

HOUSE BILL No. 2527

By Committee on Federal and State Affairs

2-14

9 AN ACT concerning children in need of care; relating to access of re-
10 cords; amending K.S.A. 2006 Supp. 38-2212 and 38-2213 and repeal-
11 ing the existing sections.

12

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

14 Section 1. K.S.A. 2006 Supp. 38-2212 is hereby amended to read as
15 follows: 38-2212. (a) *Principle of appropriate access.* Information con-
16 tained in confidential agency records concerning a child alleged or ad-
17 judicated to be in need of care may be disclosed as provided in this
18 section. Disclosure shall in all cases be guided by the principle of provid-
19 ing access only to persons or entities with a need for information that is
20 directly related to achieving the purposes of this code.

21 (b) *Free exchange of information.* Pursuant to K.S.A. 2006 Supp. 38-
22 2210, and amendments thereto, the secretary, agents of the secretary and
23 juvenile intake and assessment agencies shall participate in the free
24 exchange of information concerning a child who is alleged or adjudicated
25 to be in need of care.

26 (c) *Necessary access.* The following persons or entities shall have ac-
27 cess to information from agency records. Access shall be limited to in-
28 formation reasonably necessary to carry out their lawful responsibilities,
29 to maintain their personal safety and the personal safety of individuals in
30 their care, or to educate, diagnose, treat, care for or protect a child alleged
31 to be in need of care. Information authorized to be disclosed pursuant to
32 this subsection shall not contain information which identifies a reporter
33 of a child who is alleged or adjudicated to be a child in need of care.

34 (1) A child named in the report or records, a guardian *ad litem* ap-
35 pointed for the child and the child's attorney.

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

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

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

1 or neglected the child.

2 (5) A person or entity licensed or registered by the secretary of health
3 and environment or approved by the secretary of social and rehabilitation
4 services to care for, treat or supervise a child in need of care.

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

7 (7) The state child death review board established under K.S.A. 22a-
8 243, and amendments thereto.

9 (8) An attorney for a private party who files a petition pursuant to
10 subsection (b) of K.S.A. 2006 Supp. 38-2233, and amendments thereto.

11 (9) A foster parent, prospective foster parent, permanent custodian,
12 prospective permanent custodian, adoptive parent or prospective adop-
13 tive parent. In order to assist such person's in making an informed de-
14 cision regarding acceptance of a particular child, to help the family antic-
15 ipate problems which may occur during the child's placement, and to
16 help the family meet the needs of the child in a constructive manner, the
17 secretary shall seek and shall provide the following information to such
18 person's as the information becomes available to the secretary:

19 (A) Strengths, needs and general behavior of the child;

20 (B) circumstances which necessitated placement;

21 (C) information about the child's family and the child's relationship
22 to the family which may affect the placement;

23 (D) important life experiences and relationships which may affect the
24 child's feelings, behavior, attitudes or adjustment;

25 (E) medical history of the child, including third-party coverage which
26 may be available to the child; and

27 (F) education history, to include present grade placement, special
28 strengths and weaknesses.

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

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

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

37 (13) Any other federal, state or local government executive branch
38 entity or any agent of such entity, having a need for such information in
39 order to carry out such entity's responsibilities under the law to protect
40 children from abuse and neglect.

41 (d) *Specified access.* The following persons or entities shall have ac-
42 cess to information contained in agency records as specified. Information
43 authorized to be disclosed pursuant to this subsection shall not contain

1 information which identifies a reporter of a child who is alleged or ad-
2 judicated to be a child in need of care.

3 (1) Information from confidential agency records of the department
4 of social and rehabilitation services, a law enforcement agency or any
5 juvenile intake and assessment worker of a child alleged or adjudicated
6 to be in need of care shall be available to members of the standing house
7 or senate committee on judiciary, house committee on corrections and
8 juvenile justice, house committee on appropriations, senate committee
9 on ways and means, legislative post audit committee and any joint com-
10 mittee with authority to consider children's and families' issues, when
11 carrying out such member's or committee's official functions in accord-
12 ance with K.S.A. 75-4319 and amendments thereto, in a closed or exec-
13 utive meeting. Except in limited conditions established by $\frac{2}{3}$ of the mem-
14 bers of such committee, records and reports received by the committee
15 shall not be further disclosed. Unauthorized disclosure may subject such
16 member to discipline or censure from the house of representatives or
17 senate. The secretary of social and rehabilitation services shall not sum-
18 marize the outcome of department actions regarding a child alleged to
19 be a child in need of care in information available to members of such
20 committees.

