

2021 Kansas 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 1.