

As Amended by House Committee

Session of 2019

HOUSE BILL No. 2392

By Committee on Federal and State Affairs

3-11

1 AN ACT concerning children and minors; relating to ~~mandatory reporting~~
2 ~~of suspected child abuse and neglect~~; investigation procedures;
3 amending K.S.A. 2018 Supp. ~~38-2223~~ and 38-2226 and repealing the
4 existing sections **section**.

5
6 WHEREAS, The amendments made to the provisions of K.S.A. 2018
7 Supp. ~~38-2223~~ and 38-2226 by this act shall be known as Adrian's law.

8 Now, therefore:

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

10 Section 1. ~~K.S.A. 2018 Supp. 38-2223 is hereby amended to read as~~
11 ~~follows: 38-2223. (a) Persons making reports. (1) When any of the~~
12 ~~following persons has reason to suspect that a child has been harmed as a~~
13 ~~result of physical, mental or emotional abuse or neglect or sexual abuse,~~
14 ~~the person shall report the matter promptly as provided in subsections (b)~~
15 ~~and (c);~~

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

21 (B) ~~the following persons licensed by the state to provide mental~~
22 ~~health services: Licensed psychologists, licensed masters level~~
23 ~~psychologists, licensed clinical psychotherapists, licensed social workers,~~
24 ~~licensed marriage and family therapists, licensed clinical marriage and~~
25 ~~family therapists, licensed behavioral analysts, licensed assistant~~
26 ~~behavioral analysts, licensed professional counselors, licensed clinical~~
27 ~~professional counselors and registered alcohol and drug abuse counselors;~~

28 (C) ~~teachers, school administrators or other employees of an~~
29 ~~educational institution which the child is attending and persons licensed by~~
30 ~~the secretary of health and environment to provide child care services or~~
31 ~~the employees of persons so licensed at the place where the child care~~
32 ~~services are being provided to the child;~~

33 (D) ~~firefighters, emergency medical services personnel, law~~
34 ~~enforcement officers, juvenile intake and assessment workers, court~~
35 ~~services officers, community corrections officers, case managers appointed~~
36 ~~under K.S.A. 2018 Supp. 23-3508, and amendments thereto, and mediators~~

1 appointed under K.S.A. 2018 Supp. 23-3502, and amendments thereto;
2 and

3 ~~(E) any person employed by or who works as a volunteer for any~~
4 ~~organization, whether for profit or not-for-profit, that provides social~~
5 ~~services to pregnant teenagers, including, but not limited to, counseling,~~
6 ~~adoption services and pregnancy education and maintenance; and~~

7 ~~(F) any adult who resides in the same home as the child. For the~~
8 ~~purposes of this subparagraph, "reside" means to stay, sleep or maintain~~
9 ~~regularly or temporarily one's person and property in the home for three~~
10 ~~or more consecutive days or parts of days, or for 10 or more~~
11 ~~nonconsecutive days in a period of 30 consecutive days.~~

12 (2) In addition to the reports required under subsection (a)(1), any
13 person who has reason to suspect that a child may be a child in need of
14 care may report the matter as provided in subsection (b) and (c).

15 ~~(b) Form of report. (1) The report may be made orally and shall be~~
16 ~~followed by a written report if requested. Every report shall contain, if~~
17 ~~known: The names and addresses of the child and the child's parents or~~
18 ~~other persons responsible for the child's care; the location of the child if~~
19 ~~not at the child's residence; the child's gender, race and age; the reasons~~
20 ~~why the reporter suspects the child may be a child in need of care; if abuse~~
21 ~~or neglect or sexual abuse is suspected, the nature and extent of the harm~~
22 ~~to the child, including any evidence of previous harm; and any other~~
23 ~~information that the reporter believes might be helpful in establishing the~~
24 ~~cause of the harm and the identity of the persons responsible for the harm.~~

25 (2) When reporting a suspicion that a child may be in need of care,
26 the reporter shall disclose protected health information freely and
27 cooperate fully with the secretary and law enforcement throughout the
28 investigation and any subsequent legal process.

29 ~~(c) To whom made. Reports made pursuant to this section shall be~~
30 ~~made to the secretary, except as follows:~~

31 (1) When the Kansas department for children and families is not open
32 for business, reports shall be made to the appropriate law enforcement
33 agency. On the next day that the department is open for business, the law
34 enforcement agency shall report to the department any report received and
35 any investigation initiated pursuant to K.S.A. 2018 Supp. 38-2226, and
36 amendments thereto. The reports may be made orally or, on request of the
37 secretary, in writing.

38 (2) Reports of child abuse or neglect occurring in an institution
39 operated by the Kansas department of corrections shall be made to the
40 attorney general or the secretary of corrections. Reports of child abuse or
41 neglect occurring in an institution operated by the Kansas department for
42 aging and disability services shall be made to the appropriate law
43 enforcement agency. All other reports of child abuse or neglect by persons

1 employed by the Kansas department for aging and disability services or
2 the Kansas department for children and families, or of children of persons
3 employed by either department, shall be made to the appropriate law
4 enforcement agency.

