

HOUSE BILL No. 2628

By Committee on Child Welfare and Foster Care

Requested by Andrea Warnke on behalf of the Kansas Department of Children and Families

1-30

1 AN ACT concerning children and minors; relating to child fatality records;
2 requiring the secretary for children and families to release certain
3 information related to a child fatality when criminal charges are filed
4 with a court alleging that a person caused such fatality; amending
5 K.S.A. 2023 Supp. 38-2212 and repealing the existing section.
6

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

8 Section 1. K.S.A. 2023 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 and shall be disclosed as provided in subsection (e). Disclosure
13 shall in all cases be guided by the principle of providing access only to
14 persons or entities with a need for information that is directly related to
15 achieving the purposes of this code.

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

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

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

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

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

34 (4) A person licensed to practice the healing arts or mental health

1 profession in order to diagnose, care for, treat or supervise:

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

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

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

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

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

11 (7) The state child death review board established under K.S.A. 22a-
12 243, and amendments thereto.

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

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

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

24 (B) circumstances that necessitated placement;

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

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

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

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

33 (10) The state protection and advocacy agency as provided by K.S.A.
34 65-5603(a)(10) or K.S.A. 74-5515(a)(2)(A) and (B), and amendments
35 thereto.

36 (11) Any educational institution to the extent necessary to enable the
37 educational institution to provide the safest possible environment for its
38 pupils and employees.

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

41 (13) Any other federal, state or local government executive branch
42 entity or any agent of such entity, having a need for such information in
43 order to carry out such entity's responsibilities under the law to protect

1 children from abuse and neglect.

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

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

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

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

30 (A) The individuals involved or their representatives have given
31 express written consent; or

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

37 (e) *Law enforcement access.* The secretary shall disclose confidential
38 agency records of a child alleged or adjudicated to be a child in need of
39 care, as described in K.S.A. 38-2209, and amendments thereto, to the law
40 enforcement agency investigating the alleged or substantiated report or
41 investigation of abuse or neglect, regardless of the disposition of such
42 report or investigation. Such records shall include, but not be limited to,
43 any information regarding such report or investigation, records of past

1 reports or investigations concerning such child and such child's siblings
2 and the perpetrator or alleged perpetrator and the name and contact
3 information of the reporter or persons alleging abuse or neglect and case
4 managers, investigators or contracting agency employees assigned to or
5 investigating such report. Such records shall only be used for the purposes
6 of investigating the alleged or substantiated report or investigation of
7 abuse or neglect.

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

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

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

42 (3) Notwithstanding the provisions of paragraph (2), in the event that
43 child abuse or neglect results in a child fatality *or criminal charges are*

1 *filed with a court alleging that a person caused a child fatality*, the
2 secretary shall release the following information in response to an open
3 records request made pursuant to the Kansas open records act, within
4 seven business days of receipt of such request, as allowed by applicable
5 law:

- 6 (A) Age and sex of the child;
- 7 (B) date of the fatality;
- 8 (C) a summary of any previous reports of abuse or neglect received
9 by the secretary involving the child, along with the findings of such
10 reports; and
- 11 (D) any department recommended services provided to the child.

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

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

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

32 Sec. 2. K.S.A. 2023 Supp. 38-2212 is hereby repealed.

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