Mandatory Reporting of Child Abuse

Model Policies, Procedures, and Guidance for Kansas Sexual and Domestic Violence Advocacy Programs



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Table of Contents

Mandatory Reporting of Child Abuse Model Policy	3
Sample Procedures.	5
Sample Employment and Hiring Policies.	9
Confidentiality & Mandatory Reporting Disclosure Examples	10
Additional Information about Mandatory Reporting & Child Abuse Investigations	12
Frequently Asked Questions	17
Common Terms Used in the Child Protection System.	20
Kansas Statute 38-2223. Reporting of certain abuse or neglect of children; persons reporting; reports, made to whom; penalties; immunity from liability	27
SRS Children & Family Services Case Progression Maps (PDF version only)	29

Mandatory Reporting of Child Abuse

Model Policy

Note: This model policy is intended be used by Kansas domestic violence and sexual assault advocacy programs in conjunction with the program's confidentiality policy (see KCSDV Model Confidentiality Policy for more guidance).

"Mandatory reporting" in the context of child abuse is a legal requirement for certain professionals. Kansas law requires certain professionals to promptly report when they have reason to suspect that a child has been harmed because of physical, mental or emotional abuse, neglect, or sexual abuse.

The intent of [program name] is to provide safety and support for both adult and child survivors of domestic violence, dating violence, sexual assault, and stalking (survivors), and to that end, nothing in this policy would forbid any staff or volunteer from intervening or otherwise addressing child abuse.

[Program name] follows all state and federal laws. [Program name] is funded under the federal Violence Against Women Act (VAWA) and receives other funding requiring it to adhere to certain standards of confidentiality. The policy of [program name] is to follow the confidentiality provisions of VAWA, the Family Violence Prevention and Services Act (FVPSA), and the Victims of Crime Act (VOCA) (hereinafter referred to as *the confidentiality provisions*) which prohibits sexual and domestic violence programs receiving VAWA, FVPSA, or VOCA funding from disclosing survivors' personally identifying information or individual information collected in connection with services requested, utilized, or denied; or from revealing individual survivor information without the informed, written, reasonably time-limited consent of that person.² Survivor information can also be released when required by statute or court mandate.³

Domestic violence and sexual assault advocates are not included in the definition of mandated reporters of child abuse as defined by Kansas statute. Due to the confidentiality provisions, staff and volunteers of [program name] who are not mandated reporters are prohibited from revealing survivors' individual information without that person's informed, written, reasonably time-limited consent to the release of that information, even in situations that would require mandated reporters to make a report of suspected child abuse.

An advocate may be a mandated reporter and required by statute to release survivor information in situations of suspected child abuse if the advocate is also a licensed professional or is otherwise engaged in certain professions. Staff or volunteers of [program name] who are mandated reporters of child abuse as defined by Kansas law and who have reason to suspect that

Comment [at1]: interesting statement

¹ KAN. STAT. ANN. § 38-2223(a)(1) (Supp. 2011).

² 42 U.S.C. §§ 13925(b)(2)(A)-(D) (2006); 42 U.S.C. § 10406(c)(5) (2006 & Supp. 2010); 42 U.S.C. § 10604(d) (2006) (requires the person's *consent* to any release of information at this point).

³ 42 U.S.C. §§ 13925(b)(2)(A)-(D); 42 U.S.C. § 10406(c)(5)

a child has been harmed as a result of physical, mental or emotional abuse, neglect, or sexual abuse shall report the matter promptly in accordance with K.S.A. 38-2223.

Regardless of whether a staff or volunteer is a mandated reporter of child abuse, [program name] will address issues related to child abuse by providing appropriate advocacy and program services that enhance the safety and support of survivors and their children.

If any staff or volunteer of [program name] believes that they are a mandated reporter of child abuse or are uncertain as to whether they are a mandated reporter of child abuse, they should immediately consult with their direct supervisor or the executive director.

All staff and volunteers of [program name] shall acknowledge their agreement to adhere to the [mandatory reporting of child abuse policy] by signing a copy of the policy.

Sample Procedures

Sample 1: For staff and volunteers who are not mandated reporters of child abuse

Staff and volunteers of [program name] who are not mandated reporters of child abuse shall:

- 1. Act to protect survivors' right to autonomy, privacy, and confidentiality to the greatest extent possible by adhering to the confidentiality provisions and the confidentiality policy of [program name].
- 2. Inform all survivors upon first contact of [program name]'s confidentiality policy and obligations, including [program name]'s child abuse reporting policy and mandatory reporting obligations. This shall occur *before* the survivor makes any disclosures.
- 3. Inform survivors that if information is provided to a mandated reporter that gives that person reason to suspect that a child has been harmed because of physical, mental or emotional abuse, neglect or sexual abuse, that a report of that matter must be promptly made by the mandated reporter to the Kansas Department of Social and Rehabilitation Services (SRS) as required by Kansas law.
- 4. Address child abuse-related concerns by providing direct intervention and ongoing advocacy, resources, and referrals that enhance safety and support for survivors and their children. This may include, but is not limited to:
 - a. Safety planning;
 - b. Safe housing;
 - c. Emergency and crisis intervention;
 - d. Support group;
 - e. Individual advocacy;
 - f. Advocacy related to SRS investigations, the investigative process, and survivors' rights;
 - g. Court advocacy (e.g., PFA/PFS, CINC court, criminal court, divorce and custody court);
 - h. Information and support on parenting, enhancing resiliency in children, and strengthening mother/child bonds; and
 - Referrals to community resources as appropriate to the survivor's and child's needs (e.g., counseling, parent-child support programs, child mentor programs, legal assistance). Always inform survivors that these referral sources may be mandated reporters and discuss any potential consequences of working with the specific community resources.
- 5. Discuss with survivors the option of making a self-report to SRS when there are child abuse-related concerns, including what to expect once a report to SRS is made.
- 6. Discuss with survivors potential consequences of not self-reporting the information to SRS when there are child abuse-related concerns. This may include, but is not limited to:
 - a. Implications to child custody for knowing about the abuse, but failing to report the abuse;
 - b. Criminal sanctions of knowing about the abuse, and continuing to place the child in harm:
 - Legal obligations to inform the other parent when residing with a registered sex offender; and

d. Implications of third-party reporting versus self-reporting (i.e., school counselor learns about the abuse and makes a report to SRS).