5 ~~(d) *Death of child.* Any person who is required by this section to~~
6 ~~report a suspicion that a child is in need of care and who knows of~~
7 ~~information relating to the death of a child shall immediately notify the~~
8 ~~coroner as provided by K.S.A. 22a-242, and amendments thereto.~~

9 ~~(e) *Violations.* (1) Willful and knowing failure to make a report~~
10 ~~required by this section is a class B misdemeanor. It is not a defense that~~
11 ~~another mandatory reporter made a report.~~

12 ~~(2) Intentionally preventing or interfering with the making of a report~~
13 ~~required by this section is a class B misdemeanor.~~

14 ~~(3) Any person who willfully and knowingly makes a false report~~
15 ~~pursuant to this section or makes a report that such person knows lacks~~
16 ~~factual foundation is guilty of a class B misdemeanor.~~

17 ~~(4) *It shall not be a violation of this section if an adult who would be*~~
18 ~~*required to make a report under subsection (a)(1)(F) fails to do so, if there*~~
19 ~~*are reasonable grounds to believe that such adult, or any child of such*~~
20 ~~*adult, has been the victim of physical, mental or emotional abuse or*~~
21 ~~*neglect or sexual abuse by the same individual who would be named in*~~
22 ~~*such report as the suspected abuser.*~~

23 ~~(f) *Immunity from liability.* (1) Anyone who, without malice,~~
24 ~~participates in the making of a report to the secretary or a law enforcement~~
25 ~~agency relating to a suspicion a child may be a child in need of care or~~
26 ~~who participates in any activity or investigation relating to the report or~~
27 ~~who participates in any judicial proceeding resulting from the report shall~~
28 ~~have immunity from any civil liability that might otherwise be incurred or~~
29 ~~imposed.~~

30 ~~(2) *Except as provided further, any adult who makes a report as*~~
31 ~~*required under subsection (a)(1)(F) shall be immune from criminal*~~
32 ~~*liability for any harm or injury to the child who is the subject of the report*~~
33 ~~*as a result of physical, mental or emotional abuse or neglect or sexual*~~
34 ~~*abuse. The provisions of this paragraph shall not apply to any adult who*~~
35 ~~*engages in physical, mental or emotional abuse or neglect or sexual abuse*~~
36 ~~*of the child, or when the physical, mental or emotional abuse or neglect or*~~
37 ~~*sexual abuse results in the death of the child.*~~

38 **See-2. Section 1.** K.S.A. 2018 Supp. 38-2226 is hereby amended to
39 read as follows: 38-2226. (a) *Investigation for child abuse or neglect.* The
40 secretary and law enforcement officers shall have the duty to receive and
41 investigate reports of child abuse or neglect for the purpose of determining
42 whether the report is valid and whether action is required to protect a
43 child. Any person or agency which maintains records relating to the

1 involved child which are relevant to any investigation conducted by the
2 secretary or law enforcement agency under this code shall provide the
3 secretary or law enforcement agency with the necessary records to assist in
4 investigations. In order to provide such records, the person or agency
5 maintaining the records shall receive from the secretary or law
6 enforcement: (1) A written request for information; and (2) a written notice
7 that the investigation is being conducted by the secretary or law
8 enforcement. If the secretary and such officers determine that no action is
9 necessary to protect the child but that a criminal prosecution should be
10 considered, such law enforcement officers shall make a report of the case
11 to the appropriate law enforcement agency.

12 (b) *Joint investigations.* When a report of child abuse or neglect
13 indicates: (1) That there is serious physical harm to, serious deterioration
14 of or sexual abuse of the child; and (2) that action may be required to
15 protect the child, the investigation shall be conducted as a joint effort
16 between the secretary and the appropriate law enforcement agency or
17 agencies, with a free exchange of information between them pursuant to
18 K.S.A. 2018 Supp. 38-2210, and amendments thereto. If a statement of a
19 suspect is obtained by either agency, a copy of the statement shall be
20 provided to the other.

21 (c) *Investigation of certain cases.* Suspected child abuse or neglect
22 which occurs in an institution operated by the Kansas department of
23 corrections shall be investigated by the attorney general or secretary of
24 corrections. Any suspected child abuse or neglect in an institution operated
25 by the Kansas department for aging and disability services, or by persons
26 employed by the Kansas department for aging and disability services or
27 the Kansas department for children and families, or of children of persons
28 employed by either department, shall be investigated by the appropriate
29 law enforcement agency.

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

34 (e) *Investigations concerning certain facilities.* Any investigation
35 involving a facility subject to licensing or regulation by the secretary of
36 health and environment shall be promptly reported to the state secretary of
37 health and environment.

38 (f) *Cooperation between agencies.* Law enforcement agencies and the
39 secretary shall assist each other in taking action which is necessary to
40 protect a child regardless of which agency conducted the initial
41 investigation.

42 (g) *Cooperation between school personnel and investigative*
43 *agencies.* (1) Educational institutions, the secretary and law enforcement

1 agencies shall cooperate with each other in the investigation of reports of
2 suspected child abuse or neglect. The secretary and law enforcement
3 agencies shall have access to a child in a setting designated by school
4 personnel on the premises of an educational institution. Attendance at an
5 interview conducted on such premises shall be at the discretion of the
6 agency conducting the interview, giving consideration to the best interests
7 of the child. To the extent that safety and practical considerations allow,
8 law enforcement officers on such premises for the purpose of investigating
9 a report of suspected child abuse or neglect shall not be in uniform.

10 (2) The secretary or a law enforcement officer may request the
11 presence of school personnel during an interview if the secretary or officer
12 determines that the presence of such person might provide comfort to the
13 child or facilitate the investigation.

14 *(h) As part of any investigation conducted pursuant to this section,*
15 *the secretary or the law enforcement agency that is conducting the*
16 *investigation shall visually observe the child who is the alleged victim of*
17 *abuse or neglect. In the case of a joint investigation conducted pursuant to*
18 *subsection (b), the secretary and the investigating law enforcement agency*
19 *shall both visually observe the child who is the alleged victim of abuse or*
20 *neglect. All investigation reports shall include the date, time and location*
21 *of any visual observation of a child that is required by this subsection.*

22 ~~Sec. 3.~~ **2.** K.S.A. 2018 Supp. ~~38-2223 and 38-2226~~ **are** is hereby
23 repealed.

24 ~~Sec. 4.~~ **3.** This act shall take effect and be in force from and after its
25 publication in the statute book.