

MINUTES OF THE SENATE COMMITTEE ON JUDICIARYThe meeting was called to order by Senator Elwaine F. Pomeroy at  
Chairperson10:00 a.m./~~p.m.~~ on January 31, 1984 in room 514-S of the Capitol.~~All members were present except~~ were: Senators Pomeroy, Winter, Burke, Feleciano, Gaar,  
Gaines, Hein, Mulich, Steineger and Werts.Committee staff present: Mary Torrence, Revisor of Statutes  
Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department

## Conferees appearing before the committee:

Sylvia Houglan, Department on Aging  
Elizabeth Taylor, Kansas Association of Domestic Violence Program  
Representative Joan Wagnon  
Barb Smith, Women's Transitional Care Services, Lawrence  
Ken Bahr, Crime Victims Reparations Board  
Representative Wanda FullerDOMESTIC VIOLENCE AND ABUSECommissioner Sylvia Houglan testified concerning another dimension of domestic abuse, the elderly abuse. A copy of her testimony and copies of material regarding a non-institutional abuse bill are attached (See Attachments No. 1 and No. 2).

Elizabeth Taylor explained the services of her organization and presented a background how she became involved in the program. She stated she is speaking as an advocate of battered spouses. She reported each shelter houses from 450 to 600 women per year. Of the women housed, approximately 8,000 per year, there are many, many more. One of the shelters serves over 700 women and children a year, and more women and children are seeking their assistance and they need to provide more services for them. Some funds are from United Way, general revenue sharing moneys, alcohol tax fund moneys, and community block grants. In Topeka, they receive 51% from general revenue sharing, from United Way and fund raising campaigns. She sees the need to house those who need immediate shelter, and a need for funds for state-wide public education. She pointed out attorneys need to use the Protection from Abuse Act more. The reason women don't follow through on charges is because they are intimidated. There is a need for diversion programs for batterers. A committee member inquired, what difficulties do shelter facilities have in funding? What kind of problems, if any, with their shelters losing federal funds? Are they increasing or decreasing? She replied, not sure what the change is; funding is very, very tight. They are operating on bare minimums, and with a volunteer staff. The committee member inquired, are there communities that would have a need for a shelter and have nothing. She replied, only have 18 cities that have anything at all. The committee member inquired, what position her organization has on increasing marriage license fees? She replied, they support that increase so that shelter programs can be funded. The committee member inquired, do you have an opinion what mechanism should be utilized to distribute these funds? She replied, they do not particularly have a preference. They don't care which agency is the one to administer the moneys.

Representative Joan Wagnon testified regarding diversion for domestic violence offenders. A copy of her handout is attached (See Attachment No. 3). She pointed out renewable statewide funds must be available. The YWCA has 100% local funding here. Thirty-seven percent of the women they serve locally are going back to the abusive situation. They find the shelter situation is protecting them from immediate violence. Sometimes they go back four or five times with a valid reason for putting that family back together. She proposed mandating diversion programs. A committee member inquired, is there increased battering or are we doing a much better job of reporting it? She replied, intake at the shelter goes up every time we have a meeting like this. Whenever a stressful situation in the community occurs, incidence of violence increases. Also, extreme heat causes domestic violence; economic pressure;

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DOMESTIC VIOLENCE AND ABUSE continued

sexual frustration; problems with the kids. The committee member inquired, are there changes in our society that are resulting in greater instances of physical abuse; should we be addressing causes? She replied, there are deeply rooted attitudes. It is when people are trapped in stereotypical roles, and it is a very difficult thing to get out of the situation. The women's movement has freed up some, but the change produces conflict with others. A committee member inquired, do you think as society's attitudes change during the years about stereotypical roles and has been accepted, abuse will diminish? She replied, I hope so; getting it out of the closet helps. Six years ago the average age of the people they would see was between 17 and 22; they hardly ever served an older woman; now the average age is up to 29. The older woman is coming in for help.

Barb Smith reported how their client load has increased. In 1982 they had 238 women and children; in 1983, 359, which is a 69% increase. Their budget for 1982 was \$84,000, and they had to drop to \$44,000 in 1983. They decreased from three staff members to one-and-a-half staff members. They have been concerned about who will be the administrative agent and the paper work involved to handle that paper work; would hate to see administration costs increase because of that. A committee member inquired, is it correct one of the problems a facility like yours has in fund raising is to provide information for your funding to be sure you have a stable base source of funding? If have that base funding, would it decrease or increase? She replied, think it will increase. State funding of some sort is necessary to service what we already have available.

Ken Bahr testified in the two years he has been director of the department, he has seen an alarming increase in sexual assault and domestic violence. In 1982, the department had 1,000 cases per month; 350 women and children sheltered in domestic violence centers per month, and 450 in 1983. He estimated this is only 10% of possible violence cases which are happening. Although they do an excellent job, they are limited with the service they can provide because of funding. He sees a real need for shelters. They have a short term grant to give \$3,000 to \$4,000 but hope since the shelter has been established, the community will provide funding to help these shelters continue. Mr. Bahr stated if the legislature does address the sheltering victims of violence, his board would be glad to help administer the program. A committee member inquired, there were comments made yesterday the funding at state level is up substantially on this because of the changes in the juvenile act; is it only catching on now? The traditional way out of general revenue funding is not being done that way now. In terms of financing centers, the emphasis should be placed upon this and put pressure on Dr. Harder. Aileen Whittill replied, SRS' increase was in staff for child abuse. The committee member inquired, if you are running out of money, pressure should be put on Dr. Harder. Your budget is up to what it has been in the past. She replied, block grant money is not up from last year. The committee member explained, it comes in the form of federal money. Need to solve the problem; someone else needs to look at it because the funds are up. Another committee member inquired, the general fund money was for placement for juveniles only; SRS has nothing of general fund money to go to facilities for adults and their children. The committee member inquired, why don't they get Dr. Harder to recommend as part of social services of state government?

Representative Fuller testified there is legislation being introduced in the House Judiciary Committee, hoping it will prevent a person from being battered by a spouse. The bill will allow a police officer to make an arrest in a domestic violence case. The bill says "may" make an arrest; in the future we may look at a bill that says "shall" make an arrest; some states say "shall" make an arrest. Representative Fuller suggested the committee might want to look at a mandatory sentence in the future, and to see it is followed through and administered on the first offense.

Senator Steineger made a conceptual motion that staff prepare legislation regarding

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the peace bond; Senator Gaines seconded the motion. Senator Steineger requested staff to look into the matter and find out why it was dropped. The motion carried.

Senator Werts moved that the minutes of January 25, 1984, be approved. Senator Gaines seconded the motion, and the motion carried.

A committee member requested staff to prepare a summary of ideas and changes that have been presented to them, regarding the issues of child abuse and domestic violence.

A committee member commented during discussion of the issue of domestic violence, he sees a break down in the judicial system on the judges' part. The chairman pointed out hearings have shown we are better off now than we were six years ago. We don't need major changes in the law, but we need leadership to give the signal that the legislature views this as a serious problem, and we want action taken.

The chairman thanked everyone for participating in the hearings.

The meeting adjourned.

