

HOUSE BILL No. 2254

AN ACT concerning dependent persons; relating to the reporting of abuse, neglect or exploitation of such persons; amending K.S.A. 39-1401, 39-1403, 39-1404, 39-1405, 39-1406, 39-1407, 39-1408, 39-1409, 39-1430, 39-1432, 39-1433, 39-1436 and 39-1437 and K.S.A. 2002 Supp. 39-1402 and 39-1431 and repealing the existing sections.

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

New Section 1. (a) *Investigation of adult abuse.* The state department of social and rehabilitation services and law enforcement officers shall have the duty to receive and investigate reports of 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 adult from further abuse or neglect. If the department and such officers determine that no action is necessary to protect the 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 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 adult and (2) that action may be required to protect the adult, the investigation may be conducted as a joint effort between the department of social and rehabilitation services 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 department of social and rehabilitation services.

(c) *Coordination of investigations by county or district attorney.* If a dispute develops between agencies investigating a reported case of 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 department of social and rehabilitation services shall assist each other in taking action which is necessary to protect the adult regardless of which party conducted the initial investigation.

Sec. 2. K.S.A. 39-1401 is hereby amended to read as follows: 39-1401. As used in this act:

(a) "Resident" means:

(1) Any resident, as defined by K.S.A. 39-923 and amendments thereto; or

(2) any individual kept, cared for, treated, boarded or otherwise accommodated in a medical care facility; or

(3) any individual, kept, cared for, treated, boarded or otherwise accommodated in a state psychiatric hospital or state institution for the mentally retarded.

(b) "Adult care home" has the meaning ascribed thereto in K.S.A. 39-923 and amendments thereto.

(c) "In need of protective services" means that a resident is unable to perform or obtain services which are necessary to maintain physical or mental health, or both.

(d) "Services which are necessary to maintain physical and mental health" include, but are not limited to, the provision of medical care for physical and mental health needs, the relocation of a resident 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.

(e) "Protective services" means services provided by the state or other governmental agency or any private organizations or individuals which are necessary to prevent abuse, neglect or exploitation. Such protective serv-

ices shall include, but not be limited to, evaluation of the need for services, assistance in obtaining appropriate social services and assistance in securing medical and legal services.

(f) “Abuse” means any act or failure to act performed intentionally or recklessly that causes or is likely to cause harm to a resident, including:

(1) Infliction of physical or mental injury;

(2) any sexual act with a resident when the resident does not consent or when the other person knows or should know that the resident 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 resident;

(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 resident or another resident;

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

(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.

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

(h) “Caretaker” means a person or institution who has assumed the responsibility, *whether legally or not*, for the care of the resident voluntarily, by contract or by order of a court of competent jurisdiction.

(i) “Exploitation” means misappropriation of resident property or intentionally taking unfair advantage of an 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.

(j) “Medical care facility” means a facility licensed under K.S.A. 65-425 *et seq.* and amendments thereto but shall not include, for purposes of this act, a state psychiatric hospital or state institution for the mentally retarded, including Larned state hospital, Osawatomie state hospital; *and* Rainbow mental health facility, Kansas neurological institute and Parsons state hospital and training center.

(k) “Fiduciary abuse” means a situation in which any person who is the caretaker of, or who stands in a position of trust to, a resident, takes, secretes, or appropriates the resident’s money or property, to any use or purpose not in the due and lawful execution of such person’s trust.

(l) “State psychiatric hospital” means Larned state hospital, Osawatomie state hospital and Rainbow mental health facility.

(m) “State institution for the mentally retarded” means Kansas neurological institute and Parsons state hospital and training center.

(n) “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.

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

(p) “*Legal representative*” means an agent designated in a durable power of attorney, power of attorney or durable power of attorney for health care decisions or a court appointed guardian, conservator or trustee.

(q) “*Financial institution*” means any bank, trust company, escrow company, finance company, saving institution or credit union, chartered and supervised under state or federal law.