Sample 2: For staff and volunteers who are mandated reporters of child abuse

Staff and volunteers of [program name] who are mandated reporters of child abuse shall:

- Act to protect survivors' right to autonomy, privacy, and confidentiality to the greatest extent possible by adhering to the confidentiality provisions and the confidentiality policy of [program name].
- 2. Inform all survivors upon first contact of [program name]'s confidentiality policy and obligations, including [program name]'s child abuse reporting policy and mandatory reporting obligations. This shall occur *before* the survivor makes any disclosures.
- 3. Inform survivors that if information is provided to a mandated reporter that gives that person reason to suspect that a child has been harmed because of physical, mental or emotional abuse, neglect or sexual abuse, that a report of that matter must be promptly made by the mandated reporter to the Kansas Department of Social and Rehabilitation Services (SRS) as required by Kansas law.
- 4. Address child abuse-related concerns by providing direct intervention and ongoing advocacy, resources, and referrals that enhance safety and support for survivors and their children. This may include, but is not limited to:
 - a. Safety planning;
 - b. Safe housing;
 - c. Emergency and crisis intervention;
 - d. Support group;
 - e. Individual advocacy;
 - f. Advocacy related to SRS investigations, the investigative process, and survivors' rights;
 - g. Court advocacy (e.g., PFA/PFS, CINC court, criminal court, divorce and custody court);
 - h. Information and support on parenting, enhancing resiliency in children, and strengthening mother/child bonds; and
 - Referrals to community resources as appropriate to the survivor's and child's needs (i.e., counseling, parent-child support programs, child mentor programs, legal assistance). Always inform survivors that these referral sources may be mandated reporters and discuss any potential consequences of working with the specific community resources.
- 5. Abide by K.S.A. 38-2223 and the reporting requirements of mandated reporters of child abuse when there is reason to suspect that a child has been harmed because of physical, mental or emotional abuse, neglect or sexual abuse.
- 6. Prior to making a child abuse report and as circumstances allow, immediately consult with their direct supervisor or the executive director.
- Notify survivors' immediately when a report of suspected child abuse must be made, expect when doing so may put the child in danger.
 - a. Inform survivors that by Kansas law, a report needs to be made to SRS based on the information that gives the mandated reporter reason to suspect that a child has

- been harmed because of physical, mental or emotional abuse, neglect or sexual abuse. Reasonable attempts shall be made by the mandated reporter to provide notice to the survivor affected by the disclosure of information, and the necessary steps shall be taken to protect the privacy and safety of the survivor affected by the release of information.⁴
- b. Inform the survivor about what exact information will be disclosed to SRS. When information is released under these circumstances, only the minimum amount of information necessary to meet the statutory mandate shall be released. Any information not required to be disclosed by law shall only be shared when the survivor provides an informed, written, reasonably time-limited consent to the release of the information or upon a court order. The mandated reporter shall not make attempts to gather additional information that is not known or other evidence, and shall not release information that is not pertinent to the suspected child abuse. SRS will complete a thorough investigation of the report and will gather any additional information and evidence necessary. (See 8. f. below for specific information that by law is to be disclosed if it is known by the mandated reporter).
- c. Discuss with the survivor what to expect once a report of child abuse is made.
- d. Provide the survivor with the option of self-reporting, with the support and assistance of the mandated reporter.
 - If the survivor chooses to self-report, the mandated reporter shall assist the survivor in preparing to make the report, including what information needs to be provided. It is the mandated reporter's responsibility to ensure that the report is made.
- 8. When required by law, make a report of child abuse using the following information:
 - a. Reports are to be made to SRS.⁵ Reports may be made 24 hours a day, seven days a week, to the Protection Reporting Center (PRC) at 1-800-922-5330 or online at: http://www.srs.ks.gov/agency/ees/Pages/KIPSWebIntake.aspx.
 - b. If SRS is not open, the report is to be made to law enforcement and law enforcement is required to make a report to SRS when it is open.⁶
 - c. Reports of child abuse or neglect occurring at an institution operated by SRS or the commissioner of juvenile justice are to be made to the attorney general.⁷
 - d. Any other reports of child abuse or neglect by persons employed by or children of persons employed by SRS are to be made to law enforcement.⁸
 - e. Reports are to be made orally, but must be followed by a written report if requested.⁹
 - f. Mandated reporters must provide the following information, if it is known:
 - i. Names and addresses of the child and the child's parents or guardians
 - ii. The location of the child
 - iii. The gender, race and age of the child

⁴ 42 U.S.C. §§ 13925(b)(2)(A)-(D).

⁵ KAN. STAT. ANN. § 38-2223(c) (Supp. 2011).

⁶ KAN. STAT. ANN. § 38-2223(c)(1) (Supp. 2011).

⁷ KAN. STAT. ANN. § 38-2223(c)(1) (Supp. 2011).

⁸ *Id*.

⁹ KAN. STAT. ANN. § 38-2223(b)(1) (Supp. 2011).

- iv. The reasons why the reporter suspects the child may be a child in need of care
- v. If abuse, neglect or sexual abuse is suspected, the nature and extent of the harm to the child, including any evidence of previous harm
- vi. Any other information that may be useful in establishing the cause of the harm and identity of the person responsible for the harm
- vii. Mandated reporters are to disclose protected health information freely and fully cooperate with SRS and law enforcement throughout the investigation. ¹⁰

 $^{^{10}}$ Kan. Stat. Ann. \S 38-2223(b)(1) (Supp. 2011).

Sample Employment and Hiring Policies

Sample 1: Program will not employ mandated reporters.

Comment [at2]: is this legal?

It is the policy of [program name] to not hire or employ staff or volunteers who are mandated reporters of child abuse as defined by K.S.A. 38-2223.

Sample 2: Program will limit mandated reporters' contact with clients.

It is the policy of [program name] that any staff or volunteers who are mandated reporters of child abuse as defined by K.S.A. 38-2223 will not work directly with clients.

