

As Amended by House Committee

Session of 2021

HOUSE BILL No. 2228

By Committee on Judiciary

2-3

1 AN ACT concerning sexual assault evidence kits; relating to submission of
2 kits by law enforcement agencies; conducting evidence collection at
3 child advocacy centers; amending K.S.A. 65-448 and K.S.A. 2020
4 Supp. 38-2227 and repealing the existing sections.

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

7 New Section 1. (a) All law enforcement agencies in this state shall
8 adopt a written policy requiring submission of all sexual assault kits that
9 correspond to a law enforcement report of sexual assault to the Johnson
10 county **sheriff's office** criminalistics laboratory, Sedgwick county regional
11 forensic science center, the Kansas bureau of investigation or another
12 accredited forensic laboratory.

13 (b) Such policy shall:

14 (1) Ensure that all sexual assault kits that correspond to a law
15 enforcement report of sexual assault are submitted to a laboratory
16 described in subsection (a) for analysis within 30 business days from the
17 collection of the kit for examination; and

18 (2) include a procedure to ensure the examination results are received
19 by the investigating officer upon the completion of the examination.

20 (c) All law enforcement agencies in this state shall collaborate with
21 the county or district attorneys in the appropriate jurisdiction regarding the
22 contents of the written policies required by this section.

23 (d) Policies adopted pursuant to this section shall be made available
24 to all law enforcement officers employed by such law enforcement agency
25 and shall be available for public inspection during normal business hours.

26 (e) Policies required by this section shall be adopted and implemented
27 by all law enforcement agencies in this state prior to July 1, 2022.

28 Sec. 2. K.S.A. 2020 Supp. 38-2227 is hereby amended to read as
29 follows: 38-2227. (a) A child advocacy center in this state shall:

30 (1) Be a private, nonprofit incorporated agency or a governmental
31 entity.

32 (2) *Be a child advocacy center recognized by the national children's*
33 *alliance.*

34 (3) Have a neutral, child-focused facility where forensic interviews
35 take place with children in appropriate cases of suspected or alleged
36 physical, mental or emotional abuse or sexual abuse. All agencies shall

1 have a place to interact with the child as investigative or treatment needs
2 require.

3 ~~(3)~~(4) Have a minimum designated staff that is supervised and
4 approved by the local board of directors or governmental entity.

5 ~~(4)~~(5) Have a multidisciplinary team that meets on a regularly
6 scheduled basis or as the caseload of the community requires. The team
7 shall include, but not be limited to, representatives from the state or local
8 office prosecuting such case, law enforcement, child protective services,
9 mental health services, a victim's advocate, child advocacy center staff and
10 medical personnel.

11 ~~(5)~~(6) Provide case tracking of child abuse cases seen through the
12 center. A center shall also collect data on the number of child abuse cases
13 seen at the center, by sex, race, age, and other relevant data, the number of
14 cases referred for prosecution, and the number of cases referred for
15 medical services or mental health therapy.

16 ~~(6)~~(7) Provide ~~medical-exam~~ *examination services* ~~or and evidence~~
17 *collection for physical, mental, emotional or sexual abuse, including*
18 *sexual assault evidence collection pursuant to K.S.A. 65-448, and*
19 *amendments thereto, on site at the child advocacy center, or provide*
20 *referrals for medical examination services or evidence collection not on*
21 *the site of the child advocacy center.*

22 (8) Provide mental health therapy, ~~or both~~, on site at the child
23 advocacy center, or provide referrals for ~~medical exams~~ or mental health
24 therapy, ~~or both~~, to a facility not on the site of the child advocacy center.

25 ~~(7)~~(9) Have an interagency commitment, in writing, covering those
26 aspects of agency participation in a multidisciplinary approach to the
27 handling of cases involving physical, mental or emotional abuse.

28 ~~(8)~~(10) Provide that child advocacy center employees and volunteers
29 at the center are trained and screened in accordance with K.S.A. 65-516,
30 and amendments thereto.

31 ~~(9)~~(11) Provide training for child advocacy center staff who interview
32 children in forensic children's interview technique.

33 (b) Any child advocacy center within this state that meets the
34 standards prescribed by this section shall be eligible to receive state funds
35 that are appropriated by the legislature.

36 Sec. 3. K.S.A. 65-448 is hereby amended to read as follows: 65-448.

37 (a) Upon the request of any law enforcement officer and with the written
38 consent of the reported victim, or upon the request of the victim, any
39 physician, a licensed physician assistant, who has been specially trained in
40 performing sexual assault evidence collection, or a registered professional
41 nurse, who has been specially trained in performing sexual assault
42 evidence collection, *if such physician, licensed physician assistant or*
43 *registered nurse is on call or on duty at a:*

1 (1) (A) Medical care facility of this state, as defined by K.S.A. 65-
2 425(h), and amendments thereto, shall examine persons who may be
3 victims of sexual offenses cognizable as violations of K.S.A. 2020 Supp.
4 21-5503, 21-5504, 21-5506 or 21-5604, and amendments thereto, using
5 Kansas bureau of investigation sexual assault evidence collection kits or
6 similar kits approved by the Kansas bureau of investigation, for the
7 purposes of gathering evidence of any such crime assault; or

8 (B) child advocacy center of this state, as defined by K.S.A. 38-2227,
9 and amendments thereto, or any other facility licensed or operated by a
10 **physician, physician assistant or registered nurse licensed pursuant to**
11 *chapter 65 of the Kansas Statutes Annotated, and amendments thereto,*
12 *may examine persons who may be victims of sexual assault.*

13 (2) All examinations performed pursuant to paragraph (1), shall be
14 conducted using Kansas bureau of investigation sexual assault evidence
15 collection kits or similar kits approved by the Kansas bureau of
16 investigation, for the purposes of gathering evidence of any such crime.