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Todd Epp	Topeka	KTWU-TV
Manuel Bala	Wichita	
Pat Adamsen	Wichita	
Donna M. Adamsen-Epp	Topeka	Beaked Women Task Force
Lee Sipes	204 W 5 <sup>TH</sup>	Topeka Police Dept.
STANLEY D. ROWE	204 W 5 <sup>TH</sup> TOPEKA	Topeka Police Dept.
S. Belknap	Topeka	Beaked Women Task Force
Marti Frumhoff	Lawrence	Women's Trans. Care
Barb Smith	Lawrence	Women's Trans. Care
Oppe Groen	Box 633 Lawrence	WTCS
Judith Harris	Lawrence	WTCS
Ruth Wilkin	Topeka	<del>St. Paul's</del>
Sophy Groen	"	St. Paul's
Hendon McCrewe	Kansas City	Gov's Policy Office
Darlene Grier Stearns	Topeka	Consultation of Churches
Ms. Nelson	Lawrence	Senator Stearns
Paul Remort	Topeka	KWPC
Christine C. Taylor	Topeka	Ks Assoc. of Domestic Violence Progs
Yea Bala	"	Crime Victims Reparations Bd.
Donna S. Scott	"	KCPA
Hilda Paul Woody	Cottamwood Falls, KS	National Organization for Women
Alexis Whitell	Topeka	SRS
Andrea Swan	Topeka	SRS
Darlene Montgomery	238 Gage, Topeka	
John N. Eaton	Lawrence	SRS
Jessie Rauson	"	Leg.

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Rep Joan Wagon H. Fuher	278 W AP	
Jessie Palmer	Ingomphie	Co Govt
Roberta J. August	Topeka	
Allen Sebeten	"	KTCA
Kippie Slechta	Overbrook, Ks.	Self interest
Anita Maichel	Overbrook, Ks	" "
Chris Mitchell	Topeka	Ks AFL-CIO
Tom Futzler	Lawrence	Sen Hess

TESTIMONY TO SENATE JUDICIARY COMMITTEE  
ELDERLY ABUSE  
DOMESTIC VIOLENCE AND ABUSE  
by  
Kansas Department on Aging  
January 31, 1984

Thank you, Chairman Pomeroy and members of the committee, for giving me this opportunity to speak about another dimension of domestic violence and abuse: that of elderly abuse.

Like the previous testifiers on spousal abuse and child abuse, the abused elderly person is dependent on the caregiver for his/her maintenance. There are similar parallels between the battered child and the elderly person who is residing with a caretaker. Both depend on the caretaker for basic survival needs; both reside in a family setting that is assumed to give love and caring protection; and both can be a source of stress on the caretaker. In addition, the elderly abused person is often also physically frail, physically ill, or mentally impaired.

Although my topic is more inclusive than just the abuse of elders by family members in that it includes other caretakers, as well as self-neglect, the number of abuse in non-institutional settings is likely to increase in Kansas as it has done in nearby states.

There are several factors contributing to what we see as an increase in elder abuse by caretakers, usually family members.

1. The increased number of elderly (75+ and 85+) is especially significant. Percentage increases in those populations between 1970-1980 were: 65+ - 15.2%; 75+ - 18.6%; and 85+ - 40%.
2. Preference to remain at home and in the community. It is a good policy to have community long term care (cost and a preference), but it means more people with care needs will be in the community.
3. Change in family roles and structures with caretakers often having other roles and work.

The increase in those 85+ is particularly significant, because **they generally** have greater limitations on the ability to maintain themselves, often they have multiple disabilities without some assistance personally from family and caretakers. I certainly don't want to imply that all families abuse their elders, but the increased caretaking responsibilities and numbers of elderly persons that are dependent on others have increased and will, we believe, cause an increase in elderly abuse into the future.

6.8% of the elderly are in nursing homes at one time in Kansas; yet, 17% are adjudged to have great or severe limitations to take care of themselves. It is estimated that 80% of the elderly's care is provided by families and family members. The middle-aged person today is more likely to have a living parent than ever before. This extended caretaking, rather than decreasing, is likely to increase into the future.

What this suggests is that adult children and other family members may be the providers of a significant amount of care to an increasingly larger and older elderly population. There is also a further possibility that the older person will be very old and quite frail, increasing the potential for abuse.

The changed physical or mental state also increases the potential for abuse. The elderly individual may not be as comfortable or feel as free as anticipated. The sense of control over his or her own life may decrease, and the sense of dependency increase along with physical and mental impairments.

There is a profile of abused elderly nationally that indicates the kind of older person who is most likely to be abused.

1. The abused person is most likely to be a woman over age 75; it isn't the majority of the elderly who are well able to care for themselves.
2. The victim, in 75% of the cases reported, lived with the abuser; and in 84% of the cases, the abusing person was a relative of the victim (84%).
3. In most cases (75%) the elderly victim had a mental or physical disability which prevented him or her from taking care of basic daily needs - e.g. eating, toileting, bathing, dressing, taking medication. In most cases there was more than one disability.

Often the elderly victim had no or few other contacts outside the family and is completely dependent on the caretaker. The incidence of abuse tended to be recurring events and not single occurrences. The abuser also had a profile - the abuser experienced some form of stress, e.g., of substance addiction (either alcohol or drugs), long term medical complaint, or long term financial difficulty. Generally, the abuser tended to say that the victim was a source of stress because the elder required a high level of physical or emotional care or was financially dependent on the abuser.

In the family order, the abuser is a son, another family member; e.g., grandchildren or nieces, and then daughters.

What we have then is an elderly victim, over 75, usually a woman, dependent on someone else, usually a family member, for life supporting maintenance.

Let me just briefly outline some information about Kansas and what we currently do. Under SRS, General H&W Clause, although not specified in statute, the state does provide protective services to non-institutional elderly on a limited basis. There were 774 non-institutional abuse cases; 75% were confirmed or potential risks; 31% were by family or relations; 10% by others; and 59% were self-abuse. Not all were over 60 years of age.

774 Non-Institutional  
359 In Institutions

Missouri passed a strengthened law in 1981 and we have some statistics. There were 983 Non-institutional Elderly Abuse cases in 1983 (60+); 75% were substantiated; 13% were suspected. Missouri reported they are presently at 800 cases per month.

Although we may have understanding of the abused and abuser, one essential function of government is to insure the safety and welfare of the most dependent in society. Kansas law provides for protective services for residents in nursing homes. But it makes no provisions for other elder abuse even though more reported abuse occurs in non-institutional setting.

Kansas is the only state of the 25 states that we reviewed that have an abuse statute that excludes non-institutional elderly in statute.

SRS presently serves these non-institutional clients under the broadest of mandate under its general health and welfare provisions. But there is no specification in law either to the limits, procedures, or to the protections for the victims, caretakers, or workers.

KDOA supports passage of a bill that insures protective services under certain situations. In reviewing the concerns of previous years, we have noted a variety of issues and concern to the legislature and believe that any bill should address them.

1. That the civil liberties of the individual and caretakers be protected.
2. That we do not unnecessarily interfere with people's lives but provide protective services only when essential.
3. That the abused and or neglected person be provided needed services.
4. That future abuse is, to the greatest degree possible, prevented.
5. That government also has protections in carrying out its mandates.

KDOA also believes the following principles should guide any bill to prevent non-institutional abuse and to provide protective services.

Such services should protect the individual who because of infirmities associated with age or disability and who is in life threatening danger from abuse, neglect, or exploitation should receive those services.

That the protective services of the state should be brought to bear to prevent further abuse or neglect.



