

HOUSE BILL No. 2137

By Committee on Children and Families

2-3

Amendments to HB 2137
Proposed by Rep. Hermanson
February 2, 2012
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Office of the Revisor of Statutes

1 AN ACT concerning children and minors; establishing the protective
2 parent reform act; amending K.S.A. 2010 Supp. 38-2226 and 38-2230 2011
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
11 visitation 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
18 shall not be deprived of custody, visitation or contact with the child based
19 solely on the belief or reasonable actions taken in accordance with such
20 belief.

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

27 (3) No ex parte communications shall be made between the court and
28 any guardian ad litem for the child, attorney for the child or other
29 professional participating in the proceeding. 2011

30 (4) Notwithstanding the provisions of K.S.A. 2010 Supp. 38-2205,
31 and amendments thereto, the role of any guardian ad litem or attorney for
32 the child shall be limited to advocating for the desires of the child and
33 participating in the proceeding by presenting evidence and argument in
34 the same manner as an attorney for the parent. The guardian ad litem or
35 attorney for the child shall not substitute the guardian ad litem or
36 attorney's personal opinion and judgment for the desires of the child or

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

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

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

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

and, or, the parent has coached the child

and, or, the child has been coached

27 (8) No court-sponsored conciliation, mediation, intake screening or
28 parent education program shall make any recommendation or report to
29 the 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 sexual
34 abuse is an issue in the proceeding, no mental health professional who
35 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 issued a protection from abuse order, at no time shall this order be consolidated into any proceeding under article 22 of chapter 38 of the Kansas Statutes Annotated, and amendments thereto, and article 16 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto.

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

9 additional interviews are necessary, the additional interviews shall be
10 conducted, to the extent possible, by the same interviewer who conducted
11 the initial interview of the child.

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

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

and present during

21 Section 3. K.S.A. 2010 Supp. 38-2226 is hereby amended to read as
22 follows: 38-2226. (a) *Investigation for child abuse or neglect.* The
23 secretary and law enforcement officers shall have the duty to receive and
24 investigate reports of child abuse or neglect for the purpose of
25 determining whether the report is valid and whether action is required to
26 protect a child. Any person or agency which maintains records relating to
27 the involved child which are relevant to any investigation conducted by
28 the secretary or law enforcement agency under this code shall provide the
29 secretary or law enforcement agency with the necessary records to assist
30 in investigations. In order to provide such records, the person or agency
31 maintaining the records shall receive from the secretary or law
32 enforcement: (1) A written request for information; and (2) a written
33 notice that the investigation is being conducted by the secretary or law
34 enforcement. If the secretary and such officers determine that no action is
35 necessary to protect the child but that a criminal prosecution should be
36 considered, such law enforcement officers shall make a report of the case
37 to the appropriate law enforcement agency.

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

1 K.S.A. 2010²⁰¹¹ Supp. 38-2210, and amendments thereto. If a statement of a
2 suspect is obtained by either agency, a copy of the statement shall be
3 provided to the other.

4 (c) *Investigation of certain cases.* Suspected child abuse or neglect
5 which occurs in an institution operated by the secretary shall be
6 investigated by the attorney general. Any other suspected child abuse or
7 neglect by persons employed by the department of social and
8 rehabilitation services shall be investigated by the appropriate law
9 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
15 involving 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
19 the 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*
23 *agencies.* (1) Educational institutions, the secretary and law enforcement
24 agencies shall cooperate with each other in the investigation of reports of
25 suspected child abuse or neglect. The secretary and law enforcement
26 agencies shall have access to a child in a setting designated by school
27 personnel on the premises of an educational institution. Attendance at an
28 interview conducted on such premises shall be at the discretion of the
29 agency conducting the interview, giving consideration to the best interests
30 of the child. To the extent that safety and practical considerations allow,
31 law enforcement officers on such premises, for the purpose of
32 investigating a report of suspected child abuse or neglect, shall not be in
33 uniform. when exigent circumstances exist

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

38 (h) *An investigation by the department of alleged physical, mental or*
39 *emotional abuse or neglect or sexual abuse reported under this code*
40 *shall be conducted by a person trained to conduct such a child abuse and*
41 *neglect investigation. An interview of a child conducted as a result of a*
42 *report of such abuse or neglect as required under subsection (b) of K.S.A.*
43 *2010²⁰¹¹ Supp. 38-2230, and amendments thereto, shall be videotaped.* in forensic children's interviewing techniques

1 (1) By a person trained and competent to conduct the interview; and
 2 (2) if available, at a child advocacy center as described in K.S.A.
 3 ~~2010 Supp. 38-2227, and amendments thereto.~~

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4 Sec. 4. K.S.A. ~~2010~~ Supp. 38-2230 is hereby amended to read as
 5 follows: 38-2230. (a) Whenever any person furnishes information to the
 6 secretary that a child appears to be a child in need of care, the department
 7 shall make a preliminary inquiry to determine whether the interests of the
 8 child require further action be taken. Whenever practicable, the inquiry
 9 shall include a preliminary investigation of the circumstances which were
 10 the subject of the information, including the home and environmental
 11 situation and the previous history of the child. If ~~reasonable grounds to~~
 12 ~~believe~~ abuse or neglect exist, immediate steps shall be taken to protect
 13 the health and welfare of the abused or neglected child as well as that of
 14 any other child under the same care who may be harmed by abuse or
 15 neglect. After the inquiry, if the secretary determines it is not otherwise
 16 possible to provide those services necessary to protect the ~~interests~~ of the
 17 child, the secretary shall recommend to the county or district attorney that
 18 a petition be filed.

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there is clear and convincing evidence that

exists

safety

No petition shall be filed by the county or district attorney to remove the child from the residence and or custody of the parent who is not the alleged perpetrator of the report of alleged abuse or neglect or if the report is found to be unsubstantiated due to the lack of clear and convincing evidence.

19 (b) *In investigations of alleged physical, mental or emotional abuse or*
 20 *neglect or sexual abuse reports under article 22 of chapter 38 of the*
 21 *Kansas Statutes Annotated and sections 65 through 86 or 229 through*
 22 *231 of the 2010 Session Laws of Kansas, and amendments thereto, the*
 23 *secretary shall make necessary inquiries about the criminal records of the*
 24 *parents or of the alleged abusive or neglectful person, including, but not*
 25 *limited to, inquiries about the existence of a criminal history record and*
 26 *past reports of the alleged or neglectful person who is being investigated*
 27 *for the offenses involving a child under article 22 of chapter 38 of the*
 28 *Kansas Statutes Annotated and sections 65 through 86 or 229 through*
 29 *231 of the 2010 Session Laws of Kansas, and amendments thereto.*

article 55 or 56 of chapter 21 of the Kansas Statutes Annotated or K.S.A. 2011 Supp. 21-6419 through 21-6421

parent who is the subject of the report,

of family violence

30 Sec. 5. K.S.A. ~~2010~~ Supp. 38-2226 and 38-2230 are hereby
 31 repealed.

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article 55 or 56 of chapter 21 of the Kansas Statutes Annotated or K.S.A. 2011 Supp. 21-6419 through 21-6421

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