Adult Protective Services Statutes

39-1430. Abuse, neglect or exploitation of certain adults; definitions used in this act:
(a) "Adult" means an individual 18 years of age or older alleged to be unable to protect their own interest and who is harmed or threatened with harm, whether financial, mental or physical in nature, through action or inaction by either another individual or through their own action or inaction when (1) such person is residing in such person's own home, the home of a family member or the home of a friend, (2) such person resides in an adult family home as defined in K.S.A. 39-1501 and amendments thereto, or (3) such person is receiving services through a provider of community services and affiliates thereof operated or funded by the department of social and rehabilitation services or the department on aging or a residential facility licensed pursuant to K.S.A. 75-3307b and amendments thereto. Such term shall not include persons to whom K.S.A. 39-1401 et seq. and amendments thereto apply.
(b) "Abuse" means any act or failure to act performed intentionally or recklessly that causes or is likely to cause harm to an adult, including:
   (1) Infliction of physical or mental injury;
   (2) any sexual act with an adult when the adult does not consent or when the other person knows or should know that the adult is incapable of resisting or declining consent to the sexual act due to mental deficiency or disease or due to fear of retribution or hardship;
   (3) unreasonable use of a physical restraint, isolation or medication that harms or is likely to harm an adult;
   (4) unreasonable use of a physical or chemical restraint, medication or isolation as punishment, for convenience, in conflict with a physician's orders or as a substitute for treatment, except where such conduct or physical restraint is in furtherance of the health and safety of the adult;
   (5) a threat or menacing conduct directed toward an adult that results or might reasonably be expected to result in fear or emotional or mental distress to an adult;
   (6) fiduciary abuse; or
   (7) omission or deprivation by a caretaker or another person of goods or services which are necessary to avoid physical or mental harm or illness.
(c) "Neglect" means the failure or omission by one's self, caretaker or another person with a duty to supply or provide goods or services which are reasonably necessary to ensure safety and well-being and to avoid physical or mental harm or illness.
(d) "Exploitation" means misappropriation of an adult's property or intentionally taking unfair advantage of an adult's physical or financial resources for another individual's personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense by a caretaker or another person.
(e) "Fiduciary abuse" means a situation in which any person who is the caretaker of, or who stands in a position of trust to, an adult, takes, secretes, or appropriates their money or property, to any use or purpose not in the due and lawful execution of such person's trust or benefit.
(f) "In need of protective services" means that an adult is unable to provide for or obtain services which are necessary to maintain physical or mental health or both.
(g) "Services which are necessary to maintain physical or mental health or both" include, but are not limited to, the provision of medical care for physical and mental health needs, the relocation of an adult to a facility or institution able to offer such care, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from maltreatment the result of which includes, but is not limited to, malnutrition, deprivation of necessities or physical punishment and transportation necessary to secure any of the above stated needs, except that this term shall not include taking such person into custody without consent except as provided in this act.
(h) "Protective services" means services provided by the state or other governmental agency or by private organizations or individuals which are necessary to prevent abuse, neglect or exploitation. Such protective services shall include, but shall not be limited to, evaluation of the need for services, assistance in obtaining appropriate social services, and assistance in securing medical and legal services.
(i) "Caretaker" means a person who has assumed the responsibility, whether legally or not, for an adult's care or financial management or both.
(j) "Secretary" means the secretary of social and rehabilitation services.
(k) "Report" means a description or accounting of an incident or incidents of abuse, neglect or exploitation under this act and for the purposes of this act shall not include any written assessment or findings.
(l) "Law enforcement" means the public office which is vested by law with the duty to maintain public order, make arrests for crimes, investigate criminal acts and file criminal charges, whether that duty extends to all crimes or is limited to specific crimes.
(m) "Involved adult" means the adult who is the subject of a report of abuse, neglect or exploitation under this act.
(n) "Legal representative," "financial institution" and "governmental assistance provider" shall have the meanings ascribed thereto in K.S.A. 39-1401, and amendments thereto.

