

SENATE BILL No. 219

By Committee on Judiciary

2-12

1 AN ACT concerning social welfare; relating to the reporting of abuse,
2 neglect or exploitation of certain persons; amending K.S.A. 39-1438
3 and K.S.A. 2014 Supp. 39-1430, 39-1431, 39-1433, 39-1435, 39-1437
4 and 39-1443 and repealing the existing sections.

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

7 Section 1. K.S.A. 2014 Supp. 39-1430 is hereby amended to read as
8 follows: 39-1430. As used in this act:

9 (a) "*Vulnerable adult*" means an individual 18 years of age or older
10 *who has a physical, mental, ~~emotional~~ or frail condition* alleged to be
11 unable to protect their own interest and who is harmed or threatened with
12 harm, whether financial, mental, ~~emotional~~ or physical in nature, through
13 action or inaction by either another individual or through their own action
14 or inaction when: (1) Such person is residing in such person's own home,
15 the home of a family member or the home of a friend; (2) such person
16 resides in an adult family home as defined in K.S.A. 39-1501, and
17 amendments thereto; or (3) such person is receiving services through a
18 provider of community services and affiliates thereof operated or funded
19 by the Kansas department for children and families or the Kansas
20 department for aging and disability services or a residential facility
21 licensed pursuant to K.S.A. 75-3307b, and amendments thereto. Such term
22 shall not include persons to whom K.S.A. 39-1401 et seq., and
23 amendments thereto, apply.

24 (b) "Abuse" means any act or failure to act performed intentionally or
25 recklessly that causes or is likely to cause harm to ~~an~~ *a vulnerable adult*,
26 including:

- 27 (1) Infliction of physical or mental injury;
28 (2) any sexual act with ~~an~~ *a vulnerable adult* when the *vulnerable*
29 adult does not consent or when the other person knows or should know
30 that the *vulnerable adult* is incapable of resisting or declining consent to
31 the sexual act due to mental deficiency or disease or due to fear of
32 retribution or hardship;
33 (3) unreasonable use of a physical restraint, isolation or medication
34 that harms or is likely to harm ~~an~~ *a vulnerable adult*;
35 (4) unreasonable use of a physical or chemical restraint, medication
36 or isolation as punishment, for convenience, in conflict with a physician's

1 orders or as a substitute for treatment, except where such conduct or
2 physical restraint is in furtherance of the health and safety of the
3 *vulnerable* adult;

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

7 (6) fiduciary abuse; or

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

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

15 (d) "Exploitation" means misappropriation of ~~an~~ *a vulnerable* adult's
16 property or intentionally taking unfair advantage of ~~an~~ *a vulnerable* adult's
17 physical or financial resources for another individual's personal or
18 financial advantage by the use of undue influence, coercion, harassment,
19 duress, deception, false representation or false pretense by a caretaker or
20 another person.

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

26 (f) "In need of protective services" means that ~~an~~ *a vulnerable* adult is
27 unable to provide for or obtain services which are necessary to maintain
28 physical or mental health or both.

29 (g) "Services which are necessary to maintain physical or mental
30 health or both" include, but are not limited to, the provision of medical
31 care for physical and mental health needs, the relocation of ~~an~~ *a*
32 *vulnerable* adult to a facility or institution able to offer such care,
33 assistance in personal hygiene, food, clothing, adequately heated and
34 ventilated shelter, protection from health and safety hazards, protection
35 from maltreatment the result of which includes, but is not limited to,
36 malnutrition, deprivation of necessities or physical punishment and
37 transportation necessary to secure any of the above stated needs, except
38 that this term shall not include taking such person into custody without
39 consent except as provided in this act.

40 (h) "Protective services" means services provided by the state or other
41 governmental agency or by private organizations or individuals which are
42 necessary to prevent abuse, neglect or exploitation. Such protective
43 services shall include, but shall not be limited to, evaluation of the need for

1 services, assistance in obtaining appropriate social services, and assistance
2 in securing medical and legal services.

3 (i) "Caretaker" means a person who has assumed the responsibility,
4 whether legally or not, for ~~an~~ a *vulnerable* adult's care or financial
5 management or both.

