

SENATE BILL No. 425

By Committee on Public Health and Welfare

2-1

1 AN ACT concerning children and minors; relating to the Kansas
2 department for children and families; clarifying information exchange
3 in investigations of child abuse between the department and law
4 enforcement agencies; directing the department to release certain
5 information to law enforcement agencies; amending K.S.A. 38-2210,
6 38-2211 and 38-2212 and repealing the existing sections.
7

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

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

- 15 (a) The secretary.
16 (b) The secretary of corrections.
17 (c) ~~The~~A law enforcement agency *investigating or* receiving such
18 report. *Such information shall include information and records disclosed*
19 *pursuant to K.S.A. 38-2212(e), and amendments thereto.*
20 (d) Members of a court appointed multidisciplinary team.
21 (e) An entity mandated by federal law or an agency of any state
22 authorized to receive and investigate reports of a child known or suspected
23 to be in need of care.
24 (f) A military enclave or Indian tribal organization authorized to
25 receive and investigate reports of a child known or suspected to be in need
26 of care.
27 (g) A county or district attorney with responsibility for filing a
28 petition pursuant to K.S.A. 38-2214, and amendments thereto.
29 (h) A court services officer who has taken a child into custody
30 pursuant to K.S.A. 38-2231, and amendments thereto.
31 (i) An intake and assessment worker.
32 (j) Any community corrections program which has the child under
33 court ordered supervision.
34 (k) The department of health and environment or persons authorized
35 by the department of health and environment pursuant to K.S.A. 65-512,
36 and amendments thereto, for the purpose of carrying out responsibilities

1 relating to licensure or registration of child care providers as required by
2 article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments
3 thereto.

4 (1) The interstate compact for juveniles compact administrator for the
5 purpose of carrying out the responsibilities related to the interstate
6 compact for juveniles.

7 Sec. 2. K.S.A. 38-2211 is hereby amended to read as follows: 38-
8 2211. (a) *Access to the official file.* The following persons or entities shall
9 have access to the official file of a child in need of care proceeding
10 pursuant to this code:

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

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

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

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

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

24 (6) A citizen review board.

25 (7) The secretary of corrections or any agents designated by the
26 secretary of corrections.

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

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

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

34 (11) *An investigating law enforcement agency.*

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

38 (1) The court having jurisdiction over the proceeding, including the
39 presiding judge and any court personnel designated by the judge.

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

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

1 (4) A court appointed special advocate for a child who is the subject
2 of the proceeding or a paid staff member of a court appointed special
3 advocate program.

4 (5) A citizen review board.

5 (6) The secretary.

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

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

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

13 (10) *An investigating law enforcement agency.*

14 (c) *Preservation of records.* The Kansas state historical society shall
15 be allowed to take possession for preservation in the state archives of any
16 court records related to proceedings under the Kansas code for care of
17 children whenever such records otherwise would be destroyed. No such
18 records in the custody of the Kansas state historical society shall be
19 disclosed directly or indirectly to anyone for 70 years after creation of the
20 records, except as provided in subsections (a) and (b). Pursuant to
21 subsections (a)(9) and (b)(9), a judge of the district court may allow
22 inspection for research purposes of any court records in the custody of the
23 Kansas state historical society related to proceedings under the Kansas
24 code for care of children.

25 Sec. 3. K.S.A. 38-2212 is hereby amended to read as follows: 38-
26 2212. (a) *Principle of appropriate access.* Information contained in
27 confidential agency records concerning a child alleged or adjudicated to be
28 in need of care may be disclosed as provided in this section *and shall be*
29 *disclosed as provided in subsection (e).* Disclosure shall in all cases be
30 guided by the principle of providing access only to persons or entities with
31 a need for information that is directly related to achieving the purposes of
32 this code.

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

37 (c) *Necessary access.* The following persons or entities shall have
38 access to information from agency records. Access shall be limited to
39 information reasonably necessary to carry out their lawful responsibilities,
40 to maintain their personal safety and the personal safety of individuals in
41 their care, or to educate, diagnose, treat, care for or protect a child alleged
42 to be in need of care. Information authorized to be disclosed pursuant to
43 this subsection shall not contain information that identifies a reporter of a

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

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

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

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

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

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

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

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

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

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

19 (7) The state child death review board established under K.S.A. 22a-
20 243, and amendments thereto.

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

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

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

32 (B) circumstances that necessitated placement;

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

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

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

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

41 (10) The state protection and advocacy agency as provided by K.S.A.
42 65-5603(a)(10) or K.S.A. 74-5515(a)(2)(A) and (B), and amendments
43 thereto.

1 (11) Any educational institution to the extent necessary to enable the
2 educational institution to provide the safest possible environment for its
3 pupils and employees.

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

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

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

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

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

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

38 (A) The individuals involved or their representatives have given
39 express written consent; or

40 (B) the investigation of the abuse or neglect of the child or the filing
41 of a petition alleging a child to be in need of care has become public
42 knowledge, provided, however, that the agency shall limit disclosure to
43 confirmation of procedural details relating to the handling of the case by

1 professionals.

2 (e) *Law enforcement access. The secretary shall disclose confidential*
3 *agency records of a child alleged or adjudicated to be a child in need of*
4 *care, as described in K.S.A. 38-2209, and amendments thereto, to the law*
5 *enforcement agency investigating the alleged or substantiated report or*
6 *investigation of abuse or neglect, regardless of the disposition of such*
7 *report or investigation. Such records shall include, but not be limited to,*
8 *any information regarding such report or investigation—and, records of*
9 *past reports or investigations concerning such child and such child's*
10 *siblings and the perpetrator or alleged perpetrator **and the name and***
11 ***contact information of the reporter or persons alleging abuse or neglect***
12 ***and case managers, investigators or contracting agency employees***
13 ***assigned to or investigating such report.***

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

21 (f)(g) (1) Notwithstanding any other provision of law to the contrary,
22 except as provided in paragraph (6), in the event that child abuse or
23 neglect results in a child fatality or near fatality, reports or records of a
24 child alleged or adjudicated to be in need of care received by the secretary,
25 a law enforcement agency or any juvenile intake and assessment worker
26 shall become a public record and subject to disclosure pursuant to K.S.A.
27 45-215, and amendments thereto.

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

1 justifying the closing of the records and shall provide a copy of the journal
2 entry to the affected parties and the individual requesting disclosure
3 pursuant to the Kansas open records act, K.S.A. 45-215 et seq., and
4 amendments thereto.

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

10 (A) Age and sex of the child;

11 (B) date of the fatality;

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

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

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

22 (A) Age and sex of the child;

23 (B) date of the fatality; and

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

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

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

36 Sec. 4. K.S.A. 38-2210, 38-2211 and 38-2212 are hereby repealed.

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