No person shall be considered to be abused, neglected or exploited or in need of protective services for the sole reason that such person relies upon spiritual means through prayer alone for treatment in accordance with the tenets and practices of a recognized church or religious denomination in lieu of medical treatment.

39-1431. Abuse, neglect or exploitation of certain adults; reporting abuse, neglect or exploitation or need of protective services; persons required to report; penalty for failure to report; posting notice of requirement(s) of act.
Any person who is licensed to practice any branch of the healing arts, a licensed psychologist, a licensed master level psychologist, a licensed clinical psychotherapist, the chief administrative officer of a medical care facility, a teacher, a licensed social worker, a licensed professional nurse, a licensed practical nurse, a licensed dentist, a
licensed marriage and family therapist, a licensed clinical marriage and family therapist, licensed professional counselor, licensed clinical professional counselor, registered alcohol and drug abuse counselor, a law enforcement officer, a case manager, a rehabilitation counselor, a bank trust officer or any other officers of financial institutions, a legal representative, a governmental assistance provider, an owner or operator of a residential care facility, an independent living counselor and the chief administrative officer of a licensed home health agency, the chief administrative officer of an adult family home and the chief administrative officer of a provider of community services and affiliates thereof operated or funded by the department of social and rehabilitation services or licensed under K.S.A. 75-3307b and amendments thereto who has reasonable cause to believe that an adult is being or has been abused, neglected or exploited or is in need of protective services shall report, immediately from receipt of the information, such information or cause a report of such information to be made in any reasonable manner. An employee of a domestic violence center shall not be required to report information or cause a report of information to be made under this subsection. Other state agencies receiving reports that are to be referred to the department of social and rehabilitation services and the appropriate law enforcement agency, shall submit the report to the department and agency within six hours, during normal work days, of receiving the information. Reports shall be made to the department of social and rehabilitation services during the normal working week days and hours of operation. Reports shall be made to law enforcement agencies during the time social and rehabilitation services are not in operation. Law enforcement shall submit the report and appropriate information to the department of social and rehabilitation services on the first working day that social and rehabilitation services is in operation after receipt of such information.

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

(c) Any other person, not listed in subsection (a), having reasonable cause to suspect or believe that an adult is being or has been abused, neglected or exploited or is in need of protective services may report such information to the department of social and rehabilitation services. Reports shall be made to law enforcement agencies during the time social and rehabilitation services are not in operation.

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

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

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

39-1432. Same; immunity from liability of certain persons; employer prohibited from imposing sanctions on employee making report; attorney fees awarded, when (a) anyone participating in the making of any report pursuant to this act, or in any follow-up activity to the report, including providing records upon request of the department of social and rehabilitation services, or investigation of such report or who testifies in any administrative or judicial proceeding arising from such report shall not be subject to any civil liability on account of such report, investigation or testimony, unless such person acted in bad faith or with malicious purpose.
(b) No employer shall terminate the employment of, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that such employee made or caused to be made a report, or cooperated with an investigation, under this act. A court, in addition to other damages and remedies, may assess reasonable attorney fees against an employer who has been found to have violated the provisions of this subsection.

39-1433. Same; duties of department of social and rehabilitation services; personal visit; investigation and evaluation; findings referred to appropriate regulating authority, when; information provided to certain persons.
The department of social and rehabilitation services upon receiving a report that an adult is being, or has been abused, neglected, or exploited or is in need of protective services, shall:
(1) When a criminal act has occurred or has appeared to have occurred, immediately notify, in writing, the appropriate law enforcement agency;
(2) make a personal visit with the involved adult:
(A) Within 24 hours when the information from the reporter indicates imminent danger to the health or welfare of the involved adult;
(B) Within three working days for all reports of suspected abuse, when the information from the reporter indicates no imminent danger;
(C) Within five working days for all reports of neglect or exploitation when the information from the reporter indicates no imminent danger.
(3) Complete, within 30 working days of receiving a report, a thorough investigation and evaluation to determine the situation relative to the condition of the involved adult and what action and services, if any, are required. The evaluation shall include, but not be limited to, consultation with those individuals having knowledge of the facts of the particular case.
If conducting the investigation within 30 working days would interfere with an ongoing criminal investigation, the time period for the investigation shall be extended, but the investigation and evaluation shall be completed within 90 working days. If a finding is made prior to the conclusion of the criminal investigation, the investigation and evaluation may be reopened and a new finding made based on any additional evidence provided as a result of the criminal investigation. If the alleged perpetrator is licensed, registered or otherwise regulated by a state agency, such state agency also shall be
notified upon completion of the investigation or sooner if such notification does not compromise the investigation.