17 (b) If an examination ~~has taken~~ takes place solely upon the request of
18 the victim, the medical care facility, child advocacy center or other facility
19 where the examination takes place shall not notify any law enforcement
20 agency without the written consent of the victim, unless otherwise required
21 by law.

22 (c) If the physician, licensed physician assistant or registered
23 professional nurse refuses to perform ~~such physical~~ an examination at a
24 medical care facility pursuant to subsection (a)(1), the prosecuting
25 attorney is hereby empowered to seek a mandatory injunction against such
26 physician, licensed physician assistant or registered professional nurse to
27 enforce the provisions of ~~this act~~ subsection (a)(1). Any refusal by a
28 physician, licensed physician assistant or registered professional nurse to
29 perform an examination which has been requested pursuant to ~~this section~~
30 subsection (a)(1) shall be reported by the county or district attorney to the
31 state board of healing arts or the board of nursing, whichever is applicable,
32 for appropriate disciplinary action.

33 (d) ~~The department of health and environment, in cooperation with~~
34 ~~the Kansas bureau of investigation; shall establish procedures for gathering~~
35 ~~evidence pursuant to this section. A minor may consent to examination~~
36 ~~under this section. Such consent is not subject to disaffirmance because of~~
37 ~~minority, and consent of parent or guardian of the minor is not required for~~
38 ~~such examination.~~

39 (e) (1) ~~The hospital or~~ medical care facility, child advocacy center or
40 other facility shall give written notice to the parent or guardian of a minor
41 that such an examination has taken place, except when:

42 (1)(A) ~~The hospital or~~ medical care facility, child advocacy center or
43 other facility has information that a parent, guardian or family or

1 household member is the subject of a related criminal investigation; or

2 ~~(2)(B)~~ the physician, licensed physician assistant or registered
3 professional nurse, after consultation with law enforcement, reasonably
4 believes that the child will be harmed if such notice is given.

5 *(2) A minor may consent to an examination under this section. Such*
6 *consent is not subject to disaffirmance because of minority, and consent of*
7 *a parent or guardian of the minor is not required for such examination.*

8 ~~(b)(f)~~ All unreported sexual assault kits ~~collected that are not released~~
9 ~~to law enforcement~~ shall be sealed by either the sexual assault nurse
10 examiner program or the facility that provided the examination and ~~kept~~
11 ~~sent to the Kansas bureau of investigation. The Kansas bureau of~~
12 ~~investigation shall retain all unreported sexual assault kits connected to a~~
13 ~~report of sexual assault in evidence storage for five 20 years in the~~
14 ~~evidence storage facilities of the Kansas bureau of investigation. After five~~
15 ~~20 years, such kits shall be destroyed by the Kansas bureau of~~
16 ~~investigation.~~

17 ~~(e)(g)~~ Each sexual assault kit that is received by the Johnson county
18 **sheriff's office** criminalistics laboratory, Sedgwick county regional
19 forensic science center or the Kansas bureau of investigation shall be
20 examined if the kit is required to be released to a law enforcement agency
21 in connection with a report of sexual assault.

22 *(h) The fee chargeable for conducting an examination of a victim as*
23 *herein provided shall be established by the department of health and*
24 *environment. Such fee, including the cost of the sexual assault evidence*
25 *collection kit, shall be charged to and paid by the county where the alleged*
26 *offense was committed, and refusal of the victim to report the alleged*
27 *offense to law enforcement shall not excuse or exempt the county from*
28 *paying such fee. The fee for conducting an examination of a victim as*
29 ~~herein provided pursuant to this section shall not be charged or billed to~~
30 ~~the victim or to the victim's insurance carrier. Such county shall be~~
31 ~~reimbursed such fee upon the costs being paid by the defendant as court~~
32 ~~costs assessed pursuant to K.S.A. 28-172a, and amendments thereto.~~

33 ~~(d)(i)~~ No medical care facility, *child advocacy center or other facility*
34 shall incur any civil, administrative or criminal liability as a result of
35 notifying or failing to notify any law enforcement agency if an
36 examination has taken place solely upon the request of the victim and such
37 notification is not otherwise required by law.

38 ~~(e)(j)~~ The Kansas bureau of investigation may adopt rules and
39 regulations as deemed necessary to implement the provisions of this
40 section.

41 *(k) As used in this section:*

42 *(1) "Unreported sexual assault kit" means a sexual assault kit*
43 *collected pursuant to subsection (b) that is not released to law*

1 *enforcement; and*

2 *(2) "sexual assault" means a sexual offense cognizable as a violation*
3 *of K.S.A. 2020 Supp. 21-5503, 21-5504, 21-5506 or 21-5604, and*
4 *amendments thereto.*

5 Sec. 4. K.S.A. 65-448 and K.S.A. 2020 Supp. 38-2227 are hereby
6 repealed.

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