



STATE OF KANSAS

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CURT T. SCHNEIDER  
Attorney General

June 25, 1975

Opinion No. 75- 265

Mr. Henry Mudge-Lisk  
Assistant Regional Director  
Office of Human Development  
Department of Health, Education,  
and Welfare  
601 East 12th Street  
Kansas City, Missouri

Dear Mr. Mudge-Lisk:

The 1975 Kansas Legislature enacted House Bill 2543, section 7 of which designates K.S.A. 38-716 to -722, and acts amendatory thereof or supplemental thereto, and certain provisions of the bill, as the Kansas Child Abuse and Reporting Act.

Section 1 of this act requires persons designated therein "having reason to believe that such child has had injury or injuries inflicted upon him or her as a result of physical or mental abuse and neglect" to report such facts to either the juvenile court or to the State Department of Social and Rehabilitative Services. In addition, other persons not specifically enumerated therein are encouraged by the provision to make similar reports. Section 1340.3-3(d)(2)(i), of regulations appearing in the Federal Register, Vol. 39, no. 245, dated December 19, 1974, requires that the "State must provide for the reporting of known or suspected instances of child abuse and neglect." In my opinion, the reporting requirement under Kansas law, appertaining to those "having reason to believe" instances of child abuse or neglect have occurred, is tantamount and equivalent to a requirement for the reporting of "suspected" such instances. In the ordinary course of human affairs, one who has reason to believe a particular fact thereby suspects that fact to be correct, and the two requirements are, in my judgment legally identical.

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Section 2 of 1975 House Bill No. 2543 defines "physical or mental abuse or neglect" so as to include abuse or neglect by *any* person, including those persons legally responsible for the care of the child.

The question is raised whether the appointment of a guardian *ad litem* is required, or if not required is permitted, in criminal cases involving child abuse and neglect. In Kansas a guardian *ad litem* must be appointed in all judicial proceedings involving an abused or neglected child. The Kansas code of civil procedure requires, in K.S.A. 1974 Supp. 60-217(c), that the court appoint a guardian *ad litem* for a minor whenever the minor is involved in a judicial proceeding under the civil code. Concerning criminal cases, the Kansas criminal procedure code states at K.S.A. 22-3415 thus:

"The provisions of law in civil cases relative to compelling the attendance and testimony of witnesses, their examination, the administration of oaths and affirmations, and proceedings as for contempt, to enforce the remedies and *protect the rights of the parties*, shall extend to criminal cases so far as they are in their nature applicable, unless other provision is made by statute."  
[Emphasis supplied.]

K.S.A. 1974 Supp. 60-217(c), of the Kansas code of civil procedure, states in pertinent part thus:

"The court shall appoint a guardian *ad litem* for a minor or incapacitated person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the minor or incapacitated person."

In my opinion, although the appointment of a guardian *ad litem* is not a jurisdictional or procedural requirement in any criminal proceeding upon a charge of child abuse or neglect, the court is clearly permitted, under the foregoing quoted

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provisions, to appoint a guardian *ad litem* for a minor who is the subject of alleged child abuse which is the subject of a criminal prosecution.

Yours very truly,



CURT T. SCHNEIDER  
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CTS:JRM:kj

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