

Adult Protective Services Statutes

39-1430. Abuse, neglect or financial exploitation of certain adults; definitions. As used in this act:

- (a) "Act" means K.S.A. 39-1430 et seq., and amendments thereto.
- (b) (1) "Adult" means a person 18 years of age or older alleged to be unable to protect such person's 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 such person's own action or inaction when:
 - (A) Such person is residing in such person's own home, the home of a family member or the home of a friend;
 - (B) such person resides in an adult family home as defined in K.S.A. [39-1501](#), and amendments thereto; or
 - (C) such person is receiving services through:
 - (i) A provider of community services and affiliates thereof operated or funded by the Kansas department for children and families; or
 - (ii) the Kansas department for aging and disability services or a residential facility licensed pursuant to K.S.A. [39-2001](#) et seq., and amendments thereto.
- (2) "Adult" does not include persons to whom K.S.A. [39-1401](#) et seq., and amendments thereto, apply.
- (c) "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; or
 - (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.
- (d) "Neglect" means the failure or omission by one's self, caretaker or another person with a duty to supply or provide goods or services that are reasonably necessary to ensure safety and well-being and to avoid physical or mental harm or illness.
- (e) "Financial exploitation" means the unlawful or improper use, control or withholding of an adult's property, income, resources or trust funds by any other person or entity in a manner that is not for the profit of or to the advantage of the adult. "Financial exploitation" includes, but is not limited to:
 - (1) The use of deception, intimidation, coercion, extortion or undue influence by a person or entity to obtain or use an adult's property, income, resources or trust funds in a manner for the profit of or to the advantage of such person or entity;

(2) the breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust or a guardianship or conservatorship appointment, as it relates to the property, income, resources or trust funds of the adult; or

(3) the obtainment or use of an adult's property, income, resources or trust funds, without lawful authority, by a person or entity who knows or clearly should know that the adult lacks the capacity to consent to the release or use of such adult's property, income, resources or trust funds.

(f) "In need of protective services" means that an adult is unable to provide for or obtain services that are necessary to maintain physical or mental health or both.

(g) "Services that 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 that are necessary to prevent abuse, neglect or financial exploitation. Such protective services include, but are not 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 for children and families.

(k) "Report" means a description or accounting of an incident or incidents of abuse, neglect or financial exploitation under this act and, for the purposes of this act, does not include any written assessment or findings.

(l) "Law enforcement" means the public office that 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 financial exploitation under this act.

(n) "Legal representative," "financial institution" and "governmental assistance provider" mean the same as defined in K.S.A. [39-1401](#), and amendments thereto.

No person shall be considered to be abused, neglected, financially 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.

History: L. 1989, ch. 129, § 1; L. 1998, ch. 200, § 8; L. 2003, ch. 91, § 11; L. 2014, ch. 115, § 167; L. 2018, ch. 71, § 7; L. 2021, ch. 81, § 3; July

39-1431. Same; reporting abuse, neglect or financial exploitation or need of protective services; persons required to report; penalty for failure to report; posting notice of requirements of act. (a) (1) When any of the following persons has reasonable cause to suspect

or believe that an adult is in need of protective services or being harmed as a result of abuse, neglect or financial exploitation, such person shall promptly report the matter as provided by the provisions of this section:

- (A) Persons licensed to practice the healing arts;
 - (B) persons engaged in postgraduate training programs approved by the state board of healing arts;
 - (C) persons licensed by the Kansas dental board to engage in the practice of dentistry;
 - (D) persons licensed by the board of examiners in optometry to engage in the practice of optometry;
 - (E) persons licensed by the board of nursing to engage in the practice of nursing;
 - (F) chief administrative officers of medical care facilities;
 - (G) persons licensed by the behavioral sciences regulatory board to provide mental health services, including psychologists, masters level psychologists, bachelors level social workers, masters level social workers, clinical social workers, marriage and family therapists, clinical marriage and family therapists, professional counselors, clinical professional counselors, behavior analysts, addiction counselors and clinical addiction counselors;
 - (H) teachers, school administrators or other employees of any Kansas educational institution, as defined in K.S.A. [75-53,112](#), and amendments thereto, that the adult is attending;
 - (I) firefighters, law enforcement officers and emergency medical services personnel;
 - (J) court services officers, community corrections officers, case managers appointed under K.S.A. [23-3508](#), and amendments thereto, and mediators appointed under K.S.A. [23-3502](#), and amendments thereto;
 - (K) bank trust officers or any other officers of financial institutions;
 - (L) rehabilitation counselors;
 - (M) legal representatives;
 - (N) governmental assistance providers;
 - (O) independent living counselors;
 - (P) owners or operators of residential care facilities, as defined in K.S.A. [39-2002](#), and amendments thereto;
 - (Q) the chief administrative officer of a licensed home health agency, as defined in K.S.A. [65-5101](#), and amendments thereto;
 - (R) the chief administrative officer of an adult family home, as defined in K.S.A. [39-1501](#), and amendments thereto; and
 - (S) the chief administrative officer of any provider of community services and affiliates thereof operated or funded by the Kansas department for children and families or licensed under K.S.A. [39-2001](#) et seq., and amendments thereto.
- (2) 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.
- (b) Other state agencies receiving reports that are to be referred to the Kansas department for children and families 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 Kansas department for children and families during the normal working week days and hours of operation. Reports shall be made to law enforcement agencies during the time the Kansas department for children and families is not in operation. Law enforcement shall submit the report and appropriate information to the Kansas department for

