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Testimony in Support of Senate Bill 408

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

February 16, 2016

Chairman King, 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.

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.

Requested Amendment

We have consulted with the Department of Corrections, the Department of Children and Families, the Department of Aging and Disability Services and others since drafting this bill. During that process, several suggestions have been brought to our attention that we agree should be incorporated into the bill. Therefore, if the committee decides to work this bill, I request the attached balloon amendments, reflecting those suggestions, be adopted.

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.

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SENATE BILL No. 408

By Committee on Corrections and Juvenile Justice

2-4

Proposed Amendments to SB 408

Prepared by: Jason Thompson

Office of Revisor of Statutes

February 15, 2016

AN ACT concerning abuse, neglect and exploitation of persons; relating to reporting and investigation; duties and powers of attorney general, law enforcement and department of corrections; amending K.S.A. 2015 Supp. 38-2223, 38-2226 and 75-723 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2015 Supp. 38-2223 is hereby amended to read as follows: 38-2223. (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;

(D) firefighters, emergency medical services personnel, law enforcement officers, juvenile intake and assessment workers, court services officers, community corrections officers, case managers appointed under K.S.A. 2015 Supp. 23-3508, and amendments thereto, and mediators appointed under K.S.A. 2015 Supp. 23-3502, 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

1 services to pregnant teenagers, including, but not limited to, counseling,
2 adoption services and pregnancy education and maintenance.

3 (2) In addition to the reports required under subsection (a)(1), any
4 person who has reason to suspect that a child may be a child in need of
5 care may report the matter as provided in subsection (b) and (c).

6 (b) *Form of report.* (1) The report may be made orally and shall be
7 followed by a written report if requested. Every report shall contain, if
8 known: The names and addresses of the child and the child's parents or
9 other persons responsible for the child's care; the location of the child if
10 not at the child's residence; the child's gender, race and age; the reasons
11 why the reporter suspects the child may be a child in need of care; if abuse
12 or neglect or sexual abuse is suspected, the nature and extent of the harm
13 to the child, including any evidence of previous harm; and any other
14 information that the reporter believes might be helpful in establishing the
15 cause of the harm and the identity of the persons responsible for the harm.

16 (2) When reporting a suspicion that a child may be in need of care,
17 the reporter shall disclose protected health information freely and
18 cooperate fully with the secretary and law enforcement throughout the
19 investigation and any subsequent legal process.

20 (c) *To whom made.* Reports made pursuant to this section shall be
21 made to the secretary, except as follows:

22 (1) When the Kansas department for children and families is not open
23 for business, reports shall be made to the appropriate law enforcement
24 agency. On the next day that the department is open for business, the law
25 enforcement agency shall report to the department any report received and
26 any investigation initiated pursuant to K.S.A. 2015 Supp. 38-2226, and
27 amendments thereto. The reports may be made orally or, on request of the
28 secretary, in writing.

29 (2) *Reports of child abuse or neglect occurring in an institution*
30 *operated by the Kansas department of corrections shall be made to the*
31 *secretary of corrections.* Reports of child abuse or neglect occurring in an
32 institution operated by the Kansas department for aging and disability
33 services or ~~the commissioner of juvenile justice~~ *the Kansas department for*
34 *children and families* shall be made to the ~~attorney general~~ *appropriate*
35 *law enforcement agency.* All other reports of child abuse or neglect by
36 persons employed by ~~or of children of persons employed by~~ the Kansas
37 department for aging and disability services ~~and or~~ the Kansas department
38 for children and families, *or of children of persons employed by either*
39 *department,* shall be made to the appropriate law enforcement agency.

40 (d) *Death of child.* Any person who is required by this section to
41 report a suspicion that a child is in need of care and who knows of
42 information relating to the death of a child shall immediately notify the
43 coroner as provided by K.S.A. 22a-242, and amendments thereto.

1 (e) *Violations.* (1) Willful and knowing failure to make a report
2 required by this section is a class B misdemeanor. It is not a defense that
3 another mandatory reporter made a report.

4 (2) Intentionally preventing or interfering with the making of a report
5 required by this section is a class B misdemeanor.

6 (3) Any person who willfully and knowingly makes a false report
7 pursuant to this section or makes a report that such person knows lacks
8 factual foundation is guilty of a class B misdemeanor.

9 (f) *Immunity from liability.* Anyone who, without malice, participates
10 in the making of a report to the secretary or a law enforcement agency
11 relating to a suspicion a child may be a child in need of care or who
12 participates in any activity or investigation relating to the report or who
13 participates in any judicial proceeding resulting from the report shall have
14 immunity from any civil liability that might otherwise be incurred or
15 imposed.

