

HOUSE BILL NO. _____

By Committee on Judiciary

AN ACT concerning children and minors; establishing the protective parent reform act; amending K.S.A. 2008 Supp. 38-2226 and 38-2230 and repealing the existing sections.

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

New Section 1. (a) This section shall be known and may be cited as the protective parent reform act.

(b) In any proceeding under article 22 of chapter 38 of the Kansas Statutes Annotated and article 16 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, involving child custody and visitation and child in need of care proceedings:

(1) If a parent makes a good faith allegation, based on a reasonable belief supported by facts, that the parent's child is a victim of physical, mental or emotional abuse or neglect or sexual abuse perpetrated or allowed by the other parent and if the parent making the allegation acts lawfully and in good faith in accordance with such belief to protect the child or seek treatment for the child, the parent making the allegation shall not be deprived of custody, visitation or contact with the child based solely on the belief or reasonable actions taken in accordance with such belief.

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

(3) No ex parte communications shall be made between the court and any guardian ad litem

for the child, attorney for the child or other professional participating in the proceeding.

(4) Notwithstanding the provisions of K.S.A. 2008 Supp. 38-2205, and amendments thereto, the role of any guardian ad litem or attorney for the child shall be limited to advocating for the desires of the child and participating in the proceeding by presenting evidence and argument in the same manner as an attorney for the parent. The guardian ad litem or attorney for the child shall not substitute the guardian ad litem or attorney's personal opinion and judgment for the desires of the child or offer evidence which would be excluded if offered by any other party. In no case shall the guardian ad litem or attorney for the child be deemed a quasi-judicial officer or be granted any fact-finding role. Nothing in this paragraph shall be construed to require the appointment of a guardian ad litem or attorney for the child in a proceeding involving child custody and visitation.

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

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

(7) A parent shall not be deprived of custody, visitation or contact with the parent's child based on the opinion of a mental health professional that the parent is at risk of unlawfully fleeing

with the child, unless credible and admissible evidence independent of the mental health professional's opinion establishes that the parent's plan or intent is to flee.

(8) No court-sponsored conciliation, mediation, intake screening or parent education program shall make any recommendation or report to the court regarding custody, visitation or contact with the child unless all parties agree to the making of such recommendations or report. Each parent of the child shall have the right to contest such recommendation or report.

(9) Whenever physical, mental or emotional abuse or neglect or sexual abuse is an issue in the proceeding, no mental health professional who lacks specialized training and experience in the type of such abuse or neglect that is relevant to the specific allegations made shall be appointed by the court to conduct any evaluation in the proceeding.

(8) Admissible evidence of physical, mental or emotional abuse or neglect or sexual abuse shall be considered by the court.

(9) No protection from abuse order issued pursuant to article 31 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, shall be violated by the award of custody, visitation or contact with the child to a parent who is the perpetrator of family violence.

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

same interviewer who conducted the initial interview of the child.

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

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

Sec. 3. K.S.A. 2008 Supp. 38-2226 is hereby amended to read as follows: 38-2226. (a) *Investigation for child abuse or neglect.* The secretary and law enforcement officers shall have the duty to receive and investigate reports of child abuse or neglect for the purpose of determining whether the report is valid and whether action is required to protect a child. Any person or agency which maintains records relating to the involved child which are relevant to any investigation conducted by the secretary or law enforcement agency under this code shall provide the secretary or 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 secretary or law enforcement: (1) A written request for information; and (2) a written notice that the investigation is being conducted by the secretary or law enforcement. If the secretary and such officers determine that no action is necessary to protect the child but that a criminal prosecution should be considered, such law enforcement officers shall make a report of the case to the appropriate law enforcement agency.

(b) *Joint investigations.* When a report of child abuse or neglect indicates: (1) That there is

serious physical harm to, serious deterioration of or sexual abuse of the child; and (2) that action may be required to protect the child, the investigation shall be conducted as a joint effort between the secretary and the appropriate law enforcement agency or agencies, with a free exchange of information between them pursuant to K.S.A. 2008 Supp. 38-2210, and amendments thereto. If a statement of a suspect is obtained by either agency, a copy of the statement shall be provided to the other.

(c) *Investigation of certain cases.* Suspected child abuse or neglect which occurs in an institution operated by the secretary shall be investigated by the attorney general. Any other suspected child abuse or neglect by persons employed by the department of social and rehabilitation services shall be investigated by the appropriate law enforcement agency.

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

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

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

(g) *Cooperation between school personnel and investigative agencies.* (1) Educational institutions, the secretary and law enforcement agencies shall cooperate with each other in the investigation of reports of suspected child abuse or neglect. The secretary and law enforcement

agencies shall have access to a child in a setting designated by school personnel on the premises of an educational institution. Attendance at an interview conducted on such premises shall be at the discretion of the agency conducting the interview, giving consideration to the best interests of the child. To the extent that safety and practical considerations allow, law enforcement officers on such premises for the purpose of investigating a report of suspected child abuse or neglect shall not be in uniform.

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

(h) An investigation by the department of alleged physical, mental or emotional abuse or neglect or sexual abuse reported under this code shall be conducted by a person trained to conduct such a child abuse and neglect investigation. An interview of a child conducted as a result of a report of such abuse or neglect as required under subsection (b) of K.S.A. 2008 Supp. 38-2230, and amendments thereto, shall be videotaped:

(1) By a person trained and competent to conduct the interview; and

(2) if available, at a child advocacy center as described in K.S.A. 2008 Supp. 38-2227, and amendments thereto.

Sec. 4. K.S.A. 2008 Supp. 38-2230 is hereby amended to read as follows: 38-2230. (a) Whenever any person furnishes information to the secretary that a child appears to be a child in need of care, the department shall make a preliminary inquiry to determine whether the interests of the child require further action be taken. Whenever practicable, the inquiry shall include a preliminary investigation of the circumstances which were the subject of the information, including the home

and environmental situation and the previous history of the child. If reasonable grounds to believe abuse or neglect exist, immediate steps shall be taken to protect the health and welfare of the abused or neglected child as well as that of any other child under the same care who may be harmed by abuse or neglect. After the inquiry, if the secretary determines it is not otherwise possible to provide those services necessary to protect the interests of the child, the secretary shall recommend to the county or district attorney that a petition be filed.

(b) In investigations of alleged physical, mental or emotional abuse or neglect or sexual abuse reports under article 22 of chapter 38 of the Kansas Statutes Annotated and articles 35 and 36 of Chapter 21 of the Kansas Statutes Annotated, and amendments thereto, the secretary shall make necessary inquiries about the criminal records of the parents or of the alleged abusive or neglectful person, including, but not limited to, inquiries about the existence of a criminal history record and past reports of the alleged or neglectful person who is being investigated for the offenses involving a child under article 22 of chapter 38 of the Kansas Statutes Annotated and articles 35 and 36 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 5. K.S.A. 2008 Supp. 38-2226 and 38-2230 are hereby repealed.

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