children and families on the first working day that the Kansas department for children and families is in operation after receipt of such information.

(c) The report made pursuant to this section 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 financial exploitation, the name of the next of kin of the involved adult, if known, and any other information that the person making the report believes might be helpful in the investigation of the case and the protection of the involved adult.

(d) Any other person, not listed in subsection (a) who has reasonable cause to suspect or believe that an adult is being or has been harmed as a result of abuse, neglect or financial exploitation may report such information to the Kansas department for children and families. Reports shall be made to law enforcement agencies during the time the Kansas department for children and families is not in operation.

(e) A person making a report under subsection (a) shall not be required to make a report under K.S.A. [39-1401](#) through [39-1410](#), and amendments thereto.

(f) 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 knowingly causes such report not to be made shall be guilty of a class B misdemeanor.

(g) 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 Kansas department for aging and disability services or other facility licensed under K.S.A. [39-2001](#) et seq., and amendments thereto, and other institutions included in subsection (a).

History: L. 1989, ch. 129, § 2; L. 1998, ch. 200, § 9; L. 2001, ch. 154, § 4; L. 2003, ch. 91, § 12; L. 2014, ch. 115, § 168; L. 2018, ch. 33, § 2; L. 2019, ch. 64, § 5; L. 2021, ch. 81, § 4; July 1.

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 Kansas department for children and families, 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.

History: L. 1989, ch. 129, § 3; L. 2003, ch. 91, § 13; L. 2004, ch. 153, § 1; L. 2014, ch. 115, § 169; July 1.

39-1433. Same; duties of Kansas department for children and families; face-to-face visit; investigation and evaluation; findings referred to appropriate regulating authority, when; information provided to certain persons. (a) The Kansas department for children and families,

upon receiving a report that an adult is being or has been harmed as a result of abuse, neglect or financial exploitation, shall:

- (1) Immediately notify, in writing, the appropriate law enforcement agency when a criminal act has occurred or appears to have occurred;
- (2) make a face-to-face 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; and
 - (C) within five working days for all reports of neglect or financial exploitation when the information from the reporter indicates no imminent danger;
- (3) complete, within 30 working days of receiving a report of abuse or neglect and 60 working days of receiving a report of financial exploitation, 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 the corresponding 30 or 60 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 shall be notified upon completion of the investigation or sooner if such notification does not compromise the investigation; and
- (4) prepare, upon completion of the investigation of each case, a written assessment that shall include an analysis of whether there is or has been abuse, neglect or financial exploitation, recommended action, a determination of whether protective services are needed and any follow-up.
 - (b) The secretary for children and families shall forward any finding of abuse, neglect or financial 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 regulatory authority that regulates such provider.
 - (c) The secretary for children and families shall forward any substantiated finding of abuse, neglect or financial 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 regulatory authority, and such authority may consider the finding in any disciplinary action taken with respect to such provider under the jurisdiction of such authority.
 - (d) The Kansas department for children and families shall inform the complainant, upon request of the complainant, that an investigation has been initiated.
 - (e) The Kansas department for children and families shall inform the chief administrative officers of community facilities licensed pursuant to K.S.A. [39-2001](#) et seq., and amendments thereto, and nursing facilities, nursing facilities for mental health, intermediate care facilities for people with intellectual disability, assisted living facilities, residential healthcare facilities and home plus as defined in K.S.A. [39-923](#), and amendments thereto, of substantiated findings of resident abuse, neglect or financial exploitation.