6 (j) "Secretary" means the secretary for the Kansas department for
7 children and families.

8 (k) "Report" means a description or accounting of an incident or
9 incidents of abuse, neglect or exploitation under this act and for the
10 purposes of this act shall not include any written assessment or findings.

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

15 (m) "Involved adult" means the *vulnerable* adult who is the subject of
16 ~~a report~~ an *investigation* of abuse, neglect or exploitation under this act.

17 (n) "Legal representative," "financial institution" and "governmental
18 assistance provider" shall have the meanings ascribed thereto in K.S.A.
19 39-1401, and amendments thereto.

20 No person shall be considered to be abused, neglected or exploited or
21 in need of protective services for the sole reason that such person relies
22 upon spiritual means through prayer alone for treatment in accordance
23 with the tenets and practices of a recognized church or religious
24 denomination in lieu of medical treatment.

25 Sec. 2. K.S.A. 2014 Supp. 39-1431 is hereby amended to read as
26 follows: 39-1431. (a) ~~Any person who is licensed to practice any branch of~~
27 ~~the healing arts, a licensed psychologist, a licensed master level~~
28 ~~psychologist, a licensed clinical psychotherapist, the chief administrative~~
29 ~~officer of a medical care facility, a teacher, a licensed social worker, a~~
30 ~~licensed professional nurse, a licensed practical nurse, a licensed dentist, a~~
31 ~~licensed marriage and family therapist, a licensed clinical marriage and~~
32 ~~family therapist, licensed professional counselor, licensed clinical~~
33 ~~professional counselor, registered alcohol and drug abuse counselor, a law~~
34 ~~enforcement officer, a case manager, a rehabilitation counselor, a bank~~
35 ~~trust officer or any other officers of financial institutions, a legal~~
36 ~~representative, a governmental assistance provider, an owner or operator of~~
37 ~~a residential care facility, an independent living counselor and the chief~~
38 ~~administrative officer of a licensed home health agency, the chief~~
39 ~~administrative officer of an adult family home and the chief administrative~~
40 ~~officer of a provider of community services and affiliates thereof operated~~
41 ~~or funded by the Kansas department for aging and disability services or~~
42 ~~licensed under K.S.A. 75-3307b, and amendments thereto, who has~~
43 ~~reasonable cause to believe that an adult is being or has been abused,~~

1 ~~neglected or exploited or is in need of protective services shall report,~~
2 ~~immediately from receipt of the information, such information or cause a~~
3 ~~report of such information to be made in any reasonable manner. When~~
4 ~~any of the following persons have reasonable cause to suspect or believe~~
5 ~~that a vulnerable adult is being or has been harmed as a result of physical,~~
6 ~~mental or emotional abuse or neglect or sexual abuse~~ **has reasonable**
7 **cause to believe that an adult is being or has been abused, neglected,**
8 **exploited or subjected to fiduciary abuse,** the person shall report the
9 matter promptly as provided in subsections (b) and (c):

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

15 (2) *the following persons licensed by the state to provide mental*
16 *health services: Licensed psychologists, licensed masters level*
17 *psychologists, licensed clinical psychotherapists, licensed social workers,*
18 *licensed marriage and family therapists, licensed clinical marriage and*
19 *family therapists, licensed professional counselors, licensed clinical*
20 *professional counselors, licensed addiction counselors and licensed*
21 *clinical addiction counselors;*

22 (3) *teachers, school administrators or other employees of an*
23 *educational institution which the vulnerable adult is attending; and*

24 (4) *firefighters, emergency medical services personnel, law*
25 *enforcement officers, court services officers, community corrections*
26 *officers, case managers appointed under K.S.A. 23-3508, and amendments*
27 *thereto, and mediators appointed under K.S.A. 23-3502, and amendments*
28 *thereto, a rehabilitation counselor, a bank trust officer or any other*
29 *officers of financial institutions, a legal representative, a governmental*
30 *assistance provider; an owner or operator of a residential care facility, an*
31 *independent living counselor and the chief administrative officer of a*
32 *licensed home health agency, the chief administrative officer of an adult*
33 *family home and the chief administrative officer of a provider of*
34 *community services and affiliates thereof operated or funded by the*
35 *Kansas department for children and families or licensed under K.S.A. 75-*
36 *3307b, and amendments thereto.*

37 An employee of a domestic violence center shall not be required to
38 report information or cause a report of information to be made under this
39 subsection.

