



House Children and Seniors Committee:

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HB 2309: Public Records of Children in DCF Custody

Testimony by:

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HB 2309, Public Records of Children in DCF Custody

Chairman Alford, Vice Chair Gallagher, Ranking Member Ousley and Members of the Committee:

Thank you for the opportunity to provide testimony in opposition to HB 2309.

HB 2309 is a proposal to amend the Kansas Code for Care of Children, specifically K.S.A. 2016 Supp. 38-2212 relating to the release of certain confidential reports and records of a child alleged or adjudicated to be a Child in Need of Care (CINC).

The Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5101 *et. seq.*, Section 106) is the federal legislation that mandates child protection, as well as prevention and treatment of child abuse. CAPTA requires every state that receives federal funding to have in place policies and procedures to ensure the confidentiality of all child abuse and neglect reports and records in order “to protect the rights of the child and the child’s parents or guardians.” The State must ensure information is released only to certain individuals and entities for legitimate State purposes. **This proposed amendment is in violation of both the letter and the spirit of the law, as codified in CAPTA. For this reason, if this bill were to pass, Kansas would be in violation of CAPTA and in jeopardy of losing the approximate \$48 million of annual federal funding it currently receives in support of its child welfare system.**

The need for confidentiality to protect the rights of the children and families is such a core principle that Congress reauthorized CAPTA in 1996 and made the confidentiality provisions very specific.¹ CAPTA only allows certain information to be released to “[a]ny federal, state or local government entity **that has a need for such information in order to carry out its responsibilities** under law to protect children from abuse and neglect,” which has been incorporated and codified in the Kansas Code for Care of Children, specifically K.S.A. 38-2212(c)(13). CAPTA specifically authorizes disclosure **only** to:

- Individuals who are the subject of the report;
- Federal, State, or local government entities, or any agent of such entities, as described in clause (ix);
- Child abuse citizen review panels;

¹ In fact, confidentiality is so critical to the protection of child victims and all victims of sexual abuse, that the Federal Victims’ Protection and Rights Act requires filing documents that disclosure name of or other information concerning the child to be filed under seal without a court order and further allows court to order partial, temporary closure of courtroom proceedings to the public when a child victim is testifying.

- Child fatality review panels;
- A grand jury or court, upon a finding that information in the record is necessary for the determination of issue before the court or grand jury; and
- Other entities or classes of individuals statutorily authorized by the State to receive such information ***pursuant to a legitimate State purpose.***

The ***only*** allowance for public disclosure is provided in 42 U.S.C. 5101 *et. seq.*, Section 106(b)(2)(B)(x) requirement that State law have “provisions which allow for public disclosure of the findings or information about the case of child abuse or neglect which has resulted in a child fatality or near fatality.”

K.S.A. 38-2212 regarding “Appropriate and necessary access; exchange of information; court ordered disclosure; limited public information” is compliant with CAPTA as set forth above and specifically provides in 38-2212(d) for “Specific access” of certain information from the agency records to specified persons which includes, but is not limited to, “members of the standing house or senate committee on judiciary, house committee on corrections and juvenile justice, house committee on appropriations, senate committee on ways and means, legislative post audit committee and any joint committee with authority to consider children’s and families’ issues, when carrying out such member’s or committee’s official functions in accordance with K.S.A. 75-4319, and amendments thereto, in a closed or executive meeting.”

The Administration for Children and Families (ACF) is the federal agency charged with interpreting and enforcing CAPTA and working with state agencies, such as the Kansas Department for Children and Families (DCF), to ensure compliance with federal law. Due to the complexity of the child welfare systems and multiple federal laws that impact such systems, the ACF/Children’s Bureau website posts questions and answers to assist States in drafting policy and procedures that are compliant with the federal law in order to receive federal funding. See https://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=67. Q&A 6 reads as follows:

Is it permissible under the Child Abuse Prevention and Treatment Act (CAPTA) for the State to disclose to the public information in the child abuse and neglect record that does not pertain to the case of child abuse and neglect that results in a child fatality or near fatality?

No. Except as discussed below, States must preserve the confidentiality of all child abuse and neglect reports and records in order to protect the rights of the child and family. Consistent with section 106(b)(2)(B)(viii) of CAPTA, reports and records made and maintained pursuant to the purposes of CAPTA shall be made available only to the entities and under the circumstances described in section 106(b)(2)(B)(viii)(I - VI) of CAPTA.