History: L. 1989, ch. 129, § 4; L. 1998, ch. 200, § 10; L. 2003, ch. 91, § 14; L. 2005, ch. 30, § 1; L. 2014, ch. 115, § 170; L. 2018, ch. 71, § 9; L. 2021, ch. 81, § 5; July 1.

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

(a) The secretary for children and families 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 Kansas department for children and families and as provided in K.S.A. [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.

History: L. 1989, ch. 129, § 5; L. 1997, ch. 161, § 7; L. 2014, ch. 115, § 171; July 1.

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 for children and families 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 Kansas department for children and families 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.

History: L. 1989, ch. 129, § 6; L. 1998, ch. 200, § 11; L. 2014, ch. 115, § 172; July 1.

39-1436. Same; access to relevant records; confidentiality requirements. (a) 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 Kansas department for children and families or a law enforcement agency under this act shall provide the Kansas department for children and families 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 Kansas department for children and families:

- (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 Kansas department for children and families or a law enforcement agency shall have access to all relevant records in accordance with the provisions of subsection (a).

History: L. 1989, ch. 129, § 7; L. 2003, ch. 91, § 15; L. 2004, ch. 153, § 2; L. 2014, ch. 115, § 173; July 1.

39-1437. Same; protective services; duties of secretary of social and rehabilitation services; injunction. (a) If 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.

History: L. 1989, ch. 129, § 8; L. 2003, ch. 91, § 16; July 1.

39-1438. Same; when protective services accepted or declined. If an involved adult does not agree to accept reasonable and necessary protective services, or if such adult states during the course of service delivery that such adult does not want to proceed with such services, such services shall not be provided or continued.

History: L. 1989, ch. 129, § 9; L. 2021, ch. 81, § 6; July 1.

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.

History: L. 1989, ch. 129, § 10; July 1.

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.

History: L. 1989, ch. 129, § 11; L. 1998, ch. 200, § 12; July 1.

39-1441. Same; authority of secretary for children and families; toll-free telephone number. The authority of the secretary under this act includes, 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 financial exploitation under this act.
History: L. 1989, ch. 129, § 12; L. 2021, ch. 81, § 7; July 1.

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. Same; investigation of reports; coordination and cooperation between agencies. (a) The Kansas department for children and families and law enforcement officers shall have the duty to receive and investigate reports of adult abuse, neglect or financial exploitation for the purpose of determining whether the report is valid and whether action is required to protect the adult from further abuse, neglect or financial exploitation. 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) (1) When a report of adult abuse, neglect or financial exploitation indicates that there is serious physical injury to or serious deterioration or sexual abuse or financial exploitation of the adult and that action may be required to protect the adult, the investigation may be conducted as a joint effort between the Kansas department for children and families and the appropriate law enforcement agency or agencies, with a free exchange of information between such agencies.
(2) Upon completion of the investigation by the law enforcement agency, a full report shall be provided to the Kansas department for children and families.
(c) If a dispute develops between agencies investigating a reported case of adult abuse, neglect or financial exploitation, the appropriate county or district attorney shall take charge of, direct and coordinate the investigation.
(d) 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 secretary of health and environment, upon conclusion of the investigation or sooner if such report does not compromise the investigation.
(e) Law enforcement agencies and the Kansas department for children and families shall assist each other in taking action that is necessary to protect the adult regardless of which party conducted the initial investigation.

History: L. 2003, ch. 91, § 1; L. 2014, ch. 115, § 174; L. 2021, ch. 81, § 8; July 1.

