

HOUSE BILL No. 2590

By Representative Capps

2-7

1 AN ACT concerning children and minors; relating to the revised Kansas
2 code for the care of children; access to information by law
3 enforcement; amending K.S.A. 2019 Supp. 38-2210, 38-2211 and 38-
4 2212 and repealing the existing sections.

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

7 Section 1. K.S.A. 2019 Supp. 38-2210 is hereby amended to read as
8 follows: 38-2210. (a) To facilitate investigation and ensure the provision
9 of necessary services to children who may be in need of care and such
10 children's families, the following persons and entities with responsibilities
11 concerning a child who is alleged or adjudicated to be in need of care shall
12 freely exchange information:

13 ~~(a)~~(1) The secretary.

14 ~~(b)~~(2) The secretary of corrections.

15 ~~(c)~~(3) *The Any law enforcement agency receiving such report or that*
16 *could reasonably be expected to interact with such child or such child's*
17 *family.*

18 ~~(d)~~(4) Members of a court appointed multidisciplinary team.

19 ~~(e)~~(5) An entity mandated by federal law or an agency of any state
20 authorized to receive and investigate reports of a child known or suspected
21 to be in need of care.

22 ~~(f)~~(6) A military enclave or Indian tribal organization authorized to
23 receive and investigate reports of a child known or suspected to be in need
24 of care.

25 ~~(g)~~(7) A county or district attorney with responsibility for filing a
26 petition pursuant to K.S.A. 2019 Supp. 38-2214, and amendments thereto.

27 ~~(h)~~(8) A court services officer who has taken a child into custody
28 pursuant to K.S.A. 2019 Supp. 38-2231, and amendments thereto.

29 ~~(i)~~(9) An intake and assessment worker.

30 ~~(j)~~(10) Any community corrections program which has the child
31 under court ordered supervision.

32 ~~(k)~~(11) The department of health and environment or persons
33 authorized by the department of health and environment pursuant to
34 K.S.A. 65-512, and amendments thereto, for the purpose of carrying out
35 responsibilities relating to licensure or registration of child care providers
36 as required by article 5 of chapter 65 of the Kansas Statutes Annotated,

1 and amendments thereto.

2 ~~(12)~~ The interstate compact for juveniles compact administrator for
3 the purpose of carrying out the responsibilities related to the interstate
4 compact for juveniles.

5 *(b) The department for children and families shall allow law*
6 *enforcement agencies access to systems that contain information related to*
7 *children for the purpose of ensuring the safety of any child and such*
8 *child's family.*

9 Sec. 2. K.S.A. 2019 Supp. 38-2211 is hereby amended to read as
10 follows: 38-2211. (a) *Access to the official file.* The following persons or
11 entities shall have access to the official file of a child in need of care
12 proceeding pursuant to this code:

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

15 (2) The parties to the proceedings and their attorneys.

16 (3) The guardian ad litem for a child who is the subject of the
17 proceeding.

18 (4) A court appointed special advocate for a child who is the subject
19 of the proceeding or a paid staff member of a court appointed special
20 advocate program.

21 (5) Any individual, or any public or private agency or institution,
22 having custody of the child under court order or providing educational,
23 medical or mental health services to the child or any placement provider or
24 potential placement provider as determined by the secretary or court
25 services officer.

26 (6) A citizen review board.

27 (7) The secretary of corrections or any agents designated by the
28 secretary of corrections.

29 (8) Any county or district attorney from another jurisdiction with a
30 pending child in need of care matter regarding any of the same parties.

31 (9) Any other person when authorized by a court order, subject to any
32 conditions imposed by the order.

33 (10) The commission on judicial performance in the discharge of the
34 commission's duties pursuant to article 32 of chapter 20 of the Kansas
35 Statutes Annotated, and amendments thereto.

36 *(11) Any law enforcement agency serving the area of the court having*
37 *jurisdiction over the proceeding.*

38 *(12) A law enforcement agency from another jurisdiction that could*
39 *reasonably be expected to interact with any of the same parties.*

40 (b) *Access to the social file.* The following persons or entities shall
41 have access to the social file of a child in need of care proceeding pursuant
42 to this code:

43 (1) The court having jurisdiction over the proceeding, including the

1 presiding judge and any court personnel designated by the judge.

2 (2) The attorney for a party to the proceeding or the person or persons
3 designated by an Indian tribe that is a party.

4 (3) The guardian ad litem for a child who is the subject of the
5 proceeding.

