

As Amended by House Committee

Session of 2004

HOUSE BILL No. 2581

By Committee on Financial Institutions

1-23

10 AN ACT relating to the reporting of abuse of certain adults; amending  
11 K.S.A. 2003 Supp. ~~39-1430~~, 39-1432, ~~39-1433~~ and 39-1436 and re-  
12 pealing the existing sections.

13  
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. ~~K.S.A. 2003 Supp. 39-1430 is hereby amended to read as~~  
16 ~~follows: 39-1430. As used in this act:~~

17 ~~—(a) “Adult” means an individual 18 years of age or older alleged to~~  
18 ~~be unable to protect their own interest and who is harmed or threatened~~  
19 ~~with harm, whether financial, mental or physical in nature, through action~~  
20 ~~or inaction by either another individual or through their own action or~~  
21 ~~inaction when (1) such person is residing in such person’s own home, the~~  
22 ~~home of a family member or the home of a friend, (2) such person resides~~  
23 ~~in an adult family home as defined in K.S.A. 39-1501 and amendments~~  
24 ~~thereto, or (3) such person is receiving services through a provider of~~  
25 ~~community services and affiliates thereof operated or funded by the de-~~  
26 ~~partment of social and rehabilitation services or the department on aging~~  
27 ~~or a residential facility licensed pursuant to K.S.A. 75-3307b and amend-~~  
28 ~~ments thereto. Such term shall not include persons to whom K.S.A. 39-~~  
29 ~~1401 *et seq.* and amendments thereto apply.~~

30 ~~—(b) “Abuse” means any act or failure to act performed intentionally~~  
31 ~~or recklessly that causes or is likely to cause harm to an adult, including:~~

32 ~~—(1) Infliction of physical or mental injury;~~

33 ~~—(2) any sexual act with an adult when the adult does not consent or~~  
34 ~~when the other person knows or should know that the adult is incapable of~~  
35 ~~resisting or declining consent to the sexual act due to mental deficiency~~  
36 ~~or disease or due to fear of retribution or hardship;~~

37 ~~—(3) unreasonable use of a physical restraint, isolation or medication~~  
38 ~~that harms or is likely to harm an adult;~~

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

43 ~~—(5) a threat or menacing conduct directed toward an adult that results~~

- 1 or might reasonably be expected to result in fear or emotional or mental  
2 distress to an adult;
- 3 —(6) fiduciary abuse, or
- 4 —(7) omission or deprivation by a caretaker or another person of goods  
5 or services which are necessary to avoid physical or mental harm or illness.
- 6 —(c) “Neglect” means the failure or omission by one’s self, caretaker  
7 or another person with a duty to supply or provide goods or services which  
8 are reasonably necessary to ensure safety and well-being and to avoid  
9 physical or mental harm or illness.
- 10 —(d) “Exploitation” means misappropriation of an adult’s property or  
11 intentionally taking unfair advantage of an adult’s physical or financial  
12 resources for another individual’s personal or financial advantage by the  
13 use of undue influence, coercion, harassment, duress, deception, false  
14 representation or false pretense by a caretaker or another person.
- 15 —(e) “Fiduciary abuse” means a situation in which any person who is  
16 the caretaker of, or who stands in a position of trust to, an adult, takes,  
17 secretes, or appropriates their money or property, to any use or purpose  
18 not in the due and lawful execution of such person’s trust or benefit.
- 19 —(f) “In need of protective services” means that an adult is unable to  
20 provide for or obtain services which are necessary to maintain physical or  
21 mental health or both.
- 22 —(g) “Services which are necessary to maintain physical or mental  
23 health or both” include, but are not limited to, the provision of medical  
24 care for physical and mental health needs, the relocation of an adult to a  
25 facility or institution able to offer such care, assistance in personal hy-  
26 giene, food, clothing, adequately heated and ventilated shelter, protection  
27 from health and safety hazards, protection from maltreatment the result  
28 of which includes, but is not limited to, malnutrition, deprivation of ne-  
29 cessities or physical punishment and transportation necessary to secure  
30 any of the above stated needs, except that this term shall not include  
31 taking such person into custody without consent except as provided in  
32 this act.
- 33 —(h) “Protective services” means services provided by the state or  
34 other governmental agency or by private organizations or individuals  
35 which are necessary to prevent abuse, neglect or exploitation. Such pro-  
36 tective services shall include, but shall not be limited to, evaluation of the  
37 need for services, assistance in obtaining appropriate social services, and  
38 assistance in securing medical and legal services.
- 39 —(i) “Caretaker” means a person who has assumed the responsibility,  
40 whether legally or not, for an adult’s care or financial management or  
41 both.
- 42 —(j) “Secretary” means the secretary of social and rehabilitation  
43 services.

1 —(k) “Report” means a description or accounting of an incident or in-  
2 cidents of abuse, neglect or exploitation under this act and for the pur-  
3 poses of this act shall not include any written assessment or findings.

4 —(l) “Law enforcement” means the public office which is vested by law  
5 with the duty to maintain public order, make arrests for crimes, investi-  
6 gate criminal acts and file criminal charges, whether that duty extends to  
7 all crimes or is limited to specific crimes.

8 —(m) “Involved adult” means the adult who is the subject of a report  
9 of abuse, neglect or exploitation under this act.

10 —(n) “Legal representative,” “financial institution” and “governmental  
11 assistance provider” shall have the meanings ascribed thereto in K.S.A.  
12 39-1401, and amendments thereto.