That protective services should have strict limits in state law, and due process and assistance from the courts.

That there should be the least possible restriction on personal and civil liberty and the exercise of constitutional rights consistent with due process.

KDOA supports a bill and has asked the Senate Public Health and Welfare Committee to introduce a bill which includes in some way the following provisions:

1. Definitions of eligibles, of services, and the problem to be addressed.
2. Mandates protective services in limited situations.
3. Has protections when a person does not want the service and is capable of giving informed consent.
4. Establishes the course of action with limited provisions when a person cannot give informed consent.
5. Establishes a course of action and empowerment to provide services when there is a life threatening situation and a caretaker or guardian refuses consent.
6. Emergency provisions in life threatening situations with authority clearly spelled out.
6. Use and involvement of court.
7. A preference in any action taken under the law for the independent living and the least restrictive environment.
8. Guarantees of due process through the courts.

We think it is possible to balance the interests in government's responsibility in protecting vulnerable dependent people who are victims of abuse and neglect, with our interest in protecting the civil liberties, of individuals and families, and the right to self determination and varied life styles.

I strongly believe that people have the right to live as they choose. I also believe that we do have a responsibility to protect those who cannot protect themselves and prevent future abuse.

We are looking at a changing society, with many people living into older age. The aging of the older population - increase in old people with increased dependency, and a desire to stay in the community.

I hope this is a year when we can place these protections into law to protect those most vulnerable. I believe those should be taken hand in glove with preventive interventions.

1. Alzheimer's Training - ARDA
2. Family Support and Counselling through Community Mental Health
3. Family Respite Services

Public policy needs a combination of approaches to safeguarding against elderly abuse.

1. Intervention in law.
2. Rapid identification of elders at risk in order to minimize victimization.
3. Immediate availability of effective protection when danger threatens.
4. Prevention as well as intervention strategies.

1-31-84  
Attach #2

MEMO FROM: KANSAS DEPARTMENT ON AGING

Date: Jan. 30, 1984

TO: Senator Pomeroy

FROM: Sylvia Hougland

RE: \_\_\_\_\_

Attached is a copy of suggestions for a Non-Institutional Elderly Abuse bill.

Included are:

1. Statement of Legislative Intent from the Florida bill.
2. List of necessary components.
3. A Non-Institutionalized Elderly Abuse Act.
4. Copy of Missouri legislation.
5. Copy of Florida legislation.

SH:bms  
Attachments

Atch. 2

Attach # 2

STATEMENT OF LEGISLATIVE INTENT FROM THE FLORIDA BILL:

The Legislature recognizes that there are many persons in this state who, because of age or disability, are in need of protective services. Such services should allow the individual the same rights as other citizens, and at the same time protect the individual from abuse, neglect, and exploitation. It is the intent of the Legislature to provide for the detection and correction of abuse, neglect, and exploitation and to establish a program of protective and supportive services for all persons in need of them. It is intended that the mandatory reporting of such cases will cause the protective services of the state to be brought to bear in an effort to prevent further abuse, neglect, and exploitation. In doing so, the Legislature intends to place the least possible restrictions on personal liberty and the exercise of constitutional rights, consistent with due process and protection from abuse, neglect, and exploitation.

## IDEAL COMPONENTS OF A NON-INSTITUTIONAL ADULT ABUSE BILL

1. Mandate that protective services be provided by SRS.
2. Definitions of eligibles, services, and the problems (abuse, neglect and exploitation)
3. Immunity for reporters except for malicious intent.
4. Requirements to report by selected classes of people or all people.
5. Penalties for not reporting.
6. Penalties for abuse, neglect or exploitation.
7. Penalties for divulging confidential information.
8. Course of action and empowerment to provide services when; - the caretaker does not cooperate - the client does not cooperate - or the guardian does not cooperate.
9. Provision for emergency placement, with authority going to any combination of the court, SRS, and law enforcement agencies.
10. A preference in any actions taken under the law for independent living or least restrictive environment.
11. Guarantees of due process through courts.
12. An abuse registry information system.

AN ACT concerning abuse and neglect of aged adults and disabled persons directing the investigation of reports of such abuse and neglect by the department of social and rehabilitation services; providing for protective services.

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

Section 1. As used in this act:

(a) "Abuse" means treatment under which an eligible adult is deprived, or allowed to be deprived, of food, clothing, shelter or medical treatment essential to his well-being, or is permitted to live in an environment, when such deprivation or environment causes, or is likely to cause, the adult's physical or emotional health to be significantly impaired.

(b) "Neglect" means to omit, forbear, or fail to exercise a degree of care and caution that a prudent person would deem essential to insure the well-being of an eligible adult and [by] such omission, forbearance, or failure, significantly impair or jeopardize the physical or emotional health of the individual.

(c) "Exploitation" means an unjust or improper use of another person for one's own profit or advantage.

(d) "Caretaker" means a person or institution which has assumed the responsibility for the care of an eligible adult voluntarily, by contract or by order of a court of competent jurisdiction.

(e) "Secretary" means secretary of social and rehabilitation services.

(f) "In need of protective services" means that an adult is unable to perform or obtain services which are necessary to maintain physical and mental health.

(g) "Eligible adult" means an aged or disabled person with disabling infirmities such as organic brain syndrome or other physical, mental or emotional dysfunctioning to the extent that the person is impaired in his ability to adequately provide for his own care or protection. Shall not include a resident as defined in K.S.A. 39-1401.

(h) "Protective services" means services provided by the state or other governmental or private organizations or individuals which are necessary to prevent abuse, neglect or exploitation. Such protective services shall include, but shall not be limited to, evaluation of the needs for services, arrangements for appropriate living quarters, obtaining financial benefits to which the person is entitled, or securing medical and legal services. In those situations where exploitation, prevention of injury, and protection of the person and his property are at issue, protective services shall include seeking the appointment of a guardian for the person or seeking protective placement.

Section 2. (a) The department of social and rehabilitation services upon receiving a report that an adult is being, or has been, abused or neglected, or is in a condition which is the result of such abuse or neglect or is in need of protective services shall, within 48 hours of receiving such report, initiate an investigation, including a personal visit with the adult and, within two weeks of receiving such a report, shall initiate a thorough investigation and evaluation to determine the situation relative to the condition of the adult and what action and services, if any, are required. The evaluation shall include, but not be limited to, a visit to the named adult and consultation with those individuals having knowledge of the facts of the particular case. Upon completion of the evaluation of each case, written findings shall be prepared which shall include a finding of whether there is or has been abuse or neglect, recommended action and a determination of whether protective services are needed.

(b) The secretary shall maintain a statewide register of the reports received, the findings, evaluations and the actions recommended. The register shall be available for inspection by personnel of the department of social and rehabilitation services.

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(c) Neither the report nor the written evaluation findings shall be deemed public record or be subject to the provisions of K.S.A. 45-201 to 45-203, inclusive, and amendments thereto. The name of the person making the original report or any person mentioned in such report shall not be disclosed unless the person making the original report specifically requests or agrees in writing to such disclosure or unless a judicial proceeding results therefrom. No information contained in the statewide register shall be made available to the public in such a manner as to identify individuals.

Section 3. (a) No person who makes any report pursuant to this act, or who testifies in any administrative or judicial proceeding arising from such report, shall be subject to any civil liability on account of such report or testimony, unless such person acted in bad faith or with malicious purpose.

