I. Civil Statutes Protecting Dependent Adults or Elders from Neglect or Abuse: Kansas Statutes Annotated 39-1401 et seq., and 39-1430 et seq. ¹

A. Who is Protected

1. K.S.A. 39-1401 et seq. protects “residents.” “Resident” includes “any individual kept, cared for, treated, boarded, or otherwise accommodated” in any (1) adult-care home; (2) Medical care facility; (3) State psychiatric hospital; or (4) State institution for people with intellectual disability.

2. K.S.A. 39-1430 et seq. protects “adults.” “Adult” means an individual “18 years of age or older, alleged to be unable to protect their own interests.” “Adult” specifically excludes persons covered under K.S.A. 39-1401 (residents).

B. Conduct

1. Neglect: The failure or omission by one’s self, caretaker,² or another person with a duty to provide goods or services which are reasonably necessary to ensure safety and well-being and to avoid physical or mental harm or illness. K.S.A. 39-1401(g); see also K.S.A. 39-1430(c).

¹Kansas addresses adult and elder abuse and neglect with two statutory schemes: K.S.A. 39-1401 et seq. and K.S.A. 39-1430 et seq. K.S.A. 39-1401 addresses the abuse and/or neglect of “residents,” meaning individuals “kept, cared for, treated, boarded, or otherwise accommodated in” state hospitals, medical care facilities, adult care facilities, or similar facilities. See K.S.A. 39-1401(a). K.S.A. 39-1430 addresses the abuse and/or neglect of “adults,” meaning those “individuals 18 years of age or older, alleged to be unable to protect their own interests.” As a result, the phrase “[resident or adult]” is when the respective statutory scheme uses “resident” or “adult” in a statutory definition, to indicate that each statute uses the definition, but supplies its own term.

²A “caretaker” is a one “who has assumed the responsibility, whether legally or not, for an adult’s care or financial management or both.” K.S.A. 39-1430(i).
2. **Abuse**

   a. Any act or failure to act performed intentionally or recklessly that causes or is likely to cause harm, including:

      i. Infliction of physical or mental injury;

      ii. Any sexual act with a [resident or adult]:

         1. when the [resident or adult] does not consent; or
         2. when the other person knows or should know that the [resident or 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;

      iii. Unreasonable use of physical restraint, isolation, or medication that harms or is likely to harm;

      iv. Unreasonable use of 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 [resident or adult] *or of another resident*;

      v. A threat or menacing conduct directed toward a [resident or adult] that results or might reasonably be expected to result in fear or emotional or mental distress;

      vi. Fiduciary abuse;

         1. A situation in which any person who is the caretaker of, or who stands in a position of trust to, a [resident or adult] takes, secretes, or appropriates the [resident or adult’s] money or property, to any use or purpose not in the due and lawful execution of such person’s trust.

---

3 K.S.A. 39-1401(f); *see also* K.S.A. 39-1430(b).

4 The phrase between the asterisks appears only in K.S.A. 39-1401(f), and has no counterpart in K.S.A. 39-1430(b). The asterisks are used to identify the phrase and do not appear in the original.

5 K.S.A. 39-1401(k); *see also* K.S.A. 39-1430(e).
vii. Omission or deprivation by a caretaker or another person of goods or services which are necessary to avoid physical or mental harm or illness.

3. **Exploitation:** Misappropriation of property or intentionally taking unfair advantage of a [resident or adult’s] physical or financial resources for another individual’s personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false representation, or false pretense by a caretaker or another person. K.S.A. 39-1401 (i); see also K.S.A. 39-1430(d).

4. **Protective Services:** Services provided by the state or other governmental agency or any private organizations or individuals which are necessary to prevent abuse, neglect or exploitation. Such protective services shall include, but not be limited to, evaluation of the need for services, assistance in obtaining appropriate social services and assistance in securing medical and legal services. K.S.A. 39-1401(e); see also K.S.A. 39-1430(h).

5. **Exemption:** No person shall be considered to be abused, neglected, 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. K.S.A. 39-1401; see also K.S.A. 39-1430.