13 —(o) “Account” means a deposit account that is held by an adult cov-  
14 ered by this act, and includes time, demand, savings and negotiable order  
15 of withdrawal accounts.

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

21 Sec. ~~2~~ **1**. K.S.A. 2003 Supp. 39-1432 is hereby amended to read as  
22 follows: 39-1432. (a) Anyone participating in the making of any report  
23 pursuant to this act, or in any follow-up activity to the report, including  
24 providing records upon request of the department of social and rehabil-  
25 itation services, or investigation of such report or who testifies in any  
26 administrative or judicial proceeding arising from such report shall not  
27 be subject to any civil liability on account of such report, investigation or  
28 testimony, unless such person acted in bad faith or with malicious  
29 purpose.

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

37 Sec. ~~3~~ K.S.A. 2003 Supp. 39-1433 is hereby amended to read as  
38 follows: 39-1433. (a) The department of social and rehabilitation services  
39 upon receiving a report that an adult is being, or has been abused, ne-  
40 glected, or exploited or is in need of protective services, shall:

41 —(1) When a criminal act has occurred or has appeared to have oc-  
42 curred, immediately notify, in writing, the appropriate law enforcement  
43 agency;

- 1 —(2)— make a personal visit with the involved adult.
- 2 —(A)— Within 24 hours when the information from the reporter indi-  
3 cates imminent danger to the health or welfare of the involved adult;
- 4 —(B)— within three working days for all reports of suspected abuse, when  
5 the information from the reporter indicates no imminent danger;
- 6 —(C)— within five working days for all reports of neglect or exploitation  
7 when the information from the reporter indicates no imminent danger.
- 8 —(3)— Complete, within 30 working days of receiving a report, a thor-  
9 ough investigation and evaluation to determine the situation relative to  
10 the condition of the involved adult and what action and services, if any,  
11 are required. The evaluation shall include, but not be limited to, consul-  
12 tation with those individuals having knowledge of the facts of the partic-  
13 ular case. If the alleged perpetrator is licensed, registered or otherwise  
14 regulated by a state agency, such state agency also shall be notified upon  
15 completion of the investigation or sooner if such notification does not  
16 compromise the investigation.
- 17 —(4)— Prepare, upon completion of the investigation of each case, a writ-  
18 ten assessment which shall include an analysis of whether there is or has  
19 been abuse, neglect or exploitation, recommended action, a determina-  
20 tion of whether protective services are needed, and any follow-up.
- 21 —(5)— *With regard to a report that indicates that an adult is the victim*  
22 *of fiduciary abuse or exploitation, the department of social and rehabili-*  
23 *tation services may place a hold on any account of the adult for a period*  
24 *of 10 days by giving written notice of the hold to the bank, savings and*  
25 *loan association, credit union or other financial institution in which the*  
26 *account is located.*
- 27 —(b)— The secretary of social and rehabilitation services shall forward  
28 any finding of abuse, neglect or exploitation alleged to have been com-  
29 mitted by a provider of services licensed, registered or otherwise author-  
30 ized to provide services in this state to the appropriate state authority  
31 which regulates such provider. The appropriate state regulatory authority  
32 may consider the finding in any disciplinary action taken with respect to  
33 the provider of services under the jurisdiction of such authority.
- 34 —(c)— The department of social and rehabilitation services shall inform  
35 the complainant, upon request of the complainant, that an investigation  
36 has been made and if the allegations of abuse, neglect or exploitation have  
37 been substantiated, that corrective measures will be taken, upon comple-  
38 tion of the investigation or sooner, if such measures do not jeopardize  
39 the investigation.
- 40 —(d)— The department of social and rehabilitation services may inform  
41 the chief administrative officer of community facilities licensed pursuant  
42 to K.S.A. 75-3307b and amendments thereto of confirmed findings of  
43 resident abuse, neglect or exploitation.

1     Sec. ~~4~~ **2**. K.S.A. 2003 Supp. 39-1436 is hereby amended to read as  
2 follows: 39-1436. (a) ~~After receiving a written request for information and~~  
3 ~~a written notice that an investigation is being conducted by the depart-~~  
4 ~~ment of social and rehabilitation services, As provided in this section,~~  
5 any person or agency which maintains records relating to the involved  
6 adult which are relevant to any investigation conducted by the department  
7 of social and rehabilitation services or a law enforcement agency under  
8 this act shall provide, ~~upon the written consent of sending written notice~~  
9 ~~to the involved adult or the involved adult's guardian,~~ the department of  
10 social and rehabilitation services or a law enforcement agency with the  
11 necessary records to assist in investigations. **In order to provide such**  
12 **records, the person or agency maintaining the records shall re-**  
13 **ceive from the department of social and rehabilitation services:**  
14     **(1) A written request for information;**  
15     **(2) a written notice that an investigation is being conducted by**  
16 **the department; and**  
17     **(3) certification or confirmation that the department has sent**  
18 **written notice to the involved adult or the involved adult's guard-**  
19 **ian.** Any such information shall be subject to the confidentiality require-  
20 ments of K.S.A. 39-1434 and amendments thereto.  
21     (b) The department of social and rehabilitation services or a law en-  
22 forcement agency shall have access to all relevant records in accordance  
23 with the provisions of subsection (a).  
24     Sec. ~~5~~ **3**. K.S.A. 2003 Supp. ~~39-1430, 39-1432, 39-1433~~ and 39-1436  
25 are hereby repealed.  
26     Sec. ~~6~~ **4**. This act shall take effect and be in force from and after its  
27 publication in the statute book.