

As Amended by House Committee

Session of 2021

HOUSE BILL No. 2150

By Committee on Children and Seniors

1-27

1 AN ACT concerning dependent persons; relating to the reporting of abuse,
2 neglect or financial exploitation of such persons; requiring additional
3 persons to be mandatory reporters; providing a definition of financial
4 exploitation; amending K.S.A. 39-1438 and 39-1441 and K.S.A. 2020
5 Supp. 39-1430, 39-1431, 39-1433 and 39-1443 and repealing the
6 existing sections; also repealing K.S.A. 2020 Supp. 39-1431b.

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

9 Section 1. K.S.A. 2020 Supp. 39-1430 is hereby amended to read as
10 follows: 39-1430. As used in this act:

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

12 (b) (1) *"Adult" means ~~an individual~~ a person 18 years of age or older*
13 *alleged to be unable to protect ~~their~~ such person's own interest and who is*
14 *harmed or threatened with harm, whether financial, mental or physical in*
15 *nature, through action or inaction by either another individual or through*
16 *~~their~~ such person's own action or 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. 2020 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 or conservatorship*
31 *appointment, as it relates to the property, income, resources or trust funds*
32 *of the adult; or*

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

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

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

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

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

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

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

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

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

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

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

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

38 Sec. 2. K.S.A. 2020 Supp. 39-1431 is hereby amended to read as
39 follows: 39-1431. (a) ~~Any person who is licensed to practice any branch of~~
40 ~~the healing arts, a licensed psychologist, a licensed master level~~
41 ~~psychologist, a licensed clinical psychotherapist, the chief administrative~~
42 ~~officer of a medical care facility, a teacher, a licensed social worker, a~~
43 ~~licensed professional nurse, a licensed practical nurse, a licensed dentist, a~~

1 ~~licensed marriage and family therapist, a licensed clinical marriage and~~
2 ~~family therapist, licensed professional counselor, licensed clinical~~
3 ~~professional counselor, registered alcohol and drug abuse counselor, a law~~
4 ~~enforcement officer, an emergency medical service provider, a case~~
5 ~~manager, a rehabilitation counselor, a bank trust officer or any other~~
6 ~~officers of financial institutions, a legal representative, a governmental~~
7 ~~assistance provider, an owner or operator of a residential care facility, an~~
8 ~~independent living counselor and the chief administrative officer of a~~
9 ~~licensed home health agency, the chief administrative officer of an adult~~
10 ~~family home and the chief administrative officer of a provider of~~
11 ~~community services and affiliates thereof operated or funded by the~~
12 ~~Kansas department for aging and disability services or licensed under~~
13 ~~K.S.A. 2019 Supp. 39-2001 et seq., and amendments thereto, who has~~
14 ~~reasonable cause to believe that an adult is being or has been abused,~~
15 ~~neglected or exploited or is in need of protective services shall report,~~
16 ~~immediately from receipt of the information, such information or cause a~~
17 ~~report of such information to be made in any reasonable manner. (1) When~~
18 ~~any of the following persons has reasonable cause to suspect or believe~~
19 ~~that an adult is in need of protective services or being harmed as a result~~
20 ~~of abuse, neglect or financial exploitation, such person shall promptly~~
21 ~~report the matter as provided by the provisions of this section:~~

22 (A) *Persons licensed to practice the healing arts;*

23 (B) *persons engaged in postgraduate training programs approved by*
24 *the state board of healing arts;*

25 (C) *persons licensed by the Kansas dental board to engage in the*
26 *practice of dentistry;*

27 (D) *persons licensed by the board of examiners in optometry to*
28 *engage in the practice of optometry;*

29 (E) *persons licensed by the board of nursing to engage in the*
30 *practice of nursing;*

31 (F) *chief administrative officers of medical care facilities;*

32 (G) *persons licensed by the behavioral sciences regulatory board to*
33 *provide mental health services, including psychologists, masters level*
34 *psychologists, bachelors level social workers, masters level social*
35 *workers, clinical social workers, marriage and family therapists, clinical*
36 *marriage and family therapists, professional counselors, clinical*
37 *professional counselors, behavior analysts, addiction counselors and*
38 *clinical addiction counselors;*

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

42 (I) *firefighters, law enforcement officers and emergency medical*
43 *services personnel;*

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

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

5 (L) *rehabilitation counselors;*

6 (M) *legal representatives;*

7 (N) *governmental assistance providers;*

8 (O) *independent living counselors;*

9 (P) *owners or operators of residential care facilities, as defined in*
10 *K.S.A. 2020 Supp. 39-2002, and amendments thereto;*

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

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

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

19 (2) An employee of a domestic violence center shall not be required
20 to report information or cause a report of information to be made under
21 this subsection.

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

34 ~~(b)~~(c) The report made pursuant to ~~subsection (a)~~ *this section* shall
35 contain the name and address of the person making the report and of the
36 caretaker caring for the involved adult, the name and address of the
37 involved adult, information regarding the nature and extent of the abuse,
38 neglect or *financial* exploitation, the name of the next of kin of the
39 involved adult, if known, and any other information that the person
40 making the report believes might be helpful in the investigation of the case
41 and the protection of the involved adult.

