

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Senator Roy M. Ehrlich at
Chairperson

10:00 a.m./~~p.m.~~ on February 4, 1985 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Conferees appearing before the committee:

Dr. Robert E. Harder, Secretary, SRS
Morton Ewing, State Legislative Committee, AARP
Leonard Dodson, Kansas Coalition on Aging
Dr. Ronald Harper, Department of Aging
John Grace, Kansas Director of Kansas Home for Aging
Lynelle King, Kansas State Nurses' Association
Barbara Sabol, Secretary, Dept. of Health and Environment
Marilyn Bradt, Kansans for Improvement of Nursing Homes
Dick Hummel, Kansas Health Care Association

Others Present: See Attached List

SB 72 - Mandatory reporting of incidents of abuse or neglect of residents of certain facilities.

Secretary Robert Harder, SRS testified and presented written testimony in support of SB-72 stating that this bill had first been presented to the Judiciary committee. It was felt that aides and non-professional staff are more likely to be aware of incidences of abuse and neglect because of continued on-going, day to day contact with residents. Attachment I

Morton Ewing, Vice Chairman, State Legislative Committee, AARP, testified and submitted written testimony supporting SB-72 and SB-89. The group proposed the following provisions: 1) Mandatory reporting by people who work with the elderly; 2) a penalty for not reporting when the alleged abuse is noticed; 3) an investigation into the reported case by the designated agency within a reasonable time, (not over 72 hours); 4) immunity from prosecution to those who are required to report the case for compliance. Attachment II

Leonard Dodson, Kansas Representative for National Association of Mature People, also representing the Kansas Coalition for Aging, testified in support of SB-72 and SB-89 and submitted written testimony. The addition of non-professionals being required to report and the imposing of a legal penalty, tho more symbolic than punitive, met with the Coalition's approval. Attachment III

Dr. Ronald Harper, Kansas Department of Aging, testified and submitted written testimony in support of SB-72. Recommended Changes were to mandate additional reporters and specify a penalty provision for knowingly failing to report abuse, neglect, or exploitation of adult care facility residents. Attachment IV

John Grace, Executive Director, Kansas Association for Homes for Aging testified and presented written testimony supporting the intent of SB-72. The suggestion to add "certified medication or nurse aide, social service designee" to KSA 39-1402 was presented. It was also suggested that people need to know what is a more clear definition of abuse, and what examples of abuse must be reported as well as identification of potential abusers, prevention of abuse and prosecuting those who abuse. Attachment V

Lynelle King, Kansas State Nurses' Association testified in support of SB-72.
Attachment VI

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 526-S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 4, 1985

Marilyn Bradt, Kansans for Improvement of Nursing Homes, presented written testimony in support of SB-72 stating that KINH believes the addition of further classifications of persons to those required to report abuse would greatly strengthen the statute. Attachment VII

Barbara Sabol, Secretary, Kansas Department of Health and Environment, presented written testimony setting forth the official position of her department as follows: "Senate Bill 72 would significantly strengthen the abuse/neglect reporting requirements by requiring all employees of adult care homes or medical care facilities to report suspected abuse or neglect. Since the vast majority of care in adult care homes is provided by unlicensed persons, it is impractical to exclude those unlicensed employees from the requirement to report suspected abuse or neglect. Senate Bill 72 would also implement a misdemeanor penalty for knowingly failing to report suspected abuse or neglect. At the present time, there is no clear authority to enforce the requirement that designated persons report suspected abuse or neglect."

Attachment VIII

Dick Hummel, Kansas Health Care Association, testified in opposition to SB 72 and submitted written testimony citing that framers of the Act in 1980 considered but rejected the ideas in SB-72. In 1983, SB-170 passed Senate Judiciary but re-referred to committee where it died in 1984. HB 2762 in 1984 died in Public Health and Welfare Committee. Mr. Hummel further maintained reporting should be left to the judgment of trained and qualified health professionals. Attachment IX

The Chairman announced that hearings on SB 89, 90 and 93 would be continued on Thursday, February 7, 1985.

