

## HOUSE BILL No. 2700

By Committee on Children and Seniors

2-14

1 AN ACT concerning dependent persons; relating to the reporting of abuse,  
2 neglect or financial exploitation of such persons; amending K.S.A. 39-  
3 1438 and 39-1441 and K.S.A. 2019 Supp. 39-1430, 39-1431, 39-1433  
4 and 39-1443 and repealing the existing sections; also repealing K.S.A.  
5 2019 Supp. 39-1431b.

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

8 Section 1. K.S.A. 2019 Supp. 39-1430 is hereby amended to read as  
9 follows: 39-1430. As used in this act:

10 (a) *"Act" means K.S.A. 39-1430 et seq., and amendments thereto.*

11 (b) (1) *"Adult" means an individual a person 18 years of age or older*  
12 *alleged to be unable to protect their such person's own interest due to a*  
13 *disability or frail condition and who is harmed or threatened with harm,*  
14 *whether financial, mental or physical in nature, through action or inaction*  
15 *by either another individual or through their such person's own action or*  
16 *inaction when:*

17 ~~(1)~~(A) Such person is residing in such person's own home, the home  
18 of a family member or the home of a friend;

19 ~~(2)~~(B) such person resides in an adult family home as defined in  
20 K.S.A. 39-1501, and amendments thereto; or

21 ~~(3)~~(C) such person is receiving services through:

22 (i) A provider of community services and affiliates thereof operated  
23 or funded by the Kansas department for children and families; or

24 (ii) the Kansas department for aging and disability services or a  
25 residential facility licensed pursuant to K.S.A. 2019 Supp. 39-2001 et seq.,  
26 and amendments thereto.

27 ~~Such term shall~~(2) *"Adult" does not include persons to whom K.S.A.*  
28 *39-1401 et seq., and amendments thereto, apply.*

29 ~~(b)~~(c) *"Abuse" means any act or failure to act performed intentionally*  
30 *or recklessly that causes or is likely to cause harm to an adult, including:*

31 (1) *Infliction of physical or mental injury;*

32 (2) *any sexual act with an adult when the adult does not consent or*  
33 *when the other person knows or should know that the adult is incapable of*  
34 *resisting or declining consent to the sexual act due to mental deficiency or*  
35 *disease or due to fear of retribution or hardship;*

36 (3) *unreasonable use of a physical restraint, isolation or medication*

1 that harms or is likely to harm an adult;

2 (4) unreasonable use of a physical or chemical restraint, medication  
3 or isolation as punishment, for convenience, in conflict with a physician's  
4 orders or as a substitute for treatment, except where such conduct or  
5 physical restraint is in furtherance of the health and safety of the adult; *or*

6 (5) a threat or menacing conduct directed toward an adult that results  
7 or might reasonably be expected to result in fear or emotional or mental  
8 distress to an adult;

9 ~~(6) fiduciary abuse; or~~

10 ~~(7) omission or deprivation by a caretaker or another person of goods~~  
11 ~~or services that are necessary to avoid physical or mental harm or illness.~~

12 ~~(e)(d)~~ "Neglect" means the failure or omission by one's self, caretaker  
13 or another person with a duty to supply or provide goods or services that  
14 are reasonably necessary to ensure safety and well-being and to avoid  
15 physical or mental harm or illness.

16 ~~(d)(e)~~ "*Financial exploitation*" means ~~misappropriation of an adult's~~  
17 ~~property or intentionally taking unfair advantage of an adult's physical or~~  
18 ~~financial resources for another individual's personal or financial advantage~~  
19 ~~by the use of undue influence, coercion, harassment, duress, deception,~~  
20 ~~false representation or false pretense by a caretaker or another person~~ *the*  
21 *unlawful or improper use, control or withholding of an adult's property,*  
22 *income, resources or trust funds by any other person or entity in a manner*  
23 *that is not for the profit of or to the advantage of the adult. "Financial*  
24 *exploitation" includes, but is not limited to:*

25 *(1) The use of deception, intimidation, coercion, extortion or undue*  
26 *influence by a person or entity to obtain or use an adult's property,*  
27 *income, resources or trust funds in a manner for the profit of or to the*  
28 *advantage of such person or entity;*

29 *(2) the breach of a fiduciary duty, including, but not limited to, the*  
30 *misuse of a power of attorney, trust or a guardianship appointment, as it*  
31 *relates to the property, income, resources or trust funds of the adult; or*

32 *(3) the obtainment or use of an adult's property, income, resources or*  
33 *trust funds, without lawful authority, by a person or entity who knows or*  
34 *clearly should know that the adult lacks the capacity to consent to the*  
35 *release or use of such adult's property, income, resources or trust funds.*

36 ~~(e)~~ "*Fiduciary abuse*" means a situation in which any person who is  
37 the caretaker of, or who stands in a position of trust to, an adult, takes,  
38 secretes or appropriates their money or property to any use or purpose not  
39 in the due and lawful execution of such person's trust or benefit.

