

HOUSE BILL No. 2233

By Committee on Children and Seniors

2-6

1 AN ACT concerning children and minors; establishing the protective
2 parent reform act; amending K.S.A. 2012 Supp. 38-2226 and 38-2230
3 and repealing the existing sections.
4

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

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

8 (b) In any proceeding under article 22 of chapter 38 of the Kansas
9 Statutes Annotated and article 16 of chapter 60 of the Kansas Statutes
10 Annotated, and amendments thereto, involving child custody and visitation
11 and child in need of care proceedings:

12 (1) If a parent makes a good faith allegation, based on a reasonable
13 belief supported by facts, that the parent's child is a victim of physical,
14 mental or emotional abuse or neglect or sexual abuse perpetrated or
15 allowed by the other parent and if the parent making the allegation acts
16 lawfully and in good faith in accordance with such belief to protect the
17 child or seek treatment for the child, the parent making the allegation shall
18 not be deprived of custody, visitation or contact with the child based solely
19 on the belief or reasonable actions taken in accordance with such belief.

20 (2) If an allegation that a child is a victim of physical, mental or
21 emotional abuse or neglect or sexual abuse perpetrated or allowed by a
22 parent is supported by a preponderance of evidence, the court shall
23 consider such evidence in determining custody and visitation that is in the
24 best interests of the child and shall not award custody of the child to the
25 parent who presents a substantial risk of harm to the child.

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

29 (4) Notwithstanding the provisions of K.S.A. 2012 Supp. 38-2205,
30 and amendments thereto, the role of any guardian ad litem or attorney for
31 the child shall be limited to advocating for the desires of the child and
32 participating in the proceeding by presenting evidence and argument in the
33 same manner as an attorney for the parent. The guardian ad litem or
34 attorney for the child shall not substitute the guardian ad litem or attorney's
35 personal opinion and judgment for the desires of the child or offer
36 evidence which would be excluded if offered by any other party. In no case

1 shall the guardian ad litem or attorney for the child be deemed a quasi-
2 judicial officer or be granted any fact-finding role. Nothing in this
3 paragraph shall be construed to require the appointment of a guardian ad
4 litem or attorney for the child in a proceeding involving child custody and
5 visitation.

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

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

21 (7) A parent shall not be deprived of custody, visitation or contact
22 with the parent's child based on the opinion of a mental health professional
23 that the parent is at risk of unlawfully fleeing with the child or the parent
24 has coached the child, or both, unless credible and admissible evidence
25 independent of the mental health professional's opinion establishes that the
26 parent's plan or intent is to flee or the child has been coached, or both.

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

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

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

40 (11) No protection from abuse order issued pursuant to article 31 of
41 chapter 60 of the Kansas Statutes Annotated, and amendments thereto,
42 shall be violated by the award of custody, visitation or contact with the
43 child to a parent who is the perpetrator of family violence. If a parent is

1 issued a protection from abuse order, at no time shall this order be
2 consolidated into any proceeding under article 22 of chapter 38 of the
3 Kansas Statutes Annotated, and amendments thereto, and article 16 of
4 chapter 60 of the Kansas Statutes Annotated, and amendments thereto.

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

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

20 (c) When conducting an investigation, the department for children
21 and families and law enforcement agency shall videotape the interview
22 with a clock on the wall behind the child to ensure the accuracy of the
23 time. Each recording shall include the full names of each individual
24 involved in and present during the interview, as well as the date and time
25 of the interview.

26 Sec. 3. K.S.A. 2012 Supp. 38-2226 is hereby amended to read as
27 follows: 38-2226. (a) *Investigation for child abuse or neglect.* The
28 secretary and law enforcement officers shall have the duty to receive and
29 investigate reports of child abuse or neglect for the purpose of determining
30 whether the report is valid and whether action is required to protect a
31 child. Any person or agency which maintains records relating to the
32 involved child which are relevant to any investigation conducted by the
33 secretary or law enforcement agency under this code shall provide the
34 secretary or law enforcement agency with the necessary records to assist in
35 investigations. In order to provide such records, the person or agency
36 maintaining the records shall receive from the secretary or law
37 enforcement: (1) A written request for information; and (2) a written notice
38 that the investigation is being conducted by the secretary or law
39 enforcement. If the secretary and such officers determine that no action is
40 necessary to protect the child but that a criminal prosecution should be
41 considered, such law enforcement officers shall make a report of the case to
42 the appropriate law enforcement agency.

