

SENATE Substitute for HOUSE BILL No. 2602

By Committee on Judiciary

3-24

9 AN ACT concerning children and minors; pertaining to death or injury
10 under certain circumstances; amending K.S.A. 22a-243 and 38-1508
11 and K.S.A. 2003 Supp. 38-1507 and repealing the existing sections.
12

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

14 New Section 1. (a) Notwithstanding any other provision of law, the
15 following type of case shall be referred to the state child death review
16 board by the department of social and rehabilitation services within 30
17 days of the injury or death of the child as a result of child abuse or neglect:
18 on or after January 1, 2001, whenever child abuse or neglect contributed
19 to, or is suspected to have contributed to, a child's death or near fatality
20 and such child is a ward of the state or had been a ward of the state within
21 three years prior to the child's death or near fatality.

22 (b) For the purposes of this section, "near fatality" means any injury
23 which results in a critical or serious medical condition as certified by a
24 person licensed by the state board of healing arts to practice medicine
25 and surgery.

26 (c) (1) For each case referred to the child death review board pur-
27 suant to subsection (a), the state child death review board shall collect
28 from any state agency or any contractor thereof any and all of the follow-
29 ing records or documents:

30 (A) Adoption records, including investigative notes, if any; and

31 (B) any child in need of care records, if any.

32 (2) It shall be the duty of each state agency and any contractor thereof
33 to cooperate with and provide any requested records and documents,
34 including investigative notes, to the state child death review board within
35 the time period set by the board.

36 (3) All records and documents, including investigative notes received
37 by the state child death review board pursuant to this subsection shall
38 remain confidential to the extent allowed by law during the pendency of
39 the board's investigation.

40 (d) (1) Except as provided in paragraph (2), within 60 days after the
41 date any case is referred to the state child death review board, the board
42 shall issue a report, approved by the board, concerning the case. The
43 report shall contain the following:

1 (A) Specific findings regarding the cause or causes of death or injury
2 to the child, including the extent to which child abuse or neglect contrib-
3 uted to such death or injury;

4 (B) specific findings and recommendations regarding whether such
5 death or injury to the child could have been prevented;

6 (C) what policies and procedures, rules and regulations and actions
7 or failure to act, by any state agency or agent or employee or any con-
8 tractor of the state contributed to the death or injury to the child; and

9 (D) what changes to public policy should be enacted to prevent any
10 similar death or injury to a child in the future.

11 (2) The state child death review board may delay the public release
12 of any report upon the request of a law enforcement agency or a prose-
13 cuting attorney, as such term is defined in K.S.A. 22-2202, and amend-
14 ments thereto, when the board, in a public meeting, makes a specific
15 finding the release of such report would compromise an ongoing criminal
16 investigation or prosecution.

17 (e) Any party may bring suit in a district court to obtain an order
18 preventing the disclosure of any or all records pertaining to a particular
19 case referred to the state child death review board pursuant to subsection
20 (a). The court shall interpret this section liberally to aid disclosure of such
21 records; however the court may enter such orders as the court deems
22 appropriate to protect the identity of or prevent the release of the name
23 of any person or party whose action or inaction has been found by a court
24 of competent jurisdiction or the state child death review board not to
25 have contributed to the death or injury of the child.

26 Sec. 2. K.S.A. 22a-243 is hereby amended to read as follows: 22a-
27 243. (a) There is hereby established a state child death review board,
28 which shall be composed of:

29 (1) One member appointed by each of the following officers to rep-
30 resent the officer's agency: The attorney general, the director of the Kan-
31 sas bureau of investigation, the secretary of social and rehabilitation serv-
32 ices, the secretary of health and environment and the commissioner of
33 education;

34 (2) three members appointed by the state board of healing arts, one
35 of whom shall be a district coroner and two of whom shall be physicians
36 licensed to practice medicine and surgery, one specializing in pathology
37 and the other specializing in pediatrics;

38 (3) one person appointed by the attorney general to represent ad-
39 vocacy groups which focus attention on child abuse awareness and pre-
40 vention; and

41 (4) one county or district attorney appointed by the Kansas county
42 and district attorneys association.