...

It bears noting that although CAPTA allows certain information to be disclosed to persons with a legitimate State purpose, “[a]uthorized recipients of confidential child abuse and neglect information are bound by the same confidentiality restrictions as the child protective services agency. Thus, recipients of such information must use the information only for activities related to the prevention and treatment of child abuse and neglect. Further disclosure is permitted only in accordance with the CAPTA standards.”

HB 2309 proposes that **all** records related to a child’s death be subject to disclosure pursuant to the Kansas Open Records Act (KORA). CAPTA, however, only allows public disclosure of the “findings or information” about the case of child abuse or neglect that results in child fatality or near death fatality (Sect. 106 of CAPTA). K.S.A. 38-2212(f) is the provision that provides for the release of records in the case of child abuse or neglect that has resulted in child fatality or near death fatality and this language is CAPTA compliant. One should note that neither CAPTA nor K.S.A. 38-2212(f) allows the disclosure of information, which may be in the child fatality/near fatality case file, that pertains to another child in the home who is not deceased or a near death fatality victim unless it is pertinent to the abuse or neglect that led to the death or near death. As CAPTA warns, child welfare information is also covered by other federal confidentiality restrictions, such as the Social Security Act, Titles IV-B and Title IV-E, which applies to all CINC cases. Therefore, the proposed legislation would violate other federal confidentiality provisions, further jeopardizing federal funding.

While it is understandable and admirable that the public is interested in making sure that the State is doing all that it can to prevent child abuse and neglect, perhaps we need to do a better job of educating the public of the oversight mechanisms that are in place and constantly evolving to meet the goal while protecting the children and families’ privacy and right to confidentiality. There is a Kansas Child Death Review Board, housed in the Office of the Attorney General (AG). The Board is required by CAPTA and is charged with **reviewing every child death in Kansas, regardless of cause of death, or whether the child was in State custody. Thus, any child in state custody at the time of death will be thoroughly reviewed by this Board, even if the death has nothing to with child abuse or neglect.** The Kansas Child Death Review Board annually prepares and posts a report on the AG’s website, with a breakdown of the causes of death. In compliance with CAPTA, the report does not include identifying information so as to protect the child and the child’s parents or guardians.

It bears repeating that violation of confidentiality provisions/standards of CAPTA, the Social Security Act, Titles IV-B and Title IV-E and possibly other federal laws would jeopardize federal funding to DCF, as much as \$48 million annually, which currently supports the Kansas child welfare system. Just as a side, HB 2309’s proposed addition of provision (g) is in direct conflict with provision (f), which specifies what and when public disclosure may be made in child fatality/near fatality case, because it provides for the release of all reports or records in the event of a child death while in custody of the secretary. HB 2309 also conflicts with the existing K.S.A. 38-2212(f) by use of the phrase “suffers great bodily harm,” which is not defined, as it is foreseeable that “great bodily harm” could constitute a “near fatality.” Finally, HB 2309 impermissibly expands

the categories for public disclosure from certain “information or findings” in child fatality/near fatality cases to any child in custody of the Secretary who is “sexually abused” or “suffers great bodily harm” (which is not defined). **DCF researched the law of the 50 states and could not find one state that allows for any disclosure other than what is allowed under CAPTA, much less broadening the class of cases for public disclosure.** See https://www.childwelfare.gov/systemwide/laws_policies/state/. In short, the passage of HB 2309 would place Kansas out of compliance with CAPTA, which requires “an assurance in the form of a certification by the Governor of the State that the State has in effect and is enforcing a State law,...” that includes each of the confidentiality standards discussed herein. See 42 U.S.C. § 5101 *et. seq.*, Section 106(b)(2)(B). The already-existing Kansas statutes in the Code for Care of Children are CAPTA and other federal law complaint and address confidentiality of records and release of same in K.S.A. 38-2209 through K.S.A. 38-2213.

Last, but not least, the violation of federal laws, and in particular, CAPTA, which set out confidentiality standards relating to the records of DCF (the State’s IV-E Agency-child welfare), would likely lead to filing of lawsuits by a child or child’s family for damages as a result of improper or illegal release of information and/or records. This would result in increased litigation expenses/costs for DCF and the AG’s office.

Thank you for the opportunity to testify in opposition to HB 2309. I am happy to stand for any questions the committee may have.