

HOUSE BILL No. 2015

AN ACT concerning juvenile offenders; relating to the Kansas juvenile justice code; relating to modification of sentence; also relating to confidential information of a treatment facility patient; relating to information given to the juvenile justice authority; amending K.S.A. 38-1609, 38-1665 and 65-5603 and repealing the existing sections.

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

Section 1. K.S.A. 38-1665 is hereby amended to read as follows: 38-1665. (a) When a juvenile offender has been placed in a youth residential facility or in the custody of a person other than a parent, the court may cause the juvenile offender to be brought before it, together with the person or persons in whose custody the juvenile offender may be. If it appears that a continuance of the custody or placement is not in the best interests of the juvenile offender, the court may rescind and set aside the order giving custody and make a further order for the custody of the juvenile offender as is appropriate, except that a child support order which has been registered under K.S.A. 38-16,119 and amendments thereto may only be modified pursuant to K.S.A. 38-16,119 and amendments thereto.

(b) At any time after the entry of an order awarding custody of a juvenile offender to a person other than a parent, the court on its own motion, or the commissioner, the attorney for the juvenile offender or any party or parent may file a motion with the court for a rehearing on the issue of custody. Upon receipt of the motion, the court shall fix a time and place for hearing and shall notify each party of the time and place. After the hearing, the court may enter any sentence, except that a child support order which has been registered under K.S.A. 38-16,119 and amendments thereto may only be modified pursuant to K.S.A. 38-16,119 and amendments thereto. If the court determines that it is in the best interests of the juvenile offender to be returned to the custody of the parent or parents, the court shall so order.

(c) Any time within 60 days after a court has committed a juvenile offender to a juvenile correctional facility the court may modify the sentence and enter any other sentence, except that a child support order which has been registered under K.S.A. 38-16,119 and amendments thereto may only be modified pursuant to K.S.A. 38-16,119 and amendments thereto.

(d) *Any time after a court has committed a juvenile offender to a juvenile correctional facility, the court may, upon motion by the commissioner, modify the sentence and enter any other sentence based on the medical condition of the juvenile.*

Sec. 2. K.S.A. 38-1609 is hereby amended to read as follows: 38-1609. (a) The diagnostic, treatment or medical records, *including records subject to K.S.A. 65-5601 to 65-5605, and amendments thereto*, of any juvenile offender shall be privileged and shall not be disclosed except:

(1) Upon the written consent of the former juvenile or, if the juvenile offender is under 18 years of age, by the parent of the juvenile;

(2) upon a determination by the head of the treatment facility *or state hospital*, who has the records, that disclosure is necessary for the further treatment of the juvenile offender;

(3) when any court having jurisdiction of the juvenile offender orders disclosure;

(4) when authorized by K.S.A. 38-1614 and amendments thereto;

(5) when requested orally or in writing by any attorney representing the juvenile offender, but the records shall not be further disclosed by the attorney unless approved by the court or presented as admissible evidence; or

(6) upon a written request of a juvenile intake and assessment worker in regard to an alleged juvenile offender when the information is needed for screening and assessment purposes or placement decisions, but the records shall not be further disclosed by the worker unless approved by the court.

(b) Willful violation of this section is a class C misdemeanor.

(c) Nothing in this section shall operate to extinguish any right of a juvenile offender established by attorney-client, physician-patient, psychologist-client or social worker-client privileges.

(d) Relevant information, reports and records shall be made available to the department of corrections upon request and a showing that the

former juvenile has been convicted of a crime and placed in the custody of the secretary of the department of corrections.

Sec. 3. K.S.A. 65-5603 is hereby amended to read as follows: 65-5603. (a) The privilege established by K.S.A. 65-5602 and amendments thereto shall not extend to:

(1) Any communication relevant to an issue in proceedings to involuntarily commit to treatment a patient for mental illness, alcoholism or drug dependency if the treatment personnel in the course of diagnosis or treatment has determined that the patient is in need of hospitalization;

(2) an order for examination of the mental, alcoholic, drug dependency or emotional condition of the patient which is entered by a judge, with respect to the particular purpose for which the examination is ordered;

(3) any proceeding in which the patient relies upon any of the aforementioned conditions as an element of the patient's claim or defense, or, after the patient's death, in any proceeding in which any party relies upon any of the patient's conditions as an element of a claim or defense;

(4) any communication which forms the substance of information which the treatment personnel or the patient is required by law to report to a public official or to be recorded in a public office, unless the statute requiring the report or record specifically provides that the information shall not be disclosed;

(5) any information necessary for the emergency treatment of a patient or former patient if the head of the treatment facility at which the patient is being treated or was treated states in writing the reasons for disclosure of the communication and makes such statement a part of the treatment or medical record of the patient;

(6) information relevant to protect a person who has been threatened with substantial physical harm by a patient during the course of treatment, when such person has been specifically identified by the patient, the treatment personnel believes there is substantial likelihood that the patient will act on such threat in the reasonable foreseeable future and the head of the treatment facility has concluded that notification should be given. The patient shall be notified that such information has been communicated;

(7) any information from a state psychiatric hospital to appropriate administrative staff of the department of corrections whenever patients have been administratively transferred to a state psychiatric hospital pursuant to the provisions of K.S.A. 75-5209 and amendments thereto;

(8) any information to the patient or former patient, except that the head of the treatment facility at which the patient is being treated or was treated may refuse to disclose portions of such records if the head of the treatment facility states in writing that such disclosure will be injurious to the welfare of the patient or former patient;

(9) any information to any state or national accreditation, certification or licensing authority, or scholarly investigator, but the head of the treatment facility shall require, before such disclosure is made, a pledge that the name of any patient or former patient shall not be disclosed to any person not otherwise authorized by law to receive such information;

(10) any information to Kansas advocacy and protective services, inc. which concerns individuals who reside in a treatment facility and which is required by federal law and federal rules and regulations to be available pursuant to a federal grant-in-aid program;

(11) any information relevant to the collection of a bill for professional services rendered by a treatment facility; or

(12) any information sought by a coroner serving under the laws of Kansas when such information is material to an investigation or proceeding conducted by the coroner in the performance of such coroner's official duties. Information obtained by a coroner under this provision shall be used for official purposes only and shall not be made public unless admitted as evidence by a court or for purposes of performing the coroner's statutory duties;

(13) any communication and information between or among treatment facilities regarding a proposed patient, patient or former patient for purposes of promoting continuity of care between the state psychiatric hospitals and the community mental health centers; the proposed patient, patient, or former patient's consent shall not be necessary to share eval-

uation and treatment records between or among treatment facilities regarding a proposed patient, patient or former patient; as used in this paragraph (13), “proposed patient” and “patient” shall have the meanings respectively ascribed thereto in K.S.A. 2002 Supp. 59-2946 and amendments thereto; ~~or~~

(14) the name, date of birth, date of death, name of any next of kin and place of residence of a deceased former patient when that information is sought as part of a genealogical study; *or*

(15) *any information concerning a patient or former patient who is a juvenile offender in the custody of the juvenile justice authority when the commissioner of juvenile justice, or the commissioner’s designee, requests such information.*

(b) The treatment personnel shall not disclose any information subject to subsection (a)(3) unless a judge has entered an order finding that the patient has made such patient’s condition an issue of the patient’s claim or defense. The order shall indicate the parties to whom otherwise confidential information must be disclosed.

Sec. 4. K.S.A. 38-1609, 38-1665 and 65-5603 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 HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.