

HOUSE BILL No. 2314

By Committee on Judiciary

2-6

9 AN ACT concerning children and minors; establishing the protective
10 parent reform act; amending K.S.A. 2008 Supp. 38-2226 and 38-2230
11 and repealing the existing sections.
12

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

14 New Section 1. (a) This section shall be known and may be cited as
15 the protective parent reform act.

16 (b) In any proceeding under article 22 of chapter 38 of the Kansas
17 Statutes Annotated and article 16 of chapter 60 of the Kansas Statutes
18 Annotated, and amendments thereto, involving child custody and visita-
19 tion and child in need of care proceedings:

20 (1) If a parent makes a good faith allegation, based on a reasonable
21 belief supported by facts, that the parent's child is a victim of physical,
22 mental or emotional abuse or neglect or sexual abuse perpetrated or al-
23 lowed by the other parent and if the parent making the allegation acts
24 lawfully and in good faith in accordance with such belief to protect the
25 child or seek treatment for the child, the parent making the allegation
26 shall not be deprived of custody, visitation or contact with the child based
27 solely on the belief or reasonable actions taken in accordance with such
28 belief.

29 (2) If an allegation that a child is a victim of physical, mental or emo-
30 tional abuse or neglect or sexual abuse perpetrated or allowed by a parent
31 is supported by a preponderance of evidence, the court shall consider
32 such evidence in determining custody and visitation that is in the best
33 interests of the child and shall not award custody of the child to the parent
34 who presents a substantial risk of harm to the child.

35 (3) No ex parte communications shall be made between the court
36 and any guardian ad litem for the child, attorney for the child or other
37 professional participating in the proceeding.

38 (4) Notwithstanding the provisions of K.S.A. 2008 Supp. 38-2205, and
39 amendments thereto, the role of any guardian ad litem or attorney for
40 the child shall be limited to advocating for the desires of the child and
41 participating in the proceeding by presenting evidence and argument in
42 the same manner as an attorney for the parent. The guardian ad litem or
43 attorney for the child shall not substitute the guardian ad litem or attor-

1 ney's personal opinion and judgment for the desires of the child or offer
2 evidence which would be excluded if offered by any other party. In no
3 case shall the guardian ad litem or attorney for the child be deemed a
4 quasi-judicial officer or be granted any fact-finding role. Nothing in this
5 paragraph shall be construed to require the appointment of a guardian
6 ad litem or attorney for the child in a proceeding involving child custody
7 and visitation.

8 (5) The parents of the child shall be provided full and timely access
9 to all custody and mental health evaluations and reports that are to be
10 considered in the proceeding, including all underlying data for such eval-
11 uations and reports. Prior to trial, the parents shall be afforded the op-
12 portunity to perform a deposition of each mental health professional who
13 will testify in the proceeding.

14 (6) No expert opinion or evidence attempting to discredit a parent's
15 motivation for alleging that the parent's child is a victim of physical, men-
16 tal or emotional abuse or neglect or sexual abuse perpetrated or allowed
17 by the other parent or attempting to discredit a report of the child of
18 such abuse or neglect shall be admissible, unless the expert opinion or
19 evidence is based on concepts and theories generally accepted by the
20 scientific community and supported by credible and admissible evidence
21 of facts which can be established independent of such expert opinion or
22 evidence.

23 (7) A parent shall not be deprived of custody, visitation or contact
24 with the parent's child based on the opinion of a mental health profes-
25 sional that the parent is at risk of unlawfully fleeing with the child, unless
26 credible and admissible evidence independent of the mental health pro-
27 fessional's opinion establishes that the parent's plan or intent is to flee.

28 (8) No court-sponsored conciliation, mediation, intake screening or
29 parent education program shall make any recommendation or report to
30 the court regarding custody, visitation or contact with the child unless all
31 parties agree to the making of such recommendations or report. Each
32 parent of the child shall have the right to contest such recommendation
33 or report.

34 (9) Whenever physical, mental or emotional abuse or neglect or sex-
35 ual abuse is an issue in the proceeding, no mental health professional who
36 lacks specialized training and experience in the type of such abuse or
37 neglect that is relevant to the specific allegations made shall be appointed
38 by the court to conduct any evaluation in the proceeding.

39 (10) Admissible evidence of physical, mental or emotional abuse or
40 neglect or sexual abuse shall be considered by the court.

41 (11) No protection from abuse order issued pursuant to article 31 of
42 chapter 60 of the Kansas Statutes Annotated, and amendments thereto,
43 shall be violated by the award of custody, visitation or contact with the

1 child to a parent who is the perpetrator of family violence.

2 New Sec. 2. (a) In any proceeding under article 22 of chapter 38 of
3 the Kansas Statutes Annotated, and amendments thereto, a child shall
4 not be subjected to more than one interview concerning the alleged phys-
5 ical, mental or emotional abuse or neglect or sexual abuse of the child,
6 except when new information is obtained that requires further informa-
7 tion from the child. The child shall not be videotaped more than once
8 unless the interviewer or investigating agency determines that one or
9 more additional interviews are necessary to complete the investigation. If
10 additional interviews are necessary, the additional interviews shall be con-
11 ducted, to the extent possible, by the same interviewer who conducted
12 the initial interview of the child.

13 (b) A recorded interview of a child shall be preserved in the manner
14 and for a period provided for maintaining evidence. A recorded interview
15 of a child is subject to disclosure under the applicable court rules for
16 discovery in a civil or criminal case.

17 (c) When conducting an investigation, the department of social and
18 rehabilitation services and law enforcement agency shall videotape the
19 interview with a clock on the wall behind the child to ensure the accuracy
20 of the time. Each recording shall include the full names of each individual
21 involved in the interview, as well as the date and time of the interview.

