

As Amended by House Committee

Session of 2004

HOUSE BILL No. 2575

By Representatives Storm, Bethell, Boyer, Carlin, Craft, Crow, Flaharty, Gilbert, Gordon, Horst, Kuether, Loganbill, Jim Morrison, Neighbor, Rehorn and Toelkes

1-22

12 AN ACT relating to abuse of persons; concerning mandatory reporting  
13 thereof; privileges and immunities; amending K.S.A. 2003 Supp. 38-  
14 1522, 39-1402 and 39-1431 and repealing the existing sections.

15  
16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. K.S.A. 2003 Supp. 38-1522 is hereby amended to read as  
18 follows: 38-1522. (a) When any of the following persons has reason to  
19 suspect that a child has been injured as a result of physical, mental or  
20 emotional abuse or neglect or sexual abuse, the person shall report the  
21 matter promptly as provided in subsection (c) or (e): Persons licensed to  
22 practice the healing arts or dentistry; persons licensed to practice optom-  
23 etry; persons engaged in postgraduate training programs approved by the  
24 state board of healing arts; licensed psychologists; licensed masters level  
25 psychologists; licensed clinical psychotherapists; licensed professional or  
26 practical nurses examining, attending or treating a child under the age of  
27 18; teachers, school administrators or other employees of a school which  
28 the child is attending; chief administrative officers of medical care facil-  
29 ities; licensed marriage and family therapists; licensed clinical marriage  
30 and family therapists; licensed professional counselors; licensed clinical  
31 professional counselors; registered alcohol and drug abuse counselors;  
32 persons licensed by the secretary of health and environment to provide  
33 child care services or the employees of persons so licensed at the place  
34 where the child care services are being provided to the child; licensed  
35 social workers; *a duly ordained minister of religion and a regular minister*  
36 *of religion as defined in K.S.A. 60-429, and amendments thereto, and any*  
37 *custodian of records for such minister pursuant to subsection (h) of this*  
38 *section*; firefighters; emergency medical services personnel; mediators ap-  
39 pointed under K.S.A. 23-602 and amendments thereto; juvenile intake  
40 and assessment workers and law enforcement officers. The report may  
41 be made orally and shall be followed by a written report if requested.  
42 When the suspicion is the result of medical examination or treatment of  
43 a child by a member of the staff of a medical care facility or similar

1 institution, that staff member shall immediately notify the superinten-  
2 dent, manager or other person in charge of the institution who shall make  
3 a written report forthwith. Every written report shall contain, if known,  
4 the names and addresses of the child and the child's parents or other  
5 persons responsible for the child's care, the child's age, the nature and  
6 extent of the child's injury (including any evidence of previous injuries)  
7 and any other information that the maker of the report believes might be  
8 helpful in establishing the cause of the injuries and the identity of the  
9 persons responsible for the injuries.

10 (b) Any other person who has reason to suspect that a child has been  
11 injured as a result of physical, mental or emotional abuse or neglect or  
12 sexual abuse may report the matter as provided in subsection (c) or (e).

13 (c) Except as provided by subsection (e), reports made pursuant to  
14 this section shall be made to the state department of social and rehabil-  
15 itation services. When the department is not open for business, the re-  
16 ports shall be made to the appropriate law enforcement agency. On the  
17 next day that the state department of social and rehabilitation services is  
18 open for business, the law enforcement agency shall report to the de-  
19 partment any report received and any investigation initiated pursuant to  
20 subsection (a) of K.S.A. 38-1524 and amendments thereto. The reports  
21 may be made orally or, on request of the department, in writing.

22 (d) Any person who is required by this section to report an injury to  
23 a child and who knows of the death of a child shall notify immediately  
24 the coroner as provided by K.S.A. 22a-242, and amendments thereto.

25 (e) Reports of child abuse or neglect occurring in an institution op-  
26 erated by the secretary of social and rehabilitation services or the com-  
27 missioner of juvenile justice shall be made to the attorney general. All  
28 other reports of child abuse or neglect by persons employed by or of  
29 children of persons employed by the state department of social and re-  
30 habilitation services or the juvenile justice authority shall be made to the  
31 appropriate law enforcement agency.

32 (f) Willful and knowing failure to make a report required by this sec-  
33 tion is a class B misdemeanor.

34 (g) Preventing or interfering with, with the intent to prevent, the  
35 making of a report required by this section is a class B misdemeanor.