43 (b) The chairperson of the state review board shall be the member

1 appointed by the attorney general to represent the office of the attorney
2 general.

3 (c) The state child death review board shall be within the office of
4 the attorney general as a part thereof. All budgeting, purchasing and re-
5 lated management functions of the board shall be administered under the
6 direction and supervision of the attorney general. All vouchers for ex-
7 penditures and all payrolls of the board shall be approved by the chair-
8 person of the board and by the attorney general. The state review board
9 shall establish and maintain an office in Topeka.

10 (d) The state review board shall meet at least annually to review all
11 reports submitted to the board. The chairperson of the state review board
12 may call a special meeting of the board at any time to review any report
13 of a child death.

14 (e) Within the limits of appropriations therefor, the state review
15 board shall appoint an executive director who shall be in the unclassified
16 service of the Kansas civil service act and shall receive an annual salary
17 fixed by the state review board.

18 (f) Within the limits of appropriations therefor, the state review board
19 may employ other persons who shall be in the classified service of the
20 Kansas civil service act.

21 (g) Members of the state review board shall not receive compensa-
22 tion, subsistence allowances, mileage and expenses as provided by K.S.A.
23 75-3223 and amendments thereto for attending meetings or subcommit-
24 tee meetings of the board.

25 (h) The state review board shall develop a protocol to be used by the
26 state review board. The protocol shall include written guidelines for cor-
27 oners to use in identifying any suspicious deaths, procedures to be used
28 by the board in investigating child deaths, methods to ensure coordination
29 and cooperation among all agencies involved in child deaths and proce-
30 dures for facilitating prosecution of perpetrators when it appears the
31 cause of a child's death was from abuse or neglect. The protocol shall be
32 adopted by the state review board by rules and regulations.

33 (i) The state review board shall submit an annual report to the gov-
34 ernor and the legislature on or before October 1 of each year, com-
35 mencing October 1993. Such report shall include the findings of the
36 board regarding reports of child deaths, the board's analysis and the
37 board's recommendations for improving child protection, including rec-
38 ommendations for modifying statutes, rules and regulations, policies and
39 procedures.

40 (j) *Except as provided in section 1, and amendments thereto*, infor-
41 mation acquired by, and records of, the state review board shall be con-
42 fidential, shall not be disclosed and shall not be subject to subpoena,
43 discovery or introduction into evidence in any civil or criminal proceeding,

1 except that such information and records may be disclosed to any member
2 of the legislature or any legislative committee which has legislative re-
3 sponsibility of the enabling or appropriating legislation, carrying out such
4 member's or committee's official functions. The legislative committee, in
5 accordance with K.S.A. 75-4319 and amendments thereto, shall recess
6 for a closed or executive meeting to receive and discuss information re-
7 ceived by the committee pursuant to this subsection.

8 (k) The state review board may adopt rules and regulations as nec-
9 essary to carry out the provisions of K.S.A. 22a-241 through 22a-244 and
10 amendments thereto.

11 Sec. 3. K.S.A. 2003 Supp. 38-1507 is hereby amended to read as
12 follows: 38-1507. (a) Except as otherwise provided *by law*, in order to
13 protect the privacy of children who are the subject of a child in need of
14 care record or report, all records and reports concerning children in need
15 of care, including the juvenile intake and assessment report, received by
16 the department of social and rehabilitation services, a law enforcement
17 agency or any juvenile intake and assessment worker shall be kept con-
18 fidential except: (1) To those persons or entities with a need for infor-
19 mation that is directly related to achieving the purposes of this code, ~~or~~
20 (2) *the child death review board in accordance with section 1, and amend-*
21 *ments thereto, or* (3) upon an order of a court of competent jurisdiction
22 pursuant to a determination by the court that disclosure of the reports
23 and records is in the best interests of the child or are necessary for the
24 proceedings before the court, or both, and are otherwise admissible in
25 evidence. Such access shall be limited to in camera inspection unless the
26 court otherwise issues an order specifying the terms of disclosure.

