

As Amended by House Committee

As Amended by Senate Committee

Session of 2016

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 behavioral analysts, licensed assistant
23 behavioral analysts**, licensed professional counselors, licensed clinical
24 professional counselors and registered alcohol and drug abuse counselors;

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

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

1 and

2 (E) any person employed by or who works as a volunteer for any
3 organization, whether for profit or not-for-profit, that provides social
4 services to pregnant teenagers, including, but not limited to, counseling,
5 adoption services and pregnancy education and maintenance.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 suspect is obtained by either agency, a copy of the statement shall be
2 provided to the other.

3 (c) *Investigation of certain cases.* Suspected child abuse or neglect
4 which occurs in an institution operated by the ~~secretary~~ *Kansas*
5 *department of corrections* shall be investigated by **the attorney general or**
6 ~~the attorney general~~ *secretary of corrections*. Any ~~other~~ suspected child
7 abuse or neglect *in an institution operated by the Kansas department for*
8 *aging and disability services* ~~or the Kansas department for children and~~
9 ~~families, or by persons employed by the Kansas department for children~~
10 ~~and families either department~~ **the Kansas department for aging and**
11 **disability services or the Kansas department for children and families, or**
12 *of children of persons employed by either department, shall be investigated*
13 *by the appropriate law enforcement agency.*

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

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

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

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

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

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

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

3 (1) *Participate in the prevention, detection, ~~investigation~~ **review** and*
4 *prosecution of abuse, neglect and exploitation of persons, whether*
5 *financial or physical;*

6 (2) *conduct investigations of suspected criminal abuse, neglect or*
7 *exploitation of persons;*

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

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

14 (5) *work with or participate in the Kansas internet crimes against*
15 *children task force, and work with any exploited and missing child*
16 *investigators and any other child crime investigators;*

17 (6) *assist in any investigation of child abuse or neglect conducted **by***
18 ***a law enforcement agency** pursuant to K.S.A. 2015 Supp. 38-2226, and*
19 *amendments thereto; and*

20 (7) *assist in any investigation of adult abuse, neglect, exploitation or*
21 *fiduciary abuse conducted **by a law enforcement agency** pursuant to*
22 *K.S.A. 2015 Supp. 39-1443, and amendments thereto.*

23 (c) *The unit shall give priority to preventing, detecting and*
24 *investigating abuse, neglect or exploitation of adults who are senior*
25 *citizens, disabled or otherwise vulnerable to abuse, neglect or*
26 *exploitation.*

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

38 (e) *Whenever a state agency reports a matter involving suspected*
39 *abuse, neglect or exploitation of an adult to a law enforcement agency or*
40 *a county or district attorney, such state agency shall simultaneously*
41 *forward such report to the unit.*

42 (f) *Except for reports alleging only self-neglect, ~~such~~ a state*
43 *agency receiving reports of abuse, neglect or exploitation of ~~persons~~*

1 *adults* shall forward to the unit:

2 (1) Within 10 days of ~~confirmation~~ **substantiation**, reports of findings
3 concerning the ~~confirmed~~ **substantiated** abuse, neglect or exploitation of
4 ~~persons~~ *adults*; and

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

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

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

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

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

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

31 (l) *As used in this section:*

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

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

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

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