

## HOUSE BILL No. 2127

By Committee on Judiciary

1-25

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1 AN ACT concerning children and minors; relating to child abuse and  
2 neglect; child fatalities; requiring the department for children and  
3 families to release information to the public when criminal charges are  
4 filed in connection with a fatality; amending K.S.A. 2020 Supp. 38-  
5 2212 and repealing the existing section.  
6

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

8 Section 1. K.S.A. 2020 Supp. 38-2212 is hereby amended to read as  
9 follows: 38-2212. (a) *Principle of appropriate access.* Information  
10 contained in confidential agency records concerning a child alleged or  
11 adjudicated to be in need of care may be disclosed as provided in this  
12 section. Disclosure shall in all cases be guided by the principle of  
13 providing access only to persons or entities with a need for information  
14 that is directly related to achieving the purposes of this code.

15 (b) *Free exchange of information.* Pursuant to K.S.A. 2020 Supp. 38-  
16 2210, and amendments thereto, the secretary and juvenile intake and  
17 assessment agencies shall participate in the free exchange of information  
18 concerning a child who is alleged or adjudicated to be in need of care.

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

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

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

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

33 (4) A person licensed to practice the healing arts or mental health  
34 profession in order to diagnose, care for, treat or supervise:

35 (A) A child whom such service provider reasonably suspects may be  
36 in need of care;

1 (B) a member of the child's family; or

2 (C) a person who allegedly abused or neglected the child.

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

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

8 (7) The state child death review board established under K.S.A. 22a-  
9 243, and amendments thereto.

10 (8) An attorney for a private party who files a petition pursuant to  
11 K.S.A. 2020 Supp. 38-2233(b), and amendments thereto.

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

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

21 (B) circumstances that necessitated placement;

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

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

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

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

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

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

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

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

42 (d) *Specified access*. The following persons or entities shall have  
43 access to information contained in agency records as specified.

1 Information authorized to be disclosed pursuant to this subsection shall not  
2 contain information that identifies a reporter of a child who is alleged or  
3 adjudicated to be a child in need of care.

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

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

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

27 (A) The individuals involved or their representatives have given  
28 express written consent; or

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

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

41 (f) (1) Notwithstanding any other provision of law to the contrary,  
42 except as provided in paragraph (6), in the event that child abuse or  
43 neglect results in a child fatality or near fatality, reports or records of a

1 child alleged or adjudicated to be in need of care received by the secretary,  
2 a law enforcement agency or any juvenile intake and assessment worker  
3 shall become a public record and subject to disclosure pursuant to K.S.A.  
4 45-215, and amendments thereto.

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

25 (3) Notwithstanding the provisions of paragraph (2), in the event that  
26 child abuse or neglect results in a child fatality *or criminal charges are*  
27 *filed against a person in relation to such fatality*, the secretary shall release  
28 the following information in response to an open records request made  
29 pursuant to the Kansas open records act, within seven business days of  
30 receipt of such request, as allowed by applicable law:

- 31 (A) Age and sex of the child;
- 32 (B) date of the fatality;
- 33 (C) a summary of any previous reports of abuse or neglect received  
34 by the secretary involving the child, along with the findings of such  
35 reports; and
- 36 (D) any department recommended services provided to the child.

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

- 43 (A) Age and sex of the child;

1 (B) date of the fatality; and

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

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

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

14 Sec. 2. K.S.A. 2020 Supp. 38-2212 is hereby repealed.

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