The meeting adjourned.

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 2-4-85

(PLEASE PRINT)
NAME AND ADDRESS

ORGANIZATION

<p>Pam Budlowe 6101 Candlish Dr. #11</p> <p>Sue Palmer 1605 W. 9th Lawrence</p> <p>KETH R LANDIS TOPEKA</p> <p>Ethel May Miller</p> <p>Anta I favors</p> <p>DICK HUMMEL</p> <p>Tom Bell</p> <p>Leonard Dodson . Namp . KCOA</p> <p>Terri Collier 8807 Cottonwood Lenexa</p> <p>Sue Merryfield 9507 Granada, Overland Park</p> <p>Janet Greider 1232 SW 31st Terrace Topeka</p> <p>Valerie Smith Topeka</p> <p>GEORGE RUCKETT . 359 S. HYDRAULIC . WICHITA</p> <p>David Blodgett 20806 W 52nd St Shawnee, Ks.</p> <p>Kathleen Draskovich, 1321 New Hampshire, Lawrence, Ks</p> <p>Orlene Fisher 8301 W. Murdock Wichita Ks 67212</p> <p>Michael Wolf</p> <p>John Peterson</p> <p>Charles V. Hamm</p> <p>B. J. Sabol</p> <p>Cynelle King</p> <p>Ric Silber</p> <p>Allen Cox</p>	<p>Visitor - here for O.T. - <u>License Bill</u></p> <p>Occupational Therapy Student - KU CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS</p> <p>Organ for Retarded Citizens / Ks.</p> <p>SRS 2700 W. 6th St</p> <p>KS HEALTH CARE ASSN</p> <p>Ks. Hosp. Assn.</p> <p>Topeka, Ks ph 232-0857</p> <p>Kansas Occup. Therapy Assn</p> <p>Kansas Occup. Therapy Ass.</p> <p>Kansas Occup. Therapy Assn.</p> <p>Kansas Occup. Therapy Assoc</p> <p>KANSAS RESTAURANT ASSOCIATION</p> <p>Kansas Occup. Therapy Ass.</p> <p>Kansas Occupational Therapy Assn</p> <p>" " " "</p> <p>Intern - Sen. Morris</p> <p>Ks Assn of Professional Psychologists</p> <p>Kans Dept of H+E</p> <p>KDH+E</p> <p>KSNA</p> <p>DoB</p> <p>Intern - Sen. Karr</p>
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SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 2-4-85

(PLEASE PRINT)
NAME AND ADDRESS

ORGANIZATION

Marilyn Bratt

John Grace

KAREN BALL

James Kastner

Lois for Kay

Sylvia Douglas

WINH
KS Assoc Homes for Aging
AP

Ks Food Dealers Assn
Ks Dept on Aging
Ks Dept on Aging

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Testimony Concerning: Mandatory reporting of incidents of abuse or neglect of residents of adult care homes; adult family homes and certain medical facilities; amending K.S.A. 1983 Supp. 39-1402 and repealing the existing section.

The current law only requires certain professionals (any person licensed to practice any branch of the healing arts, the chief administrative officer of a medical care facility, an adult care home administrator, an adult family home administrator, a licensed social worker, a licensed professional nurse, and a licensed practical nurse) to report incidences of abuse and neglect and allows other persons to report. However, aides and non-professional help, psychologists and law enforcement officials are not required by law to make reports.

If this proposed legislation is passed it would make it mandatory that certified psychologists, employees of adult care homes and medical facilities, and law enforcement officials report suspected incidences of abuse or neglect. Aides and other non-professional staff are more likely to be aware of incidences of abuse and neglect in a facility because they have a continuous, on-going, day-to-day contact with the residents. Several reports have been validated in which adult care home administrators and other professional staff have failed to report incidents of abuse and neglect that were reported to them by aides and other non-professional staff. No action was taken by SRS against the adult care homes because the current law does not make provision for a penalty for persons required to report, but do not report. This legislation will make provision for a class B misdemeanor when not reporting.