(r) “*Governmental assistance provider*” means an agency, or employee of such agency, which is funded solely or in part to provide assistance within the Kansas senior care act, K.S.A. 75-5926 *et seq.*, and amendments thereto, including medicaid and medicare.

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. 3. K.S.A. 2002 Supp. 39-1402 is hereby amended to read as follows: 39-1402. (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, a chief administrative officer of a medical care facility, an adult care home administrator or operator, a licensed social worker, a licensed professional nurse, a licensed practical nurse, 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 teacher, a bank trust officer, ~~a guardian or a conservator~~ *and any other officers of financial institutions, a legal representative or a governmental assistance provider* who has reasonable cause to believe that a resident is being or has been abused, neglected or exploited, or is in a condition which is the result of such abuse, neglect or exploitation or is in need of protective services, shall report immediately such information or cause a report of such information to be made in any reasonable manner to the department of health and environment with respect to residents defined under *subsections* (a)(1) and (a)(2) of K.S.A. 39-1401 and amendments thereto and to the department of social and rehabilitation services *and appropriate law enforcement agencies* with respect to all other residents. Reports made to one department which are required by this subsection to be made to the other department shall be referred by the department to which the report is made to the appropriate department for that report, and any such report shall constitute compliance with this subsection. Reports shall be made during the normal working week days and hours of operation of such departments. Reports shall be made to law enforcement agencies during the time the departments are not open for business. Law enforcement agencies shall submit the report and appropriate information to the appropriate department on the first working day that such department is open for business. A report made pursuant to K.S.A. 65-4923 or 65-4924 and amendments thereto shall be deemed a report under this section.

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

(c) Any other person, *not listed in subsection (a)*, having reasonable cause to suspect or believe that a resident is being or has been abused, neglected or exploited, or is in a condition which is the result of such abuse, neglect or exploitation or is in need of protective services may report such information to the department of health and environment with respect to residents defined under *subsections* (a)(1) and (a)(2) of K.S.A. 39-1401 and amendments thereto and to the department of social and rehabilitation services with respect to all other residents. Reports made to one department which are to be made to the other department under this section shall be referred by the department to which the report is made to the appropriate department for that report.

(d) 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 care home and medical care facility in this state.

(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 to be made shall be guilty of a class B misdemeanor.

Sec. 4. K.S.A. 39-1403 is hereby amended to read as follows: 39-1403. (a) Anyone participating in the making of any report pursuant to this act, or in any follow-up activity to or investigation of such report or any other report of abuse, neglect or exploitation of an adult or who testifies in any administrative or judicial proceeding arising from such

report shall not be subject to any civil or ~~criminal~~ liability on account of such report, investigation or testimony, unless such person acted in bad faith or with malicious purpose.

(b) No employer shall terminate the employment of, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that such employee made or caused to be made a report under this act.

Sec. 5. K.S.A. 39-1404 is hereby amended to read as follows: 39-1404. (a) The department of health and environment or the department of social and rehabilitation services upon receiving a report that a resident is being, or has been, abused, neglected or exploited, or is in a condition which is the result of such abuse, neglect or exploitation or is in need of protective services shall:

(1) 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 with the involved resident:

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

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

(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 resident and what action and services, if any, are required. The investigation shall include, but not be limited to, consultation with those individuals having knowledge of the facts of the particular case; and

(4) prepare, upon a completion of the evaluation 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 department which investigates the report 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 if required *upon completion of the investigation or sooner if such measures do not jeopardize the investigation.*

(c) The department of health and environment may inform the chief administrative officer of a facility as defined by K.S.A. 39-923 and amendments thereto *within 30 days* of confirmed findings of resident abuse, neglect or exploitation.

