

As Amended by House Committee

Session of 2012

HOUSE BILL No. 2533

By Representatives O'Neal, Rubin, Alford, Arpke, Billinger, Calloway, Cassidy, Collins, Crum, DeGraaf, Fawcett, Finney, Garber, Goico, Gonzalez, Goodman, Grange, Gregory, Hedke, Hermanson, Hill, Hoffman, Howell, Huebert, Kelly, Kiegerl, Kleebl, LeDoux, Montgomery, Moxley, O'Hara, Patton, Peck, Pottorff, Ryckman, Scapa, Seiwert, Smith, Suellentrop, Trimmer and K. Wolf

1-25

1 AN ACT concerning children and minors; relating to mandatory reporting  
2 of suspected child abuse; amending K.S.A. 2011 Supp. 38-2223 and  
3 repealing the existing section.

4  
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2011 Supp. 38-2223 is hereby amended to read as  
7 follows: 38-2223. (a) ~~Persons making reports.~~ (1) *Failure to report abuse*  
8 *is knowingly failing to report any suspected physical, mental or emotional*  
9 *abuse or neglect of a child by any person described in subsection (c).*

10 (b) *Failure to report sexual abuse is knowingly failing to report any*  
11 *suspected sexual abuse of a child by any person as described in subsection*  
12 *(c).*

13 (c) When any of the following persons has reason to suspect that a  
14 child has been ~~harmed as a result of~~ *the victim of* physical, mental or  
15 emotional abuse or neglect or sexual abuse, the person shall report the  
16 matter promptly as provided in subsections ~~(b) and (e); (e) and (f):~~

17 ~~(A) (1)~~ The following persons providing medical care or treatment:  
18 Persons licensed to practice the healing arts, dentistry and optometry;  
19 persons engaged in postgraduate training programs approved by the state  
20 board of healing arts; licensed professional or practical nurses; and chief  
21 administrative officers of medical care facilities;

22 ~~(B) (2)~~ the following persons licensed by the state to provide mental  
23 health services: Licensed psychologists, licensed masters level  
24 psychologists, licensed clinical psychotherapists, licensed social workers,  
25 licensed marriage and family therapists, licensed clinical marriage and  
26 family therapists, licensed professional counselors, licensed clinical  
27 professional counselors and registered alcohol and drug abuse counselors;

28 ~~(C) teachers, school administrators or other employees of an~~  
29 ~~educational institution which the child is attending and~~

30 (3) *any employee, contractor or administrator of any public or*  
31 *private educational institution in the state, including, but not limited to:*  
32 **who works in a position of authority over a child in an official**  
33 **capacity, if such child is a student enrolled in and attending, or**

1 **participating in a program or event at such educational institution.**  
 2 **For purposes of this paragraph, "educational institution" includes,**  
 3 **but is not limited to:** *Elementary schools, secondary schools, technical*  
 4 *colleges, community colleges, municipal universities and universities;*

5 ~~(4) persons licensed by the secretary of health and environment or~~  
 6 ~~the secretary of social and rehabilitation services~~ **state of Kansas** to  
 7 provide child care services *or foster family placement* or the employees of  
 8 persons so licensed at the place where the child care services *or foster*  
 9 *family placement* are being provided to the child; ~~and~~

10 ~~(D)~~ (5) firefighters, emergency medical services personnel, law  
 11 enforcement officers, juvenile intake and assessment workers, court  
 12 services officers and community corrections officers, case managers  
 13 appointed under K.S.A. 23-1001 et seq., and amendments thereto, and  
 14 mediators appointed under K.S.A. 23-602, and amendments thereto; and

15 ~~(E)~~ (6) ~~any person employed by or who~~ **who works in a position of**  
 16 **authority over a child in an official capacity and is employed by or**  
 17 works as a volunteer for any organization, whether for profit or not-for-  
 18 profit, that provides *recreational services to children or* social services to  
 19 pregnant teenagers, including, but not limited to, counseling, adoption  
 20 services and pregnancy education and maintenance, **if such children or**  
 21 **pregnant teenagers are receiving such services from the organization;**

22 ~~(7) any person employed by or who works as a volunteer for a~~  
 23 ~~recognized church or religious denomination; and~~ (7) **any person who**  
 24 **works in a position of authority over a child in an official capacity and**  
 25 **is employed by or works as a volunteer for a recognized church or**  
 26 **religious organization, if such child, child's parent or other person**  
 27 **having lawful custody or child's siblings are members of or attend**  
 28 **services or events at such church or religious organization; and**

29 (8) *any employee, as defined in K.S.A. 75-6102, and amendments*  
 30 *thereto,* **of any municipality, as defined by K.S.A. 75-6102, and**  
 31 **amendments thereto, or of the state who works in a position of authority**  
 32 **over minors children in an official capacity.**

33 ~~(2)~~ (d) In addition to the reports required under subsection ~~(a)(1)~~ (c),  
 34 any person who has reason to suspect that a child may be a child in need of  
 35 care may report the matter as provided in subsection ~~(b) and (e)~~ (e) and (f).