36 (h) ~~(1) A~~ **duly ordained minister of religion as defined in paragraphs**  
37 ~~(1) and (2) of subsection (a) of K.S.A. 60-429, and amendments thereto,~~  
38 ~~and any custodian of records for such minister~~ **and a regular minister**  
39 **of religion who obtains knowledge of or has reason to suspect that a**  
40 **child has been subjected to physical, mental, or emotional abuse or neglect**  
41 **or sexual abuse and such knowledge or suspicion arises in the performance**  
42 **of such person's professional capacity other than during a penitential**  
43 **communication as defined in K.S.A. 60-429, and amendments thereto, or**

1 *when acting in some other capacity within the scope of such person's*  
2 *employment that would otherwise make such minister or custodian a man-*  
3 *dated reporter, such minister or custodian shall report such physical,*  
4 *mental or emotional abuse or neglect or sexual abuse promptly as provided*  
5 *in subsections (c) or (e).*

6 ~~(2) This subsection shall apply even if the victim of the known or~~  
7 ~~suspected physical, mental or emotional or neglect or sexual abuse has~~  
8 ~~reached the age of majority by the time the required report is made.~~

9 ~~(3) The local law enforcement agency shall have jurisdiction to inves-~~  
10 ~~tigate any report of known or suspected physical, mental or emotional~~  
11 ~~abuse or neglect or sexual abuse made pursuant to this subsection if the~~  
12 ~~report is made after the victim has reached the age of majority.~~

13 Sec. 2. K.S.A. 2003 Supp. 39-1402 is hereby amended to read as  
14 follows: 39-1402. (a) Any person who is licensed to practice any branch  
15 of the healing arts, a licensed psychologist, a licensed master level psy-  
16 chologist, a licensed clinical psychotherapist, a chief administrative officer  
17 of a medical care facility, an adult care home administrator or operator,  
18 a licensed social worker, a licensed professional nurse, a licensed practical  
19 nurse, a licensed marriage and family therapist, a licensed clinical mar-  
20 riage and family therapist, licensed professional counselor, licensed clin-  
21 ical professional counselor, registered alcohol and drug abuse counselor,  
22 a teacher, a bank trust officer and any other officers of financial institu-  
23 tions, a legal representative, *a duly ordained minister of religion and a*  
24 *regular minister of religion as defined in K.S.A. 60-429, and amendments*  
25 *thereto, and any custodian of records for such minister pursuant to sub-*  
26 *section (f) of this section* or a governmental assistance provider who has  
27 reasonable cause to believe that a resident is being or has been abused,  
28 neglected or exploited, or is in a condition which is the result of such  
29 abuse, neglect or exploitation or is in need of protective services, shall  
30 report immediately such information or cause a report of such informa-  
31 tion to be made in any reasonable manner to the department on aging  
32 with respect to residents defined under subsection (a)(1) of K.S.A. 39-  
33 1401 and amendments thereto, to the department of health and environ-  
34 ment with respect to residents defined under subsection (a)(2) of K.S.A.  
35 39-1401, and amendments thereto, and to the department of social and  
36 rehabilitation services and appropriate law enforcement agencies with  
37 respect to all other residents. Reports made to one department which are  
38 required by this subsection to be made to the other department shall be  
39 referred by the department to which the report is made to the appropriate  
40 department for that report, and any such report shall constitute compli-  
41 ance with this subsection. Reports shall be made during the normal work-  
42 ing week days and hours of operation of such departments. Reports shall  
43 be made to law enforcement agencies during the time the departments

1 are not open for business. Law enforcement agencies shall submit the  
2 report and appropriate information to the appropriate department on the  
3 first working day that such department is open for business. A report  
4 made pursuant to K.S.A. 65-4923 or 65-4924 and amendments thereto  
5 shall be deemed a report under this section.

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

13 (c) Any other person, not listed in subsection (a), having reasonable  
14 cause to suspect or believe that a resident is being or has been abused,  
15 neglected or exploited, or is in a condition which is the result of such  
16 abuse, neglect or exploitation or is in need of protective services may  
17 report such information to the department on aging with respect to res-  
18 idents defined under subsection (a)(1) of K.S.A. 39-1401 and amend-  
19 ments thereto, to the department of health and environment with respect  
20 to residents defined under subsection (a)(2) of K.S.A. 39-1401, and  
21 amendments thereto, and to the department of social and rehabilitation  
22 services with respect to all other residents. Reports made to one depart-  
23 ment which are to be made to the other department under this section  
24 shall be referred by the department to which the report is made to the  
25 appropriate department for that report.

26 (d) Notice of the requirements of this act and the department to  
27 which a report is to be made under this act shall be posted in a conspic-  
28 uous public place in every adult care home and medical care facility in  
29 this state.

30 (e) Any person required to report information or cause a report of  
31 information to be made under subsection (a) who knowingly fails to make  
32 such report or cause such report to be made shall be guilty of a class B  
33 misdemeanor.

34 (f) **A duly ordained minister of religion** ~~as defined in paragraphs (1)~~  
35 ~~and (2) of subsection (a) of K.S.A. 60-429, and amendments thereto, and~~  
36 ~~any custodian of records for such minister~~ **and a regular minister of**  
37 **religion** *who has reasonable cause to believe that a resident is being or*  
38 *has been abused, neglected or exploited, or is in need of protective services*  
39 *and such belief arises in the performance of such minister's professional*  
40 *capacity other than during a penitential communication as defined in*  
41 *K.S.A. 60-429, and amendments thereto, or when acting in some other*  
42 *capacity within the scope of such minister's or custodian's employment*  
43 *that would otherwise make such minister or custodian a mandated re-*

1 ~~porter, such minister or custodian~~ shall report such belief of abuse, neglect  
2 or exploitation or need of protection services as provided in subsection  
3 (a).