<u>Sample 3:</u> Program will employ mandated reporters and will follow the confidentiality provisions and best practices with disclosures and clients' service rights.

It is the policy of [program name] to provide close supervision to all staff and volunteers who are mandated reporters of child abuse and to the extent possible, provide supervision and guidance prior to any staff or volunteer making a mandated report of child abuse. All supervisors of mandated reporters are required to understand the provisions of Kansas law related to mandatory reporting of child abuse.

All staff or volunteers of [program name] who are mandated reporters of child abuse as defined by Kansas law shall immediately disclose such reporting requirements to all clients before a client discloses any information. All clients will be given the opportunity to work with another staff or volunteer who is not a mandated reporter of child abuse. In the event that a mandated report of child abuse is necessary, the mandated reporter shall inform the client that a report is required and is being made.

Confidentiality & Mandatory Reporting Disclosure Examples

Note: This conversation should occur prior to survivors disclosing any information.

1. Tell the survivor that you need to review a few things prior to any information being shared.

"Before you share anything with me, I need to tell you a few things about our services and policies so that you have the information you need to make the best decisions for yourself and your children. Once we are finished reviewing this information, we can talk about your situation and how we may be able to help. If you have any questions or need me to explain anything, please let me know. I do want to let you know before we get started that your safety is our priority, and it is always your right to end this meeting or refuse services at any time without any repercussions."

2. Disclose [program name]'s confidentiality policy.

"First, I need to discuss [program name] confidentiality policies with you. [Program name] will not disclose any information about you or your situation without your informed consent in writing. This means that we cannot share any information about you with other agencies and professionals, your family and friends, or anyone else. We will also never ask that you sign releases of information as a condition of services. However, there are two situations where [program name] may have to release information about you. The first way is if the release of your information is required by law. The second way is if the release of your information is required by a court order." (See 3. below, disclosing your mandatory reporting obligations).

3. Immediately disclose your mandatory reporting obligations.

Mandated Reporter: "An example of where the release of your information may be required by law is mandatory reporting of child abuse. Because of my [licensure, profession] I am a mandated reporter of child abuse by law. What that means is that if I am told information that gives me reason to suspect or believe that a child has been harmed because of physical, mental or emotional abuse, neglect or sexual abuse, that I must report that information to SRS (specifically, the Kansas Department of Social and Rehabilitation Services Children and Family Services division). However, just because I am a mandated reporter does not mean that all advocates, staff, and volunteers are. It is your right to request to meet with someone that is not a mandated reporter of child abuse if you feel that it is safest for you to do so."

Non-Mandated Reporter: "An example of where the release of your information may be required by law is mandatory reporting of child abuse. I am not a mandated reporter; however by Kansas law, certain professionals, such as licensed social workers, are mandated reporters of child abuse. Advocates are not mandated reporters unless they are licensed professional or otherwise engaged in certain professions listed in the Kansas law. When information is provided to a mandated reporter that gives that person reason to suspect that a child has been harmed because of physical, mental or emotional abuse, neglect or sexual abuse, a report of that matter must be promptly made to SRS (specifically, the

Kansas Department of Social and Rehabilitation Services Children and Family Services division). [Disclose if [program name] employs any staff or volunteers who are mandated reporters of child abuse]."	
Page 11 Kansas Coalition Against Sexual and Domestic Violence	

Additional Information about Mandatory Reporting & Child Abuse Investigations

Confidentiality and Mandatory Reporting

Domestic violence and sexual assault advocacy programs that receive federal Violence Against Women Act (VAWA) funds, Family Violence Prevention and Services Act (FVPSA) funds, or Victims of Crime Act (VOCA) funds are prohibited from disclosing survivors' individual information or personally identifying information that they collect.

In limited circumstances, advocacy programs can release survivor information. Advocacy programs can release information if the survivor provides informed, written, reasonably time-limited consent to the release of the information. ¹² The only other situation where an advocacy program can release survivor information is when required by statutory or court mandate. ¹³ In situations where the advocacy program is required to reveal survivor information by statutory or court mandate, the advocacy program should notify the survivor of the disclosure and take steps to continue to protect their safety and privacy. 14

It is essential for advocacy programs to understand mandatory reporting of child abuse requirements under Kansas law. Mandatory reporting in the context of child abuse is a legal requirement for certain professionals to promptly report when they have reason to suspect that a child has been harmed because of physical, mental or emotional abuse, neglect or sexual abuse. 15 Domestic violence and sexual assault advocates are not included on the list of mandated reporters of child abuse, and therefore the VAWA, FVPSA, and VOCA confidentiality provisions (hereinafter referred to as the confidentiality provisions) prohibit the disclosure of identifying information.¹⁶ However, some advocacy program staff may be mandated reporters if they are also engaged in certain professions. For example, if an advocacy program employs a licensed social worker, that employee must report child abuse because Kansas law requires that licensed social workers are to be mandated reporters of child abuse.

Who are mandated reporters?

Mandatory reporting requirements are not imputed to all other staff members. If one staff member is a mandated reporter of child abuse, she or he must comply with statutory reporting requirements but other staff members do not. An advocacy program staff member is only a mandated reporter of child abuse if their profession is listed in the Kansas statue requiring certain professionals be mandated reporters of child abuse. These professions are:

- Persons licensed to practice the healing arts, dentistry, and optometry
- Persons engaged in postgraduate training programs approved by the state board of healing arts
- Licensed professional or practical nurses

^{11 42} U.S.C. §§ 13925(b)(2)(A)-(D) (2006); 42 U.S.C. § 10406(c)(5) (2006 & Supp. 2010); 42 U.S.C. § 10604(d) (2006). ¹² 42 U.S.C. §§ 13925(b)(2)(A)-(D); 42 U.S.C. § 10406(c)(5).

¹³ *Id*.

¹⁵ KAN. STAT. ANN. § 38-2223(a)(1) (Supp. 2011).

¹⁶ See 42 U.S.C. §§ 13925(b)(2)(B)-(C) (2006).

