As Amended by Senate Committee

Session of 2015

SENATE BILL No. 219

By Committee on Judiciary

2-12


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

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

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

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

(1) Infliction of physical or mental injury;

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

(3) unreasonable use of a physical restraint, isolation or medication that harms or is likely to harm a vulnerable adult;

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

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

(6) fiduciary abuse; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 2. K.S.A. 2014 Supp. 39-1431 is hereby amended to read as
follows: 39-1431. (a) Any person who is licensed to practice any branch of
the healing arts, a licensed psychologist, a licensed master level
psychologist, a licensed clinical psychotherapist, the chief administrative
officer of a medical care facility, a teacher, a licensed social worker, a
licensed professional nurse, a licensed practical nurse, a licensed dentist, a
licensed marriage and family therapist, a licensed clinical marriage and
family therapist, licensed professional counselor, licensed clinical
professional counselor, registered alcohol and drug abuse counselor, a law
enforcement officer, a case manager, a rehabilitation counselor, a bank
trust officer or any other officers of financial institutions, a legal
representative, a governmental assistance provider, an owner or operator of
a residential care facility, an independent living counselor and the chief:
administrative officer of a licensed home health agency; the chief:
administrative officer of an adult family home and the chief administrative
officer of a provider of community services and affiliates thereof operated
or funded by the Kansas department for aging and disability services or
licensed under K.S.A. 75-3307b, and amendments thereto, who has
reasonable cause to believe that an adult is being or has been abused,
neglected or exploited or is in need of protective services shall report, immediately from receipt of the information, such information or cause a report of such information to be made in any reasonable manner. When any of the following persons have reasonable cause to suspect or believe that a vulnerable adult is being or has been harmed as a result of physical, mental or emotional abuse or neglect or sexual abuse has reasonable cause to believe that an adult is being or has been abused, neglected, exploited or subjected to fiduciary abuse, the person shall report the matter promptly as provided in subsections (b) and (c):

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

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

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

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

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

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

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

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

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

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

(f) Notice of the requirements of this act and the department to which a report is to be made under this act shall be posted in a conspicuous public place in every adult family home as defined in K.S.A. 39-1501, and amendments thereto, and every provider of community services and affiliates thereof operated or funded by the Kansas department for aging and disability services or other facility licensed under K.S.A. 75-3307b, and amendments thereto, and other institutions included in subsection (a).

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

1. Immediately notify, in writing, the appropriate law enforcement agency when a criminal act has occurred or has appeared to have occurred;
immediately notify, in writing, the appropriate law enforcement agency;

(2) make a personal visit face-to-face assessment with the involved adult:
   (A) Within 24 hours when the information from the reporter indicates imminent danger to the health or welfare of the involved adult;
   (B) within three working days for all reports of suspected abuse, when the information from the reporter indicates no imminent danger;
   (C) within five working days for all reports of neglect or exploitation when the information from the reporter indicates no imminent danger.

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

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

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

(c) The Kansas department for children and families shall inform the complainant, upon request of the complainant, that an investigation has been made and if the allegations of abuse, neglect or exploitation have been substantiated, that corrective measures will be taken, upon completion of the investigation or sooner, if such measures do not jeopardize the investigation.
(d) The Kansas department for children and families may inform the chief administrative officer of community facilities licensed pursuant to K.S.A. 75-3307b, and amendments thereto, of confirmed substantiated findings of resident abuse, neglect or exploitation.

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

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

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

Sec. 6. K.S.A. 39-1438 is hereby amended to read as follows: 39-1438. If an involved adult does not consent to the receipt of reasonable and necessary protective services, or if such involved adult withdraws the consent states during the course of the provision of protective services that such involved adult does not want to continue receiving such protective services, such services shall not be provided or continued.

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

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

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

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

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

1433, 39-1435, 39-1437 and 39-1443 are hereby repealed.

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