

**HOUSE BILL No. 2631**

By Committee on Judiciary

2-6

1 AN ACT concerning investigations of abuse, neglect or exploitation of  
2 certain individuals; clarifying when reports of abuse, neglect or  
3 exploitation shall be sent to both the department for children and  
4 families and the appropriate law enforcement agency; amending K.S.A.  
5 2017 Supp. 38-2223, 38-2226 and 39-1431 and repealing the existing  
6 sections.

7

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

9 Section 1. K.S.A. 2017 Supp. 38-2223 is hereby amended to read as  
10 follows: 38-2223. (a) *Persons making reports.* (1) When any of the  
11 following persons has reason to suspect that a child has been harmed as a  
12 result of physical, mental or emotional abuse or neglect or sexual abuse,  
13 the person shall report the matter promptly as provided in subsections (b)  
14 and (c);

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

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

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

32 (D) firefighters, emergency medical services personnel, law  
33 enforcement officers, juvenile intake and assessment workers, court  
34 services officers, community corrections officers, case managers appointed  
35 under K.S.A. 2017 Supp. 23-3508, and amendments thereto, and mediators  
36 appointed under K.S.A. 2017 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) (1) *To whom made.* Reports made pursuant to this section shall be  
24 made to the secretary, except as follows:

25 ~~(A)~~(A) When the Kansas department for children and families is not  
26 open for business, reports shall be made to the appropriate law  
27 enforcement agency. On the next day that the department is open for  
28 business, the law enforcement agency shall report to the department any  
29 report received and any investigation initiated pursuant to K.S.A. 2017  
30 Supp. 38-2226, and amendments thereto. The reports may be made orally  
31 or, on request of the secretary, in writing.

32 ~~(B)~~(B) 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 shall be made to the appropriate law  
37 enforcement agency. All other reports of child abuse or neglect by persons  
38 employed by the Kansas department for aging and disability services or  
39 the Kansas department for children and families, or of children of persons  
40 employed by either department, shall be made to the appropriate law  
41 enforcement agency.

42 (2) *When the Kansas department for children and families receives a*  
43 *report required under subsection (a)(1), or two or more reports from any*

1 *person of suspected abuse or neglect concerning the same child, the report*  
2 *or reports shall be promptly relayed by the department to the appropriate*  
3 *law enforcement agency. Any such relayed reports may be made orally or,*  
4 *on request of the appropriate law enforcement agency, in writing.*

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

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

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

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

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

24 Sec. 2. K.S.A. 2017 Supp. 38-2226 is hereby amended to read as  
25 follows: 38-2226. (a) *Investigation for child abuse or neglect.* The  
26 secretary and law enforcement officers shall have the duty to receive and  
27 investigate reports of child abuse or neglect for the purpose of determining  
28 whether the report is valid and whether action is required to protect a  
29 child. Any person or agency which maintains records relating to the  
30 involved child which are relevant to any investigation conducted by the  
31 secretary or law enforcement agency under this code shall provide the  
32 secretary ~~or~~ and law enforcement agency with the necessary records to  
33 assist in investigations. In order to provide such records, the person or  
34 agency maintaining the records shall receive from the secretary or law  
35 enforcement: (1) A written request for information; and (2) a written notice  
36 that the investigation is being conducted by the secretary or law  
37 enforcement. If the secretary and such officers determine that no action is  
38 necessary to protect the child but that a criminal prosecution should be  
39 considered, such law enforcement officers shall make a report of the case  
40 to the appropriate law enforcement agency.

41 (b) *Joint investigations.* When a report of child abuse or neglect  
42 indicates: (1) That there is serious physical harm to, serious deterioration  
43 of or sexual abuse of the child; and (2) that action may be required to

1 protect the child, the investigation shall be conducted as a joint effort  
2 between the secretary and the appropriate law enforcement agency or  
3 agencies, with a free exchange of information between them pursuant to  
4 K.S.A. 2017 Supp. 38-2210, and amendments thereto. If a statement of a  
5 suspect is obtained by either agency, a copy of the statement shall be  
6 provided to the other.