40 (f) "In need of protective services" means that an adult is unable to  
41 provide for or obtain services that are necessary to maintain physical or  
42 mental health or both.

43 (g) "Services that are necessary to maintain physical or mental health

1 or both" include, but are not limited to, the provision of medical care for  
2 physical and mental health needs, the relocation of an adult to a facility or  
3 institution able to offer such care, assistance in personal hygiene, food,  
4 clothing, adequately heated and ventilated shelter, protection from health  
5 and safety hazards, protection from maltreatment the result of which  
6 includes, but is not limited to, malnutrition, deprivation of necessities or  
7 physical punishment and transportation necessary to secure any of the  
8 above stated needs, except that this term shall not include taking such  
9 person into custody without consent except as provided in this act.

10 (h) "Protective services" means services provided by the state or other  
11 governmental agency or by private organizations or individuals that are  
12 necessary to prevent abuse, neglect or *financial* exploitation. Such  
13 protective services ~~shall~~ include, but ~~shall~~ *are* not ~~be~~ limited to, evaluation  
14 of the need for services, assistance in obtaining appropriate social services  
15 and assistance in securing medical and legal services.

16 (i) "Caretaker" means a person who has assumed the responsibility,  
17 whether legally or not, for an adult's care or financial management or both.

18 (j) "Secretary" means the secretary for children and families.

19 (k) "Report" means a description or accounting of an incident or  
20 incidents of abuse, neglect or *financial* exploitation under this act and, for  
21 the purposes of this act ~~shall~~, *does* not include any written assessment or  
22 findings.

23 (l) "Law enforcement" means the public office that is vested by law  
24 with the duty to maintain public order, make arrests for crimes, investigate  
25 criminal acts and file criminal charges, whether that duty extends to all  
26 crimes or is limited to specific crimes.

27 (m) "Involved adult" means the adult who is the subject of a report of  
28 abuse, neglect or *financial* exploitation under this act.

29 (n) "Legal representative," "financial institution" and "governmental  
30 assistance provider" mean the same as defined in K.S.A. 39-1401, and  
31 amendments thereto.

32 (o) "*Disability*" means a physical or mental impairment that  
33 substantially limits one or more major life activities.

34 (p) "*Frail condition*" means an adult experiencing deterioration in  
35 one or more domains of health, such as physical, functional, psychological  
36 or cognitive health, that leads to increased susceptibility to adverse health  
37 effects and may require such adult to receive assistance with daily living  
38 activities.

39 No person shall be considered to be abused, neglected ~~or~~, *financially*  
40 exploited or in need of protective services for the sole reason that such  
41 person relies upon spiritual means through prayer alone for treatment in  
42 accordance with the tenets and practices of a recognized church or  
43 religious denomination in lieu of medical treatment.

