

## HOUSE BILL No. 2728

By Committee on Judiciary

2-8

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1 AN ACT concerning the revised Kansas code for care of children; relating  
2 to agency records concerning a child alleged or adjudicated to be in  
3 need of care; child fatality; amending K.S.A. 2017 Supp. 38-2212 and  
4 repealing the existing section.  
5

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

7 Section 1. K.S.A. 2017 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. 2017 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. 2017 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) *Notwithstanding the provisions of paragraph (2), in the event that*  
20 *child abuse or neglect results in a child fatality, the secretary shall release*  
21 *the following information in response to an open records request made*  
22 *pursuant to the Kansas open records act, as allowed by applicable law:*

23 (A) *Age and sex of the child;*

24 (B) *date of the fatality;*

25 (C) *a summary of any previous reports of abuse or neglect received*  
26 *by the secretary involving the child, along with the findings of such*  
27 *reports; and*

28 (D) *any department recommended services provided to the child.*

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

35 ~~(4)~~(5) Nothing in this subsection shall allow the disclosure of reports,  
36 records or documents concerning the child and such child's biological  
37 parents ~~which~~ *that* were created prior to such child's adoption. Nothing  
38 herein is intended to require that an otherwise privileged communication  
39 lose its privileged character.

40 Sec. 2. K.S.A. 2017 Supp. 38-2212 is hereby repealed.

41 Sec. 3. This act shall take effect and be in force from and after its  
42 publication in the statute book.