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

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

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

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

28 (g) *Cooperation between school personnel and investigative*  
29 *agencies.* (1) Educational institutions, the secretary and law enforcement  
30 agencies shall cooperate with each other in the investigation of reports of  
31 suspected child abuse or neglect. The secretary and law enforcement  
32 agencies shall have access to a child in a setting designated by school  
33 personnel on the premises of an educational institution. Attendance at an  
34 interview conducted on such premises shall be at the discretion of the  
35 agency conducting the interview, giving consideration to the best interests  
36 of the child. To the extent that safety and practical considerations allow,  
37 law enforcement officers on such premises for the purpose of investigating  
38 a report of suspected child abuse 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 Sec. 3. K.S.A. 2017 Supp. 39-1431 is hereby amended to read as

1 follows: 39-1431. (a) (1) Any person who is licensed to practice any  
2 branch of the healing arts, a licensed psychologist, a licensed master level  
3 psychologist, a licensed clinical psychotherapist, the chief administrative  
4 officer of a medical care facility, a teacher, a licensed social worker, a  
5 licensed professional nurse, a licensed practical nurse, a licensed dentist, a  
6 licensed marriage and family therapist, a licensed clinical marriage and  
7 family therapist, licensed professional counselor, licensed clinical  
8 professional counselor, registered alcohol and drug abuse counselor, a law  
9 enforcement officer, a case manager, a rehabilitation counselor, a bank  
10 trust officer or any other officers of financial institutions, a legal  
11 representative, a governmental assistance provider, an owner or operator of  
12 a residential care facility, an independent living counselor and the chief  
13 administrative officer of a licensed home health agency, the chief  
14 administrative officer of an adult family home and the chief administrative  
15 officer of a provider of community services and affiliates thereof operated  
16 or funded by the Kansas department for aging and disability services or  
17 licensed under K.S.A. 75-3307b, and amendments thereto, who has  
18 reasonable cause to believe that an adult is being or has been abused,  
19 neglected or exploited or is in need of protective services shall report,  
20 immediately from receipt of the information, such information or cause a  
21 report of such information to be made in any reasonable manner *to the*  
22 *Kansas department for children and families and the appropriate law*  
23 *enforcement agency*. An employee of a domestic violence center shall not  
24 be required to report information or cause a report of information to be  
25 made under this subsection.

26 (2) Other state agencies receiving reports that are to be referred to the  
27 Kansas department for children and families and the appropriate law  
28 enforcement agency, shall submit the report to the department and agency  
29 within six hours, during normal work days, of receiving the information.  
30 Reports shall be made to the Kansas department for children and families  
31 during the normal working week days and hours of operation.

32 (3) Reports shall be made to law enforcement agencies during the  
33 time the Kansas department for children and families is not in operation.  
34 Law enforcement shall submit the report and appropriate information to  
35 the Kansas department for children and families on the first working day  
36 that the Kansas department for children and families is in operation after  
37 receipt of such information.

38 (b) The report made pursuant to subsection (a) shall contain the name  
39 and address of the person making the report and of the caretaker caring for  
40 the involved adult, the name and address of the involved adult, information  
41 regarding the nature and extent of the abuse, neglect or exploitation, the  
42 name of the next of kin of the involved adult, if known, and any other  
43 information which the person making the report believes might be helpful

1 in the investigation of the case and the protection of the involved adult.

2 (c) (1) Any other person, not listed in subsection (a), having  
3 reasonable cause to suspect or believe that an adult is being or has been  
4 abused, neglected or exploited or is in need of protective services may  
5 report such information to the Kansas department for children and  
6 families. Reports ~~shall~~ *may* be made to law enforcement agencies during  
7 the time the Kansas department for children and families is not in  
8 operation.

9 (2) *Any time two or more such reports are made to the Kansas*  
10 *department for children and families, the department shall relay the*  
11 *reports to the appropriate law enforcement agency. Any such relayed*  
12 *reports may be made orally or, on request of the appropriate law*  
13 *enforcement agency, in writing.*

14 (d) A person making a report under subsection (a) shall not be  
15 required to make a report under K.S.A. 39-1401 ~~to~~ *through* 39-1410,  
16 ~~inclusive~~, and amendments thereto.

17 (e) Any person required to report information or cause a report of  
18 information to be made under subsection (a) who knowingly fails to make  
19 such report or cause such report not to be made shall be guilty of a class B  
20 misdemeanor.

21 (f) Notice of the requirements of this act and the department to which  
22 a report is to be made under this act shall be posted in a conspicuous  
23 public place in every adult family home as defined in K.S.A. 39-1501, and  
24 amendments thereto, and every provider of community services and  
25 affiliates thereof operated or funded by the Kansas department for aging  
26 and disability services or other facility licensed under K.S.A. 75-3307b,  
27 and amendments thereto, and other institutions included in subsection (a).

28 Sec. 4. K.S.A. 2017 Supp. 38-2223, 38-2226 and 39-1431 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.