



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.AG.KS.GOV

Testimony in Support of Senate Bill 408

**Presented to the House Judiciary Committee
By Kansas Attorney General Derek Schmidt**

March 9, 2016

Chairman Barker, members of the committee:

Thank you for this opportunity to testify in support of Senate Bill 408, which is proposed by the attorney general's office.

The overall purpose of this bill is to eliminate statutory mandates that require the attorney general's office to devote resources to areas where our work is less likely to contribute to public safety, thereby allowing us to focus more intently on areas where we can truly make a difference. This bill has two principal components: 1) transfer of Suspicious Incidents at State Institutions to other agencies, and 2) strengthen the powers and narrow the scope of the Abuse, Neglect, and Exploitation Unit.

We support all of the amendments added to the bill by the Senate. We do not support the further amendment from the Department of Children and Families (DCF) that was rejected by the Senate committee.

Transfer SISI Duties to Other Agencies

Sections 1 and 2 would eliminate the mandatory duty of the attorney general's office to investigate Suspicious Incidents at State Institutions (SISI) and transfer that responsibility to other agencies. In general, under current law, the attorney general's office is responsible for ensuring a proper investigation whenever a complaint of misconduct is filed by a juvenile in state custody. This made a certain amount of sense when the Juvenile Justice Authority (JJA) was an independent state agency. However, now that JJA has been consolidated into the Department of Corrections, that agency has ample processes, procedures and resources to properly investigate its own complaints. There is simply no reason to doubt the ability of the Department of Corrections, which has responsibility to independently investigate inmate allegations under the federal Prison Rape Elimination Act, to handle investigations of complaints by juveniles in its custody.

The current system is not a good use of scarce resources at the attorney general's office. The vast majority of SISI complaints handled by the attorney general's office turn out to be baseless. Most SISI complaints involve inconsequential matters such as complaints about food quality or personality conflicts with other juveniles. A minority of the complaints involve allegations of actual abuse or neglect by Department of Corrections employees. Based on the last three years of data, of roughly 180 complaints we typically review each year, fewer than 10 result in recommendation for substantiation by the Department of Children and Families.

Even the very few that have merit can be adequately handled by the Department of Corrections or, in the case of other state facilities that might be covered, by the appropriate law enforcement agency. Of course, in the event of serious allegations of criminal misconduct within a state facility, the assistance of the Kansas Bureau of Investigation would remain available. The attorney general's office also would retain authority, in extraordinary cases, to assist.

By transferring this mandatory SISI responsibility from the attorney general's office, we will be able to focus our investigation resources on major cases. In that way, we can contribute more to public safety than we do by overseeing the work of certain state institutions. We have worked with the Department of Corrections on this part of the bill to ensure officials there are comfortable with the proposed transition.

Strengthen the Powers and Narrow the Focus of the Abuse, Neglect and Exploitation Unit

Section 3 of this bill proposes two general types of changes related to the existing Abuse, Neglect and Exploitation (ANE) Unit at the attorney general's office.

First, it would more expressly set forth the purpose and authorities of the Unit. Current law is vague as to the purposes and authorities of the Unit, which was created after the criminal abuse committed at the Kaufman House a decade ago. The bill would make clear that the attorney general's office has broad authority to prevent, detect, investigate and help prosecute cases of abuse, neglect and exploitation throughout our state. The key provisions of the bill that accomplish this are in Section 3(b).

Second, it would direct the Unit to focus on the abuse, neglect and exploitation of adults rather than of children. The setting of this priority is the most significant policy change proposed in the bill, and I urge the committee to focus intently on it to ensure its importance is fully understood.

Currently, the ANE Unit annually reviews about 1,800 cases of "substantiated" abuse, neglect and exploitation that are referred to it by the Department of Children and Families. Roughly 375 of those are cases of adult abuse, neglect or exploitation, and the other roughly 1,475 cases involve children. We review all of those cases with our current staffing level – two people. Our staff does a terrific job, but as you can see from the numbers we are stretched thin – too thin. We have brought that disconnect between resources and capacity to the Legislature's attention for many years in our annual reports, but there has been no move to address the problem.