Attachment I
2/4/85

When an aide or non-professional staff person makes a formal report to SRS, usually the incident has occurred more than once; or they will allow time to elapse between the incident and the time of reporting in hopes that administration will not know who made the report; and they usually will want to remain anonymous for fear of reprisal from administration. One verbal, unofficial report was received that an adult care home administrator terminated three non-professional staff persons who reported incidences of abuse and neglect in his facility. This bill would prevent possible termination of non-professional staff for making reports, because it would mandate them to report. The current law makes provision for immunity of the reporter.

SRS and law enforcement officials are beginning to work together when investigating criminal allegations in adult care homes. Specifically, in sexual abuse cases, law enforcement officials will usually take the lead role in the investigation with SRS providing assistance, when appropriate.

The Department of SRS maintains a statewide register of all reports of abuse, neglect or exploitation received. This register includes the findings, actions taken and recommendations made on each report. Copies of these reports are sent to the Department of Health & Environment and the Department on Aging.

	<u>FY 81</u>	<u>FY 82</u>	<u>FY 83</u>	<u>FY 84</u>
Reports Received In Medical	248	384	350	445
Confirmed Reports	82	126	138	186

SRS supports this legislation because it will require non-professional persons, law enforcement officials and certified psychologists to report; and make provision for a class B misdemeanor when not reporting.

Dr. Robert C. Harder
 Office of the Secretary
 Social and Rehabilitation Services
 296-3271

February 4, 1985

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Statement Regarding S.B. 72

I. Title

An act concerning mandatory reporting of incidents of abuse or neglect of residents of adult care homes; adult family homes and certain medical facilities; amending K.S.A. 1983 Supp. 39-1402 and repealing the existing section.

II. Purpose

This proposed law adds non-professional employees, law enforcement officials and certified psychologists to the professionals already required to report by the existing law. The current law makes provision for immunity of these individuals, because they will be mandated to report.

Also, the amendment adds a penalty for persons mandated to report, but do not report, putting some "teeth" into the current law.

III. Background

The current statute KSA 39-1401-1410 requires only certain individuals to report, and there is no penalty for not reporting. If this proposed legislation is passed it would make it mandatory that certain professional and non-professional individuals report suspected incidences of abuse or neglect. If these individuals did not report it would be a class B misdemeanor. While it cannot be validated, it is said that nursing home administrators and professional social workers have failed to report instances of abuse in their facilities. Also, one verbal, unofficial report was received that an adult care home administrator fired three non-professional staff persons who reported incidences of abuse and neglect in his facility. This legislation would prevent possible termination of non-professional staff because it would mandate them to report. The current law makes provision for immunity of the reporter.

IV. Effect of Passage

The procedure by which area/local staff receive reports, investigate the allegations and offer needed services, when appropriate, will not be affected by the passage of this legislation. However, if the number of reports are significantly increased, additional staffing would be required in the future.

V. SRS Recommendation

SRS supports this legislation.

Robert C. Harder
Office of the Secretary
Social and Rehabilitation Services
296-3271
February 4, 1985

State of Illinois
Department of Social and Rehabilitation Services
Adult Services

ADULT ABUSE/NEGLECT/EXPLOITATION REPORTING AND INVESTIGATION
FISCAL YEAR 1984 (July, 1983 through June, 1984)