Durable Power Of Attorney (DPOA) Statute

58-656. Duties of attorney in fact; relation of attorney in fact to court-appointed fiduciary; death of principal. (a) An attorney in fact who elects to act under a power of attorney is under a duty to act in the interest of the principal and to avoid conflicts of interest that impair the ability of the attorney in fact so to act. A person who is appointed an attorney in fact under a power of attorney who undertakes to exercise the authority conferred in the power of attorney, has a fiduciary obligation to exercise the powers conferred in the best interests of the principal, and to avoid self-dealing and conflicts of interest, as in the case of a trustee with respect to the trustee's beneficiary or beneficiaries. The attorney in fact shall keep a record of receipts, disbursements and transactions made on behalf of the principal and shall not commingle funds or assets of the principal with the funds or assets of the attorney in fact. In the absence of explicit authorization, the attorney in fact shall exercise a high degree of care in maintaining, without modification, any estate plan which the principal may have in place, including, but not limited to, arrangements made by the principal for disposition of assets at death through beneficiary designations, ownership by joint tenancy or tenancy by the entirety, trust arrangements or by will or codicil. Unless otherwise provided in the power of attorney or in a separate agreement between the principal and attorney in fact, an attorney in fact who elects to act shall exercise the authority granted in a power of attorney with that degree of care that would be observed by a prudent person dealing with the property and conducting the affairs of another, except that all investments made on or after July 1, 2003, shall be in accordance with the provisions of the Kansas uniform prudent investor act, K.S.A. [58-24a01](#) et seq., and amendments thereto. If the attorney in fact has special skills or was appointed attorney in fact on the basis of representations of special skills or expertise, the attorney in fact has a duty to use those skills in the principal's behalf.

(b) On matters undertaken or to be undertaken in the principal's behalf and to the extent reasonably possible under the circumstances, an attorney in fact has a duty to keep in regular contact with the principal, to communicate with the principal and to obtain and follow the instructions of the principal.

(c) If, following execution of a durable power of attorney, a court of the principal's domicile appoints a conservator, guardian of the estate or other fiduciary charged with the management of all of the principal's property or all of the principal's property except specified exclusions, the attorney in fact is accountable to the fiduciary as well as to the principal. The fiduciary has the same power to revoke or amend the durable power of attorney that the principal would have had if the principal were not an adult with an impairment in need of a guardian or conservator or both as defined by subsection (a) of K.S.A. [59-3051](#), and amendments thereto.

(d) A principal may nominate by a power of attorney, a guardian or conservator, or both, for consideration by the court. If a petition to appoint a guardian or conservator, or both, is filed, the

court shall make the appointment in accordance with the principal's most recent nomination in the power of attorney, so long as the individual nominated is a fit and proper person.

(e) An attorney in fact shall exercise authority granted by the principal in accordance with the instrument setting forth the power of attorney, any modification made therein by the principal or the principal's legal representative or a court, and the oral and written instructions of the principal, or the written instructions of the principal's legal representative or a court.

(f) An attorney in fact may be instructed in a power of attorney that the authority granted shall not be exercised until, or shall terminate on, the happening of a future event, condition or contingency, as determined in a manner prescribed in the instrument.

(g) On the death of the principal, the attorney in fact shall follow the instructions of the court, if any, having jurisdiction over the estate of the principal, or any part thereof, and shall communicate with and be accountable to the principal's personal representative, or if none, the principal's successors. The attorney in fact shall promptly deliver to and put in the possession and control of the principal's personal representative or successors, any property of the principal and copies of any records of the attorney in fact relating to transactions undertaken in the principal's behalf that are deemed by the personal representative or the court to be necessary or helpful in the administration of the decedent's estate.

(h) If an attorney in fact has a property or contract interest in the subject of the power of attorney or the authority of the attorney in fact is otherwise coupled with an interest in a person other than the principal, this section does not impose any duties on the attorney in fact that would conflict or be inconsistent with that interest.

History: L. 2003, ch. 58, § 7; L. 2009, ch. 73, § 3; July 1.

Source or Prior Law:

58-612.

Mistreatment of Dependent adult Statute

21-5417. Mistreatment of a dependent adult; mistreatment of an elder person. (a)

Mistreatment of a dependent adult or an elder person is knowingly committing one or more of the following acts:

(1) Infliction of physical injury, unreasonable confinement or unreasonable punishment upon a dependent adult or an elder person;

(2) taking the personal property or financial resources of a dependent adult or an elder person for the benefit of the defendant or another person by taking control, title, use or management of the personal property or financial resources of a dependent adult or an elder person through:

(A) Undue influence, coercion, harassment, duress, deception, false representation, false pretense or without adequate consideration to such dependent adult or elder person;

(B) a violation of the Kansas power of attorney act, K.S.A. [58-650](#) et seq., and amendments thereto;

(C) a violation of the Kansas uniform trust code, K.S.A. [58a-101](#) et seq., and amendments thereto; or

(D) a violation of the act for obtaining a guardian or a conservator, or both, K.S.A. [59-3050](#) et seq., and amendments thereto; or

(3) omission or deprivation of treatment, goods or services that are necessary to maintain physical or mental health of such dependent adult or elder person.