36 ~~(b) Form of report. (1)~~

37 (e) (1) The report may be made orally and shall be followed by a  
 38 written report if requested. Every report shall contain, if known: The  
 39 names and addresses of the child and the child's parents or other persons  
 40 responsible for the child's care; the location of the child if not at the child's  
 41 residence; the child's gender, race and age; the reasons why the reporter  
 42 suspects the child may be a child in need of care; if abuse or neglect or  
 43 sexual abuse is suspected, the nature and extent of the harm to the child,

1 including any evidence of previous harm; and any other information that  
2 the reporter believes might be helpful in establishing the cause of the harm  
3 and the identity of the persons responsible for the harm.

4 (2) When reporting a suspicion that a child may be in need of care,  
5 the reporter shall disclose protected health information freely and  
6 cooperate fully with the secretary and law enforcement throughout the  
7 investigation and any subsequent legal process.

8 ~~(e) To whom made.~~

9 (f) Reports made pursuant to this section shall be made to the  
10 secretary, except as follows:

11 (1) When the department of social and rehabilitation services is not  
12 open for business, reports shall be made to the appropriate law  
13 enforcement agency. On the next day that the department is open for  
14 business, the law enforcement agency shall report to the department any  
15 report received and any investigation initiated pursuant to K.S.A. 2011  
16 Supp. 38-2226, and amendments thereto. The reports may be made orally  
17 or, on request of the secretary, in writing.

18 (2) Reports of child abuse or neglect occurring in an institution  
19 operated by the secretary of social and rehabilitation services or the  
20 commissioner of juvenile justice shall be made to the attorney general. All  
21 other reports of child abuse or neglect by persons employed by or of  
22 children of persons employed by the department of social and  
23 rehabilitation services shall be made to the appropriate law enforcement  
24 agency.

25 ~~(d) Death of child. Any person who is required by this section to~~  
26 ~~report a suspicion that a child is in need of care and who knows of~~  
27 ~~information relating to the death of a child shall immediately notify the~~  
28 ~~coroner as provided by K.S.A. 22a-242, and amendments thereto.~~

29 ~~(e) Violations. (1) Willful and knowing failure to make a report~~  
30 ~~required by this section is a class B misdemeanor. It is not a defense that~~  
31 ~~another mandatory reporter made a report.~~

32 (g) *It is not a defense that ~~another person made a report~~ a person*  
33 **believes another person made a report, unless such report had in fact**  
34 **been made, or that a person did not make a report for fear of reprisal or**  
35 **any other consequence of making such report.**

36 (h) (1) *Failure to report abuse as defined in subsection (a) is a class*  
37 *B misdemeanor.*

38 (2) *Failure to report sexual abuse as defined in subsection (b) is a*  
39 *severity level 10, nonperson felony.*

40 ~~(2) (i) Intentionally preventing or interfering with the making of a~~  
41 ~~report required by this section is a ~~class B misdemeanor~~ severity level 8,~~  
42 ~~nonperson felony.~~

43 ~~(3) Any person who willfully and knowingly makes~~

1       (j) *Making a false report pursuant to this section or ~~makes a report~~*  
2 *that such person knows lacks factual foundation is guilty of with the intent*  
3 *to harm, harass or defame any person is a class B misdemeanor.*

4       ~~(f) Immunity from liability.~~

5       (k) Anyone who, without malice, participates in the making of a  
6 report to the secretary or a law enforcement agency relating to a suspicion  
7 that a child may be a child in need of care or who participates in any  
8 activity or investigation relating to the report or who participates in any  
9 judicial proceeding resulting from the report shall have immunity from any  
10 civil liability that might otherwise be incurred or imposed.

11       **(l) (1) Nothing in this section shall require a duly ordained**  
12 **minister of religion, as defined by K.S.A. 60-429, and amendments**  
13 **thereto, to make a report under this section if the report would**  
14 **disclose any penitential communication under the protection of**  
15 **privilege pursuant to K.S.A. 60-429, and amendments thereto.**

16       **(2) Nothing in this section shall require a report to be made under**  
17 **this section if the report would:**

18       **(A) Disclose any communication under the protection of lawyer-**  
19 **client privilege pursuant to K.S.A. 60-426, and amendments thereto;**

20       **(B) disclose any matter communicated in confidence by a client to**  
21 **such client's lawyer; or**

22       **(C) violate any constitutional right of assistance to counsel.**

23       Sec. 2. K.S.A. 2011 Supp. 38-2223 is hereby repealed.

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

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