(b) No employer shall terminate the employment of, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that such employee made or caused to be made a report under this act.

Section 4. (a) If the secretary finds that an adult is in need of protective services, the secretary shall provide the necessary protective services, if the adult consents. If the adult fails to consent and the secretary has reason to believe that the adult lacks capacity to consent, the secretary shall determine pursuant to section 7 whether a petition for appointment of a guardian or conservator, or both, should be filed.

(b) If the caretaker of an adult who has consented to the receipt of reasonable and necessary protective services refuses to allow the provision of such services to the adult, the secretary may seek to obtain an injunction enjoining the caretaker from interfering with the provision of protective services to the adult. The petition in such action shall allege specific facts sufficient to show that the adult is in need of protective services and consents to their provision and that the caretaker refuses to allow the provision of such services. If the judge finds that the adult is in need of protective services and has been prevented by the caretaker from receiving such services, the judge shall issue an order enjoining the caretaker from interfering with the provision of protective services to the adult.



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Section 5. Any person, department or agency authorized to carry out the duties enumerated in this act shall have access to all relevant records. The authority of the secretary under this act shall include, but not be limited to, the right to initiate or otherwise take those actions necessary to assure the health, safety and welfare of an adult, subject to any specific requirements for individual consent of the adult.

Section 6. If an adult does not consent to the receipt of reasonable and necessary protective services, or if such individual withdraws the consent, such services shall not be provided or continued, except as provided in Sections 7 or 8.

Section 7. (a) If the secretary finds that an adult is being or has been abused or neglected or is in a condition which is the result of such abuse or neglect and lacks capacity to consent to reasonable and necessary protective services, the secretary may petition the district court for appointment of a guardian or conservator, or both, for the adult pursuant to the provisions of the act for obtaining a guardian or conservator, or both, in order to obtain such consent.

(b) In any proceeding in district court pursuant to provisions of this act, the district court shall appoint any attorney to represent the adult if the adult is without other legal representation.

Section 8. (a) If the secretary finds that a eligible adult who does not consent is in immediate life threatening danger if not immediately removed from the premises, the secretary may, when authorized by court order and accompanied to the premises by a law enforcement official, make arrangements for transport of the eligible adult to an appropriate medical facility.

(b) When action is taken under this section, a preliminary hearing shall be held within 48 hours, excluding Saturdays, Sundays, and legal holidays, to establish probable cause for grounds for protective placement.

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(c) Upon a finding of probable cause, the court may order temporary placement for up to 4 days, pending the hearing for a need for continuing service.

(d) When emergency services are rendered, a report of the exact circumstances, including the time, place, date, factual basis for the need for such services, and the exact services rendered, shall be made and forwarded to the district court within 24 hours.

Section 9. In performing the duties set forth in this act, the secretary may request the assistance of the staffs and resources of all appropriate state departments, agencies and commissions and local health departments and may utilize any other public or private agencies, groups or individuals who are appropriate and who may be available.

Section 10. Subsequent to the authorization for the provision of necessary protective services, the secretary shall initiate a review of each case within 45 days, to determine whether continuation of, or modification in, the services provided is warranted. A decision to continue the provision of such services should be made in concert with appropriate personnel from other involved state and local groups, agencies and departments and shall comply with the consent provisions of this act. Reevaluations of such case shall be made not less than every six months thereafter.

Section 11. Due process - nothing in this act shall be construed in any way to be a denial of due process nor be construed as limiting in any way the authority of the court, of a law enforcement officer, or any other duly appointed official with the power to intervene in emergency situations under existing statutes.

Section 12. Any actions taken under this act by any court, law enforcement office or the Secretary shall be consistent with providing protective services and accommodations in a manner no more restrictive of an individual's personal liberty and no more intrusive than necessary to achieve acceptable care and treatment objectives.

Section 13. This act shall take effect and be in force from and after its publication in the statute book.

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CHAPTER 83-82

Senate Bill No. 124

An act relating to the Department of Health and Rehabilitative Services; amending s. 627.09, Florida Statutes, relating to protection of abused, aged, and disabled persons; requiring certain reports and authorizing the department to take certain action with respect thereto; providing for certain confidentiality; providing penalties; amending s. 410.035, Florida Statutes, relating to subsidy payments; providing for development of a schedule of subsidy payments by October 1, 1983; deleting minimum and maximum limits thereon; repealing ss. 410.10-410.11, Florida Statutes, relating to the "Adult Protective Services Act;" providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 627.09, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 627.09, F.S., for present text.)

627.09 Abuse, neglect, or exploitation of aged or disabled persons.--

(1) LEGISLATIVE INTENT.--The Legislature recognizes that there are many persons in this state who, because of age or disability, are in need of protective services. Such services should allow the individual the same rights as other citizens, and at the same time protect the individual from abuse, neglect, and exploitation. It is the intent of the Legislature to provide for the detection and correction of abuse, neglect, and exploitation and to establish a program of protective and supportive services for all persons in need of them. It is intended that the mandatory reporting of such cases will cause the protective services of the state to be brought to bear in an effort to prevent further abuse, neglect, and exploitation. In doing so, the Legislature intends to place the least possible restrictions on personal liberty and the exercise of constitutional rights, consistent with due process and protection from abuse, neglect, and exploitation.

(2) DEFINITIONS.--As used in this section:

(a) "Abuse" means treatment under which an aged or disabled person is deprived, or allowed to be deprived, of necessary treatment, habilitation, care, sustenance, clothing, shelter, supervision, or medical services essential to his well-being; or is permitted to live in an environment, when such deprivation or environment causes, or is likely to cause impairment of physical or emotional health; or is subject to physical or psychological injury.

(b) "Abused person" means any aged or disabled person who has been subjected to abuse, <sup>neglect or exploitation</sup> or whose condition suggests that he has been abused, <sup>neglected or exploited</sup>

(c) "Aged person" <sup>with</sup> means a person suffering from the infirmities of aging as manifested by organic brain damage, <sup>advanced cerebral</sup> or other physical, mental, or emotional dysfunctioning to the extent that the person is impaired in his ability to adequately provide for his own care or protection.

(d) "Department" means the Department of Health and Rehabilitative Services.

(e) "Disabled person" means any person who suffers from a condition of mental retardation, epilepsy, cerebral palsy, mental illness, or other

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disability which causes the person to be substantially unable to protect himself from the abusive conduct of others.

(f) "Exploitation" means an unjust or improper use of another person for one's own profit or advantage.

(g) "Facility" means any public or private hospital, training center, clinic, school, or other program or service for aged or disabled persons.

(h) "Indicated report" means a report made pursuant to this section when a protective investigation determines that some indication of abuse, neglect, or exploitation exists.

(i) "Neglect" means to omit, forbear, or fail to exercise a degree of care and caution that a prudent person would deem essential to insure the well-being of an aged or disabled person and, by such omission, forbearance, or failure, significantly impair or jeopardize the physical or emotional health of the aged or disabled person.

(j) "Protective services" means those services, the objective of which is to protect an aged or disabled person. Such protective services shall include, but shall not be limited to, evaluation of the need for services, arrangements for appropriate living quarters, obtaining financial benefits to which the person is entitled, or securing medical and legal services. In those situations where exploitation, prevention of injury, and protection of the person and his property are at issue, protective services shall include seeking the appointment of a guardian for the person or seeking protective placement.