1       Sec. 2. K.S.A. 2019 Supp. 39-1431 is hereby amended to read as  
2 follows: 39-1431. (a) ~~Any person who is licensed to practice any branch of~~  
3 ~~the healing arts, a licensed psychologist, a licensed master level~~  
4 ~~psychologist, a licensed clinical psychotherapist, the chief administrative~~  
5 ~~officer of a medical care facility, a teacher, a licensed social worker, a~~  
6 ~~licensed professional nurse, a licensed practical nurse, a licensed dentist, a~~  
7 ~~licensed marriage and family therapist, a licensed clinical marriage and~~  
8 ~~family therapist, licensed professional counselor, licensed clinical~~  
9 ~~professional counselor, registered alcohol and drug abuse counselor, a law~~  
10 ~~enforcement officer, an emergency medical service provider, a case~~  
11 ~~manager, a rehabilitation counselor, a bank trust officer or any other~~  
12 ~~officers of financial institutions, a legal representative, a governmental~~  
13 ~~assistance provider, an owner or operator of a residential care facility, an~~  
14 ~~independent living counselor and the chief administrative officer of a~~  
15 ~~licensed home health agency, the chief administrative officer of an adult~~  
16 ~~family home and the chief administrative officer of a provider of~~  
17 ~~community services and affiliates thereof operated or funded by the~~  
18 ~~Kansas department for aging and disability services or licensed under~~  
19 ~~K.S.A. 2019 Supp. 39-2001 et seq., and amendments thereto, who has~~  
20 ~~reasonable cause to believe that an adult is being or has been abused,~~  
21 ~~neglected or exploited or is in need of protective services shall report,~~  
22 ~~immediately from receipt of the information, such information or cause a~~  
23 ~~report of such information to be made in any reasonable manner. (1) When~~  
24 ~~any of the following persons has reasonable cause to suspect or believe~~  
25 ~~that an adult is being or has been harmed as a result of abuse, neglect or~~  
26 ~~financial exploitation, such person shall promptly report the matter as~~  
27 ~~provided by the provisions of this section:~~  
28       (A) *Persons licensed to practice the healing arts;*  
29       (B) *persons engaged in postgraduate training programs approved by*  
30 *the state board of healing arts;*  
31       (C) *persons licensed by the Kansas dental board to engage in the*  
32 *practice of dentistry;*  
33       (D) *persons licensed by the board of examiners in optometry to*  
34 *engage in the practice of optometry;*  
35       (E) *persons licensed by the board of nursing to engage in the*  
36 *practice of nursing;*  
37       (F) *chief administrative officers of medical care facilities;*  
38       (G) *persons licensed by the behavioral sciences regulatory board to*  
39 *provide mental health services, including psychologists, masters level*  
40 *psychologists, bachelors level social workers, masters level social*  
41 *workers, clinical social workers, marriage and family therapists, clinical*  
42 *marriage and family therapists, professional counselors, clinical*  
43 *professional counselors, behavior analysts, addiction counselors and*

1 *clinical addiction counselors;*

2 *(H) teachers, school administrators or other employees of any*  
3 *Kansas educational institution, as defined in K.S.A. 75-53,112, and*  
4 *amendments thereto, that the adult is attending;*

5 *(I) firefighters, law enforcement officers and emergency medical*  
6 *services personnel;*

7 *(J) court services officers, community corrections officers, case*  
8 *managers appointed under K.S.A. 23-3508, and amendments thereto, and*  
9 *mediators appointed under K.S.A. 23-3502, and amendments thereto;*

10 *(K) bank trust officers or any other officers of financial institutions;*

11 *(L) rehabilitation counselors;*

12 *(M) legal representatives;*

13 *(N) governmental assistance providers;*

14 *(O) independent living counselors;*

15 *(P) owners or operators of residential care facilities, as defined in*  
16 *K.S.A. 2019 Supp. 39-2002, and amendments thereto;*

17 *(Q) the chief administrative officer of a licensed home health agency,*  
18 *as defined in K.S.A. 65-5101, and amendments thereto;*

19 *(R) the chief administrative officer of an adult family home, as*  
20 *defined in K.S.A. 39-1501, and amendments thereto; and*

21 *(S) the chief administrative officer of any provider of community*  
22 *services and affiliates thereof operated or funded by the Kansas*  
23 *department for children and families or licensed under K.S.A. 39-2001 et*  
24 *seq., and amendments thereto.*

25 *(2) An employee of a domestic violence center shall not be required*  
26 *to report information or cause a report of information to be made under*  
27 *this subsection.*

28 *(b) Other state agencies receiving reports that are to be referred to the*  
29 *Kansas department for children and families and the appropriate law*  
30 *enforcement agency, shall submit the report to the department and agency*  
31 *within six hours, during normal work days, of receiving the information.*  
32 *Reports shall be made to the Kansas department for children and families*  
33 *during the normal working week days and hours of operation. Reports*  
34 *shall be made to law enforcement agencies during the time the Kansas*  
35 *department for children and families is not in operation. Law enforcement*  
36 *shall submit the report and appropriate information to the Kansas*  
37 *department for children and families on the first working day that the*  
38 *Kansas department for children and families is in operation after receipt of*  
39 *such information.*

40 ~~*(b)(c)*~~ *The report made pursuant to ~~subsection (a)~~ this section shall*  
41 *contain the name and address of the person making the report and of the*  
42 *caretaker caring for the involved adult, the name and address of the*  
43 *involved adult, information regarding the nature and extent of the abuse,*

1 neglect or *financial* exploitation, the name of the next of kin of the  
 2 involved adult, if known, and any other information that the person  
 3 making the report believes might be helpful in the investigation of the case  
 4 and the protection of the involved adult.

