

SENATE BILL No. 408

By Committee on Corrections and Juvenile Justice

2-4

1 AN ACT concerning abuse, neglect and exploitation of persons; relating to
2 reporting and investigation; duties and powers of attorney general, law
3 enforcement and department of corrections; amending K.S.A. 2015
4 Supp. 38-2223, 38-2226 and 75-723 and repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2015 Supp. 38-2223 is hereby amended to read as
8 follows: 38-2223. (a) *Persons making reports.* (1) When any of the
9 following persons has reason to suspect that a child has been harmed as a
10 result of physical, mental or emotional abuse or neglect or sexual abuse,
11 the person shall report the matter promptly as provided in subsections (b)
12 and (c);

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

18 (B) the following persons licensed by the state to provide mental
19 health services: Licensed psychologists, licensed masters level
20 psychologists, licensed clinical psychotherapists, licensed social workers,
21 licensed marriage and family therapists, licensed clinical marriage and
22 family therapists, licensed professional counselors, licensed clinical
23 professional counselors and registered alcohol and drug abuse counselors;

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

29 (D) firefighters, emergency medical services personnel, law
30 enforcement officers, juvenile intake and assessment workers, court
31 services officers, community corrections officers, case managers appointed
32 under K.S.A. 2015 Supp. 23-3508, and amendments thereto, and mediators
33 appointed under K.S.A. 2015 Supp. 23-3502, and amendments thereto;
34 and

35 (E) any person employed by or who works as a volunteer for any
36 organization, whether for profit or not-for-profit, that provides social

1 services to pregnant teenagers, including, but not limited to, counseling,
2 adoption services and pregnancy education and maintenance.

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

6 (b) *Form of report.* (1) The report may be made orally and shall be
7 followed by a written report if requested. Every report shall contain, if
8 known: The names and addresses of the child and the child's parents or
9 other persons responsible for the child's care; the location of the child if
10 not at the child's residence; the child's gender, race and age; the reasons
11 why the reporter suspects the child may be a child in need of care; if abuse
12 or neglect or sexual abuse is suspected, the nature and extent of the harm
13 to the child, including any evidence of previous harm; and any other
14 information that the reporter believes might be helpful in establishing the
15 cause of the harm and the identity of the persons responsible for the harm.

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

20 (c) *To whom made.* Reports made pursuant to this section shall be
21 made to the secretary, except as follows:

22 (1) When the Kansas department for children and families is not open
23 for business, reports shall be made to the appropriate law enforcement
24 agency. On the next day that the department is open for business, the law
25 enforcement agency shall report to the department any report received and
26 any investigation initiated pursuant to K.S.A. 2015 Supp. 38-2226, and
27 amendments thereto. The reports may be made orally or, on request of the
28 secretary, in writing.

29 (2) *Reports of child abuse or neglect occurring in an institution*
30 *operated by the Kansas department of corrections shall be made to the*
31 *secretary of corrections.* Reports of child abuse or neglect occurring in a
32 institution operated by the Kansas department for aging and disability
33 services or ~~the commissioner of juvenile justice~~ *the Kansas department for*
34 *children and families* shall be made to the ~~attorney general~~ *appropriate*
35 *law enforcement agency.* All other reports of child abuse or neglect by
36 persons employed by ~~or of children of persons employed by~~ the Kansas
37 department for aging and disability services ~~and or~~ the Kansas department
38 for children and families, *or of children of persons employed by either*
39 *department,* shall be made to the appropriate law enforcement agency.

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

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

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

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

9 (f) *Immunity from liability.* Anyone who, without malice, participates
10 in the making of a report to the secretary or a law enforcement agency
11 relating to a suspicion a child may be a child in need of care or who
12 participates in any activity or investigation relating to the report or who
13 participates in any judicial proceeding resulting from the report shall have
14 immunity from any civil liability that might otherwise be incurred or
15 imposed.

16 Sec. 2. K.S.A. 2015 Supp. 38-2226 is hereby amended to read as
17 follows: 38-2226. (a) *Investigation for child abuse or neglect.* The
18 secretary and law enforcement officers shall have the duty to receive and
19 investigate reports of child abuse or neglect for the purpose of determining
20 whether the report is valid and whether action is required to protect a
21 child. Any person or agency which maintains records relating to the
22 involved child which are relevant to any investigation conducted by the
23 secretary or law enforcement agency under this code shall provide the
24 secretary or law enforcement agency with the necessary records to assist in
25 investigations. In order to provide such records, the person or agency
26 maintaining the records shall receive from the secretary or law
27 enforcement: (1) A written request for information; and (2) a written notice
28 that the investigation is being conducted by the secretary or law
29 enforcement. If the secretary and such officers determine that no action is
30 necessary to protect the child but that a criminal prosecution should be
31 considered, such law enforcement officers shall make a report of the case
32 to the appropriate law enforcement agency.

33 (b) *Joint investigations.* When a report of child abuse or neglect
34 indicates: (1) That there is serious physical harm to, serious deterioration
35 of or sexual abuse of the child; and (2) that action may be required to
36 protect the child, the investigation shall be conducted as a joint effort
37 between the secretary and the appropriate law enforcement agency or
38 agencies, with a free exchange of information between them pursuant to
39 K.S.A. 2015 Supp. 38-2210, and amendments thereto. If a statement of a
40 suspect is obtained by either agency, a copy of the statement shall be
41 provided to the other.