27 (b) The provisions of subsection (a) shall not prevent disclosure of
28 information to an educational institution or to individual educators about
29 a pupil specified in subsection (a) of K.S.A. 72-89b03 and amendments
30 thereto.

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

- 36 (1) The department of social and rehabilitation services;
- 37 (2) the commissioner of juvenile justice;
- 38 (3) the law enforcement agency receiving such report;
- 39 (4) members of a court appointed multidisciplinary team;
- 40 (5) an entity mandated by federal law or an agency of any state au-
41 thorized to receive and investigate reports of a child known or suspected
42 to be in need of care;
- 43 (6) a military enclave or Indian tribal organization authorized to re-

- 1 ceive and investigate reports of a child known or suspected to be in need
2 of care;
- 3 (7) a county or district attorney;
- 4 (8) a court services officer who has taken a child into custody pursuant
5 to K.S.A. 38-1527, and amendments thereto;
- 6 (9) a guardian ad litem appointed for a child alleged to be in need of
7 care;
- 8 (10) an intake and assessment worker;
- 9 (11) any community corrections program which has the child under
10 court ordered supervision;
- 11 (12) the department of health and environment or persons authorized
12 by the department of health and environment pursuant to K.S.A. 65-512,
13 and amendments thereto, for the purpose of carrying out responsibilities
14 relating to licensure or registration of child care providers as required by
15 article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments
16 thereto; and
- 17 (13) members of a duly appointed community services team.
- 18 (d) The following persons or entities shall have access to information,
19 records or reports received by the department of social and rehabilitation
20 services, a law enforcement agency or any juvenile intake and assessment
21 worker. Access shall be limited to information reasonably necessary to
22 carry out their lawful responsibilities to maintain their personal safety and
23 the personal safety of individuals in their care or to diagnose, treat, care
24 for or protect a child alleged to be in need of care.
- 25 (1) A child named in the report or records.
- 26 (2) A parent or other person responsible for the welfare of a child,
27 or such person's legal representative.
- 28 (3) A court-appointed special advocate for a child, a citizen review
29 board or other advocate which reports to the court.
- 30 (4) A person licensed to practice the healing arts or mental health
31 profession in order to diagnose, care for, treat or supervise: (A) A child
32 whom such service provider reasonably suspects may be in need of care;
33 (B) a member of the child's family; or (C) a person who allegedly abused
34 or neglected the child.
- 35 (5) A person or entity licensed or registered by the secretary of health
36 and environment or approved by the secretary of social and rehabilitation
37 services to care for, treat or supervise a child in need of care. In order to
38 assist a child placed for care by the secretary of social and rehabilitation
39 services in a foster home or child care facility, the secretary shall provide
40 relevant information to the foster parents or child care facility prior to
41 placement and as such information becomes available to the secretary.
- 42 (6) A coroner or medical examiner when such person is determining
43 the cause of death of a child.