5 ~~(e)~~(d) Any other person, not listed in subsection (a), ~~having who has~~  
 6 reasonable cause to suspect or believe that an adult is being or has been  
 7 ~~abused, neglected or exploited or is in need of protective services~~ *harmed*  
 8 *as a result of abuse, neglect or financial exploitation* may report such  
 9 information to the Kansas department for children and families. Reports  
 10 shall be made to law enforcement agencies during the time the Kansas  
 11 department for children and families is not in operation.

12 ~~(d)~~(e) A person making a report under subsection (a) shall not be  
 13 required to make a report under K.S.A. 39-1401 through 39-1410, and  
 14 amendments thereto.

15 ~~(e)~~(f) Any person required to report information or cause a report of  
 16 information to be made under subsection (a) who knowingly fails to make  
 17 such report or ~~cause~~ *knowingly causes* such report not to be made shall be  
 18 guilty of a class B misdemeanor.

19 ~~(f)~~(g) Notice of the requirements of this act and the department to  
 20 which a report is to be made under this act shall be posted in a conspicuous  
 21 public place in every adult family home as defined in K.S.A. 39-1501, and  
 22 amendments thereto, and every provider of community services and  
 23 affiliates thereof operated or funded by the Kansas department for aging  
 24 and disability services or other facility licensed under K.S.A. 2019 Supp.  
 25 39-2001 et seq., and amendments thereto, and other institutions included in  
 26 subsection (a).

27 Sec. 3. K.S.A. 2019 Supp. 39-1433 is hereby amended to read as  
 28 follows: 39-1433. (a) The Kansas department for children and families,  
 29 upon receiving a report that an adult is being; or has been ~~abused,~~  
 30 ~~neglected, or exploited or is in need of protective services,~~ *harmed as a*  
 31 *result of abuse, neglect or financial exploitation*, shall:

32 (1) *Immediately notify, in writing, the appropriate law enforcement*  
 33 *agency* when a criminal act has occurred or ~~has appeared~~ *appears* to have  
 34 occurred; ~~immediately notify, in writing, the appropriate law enforcement~~  
 35 ~~agency;~~

36 (2) make a ~~personal~~ *face-to-face* visit with the involved adult:

37 (A) Within 24 hours when the information from the reporter indicates  
 38 imminent danger to the health or welfare of the involved adult;

39 (B) within three working days for all reports of suspected abuse,  
 40 when the information from the reporter indicates no imminent danger; *and*

41 (C) within five working days for all reports of neglect or *financial*  
 42 exploitation when the information from the reporter indicates no imminent  
 43 danger;:

1 (3) complete, within ~~30~~ 60 working days of receiving a report, a  
2 thorough investigation and evaluation to determine the situation relative to  
3 the condition of the involved adult and what action and services, if any, are  
4 required. The evaluation shall include, but not be limited to, consultation  
5 with those individuals having knowledge of the facts of the particular case.  
6 If conducting the investigation within ~~30~~ 60 working days would interfere  
7 with an ongoing criminal investigation, the time period for the  
8 investigation shall be extended, but the investigation and evaluation shall  
9 be completed within 90 working days. If a finding is made prior to the  
10 conclusion of the criminal investigation, the investigation and evaluation  
11 may be reopened and a new finding made based on any additional  
12 evidence provided as a result of the criminal investigation. If the alleged  
13 perpetrator is licensed, registered or otherwise regulated by a state agency,  
14 such state agency ~~also~~ shall be notified upon completion of the  
15 investigation or sooner if such notification does not compromise the  
16 investigation; and

17 (4) prepare, upon completion of the investigation of each case, a  
18 written assessment that shall include an analysis of whether there is or has  
19 been abuse, neglect or *financial* exploitation, recommended action, a  
20 determination of whether protective services are needed and any follow-  
21 up.

22 (b) The secretary for children and families shall forward any finding  
23 of abuse, neglect or *financial* exploitation alleged to have been committed  
24 by a provider of services licensed, registered or otherwise authorized to  
25 provide services in this state to the appropriate state *regulatory* authority  
26 that regulates such provider. ~~The appropriate state regulatory authority~~  
27 ~~may consider the finding in any disciplinary action taken with respect to~~  
28 ~~the provider of services under the jurisdiction of such authority.~~

29 (c) *The secretary for children and families shall forward any*  
30 *substantiated finding of abuse, neglect or financial exploitation alleged to*  
31 *have been committed by a provider of services licensed, registered or*  
32 *otherwise authorized to provide services in this state to the appropriate*  
33 *state regulatory authority, and such authority may consider the finding in*  
34 *any disciplinary action taken with respect to such provider under the*  
35 *jurisdiction of such authority.*

36 (d) The Kansas department for children and families shall inform the  
37 complainant, upon request of the complainant, that an investigation has  
38 been made and if the allegations of abuse, neglect or exploitation have  
39 been substantiated, that corrective measures will be taken, upon  
40 completion of the investigation or sooner, if such measures do not  
41 jeopardize the investigation initiated.

