

## SENATE BILL No. 72

By Committee on Judiciary

1-24

1 AN ACT concerning social welfare; relating to the reporting of abuse,  
2 neglect or exploitation of vulnerable adults; amending K.S.A. 39-1438  
3 and K.S.A. 2016 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. 2016 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 or frail condition* alleged to be unable to  
11 protect their own interest and who is harmed or threatened with harm,  
12 whether financial, mental or physical in nature, through action or inaction  
13 by either another individual or through their own action or inaction when:  
14 (1) Such person is residing in such person's own home, the home of a  
15 family member or the home of a friend; (2) such person resides in an adult  
16 family home as defined in K.S.A. 39-1501, and amendments thereto; or (3)  
17 such person is receiving services through a provider of community  
18 services and affiliates thereof operated or funded by the Kansas  
19 department for children and families or the Kansas department for aging  
20 and disability services or a residential facility licensed pursuant to K.S.A.  
21 75-3307b, and amendments thereto. Such term shall not include persons to  
22 whom K.S.A. 39-1401 et seq., and amendments thereto, apply.

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

26 (1) Infliction of physical or mental injury;

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

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

34 (4) unreasonable use of a physical or chemical restraint, medication  
35 or isolation as punishment, for convenience, in conflict with a physician's  
36 orders or as a substitute for treatment, except where such conduct or

1 physical restraint is in furtherance of the health and safety of the  
2 *vulnerable* adult;

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

6 (6) fiduciary abuse; or

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

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

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

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

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

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

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

1 in securing medical and legal services.

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

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

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

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

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

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

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

24 Sec. 2. K.S.A. 2016 Supp. 39-1431 is hereby amended to read as  
25 follows: 39-1431. (a) ~~Any person who is licensed to practice any branch of~~  
26 ~~the healing arts, a licensed psychologist, a licensed master level~~  
27 ~~psychologist, a licensed clinical psychotherapist, the chief administrative~~  
28 ~~officer of a medical care facility, a teacher, a licensed social worker, a~~  
29 ~~licensed professional nurse, a licensed practical nurse, a licensed dentist, a~~  
30 ~~licensed marriage and family therapist, a licensed clinical marriage and~~  
31 ~~family therapist, licensed professional counselor, licensed clinical~~  
32 ~~professional counselor, registered alcohol and drug abuse counselor, a law~~  
33 ~~enforcement officer, a case manager, a rehabilitation counselor, a bank~~  
34 ~~trust officer or any other officers of financial institutions, a legal~~  
35 ~~representative, a governmental assistance provider, an owner or operator of~~  
36 ~~a residential care facility, an independent living counselor and the chief~~  
37 ~~administrative officer of a licensed home health agency, the chief~~  
38 ~~administrative officer of an adult family home and the chief administrative~~  
39 ~~officer of a provider of community services and affiliates thereof operated~~  
40 ~~or funded by the Kansas department for aging and disability services or~~  
41 ~~licensed under K.S.A. 75-3307b, and amendments thereto, who has~~  
42 ~~reasonable cause to believe that an adult is being or has been abused,~~  
43 ~~neglected or exploited or is in need of protective services shall report,~~

1 ~~immediately from receipt of the information, such information or cause a~~  
2 ~~report of such information to be made in any reasonable manner. When~~  
3 ~~any of the following has reasonable cause to believe that a vulnerable~~  
4 ~~adult is being or has been abused, neglected, exploited or subjected to~~  
5 ~~fiduciary abuse, the person shall report the matter promptly as provided in~~  
6 ~~subsections (b) and (c):~~

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

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

19 (3) *teachers, school administrators and other employees of an*  
20 *educational institution that the vulnerable adult is attending;*

21 (4) *firefighters, emergency medical services personnel, law*  
22 *enforcement officers, court services officers, community corrections*  
23 *officers, case managers, rehabilitation counselors, bank trust officers or*  
24 *any other officers of financial institutions, legal representatives,*  
25 *governmental assistance providers, owners or operators of residential*  
26 *care facilities, independent living counselors; and*