22 Sec. 3. K.S.A. 2008 Supp. 38-2226 is hereby amended to read as
23 follows: 38-2226. (a) *Investigation for child abuse or neglect.* The secre-
24 tary and law enforcement officers shall have the duty to receive and in-
25 vestigate reports of child abuse or neglect for the purpose of determining
26 whether the report is valid and whether action is required to protect a
27 child. Any person or agency which maintains records relating to the in-
28 volved child which are relevant to any investigation conducted by the
29 secretary or law enforcement agency under this code shall provide the
30 secretary or law enforcement agency with the necessary records to assist
31 in investigations. In order to provide such records, the person or agency
32 maintaining the records shall receive from the secretary or law enforce-
33 ment: (1) A written request for information; and (2) a written notice that
34 the investigation is being conducted by the secretary or law enforcement.
35 If the secretary and such officers determine that no action is necessary
36 to protect the child but that a criminal prosecution should be considered,
37 such law enforcement officers shall make a report of the case to the
38 appropriate law enforcement agency.

39 (b) *Joint investigations.* When a report of child abuse or neglect in-
40 dicates: (1) That there is serious physical harm to, serious deterioration
41 of or sexual abuse of the child; and (2) that action may be required to
42 protect the child, the investigation shall be conducted as a joint effort
43 between the secretary and the appropriate law enforcement agency or

1 agencies, with a free exchange of information between them pursuant to
2 K.S.A. 2008 Supp. 38-2210, and amendments thereto. If a statement of
3 a suspect is obtained by either agency, a copy of the statement shall be
4 provided to the other.

5 (c) *Investigation of certain cases.* Suspected child abuse or neglect
6 which occurs in an institution operated by the secretary shall be investi-
7 gated by the attorney general. Any other suspected child abuse or neglect
8 by persons employed by the department of social and rehabilitation serv-
9 ices shall be investigated by the appropriate law enforcement agency.

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

14 (e) *Investigations concerning certain facilities.* Any investigation in-
15 volving a facility subject to licensing or regulation by the secretary of
16 health and environment shall be promptly reported to the state secretary
17 of health and environment.

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

22 (g) *Cooperation between school personnel and investigative agencies.*

23 (1) Educational institutions, the secretary and law enforcement agencies
24 shall cooperate with each other in the investigation of reports of suspected
25 child abuse or neglect. The secretary and law enforcement agencies shall
26 have access to a child in a setting designated by school personnel on the
27 premises of an educational institution. Attendance at an interview con-
28 ducted on such premises shall be at the discretion of the agency con-
29 ducting the interview, giving consideration to the best interests of the
30 child. To the extent that safety and practical considerations allow, law
31 enforcement officers on such premises for the purpose of investigating a
32 report of suspected child abuse or neglect shall not be in uniform.

33 (2) The secretary or a law enforcement officer may request the pres-
34 ence of school personnel during an interview if the secretary or officer
35 determines that the presence of such person might provide comfort to
36 the child or facilitate the investigation.

37 (h) *An investigation by the department of alleged physical, mental or*
38 *emotional abuse or neglect or sexual abuse reported under this code shall*
39 *be conducted by a person trained to conduct such a child abuse and*
40 *neglect investigation. An interview of a child conducted as a result of a*
41 *report of such abuse or neglect as required under subsection (b) of K.S.A.*
42 *2008 Supp. 38-2230, and amendments thereto, shall be videotaped:*

43 (1) *By a person trained and competent to conduct the interview; and*

1 (2) *if available, at a child advocacy center as described in K.S.A. 2008*
2 *Supp. 38-2227, and amendments thereto.*

3 Sec. 4. K.S.A. 2008 Supp. 38-2230 is hereby amended to read as
4 follows: 38-2230. (a) Whenever any person furnishes information to the
5 secretary that a child appears to be a child in need of care, the department
6 shall make a preliminary inquiry to determine whether the interests of
7 the child require further action be taken. Whenever practicable, the in-
8 quiry shall include a preliminary investigation of the circumstances which
9 were the subject of the information, including the home and environ-
10 mental situation and the previous history of the child. If reasonable
11 grounds to believe abuse or neglect exist, immediate steps shall be taken
12 to protect the health and welfare of the abused or neglected child as well
13 as that of any other child under the same care who may be harmed by
14 abuse or neglect. After the inquiry, if the secretary determines it is not
15 otherwise possible to provide those services necessary to protect the in-
16 terests of the child, the secretary shall recommend to the county or dis-
17 trict attorney that a petition be filed.

18 (b) *In investigations of alleged physical, mental or emotional abuse*
19 *or neglect or sexual abuse reports under article 22 of chapter 38 of the*
20 *Kansas Statutes Annotated and articles 35 and 36 of Chapter 21 of the*
21 *Kansas Statutes Annotated, and amendments thereto, the secretary shall*
22 *make necessary inquiries about the criminal records of the parents or of*
23 *the alleged abusive or neglectful person, including, but not limited to,*
24 *inquiries about the existence of a criminal history record and past reports*
25 *of the alleged or neglectful person who is being investigated for the of-*
26 *fenses involving a child under article 22 of chapter 38 of the Kansas Stat-*
27 *utes Annotated and articles 35 and 36 of chapter 21 of the Kansas Statutes*
28 *Annotated, and amendments thereto.*

29 Sec. 5. K.S.A. 2008 Supp. 38-2226 and 38-2230 are hereby repealed.

30 Sec. 6. This act shall take effect and be in force from and after its
31 publication in the statute book.