- Chief administrative officers of medical care facilities
- Licensed psychologists
- Licensed masters level psychologists
- Licensed clinical psychotherapists
- Licensed social workers
- Licensed marriage and family therapists
- Licensed clinical marriage and family therapists
- Licensed professional counselors
- Licensed clinical professional counselors
- Registered alcohol and drug abuse counselors
- Teachers
- School administrators
- Other employees of an educational institution where the child is attending
- Persons licensed by the secretary of health and environment to provide child care
- Employees of persons licensed to provide child care at the place where child care is provided
- Firefighters
- Emergency medical services personnel
- Law enforcement officers
- Juvenile intake and assessment workers
- Court services officers
- Community corrections officers
- Case managers appointed under Kansas law
- Mediators appointed under Kansas law
- Employees and volunteers for organizations providing social services to pregnant teenagers, such as, counseling, adoption services and pregnancy education and maintenance.17

What is the legal definition of child abuse and neglect?

It is important to know the definitions of physical, mental or emotional abuse, neglect and sexual abuse when making decisions regarding mandatory reporting of child abuse. Mandated reporters must consider whether there is reason to suspect that the following actions have caused harm to a child.

Physical, Mental or Emotional Abuse: causing physical, mental or emotional harm. It includes causing a child's deterioration, by maltreating the child or exploiting the child and causing the endangerment of the child's health or emotional well-being. Mental or emotional abuse also includes acts, behaviors, or omissions that impair or endanger the social or intellectual functioning of a child. Examples include terrorizing a child, emotionally abandoning a child, and corrupting a child.¹⁸

¹⁷ Kan. Stat. Ann. § 38-2223(a)(1) (Supp. 2011).

Neglect: "acts or omissions by a parent, guardian or person responsible for the care of a child resulting in harm to a child, or presenting a likelihood of harm, and the acts or omissions are not due solely to the lack of financial means of the child's parents or other custodian. Neglect may include, but shall not be limited to:

- (1) Failure to provide the child with food, clothing or shelter necessary to sustain the life or health of the child;
- (2) failure to provide adequate supervision of a child or to remove a child from a situation which requires judgment or actions beyond the child's level of maturity, physical condition or mental abilities and that results in bodily injury or a likelihood of harm to the child; or
- (3) failure to use resources available to treat a diagnosed medical condition if such treatment will make a child substantially more comfortable, reduce pain and suffering, or correct or substantially diminish a crippling condition from worsening. A parent legitimately practicing religious beliefs who does not provide specified medical treatment for a child because of religious beliefs shall not for that reason be considered a negligent parent; however, this exception shall not preclude a court from entering an order pursuant to subsection (a)(2) of K.S.A. 38-2217, and amendments thereto."

<u>Sexual Abuse</u>: "any contact or interaction with a child in which the child is being used for the sexual stimulation of the perpetrator, the child or another person. Sexual abuse shall include allowing, permitting or encouraging a child to engage in prostitution or to be photographed, filmed or depicted in pornographic material." Sexual abuse includes "contact solely between children only if the contact involves force, intimidation, difference in maturity, or coercion."

What if a mandated reporter does not comply with reporting requirements?

Willful and knowing failure to make a report is a class B misdemeanor. It is not a defense that another mandated reporter made a report.²² Intentionally preventing or interfering with the making of a report required by statute is also a class B misdemeanor.²³

What happens once a report of child abuse is made?

Once a report of suspected child abuse is made, the Kansas Department of Social and Rehabilitation Services (SRS) will determine whether further assessment or investigation is necessary. If further assessment or investigation is necessary, a SRS Children and Family Services (CFS) worker will attempt to locate and interview the child. SRS may interview the child at the child's school.²⁴ The SRS CFS worker will then contact the child's parents or guardians and explain what has been reported. The response time varies depending on the nature of the report. Most response times by SRS are either same day or within 72 hours. Information will be gathered to determine whether abuse or neglect has occurred or is in danger of occurring. The SRS CFS worker may talk to the child, family members, or others to help assess the situation. The SRS CFS worker will then work with the parents or guardians of the child to complete a family assessment, which is a tool used to identify family strengths and potential

¹⁹ Kan. Stat. Ann. § 38-2202(t) (Supp. 2011).

²⁰ KAN. STAT. ANN. § 38-2202(dd) (Supp. 2011).

²¹ KAN. ADMIN. REGS. § 30-46-10(j) (Supp. 2011).

²² KAN. STAT. ANN. § 38-2223(e)(1) (Supp. 2011).

²³ KAN. STAT. ANN. § 38-2223(e)(2) (Supp. 2011).

²⁴ KAN. STAT. ANN. § 38-2226(g) (Supp. 2011).

sources of support. SRS may work with the parents or guardians or other family members to develop a plan of care to protect the child, and make referrals to other community agencies and supports. This process typically happens for all reports that are assigned for further assessment.

In some cases, the SRS CFS worker will work in conjunction with a law enforcement officer, but law enforcement will not be involved in all cases. SRS is required to report sexual abuse, serious physical injury, or possible crime to the county or district attorney, but it is that attorney's decision whether to file a civil petition (typically a Child in Need of Care (CINC) petition) or criminal charges. SRS also reports all substantiated findings to the county or district attorney. If a CINC petition is filed, the court will hold a hearing and the parents or guardians may appear with an attorney. SRS may be a witness, but SRS has no authority or control over court decisions.25

What is the difference between an unsubstantiated and substantiated Case Finding?

After investigating the child's safety, SRS will make a Case Finding regarding the allegations. The purpose of the Case Finding is to determine if the identified perpetrator should be permitted to reside, work, or regularly volunteer in a child care facility that is licensed by the Kansas Department of Health and Environment (KDHE) and placed on the Central Registry. A Case Finding is not intended to validate that a situation did or did not occur. Case Findings are not related to criminal or Child In Need of Care (CINC) proceedings, and are not intended to be used in favor of or against either parent in custody determination. A Case Finding shall be made within 25 working days from the date the report was accepted for assessment unless a delay is requested by law enforcement, a county or district attorney, the court, health care professionals, mental health professionals or for similar exceptional circumstances documented in the case file.²⁶

An unsubstantiated finding means that either 1) the facts or circumstances do not provide clear and convincing evidence to meet the legal definition of abuse or neglect; or 2) there is clear and convincing evidence that abuse or neglect did occur based on the K.S.A. and K.A.R. definition, but there is not clear and convincing evidence to conclude that the perpetrator should not be permitted to reside, work, or regularly volunteer in a child care facility. ²⁷ An unsubstantiated finding does not mean the abuse or neglect did not occur. ²⁸

A substantiated finding means that 1) the facts or circumstances provide clear and convincing evidence to conclude abuse or neglect did occur based on the legal definition of abuse or neglect; and 2) the facts or circumstances provide clear and convincing evidence to conclude the alleged perpetrator's actions or inactions caused the identified harm to the child and the perpetrator should not be permitted to reside, work, or regularly volunteer in a child care facility. 29

 $^{^{25}}$ Kan. Dep't of Soc. & Rehab. Serv., What You Need to Know about Investigations of Child Abuse or NEGLECT (2009).