6 (4) A court appointed special advocate for a child who is the subject
7 of the proceeding or a paid staff member of a court appointed special
8 advocate program.

9 (5) A citizen review board.

10 (6) The secretary.

11 (7) The secretary of corrections or any agents designated by the
12 secretary of corrections.

13 (8) Any county or district attorney from another jurisdiction with a
14 pending child in need of care matter regarding any of the same parties or
15 interested parties.

16 (9) Any other person when authorized by a court order, subject to any
17 conditions imposed by the order.

18 (10) *Any law enforcement agency serving the area of the court having*
19 *jurisdiction over the proceeding.*

20 (11) *A law enforcement agency from another jurisdiction that could*
21 *reasonably be expected to interact with any of the same parties or*
22 *interested parties.*

23 (c) *Preservation of records.* The Kansas state historical society shall
24 be allowed to take possession for preservation in the state archives of any
25 court records related to proceedings under the Kansas code for care of
26 children whenever such records otherwise would be destroyed. No such
27 records in the custody of the Kansas state historical society shall be
28 disclosed directly or indirectly to anyone for 70 years after creation of the
29 records, except as provided in subsections (a) and (b). Pursuant to
30 subsections (a)(9) and (b)(9), a judge of the district court may allow
31 inspection for research purposes of any court records in the custody of the
32 Kansas state historical society related to proceedings under the Kansas
33 code for care of children.

34 Sec. 3. K.S.A. 2019 Supp. 38-2212 is hereby amended to read as
35 follows: 38-2212. (a) *Principle of appropriate access.* Information
36 contained in confidential agency records concerning a child alleged or
37 adjudicated to be in need of care may be disclosed as provided in this
38 section. Disclosure shall in all cases be guided by the principle of
39 providing access only to persons or entities with a need for information
40 that is directly related to achieving the purposes of this code.

41 (b) *Free exchange of information.* Pursuant to K.S.A. 2019 Supp. 38-
42 2210, and amendments thereto, the secretary and juvenile intake and
43 assessment agencies shall participate in the free exchange of information

1 concerning a child who is alleged or adjudicated to be in need of care.

2 (c) *Necessary access.* The following persons or entities shall have
3 access to information from agency records. Access shall be limited to
4 information reasonably necessary to carry out their lawful responsibilities,
5 to maintain their personal safety and the personal safety of individuals in
6 their care, or to educate, diagnose, treat, care for or protect a child alleged
7 to be in need of care. Information authorized to be disclosed pursuant to
8 this subsection shall not contain information that identifies a reporter of a
9 child who is alleged or adjudicated to be a child in need of care.

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

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

14 (3) A court-appointed special advocate for a child, a citizen review
15 board or other advocate that reports to the court.

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

21 (5) A person or entity licensed or registered by the secretary of health
22 and environment or approved by the secretary for children and families to
23 care for, treat or supervise a child in need of care.

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

26 (7) The state child death review board established under K.S.A. 22a-
27 243, and amendments thereto.

28 (8) An attorney for a private party who files a petition pursuant to
29 K.S.A. 2019 Supp. 38-2233(b), and amendments thereto.

30 (9) A foster parent, prospective foster parent, permanent custodian,
31 prospective permanent custodian, adoptive parent or prospective adoptive
32 parent. In order to assist such persons in making an informed decision
33 regarding acceptance of a particular child, to help the family anticipate
34 problems that may occur during the child's placement, and to help the
35 family meet the needs of the child in a constructive manner, the secretary
36 shall seek and shall provide the following information to such persons as
37 the information becomes available to the secretary:

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

39 (B) circumstances that necessitated placement;

40 (C) information about the child's family and the child's relationship to
41 the family that may affect the placement;

42 (D) important life experiences and relationships that may affect the
43 child's feelings, behavior, attitudes or adjustment;

1 (E) medical history of the child, including third-party coverage that
2 may be available to the child; and

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

5 (10) The state protection and advocacy agency as provided by K.S.A.
6 65-5603(a)(10) or K.S.A. 74-5515(a)(2)(A) and (B), and amendments
7 thereto.

8 (11) Any educational institution to the extent necessary to enable the
9 educational institution to provide the safest possible environment for its
10 ~~pupils~~ *students* and employees.

11 (12) Any educator to the extent necessary to enable the educator to
12 protect the personal safety of the educator and the educator's ~~pupils~~
13 *students*.

