

SENATE BILL No. 408

AN ACT concerning abuse, neglect and exploitation of persons; relating to reporting and investigation; duties and powers of attorney general, law enforcement and department of corrections; amending K.S.A. 2015 Supp. 38-2223, 38-2226 and 75-723 and repealing the existing sections.

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

Section 1. K.S.A. 2015 Supp. 38-2223 is hereby amended to read as follows: 38-2223. (a) *Persons making reports.* (1) When any of the following persons has reason to suspect that a child has been harmed as a result of physical, mental or emotional abuse or neglect or sexual abuse, the person shall report the matter promptly as provided in subsections (b) and (c);

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

(B) the following persons licensed by the state to provide mental health services: Licensed psychologists, licensed masters level psychologists, licensed clinical psychotherapists, licensed social workers, licensed marriage and family therapists, licensed clinical marriage and family therapists, *licensed behavioral analysts, licensed assistant behavioral analysts*, licensed professional counselors, licensed clinical professional counselors and registered alcohol and drug abuse counselors;

(C) teachers, school administrators or other employees of an educational institution which the child is attending and persons licensed by the secretary of health and environment to provide child care services or the employees of persons so licensed at the place where the child care services are being provided to the child;

(D) firefighters, emergency medical services personnel, law enforcement officers, juvenile intake and assessment workers, court services officers, community corrections officers, case managers appointed under K.S.A. 2015 Supp. 23-3508, and amendments thereto, and mediators appointed under K.S.A. 2015 Supp. 23-3502, and amendments thereto; and

(E) any person employed by or who works as a volunteer for any organization, whether for profit or not-for-profit, that provides social services to pregnant teenagers, including, but not limited to, counseling, adoption services and pregnancy education and maintenance.

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

(b) *Form of report.* (1) The report may be made orally and shall be followed by a written report if requested. Every report shall contain, if known: The names and addresses of the child and the child's parents or other persons responsible for the child's care; the location of the child if not at the child's residence; the child's gender, race and age; the reasons why the reporter suspects the child may be a child in need of care; if abuse or neglect or sexual abuse is suspected, the nature and extent of the harm to the child, including any evidence of previous harm; and any other information that the reporter believes might be helpful in establishing the cause of the harm and the identity of the persons responsible for the harm.

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

(c) *To whom made.* Reports made pursuant to this section shall be made to the secretary, except as follows:

(1) When the Kansas department for children and families is not open for business, reports shall be made to the appropriate law enforcement agency. On the next day that the department is open for business, the law enforcement agency shall report to the department any report received and any investigation initiated pursuant to K.S.A. 2015 Supp. 38-2226, and amendments thereto. The reports may be made orally or, on request of the secretary, in writing.

(2) *Reports of child abuse or neglect occurring in an institution operated by the Kansas department of corrections shall be made to the attorney general or the secretary of corrections.* Reports of child abuse or neglect occurring in an institution operated by the Kansas department

for aging and disability services ~~or the commissioner of juvenile justice~~ shall be made to the ~~attorney general~~ *appropriate law enforcement agency*. All other reports of child abuse or neglect by persons employed by ~~or of children of persons employed by~~ the Kansas department for aging and disability services ~~and or~~ the Kansas department for children and families, *or of children of persons employed by either department*, shall be made to the appropriate law enforcement agency.

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

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

(2) Intentionally preventing or interfering with the making of a report required by this section is a class B misdemeanor.

(3) Any person who willfully and knowingly makes a false report pursuant to this section or makes a report that such person knows lacks factual foundation is guilty of a class B misdemeanor.

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

Sec. 2. K.S.A. 2015 Supp. 38-2226 is hereby amended to read as follows: 38-2226. (a) *Investigation for child abuse or neglect*. The secretary and law enforcement officers shall have the duty to receive and investigate reports of child abuse or neglect for the purpose of determining whether the report is valid and whether action is required to protect a child. Any person or agency which maintains records relating to the involved child which are relevant to any investigation conducted by the secretary or law enforcement agency under this code shall provide the secretary or law enforcement agency with the necessary records to assist in investigations. In order to provide such records, the person or agency maintaining the records shall receive from the secretary or law enforcement: (1) A written request for information; and (2) a written notice that the investigation is being conducted by the secretary or law enforcement. If the secretary and such officers determine that no action is necessary to protect the child but that a criminal prosecution should be considered, such law enforcement officers shall make a report of the case to the appropriate law enforcement agency.

(b) *Joint investigations*. When a report of child abuse or neglect indicates: (1) That there is serious physical harm to, serious deterioration of or sexual abuse of the child; and (2) that action may be required to protect the child, the investigation shall be conducted as a joint effort between the secretary and the appropriate law enforcement agency or agencies, with a free exchange of information between them pursuant to K.S.A. 2015 Supp. 38-2210, and amendments thereto. If a statement of a suspect is obtained by either agency, a copy of the statement shall be provided to the other.

(c) *Investigation of certain cases*. Suspected child abuse or neglect which occurs in an institution operated by the ~~secretary~~ *Kansas department of corrections* shall be investigated by the attorney general *or secretary of corrections*. ~~Any other~~ suspected child abuse or neglect *in an institution operated by the Kansas department for aging and disability services, or by persons employed by the Kansas department for children and families aging and disability services or the Kansas department for children and families, or of children of persons employed by either department*, shall be investigated by the appropriate law enforcement agency.

(d) *Coordination of investigations by county or district attorney*. If a dispute develops between agencies investigating a reported case of child abuse or neglect, the appropriate county or district attorney shall take charge of, direct and coordinate the investigation.