27 (5) *chief administrative officers of: Licensed home health agencies;*  
28 *adult family homes; and providers of community services and affiliates*  
29 *thereof operated or funded by the Kansas department for aging and*  
30 *disability services or licensed under K.S.A. 75-3307b, and amendments*  
31 *thereto.*

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

35 (b) Other state agencies receiving reports that are to be referred to the  
36 Kansas department for children and families and the appropriate law  
37 enforcement agency, shall submit the report to the department and agency  
38 within six hours, during normal work days, of receiving the information.  
39 Reports shall be made to the Kansas department for children and families  
40 during the normal working week days and hours of operation. Reports  
41 shall be made to law enforcement agencies during the time the Kansas  
42 department for children and families is not in operation. Law enforcement  
43 shall submit the report and appropriate information to the Kansas

1 department for children and families on the first working day that the  
2 Kansas department for children and families is in operation after receipt of  
3 such information.

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

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

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

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

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

33 Sec. 3. K.S.A. 2016 Supp. 39-1433 is hereby amended to read as  
34 follows: 39-1433. (a) The Kansas department for children and families  
35 upon receiving a report that ~~an~~ *a vulnerable* adult is being, or has been  
36 abused, neglected, or exploited or is in need of protective services, shall:

37 (1) *Immediately notify, in writing, the appropriate law enforcement*  
38 *agency* when a criminal act has occurred or has appeared to have occurred;  
39 ~~immediately notify, in writing, the appropriate law enforcement agency;~~

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

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

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

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

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

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

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

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

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

43 Sec. 4. K.S.A. 2016 Supp. 39-1435 is hereby amended to read as

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

11 Sec. 5. K.S.A. 2016 Supp. 39-1437 is hereby amended to read as  
12 follows: 39-1437. (a) If the secretary determines that an involved adult is  
13 in need of protective services, the secretary shall provide the necessary  
14 protective services if the *involved* adult consents, or if the *involved* adult  
15 lacks capacity to consent, the secretary may obtain consent from such  
16 *involved* adult's legal representative. If the involved adult fails to consent  
17 and the secretary has reason to believe that the involved adult *has no legal*  
18 *representative and* lacks capacity to consent, the secretary shall determine  
19 whether a petition for appointment of a guardian or conservator, or both,  
20 should be filed. If such determination is made, the secretary may petition  
21 the district court for appointment of a guardian or conservator, or both, for  
22 an involved adult pursuant to the provisions of the act for obtaining a  
23 guardian or conservator, or both.

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

40 Sec. 6. K.S.A. 39-1438 is hereby amended to read as follows: 39-  
41 1438. If an involved adult does not consent to the receipt of reasonable and  
42 necessary protective services, or if such *involved* adult withdraws the  
43 consent, such services shall not be provided or continued.

1       Sec. 7. K.S.A. 2016 Supp. 39-1443 is hereby amended to read as  
2 follows: 39-1443. (a) *Investigation of adult abuse.* The Kansas department  
3 for children and families and law enforcement officers shall have the duty  
4 to receive and investigate reports of *vulnerable* adult abuse, neglect,  
5 exploitation or fiduciary abuse for the purpose of determining whether the  
6 report is valid and whether action is required to protect the *vulnerable*  
7 adult from further abuse or neglect. If the department and such officers  
8 determine that no action is necessary to protect the *vulnerable* adult but  
9 that a criminal prosecution should be considered, the department and such  
10 law enforcement officers shall make a report of the case to the appropriate  
11 law enforcement agency.

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

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

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

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

37       Sec. 8. K.S.A. 39-1438 and K.S.A. 2016 Supp. 39-1430, 39-1431, 39-  
38 1433, 39-1435, 39-1437 and 39-1443 are hereby repealed.

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