Medical

REPORTS RECEIVED		June, 1984		Year to Date				June, 1984		Year to Date	
Total		46		445		PERPETRATORS		#	%	#	%
Age Range		18 - 96		18 - 103		Abuse:		23		234	
Average Age		69		65		Self		1	4	4	2
	#	%	#	%	Spouse		1	4	4	2	
Male	11	24	148	33	Family/Relatives		2	9	9	4	
Female	35	76	297	67	Guardian/Conservator		--	--	--	--	
60 years and older	34	74	298	67	Other/Staff		19	83	217	93	
						Neglect:		20		207	
INVESTIGATIVE FINDINGS						Self		3	15	23	11
Total Reports		46		445		Family/Relatives		2	10	8	4
Confirmed		24	52	186	42	Guardian/Conservator		--	--	5	2
Potential Risk		5	11	38	9	Other/Staff		15	75	171	83
Unconfirmed		17	37	221	50	Exploitation:		4		43	
						Self		--	--	1	2
ABUSE *						Family/Relatives		1	25	13	30
Total Reports		23		234		Guardian/Conservator		1	25	7	16
Investigative Findings	Confirmed	13	57	104	44	Other/Staff		2	50	22	51
	Pot.Risk	2	9	18	8	REPORTERS					
Spouse Abuse Reports		1		4		Self		--	--	14	3
Investigative Findings	Confirmed	1	100	3	75	Family		9	20	95	21
	Pot.Risk	--	--	--	--	Neighbor/Friend		4	9	48	11
						Guardian/Conservator		--	--	--	--
NEGLECT *						Community Agencies		--	--	4	1
Total Reports		20		207		SRS Staff		5	11	20	4
Investigative Findings	Confirmed	10	50	77	37	Medical Personnel (N.H.-M.D.-Health Dept. Hospital Staff)		24	52	210	47
	Pot.Risk	2	10	19	9	Police		--	--	1	1
						Lawyer/Court Services		--	--	--	--
EXPLOITATION *						Anonymous		--	--	24	--
Total Reports		4		43		Other		4	9	29	7
Investigative Findings	Confirmed	--	--	17	40						
	Pot.Risk	1	25	4	9						

* Some cases are reported in more than one category (abuse, neglect, exploitation)

Social and Rehabilitation Services
Adult Services Commission
October 1, 1984

1985 LEGISLATIVE ISSUES

Adult Abuse/Neglect/Exploitation in Medical Facilities

Statement of Problem or Issue

Currently the state law, K.S.A. 1983 Supp. 39-1402, does not require certified psychologists, employees of a medical facility, or law enforcement officers to report abuse or neglect in a medical facility and has no penalty for persons who have any information and fail to report.

Background Data

The current law only requires certain professionals (any persons licensed to practice any branch of the healing arts, the chief administrative officer of a medical care facility, an adult care home administrator, an adult family home administrator, a licensed social worker, a licensed professional nurse, and a licensed practical nurse) to report instances of abuse and neglect and allow other persons (employees, volunteers, etc.) to report.

Currently, aides and non-professional help, psychologists, and law enforcement officials are not required by law to file reports. Neither are ministers or persons visiting the medical facilities required to report.

Current SRS Policy or Status

The current statute does not require the reporting, as stated above. It also does not have any teeth in it. We need to have mandatory reporting by additional persons who are aware of it. We also need to have a penalty for not reporting. While it cannot be validated, it has been said that nursing home administrators and professional social workers have failed to report instances of abuse in their facilities. Also, one verbal unofficial report was received that an administrator filed three non-professional staff persons who reported instances of abuse and neglect in his facility. Such a bill would prevent possible termination of staff because it would mandate them to report. The current law makes provision for immunity of the reporter.

Recommended Changes

Such legislation would require additional non-professional persons, certified psychologists, and law enforcement personnel to report as well as making provision for a penalty when not reported.

ADULT SERVICES

OCT 18 1984

State of Kansas
 Department of Social and Rehabilitation Services
 Adult Services

ADULT ABUSE/NEGLECT/EXPLOITATION REPORTING AND INVESTIGATION
 FISCAL YEAR 1984 (July, 1983 through June, 1984)