42 ~~(e)~~(d) Any other person, not listed in subsection (a), ~~having~~ *who has*
43 reasonable cause to suspect or believe that an adult is being or has been

1 ~~abused, neglected or exploited or is in need of protective services~~ *harmed*
2 *as a result of abuse, neglect or financial exploitation* may report such
3 information to the Kansas department for children and families. Reports
4 shall be made to law enforcement agencies during the time the Kansas
5 department for children and families is not in operation.

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

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

13 ~~(f)~~(g) Notice of the requirements of this act and the department to
14 which a report is to be made under this act shall be posted in a conspicuous
15 public place in every adult family home as defined in K.S.A. 39-1501, and
16 amendments thereto, and every provider of community services and
17 affiliates thereof operated or funded by the Kansas department for aging
18 and disability services or other facility licensed under K.S.A. 2020 Supp.
19 39-2001 et seq., and amendments thereto, and other institutions included in
20 subsection (a).

21 Sec. 3. K.S.A. 2020 Supp. 39-1433 is hereby amended to read as
22 follows: 39-1433. (a) The Kansas department for children and families,
23 upon receiving a report that an adult is being; or has been ~~abused,~~
24 ~~neglected, or exploited or is in need of protective services,~~ *harmed as a*
25 *result of abuse, neglect or financial exploitation,* shall:

26 (1) *Immediately notify, in writing, the appropriate law enforcement*
27 *agency* when a criminal act has occurred or ~~has appeared~~ *appears* to have
28 occurred; ~~immediately notify, in writing, the appropriate law enforcement~~
29 ~~agency;~~

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

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

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

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

38 (3) complete, within 30 working days of receiving a report *of abuse*
39 *or neglect* and 60 working days of receiving a report *of financial*
40 *exploitation,* a thorough investigation and evaluation to determine the
41 situation relative to the condition of the involved adult and what action and
42 services, if any, are required. The evaluation shall include, but not be
43 limited to, consultation with those individuals having knowledge of the

1 facts of the particular case. If conducting the investigation within *the*
2 *corresponding* 30 or 60 working days would interfere with an ongoing
3 criminal investigation, the time period for the investigation shall be
4 extended, but the investigation and evaluation shall be completed within
5 90 working days. If a finding is made prior to the conclusion of the
6 criminal investigation, the investigation and evaluation may be reopened
7 and a new finding made based on any additional evidence provided as a
8 result of the criminal investigation. If the alleged perpetrator is licensed,
9 registered or otherwise regulated by a state agency, such state agency ~~also~~
10 shall be notified upon completion of the investigation or sooner if such
11 notification does not compromise the investigation.; *and*

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

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

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

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

37 ~~(d)~~(e) The Kansas department for children and families ~~may~~ shall
38 inform the chief administrative ~~officer~~ **officers** of community facilities
39 licensed pursuant to K.S.A. 2020 Supp. 39-2001 et seq., and amendments
40 thereto, **and nursing facilities, nursing facilities for mental health,**
41 **intermediate care facilities for people with intellectual disability,**
42 **assisted living facilities, residential healthcare facilities and home plus**
43 **as defined in K.S.A. 39-923, and amendments thereto, of confirmed**

1 *substantiated* findings of resident abuse, neglect or *financial* exploitation.

2 Sec. 4. K.S.A. 39-1438 is hereby amended to read as follows: 39-
3 1438. If an involved adult does not ~~consent to the receipt of~~ *agree to*
4 *accept* reasonable and necessary protective services, or if such adult
5 ~~withdraws the consent~~ *states during the course of service delivery that*
6 *such adult does not want to proceed with such services*, such services shall
7 not be provided or continued.

8 Sec. 5. K.S.A. 39-1441 is hereby amended to read as follows: 39-
9 1441. The authority of the secretary under this act ~~shall include~~ *includes*,
10 but is not limited to, the right to initiate or otherwise take those actions
11 necessary to assure the health, safety and welfare of an involved adult,
12 subject to any specific requirements for individual consent of the adult.
13 The secretary may establish a toll-free telephone number for the reporting
14 of instances of abuse, neglect or *financial* exploitation under this act.

15 Sec. 6. K.S.A. 2020 Supp. 39-1443 is hereby amended to read as
16 follows: 39-1443. (a) ~~Investigation of adult abuse.~~ The Kansas department
17 for children and families and law enforcement officers shall have the duty
18 to receive and investigate reports of adult abuse, neglect; *or financial*
19 ~~exploitation or fiduciary abuse~~ for the purpose of determining whether the
20 report is valid and whether action is required to protect the adult from
21 further abuse ~~or~~, neglect *or financial exploitation*. If the department and
22 such officers determine that no action is necessary to protect the adult but
23 that a criminal prosecution should be considered, the department and such
24 law enforcement officers shall make a report of the case to the appropriate
25 law enforcement agency.

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

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

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

42 (d) ~~Investigations concerning certain facilities.~~ Any investigation by
43 a law enforcement agency involving a facility subject to licensing or

1 regulation by the secretary of health and environment shall be reported
2 promptly to the ~~state~~ secretary of health and environment, upon conclusion
3 of the investigation or sooner if such report does not compromise the
4 investigation.

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

9 Sec. 7. K.S.A. 39-1438 and 39-1441 and K.S.A. 2020 Supp. 39-1430,
10 39-1431, 39-1431b, 39-1433 and 39-1443 are hereby repealed.

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