(k) "Unfounded report" means a report made pursuant to this section when a protective investigation determines that no indication of abuse, neglect, or exploitation exists.

(3) REPORTS OF ABUSE, NEGLECT, OR EXPLOITATION OF AGED OR DISABLED PERSONS REQUIRED.--

(a) Any person, including, but not limited to, any:

1. Physician, osteopath, medical examiner, chiropractor, nurse, or hospital personnel engaged in the admission, examination, care, or treatment of persons.

2. Health or mental health professional other than one listed in subparagraph 1.

3. Practitioner who relies solely on spiritual means for healing.

4. Nursing home worker, adult congregate living facility worker, adult day care center worker, social worker, or other professional adult care, foster care, residential or institutional worker.

5. Law enforcement officer.

who knows, or has reasonable cause to suspect, that an aged or disabled person is an abused, neglected, or exploited person shall immediately report such knowledge or suspicion to the department's abuse registry on the single statewide tollfree telephone number or directly to the local office of the department responsible for investigation of reports made pursuant to this section.

(b) Each report made by a person in an occupation designated in paragraph (a) shall be confirmed in writing by the individual making the report to the local office of the department within 48 hours of the initial report.

(c) Reports involving known or suspected institutional abuse, neglect, or exploitation shall be made and received in the same manner as all other reports made pursuant to this section.

(d) The statewide tollfree telephone number for the central abuse registry shall be posted in all facilities operated by or under contract with or licensed by the department which provide services to aged or disabled persons. Such posting shall be clearly visible and in a prominent place within the facility and shall be accompanied by the words, "To Report the Abuse, Neglect, or Exploitation of an Elderly or Disabled Person, Please call the Tollfree Number."

(4) MANDATORY REPORTING OF DEATH AND POSTMORTEM INVESTIGATION BY MEDICAL EXAMINER.--Any person required to report or investigate cases of suspected abuse, neglect, or exploitation who has reasonable cause to suspect that an aged or disabled person died as a result of abuse, neglect, or exploitation, shall report his suspicion to the appropriate medical examiner. The medical examiner shall accept the report for investigation pursuant to s. 406.11 and shall report his findings, in writing, to the local law enforcement agency, the appropriate state attorney, and the department. Autopsy reports maintained by the medical examiner shall not be subject to the confidentiality requirements provided for in this section.

(5) REPORTS OF INSTITUTIONAL ABUSE, NEGLECT, OR EXPLOITATION.--The department shall conduct a protective investigation of each report of institutional abuse, neglect, or exploitation. Upon receipt of a report which alleges that an employee or agent of the department acting in an official capacity, has committed an act of abuse, neglect, or exploitation, the department shall immediately initiate a protective investigation and shall notify the state attorney in whose circuit the alleged abuse, neglect, or exploitation occurred.

(6) ABUSE REGISTRY.--

(a) The department shall establish and maintain a central abuse registry which shall receive reports made pursuant to this section in writing or through a single statewide tollfree telephone number which any person may use to report known or suspected abuse, neglect, or exploitation at any hour of the day or night, any day of the week. The abuse registry shall be operated in such a manner as to enable the department to:

1. Immediately identify and locate prior reports or cases of abuse, neglect, or exploitation.
2. Regularly evaluate the effectiveness of the department's program for abused, neglected, or exploited persons through the development and analysis of statistical and other information.

(b) Upon receiving an oral or written report of known or suspected abuse, neglect, or exploitation, the abuse registry shall immediately notify the local office of the department with respect to the report, any previous report concerning a subject of the present report, or any other pertinent information relative thereto.

(c) Upon completion of its investigation, the local office of the department shall classify reports either as indicated or unfounded. All identifying information in the abuse registry maintained in unfounded reports shall be expunged immediately. All identifying information in the abuse registry maintained in indicated reports shall be expunged from the registry 7 years from the date of the last indicated report concerning the same victim or the same perpetrator. All information, other than identifying information, maintained in indicated or unfounded reports at the time of expunction shall be disposed of in a manner deemed

appropriate by the department and pursuant to s. 119.041 and s. 267.051(6). Nothing in this section is intended to require the expunction or destruction of case records or information required by the Federal Government to be retained for future audit.

(7) PROTECTIVE INVESTIGATIONS.--

(a) The department shall, upon receipt of a report of abuse, neglect, or exploitation of an aged or disabled person, cause an immediate protective investigation to be made and shall in turn, upon determining probable cause, notify the state attorney. The department shall, within 24 hours of receipt of the report notify the appropriate human rights advocacy committee, as established pursuant to s. 20.19(7), that an alleged abuse has occurred. Such notice may be accomplished verbally or in writing and shall include the name of the person alleged to have been abused and the nature of the report. The department shall provide protective services under any of the following conditions:

1. The person demonstrates a need for, and requests, such services.
2. An interested person requests such services on behalf of a person in need of services.
3. The department determines a person is in need of such services.
4. A court orders such services.

(b) Voluntary services.--An individual shall receive protective services voluntarily unless ordered by the court, requested by a guardian, or provided in accordance with subsection (8).

(8) INVOLUNTARY PROVISION OF SERVICES.--

(a) Every reasonable effort shall be made to secure the consent and participation of the aged or disabled person in the assessment and resolution of his own need for protective services.

(b) Upon probable cause to believe that an aged or disabled person is being abused, neglected, or exploited, a representative of the department, accompanied by a law enforcement officer may enter a premises after obtaining a court order and announcing their authority and purpose.

(c) Forcible entry shall be attained only after a court order has been obtained, unless there is probable cause to believe that the delay incident of such an order would cause an aged or disabled person to incur a substantial risk of life-threatening physical harm.

(d) When, from the personal observation of a representative of the department and a law enforcement officer, it appears probable that an aged or disabled person is likely to incur a substantial risk of life-threatening physical harm or deterioration if not immediately removed from the premises, the department's representative may, when authorized by a court order, take into custody and transport, or make arrangements for the transportation and payment thereof, the individual to an appropriate medical or protective services facility.

(e) When action is taken under this section, a preliminary hearing shall be held within 48 hours of the signing of the court order, excluding Saturdays, Sundays, and legal holidays, to establish probable cause for grounds for protective placement.

(f) Upon a finding of probable cause, the court may order temporary placement for up to 4 days, pending the hearing for a need for continuing services.

(9) COOPERATION WITH LAW ENFORCEMENT AND OTHER AGENCIES.--

(a) All state, county, and municipal law enforcement and public agencies have a duty to cooperate with the department and its employees, transmit reports of abuse, neglect, and exploitation to the department, and protect and enhance the welfare of aged or disabled persons who are potentially subject to abuse, neglect, or exploitation detected by a report made pursuant to this section.

(b) Any funds appropriated by counties for home health care or boarding home, foster home, or nursing home services may be matched by state and federal funds; such funds shall be utilized by the Department of Health and Rehabilitative Services for the benefit of aged or disabled persons in said counties.

(c) The Department of Health and Rehabilitative Services may purchase services from any public or private institution, or institution or agency within the state which meets the standards and rules prescribed by the department for the proper care and supervision of abused, neglected, or exploited persons.

(d) Every facility serving aged or disabled persons shall inform residents of their rights to report abusive, neglectful, or exploitive practices and shall establish appropriate policies and procedures to facilitate such reporting.

