

39 (13) The secretary of social and rehabilitation services.

40 (14) A law enforcement agency.

41 (15) A juvenile intake and assessment worker.

42 (16) The commissioner of juvenile justice.

43 (e) Information from a record or report of a child in need of care

1 shall be available to members of the standing house or senate committee  
2 on judiciary, house committee on appropriations, senate committee on  
3 ways and means, legislative post audit committee and joint committee on  
4 children and families, carrying out such member's or committee's official  
5 functions in accordance with K.S.A. 75-4319 and amendments thereto,  
6 in a closed or executive meeting. Except in limited conditions established  
7 by  $\frac{2}{3}$  of the members of such committee, records and reports received  
8 by the committee shall not be further disclosed. Unauthorized disclosure  
9 may subject such member to discipline or censure from the house of  
10 representatives or senate.

11 (f) Nothing in this section shall be interpreted to prohibit the secre-  
12 tary of social and rehabilitation services from summarizing the outcome  
13 of department actions regarding a child alleged to be a child in need of  
14 care to a person having made such report.

15 (g) Disclosure of information from reports or records of a child in  
16 need of care to the public shall be limited to confirmation of factual details  
17 with respect to how the case was handled that do not violate the privacy  
18 of the child, if living, or the child's siblings, parents or guardians. Further,  
19 confidential information may be released to the public only with the ex-  
20 press written permission of the individuals involved or their representa-  
21 tives or upon order of the court having jurisdiction upon a finding by the  
22 court that public disclosure of information in the records or reports is  
23 necessary for the resolution of an issue before the court.

24 (h) Nothing in this section shall be interpreted to prohibit a court of  
25 competent jurisdiction from making an order disclosing the findings or  
26 information pursuant to a report of alleged or suspected child abuse or  
27 neglect which has resulted in a child fatality or near fatality if the court  
28 determines such disclosure is necessary to a legitimate state purpose. In  
29 making such order, the court shall give due consideration to the privacy  
30 of the child, if, living, or the child's siblings, parents or guardians.

31 (i) Information authorized to be disclosed in subsections (d) through  
32 (g) shall not contain information which identifies a reporter of a child in  
33 need of care.

34 (j) Records or reports authorized to be disclosed in this section shall  
35 not be further disclosed, except that the provisions of this subsection shall  
36 not prevent disclosure of information to an educational institution or to  
37 individual educators about a pupil specified in subsection (a) of K.S.A.  
38 ~~2000~~ 2001 Supp. 72-89b03 and amendments thereto.

39 (k) Anyone who participates in providing or receiving information  
40 without malice under the provisions of this section shall have immunity  
41 from any civil liability that might otherwise be incurred or imposed. Any  
42 such participant shall have the same immunity with respect to participa-  
43 tion in any judicial proceedings resulting from providing or receiving

1 information.

2 (l) No individual, association, partnership, corporation or other entity  
3 shall willfully or knowingly disclose, permit or encourage disclosure of  
4 the contents of records or reports concerning a child in need of care  
5 received by the department of social and rehabilitation services, a law  
6 enforcement agency or a juvenile intake and assessment worker except  
7 as provided by this code. Violation of this subsection is a class B  
8 misdemeanor.

9 Sec. 3. K.S.A. 38-1541 is hereby amended to read as follows: 38-  
10 1541. (a) Upon motion of any person with whom the child has been  
11 residing or who is within the fourth degree of relationship to the child  
12 and who desires to have standing to participate in the proceedings re-  
13 garding the child, the court may order that the person may participate in  
14 the proceedings. Upon the filing of the motion, the court may send to  
15 the department of social and rehabilitation services a copy of the motion.  
16 Upon its receipt, the department shall make an investigation of the ad-  
17 visability of the matter and report its findings and recommendations to  
18 the court. In determining whether to enter the order, the court shall take  
19 into consideration the length of time the child has resided with the per-  
20 son, the nature of the custody, the relationship between the child and the  
21 person and the degree to which the person has been standing in the place  
22 of or assumed the obligations of the child's parent. The status as an in-  
23 terested party granted pursuant to this ~~section~~ subsection may be termi-  
24 nated at any time by order of the court.

25 (b) *A foster parent or foster parents of the child shall be considered*  
26 *interested parties. The status as an interested party pursuant to this sub-*  
27 *section may not be terminated at any time by the court.*

28 Sec. 4. K.S.A. 38-1507 and 38-1541 are hereby repealed.

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

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