Now, that problem is about to get worse because DCF is preparing to change its classification system for findings to a three-tiered system. Under the new system, we would need to review both "substantiated" and "affirmed" cases of abuse, neglect and exploitation if the Unit is to continue doing its job of identifying cases that otherwise might "slip through the cracks." The

bottom line is that in this changed classification system, the threshold for a case to be referred to the attorney general's office will be lowered from "clear and convincing evidence" of abuse, neglect or exploitation to "a preponderance of the evidence," and that change will enlarge the universe of cases referred for our review. While precise numbers are elusive, it is clear that a much larger number of cases will soon come to the attorney general's office for review, and our resources – already stretched far too thin – will be stretched beyond the breaking point. We simply cannot do the expanded job with the resources available.

Therefore, I believe now is the time a change is required. I think there are only two realistic options. The first option, which frankly would be my preference, would be to add enough skilled staff to the Unit to properly review and follow up on all cases (child and adult) that are referred to us. To do that, we estimate we would need to add five more employees at an annual additional cost of about \$400,000. While we would like to do this, we recognize the State's financial situation makes this an inopportune time to request that expansion.

Therefore, we present this bill as our second option. Although it is our less-preferred option, it also is far preferable to the status quo. Under this bill, although we would retain our authority to review cases of child abuse, neglect and exploitation, we would focus our resources on adult cases. The provisions of the bill that accomplish this narrowing of focus are Section 3(c) and 3(f). By limiting our mandatory review to adult cases, we would reduce our caseload to roughly one-fourth its current level. This would allow us to focus more intensely on the adult abuse, neglect and exploitation cases we receive and do more follow-up investigation and other work to ensure these cases are properly investigated. The bill also would require that we be concurrently notified whenever a state agency refers an adult abuse, neglect or exploitation case to local law enforcement, and that notification will provide us the ability to make timely contact with local law enforcement agencies to determine from the outset whether they desire assistance in what can be very difficult cases to investigate.

Of course, we would retain our current authority to access and become involved in child abuse cases in circumstances where that was required, but we would no longer be mandated to reviewing child abuse cases with an eye toward spotting those that need further attention. In effect, this legislation would slow the flow of cases coming to our office automatically, while retaining our ability to request to review other cases if we have reason to believe review is appropriate.

In a phrase, our Unit's efforts to address abuse, neglect and exploitation currently are a mile wide and an inch deep. Our team does very good work, but our team is too small and its mission is too ill-defined. What we propose in this bill is to significantly narrow the scope of cases we review but also give us the statutory focus and tools to dig much more deeply into those (adult) cases. The philosophy of this bill is that if there are not enough resources to do everything well, then it is better to do fewer things but do them very well.

Conclusion

The status quo in SISI investigations is not an optimal use of the attorney general's office resources. Therefore, I request enactment of Sections 1 and 2 of this bill to transfer that responsibility to other agencies.

The status quo in our ANE Unit also is not optimal, and it is about to become unsustainable because of classification changes at DCF. We simply cannot handle the anticipated influx of additional cases for review without significantly more resources. Therefore, I request the resources be provided; however, if that cannot happen this year, then I request enactment of Section 3(c) and 3(f) in this bill so that we can focus the resources we have on making a real difference in the lives of dependent adults in our state. If you do this now, we are likely to return to you in future years and seek the budget to again broaden our mission to include review of child abuse, neglect and exploitation cases when that becomes possible.

The bottom line is this: We are the attorney general's office, not the inspector general's office. We are very good at investigating and prosecuting crimes of abuse, neglect and exploitation, but merely reviewing and overseeing the casework of other agencies is not the best use of our limited resources. I ask that you make clear the authority and purpose of this Unit, as Section 3(b) does. If significantly more funding can be provided, then we can add the staff to do our current scope of work effectively. But if our current resources are what will remain available for now, then we ask that you enact this bill so we can focus them where they can make the greatest difference in combating abuse, neglect and exploitation of Kansans – and bringing perpetrators to justice. Let this Unit focus on combating the abuse of vulnerable adults – the type of abuse that occurred at the Kaufmann House that led to creation of our ANE Unit – and then expand to cover the much more widespread problem of child abuse in future years if funding becomes available.

Thank you for your consideration. I would stand for questions.

###