(10) CONFIDENTIALITY OF REPORTS AND RECORDS.--

(a) In order to protect the rights of the individual or other persons responsible for the welfare of the aged or disabled person, all records concerning reports of abuse, neglect, or exploitation of the aged or disabled person, including reports made to the abuse registry and to local offices of the department and all records generated as a result of such reports, shall be confidential and exempt from the provisions of s. 119.07(1), and shall not be disclosed except as specifically authorized by this section.

(b) Access to such records, excluding the name of the person making the report, which shall be released only as provided in paragraph (d), shall be granted only to the following persons, officials, and agencies for the following purposes:

1. Employees or agents of the department responsible for carrying out protective investigations, ongoing protective services, or licensure or approval of nursing homes, adult congregate living facilities, adult day care centers or other facilities, used for the placement of aged or disabled persons.

2. A law enforcement agency investigating a report of known or suspected abuse, neglect, or exploitation.

3. The state attorney of the judicial circuit in which the aged or disabled individual resides or in which the alleged abuse, neglect, or exploitation occurred.

4. Any aged or disabled person or perpetrator who is the subject of a report or the subject's guardian, custodian, guardian ad litem, or counsel.

5. A court, by subpoena, upon its finding that access to such records may be necessary for the determination of an issue before the court; however, such access shall be limited to in-camera inspection, unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it.

6. A grand jury, by subpoena, upon its determination that access to such records is necessary in the conduct of its official business.

7. Any appropriate official of the department responsible for:

a. Administration or supervision of the department's program for the prevention, investigation, or treatment of abuse, neglect, or exploitation when carrying out his official function; or

b. Taking appropriate administrative action concerning an employee of the department alleged to have perpetrated institutional abuse, neglect, or exploitation.

8. Any person engaged in bona fide research or audit purposes. However, no information identifying the subjects of the report shall be made available to the researcher unless such information is absolutely essential to the research purpose, suitable provision is made to maintain the confidentiality of the data, and the department has given written approval.

(c) The department may release to professional persons such information as is necessary for the diagnosis and treatment of the victim or the person perpetrating the abuse.

(d) The name of any person reporting abuse, neglect, or exploitation shall in no case be released to any person other than employees of the department responsible for protective services, the abuse registry, or the appropriate state attorney without the written consent of the person reporting abuse, neglect, or exploitation when deemed necessary by the state attorney or the department to protect an aged or disabled person who is the subject of a report, provided that the fact that such person made the report is not disclosed. The department shall, upon receipt of an application of a person applying for approval or licensure of a facility to care for the aged or disabled persons, whether such care is for less than or more than 24 hours, search its abuse registry for the existence of an indicated report and the results of the adult protective assessment conducted pursuant thereto.

(11) TRANSMITTAL OF RECORDS.--With respect to any case of reported abuse of an aged or disabled person, the department, when appropriate, shall transmit all reports received by it, which shall contain the results of the investigation, to the state attorney of the county where the incident occurred.

(12) IMMUNITY.--Anyone participating in the making of a report pursuant to this section or participating in a judicial proceeding resulting therefrom shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, that otherwise might be incurred or imposed. Further, no resident or employee of a facility serving aged or disabled persons shall be subjected to reprisal or discharge because of his actions in reporting abuse pursuant to the requirements of this section.

(13) ABROGATION OF PRIVILEGED COMMUNICATIONS.--The privileged quality of communication between husband and wife and between any professional person and his patient or client, and any other privileged communication except that between attorney and client, as such communication relates to both the competency of the witness and to the exclusion of confidential communications, shall not apply to any situation involving known or suspected abuse, neglect, or exploitation and shall not constitute grounds for failure to report as required by this section, failure to cooperate with the department in its activities pursuant to this section, or failure to give evidence in any judicial proceeding relating to abuse, neglect, or exploitation of an aged or disabled person.



(14) RULES TO BE PROMULGATED.--The Department of Health and Rehabilitative Services shall promulgate rules for the implementation of this section.

(15) PENALTIES.--

(a) Any person required by this section to report a case of known or suspected abuse, neglect, or exploitation of an aged or disabled person who knowingly and willfully fails to do so, or who knowingly and willfully prevents another person from doing so, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any person who knowingly and willfully makes public or discloses any confidential information contained in the abuse registry or in the records of any case of abuse, neglect, or exploitation except as provided in this section, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or 775.084.

(c) Any person who knowingly or willfully abuses, neglects or exploits an aged or disabled person and, in so doing, causes great bodily harm, permanent disfigurement, or permanent disability to such person is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) Any person who knowingly or willfully abuses, neglects, or exploits an aged or disabled person is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 3. Sections 410.10-410.11, Florida Statutes, are hereby repealed.

Section 4. This act shall take effect July 1, 1983.

NOV 21 1979

## AN ACT

Relating to the reporting of certain persons who are unable to perform or obtain services necessary to maintain physical or mental health and the assistance of such persons by the state.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,  
AS FOLLOWS:

Section 1. As used in this act, unless the context clearly requires otherwise, the following terms mean:

- (1) "Court", circuit court of probate jurisdiction;
- (2) "Department", the department of social services;
- (3) "Director", director of the department of social services or his designees;
- (4) "Eligible adult", a person sixty years of age or older who is unable to protect his own interests or adequately perform or obtain services which are necessary to meet his essential human needs;
- (5) "Informed consent", consent or agreement by a competent eligible adult to receive protective services under the provisions of this act after receiving a clear, fair and reasonable explanation of his rights and the contemplated services to be provided so that the eligible adult is in a position to make an intelligent decision as to whether or not he will accept the provided protective services;
- (6) "Least restrictive environment", a physical setting where protective services for the eligible adult and accommodation is provided in a manner no more restrictive of an individual's personal liberty and is no more intrusive than necessary to achieve acceptable care and treatment objectives;
- (7) "Likelihood of serious physical harm", one or more of the following:
  - (a) A substantial risk that physical harm to an eligible adult will occur because of his failure or inability to provide

for his essential human needs as evidenced by acts or behavior which has caused such harm or which places another person in reasonable fear that the eligible adult will sustain such harm;

(b) A substantial risk that physical harm will be inflicted by an eligible adult upon himself, as evidenced by recent credible threats, acts, or behavior which has caused such harm or which places another person in reasonable fear that the eligible adult will sustain such harm;

(c) A substantial risk that physical harm will be inflicted by an eligible adult upon another as evidenced by recent acts or behavior which has caused such harm or which places another person in reasonable fear of sustaining such harm;

(d) A substantial risk that further physical harm will occur to an eligible adult who has suffered physical injury, neglect, sexual or emotional abuse, or other maltreatment or wasting of his financial resources by another person;

(8) "Protective services", services provided by the state or other governmental or private organizations or individuals which are necessary for the eligible adult to meet his essential human needs.

Section 2. 1. Any person having reasonable cause to suspect that an eligible adult presents a likelihood of suffering serious physical harm and is in need of protective services shall report such information to the department.

2. The report shall be made orally or in writing. It shall include, if known:

- (1) The name, age, and address of the eligible adult;
- (2) The name and address of any person responsible for the eligible adult's care;
- (3) The nature and extent of the eligible adult's

condition; and

(4) Other relevant information.