Medical

REPORTS RECEIVED		June, 1984		Year to Date		PERPETRATORS		June, 1984		Year to Date	
Total		46		445		#	%	#	%	#	%
Age Range		18 - 96		18 - 103		Abuse:		23		234	
Average Age		69		65		Self		1	4	4	2
	#	%	#	%	Spouse		1	4	4	2	
Male	11	24	148	33	Family/Relatives		2	9	9	4	
Female	35	76	297	67	Guardian/Conservator		--	--	--	--	
60 years and older	34	74	298	67	Other/Staff		19	83	217	93	
						Neglect:		20		207	
INVESTIGATIVE FINDINGS						Self		3	15	23	11
Total Reports		46		445		Family/Relatives		2	10	8	4
Confirmed		24	52	186	42	Guardian/Conservator		--	--	5	2
Potential Risk		5	11	38	9	Other/Staff		15	75	171	83
Unconfirmed		17	37	221	50	Exploitation:		4		43	
ABUSE *						Self		--	--	1	2
Total Reports		23		234		Family/Relatives		1	25	13	30
Investigative Findings	Confirmed	13	57	104	44	Guardian/Conservator		1	25	7	16
	Pot.Risk	2	9	18	8	Other/Staff		2	50	22	51
Spouse Abuse Reports		1		4		REPORTERS					
Investigative Findings	Confirmed	1	100	3	75	Self		--	--	14	3
	Pot.Risk	--	--	--	--	Family		9	20	95	21
						Neighbor/Friend		4	9	48	11
						Guardian/Conservator		--	--	--	--
NEGLECT *						Community Agencies		--	--	4	1
Total Reports		20		207		SRS Staff		5	11	20	4
Investigative Findings	Confirmed	10	50	77	37	Medical Personnel (N.H.-M.D.-Health Dept. Hospital Staff)		24	52	210	47
	Pot.Risk	2	10	19	9	Police		--	--	1	1
EXPLOITATION *						Lawyer/Court Services		--	--	--	--
Total Reports		4		43		Anonymous		--	--	24	
Investigative Findings	Confirmed	--	--	17	40	Other		4	9	29	7
	Pot.Risk	1	25	4	9						

* Some cases are reported in more than one category (abuse, neglect, exploitation)

STATE OF KANSAS
 Department of Social and Rehabilitation Services
 Adult Services

ADULT ABUSE/NEGLECT/EXPLOITATION REPORTING AND INVESTIGATION
 FISCAL YEAR 1983 (July, 1982 through June, 1983)

MEDICAL

REPORTS RECEIVED		June, 1983		Year to Date		PERPETRATORS		June, 1983		Year to Date	
		#	%	#	%			#	%	#	%
Total		31		359		Abuse:		16		188	
Age Range		18-102		17-105		Self		0	0	2	1
Average Age		70		62		Spouse		1	6	4	2
		#	%	#	%	Family/Relatives		0	0	4	2
Male		10	32	118	33	Guardian/Conservator		0	0	0	0
Female		21	68	241	67	Other/ Staff		15	94	178	95
60 years and older		24	77	232	65	Neglect:		15		164	
INVESTIGATIVE FINDINGS						Self		1	7	13	8
Total Reports		31		359		Family/Relatives		1	7	8	5
Confirmed		6	19	138	38	Guardian/Conservator		0	0	0	0
Potential Risk		8	26	56	16	Other/Staff		13	87	143	87
Unconfirmed		17	55	165	46	Exploitation:		0		25	
ABUSE *						Self		0	0	2	8
Total Reports		16		188		Family/Relatives		0	0	10	40
Investigative Findings	Confirmed	2	13	77	41	Guardian/Conservator		0	0	4	16
	Pot.Risk	8	50	32	17	Other/Staff		0	0	9	36
Spouse Abuse Reports		1		4		REPORTERS					
Investigative Findings	Confirmed	0	0	1	25	Self		2	6	16	4
	Pot.Risk	0	0	0	0	Family		6	19	62	18
NEGLECT *						Neighbor/Friend		2	6	29	8
Total Reports		15		164		Guardian/Conservator		0	0	0	0
Investigative Findings	Confirmed	4	27	58	35	Community Agencies		0	0	2	1
	Pot.Risk	0	0	25	15	SRS Staff		1	3	27	8
EXPLOITATION *						Medical Personnel (N.H.-M.D.-Health Dept. Hospital Staff)		19	61	174	48
Total Reports		0		25		Police		0	0	1	0
Investigative Findings	Confirmed	0	0	8	32	Lawyer/Court Services		0	0	0	0
	Pot.Risk	0	0	3	12	Anonymous		1	3	38	11
						Other		0	0	10	3