- 1 (7) The state child death review board established under K.S.A. 22a-
2 243, and amendments thereto.
- 3 (8) A prospective adoptive parent prior to placing a child in their care.
- 4 (9) The department of health and environment or person authorized
5 by the department of health and environment pursuant to K.S.A. 65-512,
6 and amendments thereto, for the purpose of carrying out responsibilities
7 relating to licensure or registration of child care providers as required by
8 article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments
9 thereto.
- 10 (10) The state protection and advocacy agency as provided by sub-
11 section (a)(10) of K.S.A. 65-5603 or subsection (a)(2)(A) and (B) of K.S.A.
12 74-5515, and amendments thereto.
- 13 (11) Any educational institution to the extent necessary to enable the
14 educational institution to provide the safest possible environment for its
15 pupils and employees.
- 16 (12) Any educator to the extent necessary to enable the educator to
17 protect the personal safety of the educator and the educator's pupils.
- 18 (13) The secretary of social and rehabilitation services.
- 19 (14) A law enforcement agency.
- 20 (15) A juvenile intake and assessment worker.
- 21 (16) The commissioner of juvenile justice.
- 22 (e) Information from a record or report of a child in need of care
23 shall be available to members of the standing house or senate committee
24 on judiciary, house committee on appropriations, senate committee on
25 ways and means, legislative post audit committee and joint committee on
26 children and families, carrying out such member's or committee's official
27 functions in accordance with K.S.A. 75-4319 and amendments thereto,
28 in a closed or executive meeting. Except in limited conditions established
29 by $\frac{2}{3}$ of the members of such committee, records and reports received
30 by the committee shall not be further disclosed. Unauthorized disclosure
31 may subject such member to discipline or censure from the house of
32 representatives or senate.
- 33 (f) Nothing in this section shall be interpreted to prohibit the secre-
34 tary of social and rehabilitation services from summarizing the outcome
35 of department actions regarding a child alleged to be a child in need of
36 care to a person having made such report.
- 37 (g) *Except as provided in section 1, and amendments thereto*, disclo-
38 sure of information from reports or records of a child in need of care to
39 the public shall be limited to confirmation of factual details with respect
40 to how the case was handled that do not violate the privacy of the child,
41 if living, or the child's siblings, parents or guardians. Further, confidential
42 information may be released to the public only with the express written
43 permission of the individuals involved or their representatives or upon

1 order of the court having jurisdiction upon a finding by the court that
2 public disclosure of information in the records or reports is necessary for
3 the resolution of an issue before the court.

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

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

14 (j) *Except as provided in section 1, and amendments thereto*, records
15 or reports authorized to be disclosed in this section shall not be further
16 disclosed, except that the provisions of this subsection shall not prevent
17 disclosure of information to an educational institution or to individual
18 educators about a pupil specified in subsection (a) of K.S.A. 72-89b03
19 and amendments thereto.

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

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

33 Sec. 4. K.S.A. 38-1508 is hereby amended to read as follows: 38-
34 1508. All records and reports concerning child abuse or neglect received
35 by law enforcement agencies shall be kept separate from all other records
36 and shall not be disclosed to anyone except:

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

39 (b) the guardian *ad litem* and the parties to the proceedings and their
40 attorneys, subject to the restrictions imposed by subsection (a)(2)(C) of
41 K.S.A. 38-1507 and amendments thereto;

42 (c) the department of social and rehabilitation services;

43 (d) any individual, or public or private agency authorized by a prop-

1 erly constituted authority to diagnose, care for, treat or supervise a child
2 who is the subject of a report or record of child abuse or neglect and
3 specifically includes the following: Physicians, psychiatrists, nurses, nurse
4 practitioners, psychologists, licensed social workers, child development
5 specialists, physician assistants, community mental health workers, alco-
6 hol and drug abuse counselors, and licensed or registered child care pro-
7 viders. Teachers, administrators and school paraprofessionals shall have
8 access but shall not copy materials in the file;

9 (e) law enforcement officers or county or district attorneys or their
10 staff when necessary for the discharge of their official duties in investi-
11 gating or prosecuting a report of known or suspected child abuse or
12 neglect;

13 (f) any member of the standing house or senate committee on judi-
14 ciary, house committee on appropriations, senate committee on ways and
15 means, legislative post audit committee and joint committee on children
16 and families, carrying out such member's or committee's official func-
17 tions; ~~and~~

18 (g) any juvenile intake and assessment worker; *and*

19 (h) *the state child death review board in accordance with section 1,*
20 *and amendments thereto.*

21 Sec. 5. K.S.A. 22a-243 and 38-1508 and K.S.A. 2003 Supp. 38-1507
22 are hereby repealed.

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