16 Sec. 2. K.S.A. 2015 Supp. 38-2226 is hereby amended to read as
17 follows: 38-2226. (a) *Investigation for child abuse or neglect.* The
18 secretary and law enforcement officers shall have the duty to receive and
19 investigate reports of child abuse or neglect for the purpose of determining
20 whether the report is valid and whether action is required to protect a
21 child. Any person or agency which maintains records relating to the
22 involved child which are relevant to any investigation conducted by the
23 secretary or law enforcement agency under this code shall provide the
24 secretary or law enforcement agency with the necessary records to assist in
25 investigations. In order to provide such records, the person or agency
26 maintaining the records shall receive from the secretary or law
27 enforcement: (1) A written request for information; and (2) a written notice
28 that the investigation is being conducted by the secretary or law
29 enforcement. If the secretary and such officers determine that no action is
30 necessary to protect the child but that a criminal prosecution should be
31 considered, such law enforcement officers shall make a report of the case
32 to the appropriate law enforcement agency.

33 (b) *Joint investigations.* When a report of child abuse or neglect
34 indicates: (1) That there is serious physical harm to, serious deterioration
35 of or sexual abuse of the child; and (2) that action may be required to
36 protect the child, the investigation shall be conducted as a joint effort
37 between the secretary and the appropriate law enforcement agency or
38 agencies, with a free exchange of information between them pursuant to
39 K.S.A. 2015 Supp. 38-2210, and amendments thereto. If a statement of a
40 suspect is obtained by either agency, a copy of the statement shall be
41 provided to the other.

42 (c) *Investigation of certain cases.* Suspected child abuse or neglect
43 which occurs in an institution operated by the ~~secretary~~ Kansas

1 ~~department of corrections~~ shall be investigated by the ~~attorney general~~
2 ~~secretary of corrections~~. Any ~~other~~ suspected child abuse or neglect in an
3 ~~institution operated by the Kansas department for aging and disability~~
4 ~~services or the Kansas department for children and families, or by persons~~
5 ~~employed by the Kansas department for children and families either~~
6 ~~department or of children of persons employed by either department~~, shall
7 be investigated by the appropriate law enforcement agency.

8 (d) *Coordination of investigations by county or district attorney*. If a
9 dispute develops between agencies investigating a reported case of child
10 abuse or neglect, the appropriate county or district attorney shall take
11 charge of, direct and coordinate the investigation.

12 (e) *Investigations concerning certain facilities*. Any investigation
13 involving a facility subject to licensing or regulation by the secretary of
14 health and environment shall be promptly reported to the state secretary of
15 health and environment.

16 (f) *Cooperation between agencies*. Law enforcement agencies and the
17 secretary shall assist each other in taking action which is necessary to
18 protect a child regardless of which agency conducted the initial
19 investigation.

20 (g) *Cooperation between school personnel and investigative*
21 *agencies*. (1) Educational institutions, the secretary and law enforcement
22 agencies shall cooperate with each other in the investigation of reports of
23 suspected child abuse or neglect. The secretary and law enforcement
24 agencies shall have access to a child in a setting designated by school
25 personnel on the premises of an educational institution. Attendance at an
26 interview conducted on such premises shall be at the discretion of the
27 agency conducting the interview, giving consideration to the best interests
28 of the child. To the extent that safety and practical considerations allow,
29 law enforcement officers on such premises for the purpose of investigating
30 a report of suspected child abuse or neglect shall not be in uniform.

31 (2) The secretary or a law enforcement officer may request the
32 presence of school personnel during an interview if the secretary or officer
33 determines that the presence of such person might provide comfort to the
34 child or facilitate the investigation.

35 Sec. 3. K.S.A. 2015 Supp. 75-723 is hereby amended to read as
36 follows: 75-723. (a) There is hereby created in the office of the attorney
37 general an abuse, neglect and exploitation of persons unit.