* Some cases are reported in more than one category (abuse, neglect, exploitation)

Department of Social and Rehabilitation Services
Division of Children, Youth, and Adults

ADULT ABUSE/NEGLECT/EXPLOITATION REPORTING AND INVESTIGATION
FISCAL YEAR 1982 (July, 1981 through June, 1982)

MEDICAL FACILITIES

REPORTS RECEIVED		June, 1982		Year to Date						June, 1982		Year to Date	
		#	%	#	%	#	%	#	%	#	%	#	%
Total		24		384		PERPETRATORS				13		200	
Age Range		18-91		17-98		Abuse:							
Average Age		43		55		Self				1		8	
		#		#		Spouse				-		-	
Male		13		133		Family/Relatives				2		15	
Female		11		251		Guardian/Conservator				-		-	
60 years and older		9		209		Other/Staff				10		77	
						Neglect:				11		171	
INVESTIGATIVE FINDINGS						Self				1		9	
Total Reports		24		384		Family/Relatives				1		9	
Confirmed		5		126		Guardian/Conservator				-		-	
Potential Risk		7		63		Other/Staff				9		82	
Unconfirmed		12		195		Exploitation:				0		38	
						Self				-		-	
ABUSE *						Family/Relatives				-		14	
Total Reports		13		200		Guardian/Conservator				-		2	
Investigative Findings	Confirmed	3	23	78	39	Other / Staff				-		22	
	Pot.Risk	4	31	37	19	REPORTERS							
Spouse Abuse Reports		0		0		Self				-		9	
Investigative Findings	Confirmed	-	-	-	-	Family				3		13	
	Pot.Risk	-	-	-	-	Neighbor/Friend				2		8	
						Guardian/Conservator				-		1	
NEGLECT *						Community Agencies				4		17	
Total Reports		11		171		SRS Staff				1		4	
Investigative Findings	Confirmed	2	18	45	26	Medical Personnel (N.H.-M.D.-Health Dept. Hospital Staff)				12		50	
	Pot.Risk	3	27	21	12	Police				-		-	
EXPLOITATION *						Lawyer/Court Services				-		4	
Total Reports		0		38		Anonymous				2		8	
Investigative Findings	Confirmed	-	-	14	37	Other				-		21	
	Pot.Risk	-	-	15	39					-		5	

* Some cases are reported in more than one category (abuse, neglect, exploitation)

by substantial evidence upheld. *In re White*, 227 K. 881, 883, 610 P.2d 1114.

33. Constitutionality of 21-4618 which denies probation and parole and requires mandatory minimum sentences for certain crimes is upheld. *State v. McDaniel & Owens*, 228 K. 172, 185, 612 P.2d 1231.

21-4502. Classification of misdemeanors and terms of confinement; possible disposition. (1) For the purpose of sentencing, the following classes of misdemeanors and the punishment and the terms of confinement authorized for each class are established:

(a) Class A, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one (1) year;

(b) Class B, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed six (6) months;

(c) Class C, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one (1) month;

(d) Unclassified misdemeanors, which shall include all crimes declared to be misdemeanors without specification as to class, the sentence for which shall be in accordance with the sentence specified in the statute that defines the crime; if no penalty is provided in such law, the sentence shall be the same penalty as provided herein for a class C misdemeanor.

(2) Upon conviction of a misdemeanor, a person may be punished by a fine, as provided in K.S.A. 21-4503, instead of or in addition to confinement, as provided in this section.

(3) Whenever there is evidence that the act constituting the misdemeanor was substantially related to the possession, use or ingestion of cereal malt beverage or an alcoholic beverage by such person, the court may:

(a) Order any of the dispositions authorized by this section or by article 46 of chapter 21 of the Kansas Statutes Annotated;

(b) Order such person to attend and satisfactorily complete a suitable educational or training program dealing with the effects of alcohol or other chemical substances when ingested by humans; or

(c) Any appropriate combination of subsections (a) and (b) of this subsection.