21 (2) The secretary of social and rehabilitation services may summarize
22 the outcome of department actions regarding a child alleged to be a child
23 in need of care to a person having made such report.

24 (3) Public disclosure of information from confidential reports or re-
25 cords of a child alleged or adjudicated to be a child in need of care shall
26 be limited to:

27 (A) Confirmation of factual details with respect to how the case was
28 handled, ~~provided, however, that~~ *While assuring the information pro-*
29 *vided does not violate the privacy of the child, or the child's siblings,*
30 *parents or guardians, information concerning the handling of the case by*
31 *mandated reporters, law enforcement, the secretary and the courts shall*
32 *be made available.*

33 (B) Confidential information may be released to the public only with
34 the express written permission of the individuals involved or their
35 representatives.

36 (e) *Court order.* Notwithstanding the provisions of this section, a
37 court of competent jurisdiction, after in camera inspection, may order
38 disclosure of confidential agency records pursuant to a determination that
39 the disclosure is in the best interests of the child who is the subject of
40 the reports or that the records are necessary for the proceedings of the
41 court and otherwise admissible as evidence. The court shall specify the
42 terms of disclosure and impose appropriate limitations.

43 (f) (1) Notwithstanding any other provision of law to the contrary,

1 except as provided in paragraph (2), in the event that child abuse or
2 neglect results in a child fatality or near fatality, reports or records of a
3 child in need of care received by the department of social and rehabilita-
4 tion services, a law enforcement agency or any juvenile intake and as-
5 sessment worker shall become a public record and subject to disclosure
6 pursuant to K.S.A. 45-215, and amendments thereto. Within seven days
7 of receipt of a request in accordance with the procedures adopted under
8 K.S.A. 45-220, and amendments thereto, the secretary shall notify any
9 affected individual that an open records request has been made concern-
10 ing such records. The secretary or any affected individual may file a mo-
11 tion requesting the court to prevent disclosure of such record or report,
12 or any select portion thereof. If the affected individual does not file such
13 motion within seven days of notification, and the secretary has not filed
14 a motion, the secretary shall release the reports or records. ~~In reviewing~~
15 ~~such motion~~ *If such motion is filed*, the court shall consider the effect
16 such disclosure may have upon an ongoing criminal investigation, a pend-
17 ing prosecution, or the privacy of the child, if living, or the child's siblings,
18 parents or guardians. Nothing herein is intended to require that an oth-
19 erwise privileged communication lose its privileged character. ~~If the court~~
20 ~~grants such motion~~, The court shall make written findings on the record
21 justifying the closing of the records *and shall provide a copy of the journal*
22 *entry to the affected parties and the individual requesting disclosure pur-*
23 *suant to the open records act, K.S.A. 45-215 et seq., and amendments*
24 *thereto*. For reports or records requested pursuant to this subsection, the
25 time limitations specified in this subsection shall control to the extent of
26 any inconsistency between this subsection and K.S.A. 45-218, and amend-
27 ments thereto. As used in this section, "near fatality" means an act that,
28 as certified by a person licensed to practice medicine and surgery, places
29 the child in serious ~~or~~ *and* critical condition.

30 (2) Nothing in this subsection shall allow the disclosure of reports,
31 records or documents concerning the child and such child's biological
32 parents which were created prior to such child's adoption.

33 Sec. 2. K.S.A. 2006 Supp. 38-2213 is hereby amended to read as
34 follows: 38-2213. (a) *Principle of limited disclosure*. Information con-
35 tained in confidential law enforcement records concerning a child alleged
36 or adjudicated to be in need of care may be disclosed as provided in this
37 section. Disclosure shall in all cases be guided by the principle of provid-
38 ing access only to persons or entities with a need for information that is
39 directly related to achieving the purposes of this code.

40 (b) *Free exchange of information*. Pursuant to K.S.A. 2006 Supp. 38-
41 2210, and amendments thereto, a law enforcement agency shall partici-
42 pate in the free exchange of information concerning a child who is alleged
43 or adjudicated to be in need of care.