Sec. 6. K.S.A. 39-1405 is hereby amended to read as follows: 39-1405. (a) The secretary of health and environment shall forward to the secretary of social and rehabilitation services any finding that a resident may be in need of protective services. If the secretary of social and rehabilitation services determines that a resident is in need of protective services, the secretary of social and rehabilitation services shall provide the necessary protective services, if a resident consents, *or if the resident lacks capacity to consent, the secretary may obtain consent from such resident's legal representative.* If a resident *or such resident's legal representative, or both,* fails to consent and the secretary of social and rehabilitation services has reason to believe that such a resident lacks capacity to consent, the secretary of social and rehabilitation services shall determine pursuant to K.S.A. 39-1408 and amendments thereto whether a petition for appointment of a guardian or conservator, or both, should be filed.

(b) If the caretaker *or legal representative, or both,* of a resident who has consented to the receipt of reasonable and necessary protective services refuses to allow the provision of such services to such resident, the secretary of social and rehabilitation services may seek to obtain an injunction enjoining the caretaker *or legal representative, or both,* from interfering with the provision of protective services to the resident. The petition in such action shall allege specific facts sufficient to show that the resident is in need of protective services and consents to their provision and that the caretaker *or legal representative, or both,* refuses to

allow the provision of such services. If the judge, *by clear and convincing evidence*, finds that the resident is in need of protective services and has been prevented by the caretaker *or legal representative, or both*, from receiving such services, the judge shall issue an order enjoining the caretaker *or legal representative, or both*, from interfering with the provision of protective services to the resident. *The court may appoint a new legal representative if the court deems that it is in the best interest of the resident.*

Sec. 7. K.S.A. 39-1406 is hereby amended to read as follows: 39-1406. Any person, department or agency authorized to carry out the duties enumerated in this act, *including investigating law enforcement agencies* and the long-term care ombudsman shall have access to all relevant records. The authority of the secretary of social and rehabilitation services and the secretary of health and environment under this act shall include, but not be limited to, the right to initiate or otherwise take those actions necessary to assure the health, safety and welfare of any resident, subject to any specific requirement for individual consent of the resident.

Sec. 8. K.S.A. 39-1407 is hereby amended to read as follows: 39-1407. If a resident does not consent to the receipt of reasonable and necessary protective services, or if such person withdraws the consent, such services shall not be provided or continued, except that if the secretary of social and rehabilitation services has reason to believe that such resident lacks capacity to consent, the secretary may seek court authorization to provide necessary services, as provided in K.S.A. 39-1408, *and amendments thereto.*

Sec. 9. K.S.A. 39-1408 is hereby amended to read as follows: 39-1408. (a) If the secretary of social and rehabilitation services finds that a resident is being or has been abused, neglected or exploited or is in a condition which is the result of such abuse, neglect or exploitation and lacks capacity to consent to reasonable and necessary protective services, the secretary may petition the district court for appointment of a guardian or conservator, or both, for the resident pursuant to the provisions of the act for obtaining a guardian or conservator, or both, in order to obtain such consent.

(b) In any proceeding in district court pursuant to provisions of this act, the district court shall appoint an attorney to represent the resident if the resident is without other legal representation.

Sec. 10. K.S.A. 39-1409 is hereby amended to read as follows: 39-1409. In performing the duties set forth in this act, the secretary of social and rehabilitation services ~~or~~, the secretary of health and environment *or an appropriate law enforcement agency* may request the assistance of the staffs and resources of all appropriate state departments, agencies and commissions and local health departments and may utilize any other public or private agency, group or individual who is appropriate and who may be available to assist such department *or agency* in the investigation and determination of whether a resident is being, or has been, abused, neglected or exploited or is in a condition which is a result of such abuse, neglect or exploitation, except that any internal investigation conducted by any caretaker under investigation shall be limited to the least serious category of report as specified by the secretary of health and environment or the secretary of social and rehabilitation services, as applicable.

Sec. 11. K.S.A. 39-1430 is hereby amended to read as follows: 39-1430. As used in this act:

(a) “Adult” means an individual 18 years of age or older alleged to be unable to protect their own interest and who is harmed or threatened with harm, *whether financial, mental 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 department of social and rehabilitation services or the department on aging 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 an adult, including:

- (1) Infliction of physical or mental injury;
- (2) any sexual act with an adult when the adult does not consent or when the other person knows or should know that the 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 an 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 adult;
- (5) a threat or menacing conduct directed toward an adult that results or might reasonably be expected to result in fear or emotional or mental distress to an 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 adult’s property or intentionally taking unfair advantage of an 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 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 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 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 an adult’s care or financial management or both.