43 (b) *Joint investigations.* When a report of child abuse or neglect

1 indicates: (1) That there is serious physical harm to, serious deterioration
2 of or sexual abuse of the child; and (2) that action may be required to
3 protect the child, the investigation shall be conducted as a joint effort
4 between the secretary and the appropriate law enforcement agency or
5 agencies, with a free exchange of information between them pursuant to
6 K.S.A. 2012 Supp. 38-2210, and amendments thereto. If a statement of a
7 suspect is obtained by either agency, a copy of the statement shall be
8 provided to the other.

9 (c) *Investigation of certain cases.* Suspected child abuse or neglect
10 which occurs in an institution operated by the secretary shall be
11 investigated by the attorney general. Any other suspected child abuse or
12 neglect by persons employed by the department of social and rehabilitation
13 services for children and families shall be investigated by the appropriate
14 law enforcement agency.

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

19 (e) *Investigations concerning certain facilities.* Any investigation
20 involving a facility subject to licensing or regulation by the secretary of
21 health and environment shall be promptly reported to the state secretary of
22 health and environment.

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

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

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

43 (h) *An investigation by the department of alleged physical, mental or*

1 *emotional abuse or neglect or sexual abuse reported under this code shall*
2 *be conducted by a person trained in forensic children's interviewing*
3 *techniques to conduct such a child abuse and neglect investigation. An*
4 *interview of a child conducted as a result of a report of such abuse or*
5 *neglect as required under subsection (b) of K.S.A. 2012 Supp. 38-2230,*
6 *and amendments thereto, shall be videotaped:*

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

8 (2) *if available, at a child advocacy center as described in K.S.A.*
9 *2012 Supp. 38-2227, and amendments thereto.*

10 Sec. 4. K.S.A. 2012 Supp. 38-2230 is hereby amended to read as
11 follows: 38-2230. (a) Whenever any person furnishes information to the
12 secretary that a child appears to be a child in need of care, the department
13 shall make a preliminary inquiry to determine whether the interests of the
14 child require further action be taken. Whenever practicable, the inquiry
15 shall include a preliminary investigation of the circumstances which were
16 the subject of the information, including the home and environmental
17 situation and the previous history of the child. ~~If reasonable grounds to~~
18 ~~believe there is clear and convincing evidence that abuse or neglect exist~~
19 ~~exists~~, immediate steps shall be taken to protect the health and welfare of
20 the abused or neglected child as well as that of any other child under the
21 same care who may be harmed by abuse or neglect. After the inquiry, if the
22 secretary determines it is not otherwise possible to provide those services
23 necessary to protect the ~~interests~~ *safety* of the child, the secretary shall
24 recommend to the county or district attorney that a petition be filed. *No*
25 *petition shall be filed by the county or district attorney to remove the child*
26 *from the residence or custody of the parent who is not the alleged*
27 *perpetrator of the report of alleged abuse or neglect or if the report is*
28 *found to be unsubstantiated due to the lack of clear and convincing*
29 *evidence.*

30 (b) *In investigations of alleged physical, mental or emotional abuse*
31 *or neglect or sexual abuse reports under article 22 of chapter 38 of the*
32 *Kansas Statutes Annotated and article 55 or 56 of chapter 21 of the*
33 *Kansas Statutes Annotated or K.S.A. 2012 Supp. 21-6419 through 21-*
34 *6421, and amendments thereto, the secretary shall make necessary*
35 *inquiries about the criminal records of the parent who is the subject of the*
36 *report, or of the alleged abusive or neglectful person, including, but not*
37 *limited to, inquiries about the existence of a criminal history record of*
38 *family violence and past reports of the alleged or neglectful person who is*
39 *being investigated for the offenses involving a child under article 22 of*
40 *chapter 38 of the Kansas Statutes Annotated and article 55 or 56 of*
41 *chapter 21 of the Kansas Statutes Annotated or K.S.A. 2012 Supp. 21-*
42 *6419 through 21-6421, and amendments thereto.*

43 Sec. 5. K.S.A. 2012 Supp. 38-2226 and 38-2230 are hereby repealed.

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