²⁶ KAN. DEP'T OF SOC. & REHAB. SERV., CHILDREN AND FAMILY SERVICES: POLICY AND PROCEDURE MANUAL § 2511 (2009) available at http://www.srskansas.org/CFS/robohelp/PPMGenerate/. ²⁷ KAN. DEP'T OF SOC. & REHAB. SERV., CHILDREN AND FAMILY SERVICES: POLICY AND PROCEDURE MANUAL §

^{2502 (2009)} available at http://www.srskansas.org/CFS/robohelp/PPMGenerate/.

²⁸ KAN. DEP'T OF SOC. & REHAB. SERV., WHAT YOU NEED TO KNOW ABOUT INVESTIGATIONS OF CHILD ABUSE OR NEGLECT (2009). ²⁹ *Id*.

If the evidence supports a substantiated finding, the person identified as responsible for the abuse or neglect will have their name placed on a statewide list of substantiated perpetrators known as the Central Registry, making them unable to work, reside, or volunteer in a facility regulated by KDHE.

Will SRS remove the child?

SRS expects children to remain with their parents or guardians whenever the child's safety is not at risk. The child will be removed from the home in the most serious situations and if the parents or guardians are unable to protect the child themselves. SRS may not remove the child from a location without a court order giving temporary custody of the child to SRS or another person.

SRS can contact law enforcement if the child is in immediate physical danger. A law enforcement officer is authorized to remove the child from the location without a court order if the officer reasonably believes that the child is in imminent danger. When any law enforcement officer takes a child into custody without a court order, the child must be delivered to the custody of the parent or caregiver unless there is reason to believe that it would not be in the best interest of the child. If the child is not delivered to the custody of the parent or caregiver, the child must be delivered to a facility or person designated by SRS or to a court-designated shelter or person. A court hearing is required within 72 hours (not including weekends or holidays) to determine if the child can be returned home.

Frequently Asked Questions

The following is intended to help advocacy programs think through situations regarding mandatory reporting of child abuse that may not have clear "yes" or "no" answers. Each situation is unique and should be considered and handled as such.

What if a supervisor is a mandated reporter of child abuse as defined by Kansas statute? If a supervisor who is a mandated reporter of child abuse learns of information that gives that person reason to suspect that a child has been harmed because of physical, mental or emotional abuse, neglect or sexual abuse, then it is that supervisor's responsibility to ensure that a report is made to SRS, regardless of whether the information is learned from a third party. This applies to volunteers and any other staff who are mandated reporters as defined by Kansas statute. In situations where the mandated reporter is required to reveal survivor information in order to comply with mandatory reporting requirements, the advocacy program should notify the survivor of the disclosure and take steps to continue to protect their safety and privacy. Onsider appointing someone knowledgeable in this issue who is not a mandated reporter of child abuse as the supervision provider in these situations. Have policies in place that specify the chain of command for which staff and volunteers can seek supervision.

Are social work students or interns mandated reporters of child abuse?

Social work students and interns are not mandated reporters of child abuse as defined by Kansas law. People who have a social work education or background are not mandated reporters of child abuse unless that person is also licensed by the Kansas Behavioral Sciences Regulatory Board (BSRB). However, social work interns may be instructed by their professors to report suspected child abuse while completing their internship or practicum. Advocacy programs should consult with the school faculty practicum liaison when considering social work student placements or internships to ensure that mandatory reporting of child abuse expectations are clear and understood.

Are there benefits to using the online reporting option?

Reports of suspected child abuse by mandated reporters can now be made online at: http://www.srs.ks.gov/agency/ees/Pages/KIPSWebIntake.aspx. This reporting option may be preferable for domestic violence and sexual assault advocacy programs that employ mandated reporters of child abuse, as it allows advocates who are mandated reporters the opportunity to think through their responses to the questions asked to ensure accurate information is provided and confidentiality provisions and policies followed. The online reporting form may ask questions that are outside the scope of what state law requires of mandated reporters to be released. Therefore, all mandated reporters of child abuse should be familiar with the reporting requirements of K.S.A. 38-2223 and only release the amount of information necessary to meet those requirements. It is also important to note that with the online reporting form, some fields are required to be filled in or the form will not submit. If information is unavailable for one of the required fields, the mandated reporter should indicate that by typing "N/A" into that field.

30

³⁰ 42 U.S.C. §§ 13925(b)(2)(A)-(D) (2006).

What do I do if a child discloses child abuse?

If a child discloses abuse, it is most important to remain calm and not overreact. An overreaction on the part of a trusted adult can lead the child to feel at fault or as though the child did something wrong. Instead, acknowledge the child's disclosure and validate the child's feelings. Let the child know that what happened is not and was not their fault. Determine the child's immediate need for safety. If appropriate, let the child know that it is important that their mother know of the information, and consider asking the child whether they would like to tell their mother with the advocate present for support. Work with the mother and child to provide advocacy services that enhance safety and lessen the impact of abuse on the child and the family.

What if I am giving a presentation to children and youth and someone discloses child abuse? It is not uncommon for children and youth to disclose abuse after seeing a presentation about abuse and violence. Always prepare ahead of time for this possibility by coordinating how disclosures will be handled. If other agencies or organizations are involved in the planning of the presentation (e.g., schools), it is important to talk with personnel from those agencies or organizations ahead of time about how they expect disclosures of child abuse to be handled. Inform other agencies and organizations about advocacy programs' confidentiality policies and obligations. This conversation may help guide how you decide to proceed with the planning of the presentation. In most presentation settings, it is best practice to have someone knowledgeable in these issues available to provide support to anyone who may need to talk.