40 (b) Other state agencies receiving reports that are to be referred to the
41 Kansas department for children and families and the appropriate law
42 enforcement agency, shall submit the report to the department and agency
43 within six hours, during normal work days, of receiving the information.

1 Reports shall be made to the Kansas department for children and families
2 during the normal working week days and hours of operation. Reports
3 shall be made to law enforcement agencies during the time the Kansas
4 department for children and families is not in operation. Law enforcement
5 shall submit the report and appropriate information to the Kansas
6 department for children and families on the first working day that the
7 Kansas department for children and families is in operation after receipt of
8 such information.

9 ~~(b)~~ (c) (1) The report made pursuant to ~~subsection (a)~~ *this section*
10 shall contain the name and address of the person making the report and of
11 the caretaker caring for the involved adult, the name and address of the
12 involved adult, information regarding the nature and extent of the abuse,
13 neglect or exploitation, the name of the next of kin of the involved adult,
14 if known, and any other information which the person making the report
15 believes might be helpful in the investigation of the case and the protection
16 of the involved adult.

17 ~~(e)~~ (2) Any other person, not listed in subsection (a), having
18 reasonable cause to suspect or believe that ~~an a vulnerable~~ *an* adult is
19 being or has been abused, neglected or exploited or is in need of protective
20 services may report such information to the Kansas department for
21 children and families. Reports shall be made to law enforcement agencies
22 during the time the Kansas department for children and families is not in
23 operation.

24 (d) A person making a report under subsection (a) shall not be
25 required to make a report under K.S.A. 39-1401 to 39-1410, inclusive, and
26 amendments thereto.

27 (e) Any person required to report information or cause a report of
28 information to be made under subsection (a) who knowingly fails to make
29 such report or cause such report not to be made shall be guilty of a class B
30 misdemeanor.

31 (f) 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. 75-3307b,
37 and amendments thereto, and other institutions included in subsection (a).

38 Sec. 3. K.S.A. 2014 Supp. 39-1433 is hereby amended to read as
39 follows: 39-1433. (a) The Kansas department for children and families
40 upon receiving a report that ~~an a vulnerable~~ adult is being, or has been
41 abused, neglected, or exploited or is in need of protective services, shall:

42 (1) *Immediately notify, in writing, the appropriate law enforcement*
43 *agency* when a criminal act has occurred or has appeared to have occurred;

1 ~~immediately notify, in writing, the appropriate law enforcement agency;~~

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

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

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

8 (C) within five working days for all reports of neglect or exploitation
9 when the information from the reporter indicates no imminent danger.

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

26 (4) Prepare, upon completion of the investigation of each case, a
27 written assessment which shall include an analysis of whether there is or
28 has been abuse, neglect or exploitation, recommended action, a
29 determination of whether protective services are needed, and any follow-
30 up.

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

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

1 (d) The Kansas department for children and families may inform the
2 chief administrative officer of community facilities licensed pursuant to
3 K.S.A. 75-3307b, and amendments thereto, of ~~confirmed~~ *substantiated*
4 findings of resident abuse, neglect or exploitation.

5 Sec. 4. K.S.A. 2014 Supp. 39-1435 is hereby amended to read as
6 follows: 39-1435. In performing the duties set forth in this act, the
7 secretary for children and families may request the assistance of all state
8 departments, agencies and commissions and may utilize any other public
9 or private agencies, groups or individuals who are appropriate and who
10 may be available. Law enforcement shall be contacted to assist the Kansas
11 department for children and families when the information received on the
12 report indicates that ~~an~~ *a vulnerable* adult, residing in such *vulnerable*
13 adult's own home or the home of another individual, an adult family home,
14 a community development disabilities facility or residential facility is in a
15 life threatening situation.

