

**REPORT OF THE JUDICIAL COUNCIL
JUVENILE OFFENDER/CHILD IN NEED OF CARE ADVISORY COMMITTEE
ON 2007 HB 2527**

November 19, 2008

In June, 2008, Rep. Mike O'Neal, Chair of the House Judiciary Committee, requested that the Judicial Council review and make recommendations on 2007 HB 2527 concerning access to records in child in need of care cases. The Kansas Judicial Council assigned the study to the Juvenile Offender/Child in Need of Care Advisory Committee (hereinafter "the Committee").

COMMITTEE MEMBERSHIP

The members of the Committee taking part in this study are as follows:

Honorable Jean F. Shepherd, Chair, Lawrence. Judge Shepherd is a district judge, a member of the Judicial Council and handles juvenile matters in Douglas County.

Wade H. Bowie, Jr., Topeka. Mr. Bowie is an assistant district attorney in Douglas County who works exclusively in the juvenile area.

Kathryn Carter, Concordia. Ms. Carter is a practicing attorney and former district magistrate judge.

Ann Henderson, Olathe. Ms. Henderson is an attorney with K.V.C. Inc., an S.R.S. contractor.

Honorable Timothy H. Henderson, Wichita. Judge Henderson is a district judge in the Sedgwick County Juvenile Department.

Professor Richard E. Levy, Lawrence. Professor Levy is a professor at the University of Kansas School of Law.

Sue Lockett, Topeka. Mrs. Lockett is former Executive Director of C.A.S.A. of Shawnee County.

Roberta Sue McKenna, Topeka. Mrs. McKenna is the attorney for Children and Family Services of the Kansas Department of Social and Rehabilitation.

Lisa Mendoza, Topeka. Ms. Mendoza is chief counsel for the Kansas Juvenile Justice Authority.

Representative Janice L. Pauls, Hutchinson. Representative Pauls is an attorney, a state representative and is the ranking minority member of the House Judiciary Committee.

Honorable Kathleen Sloan, Olathe. Judge Sloan is a district judge in the Johnson County Juvenile Department.

BACKGROUND

2007 House Bill 2527 was submitted to the Legislature in 2007 with the intention of clarifying the circumstances, under the Kansas Code for Care of Children, where information regarding children in need of care could be made public by the Department of Social and Rehabilitation Services, juvenile intake and assessment centers, and law enforcement. The proposed amendments to K.S.A. 38-2212 and 38-2213 would have clarified in pertinent part that:

- Public disclosure of information from confidential reports or records of a child in need of care shall be limited to confirmation of factual details with respect to how the case is handled and, as long as it is assured that such information does not violate the privacy of the child, or the child's siblings, parents or guardians, information concerning the handling of the case by mandated reporters, law enforcement, the secretary and the courts.
- 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 shall become public record and subject to disclosure. However, the secretary or any affected individual may file a motion requesting the court prevent such disclosure. If such a motion is filed, the court shall consider the effect such disclosure may have, shall make written findings on the record and shall provide a copy of the journal entry to the affected parties and the individual requesting disclosure pursuant to the Kansas Open Records Act.
- Confidential information may be released to the public only with the express written permission of the individuals involved or their representatives.

2007 HB 2527 was introduced in the Federal and State Affairs Committee on February 14, 2007. It was referred to the House Judiciary Committee, February 15, 2007 and received a hearing on March 10, 2008. There was no other action taken on this bill.

COMMITTEE'S CONCLUSION REGARDING 2007 HB 2527

The Committee reviewed 2007 HB 2527 and agreed that there needed to be clarification concerning the release of otherwise confidential information to the public. The Committee met and sought to balance the privacy interests of the child, siblings and family with the public's interest in the transparent operation of government. In particular, the Committee sought to provide the public with more complete information when the privacy of the family had already been breached and one perspective made public. All reports or records of a child alleged or adjudicated to be a child in need of care remain confidential and may be disclosed to the public only when: A) the individuals involved or their representatives have explicitly consented in writing; or B) the investigation of the abuse or neglect of the child or the filing of a petition alleging a child to be in need of care has become public knowledge, provided the agency limits disclosure to confirmation of procedural details relating to the handling of the case by professionals. Additional proposed amendments are technical in nature and attempt to provide clearer organization of the statute. The Committee also looked at the proposed amendments to K.S.A. 38-2213 and agreed that no amendment was needed if the proposed amendments to K.S.A. 38-2212 were adopted. The Committee's proposed amendments to K.S.A. 38-2212 have been included in section 8 of its proposed amendments to the Revised Kansas Code for Care of Children for the 2009 Legislative session.