

As Amended by House Committee

Session of 2021

HOUSE BILL No. 2127

By Committee on Judiciary

1-25

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 $\frac{2}{3}$ 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* **child fatality involving an**
28 **allegation of child abuse or neglect**, the secretary shall release the
29 following information in response to an open records request made
30 pursuant to the Kansas open records act, within seven business days of
31 receipt of such request, as allowed by applicable law:

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

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

- 1 (A) Age and sex of the child;
2 (B) date of the fatality; and
3 (C) a summary of the facts surrounding the death of the child.

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

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

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 K.S.A. 2020 Supp. 38-2212 is hereby repealed.

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