16 Sec. 5. K.S.A. 2014 Supp. 39-1437 is hereby amended to read as
17 follows: 39-1437. (a) If the secretary determines that an involved adult is
18 in need of protective services, the secretary shall provide the necessary
19 protective services if the *involved* adult consents, or if the *involved* adult
20 lacks capacity to consent, the secretary may obtain consent from such
21 *involved* adult's legal representative. If the involved adult fails to consent
22 and the secretary has reason to believe that the involved adult *has no legal*
23 *representative and* lacks capacity to consent, the secretary ~~shall determine~~
24 ~~whether a petition for appointment of a guardian or conservator, or both,~~
25 ~~should be filed. If such determination is made, the secretary~~ may petition
26 the district court for appointment of a guardian or conservator, or both, for
27 an involved adult pursuant to the provisions of the act for obtaining a
28 guardian or conservator, or both.

29 (b) If the caretaker or legal representative of an involved adult who
30 has consented to the receipt of reasonable and necessary protective
31 services refuses to allow the provision of such services to the *involved*
32 adult, the secretary may seek an injunction enjoining the caretaker or legal
33 representative from interfering with the provision of protective services to
34 the *involved* adult. The petition in such action shall allege specific facts
35 sufficient to show that the *involved* adult is in need of protective services
36 and consents to their provision and that the caretaker or legal
37 representative refuses to allow the provision of such services. If the judge
38 finds, by clear and convincing evidence, that the *involved* adult is in need
39 of protective services and has been prevented by the caretaker or legal
40 representative from receiving such services, the judge shall issue an order
41 enjoining the caretaker or legal representative from interfering with the
42 provision of protective services to the *involved* adult. The court may
43 appoint a new legal representative, if the court deems that it is in the best

1 interest of the *involved* adult.

2 Sec. 6. 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 *involved*
5 *adult withdraws the consent states during the course of the provision of*
6 *protective services that such involved adult does not want to continue*
7 *receiving such protective services*, such services shall not be provided or
8 continued.

9 Sec. 7. K.S.A. 2014 Supp. 39-1443 is hereby amended to read as
10 follows: 39-1443. (a) *Investigation of vulnerable adult abuse.* The Kansas
11 department for children and families and law enforcement officers shall
12 have the duty to receive and investigate reports of *vulnerable* adult abuse,
13 neglect, exploitation or fiduciary abuse for the purpose of determining
14 whether the report is valid and whether action is required to protect the
15 *vulnerable* adult from further abuse or neglect. If the department and such
16 officers determine that no action is necessary to protect the *vulnerable*
17 adult but that a criminal prosecution should be considered, the department
18 and such law enforcement officers shall make a report of the case to the
19 appropriate law enforcement agency.

20 (b) *Joint investigations.* When a report of *vulnerable* adult neglect,
21 ~~adult~~ abuse, exploitation or fiduciary abuse indicates: (1) That there is
22 serious physical injury to or serious deterioration or sexual abuse or
23 exploitation of the *vulnerable* adult; and (2) that action may be required to
24 protect the *vulnerable* adult, the investigation may be conducted as a joint
25 effort between the Kansas department for children and families and the
26 appropriate law enforcement agency or agencies, with a free exchange of
27 information between such agencies. Upon completion of the investigation
28 by the law enforcement agency, a full report shall be provided to the
29 Kansas department for children and families.

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

35 (d) *Investigations concerning certain facilities.* Any investigation by
36 a law enforcement agency involving a facility subject to licensing or
37 regulation by the secretary of health and environment shall be reported
38 promptly to the state secretary of health and environment, upon conclusion
39 of the investigation or sooner if such report does not compromise the
40 investigation.

41 (e) *Cooperation between agencies.* Law enforcement agencies and
42 the Kansas department for children and families shall assist each other in
43 taking action which is necessary to protect the *vulnerable* adult regardless

1 of which party conducted the initial investigation.

2 Sec. 8. K.S.A. 39-1438 and K.S.A. 2014 Supp. 39-1430, 39-1431, 39-
3 1433, 39-1435, 39-1437 and 39-1443 are hereby repealed.

4 Sec. 9. This act shall take effect and be in force from and after its
5 publication in the statute book.