(4) Prepare, upon completion of the investigation of each case, a written assessment which shall include an analysis of whether there is or has been abuse, neglect or exploitation, recommended action, a determination of whether protective services are needed, and any follow-up.

(b) The secretary of social and rehabilitation services shall forward any finding of abuse, neglect or exploitation alleged to have been committed by a provider of services licensed, registered or otherwise authorized to provide services in this state to the appropriate state authority which regulates such provider. The appropriate state regulatory authority may consider the finding in any disciplinary action taken with respect to the provider of services under the jurisdiction of such authority.

(c) The department of social and rehabilitation services shall inform the complainant, upon request of the complainant, that an investigation has been made and if the allegations of abuse, neglect or exploitation have been substantiated, that corrective measures will be taken, upon completion of the investigation or sooner, if such measures do not jeopardize the investigation.

(d) The department of social and rehabilitation services may inform the chief administrative officer of community facilities licensed pursuant to K.S.A. 75-3307b and amendments thereto of confirmed findings of resident abuse, neglect or exploitation.

39-1434. Statewide register; report, assessment or written evaluation not public record; disclosure of certain individuals prohibited

(a) The secretary of social and rehabilitation services shall maintain a statewide register of the reports, assessments received and the analyses, evaluations and the actions recommended. The register shall be available for inspection by personnel of the department of social and rehabilitation services and as provided in K.S.A. 2000 Supp. 65-6205 and amendments thereto.

(b) Neither the report, assessment or the written evaluation analysis shall be deemed a public record or be subject to the provisions of the open records act. The name of the person making the original report or any person mentioned in such report shall not be disclosed unless the person making the original report specifically requests or agrees in writing to such disclosure or unless a judicial proceeding results therefrom. No information contained in the statewide register shall be made available to the public in such a manner as to identify individuals.

39-1435. Same; assistance of state departments and agencies and other public and private agencies; law enforcement assistance. In performing the duties set forth in this act, the secretary of social and rehabilitation services may request the assistance of all state departments, agencies and commissions and may utilize any other public or private agencies, groups or individuals who are appropriate and who may be available. Law enforcement shall be contacted to assist the department of social and rehabilitation services when the information received on the report indicates that an adult, residing in such adult's own home or the home of another individual, an adult family home, a community development disabilities facility or residential facility is in a life threatening situation.
39-1436. Same; access to relevant records; confidentiality requirement(s) as provided in this section, any person or agency which maintains records relating to the involved adult which are relevant to any investigation conducted by the department of social and rehabilitation services or a law enforcement agency under this act shall provide the department of social and rehabilitation services or a law enforcement agency with the necessary records to assist in investigations. In order to provide such records, the person or agency maintaining the records shall receive from the department of social and rehabilitation services:
(1) A written request for information;
(2) a written notice that an investigation is being conducted by the department; and
(3) certification or confirmation that the department has sent written notice to the involved adult or the involved adult's guardian. Any such information shall be subject to the confidentiality requirements of K.S.A. 39-1434 and amendments thereto.
(b) The department of social and rehabilitation services or a law enforcement agency shall have access to all relevant records in accordance with the provisions of subsection (a).

