

HOUSE BILL No. 2537

By Committee on Children and Families

1-25

1 AN ACT concerning the revised Kansas code for care of children; relating
2 to legislative access; amending K.S.A. 2011 Supp. 38-2212 and 38-
3 2213 and repealing the existing sections.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2011 Supp. 38-2212 is hereby amended to read as
7 follows: 38-2212. (a) *Principle of appropriate access.* Information
8 contained in confidential agency records concerning a child alleged or
9 adjudicated to be in need of care may be disclosed as provided in this
10 section. Disclosure shall in all cases be guided by the principle of
11 providing access only to persons or entities with a need for information
12 that is directly related to achieving the purposes of this code.

13 (b) *Free exchange of information.* Pursuant to K.S.A. 2011 Supp. 38-
14 2210, and amendments thereto, the secretary and juvenile intake and
15 assessment agencies shall participate in the free exchange of information
16 concerning a child who is alleged or adjudicated to be in need of care.

17 (c) *Necessary access.* The following persons or entities shall have
18 access to information from agency records. Access shall be limited to
19 information reasonably necessary to carry out their lawful responsibilities,
20 to maintain their personal safety and the personal safety of individuals in
21 their care, or to educate, diagnose, treat, care for or protect a child alleged
22 to be in need of care. Information authorized to be disclosed pursuant to
23 this subsection shall not contain information which identifies a reporter of
24 a child who is alleged or adjudicated to be a child in need of care.

25 (1) A child named in the report or records, a guardian *ad litem*
26 appointed for the child and the child's attorney.

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

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

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

36 (5) A person or entity licensed or registered by the secretary of health

1 and environment or approved by the secretary of social and rehabilitation
2 services to care for, treat or supervise a child in need of care.

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

5 (7) The state child death review board established under K.S.A. 22a-
6 243, and amendments thereto.

7 (8) An attorney for a private party who files a petition pursuant to
8 subsection (b) of K.S.A. 2011 Supp. 38-2233, and amendments thereto.

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

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

18 (B) circumstances which necessitated placement;

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

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

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

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

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

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

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

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

39 (d) *Specified access.* The following persons or entities shall have
40 access to information contained in agency records as specified.
41 Information authorized to be disclosed pursuant to this subsection shall not
42 contain information which identifies a reporter of a child who is alleged or
43 adjudicated to be a child in need of care.

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

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

22 (3) Information from confidential reports or records of a child alleged
23 or adjudicated to be a child in need of care may be disclosed to the public
24 when:

25 (A) The individuals involved or their representatives have given
26 express written consent; or

27 (B) the investigation of the abuse or neglect of the child or the filing
28 of a petition alleging a child to be in need of care has become public
29 knowledge, provided, however, that the agency shall limit disclosure to
30 confirmation of procedural details relating to the handling of the case by
31 professionals.

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

39 (f) (1) Notwithstanding any other provision of law to the contrary,
40 except as provided in paragraph (4), in the event that child abuse or
41 neglect results in a child fatality or near fatality, reports or records of a
42 child alleged or adjudicated to be in need of care received by the secretary,
43 a law enforcement agency or any juvenile intake and assessment worker

1 shall become a public record and subject to disclosure pursuant to K.S.A.
2 45-215, and amendments thereto.

3 (2) Within seven days of receipt of a request in accordance with the
4 procedures adopted under K.S.A. 45-220, and amendments thereto, the
5 secretary shall notify any affected individual that an open records request
6 has been made concerning such records. The secretary or any affected
7 individual may file a motion requesting the court to prevent disclosure of
8 such record or report, or any select portion thereof. If the affected
9 individual does not file such motion within seven days of notification, and
10 the secretary has not filed a motion, the secretary shall release the reports
11 or records. If such motion is filed, the court shall consider the effect such
12 disclosure may have upon an ongoing criminal investigation, a pending
13 prosecution, or the privacy of the child, if living, or the child's siblings,
14 parents or guardians. The court shall make written findings on the record
15 justifying the closing of the records and shall provide a copy of the journal
16 entry to the affected parties and the individual requesting disclosure
17 pursuant to the Kansas open records act, K.S.A. 45-215 et seq., and
18 amendments thereto.