14 (13) *Any law enforcement agency.*

15 ~~(13)~~(14) Any other federal, state or local government executive
16 branch entity or any agent of such entity, having a need for such
17 information in order to carry out such entity's responsibilities under the
18 law to protect children from abuse and neglect.

19 (d) *Specified access.* The following persons or entities shall have
20 access to information contained in agency records as specified.
21 Information authorized to be disclosed pursuant to this subsection shall not
22 contain information that identifies a reporter of a child who is alleged or
23 adjudicated to be a child in need of care.

24 (1) Information from confidential agency records of the Kansas
25 department for children and families, a law enforcement agency or any
26 juvenile intake and assessment worker of a child alleged or adjudicated to
27 be in need of care shall be available to members of the standing house or
28 senate committee on judiciary, house committee on corrections and
29 juvenile justice, house committee on appropriations, senate committee on
30 ways and means, legislative post audit committee and any joint committee
31 with authority to consider children's and families' issues, when carrying
32 out such member's or committee's official functions in accordance with
33 K.S.A. 75-4319, and amendments thereto, in a closed or executive
34 meeting. Except in limited conditions established by $\frac{2}{3}$ of the members of
35 such committee, records and reports received by the committee shall not
36 be further disclosed. Unauthorized disclosure may subject such member to
37 discipline or censure from the house of representatives or senate. The
38 secretary for children and families shall not summarize the outcome of
39 department actions regarding a child alleged to be a child in need of care
40 in information available to members of such committees.

41 (2) The secretary for children and families may summarize the
42 outcome of department actions regarding a child alleged to be a child in
43 need of care to a person having made such report.

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

4 (A) The individuals involved or their representatives have given
5 express written consent; or

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

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

18 (f) (1) Notwithstanding any other provision of law to the contrary,
19 except as provided in paragraph (6), in the event that child abuse or
20 neglect results in a child fatality or near fatality, reports or records of a
21 child alleged or adjudicated to be in need of care received by the secretary,
22 a law enforcement agency or any juvenile intake and assessment worker
23 shall become a public record and subject to disclosure pursuant to K.S.A.
24 45-215, and amendments thereto.

25 (2) Within seven days of receipt of a request in accordance with the
26 procedures adopted under K.S.A. 45-220, and amendments thereto, the
27 secretary shall notify any affected individual that an open records request
28 has been made concerning such records. The secretary or any affected
29 individual may file a motion requesting the court to prevent disclosure of
30 such record or report, or any select portion thereof. Notice of the filing of
31 such motion shall be provided to all parties requesting the records or
32 reports, and such party or parties shall have a right to hearing, upon
33 request, prior to the entry of any order on such motion. If the affected
34 individual does not file such motion within seven days of notification, and
35 the secretary has not filed a motion, the secretary shall release the reports
36 or records. If such motion is filed, the court shall consider the effect such
37 disclosure may have upon an ongoing criminal investigation, a pending
38 prosecution, or the privacy of the child, if living, or the child's siblings,
39 parents or guardians, and the public's interest in the disclosure of such
40 records or reports. The court shall make written findings on the record
41 justifying the closing of the records and shall provide a copy of the journal
42 entry to the affected parties and the individual requesting disclosure
43 pursuant to the Kansas open records act, K.S.A. 45-215 et seq., and

1 amendments thereto.

2 (3) Notwithstanding the provisions of paragraph (2), in the event that
3 child abuse or neglect results in a child fatality, the secretary shall release
4 the following information in response to an open records request made
5 pursuant to the Kansas open records act, within seven business days of
6 receipt of such request, as allowed by applicable law:

7 (A) Age and sex of the child;

8 (B) date of the fatality;

9 (C) a summary of any previous reports of abuse or neglect received
10 by the secretary involving the child, along with the findings of such
11 reports; and

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

13 (4) Notwithstanding the provisions of paragraph (2), in the event that
14 a child fatality occurs while such child was in the custody of the secretary
15 for children and families, the secretary shall release the following
16 information in response to an open records request made pursuant to the
17 Kansas open records act, within seven business days of receipt of such
18 request, as allowed by applicable law:

19 (A) Age and sex of the child;

20 (B) date of the fatality; and

21 (C) a summary of the facts surrounding the death of the child.

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

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

33 Sec. 4. K.S.A. 2019 Supp. 38-2210, 38-2211 and 38-2212 are hereby
34 repealed.

35 Sec. 5. This act shall take effect and be in force from and after its
36 publication in the statute book.