

SENATE BILL No. 443

By Committee on Federal and State Affairs

3-8

1 AN ACT concerning children and minors; relating to preliminary inquiries
2 to determine whether a child is in need of care; investigations of
3 suspected abuse or neglect; amending K.S.A. 2017 Supp. 38-2223, 38-
4 2226 and 38-2230 and repealing the existing sections.

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

7 Section 1. K.S.A. 2017 Supp. 38-2223 is hereby amended to read as
8 follows: 38-2223. (a) *Persons making reports.* (1) When any of the
9 following persons has reason to suspect that a child has been harmed as a
10 result of physical, mental or emotional abuse or neglect or sexual abuse,
11 the person shall report the matter promptly as provided in subsections (b)
12 and (c);

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

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

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

30 (D) firefighters, emergency medical services personnel, law
31 enforcement officers, juvenile intake and assessment workers, court
32 services officers, community corrections officers, case managers appointed
33 under K.S.A. 2017 Supp. 23-3508, and amendments thereto, and mediators
34 appointed under K.S.A. 2017 Supp. 23-3502, and amendments thereto;
35 and

36 (E) any person employed by or who works as a volunteer for any

1 organization, whether for profit or not-for-profit, that provides social
2 services to pregnant teenagers, including, but not limited to, counseling,
3 adoption services and pregnancy education and maintenance.

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

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

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

21 (c) (1) *To whom made.* Reports made pursuant to this section shall be
22 made to the secretary, except as follows:

23 ~~(1)~~(A) When the Kansas department for children and families is not
24 open for business, reports shall be made to the appropriate law
25 enforcement agency. On the next day that the department is open for
26 business, the law enforcement agency shall report to the department any
27 report received and any investigation initiated pursuant to K.S.A. 2017
28 Supp. 38-2226, and amendments thereto. The reports may be made orally
29 or, on request of the secretary, in writing.

30 ~~(2)~~(B) Reports of child abuse or neglect occurring in an institution
31 operated by the Kansas department of corrections shall be made to the
32 attorney general or the secretary of corrections. Reports of child abuse or
33 neglect occurring in an institution operated by the Kansas department for
34 aging and disability services shall be made to the appropriate law
35 enforcement agency. All other reports of child abuse or neglect by persons
36 employed by the Kansas department for aging and disability services or
37 the Kansas department for children and families, or of children of persons
38 employed by either department, shall be made to the appropriate law
39 enforcement agency.

40 (2) *When the Kansas department for children and families receives a*
41 *report required under subsection (a)(1), or two or more reports from any*
42 *person of suspected abuse or neglect concerning the same child, the report*
43 *or reports shall be promptly relayed by the department to the appropriate*

1 *law enforcement agency. Any such relayed reports may be made orally or,*
 2 *on request of the appropriate law enforcement agency, in writing. Any*
 3 *investigation of a report of suspected abuse or neglect shall be made in*
 4 *accordance with the provisions of K.S.A. 2017 Supp. 38-2226(a), and*
 5 *amendment thereto.*

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

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

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

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

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

25 Sec. 2. K.S.A. 2017 Supp. 38-2226 is hereby amended to read as
 26 follows: 38-2226. (a) *Investigation for child abuse or neglect.* (1) The
 27 secretary and law enforcement officers shall have the duty to receive and
 28 investigate reports of child abuse or neglect for the purpose of determining
 29 whether the report is valid and whether action is required to protect a
 30 child. Any person or agency which maintains records relating to the
 31 involved child which are relevant to any investigation conducted by the
 32 secretary or law enforcement agency under this code shall provide the
 33 secretary ~~or~~ and law enforcement agency with the necessary records to
 34 assist in investigations. In order to provide such records, the person or
 35 agency maintaining the records shall receive from the secretary or law
 36 enforcement: ~~(1)~~ (A) A written request for information; and ~~(2)~~ (B) a
 37 written notice that the investigation is being conducted by the secretary or
 38 law enforcement. If the secretary and such officers determine that no
 39 action is necessary to protect the child but that a criminal prosecution
 40 should be considered, such law enforcement officers shall make a report of
 41 the case to the appropriate law enforcement agency.

42 (2) *Any investigation of a report of suspected child abuse or neglect*
 43 *made by the secretary under article 22 of chapter 38 of the Kansas*

1 *Statutes Annotated, and amendments thereto, shall be in accordance with*
2 *the rules and regulations adopted by the secretary in order to determine*
3 *the circumstances surrounding the suspected abuse or neglect and the*
4 *cause thereof. An investigation made by any person required to investigate*
5 *reports of child abuse or neglect under article 22 of chapter 38 of the*
6 *Kansas Statutes Annotated, and amendments thereto, shall include*
7 *personal contact with the child named in the report and, if applicable, any*
8 *other children in the same household. Any person required to investigate*
9 *reports of child abuse or neglect may question the subjects of those reports*
10 *with or without the consent of the parent or other person responsible for*
11 *the child's welfare. The interviewing of the child or children, if they are of*
12 *the mental capacity to be interviewed, shall take place in the absence of*
13 *the person or persons responsible for the suspected abuse or neglect. In*
14 *the event that any person required to investigate child abuse or neglect is*
15 *denied reasonable access to a child by the parents or other persons, and*
16 *that person required to investigate deems that the best interests of the child*
17 *so require, the person investigating may request the intervention of a local*
18 *law enforcement agency or seek an appropriate court order to examine*
19 *and interview the child.*

20 (b) *Joint investigations.* When a report of child abuse or neglect
21 indicates: (1) That there is serious physical harm to, serious deterioration
22 of or sexual abuse of the child; and (2) that action may be required to
23 protect the child, the investigation shall be conducted as a joint effort
24 between the secretary and the appropriate law enforcement agency or
25 agencies, with a free exchange of information between them pursuant to
26 K.S.A. 2017 Supp. 38-2210, and amendments thereto. If a statement of a
27 suspect is obtained by either agency, a copy of the statement shall be
28 provided to the other.

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

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

42 (e) *Investigations concerning certain facilities.* Any investigation
43 involving a facility subject to licensing or regulation by the secretary of

1 health and environment shall be promptly reported to the state secretary of
2 health and environment.

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

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

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

22 Sec. 3. K.S.A. 2017 Supp. 38-2230 is hereby amended to read as
23 follows: 38-2230. (a) Whenever any person furnishes information to the
24 secretary that a child appears to be a child in need of care, the department
25 shall make a preliminary inquiry to determine whether the interests of the
26 child require further action be taken.

27 (b) Whenever practicable, the inquiry shall include a preliminary
28 investigation of the circumstances which were the subject of the
29 information, including the home and environmental situation and the
30 previous history of the child.

31 (c) *Preliminary investigations made in response to a report of*
32 *suspected abuse or neglect shall be made in accordance with the*
33 *provisions of K.S.A. 2017 Supp. 38-2226(a), and amendments thereto.*

34 (d) If reasonable grounds to believe abuse or neglect exist, immediate
35 steps shall be taken to protect the health and welfare of the abused or
36 neglected child as well as that of any other child under the same care who
37 may be harmed by abuse or neglect. After the inquiry, if the secretary
38 determines it is not otherwise possible to provide those services necessary
39 to protect the interests of the child, the secretary shall recommend to the
40 county or district attorney that a petition be filed.

41 Sec. 4. K.S.A. 2017 Supp. 38-2223, 38-2226 and 38-2230 are hereby
42 repealed.

43 Sec. 5. This act shall take effect and be in force from and after its

- 1 publication in the statute book.