If a child engaged in consensual sexual activity, is it considered sexual abuse?

Mandated reporters are required to report the sexual activity of a child when there is reason to suspect that a child has been harmed because of sexual abuse.³¹ Accordingly, one must determine both whether the child was harmed by the sexual activity and whether the sexual activity is considered sexual abuse. To determine whether the sexual contact is considered sexual abuse, refer to the definition of sexual abuse. Kansas law specifies that when sexual contact occurs between children it should only be considered sexual abuse in cases in which there is force, intimidation, coercion, or difference in maturity.³² If the sexual activity of the child harmed the child and is sexual abuse, and you are a mandated reporter as defined by Kansas statute, then you are mandated to report that activity to SRS even if the child identifies the activity as consensual.

What if I have concerns for a survivor's child?

If you have concerns for a survivor's child, consider her circumstances and immediately address the situation with her in private. Assess the child's immediate need for safety. Consider that the survivor may be overwhelmed because of current life changes, or perhaps she assumes because it is communal living that others may be tending to her child's needs. Advocacy program shelters often operate at capacity. This dynamic alone makes adjusting to shelter living difficult for anyone. Talk frankly with the survivor about your concerns and all the possible consequences of the situation. Find out what happened and what the survivor's and her child's needs are. If appropriate, consider making an agreement with the survivor that assists her in improving the circumstances. Any agreement should include assistance and support to the survivor by an advocate on issues related to positive parenting, enhancing resiliency, and building bonds. Work

³² KAN. ADMIN. REGS. § 30-46-10(j) (Supp. 2010).

³¹ Kan. Stat. Ann. § 38-2223 (Supp. 2011).

with the mother and child to provide advocacy services that enhance safety and lessen the impact of abuse on the child and the family. Discuss with the survivor referrals to other community agencies as appropriate and specific to the survivor's and her child's needs. Advocacy does not mean that you do nothing when you have concerns for a survivor's child, regardless of whether a child abuse report has been made.

Comment [at3]: interesting statement

Note: Nothing in this guide prohibits advocacy programs from intervening in crisis and emergency situations.

For more information or for technical assistance, call the Kansas Coalition Against Sexual and Domestic Violence at (785) 232-9784.

Common Terms Used in the Child Protection System³³

A

Abuse

Physical Abuse means the infliction of physical harm on a child or the causation of a child's deterioration, or the likelihood of harm or deterioration.

Sexual Abuse: Any contact or interaction with a child in which the child is being used for the sexual stimulation of the perpetrator, the child, or another person. Sexual abuse shall include allowing, permitting, or encouraging a child to engage in prostitution or to be photographed, filmed, or depicted in obscene or pornographic material. Contact solely between children shall meet the criteria only if the contact also involves force, intimidation, difference in maturity, or coercion. (K.A.R. 30-46-10).

Mental or Emotional Abuse means the infliction of mental or emotional harm to a child or the causation of a child's deterioration. This term may include, but shall not be limited to, maltreatment or exploitation of a child to the extent the child's health is likely to be harmed. This term may include the following:

- terrorizing a child, by creating a climate of fear or engaging in violent or threatening behavior toward the child or toward others in the child's presence that demonstrates a flagrant disregard for the child;
- emotionally abandoning a child, by being psychologically unavailable to the child, demonstrating no attachment to the child, or failing to provide adequate nurturance of the child;
- corrupting a child, by teaching or rewarding the child for unlawful, antisocial, or sexually mature behaviors.

Physical Neglect means any act or omission by a parent, guardian or person responsible for the care of a child resulting in harm to a child or presenting a likelihood of harm and the acts or omissions are not due solely to the lack of financial means of a child's parent or other custodian. This term may include but shall not be limited to: failure to provide the child with food, clothing, or shelter necessary to sustain the life or health of the child. (K.A.R. 30-46-10).

Medical Neglect means any act or omission by a parent, guardian, or person responsible for the care of a child resulting in harm to a child or presenting a likelihood of harm and the acts or omissions are not due solely to the lack of financial means of a child's parent or other custodian. This term may include the following:

failure to use resources available to treat a diagnosed medical condition if the treatment will make the child substantially more comfortable, reduce pain and suffering, correct or substantially diminish a crippling condition, or prevent the condition from worsening.

³³ KAN. DEP'T OF SOC. & REHAB. SERV., CHILDREN AND FAMILY SERVICES: POLICY AND PROCEDURE MANUAL § 0160 (2009) available at http://www.srskansas.org/CFS/robohelp/PPMGenerate/.

A parent legitimately practicing religious beliefs who does not provide specified medical treatment for a child because of religious beliefs shall not for that reason be considered a negligent parent. (K.A.R. 30-46-10).

Lack of Supervision means any act or omission resulting in harm to a child or presenting a likelihood of harm and the act or omission are not due solely to the lack of financial means of a child's parent or other custodian. This term may include the following: failure to provide adequate supervision of a child or to remove a child from a situation that requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that result in bodily injury or the likelihood of harm to the child. (K.A.R. 30-46-10)

Abandonment means forsake, desert or cease providing care for the child without making appropriate provisions for substitute care. (K.S.A. 38-2202).

Adjudication: A court hearing in which a determination is made whether a child is a CINC (child in need of care) or juvenile offender.

 \mathbf{C}

Central Registry: The Child Abuse and Neglect Central Registry is a computerized name-based list of persons who have been confirmed validated or substantiated for child abuse or neglect. The name of a perpetrator is not entered in the central registry unless and until they have been afforded an opportunity for an interview and have exercised their right of appeal or the time limit for appeal has expired without action.

Child: anyone under the age of 18 or any adult under the age of 21 and in the custody of the Secretary.