39-1437. Same; protective services; duties of secretary of social and rehabilitation services; injunction.
the secretary determines that an involved adult is in need of protective services, the secretary shall provide the necessary protective services if the adult consents, or if the adult lacks capacity to consent, the secretary may obtain consent from such adult's legal representative. If the involved adult fails to consent and the secretary has reason to believe that the involved adult lacks capacity to consent, the secretary shall determine whether a petition for appointment of a guardian or conservator, or both, should be filed. If such determination is made, the secretary may petition the district court for appointment of a guardian or conservator, or both, for an involved adult pursuant to the provisions of the act for obtaining a guardian or conservator, or both.
(b) If the caretaker or legal representative of an involved adult who has consented to the receipt of reasonable and necessary protective services refuses to allow the provision of such services to the adult, the secretary may seek an injunction enjoining the caretaker or legal representative from interfering with the provision of protective services to the adult. The petition in such action shall allege specific facts sufficient to show that the adult is in need of protective services and consents to their provision and that the caretaker or legal representative refuses to allow the provision of such services. If the judge finds, by clear and convincing evidence, that the adult is in need of protective services and has been prevented by the caretaker or legal representative from receiving such services, the judge shall issue an order enjoining the caretaker or legal representative from interfering with the provision of protective services to the adult. The court may appoint a new legal representative, if the court deems that it is in the best interest of the adult.
39-1438. Same; when protective services not provided. If an involved adult does not consent to the receipt of reasonable and necessary protective services, or if such adult withdraws the consent, such services shall not be provided or continued.

39-1439. Same; district court appointment of attorney to represent involved adult, when. In any proceeding in district court pursuant to provisions of this act, the district court shall appoint an attorney to represent the involved adult if the adult is without other legal representation.

39-1440. Same; review subsequent to authorization of protective services; continuation of protective services; reevaluations. Subsequent to the authorization for the provision of necessary protective services, the secretary shall initiate a review of each case within 60 days to determine where continuation of, or modification in, the services provided is warranted. A decision to continue the provision of such services shall comply with the consent provisions of this act. Reevaluations of the need for protective services shall be made not less than every six months thereafter.

39-1441. Same; authority of secretary of social and rehabilitation services; toll-free telephone number. The authority of the secretary under this act shall include, but is not limited to, the right to initiate or otherwise take those actions necessary to assure the health, safety and welfare of an involved adult, subject to any specific requirements for individual consent of the adult. The secretary may establish a toll-free telephone number for the reporting of instances of abuse, neglect or exploitation under this act.

39-1442. Same; least restrictive actions to be taken. Any actions taken under this act shall be consistent with providing protective services and accommodations in a manner no more restrictive of an individual's personal liberty and no more intrusive than necessary to achieve acceptable and treatment objectives.

39-1443. Investigation of adult abuse; coordination and cooperation between agencies (a). Investigation of adult abuse. The state department of social and rehabilitation services and law enforcement officers shall have the duty to receive and investigate reports of adult abuse, neglect, exploitation or fiduciary abuse for the purpose of determining whether the report is valid and whether action is required to protect the adult from further abuse or neglect. If the department and such officers determine that no action is necessary to protect the adult but that a criminal prosecution should be considered, the department and such law enforcement officers shall make a report of the case to the appropriate law enforcement agency.

(b) Joint investigations. When a report of adult neglect, adult abuse, exploitation or fiduciary abuse indicates (1) that there is serious physical injury to or serious deterioration or sexual abuse or exploitation of the adult and (2) that action may be required to protect the adult, the investigation may be conducted as a joint effort between the department of social and rehabilitation services and the appropriate law enforcement agency or agencies, with a free exchange of information between such
agencies. Upon completion of the investigation by the law enforcement agency, a full report shall be provided to the department of social and rehabilitation services.

(c) **Coordination of investigations by county or district attorney.** If a dispute develops between agencies investigating a reported case of adult abuse, neglect, exploitation or fiduciary abuse, the appropriate county or district attorney shall take charge of, direct and coordinate the investigation.

(d) **Investigations concerning certain facilities.** Any investigation by a law enforcement agency involving a facility subject to licensing or regulation by the secretary of health and environment shall be reported promptly to the state secretary of health and environment, upon conclusion of the investigation or sooner if such report does not compromise the investigation.

(e) **Cooperation between agencies.** Law enforcement agencies and the department of social and rehabilitation services shall assist each other in taking action which is necessary to protect the adult regardless of which party conducted the initial investigation.