

(Excerpt from Diocese of Dodge City *Policy for the Protection of Children and Young People*)

XVI. Kansas Law Summary (May, 2003)

The following is a summary of Kansas law about reporting and other requirements relating to child abuse.

1. Who Must Report? According to Kansas State Law (K.S.A. 38-1522), when there is reason to suspect a child has been injured as the result of physical, mental or emotional abuse or neglect or sexual abuse, a report must be made by the following persons: "Persons licensed to practice the healing arts or dentistry; persons licensed to practice optometry; persons engaged in postgraduate training programs approved by the state board of healing arts; licensed psychologists; licensed professional or practical nurses examining, attending or treating a child under the age of 18; *teachers, school administrators or other employees of a school which the child is attending*; child administrative officers of medical care facilities; registered marriage and family therapists; *person 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*; licensed social workers; firefighters; emergency medical services personnel; mediators appointed under K.S.A. 23-602 and amendments thereto; juvenile intake and assessment workers, and law enforcement officers." (emphasis added)

Any other person (i.e., those not listed above) may report, but is not required to under Kansas law.

2. Priests and Religious: Priests and religious are not specifically mentioned in the Kansas Statute as persons who have a duty to report abuse. However, if the individual (whether priest, religious, church or school employee or volunteer) falls into any of the categories mentioned in K.S.A. 38-1522 (i.e., a priest or sister who is a teacher, school administrator or otherwise employed by the school which the child attends), he or she has the duty to report suspected abuse under Kansas law. Kansas law does not say that clergy must report simply because they are clergy. However, the Charter for Protection of Children and Young People issued by the United States Conference of Catholic Bishops provides that in any case where there is a report of abuse of a person presently a minor, the alleged abuse *will* be reported to the appropriate authorities. If the victim is no longer a minor, the diocese will cooperate with public authorities about reporting, and will advise the victim of their right to make a report to public authorities.

3. What Requires a Report? A report must be made when a person in any of the categories listed in K.S.A. 38-1522 has reason to suspect that a child has been injured through physical, mental or emotional abuse, or neglect or sexual abuse.

4. Summary of Legal Definitions:

"Child" refers generally to any person under 18 years of age.

"Abuse" minimally includes any or all of the following:

- (a) physical, mental or emotional injury inflicted on a child;
- (b) sexual contact or intercourse;

(c) sexual exploitation of a child.

"Neglect" minimally means failing to maintain reasonable care and treatment to the extent that the child's health or emotional well being is endangered.

5. To Whom Must The Report Be Made: Reports -- oral or written -- are made to the Kansas Department of Social and Rehabilitation Services (SRS). When this department is not open for business, the report is made to the appropriate law enforcement agency. (K.S.A. 38-1522 (c)). The person reporting may speak with the Diocesan attorney beforehand.

6. Penalties for Failing to Report : Any person who is required to report as stated above and who willfully and knowingly fails to do so may be found guilty of a Class B Misdemeanor. (K.S.A. 38-1522 (f)). Likewise, anyone who prevents or interferes with the making of a report required by law may be found guilty of a Class B Misdemeanor. (K.S.A. 38-1522 (g)).

7. Protection for Those Who Report: Under Kansas law (K.S.A. 38-1526), anyone participating without malice in the making of an oral or written report on the abuse of a child, or in any follow-up investigation of the report, shall have immunity from any civil liability that might otherwise be incurred or imposed. Such a participant has the same immunity with respect to participating in a judicial proceeding resulting from the report.

8. Penitential Communication Privilege: Kansas law (K.S.A. 60-429) recognizes as privileged what the statute defines as a "penitential communication". A "penitential communication" means "any communication between a penitent and a regular or duly ordained minister of religion which the penitent intends shall be kept secret and confidential and which pertains to advice or assistance in determining or discharging the penitent's moral obligations, or to obtaining God's mercy or forgiveness for past culpable conduct." (K.S.A. 60-429 (a) (5))

"A person, whether or not a party, has a privilege to refuse to disclose, and to prevent a witness from disclosing a communication if he or she claims the privilege and the judge finds that (1) the communication was a penitential communication, and (2) the witness is the penitent or the minister, and (3) the claimant is the penitent, or the minister making the claim on behalf of an absent penitent." (K.S.A. 60-429 (b))

Any questions regarding this summary should be directed to the Diocesan Attorney.