- 1 (c) *Access to information in law enforcement records.* In order to
2 discharge their official duties, the following persons or entities shall have
3 access to confidential law enforcement records concerning a child alleged
4 or adjudicated to be in need of care.
- 5 (1) The court having jurisdiction over the proceedings, including the
6 presiding judge and any court personnel designated by the judge.
- 7 (2) The secretary.
- 8 (3) The commissioner of juvenile justice.
- 9 (4) Law enforcement officers or county or district attorneys or their
10 staff.
- 11 (5) Any juvenile intake and assessment worker.
- 12 (6) Members of a court-appointed multidisciplinary team.
- 13 (7) Any other federal, state or local government executive branch
14 entity, or any agent of such entity, having a need for such information in
15 order to carry out such entity's responsibilities under law to protect chil-
16 dren from abuse and neglect.
- 17 (8) Persons or entities allowed access pursuant to subsection (f) of
18 K.S.A. 38-2212, and amendments thereto.
- 19 (d) *Necessary access.* The following persons or entities shall have ac-
20 cess to information from law enforcement records when reasonably nec-
21 essary to carry out their lawful responsibilities, to maintain their personal
22 safety and the personal safety of individuals in their care, or to educate,
23 diagnose, treat, care for or protect a child alleged or adjudicated to be in
24 need of care. Information authorized to be disclosed in this subsection
25 shall not contain information which identifies a reporter of a child alleged
26 or adjudicated to be a child in need of care.
- 27 (1) Any individual, or public or private agency authorized by a prop-
28 erly constituted authority to diagnose, care for, treat or supervise a child
29 who is the subject of a report or record of child abuse or neglect, including
30 physicians, psychiatrists, nurses, nurse practitioners, psychologists, li-
31 censed social workers, child development specialists, physician assistants,
32 community mental health workers, alcohol and drug abuse counselors,
33 and licensed or registered child care providers.
- 34 (2) School administrators shall have access to but shall not copy law
35 enforcement records and may disclose information to teachers, parapro-
36 fessionals and other school personnel as necessary to meet the educational
37 needs of the child or to protect the safety of students and school
38 employees.
- 39 (3) The department of health and environment or persons authorized
40 by the department of health and environment pursuant to K.S.A. 65-512,
41 and amendments thereto, for the purposes of carrying out responsibilities
42 relating to licensure or registration of child care providers as required by
43 article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments

1 thereto.

2 (e) *Legislative access.* Information from law enforcement records of
3 a child alleged or adjudicated to be in need of care shall be available to
4 members of the standing house or senate committee on judiciary, house
5 committee on corrections and juvenile justice, house committee on ap-
6 propriations, senate committee on ways and means, legislative post audit
7 committee and any joint committee with authority to consider children's
8 and families' issues, when carrying out such member's or committee's
9 official functions in accordance with K.S.A. 75-4319 and amendments
10 thereto, in a closed or executive meeting. Except in limited conditions
11 established by $\frac{2}{3}$ of the members of such committee, records and reports
12 received by the committee shall not be further disclosed. Unauthorized
13 disclosure may subject such member to discipline or censure from the
14 house of representatives or senate.

15 (f) *Public access. Public disclosure of information from confidential*
16 *reports or records of a child alleged or adjudicated to be a child in need*
17 *of care shall be limited to:*

18 (1) *Confirmation of factual details with respect to how the case was*
19 *handled. While assuring the information provided does not violate the*
20 *privacy of the child, or the child's siblings, parents or guardians, infor-*
21 *mation concerning the handling of the case by mandated reporters, law*
22 *enforcement, the secretary and the courts shall be made available.*

23 (2) *Confidential information may be released to the public only with*
24 *the express written permission of the individuals involved or such indi-*
25 *vidual's representatives.*

26 (g) *Court order.* Notwithstanding the provisions of this section, a
27 court of competent jurisdiction, after in camera inspection, may order
28 disclosure of confidential law enforcement records pursuant to a deter-
29 mination that the disclosure is in the best interests of the child who is the
30 subject of the reports or that the records are necessary for the proceedings
31 of the court and otherwise admissible as evidence. The court shall specify
32 the terms of disclosure and impose appropriate limitations.

33 Sec. 3. K.S.A. 2006 Supp. 38-2212 and 38-2213 are hereby repealed.

34 Sec. 4. This act shall take effect and be in force from and after its
35 publication in the statute book.