(j) “Secretary” means the secretary of social and rehabilitation services.

(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 adult who is the subject of a report 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. 12. K.S.A. 2002 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 guardian or conservator, a bank trust officer, a holder of a power of attorney, 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 department of social and rehabilitation 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. 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. Other state agencies receiving reports that are to be referred to the department of social and rehabilitation services *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 department of social and rehabilitation services during the normal working week days and hours of operation. Reports shall be made to law enforcement agencies during the time social and rehabilitation services are not in operation. Law enforcement shall submit the report and appropriate information to the department of social and rehabilitation services on the first working day that social and rehabilitation services is in operation *after receipt of such information*.

(b) The report made pursuant to subsection (a) 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) 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 department of social and rehabilitation services. Reports shall be made to law enforcement agencies during the time social and rehabilitation services are 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 department of social and rehabilitation services or other facility licensed under K.S.A. 75-3307b and amendments thereto, *and other institutions included in subsection (a)*.

Sec. 13. K.S.A. 39-1432 is hereby amended to read as follows: 39-1432. (a) Anyone participating in the making of any report pursuant to this act, or in any follow-up activity to or investigation of such report or who testifies in any administrative or judicial proceeding arising from such report shall not be subject to any civil ~~or criminal~~ liability on account of such report, investigation or testimony, unless such person acted in bad faith or with malicious purpose.

(b) No employer shall terminate the employment of, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that such employee made or caused to be made a report, or cooperated with an investigation, under this act. A court, in addition to other damages and remedies, may assess reasonable attorney fees against an employer who has been found to have violated the provisions of this subsection.

Sec. 14. K.S.A. 39-1433 is hereby amended to read as follows: 39-1433. (a) The department of social and rehabilitation services 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) 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 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 the alleged perpetrator is licensed, registered or otherwise regulated by a state agency, such state agency also shall be notified ~~immediately~~ *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 of social and rehabilitation services shall forward any 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 department of social and rehabilitation services 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 department of social and rehabilitation services may inform the chief administrative officer of community facilities licensed pursuant to K.S.A. 75-3307b and amendments thereto of confirmed findings of resident abuse, neglect or exploitation.

Sec. 15. K.S.A. 39-1436 is hereby amended to read as follows: 39-1436. (a) Any person or agency which maintains records relating to the involved adult which are relevant to any investigation conducted by the department of social and rehabilitation services *or a law enforcement*

agency under this act shall provide, upon the written consent of the involved adult or the involved adult's guardian, the department of social and rehabilitation services *or a law enforcement agency* with the necessary records to assist in investigations. Any such information shall be subject to the confidentiality requirements of K.S.A. 39-1434 and amendments thereto.

(b) The department of social and rehabilitation services *or a law enforcement agency* shall have access to all relevant records in accordance with the provisions of subsection (a).

Sec. 16. K.S.A. 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 adult consents, *or if the adult lacks capacity to consent, the secretary may obtain consent from such adult's legal representative.* If the involved adult fails to consent and the secretary has reason to believe that the involved adult 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 adult, the secretary may seek an injunction enjoining the caretaker *or legal representative* from interfering with the provision of protective services to the adult. The petition in such action shall allege specific facts sufficient to show that the 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 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 adult. *The court may appoint a new legal representative, if the court deems that it is in the best interest of the adult.*

Sec. 17. K.S.A. 39-1401, 39-1403, 39-1404, 39-1405, 39-1406, 39-1407, 39-1408, 39-1409, 39-1430, 39-1432, 39-1433, 39-1436 and 39-1437 and K.S.A. 2002 Supp. 39-1402 and 39-1431 are hereby repealed.

Sec. 18. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.