

HOUSE BILL No. 2242

By Committee on Judiciary

2-12

1 AN ACT concerning investigations of abuse, neglect or exploitation of
2 certain individuals; relating to instances when reports of abuse, neglect
3 or exploitation are sent to both the Kansas department for children and
4 families and the appropriate law enforcement agency; amending K.S.A.
5 2018 Supp. 38-2223, 38-2226 and 39-1431 and repealing the existing
6 sections.

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

9 Section 1. K.S.A. 2018 Supp. 38-2223 is hereby amended to read as
10 follows: 38-2223. (a) *Persons making reports.* (1) When any of the
11 following persons has reason to suspect that a child has been harmed as a
12 result of physical, mental or emotional abuse or neglect or sexual abuse,
13 the person shall report the matter promptly as provided in subsections (b)
14 and (c);

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

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

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

32 (D) firefighters, emergency medical services personnel, law
33 enforcement officers, juvenile intake and assessment workers, court
34 services officers, community corrections officers, case managers appointed
35 under K.S.A. 2018 Supp. 23-3508, and amendments thereto, and mediators
36 appointed under K.S.A. 2018 Supp. 23-3502, and amendments thereto;

1 and

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

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

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

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

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

25 ~~(A)~~(A) When the Kansas department for children and families is not
26 open for business, reports shall be made to the appropriate law
27 enforcement agency. On the next day that the department is open for
28 business, the law enforcement agency shall ~~report~~ *relay* to the department
29 any report received and any investigation initiated pursuant to K.S.A. 2018
30 Supp. 38-2226, and amendments thereto. The reports ~~may be made orally~~
31 ~~or, on request of the secretary, in writing~~ *shall be relayed in paper or*
32 *electronic format, or a combination of both.*

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

43 (2) *When the secretary receives a second or subsequent report from*

1 any person of suspected abuse or neglect concerning the same child, the
2 secretary shall relay the report and all previous reports of suspected abuse
3 or neglect concerning the same child to the appropriate law enforcement
4 agency within six hours, during normal working days, of receiving such
5 report or reports. Any such report or reports shall be relayed in paper or
6 electronic format, or a combination of both.

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

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

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

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

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

26 Sec. 2. K.S.A. 2018 Supp. 38-2226 is hereby amended to read as
27 follows: 38-2226. (a) *Investigation for child abuse or neglect.* The
28 secretary and law enforcement officers shall have the duty to receive and
29 investigate reports of child abuse or neglect for the purpose of determining
30 whether the report is valid and whether action is required to protect a
31 child. Any person or agency ~~which~~ that maintains records relating to the
32 involved child ~~which~~ that are relevant to any investigation conducted by
33 the secretary or law enforcement agency under this code shall provide the
34 secretary ~~or~~ and law enforcement agency with the necessary records to
35 assist in investigations. In order to provide such records, the person or
36 agency maintaining the records shall receive from the secretary or law
37 enforcement: (1) A written request for information; and (2) a written notice
38 that the investigation is being conducted by the secretary or law
39 enforcement. If the secretary and such officers determine that no action is
40 necessary to protect the child but that a criminal prosecution should be
41 considered, such law enforcement officers shall make a report of the case to
42 the appropriate law enforcement agency.

43 (b) *Joint investigations.* When a report of child abuse or neglect

1 indicates: (1) That there is serious physical harm to, serious deterioration
2 of or sexual abuse of the child; and (2) that action may be required to
3 protect the child, the investigation shall be conducted as a joint effort
4 between the secretary and the appropriate law enforcement agency or
5 agencies, with a free exchange of information between them pursuant to
6 K.S.A. 2018 Supp. 38-2210, and amendments thereto. *The secretary shall*
7 *relay such report of suspected abuse or neglect and any previous reports*
8 *of suspected abuse or neglect concerning the same child to the*
9 *appropriate law enforcement agency or agencies within six hours, during*
10 *normal working days, of receiving such report or reports. Any such report*
11 *or reports shall be relayed in paper or electronic format, or a combination*
12 *of both. If a statement of a suspect is obtained by either agency, a copy of*
13 *the statement shall be provided to the other.*

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

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

27 (e) *Investigations concerning certain facilities.* Any investigation
28 involving a facility subject to licensing or regulation by the secretary of
29 health and environment shall be promptly reported to the state secretary of
30 health and environment.