3. Any person making a report pursuant to subsection 1 above, testifying in any judicial proceeding arising from the report, or participating in a required investigation, shall be immune from civil or criminal liability on account of such report, testimony, or participation. The name of the person making the report and the report are not public records, shall be kept confidential and shall not be released to any person.

4. The department shall establish a statewide toll free phone number for receipt of reports.

Section 3. Upon receipt of a report, the department shall make a prompt and thorough investigation of all reports regarding eligible adults facing a likelihood of serious physical harm and in need of protective services. The department shall provide for:

(1) Identification of the eligible adult and determination that the eligible adult is eligible for services;

(2) Evaluation and diagnosis of the needs of eligible adults;

(3) Provision of social casework and counseling;

(4) Development of alternative living arrangements as necessary;

(5) Assistance in locating and receiving necessary protective services;

(6) The coordination and cooperation with other state agencies and public and private agencies in exchange of information and the avoidance of duplication of services.

Section 4. When an eligible adult gives informed consent to receive protective services, the department shall assist the adult in locating and arranging for necessary services in the

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least restrictive environment reasonably available.

Section 5. When the department receives a report that an eligible adult is facing a likelihood of serious physical harm and is in need of protective services and the department is unable to conduct an investigation because access to the eligible adult is barred by any person, the director may petition the appropriate court for a warrant to enter upon the described premises and investigate the report. The application for the warrant shall identify the eligible adult and the facts and circumstances which require the issuance of the warrant. The director may also seek an order to enjoin the person barring access from interfering with the investigation. If the court finds that, based on the report and relevant circumstances and facts, probable cause exists showing that the eligible adult faces a likelihood of serious physical harm and is in need of protective services and the director has been prevented by another person from investigating the report, the court may issue the warrant or enjoin the interference with the investigation or both.

Section 6. 1. If an eligible adult gives informed consent to receive protective services and any other person interferes with or prevents the delivery of such services, the directory may petition the appropriate court for an order to enjoin the delivery of the services. The petition shall cite the informed consent of the eligible adult and shall allege specific facts sufficient to show that the eligible adult faces a likelihood of serious physical harm and is in need of the protective services and that delivery is barred by the person named in the petition. If the court finds upon clear, cogent and convincing evidence that the allegations in the petition are substantiated, the court may issue an order enjoining the

delivery of the protective services and may establish such conditions and restrictions on the delivery as the court deems necessary and proper under the circumstances.

Section 7. When an eligible adult facing the likelihood of serious physical harm and in need of protective services is unable to give informed consent because of incompetency or legal disability and the guardian of the eligible adult refuses to provide the necessary services or allow the provision of such services, the director shall inform the court having jurisdiction over the eligible adult of the facts showing that the eligible adult faces the likelihood of serious physical harm and is in need of protective services and that the guardian refuses to provide the necessary services or allow the provision of such services under the provisions of this act. Upon receipt of such information, the court may take such action as it deems necessary and proper to insure that the eligible adult is able to meet his essential human need.

Section 8. If the director determines that an eligible adult lacks the capacity to consent to receive protective services and presents a likelihood of serious physical harm, the director may petition the appropriate court in the county in which the elderly person is found for an order to initiate the proper procedures established in either chapter 202, RSMo, or chapter 475, RSMo.

Section 9. When a peace officer has probable cause to believe that an eligible adult will suffer an imminent likelihood of serious physical harm if not immediately placed in a medical facility, that the adult is incapable of giving informed consent, and that it is not possible to follow the procedures in section 8 of this act, the officer may transport the eligible adult to an appropriate medical facility which

shall admit the eligible adult and notify the next of kin, if known, and the director. If within forty-eight hours of admission, a person who is legally authorized to give consent for the provision of medical treatment for the eligible adult has not given or refused to give and it is the opinion of the medical staff of the facility that treatment is necessary to prevent serious physical harm, the director or the head of the medical facility may file a petition in the appropriate court for an order authorizing specific medical treatment. The court shall hold a hearing and issue its decision within five days. Where access to the eligible adult is barred and a substantial likelihood exists of serious physical harm resulting to the eligible adult if he is not immediately afforded protective services, the peace officer may apply to the appropriate court for a warrant to enter upon the described premises and remove the eligible adult. The application for the warrant shall identify the eligible adult and the circumstances and facts which require the issuance of the warrant. The medical facility may admit and treat the eligible adult before the court hearing only if a licensed physician designated by the facility for such purpose examines the eligible adult and determines that the admission and treatment are imminently necessary and any delay before the hearing would jeopardize the life of the person affected. The medical care under this section may not be rendered in a mental health facility unless authorized pursuant to the civil commitment procedures in chapter 202, RSMo.

Section 10. If an eligible adult does not consent to the receipt of reasonable and necessary protective services, or if an eligible adult withdraws previously given consent, the protective services shall not be provided or continued; except

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that, if the director has reasonable cause to believe that the eligible adult lacks the capacity to consent, the director may seek a court order pursuant to the provisions of section 8.



KANSAS LEGISLATIVE RESEARCH DEPARTMENT

Room 545-N - Statehouse

Phone 296-3181

Date January 16, 1984

TO: REPRESENTATIVE IOAN WAGNON Office No. 278-W

RE: DIVERSION FOR DOMESTIC VIOLENCE OFFENDERS

According to the September/October, 1983, issue of Response to Violence in the Family and Sexual Assault, there are seven states which have statutory provisions for diversion of domestic violence offenders. These states are: Arizona, California, Illinois, Michigan, New York, Ohio, and Wisconsin. The following is a brief summary of each of these states' laws. Copies of these state laws are attached.

1. Arizona. Ariz. Rev. Stat. Ann. S 13-3601 permits a peace officer to arrest a person with or without a warrant if he has probable cause to believe that such person committed domestic violence. Pretrial release may be conditioned upon participation in counseling. Upon finding a defendant guilty of domestic violence, the court may, with the consent of the prosecutor and the defendant, defer further proceedings and place the defendant on probation subject to such terms and conditions including any counseling or diversion programs that the court sees fit to impose. Under S 13-3602, a person may file for an order of protection to restrain another from committing acts of domestic violence.
2. California. Cal. Code S 1000.6 provides that a defendant who is charged with or has had the charge reduced to a misdemeanor count of domestic violence may enter a diversion program if the defendant has had no conviction for any offense involving violence in the past seven years, has never had probation or parole revoked and has not participated in a diversion program under this law in the past five years. This statute and sections following it set out detailed criteria and procedures for a defendant who participates in this program. Prior to entering the program, the defendant is to be given, among other things, a clear statement that for the period of diversion

the defendant may be enjoined from any battering, sexually assaulting and other abusive conduct toward the victim. Under S1000.8 the court may order a defendant who is financially able to pay for any counseling so ordered. The period for which criminal proceedings may be diverted shall be for no less than six months nor longer than two years. S 1000.9 provides criminal proceedings may be reinstated if the defendant is not performing satisfactorily.