42 (d)(e) The Kansas department for children and families may inform  
43 the chief administrative officer of community facilities licensed pursuant

1 to K.S.A. 2019 Supp. 39-2001 et seq., and amendments thereto, of  
2 ~~confirmed~~ *substantiated* findings of resident abuse, neglect or *financial*  
3 exploitation.

4 Sec. 4. K.S.A. 39-1438 is hereby amended to read as follows: 39-  
5 1438. If an involved adult does not ~~consent to the receipt of~~ *agree to*  
6 *accept* reasonable and necessary protective services, or if such adult  
7 ~~withdraws the consent~~, *states during the course of service delivery that*  
8 *such adult does not want to proceed with such services*, such services shall  
9 not be provided or continued.

10 Sec. 5. K.S.A. 39-1441 is hereby amended to read as follows: 39-  
11 1441. The authority of the secretary under this act ~~shall include~~ *includes*,  
12 but is not limited to, the right to initiate or otherwise take those actions  
13 necessary to assure the health, safety and welfare of an involved adult,  
14 subject to any specific requirements for individual consent of the adult.  
15 The secretary may establish a toll-free telephone number for the reporting  
16 of instances of abuse, neglect or *financial* exploitation under this act.

17 Sec. 6. K.S.A. 2019 Supp. 39-1443 is hereby amended to read as  
18 follows: 39-1443. (a) ~~Investigation of adult abuse.~~ The Kansas department  
19 for children and families and law enforcement officers shall have the duty  
20 to receive and investigate reports of adult abuse, neglect; *or financial*  
21 ~~exploitation or fiduciary abuse~~ for the purpose of determining whether the  
22 report is valid and whether action is required to protect the adult from  
23 further abuse ~~or~~, neglect *or financial exploitation*. If the department and  
24 such officers determine that no action is necessary to protect the adult but  
25 that a criminal prosecution should be considered, the department and such  
26 law enforcement officers shall make a report of the case to the appropriate  
27 law enforcement agency.

28 (b) ~~Joint investigations.~~ (1) When a report of ~~adult neglect~~, adult  
29 abuse, *neglect or financial* exploitation ~~or fiduciary abuse~~ indicates: ~~(1)~~  
30 that there is serious physical injury to or serious deterioration or sexual  
31 abuse or *financial* exploitation of the adult; and ~~(2)~~ that action may be  
32 required to protect the adult, the investigation may be conducted as a joint  
33 effort between the Kansas department for children and families and the  
34 appropriate law enforcement agency or agencies, with a free exchange of  
35 information between such agencies.

36 (2) Upon completion of the investigation by the law enforcement  
37 agency, a full report shall be provided to the Kansas department for  
38 children and families.

39 (c) ~~Coordination of investigations by county or district attorney.~~ If a  
40 dispute develops between agencies investigating a reported case of adult  
41 abuse, neglect; *or financial* exploitation ~~or fiduciary abuse~~, the appropriate  
42 county or district attorney shall take charge of, direct and coordinate the  
43 investigation.



1       (d) ~~Investigations concerning certain facilities.~~ Any investigation by  
2 a law enforcement agency involving a facility subject to licensing or  
3 regulation by the secretary of health and environment shall be reported  
4 promptly to the ~~state~~ secretary of health and environment, upon conclusion  
5 of the investigation or sooner if such report does not compromise the  
6 investigation.

7       (e) ~~Cooperation between agencies.~~ Law enforcement agencies and  
8 the Kansas department for children and families shall assist each other in  
9 taking action ~~which~~ that is necessary to protect the adult regardless of  
10 which party conducted the initial investigation.

11       Sec. 7. K.S.A. 39-1438 and 39-1441 and K.S.A. 2019 Supp. 39-1430,  
12 39-1431, 39-1431b, 39-1433 and 39-1443 are hereby repealed.

13       Sec. 8. This act shall take effect and be in force from and after its  
14 publication in the statute book.