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

35 (g) *Cooperation between school personnel and investigative*
36 *agencies.* (1) Educational institutions, the secretary and law enforcement
37 agencies shall cooperate with each other in the investigation of reports of
38 suspected child abuse or neglect. The secretary and law enforcement
39 agencies shall have access to a child in a setting designated by school
40 personnel on the premises of an educational institution. Attendance at an
41 interview conducted on such premises shall be at the discretion of the
42 agency conducting the interview, giving consideration to the best interests
43 of the child. To the extent that safety and practical considerations allow,

1 law enforcement officers on such premises for the purpose of investigating
2 a report of suspected child abuse or neglect shall not be in uniform.

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

7 Sec. 3. K.S.A. 2018 Supp. 39-1431 is hereby amended to read as
8 follows: 39-1431. (a) (1) Any person who is licensed to practice any
9 branch of the healing arts, a licensed psychologist, a licensed master level
10 psychologist, a licensed clinical psychotherapist, the chief administrative
11 officer of a medical care facility, a teacher, a licensed social worker, a
12 licensed professional nurse, a licensed practical nurse, a licensed dentist, a
13 licensed marriage and family therapist, a licensed clinical marriage and
14 family therapist, licensed professional counselor, licensed clinical
15 professional counselor, registered alcohol and drug abuse counselor, a law
16 enforcement officer, an emergency medical services attendant, a case
17 manager, a rehabilitation counselor, a bank trust officer or any other
18 officers of financial institutions, a legal representative, a governmental
19 assistance provider, an owner or operator of a residential care facility, an
20 independent living counselor and the chief administrative officer of a
21 licensed home health agency, the chief administrative officer of a provider of
22 community services and affiliates thereof operated or funded by the
23 Kansas department for aging and disability services or licensed under
24 K.S.A. 2018 Supp. 39-2001 et seq., and amendments thereto, who has
25 reasonable cause to believe that an adult is being or has been abused,
26 neglected or exploited or is in need of protective services shall report,
27 immediately from receipt of the information, such information or cause a
28 report of such information to be made in any reasonable manner. An
29 employee of a domestic violence center shall not be required to report
30 information or cause a report of information to be made under this
31 subsection.
32

33 (2) Other state agencies receiving reports that are to be referred to the
34 Kansas department for children and families and the appropriate law
35 enforcement agency, shall submit the report to the department and agency
36 within six hours, during normal work days, of receiving the information.

37 (3) Reports shall be made to the Kansas department for children and
38 families during the normal working week days and hours of operation.
39 Reports shall be made to law enforcement agencies during the time the
40 Kansas department for children and families is not in operation. Law
41 enforcement shall submit the report and appropriate information to the
42 Kansas department for children and families on the first working day that
43 the Kansas department for children and families is in operation after

1 receipt of such information.

2 (b) The report made pursuant to subsection (a) shall contain the name
3 and address of the person making the report and of the caretaker caring for
4 the involved adult, the name and address of the involved adult, information
5 regarding the nature and extent of the abuse, neglect or exploitation, the
6 name of the next of kin of the involved adult, if known, and any other
7 information ~~which~~ *that* the person making the report believes might be
8 helpful in the investigation of the case and the protection of the involved
9 adult.

10 (c) Any other person, not listed in subsection (a), having reasonable
11 cause to suspect or believe that an adult is being or has been abused,
12 neglected or exploited or is in need of protective services may report such
13 information to the Kansas department for children and families. *Such*
14 reports ~~shall~~ *may* be made to law enforcement agencies during the time the
15 Kansas department for children and families is not in operation.

16 (d) A person making a report under subsection (a) shall not be
17 required to make a report under K.S.A. 39-1401 through 39-1410, and
18 amendments thereto.

19 (e) Any person required to report information or cause a report of
20 information to be made under subsection (a) who knowingly fails to make
21 such report or cause such report not to be made shall be guilty of a class B
22 misdemeanor.

23 (f) *When the secretary receives a second or subsequent report from*
24 *any person of suspected abuse, neglect or exploitation concerning the*
25 *same adult in accordance with this section, the secretary shall relay the*
26 *report and all previous reports of suspected abuse, neglect or exploitation*
27 *concerning the same adult to the appropriate law enforcement agency*
28 *within six hours, during normal working days, of receiving such report or*
29 *reports. Any such report or reports shall be relayed in paper or electronic*
30 *format, or a combination of both.*

31 (g) Notice of the requirements of this act and the department to which
32 a report is to be made under this act shall be posted in a conspicuous
33 public place in every adult family home as defined in K.S.A. 39-1501, and
34 amendments thereto, and every provider of community services and
35 affiliates thereof operated or funded by the Kansas department for aging
36 and disability services or other facility licensed under K.S.A. 2018 Supp.
37 39-2001 et seq., and amendments thereto, and other institutions included in
38 subsection (a).

39 Sec. 4. K.S.A. 2018 Supp. 38-2223, 38-2226 and 39-1431 are hereby
40 repealed.

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