- 3. Illinois. In Illinois, the term "supervision" is used instead of diversion. Ill. Ann. Stat. Ch. 38 S 1005-6-3.1 provides supervision shall be for a reasonable time but not longer than two years. Conditions which the court may impose include requiring the person to undergo psychological or psychiatric treatment and comply with orders of protection issued under the Illinois Domestic Violence Act.
- 4. Michigan. Mich. Comp. Laws Ann. S 764.15a permits a police officer to arrest a person suspected of committing domestic violence without a warrant. S 769.4a permits a defendant who has not been previously convicted of domestic violence type crimes to be placed on probation without entering a judgement of guilt. Probation may be conditioned upon the defendant participating in a mandatory counseling program. Upon fulfillment of the terms of probation, the defendant shall be discharged and the charges dismissed. There may be only two discharges with respect to any person. The Department of State Police is required to keep a non-public record of arrests and dismissals under this section.
- 5. New York. N.Y. Crim. Proced. S 530.11 provides that the Family Court and the Criminal Court shall have concurrent jurisdiction over domestic violence cases. When a criminal action is pending, the court may issue a temporary order of protection as a condition of bail. S 170.55 provides that a court may issue a temporary order of protection in conjunction with an adjournment in contemplation of dismissal. N.Y. Jud. Law S 751(1) provides that punishment for criminal contempt of a violation of an order of protection may be for a term not to exceed three months.
- 6. Ohio. Ohio Rev. Code Ann. S 2919.25 establishes penalties for the crime of domestic violence. S 2919.26 authorizes temporary protection orders.

S 2933.16 permits a court to suspend a defendant's sentence and place the defendant on probation conditioned upon participation in a psychiatric or a psychological treatment program.

- 7. Wisconsin. Wis. Stat. Ann. 1983 Supp. S 971.37 establishes a deferred prosecution program for domestic abuse or child sexual abuse. The prosecutor is authorized to enter into a deferred prosecution agreement with the defendant. The agreement may include a requirement for community service work.

I am also enclosing your copy of Response. If you desire further assistance on this subject, please let me know.



Mike Heim  
Principal Analyst

MH/jsf

Enclosures

Changing their violent behavior is goal

# Program offers help to batterers, not victims

The New York Times

NEW YORK — For some of the men, it had been a good week: They had not struck their wives nor even felt the threat of uncontrollable anger. For others, it had been more difficult. They had not been able to keep the lid on their fury, but they had not hit anyone, and that was a good sign.

The 11 men, all of whom had physically abused women who were close to them, had been gathering weekly in the Quaker Meeting House in Brooklyn for the Alternative to Violence Program organized 1½ years ago by the Victim Services Agency, a division of the Metropolitan Assistance Corporation. It is said to be one of only two programs in New York City designed to change male battering behavior. The other one is the Fordham-Fremont Community Mental Health Center, a non-profit agency in the central Bronx.

Some of the men gathered around the table for the Victim Services Agency program were there as a condition of the Brooklyn district attorney's office and the courts for possible dismissal of their cases. If they were to drop out, charges against them would be reintroduced in court. Others had enrolled voluntarily, hoping to break the impulse to commit violence.

Each session opens with what John E. Aponte, who was in charge of the group, calls "checking in."

"Each person reviews the events of the week and in particular any provocative incidents and how they were resolved," said Mr. Aponte, consultant to the Victim Services Agency. "If any member feels he had an especially bad week and wants more feedback, then we have a timeout to focus on that individual's situation."

For Peter (a pseudonym; members would not allow use of their real names), it had been a tranquil week. "But that's because I have not been in contact with my sister," he said, referring to the target of his attacks.

Rick had managed well, too. "I'm having a great relationship with my ex-wife," he said. "She lets me see my son whenever I want. But last week she started to fight. I said there's nothing to fight about, and that was that."

But for Marvin, the peace of two weeks was shattered by the disclosure of an unexpected debt. "My wife has always paid the bills," Marvin told the group. "She can pinch a dollar here and a dollar there, and I can't. It worked fine for 13 years, and I thought everything was up to date. Then I got a letter on the job telling me that they're going to deduct money from my paycheck until a \$1,000 debt is paid off. I just blew my top, and she said she didn't want to hear me. I walked out, and now we're sleeping separately." But, he added proudly, "There was no violence."

Bill had not gotten drunk as he said he undoubtedly would have done in the past. "On Wednesday, my wife decided to look for a different job from the one she has, but also as a night waitress," he said. "She said she would be back in a half an hour. At 1 a.m., I left our four children alone and went out to look for her. At 2 a.m. she came home, totally bombed. Normally I would have gotten mad, and I would also have gotten drunk. In-

stead, I told her that I was happy that she'd come back. I stayed in control."

According to Mr. Aponte, the aims of the program are "to end the violence, to have male batterers assume responsibility and become accountable for the use of their hands, to enable them to use open forms of expression of their feelings and to encourage them to develop more realistic expectations of themselves and their partners."

Expectations, exaggerated and realistic, were the central item on the agenda on the recent evening. Mr. Aponte explained later that batterers tend to explode when roles they have assigned to themselves or to their partners go unfulfilled. "Other people can deal with that through discussion or argument," he said. "These people can't talk it out — battering is in part the result of inability to communicate — so they strike out instead."

Battering can occur in any kind of relationship, Mr. Aponte said, between married couples, divorced couples and co-habiting couples, between siblings, parents and children. The men in the group came from a variety of circumstances. Some were living with the women they had struck, others had cut off all contact.

The actions they had taken had ranged from slapping to punching, serious beating and the destruction of property. None of the women involved had required hospitalization.

Mr. Aponte introduced a mental exercise: "List the roles we play as men."

"Bread winner, father," one said. "Husband, father, confessor, provider, authority figure," another said.

And so it went, around the circle. "Husband, father, empathizer, chastiser of my wife." "Counselor and adviser," said a man whose wife was undergoing a difficult career change. They had been married only a year, and he had begun battering her just after the wedding.

Then the question was altered, with Mr. Aponte asking, "What roles have your wives or lovers played?" "Mother, wife, housewife sometimes, but she has her own career with an insurance company," was one response. "Lover, companion and housewife, for whatever a housewife does," went another.

Mr. Aponte listened to the lists and said: "Sometimes roles overlap, sometimes they're the same for both partners, sometimes they're locked in and sometimes they break down. For example, when you lose your job, you're not the bread winner for a while."

So far, according to Lucy N. Friedman, executive director of the Victim Services Agency, 126 men have enrolled in the program, and 94 have completed it. The completions represent 70 percent of the court-mandated referrals and 80 percent of those who entered voluntarily. Twenty of the cases have been put back on the court docket.

Some of the men who completed the program are expected to join a self-help group that will begin next month, and other groups are in progress.

The help given them is a new direction in a field where most therapeutic attention is paid to female victims.

That approach has not been found sufficient for either men or women.

As Mrs. Friedman said: "It's one thing to provide a shelter for a woman, but that doesn't mean that the man will stop. He can simply go and batter other women. We are trying to show men that there are non-violent ways to deal with frustration."

It is too soon to tell whether the pro-

gram works, but District Attorney Elizabeth Holtzman of Brooklyn said

"This is an important option that was not available before. Sending offenders away from the home is not always the solution. Often the wife wants to retain the relationship and to have it improved. If this works, it will solve many problems."

*The Battered Women Task Force may be expanding its focus in the next year to include programs such as described in this article. Since so many of our women choose to return home, at least in the early stages of the cycle of violence, we feel it is appropriate to offer services to all family members, including the batterers. A key to widespread use of this approach will be (1) training therapists in effective techniques such as the ones developed by Daniel Lonkin in California and (2) legislation mandating diversion programs.*