4 Sec. 3. K.S.A. 2003 Supp. 39-1431 is hereby amended to read as  
5 follows: 39-1431. (a) Any person who is licensed to practice any branch  
6 of the healing arts, a licensed psychologist, a licensed master level psy-  
7 chologist, a licensed clinical psychotherapist, the chief administrative of-  
8 ficer of a medical care facility, a teacher, a licensed social worker, a li-  
9 censed professional nurse, a licensed practical nurse, a licensed dentist,  
10 a licensed marriage and family therapist, a licensed clinical marriage and  
11 family therapist, licensed professional counselor, licensed clinical profes-  
12 sional counselor, registered alcohol and drug abuse counselor, a law en-  
13 forcement officer, a case manager, a rehabilitation counselor, a bank trust  
14 officer or any other officers of financial institutions, a legal representative,  
15 a governmental assistance provider, *a duly ordained minister of religion*  
16 *and a regular minister of religion as defined in K.S.A. 60-429, and amend-*  
17 *ments thereto, and any custodian of records for such minister pursuant*  
18 *to subsection (g) of this section,* an owner or operator of a residential care  
19 facility, an independent living counselor and the chief administrative of-  
20 ficer of a licensed home health agency, the chief administrative officer of  
21 an adult family home and the chief administrative officer of a provider of  
22 community services and affiliates thereof operated or funded by the de-  
23 partment of social and rehabilitation services or licensed under K.S.A. 75-  
24 3307b and amendments thereto who has reasonable cause to believe that  
25 an adult is being or has been abused, neglected or exploited or is in need  
26 of protective services shall report, immediately from receipt of the infor-  
27 mation, such information or cause a report of such information to be made  
28 in any reasonable manner. An employee of a domestic violence center  
29 shall not be required to report information or cause a report of infor-  
30 mation to be made under this subsection. Other state agencies receiving  
31 reports that are to be referred to the department of social and rehabili-  
32 tation services and the appropriate law enforcement agency, shall submit  
33 the report to the department and agency within six hours, during normal  
34 work days, of receiving the information. Reports shall be made to the  
35 department of social and rehabilitation services during the normal work-  
36 ing week days and hours of operation. Reports shall be made to law en-  
37 forcement agencies during the time social and rehabilitation services are  
38 not in operation. Law enforcement shall submit the report and appro-  
39 priate information to the department of social and rehabilitation services  
40 on the first working day that social and rehabilitation services is in op-  
41 eration after receipt of such information.

42 (b) The report made pursuant to subsection (a) shall contain the  
43 name and address of the person making the report and of the caretaker

1 caring for the involved adult, the name and address of the involved adult,  
2 information regarding the nature and extent of the abuse, neglect or ex-  
3 ploitation, the name of the next of kin of the involved adult, if known,  
4 and any other information which the person making the report believes  
5 might be helpful in the investigation of the case and the protection of the  
6 involved adult.

7 (c) Any other person, not listed in subsection (a), having reasonable  
8 cause to suspect or believe that an adult is being or has been abused,  
9 neglected or exploited or is in need of protective services may report such  
10 information to the department of social and rehabilitation services. Re-  
11 ports shall be made to law enforcement agencies during the time social  
12 and rehabilitation services are not in operation.

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

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

20 (f) Notice of the requirements of this act and the department to  
21 which a report is to be made under this act shall be posted in a conspic-  
22 uous public place in every adult family home as defined in K.S.A. 39-  
23 1501 and amendments thereto and every provider of community services  
24 and affiliates thereof operated or funded by the department of social and  
25 rehabilitation services or other facility licensed under K.S.A. 75-3307b  
26 and amendments thereto, and other institutions included in subsection  
27 (a).

28 (g) **A duly ordained minister of religion** ~~as defined in paragraphs~~  
29 ~~(1) and (2) of subsection (a) of K.S.A. 60-429, and amendments thereto,~~  
30 ~~and any custodian of records for such minister~~ **and a regular minister**  
31 **of religion** *who has reasonable cause to believe an adult is being abused,*  
32 *neglected or exploited or in need of protective services and such belief*  
33 *arises in the performance of such minister's professional capacity other*  
34 *than during a penitential communication as defined in K.S.A. 60-429, and*  
35 *amendments thereto, or when acting in some other capacity within the*  
36 *scope of such minister's or custodian's employment that would otherwise*  
37 *make such minister or custodian a mandated reporter, such minister or*  
38 *custodian shall report such belief of abuse, neglect or exploitation or need*  
39 *of protective services as provided in subsection (a).*

40 Sec. 4. K.S.A. 2003 Supp. 38-1522, 39-1402 and 39-1431 are hereby  
41 repealed.

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