Child in Need of Care: The Kansas Code for Care of Children (K.S.A. 38-2202(d)) defines Child in Need of Care as a person less than 18 years of age who:

- Has been physically, mentally or emotionally abused or neglected or sexually abused.
- Has been abandoned or does not have a known living parent.
- Is without the care or control necessary for the child's physical, mental or emotional health.
- Resides in the same residence as a sibling or other person under 18 years of age who has been physically, mentally or emotionally abused or neglected or sexually abused.
- While less that 10 years of age, commits an act which if done by an adult would
 constitute the commission of a felony or misdemeanor as defined by K.S. A. 21-3105 and
 amendments thereto OR knowingly possesses a firearm with a barrel less than 18 inches
 long.
- Is willfully and voluntarily absent from the child's home without the consent of the child's
 parent or other custodian or is willfully and voluntarily absent at least a second time from
 a court ordered or designated placement, if the absence is without the consent of the
 person with whom the child is placed.
- Is without adequate parental care, control or subsistence and the condition is not due solely to the lack of financial means of the child's parents or other custodian.

- Is not attending school as required by K.S.A. 72-977 or 72-1111, and amendments thereto.
- Except in the case of a violation of K.S.A. 41-715 or 41-2721, and amendments thereto, does an act which, when committed by a person under 18 years of age, is prohibited by state law, city ordinance or county resolution but which is not prohibited when done by an adult.
- Has been placed for care or adoption in violation of the law.
- Permanent Custodian is no longer willing or able to serve.

Child in Need of Care Petition: A petition filed with the clerk of the district court by the county/district attorney alleging a child or youth is a Child in Need of Care. Refer to K.S.A. 38-2233(b), concerning the filing of a Child in Need of Care petition by any other individual.

Child Support Enforcement: This agency has the responsibility of seeking child support for children in SRS custody and in an out-of-home placement.

Child Welfare Case Management Providers: Child Welfare Case Management Providers are private organizations that contract with SRS to provide adoption, foster care, reintegration and family preservation services using a philosophy which includes the community, immediate and extended families, and concerned kin in planning for the child's safety, permanency and wellbeing.

CINC-NAN Child in Need of Care (Non abuse/neglect): Children who come to the attention of the agency for reasons other than alleged abuse or neglect or juvenile offense and who meets one or more of the definitions in K.S.A. 38-2202(d).

Citizen Review Board: A group of citizen volunteers appointed by a court to review child in need of care cases and make recommendations to the court.

Court Appointed Special Advocate (CASA): A responsible adult other than an attorney or guardian ad litem appointed by the court to represent the best interests of a child. (K.S.A. 38-2202(f), 38-2206). A CASA may also be appointed under the Juvenile Offender Code.

Custody/Custodian: Custody, whether temporary, protective or legal, means the status created by court order or statute which vests in a custodian, whether an individual or an agency, the right to physical possession of the child and the right to determine placement of the child, subject to restrictions placed by the court. (K.S.A. 38-2202(g)).

D

Disposition: A court hearing following adjudication in which an order may be issued regarding services, custody, placement, sentencing for juvenile offenders or other matters.

Е

Ex Parte Order: An order issued by a judge without a hearing.

Facility Homes and child care providers regulated by the Kansas Department of Health and Environment as well as such homes and providers which are legally exempt from regulation and homes or providers which are operating as unregulated services. Facility includes:

- · family foster homes,
- residential child care facilities,
- detention,
- secure care
- attendant care facilities
- day care homes or centers.

For purposes of complaints alleging abuse or neglect, "facility" includes any of the above entities which are subject to regulation, whether operating within or without the law.

Family: A family means any group of persons who act as a family system with or without a legal or biological relationship.

Foster Resource Family Home means "a private home in which care is given for 24 hours a day for a small number of children away from their parent or guardian" (K.A.R. 28-4-311 (d)).

Family Preservation Referral: A referral made to the Family Preservation Case Management Provider to provide services to keep the family intact and to prevent out of home placement for the child/children in the family, including pregnant women using substances, who may or may not have other children.

Family Services: Non-custody services provided directly to families by SRS social workers or through purchase of services by SRS. Family services are designed to meet identified needs or to support family strengths and are based on a safety or risk assessment of the child and family.

FC Referral: A referral made to a foster care provider to provide case management and supervision for children removed from the home and placed into court ordered SRS custody.

Food Stamps: A federal income subsidy to buy food for families who have marginal income.

G

Guardian Ad Litem: An attorney appointed by the court in Child in Need of Care proceedings to represent the best interests of the child.

Guardianship: A status in which the court gives a person specified rights to the custody and control of a child subject to ongoing review by the court of jurisdiction.

Η

Harm: Physical or psychological injury or damage. (K.S.A. 38-2202(k)).

Healthwave 21: A Federal program to cover low income, uninsured children who do not qualify for Medicaid. This Children's Health Insurance Program (CHIP) is funded with Federal and State money. A small premium is charged depending on the family's income. This is only for children up to age 19.

I

Imminent implies more than speculation but less than certainty. An event is imminent if a reasonable person using common sense, training or experience concludes an event will occur without delay unless there is prompt intervention.

K

Kinship: Placement of a child in the home of the child's relative or with an adult with whom the child or parent has a close emotional attachment.

L

Likely (Likelihood) Reasonably to be expected: Likelihood implies more than speculation and less than certainty. An event is likely if a reasonable person using common sense, training or experience concludes that, given the circumstances, an event is probable without a change in those circumstances.

M

Medicaid: A government health care assistance program for families who are below the poverty level. Medicaid funds traditional medical services as well as a variety of behavior management services. A child removed from the home and placed in foster care usually qualifies for Medicaid since they are considered a family of one if their resources do not exceed the established limitations. The Medicaid program is funded with Federal and State money.

Multidisciplinary Team: A group of persons with special knowledge regarding the detection, investigation or treatment of child abuse or neglect. The Kansas Code for Care of Children authorizes SRS to request, and the court to appoint, a multidisciplinary team "to assist in gathering information regarding a child who may be or is a child in need of care" (K.S.A. 38-2228).

Ν

Non-family/Unregulated Care Giver: A person who is not the child's parent, guardian or other person who regularly cares for the child. (examples: teacher, coach, brother/sister, neighbor, etc.)

Parent: When used in relation to a child or children, includes a guardian, conservator and every person who is by law liable to maintain, care for or support the child. (K.S.A. 38-2202(t)).

