

## HOUSE BILL No. 2392

By Committee on Federal and State Affairs

3-11

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1 AN ACT concerning children and minors; relating to mandatory reporting  
2 of suspected child abuse and neglect; investigation procedures;  
3 amending K.S.A. 2018 Supp. 38-2223 and 38-2226 and repealing the  
4 existing sections.

5  
6 WHEREAS, The amendments made to the provisions of K.S.A. 2018  
7 Supp. 38-2223 and 38-2226 by this act shall be known as Adrian's law.

8 Now, therefore:

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

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

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

21 (B) the following persons licensed by the state to provide mental  
22 health services: Licensed psychologists, licensed masters level  
23 psychologists, licensed clinical psychotherapists, licensed social workers,  
24 licensed marriage and family therapists, licensed clinical marriage and  
25 family therapists, licensed behavioral analysts, licensed assistant  
26 behavioral analysts, 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 persons licensed by  
30 the secretary of health and environment to provide child care services or  
31 the employees of persons so licensed at the place where the child care  
32 services are being provided to the child;

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

1 appointed under K.S.A. 2018 Supp. 23-3502, and amendments thereto;  
2 ~~and~~

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

7 (F) *any adult who resides in the same home as the child. For the*  
8 *purposes of this subparagraph, "reside" means to stay, sleep or maintain*  
9 *regularly or temporarily one's person and property in the home for three*  
10 *or more consecutive days or parts of days, or for 10 or more*  
11 *nonconsecutive days in a period of 30 consecutive days.*

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

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

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

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

31 (1) When the Kansas department for children and families is not open  
32 for business, reports shall be made to the appropriate law enforcement  
33 agency. On the next day that the department is open for business, the law  
34 enforcement agency shall report to the department any report received and  
35 any investigation initiated pursuant to K.S.A. 2018 Supp. 38-2226, and  
36 amendments thereto. The reports may be made orally or, on request of the  
37 secretary, in writing.

38 (2) Reports of child abuse or neglect occurring in an institution  
39 operated by the Kansas department of corrections shall be made to the  
40 attorney general or the secretary of corrections. Reports of child abuse or  
41 neglect occurring in an institution operated by the Kansas department for  
42 aging and disability services shall be made to the appropriate law  
43 enforcement agency. All other reports of child abuse or neglect by persons

1 employed by the Kansas department for aging and disability services or  
2 the Kansas department for children and families, or of children of persons  
3 employed by either department, shall be made to the appropriate law  
4 enforcement agency.

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

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

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

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

17 (4) *It shall not be a violation of this section if an adult who would be*  
18 *required to make a report under subsection (a)(1)(F) fails to do so, if there*  
19 *are reasonable grounds to believe that such adult, or any child of such*  
20 *adult, has been the victim of physical, mental or emotional abuse or*  
21 *neglect or sexual abuse by the same individual who would be named in*  
22 *such report as the suspected abuser.*

23 (f) *Immunity from liability.* (1) Anyone who, without malice,  
24 participates in the making of a report to the secretary or a law enforcement  
25 agency relating to a suspicion a child may be a child in need of care or  
26 who participates in any activity or investigation relating to the report or  
27 who participates in any judicial proceeding resulting from the report shall  
28 have immunity from any civil liability that might otherwise be incurred or  
29 imposed.

30 (2) *Except as provided further, any adult who makes a report as*  
31 *required under subsection (a)(1)(F) shall be immune from criminal*  
32 *liability for any harm or injury to the child who is the subject of the report*  
33 *as a result of physical, mental or emotional abuse or neglect or sexual*  
34 *abuse. The provisions of this paragraph shall not apply to any adult who*  
35 *engages in physical, mental or emotional abuse or neglect or sexual abuse*  
36 *of the child, or when the physical, mental or emotional abuse or neglect or*  
37 *sexual abuse results in the death of the child.*

38 Sec. 2. K.S.A. 2018 Supp. 38-2226 is hereby amended to read as  
39 follows: 38-2226. (a) *Investigation for child abuse or neglect.* The  
40 secretary and law enforcement officers shall have the duty to receive and  
41 investigate reports of child abuse or neglect for the purpose of determining  
42 whether the report is valid and whether action is required to protect a  
43 child. Any person or agency which maintains records relating to the

1 involved child which are relevant to any investigation conducted by the  
2 secretary or law enforcement agency under this code shall provide the  
3 secretary or law enforcement agency with the necessary records to assist in  
4 investigations. In order to provide such records, the person or agency  
5 maintaining the records shall receive from the secretary or law  
6 enforcement: (1) A written request for information; and (2) a written notice  
7 that the investigation is being conducted by the secretary or law  
8 enforcement. If the secretary and such officers determine that no action is  
9 necessary to protect the child but that a criminal prosecution should be  
10 considered, such law enforcement officers shall make a report of the case  
11 to the appropriate law enforcement agency.

12 (b) *Joint investigations.* When a report of child abuse or neglect  
13 indicates: (1) That there is serious physical harm to, serious deterioration  
14 of or sexual abuse of the child; and (2) that action may be required to  
15 protect the child, the investigation shall be conducted as a joint effort  
16 between the secretary and the appropriate law enforcement agency or  
17 agencies, with a free exchange of information between them pursuant to  
18 K.S.A. 2018 Supp. 38-2210, and amendments thereto. If a statement of a  
19 suspect is obtained by either agency, a copy of the statement shall be  
20 provided to the other.

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

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

34 (e) *Investigations concerning certain facilities.* Any investigation  
35 involving a facility subject to licensing or regulation by the secretary of  
36 health and environment shall be promptly reported to the state secretary of  
37 health and environment.

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

42 (g) *Cooperation between school personnel and investigative*  
43 *agencies.* (1) Educational institutions, the secretary and law enforcement

1 agencies shall cooperate with each other in the investigation of reports of  
2 suspected child abuse or neglect. The secretary and law enforcement  
3 agencies shall have access to a child in a setting designated by school  
4 personnel on the premises of an educational institution. Attendance at an  
5 interview conducted on such premises shall be at the discretion of the  
6 agency conducting the interview, giving consideration to the best interests  
7 of the child. To the extent that safety and practical considerations allow,  
8 law enforcement officers on such premises for the purpose of investigating  
9 a report of suspected child abuse or neglect shall not be in uniform.

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

14 *(h) As part of any investigation conducted pursuant to this section,*  
15 *the secretary or the law enforcement agency that is conducting the*  
16 *investigation shall visually observe the child who is the alleged victim of*  
17 *abuse or neglect. In the case of a joint investigation conducted pursuant to*  
18 *subsection (b), the secretary and the investigating law enforcement agency*  
19 *shall both visually observe the child who is the alleged victim of abuse or*  
20 *neglect. All investigation reports shall include the date, time and location*  
21 *of any visual observation of a child that is required by this subsection.*

22 Sec. 3. K.S.A. 2018 Supp. 38-2223 and 38-2226 are hereby repealed.

23 Sec. 4. This act shall take effect and be in force from and after its  
24 publication in the statute book.