38 (b) *Within the limits of available resources, the unit may, in the*
39 *attorney general's discretion:*

40 (1) *Participate in the prevention, detection, [investigation] and*
41 *prosecution of abuse, neglect and exploitation of persons, whether*
42 *financial or physical;*

43 (2) *conduct investigations of suspected criminal abuse, neglect or*

review

1 exploitation of persons;

2 (3) coordinate with and assist other law enforcement agencies, or
3 participate in task forces or joint operations, in the investigation of
4 suspected criminal abuse, neglect or exploitation of persons;

5 (4) coordinate with and assist the medicaid fraud and abuse division
6 established by K.S.A. 75-725, and amendments thereto, in the prevention,
7 detection and investigation of abuse, neglect and exploitation of persons;

8 (5) work with or participate in the Kansas internet crimes against
9 children task force, and work with any exploited and missing child
10 investigators and any other child crime investigators;

11 (6) assist in any investigation of child abuse or neglect conducted — by a law enforcement agency
12 pursuant to K.S.A. 2015 Supp. 38-2226, and amendments thereto; and

13 (7) assist in any investigation of adult abuse, neglect, exploitation or
14 fiduciary abuse conducted pursuant to K.S.A. 2015 Supp. 39-1443, and
15 amendments thereto. — by a law enforcement agency

16 (c) The unit shall give priority to preventing, detecting and
17 investigating abuse, neglect or exploitation of adults who are senior
18 citizens, disabled or otherwise vulnerable to abuse, neglect or
19 exploitation.

20 (d) Except as provided by subsection ~~(h)~~ (k), the information obtained
21 and the investigations conducted by the unit shall be confidential as
22 required by state or federal law. Upon request of the unit, the unit shall
23 have access to all records of reports, investigation documents and written
24 reports of findings related to ~~confirmed~~ cases of abuse, neglect or
25 exploitation of persons ~~adults~~ or cases in which there is the attorney
26 general has reasonable suspicion to believe abuse, neglect or exploitation
27 of persons ~~adults~~ has occurred which are received or generated by the
28 Kansas department for children and families, Kansas department for aging
29 and disability services or department of health and environment a state
30 agency.

31 (e) Whenever a state agency reports a matter involving suspected
32 abuse, neglect or exploitation of an adult to a law enforcement agency or
33 a county or district attorney, such state agency shall simultaneously
34 forward such report to the unit.

35 ~~(e)~~ (f) Except for reports alleging only self-neglect, ~~such~~ a state
36 agency receiving reports of abuse, neglect or exploitation of ~~persons~~
37 ~~adults~~ shall forward to the unit:

38 (1) Within 10 days of ~~confirmation~~ reports of findings concerning the — substantiation
39 ~~confirmed~~ abuse, neglect or exploitation of persons ~~adults~~; and

40 (2) within 10 days of such denial, each report of an investigation in — substantiated
41 which such state agency was denied the opportunity or ability to conduct
42 or complete a full investigation of abuse, neglect or exploitation of ~~persons~~
43 ~~adults~~.

1 ~~(d)~~ (g) On or before the first day of the regular legislative session
2 each year, the unit shall submit to the legislature a written report of the
3 unit's activities, investigations and findings for the preceding fiscal year.

4 ~~(e)~~ (h) The attorney general shall adopt rules and regulations as
5 deemed appropriate for the administration of this section.

6 ~~(f)~~ (i) No state funds appropriated to support the provisions of the
7 ~~abuse, neglect or exploitation of persons~~ unit and expended to contract *or*
8 *enter into agreements* with any third party shall be used by a third party to
9 file any civil action against the state of Kansas or any agency of the state
10 of Kansas. Nothing in this section shall prohibit the attorney general from
11 initiating or participating in any civil action against any party.

12 ~~(g)~~ (j) The attorney general may contract *or enter into agreements*
13 with other agencies or organizations to provide services related to the
14 *attorney general's duties under this section or to the* investigation or
15 litigation of findings related to abuse, neglect or exploitation of persons.

16 ~~(h)~~ (k) Notwithstanding any other provision of law, nothing shall
17 prohibit the attorney general or the unit from distributing or utilizing only
18 that information obtained pursuant to a confirmed case of abuse, neglect or
19 exploitation or cases in which there is reasonable suspicion to believe
20 abuse, neglect or exploitation has occurred pursuant to this section with
21 any third party ~~contracted with by~~ *under contract or agreement with* the
22 attorney general to carry out the provisions of this section.

23 (i) *As used in this section:*

24 (1) *"Adult" means any person 18 years of age or older; and*

25 (2) *"state agency" means the Kansas department for children and*
26 *families, Kansas department for aging and disability services or Kansas*
27 *department of health and environment.*

28 Sec. 4. K.S.A. 2015 Supp. 38-2223, 38-2226 and 75-723 are hereby
29 repealed.

30 Sec. 5. This act shall take effect and be in force from and after its
31 publication in the statute book.