C. **Reporting Abuse, Neglect or Exploitation**

1. Any person who is licensed to practice any branch of the healing arts, a licensed psychologist, a licensed master level psychologist, a licensed clinical psychotherapist, a chief administrative officer of a medical care facility, an adult care home administrator or operator, a licensed social worker, a licensed professional nurse, a licensed practical nurse, a licensed marriage and family therapist, a licensed clinical marriage and family therapist, a licensed professional counselor, a licensed clinical professional counselor, a registered alcohol and drug abuse counselor, a teacher, a bank trust officer and any other officers of financial institutions, a legal representative or a governmental assistance provider who has reasonable cause to believe that a [resident or adult] is being or has been abused, neglected or exploited, or is in a condition which is the result of such abuse, neglect or exploitation or is in need of protective services, shall report immediately such information or cause a report of such information to be made in any reasonable manner. K.S.A. 39-1402; see also K.S.A. 39-1431.
2. Reporting under K.S.A. 39-1401 *et seq.* is to the Kansas Department of Aging, the Department of Health and Environment, and the Department of Social and Rehabilitation Services, depending on the type of “resident.”

3. Reporting under K.S.A. 39-1430 *et seq.* is to the Department of Social and Rehabilitation Services.

4. A knowing failure to report is a Class B misdemeanor. K.S.A. 39-1402(e); *see also* K.S.A. 39-1431(e).

5. The Departments identified above are responsible for investigating and acting on reported abuses under K.S.A. 39-1401 *et seq.*; *see also* K.S.A. 39-1430 *et seq.*. Actions could include reporting acts of abuse, neglect or exploitation to the licensed professional’s regulatory agency. K.S.A. 39-1433(b)

D. Immunity for Reporting Personnel

1. **Protection from civil liability**
   
a. No person who participated in the making of a report, follow-up activity concerning the report, or investigation of the allegations contained in the report shall be subject to civil liability on account of the report, investigation, or testimony.

   b. Exception: if the person acted “in bad faith or with malicious purpose,” the person will lose this immunity.

2. **Protection from employer retaliation**
   
a. No employer shall terminate or sanction an employee *solely* for the reason that the employee:

   i. Made a report of abuse or neglect; or

   ii. Cooperated with such an investigation.

   b. If a court finds that an employer has terminated or sanctioned an employee solely for making a report of abuse or neglect or for cooperating with an investigation, the court may require the employer to pay the attorney fees of the adversely-affected employee.

II. Criminal Statutes

---

*K.S.A. 39-1403(a)-(b); see also K.S.A. 39-1432 (a)-(b).*
A. Who is protected

1. Protects “dependent adults.”

2. “Dependent adults” includes “an individual 18 years of age or older who is unable to protect the individual’s own interest.”

3. “Dependent adult” includes, 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 et seq.;
      

      ii. As used in K.S.A. 39-923, the following terms are specifically defined. 7

      1. Nursing facility;
         2. Nursing facility for mental health;
         3. Intermediate care facility for people with intellectual disability;
         4. Assisted living facility;
         5. Residential health care facility;
         6. Home plus;
         7. Boarding care home;
         8. Adult day care.

   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. 75-3307(b) et seq.

   e. Individual with a developmental disability receiving services provided by a community service provider; or

---

7K.S.A. 39-923(2)-(9).
Individual kept, cared for, treated, boarded, confined, or otherwise accommodated in a state psychiatric hospital or state institution for people with intellectual disability.

B. **Mistreatment of a Dependent Adult**

1. Mistreatment of a dependent adult is knowingly committing one or more of the following acts:
   a. (a)(1): Infliction of physical injury, unreasonable confinement or unreasonable punishment upon a dependent adult;
   b. (a)(2): taking unfair advantage of a dependent adult’s physical or financial resources for another individual’s personal or financial advantage or by use of undue influence, coercion, harassment, duress, deception, false representation, or false pretense; or
   c. (a)(3): Omission or deprivation of treatment, goods or services that are necessary to maintain physical or mental health of a dependent adult.

2. Mistreatment of a dependent adult as defined in:
   a. Subsection (a)(1) is a severity level 5, person felony.
   b. Subsection (a)(2) if the aggregate amount of the value of the resources is:
      i. $1,000,000 or more is a severity level 2, person felony;
      ii. At least $250,000 but less than $1,000,000 is a severity level 3, person felony;
      iii. At least $100,000 but less than $250,000 is a severity level 4, person felony;
      iv. At least $25,000 but less than $100,000 is a severity level 5, person felony;
      v. At least $1,000 but less than $25,000 is a severity level 7, person felony;
      vi. Less than $1,000 is a class A person misdemeanor;
      vii. Less than $1,000 and committed by a person who has, within five (5) years immediately preceding commission of

---

8K.S.A. 21-5417.
the crime, the offender has been convicted of mistreatment of a dependent adult two (2) or more times is a severity level 7, person felony.

c. Subsection (a)(3) is a severity level 8, person felony.