19 (3) For reports or records requested pursuant to this subsection, the
20 time limitations specified in this subsection shall control to the extent of
21 any inconsistency between this subsection and K.S.A. 45-218, and
22 amendments thereto. As used in this section, "near fatality" means an act
23 that, as certified by a person licensed to practice medicine and surgery,
24 places the child in serious or critical condition.

25 (4) Nothing in this subsection shall allow the disclosure of reports,
26 records or documents concerning the child and such child's biological
27 parents which were created prior to such child's adoption. Nothing herein
28 is intended to require that an otherwise privileged communication lose its
29 privileged character.

30 Sec. 2. K.S.A. 2011 Supp. 38-2213 is hereby amended to read as
31 follows: 38-2213. (a) *Principle of limited disclosure.* Information
32 contained in confidential law enforcement records concerning a child
33 alleged or adjudicated to be in need of care may be disclosed as provided
34 in this section. Disclosure shall in all cases be guided by the principle of
35 providing access only to persons or entities with a need for information
36 that is directly related to achieving the purposes of this code.

37 (b) *Free exchange of information.* Pursuant to K.S.A. 2011 Supp. 38-
38 2210, and amendments thereto, a law enforcement agency shall participate
39 in the free exchange of information concerning a child who is alleged or
40 adjudicated to be in need of care.

41 (c) *Access to information in law enforcement records.* In order to
42 discharge their official duties, the following persons or entities shall have
43 access to confidential law enforcement records concerning a child alleged

1 or adjudicated to be in need of care.

2 (1) The court having jurisdiction over the proceedings, including the
3 presiding judge and any court personnel designated by the judge.

4 (2) The secretary.

5 (3) The commissioner of juvenile justice.

6 (4) Law enforcement officers or county or district attorneys or their
7 staff.

8 (5) Any juvenile intake and assessment worker.

9 (6) Members of a court-appointed multidisciplinary team.

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

14 (8) Persons or entities allowed access pursuant to subsection (f) of
15 K.S.A. 2011 Supp. 38-2212, and amendments thereto.

16 (d) *Necessary access.* The following persons or entities shall have
17 access to information from law enforcement records when reasonably
18 necessary to carry out their lawful responsibilities, to maintain their
19 personal safety and the personal safety of individuals in their care, or to
20 educate, diagnose, treat, care for or protect a child alleged or adjudicated
21 to be in need of care. Information authorized to be disclosed in this
22 subsection shall not contain information which identifies a reporter of a
23 child alleged or adjudicated to be a child in need of care.

24 (1) Any individual, or public or private agency authorized by a
25 properly constituted authority to diagnose, care for, treat or supervise a
26 child who is the subject of a report or record of child abuse or neglect,
27 including physicians, psychiatrists, nurses, nurse practitioners,
28 psychologists, licensed social workers, child development specialists,
29 physician assistants, community mental health workers, alcohol and drug
30 abuse counselors, and licensed or registered child care providers.

31 (2) School administrators shall have access to but shall not copy law
32 enforcement records and may disclose information to teachers,
33 paraprofessionals and other school personnel as necessary to meet the
34 educational needs of the child or to protect the safety of students and
35 school employees.

36 (3) The department of health and environment or persons authorized
37 by the department of health and environment pursuant to K.S.A. 65-512,
38 and amendments thereto, for the purposes of carrying out responsibilities
39 relating to licensure or registration of child care providers as required by
40 article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments
41 thereto.

42 (e) *Legislative access.* Information from law enforcement records of a
43 child alleged or adjudicated to be in need of care shall be available to

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

12 (f) *Court order*. Notwithstanding the provisions of this section, a
13 court of competent jurisdiction, after in camera inspection, may order
14 disclosure of confidential law enforcement records pursuant to a
15 determination that the disclosure is in the best interests of the child who is
16 the subject of the reports or that the records are necessary for the
17 proceedings of the court and otherwise admissible as evidence. The court
18 shall specify the terms of disclosure and impose appropriate limitations.

19 Sec. 3. K.S.A. 2011 Supp. 38-2212 and 38-2213 are hereby repealed.

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

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