42 (c) *Investigation of certain cases.* Suspected child abuse or neglect
43 which occurs in an institution operated by the—secretary Kansas

1 *department of corrections* shall be investigated by the ~~attorney general~~
2 *secretary of corrections*. Any ~~other~~ suspected child abuse or neglect in an
3 *institution operated by the Kansas department for aging and disability*
4 *services or the Kansas department for children and families*, or by persons
5 employed by ~~the Kansas department for children and families~~ *either*
6 *department or of children of persons employed by either department*, shall
7 be investigated by the appropriate law enforcement agency.

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

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

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

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

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

35 Sec. 3. K.S.A. 2015 Supp. 75-723 is hereby amended to read as
36 follows: 75-723. (a) There is hereby created in the office of the attorney
37 general an abuse, neglect and exploitation of persons unit.

38 (b) *Within the limits of available resources, the unit may, in the*
39 *attorney general's discretion:*

40 (1) *Participate in the prevention, detection, investigation and*
41 *prosecution of abuse, neglect and exploitation of persons, whether*
42 *financial or physical;*

43 (2) *conduct investigations of suspected criminal abuse, neglect or*

1 exploitation of persons;

2 (3) coordinate with and assist other law enforcement agencies, or
3 participate in task forces or joint operations, in the investigation of
4 suspected criminal abuse, neglect or exploitation of persons;

5 (4) coordinate with and assist the medicaid fraud and abuse division
6 established by K.S.A. 75-725, and amendments thereto, in the prevention,
7 detection and investigation of abuse, neglect and exploitation of persons;

8 (5) work with or participate in the Kansas internet crimes against
9 children task force, and work with any exploited and missing child
10 investigators and any other child crime investigators;

11 (6) assist in any investigation of child abuse or neglect conducted
12 pursuant to K.S.A. 2015 Supp. 38-2226, and amendments thereto; and

13 (7) assist in any investigation of adult abuse, neglect, exploitation or
14 fiduciary abuse conducted pursuant to K.S.A. 2015 Supp. 39-1443, and
15 amendments thereto.

16 (c) The unit shall give priority to preventing, detecting and
17 investigating abuse, neglect or exploitation of adults who are senior
18 citizens, disabled or otherwise vulnerable to abuse, neglect or
19 exploitation.

20 (d) Except as provided by subsection ~~(h)~~ (k), the information obtained
21 and the investigations conducted by the unit shall be confidential as
22 required by state or federal law. Upon request of the unit, the unit shall
23 have access to all records of reports, investigation documents and written
24 reports of findings related to confirmed cases of abuse, neglect or
25 exploitation of ~~persons~~ adults or cases in which ~~there is the attorney~~
26 ~~general~~ has reasonable suspicion to believe abuse, neglect or exploitation
27 of ~~persons~~ adults has occurred which are received or generated by ~~the~~
28 ~~Kansas department for children and families, Kansas department for aging~~
29 ~~and disability services or department of health and environment~~ a state
30 agency.

31 (e) Whenever a state agency reports a matter involving suspected
32 abuse, neglect or exploitation of an adult to a law enforcement agency or
33 a county or district attorney, such state agency shall simultaneously
34 forward such report to the unit.

35 ~~(e)~~ (f) Except for reports alleging only self-neglect, ~~such~~ a state
36 agency receiving reports of abuse, neglect or exploitation of ~~persons~~
37 adults shall forward to the unit:

38 (1) Within 10 days of confirmation, reports of findings concerning the
39 confirmed abuse, neglect or exploitation of ~~persons~~ adults; and

40 (2) within 10 days of such denial, each report of an investigation in
41 which such state agency was denied the opportunity or ability to conduct
42 or complete a full investigation of abuse, neglect or exploitation of ~~persons~~
43 adults.

1 ~~(d)~~ (g) On or before the first day of the regular legislative session
2 each year, the unit shall submit to the legislature a written report of the
3 unit's activities, investigations and findings for the preceding fiscal year.

4 ~~(e)~~ (h) The attorney general shall adopt rules and regulations as
5 deemed appropriate for the administration of this section.

6 ~~(f)~~ (i) No state funds appropriated to support the provisions of the
7 ~~abuse, neglect or exploitation of persons~~ unit and expended to contract *or*
8 *enter into agreements* with any third party shall be used by a third party to
9 file any civil action against the state of Kansas or any agency of the state
10 of Kansas. Nothing in this section shall prohibit the attorney general from
11 initiating or participating in any civil action against any party.

12 ~~(g)~~ (j) The attorney general may contract *or enter into agreements*
13 with other agencies or organizations to provide services related to the
14 *attorney general's duties under this section or to the* investigation or
15 litigation of findings related to abuse, neglect or exploitation of persons.

16 ~~(h)~~ (k) Notwithstanding any other provision of law, nothing shall
17 prohibit the attorney general or the unit from distributing or utilizing only
18 that information obtained pursuant to a confirmed case of abuse, neglect or
19 exploitation or cases in which there is reasonable suspicion to believe
20 abuse, neglect or exploitation has occurred pursuant to this section with
21 any third party ~~contracted with by~~ *under contract or agreement with* the
22 attorney general to carry out the provisions of this section.

23 (i) *As used in this section:*

24 (1) *"Adult" means any person 18 years of age or older; and*

25 (2) *"state agency" means the Kansas department for children and*
26 *families, Kansas department for aging and disability services or Kansas*
27 *department of health and environment.*

28 Sec. 4. K.S.A. 2015 Supp. 38-2223, 38-2226 and 75-723 are hereby
29 repealed.

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