4. Unless specified by the statute, mistreatment of a dependent adult does not require proof that the mistreatment resulted in injury to the victim. Id. at 684, 11 P.3d at 58.

5. The state need not establish that the person mistreating the dependent adult is the caregiver of the dependent adult; a person other than the caregiver can mistreat a dependent adult, so long as the victim is unable to protect himself or herself. State v. Maxon, 32 Kan. App. 67, 73, 79 P.3d 202, 207 (2003).

6. If the complaint depicts several acts, each of which could support an independent charge of mistreatment, the jury must agree unanimously as to which act constitutes the crime. Id. at 74, 79 P.3d at 208.

C. Exemption: No dependent adult is considered to be mistreated for the sole reason that such dependent adult 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 the dependent adult is a member or adherent. K.S.A. 21-5417(c).

D. Similarity with Civil Statutes: Contains a nearly-identical provision indicating that treatment through spiritual means of prayer is not, in itself, actionable neglect. See K.S.A. 21-5417(c) (criminal provision); K.S.A. 39-1401, 39-1430 (civil provisions).


III. Adult Care Home Licensure Act (K.S.A. 39-923 et seq.)

A. Purpose: The purpose of this act is the development, establishment, and enforcement of standards (1) for the care, treatment, health, safety, welfare and comfort of individuals in adult care homes licensed by the secretary of aging and (2) for the construction, general hygiene, maintenance and operation of said adult care homes, which, in the light of advancing knowledge, will promote safe and adequate accommodation, care and treatment of such individuals in adult care homes. K.S.A. 39-924.
B. **Licensure:** It shall be unlawful for any person or persons acting jointly or severally to operate an adult care home within this state except upon license first had and obtained for that purpose from the secretary of aging as the licensing agency upon application made therefor as provided in this act, and compliance with the requirements, standards, rules and regulations, promulgated under its provisions. K.S.A. 39-926.

C. **Unlawful Acts:** It shall be unlawful in any adult care home to house, care for or permit: (a) Any resident to stay in any unapproved room, area, or detached building. (b) Abuse, neglect, or cruel treatment of any resident. (c) The admission to resident status of any person who is known to suffer from any disease or condition for which the home is not authorized to provide care under the provisions of this act or the terms and conditions of its license. K.S.A. 39-939.

D. **Penalties:** The Act provides for both civil and criminal penalties for violations of the Act. See, e.g., K.S.A. 39-943; K.S.A. 39-946.

IV. **Legislation Affecting Statutes**

A. **Pending:** None.

B. **Anticipated:** None.

V. **Private Causes of Action Against an Adult Care Home**

A. “As a general rule, the proprietors of a nursing home are under a duty to exercise reasonable care to avoid injuries to patients, and the reasonableness of such care is to be assessed in the light of the patient's physical and mental condition.” *Juhnke v. Evangelical Lutheran Good Samaritan Soc’y*, 6 Kan. App. 2d 744, 748, 634 P.2d 1132, 1136 (1981).

B. “Whether expert testimony is necessary to prove negligence is dependent on whether, under the facts of a particular case, the trier of fact would be able to understand, absent expert testimony, the nature of the standard of care required of defendant and the alleged deviation therefrom.” *Id.*


D. **Statute of Limitations:** Two years – K.S.A. 60-513(a).

E. **Burden of Proof:** Preponderance of the evidence – PIK (4th ed.) § 106.01.
F. **Damages**

1. **Actual Damages.** Non-economic damages are capped at $250,000.00. *See K.S.A. 60-19a02.*

2. **Punitive Damages.** *See K.S.A. 60-3701 et seq.*

3. **Wrongful death damages.** *See K.S.A. 60-1901 et seq.*

4. **Costs of the Suit.** *See K.S.A. 60-2001 et seq.*

G. **Does Pain and Suffering of Decedent Survive Death?**

1. **Yes:** The decedent’s causes of action for injury, deceit, or fraud survive death and may be brought by decedent’s estate. *K.S.A. 60-1801.*

VI. **General Negligence**

A. **Conduct:** Kansas law does not provide a civil cause of action for elder abuse under its reporting statutes (*see infra*). Instead, plaintiffs must proceed under a negligence claim. Plaintiffs may also be able to recover under the Kansas Consumer Protection Act, *K.S.A. §§ 50-623 et seq.*