Permanency: The child is being released from SRS custody after achieving reintegration, guardianship, finalization of adoption, or OPPLA.

Permanency Hearing: A notice and opportunity to be heard is provided to interested parties, foster parents, pre-adoptive parents or relatives providing care for the child. The court, after consideration of the evidence, shall determine whether progress toward the case plan goal is adequate or reintegration is a viable alternative, or if the case should be referred to the county or district attorney for filing of a petition to terminate parental rights or to appoint a permanent guardian.

Protective Custody: The status of a child believed by a law enforcement officer (Police Protective Custody) or a judge (Order of Protective Custody) that a child alleged to be a child in need of care needs to be removed from danger of harm and placed in a shelter or other emergency or temporary care pending a court hearing.

Protective Placement: The status of a child determined by a law enforcement officer (Police Protective Custody) or a judge (Order or Protective Custody) that the child is alleged to be a Child in Need of Care and should be removed from danger or harm, by placement into emergency or temporary care pending a court hearing.

Provider Agreement: An agreement between a provider of services and SRS for specific services the provider offers to families and children.

R

Referral: Process of referring a child to a provider for out of home or in home services.

Resource Family: A family willing to provide short term care or service as the adoptive or legal guardian for the child. The resource family is a valued member of the team and will participate in the case planning process, serve as a mentor to birth families, and will encourage parent/child interactions in a natural setting.

\mathbf{S}

State Wards: Foster children become wards of the state when both maternal and paternal rights have been terminated and the child has not been formally adopted.

Child In Need of Care cases remain open under these circumstances and the SRS retains custody. For children who are directly relinquished to SRS, it will be necessary for the case managing entity and SRS to work together to approach the county/district attorney and request a Child In Need of Care petition.

T

Temporary Custody: Custody awarded by a Court based upon evidence in a hearing prior to disposition.

Truant: A child not attending school as required by law.

\mathbf{W}

Working Day: A day when the Department is open for business; does not including Saturdays, Sundays or official state holidays.

38-2223. Reporting of certain abuse or neglect of children; persons reporting; reports, made to whom; penalties; immunity from liability.

(a) Persons making reports.

- (1) When any of the following persons has reason to suspect that a child has been harmed as a result of physical, mental or emotional abuse or neglect or sexual abuse, the person shall report the matter promptly as provided in subsections (b) and (c);
 - (A) The following persons providing medical care or treatment: Persons licensed to practice the healing arts, dentistry and optometry; persons engaged in postgraduate training programs approved by the state board of healing arts; licensed professional or practical nurses; and chief administrative officers of medical care facilities:
 - (B) the following persons licensed by the state to provide mental health services: Licensed psychologists, licensed masters level psychologists, licensed clinical psychotherapists, licensed social workers, licensed marriage and family therapists, licensed clinical marriage and family therapists, licensed professional counselors, licensed clinical professional counselors and registered alcohol and drug abuse counselors;
 - (C) teachers, school administrators or other employees of an educational institution which the child is attending and persons licensed by the secretary of health and environment to provide child care services or the employees of persons so licensed at the place where the child care services are being provided to the child; and
 - (D) firefighters, emergency medical services personnel, law enforcement officers, juvenile intake and assessment workers, court services officers and community corrections officers, case managers appointed under K.S.A. 23–1001 et seq., and amendments thereto, and mediators appointed under K.S.A. 23–602, and amendments thereto; and
 - (E) any person employed by or who works as a volunteer for any organization, whether for profit or not-for-profit, that provides social services to pregnant teenagers, including, but not limited to, counseling, adoption services and pregnancy education and maintenance.
- (2) In addition to the reports required under subsection (a)(1), any person who has reason to suspect that a child may be a child in need of care may report the matter as provided in subsection (b) and (c).

(b) Form of report.

(1) The report may be made orally and shall be followed by a written report if requested. Every report shall contain, if known: The names and addresses of the child and the child's parents or other persons responsible for the child's care; the location of the child if not at the child's residence; the child's gender, race and age; the reasons why the reporter suspects the child may be a child in need of care; if abuse or neglect or sexual abuse is suspected, the nature and extent of the harm to the child, including any evidence of

previous harm; and any other information that the reporter believes might be helpful in establishing the cause of the harm and the identity of the persons responsible for the harm

- (2) When reporting a suspicion that a child may be in need of care, the reporter shall disclose protected health information freely and cooperate fully with the secretary and law enforcement throughout the investigation and any subsequent legal process.
- (c) To whom made. Reports made pursuant to this section shall be made to the secretary, except as follows:
 - (1) When the department of social and rehabilitation services is not open for business, reports shall be made to the appropriate law enforcement agency. On the next day that the department is open for business, the law enforcement agency shall report to the department any report received and any investigation initiated pursuant to K.S.A. 2010 Supp. 38–2226, and amendments thereto. The reports may be made orally or, on request of the secretary, in writing.
 - (2) Reports of child abuse or neglect occurring in an institution operated by the secretary of social and rehabilitation services or the commissioner of juvenile justice shall be made to the attorney general. All other reports of child abuse or neglect by persons employed by or of children of persons employed by the department of social and rehabilitation services shall be made to the appropriate law enforcement agency.
- (d) Death of child. Any person who is required by this section to report a suspicion that a child is in need of care and who knows of information relating to the death of a child shall immediately notify the coroner as provided by K.S.A. 22a–242, and amendments thereto.
- (e) Violations.
 - (1) Willful and knowing failure to make a report required by this section is a class B misdemeanor. It is not a defense that another mandatory reporter made a report.
 - (2) Intentionally preventing or interfering with the making of a report required by this section is a class B misdemeanor.
 - (3) Any person who willfully and knowingly makes a false report pursuant to this section or makes a report that such person knows lacks factual foundation is guilty of a class B misdemeanor.
- (f) Immunity from liability. Anyone who, without malice, participates in the making of a report to the secretary or a law enforcement agency relating to a suspicion a child may be a child in need of care or who participates in any activity or investigation relating to the report or who participates in any judicial proceeding resulting from the report shall have immunity from any civil liability that might otherwise be incurred or imposed.