(e) *Investigations concerning certain facilities*. Any investigation in-

volving a facility subject to licensing or regulation by the secretary of health and environment shall be promptly reported to the state secretary of health and environment.

(f) *Cooperation between agencies.* Law enforcement agencies and the secretary shall assist each other in taking action which is necessary to protect a child regardless of which agency conducted the initial investigation.

(g) *Cooperation between school personnel and investigative agencies.* (1) Educational institutions, the secretary and law enforcement agencies shall cooperate with each other in the investigation of reports of suspected child abuse or neglect. The secretary and law enforcement agencies shall have access to a child in a setting designated by school personnel on the premises of an educational institution. Attendance at an interview conducted on such premises shall be at the discretion of the agency conducting the interview, giving consideration to the best interests of the child. To the extent that safety and practical considerations allow, law enforcement officers on such premises for the purpose of investigating a report of suspected child abuse or neglect shall not be in uniform.

(2) The secretary or a law enforcement officer may request the presence of school personnel during an interview if the secretary or officer determines that the presence of such person might provide comfort to the child or facilitate the investigation.

Sec. 3. K.S.A. 2015 Supp. 75-723 is hereby amended to read as follows: 75-723. (a) There is hereby created in the office of the attorney general an abuse, neglect and exploitation of persons unit.

(b) *Within the limits of available resources, the unit may, in the attorney general's discretion:*

(1) *Participate in the prevention, detection, review and prosecution of abuse, neglect and exploitation of persons, whether financial or physical;*

(2) *conduct investigations of suspected criminal abuse, neglect or exploitation of persons;*

(3) *coordinate with and assist other law enforcement agencies, or participate in task forces or joint operations, in the investigation of suspected criminal abuse, neglect or exploitation of persons;*

(4) *coordinate with and assist the medicaid fraud and abuse division established by K.S.A. 75-725, and amendments thereto, in the prevention, detection and investigation of abuse, neglect and exploitation of persons;*

(5) *work with or participate in the Kansas internet crimes against children task force, and work with any exploited and missing child investigators and any other child crime investigators;*

(6) *assist in any investigation of child abuse or neglect conducted by a law enforcement agency pursuant to K.S.A. 2015 Supp. 38-2226, and amendments thereto; and*

(7) *assist in any investigation of adult abuse, neglect, exploitation or fiduciary abuse conducted by a law enforcement agency pursuant to K.S.A. 2015 Supp. 39-1443, and amendments thereto.*

(c) *The unit shall give priority to preventing, detecting and investigating abuse, neglect or exploitation of adults who are senior citizens, disabled or otherwise vulnerable to abuse, neglect or exploitation.*

(d) Except as provided by subsection ~~(h)~~ (k), the information obtained and the investigations conducted by the unit shall be confidential as required by state or federal law. Upon request of the unit, the unit shall have access to all records of reports, investigation documents and written reports of findings related to ~~confirmed~~ *substantiated or affirmed* cases of abuse, neglect or exploitation of persons or cases in which ~~there is~~ *the attorney general has* reasonable suspicion to believe abuse, neglect or exploitation of persons has occurred which are received or generated by ~~the Kansas department for children and families, Kansas department for aging and disability services or department of health and environment a state agency.~~

(e) *Whenever a state agency reports a matter involving suspected abuse, neglect or exploitation of an adult to a law enforcement agency or a county or district attorney, such state agency shall simultaneously forward such report to the unit.*

~~(e)-(f)~~ (f) Except for reports alleging only self-neglect, ~~such~~ a state

agency receiving reports of abuse, neglect or exploitation of ~~persons~~ *adults* shall forward to the unit:

(1) Within 10 days of ~~confirmation~~ *substantiation*, reports of findings concerning the ~~confirmed~~ *substantiated* abuse, neglect or exploitation of ~~persons~~ *adults*; and

(2) within 10 days of such denial, each report of an investigation in which such state agency was denied the opportunity or ability to conduct or complete a full investigation of abuse, neglect or exploitation of ~~persons~~ *adults*.

~~(d)~~(g) On or before the first day of the regular legislative session each year, the unit shall submit to the legislature a written report of the unit's activities, investigations and findings for the preceding fiscal year.

~~(e)~~(h) The attorney general shall adopt rules and regulations as deemed appropriate for the administration of this section.

~~(f)~~(i) No state funds appropriated to support the provisions of the ~~abuse, neglect or exploitation of persons~~ unit and expended to contract or enter into agreements with any third party shall be used by a third party to file any civil action against the state of Kansas or any agency of the state of Kansas. Nothing in this section shall prohibit the attorney general from initiating or participating in any civil action against any party.

~~(g)~~(j) The attorney general may contract or enter into agreements with other agencies or organizations to provide services related to the attorney general's duties under this section or to the investigation or litigation of findings related to abuse, neglect or exploitation of persons.

~~(h)~~(k) Notwithstanding any other provision of law, nothing shall prohibit the attorney general or the unit from distributing or utilizing only that information obtained pursuant to a confirmed case of abuse, neglect or exploitation or cases in which there is reasonable suspicion to believe abuse, neglect or exploitation has occurred pursuant to this section with any third party ~~contracted with by~~ *under contract or agreement with* the attorney general to carry out the provisions of this section.

(l) *As used in this section:*

(1) *“Adult” means any person 18 years of age or older; and*

(2) *“state agency” means the Kansas department for children and families, Kansas department for aging and disability services or Kansas department of health and environment.*

Sec. 4. K.S.A. 2015 Supp. 38-2223, 38-2226 and 75-723 are hereby repealed.

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

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.