B. **Statute of Limitations:** Personal injury and wrongful death: Two years – *K.S.A. § 60-513.* Claims under the Kansas Consumer Protection Act have a statute of limitations of three years – *K.S.A. § 60-512.*

C. **Burden of Proof:** More probably true than not true *Pattern Instr. Kan. Civil 102.10 (2013)*

D. **Damages Available:**

1. Medical Expenses

2. Economic Loss

3. Noneconomic Loss

a. **Limitation:** Kansas imposes a statutory cap on noneconomic damages of $250,000. *K.S.A. § 60-1903 (wrongful death); K.S.A. § 60-19a02 (personal injury).* (The cap on non-economic damages in personal injury cases is contingent on the finding of a *quid pro quo* which does not appear to be present except for healthcare providers subject to the Kansas Healthcare Providers Insurance Availability Act) (*K.S.A. §§ 40-3401 et seq.*).

4. Punitive Damages

a. **Burden of Proof:** Clear and convincing *K.S.A. § 171.44*
b. Not available for wrongful death actions

5. Injunctive Relief

6. Statutory costs of suit (generally does not include attorneys’ fees or expenses). K.S.A. § 60-2003

E. Does Pain and Suffering of Decedent/Resident Survive Death:

Yes. Causes of action for injury to the person or for death by wrongful act survive death. K.S.A. § 60-1801.

F. Attorney’s Fees Available: Not generally, except under the Kansas Consumer Protection Act.

VII. Reporting Statute Protecting Dependent Adults or Elders from Neglect or Abuse:
Kansas Statutes Annotated §§ 39-923 et seq., 39-1401 et seq.

A. Conduct

1. K.S.A. § 39-939 makes it unlawful for any adult care home to permit abuse, neglect, or cruel treatment of any resident.

2. K.S.A. §§ 39-1401 et seq. applies to negligence, abuse, or exploitation of residents and adults.

3. Neglect: The failure or omission by one’s self, caretaker or another person with a duty to provide goods or services which are reasonably necessary to ensure safety and well-being and to avoid physical or mental harm or illness. K.S.A. §§ 39-1401, -1430

4. Abuse: Any act or failure to act performed intentionally or recklessly that causes or is likely to cause harm to a resident, including:

   1. Infliction of physical or mental injury;

   2. Any sexual act with a resident when the resident does not consent or when the other person knows or should know that the resident 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 a resident;

---

9 K.S.A. § 39-1402 applies to the abuse, neglect or exploitation of residents of a care facility, while K.S.A. § 39-1431 applies to the abuse, neglect or exploitation of certain adults. The definitions for abuse, neglect and exploitation are the same.
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 resident or another resident;

5. A threat or menacing conduct directed toward a resident that results or might reasonably be expected to result in fear or emotional or mental distress to a resident;

6. Fiduciary abuse; or

7. Omission or deprivation by a caretaker or another person of goods or services which are necessary to avoid physical or mental harm or illness. K.S.A. § 39-1401

5. **Exploitation**\(^{10}\): Misappropriation of resident property or intentionally taking unfair advantage of an adult’s physical or financial resources for another individual’s personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense by a caretaker or another person. K.S.A. §§ 39-1401, -1430

6. **Adult:** An individual 18 years of age or older alleged to be unable to protect their own interest and who is harmed or threatened with harm, whether financial, mental, or physical in nature, through action or inaction by another individual or through their own action or inaction when

   1. such person is residing in such person’s own home, the home of a family member or the home of a friend,

   2. such person resides in an adult family home, or

   3. such person is receiving services through a provider of community services and affiliates thereof operated or funded by the department of social and rehabilitation services or the department on aging or a licensed residential facility. K.S.A. § 39-1430

**B. Persons Not Covered by Statute**

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

\(^{10}\) Exploitation will not be addressed in this compendium—instead, only the abuse and/or neglect portions of the statute will be addressed.
C. Reporting Requirements

1. The statutes provide a list of reporters who must immediately make a report to the department when he or she has reasonable cause to believe that a resident or adult is being or has been abused, neglected or exploited, or is in a condition which is the result of such abuse, neglect or exploitation or is in need of protective services. *K.S.A. §§ 39-1402(a), 39-1431(a)*

2. Anyone who participates in the making of a report or who testifies in any administrative or judicial proceeding arising from such report will not be subject to civil liability unless the person acted in bad faith or with malicious purpose. *K.S.A. §§ 39-1403(a), 39-1432(a)*

D. Legislation Affecting Statute

None pending