(b) Mistreatment of a dependent adult or an elder person as defined in:

(1) (A) Subsection (a)(1) is a severity level 5, person felony, except as provided in subsection (b)(1)(B);

(B) subsection (a)(1) is a severity level 2, person felony, when the victim is a dependent adult who is a resident of an adult care home, as described in subsection (e)(2)(A), during the commission of the offense;

(2) subsection (a)(2) if the aggregate amount of the value of the personal property or financial resources is:

(A) \$1,000,000 or more is a severity level 2, person felony;

(B) at least \$250,000 but less than \$1,000,000 is a severity level 3, person felony;

(C) at least \$100,000 but less than \$250,000 is a severity level 4, person felony;

(D) at least \$25,000 but less than \$100,000 is a severity level 5, person felony;

(E) at least \$1,500 but less than \$25,000 is a severity level 7, person felony;

(F) less than \$1,500 is a class A person misdemeanor, except as provided in subsection (b)(2)(G); and

(G) less than \$1,500 and committed by a person who has, within five years immediately preceding commission of the crime, been convicted of a violation of this section two or more times is a severity level 7, person felony; and

(3) (A) subsection (a)(3) is a severity level 8, person felony, except as provided in subsection (b)(3)(B); and

(B) subsection (a)(3) is a severity level 5, person felony, when the victim is a dependent adult who is a resident of an adult care home, as described in subsection (e)(2)(A), during the commission of the offense.

(c) It shall be an affirmative defense to any prosecution for mistreatment of a dependent adult or an elder person as described in subsection (a)(2) that:

(1) The personal property or financial resources were given as a gift consistent with a pattern of gift giving to the person that existed before the dependent adult or elder person became vulnerable;

(2) the personal property or financial resources were given as a gift consistent with a pattern of gift giving to a class of individuals that existed before the dependent adult or elder person became vulnerable;

(3) the personal property or financial resources were conferred as a gift by the dependent adult or elder person to the benefit of a person or class of persons, and such gift was reasonable under the circumstances; or

(4) a court approved the transaction before the transaction occurred.

(d) No dependent adult or elder person is considered to be mistreated under subsection (a)(1) or (a)(3) for the sole reason that such dependent adult or elder person relies upon or is being furnished treatment by spiritual means through prayer in lieu of medical treatment in accordance with the tenets and practices of a recognized church or religious denomination of which such dependent adult or elder person is a member or adherent.

(e) As used in this section:

(1) "Adequate consideration" means the personal property or financial resources were given to the person as payment for bona fide goods or services provided by such person and the payment was at a rate customary for similar goods or services in the community that the dependent adult or elder person resided in at the time of the transaction.

(2) "Dependent adult" means an individual 18 years of age or older who is unable to protect the individual's own interest. Such term shall include, but is not limited to, any:

(A) Resident of an adult care home including, but not limited to, those facilities defined by K.S.A. [39-923](#), and amendments thereto;

(B) adult cared for in a private residence;

(C) individual kept, cared for, treated, boarded, confined or otherwise accommodated in a medical care facility;

(D) individual with intellectual disability or a developmental disability receiving services through a community facility for people with intellectual disability or residential facility licensed under K.S.A. [39-2001](#) et seq., and amendments thereto;

(E) individual with a developmental disability receiving services provided by a community service provider as provided in the developmental disability reform act; or

(F) individual kept, cared for, treated, boarded, confined or otherwise accommodated in a state psychiatric hospital or state institution for people with intellectual disability.

(3) "Elder person" means a person 60 years of age or older.

(f) An offender who violates the provisions of this section may also be prosecuted for, convicted of, and punished for any other offense in article 54, 55, 56 or 58 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2021 Supp. [21-6418](#), and amendments thereto.

History: L. 2010, ch. 136, § 52; L. 2011, ch. 91, § 33; L. 2012, ch. 91, § 15; L. 2014, ch. 90, § 1; L. 2014, ch. 139, § 1; L. 2018, ch. 112, § 5; L. 2021, ch. 105, § 2; July 1.

Dependent Adult: According to K.S.A. 21-5417, a dependent adult is “an individual 18 years of age or older who is unable to protect the individual’s own interest.” This includes, but is not limited to, an adult who is:

1. A resident of an adult care home;
2. Cared for in a private residence;
3. In a medical care facility;
4. Receiving services through a community or residential facility for people with intellectual disability;
5. Receiving services for developmental disability through a community service provider; or
6. A resident of a state psychiatric hospital or institution for people with intellectual disability.

