

HOUSE BILL No. 2309

By Committee on Children and Seniors

2-8

1 AN ACT concerning the revised Kansas code for care of children; relating
2 to reports and records concerning a child alleged or adjudicated to be in
3 need of care; amending K.S.A. 2016 Supp. 38-2212 and repealing the
4 existing section.

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

7 Section 1. K.S.A. 2016 Supp. 38-2212 is hereby amended to read as
8 follows: 38-2212. (a) *Principle of appropriate access.* Information
9 contained in confidential agency records concerning a child alleged or
10 adjudicated to be in need of care may be disclosed as provided in this
11 section. Disclosure shall in all cases be guided by the principle of
12 providing access only to persons or entities with a need for information
13 that is directly related to achieving the purposes of this code.

14 (b) *Free exchange of information.* Pursuant to K.S.A. 2016 Supp. 38-
15 2210, and amendments thereto, the secretary and juvenile intake and
16 assessment agencies shall participate in the free exchange of information
17 concerning a child who is alleged or adjudicated to be in need of care.

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

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

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

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

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

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

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

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

8 (8) An attorney for a private party who files a petition pursuant to
9 ~~subsection (b) of K.S.A. 2016 Supp. 38-2233(b)~~, and amendments thereto.

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

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

19 (B) circumstances which necessitated placement;

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

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

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

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

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

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

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

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

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

1 adjudicated to be a child in need of care.

2 (1) Information from confidential agency records of the department
3 of social and rehabilitation services, a law enforcement agency or any
4 juvenile intake and assessment worker of a child alleged or adjudicated to
5 be in need of care shall be available to members of the standing house or
6 senate committee on judiciary, house committee on corrections and
7 juvenile justice, house committee on appropriations, senate committee on
8 ways and means, legislative post audit committee and any joint committee
9 with authority to consider children's and families' issues, when carrying
10 out such member's or committee's official functions in accordance with
11 K.S.A. 75-4319, and amendments thereto, in a closed or executive
12 meeting. Except in limited conditions established by $\frac{2}{3}$ of the members of
13 such committee, records and reports received by the committee shall not
14 be further disclosed. Unauthorized disclosure may subject such member to
15 discipline or censure from the house of representatives or senate. The
16 secretary of social and rehabilitation services shall not summarize the
17 outcome of department actions regarding a child alleged to be a child in
18 need of care in 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 (g) (1) *Notwithstanding any other provision of law to the contrary,*
31 *except as provided in paragraph (2), in the event that a child in the*
32 *custody of the secretary is sexually abused or suffers great bodily harm or*
33 *death, all reports or records concerning such child received by the*
34 *secretary, a law enforcement agency or any juvenile intake and assessment*
35 *worker shall become a public record and subject to disclosure pursuant to*
36 *K.S.A. 45-215, and amendments thereto, in accordance with the*
37 *procedures adopted under K.S.A. 45-220, and amendments thereto.*

38 (2) *Nothing in this subsection shall allow the disclosure of reports,*
39 *records or documents concerning the child and such child's biological*
40 *parents which were created prior to such child's adoption. Nothing herein*
41 *is intended to require that an otherwise privileged communication lose its*
42 *privileged character. Information authorized to be disclosed pursuant to*
43 *this subsection shall not contain information which identifies a reporter of*

- 1 *a child who is alleged or adjudicated to be a child in need of care.*
- 2 Sec. 2. K.S.A. 2016 Supp. 38-2212 is hereby repealed.
- 3 Sec. 3. This act shall take effect and be in force from and after its
- 4 publication in the statute book.