History: L. 1969, ch. 180, § 21-4502; L.

1977, ch. 117, § 2; L. 1979, ch. 90, § 4; July 1.

Revisor's Note:

For Judicial Council comment, see 21-4503.

Law Review and Bar Journal References:

"The Kansas Habitual Criminal Act," Bruce E. Miller, 9 W.L.J. 244, 252 (1970).

Obscenity law, Michael J. Lichty, 19 K.L.R. 789, 792 (1971).

"State Control of Local Government in Kansas: Special Legislation and Home Rule," Barkley Clark, 20 K.L.R. 631, 672 (1972).

"Arrest Under the New Kansas Criminal Code," Keith G. Meyer, 20 K.L.R. 685, 718, 720 (1972).

"The Kansas Open Meeting Act: Sunshine on the Sunflower State?," Deanell R. Tacha, 25 K.L.R. 169, 197 (1977).

Constitutionality of the use of lay judges in Kansas, 25 K.L.R. 275, 276 (1977).

"Survey of Kansas Law: Criminal Law and Procedure," Keith G. Meyer, 27 K.L.R. 391, 392 (1979).

CASE ANNOTATIONS

1. Sentence under 21-4501 (e) reversed with directions to resentence hereunder; criminal damage to property. *State v. Smith*, 215 K. 865, 868, 528 P.2d 1195.

2. Resentence for lesser offense where failure to instruct on value in prosecution under 21-3701. *State v. Piland*, 217 K. 689, 693, 538 P.2d 666.

21-4503. Fines. (1) A person who has been convicted of a felony may, in addition to or instead of the imprisonment authorized by law, be sentenced to pay a fine which shall be fixed by the court as follows:

(a) For a class B or C felony, a sum not exceeding \$10,000;

(b) For a class D or E felony, a sum not exceeding \$5,000;

(2) A person who has been convicted of a misdemeanor may, in addition to or instead of the confinement authorized by law, be sentenced to pay a fine which shall be fixed by the court as follows:

(a) For a class A misdemeanor, a sum not exceeding \$2,500;

(b) For a class B misdemeanor, a sum not exceeding \$1,000;

(c) For a class C misdemeanor, a sum not exceeding \$500;

(d) For an unclassified misdemeanor, any sum authorized by the statute that defines the crime; if no penalty is provided in such law, the fine shall not exceed the fine provided herein for a class C misdemeanor;

(3) As an alternative to any of the above, the fine imposed may be fixed at any greater sum not exceeding double the pecuniary gain derived from the crime by the offender.

History: L. 1969, ch. 180, § 21-4503; L. 1979, ch. 90, § 5; July 1.

Judicial Council, 1968: By gravity within a single single statutory penalty class, the section seeks consistent system of pen are provided separately definition of criminal co may often be observed tended to eliminate tho The idea here implemented Penal Code, 6.06.

The following characteristic should be observed:

(a) The alternative penalties are retained for C murder and aggravated

(b) Other felony penalties a limits fixed by the statu

(c) In each case the maxim

(d) In the cases of Class B, shall fix the minimum vided.

(e) In its discretion the cou minimum penalty, after criteria suggested in sec defendant's history of p of the circumstances th court in fixing the pena the convicted person, th significant part of the se period that must be serv ble for parole.

(f) Fines are authorized in imposition of fines are

(g) Maximum penalties meors of each class. may impose any appr ment or fine or both.

(h) Unclassified crimes are made punishable in ch. act. There are more th in virtually every chapt are mainly intended to lation and are not appr code. Hence, this revisi affect them either as to

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"Constitutional Law—I Indigent for Nonpayment,

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Obscenity law, Michael

(1971).

"State Control of Local cial Legislation and Hon K.L.R. 631, 672 (1972).

"The Kansas Open Me Sunflower State?," Deane 197 (1977).

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"Survey of Kansas Law: Haviland, 27 K.L.R. 241,

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Morton Ewing
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2-4-85



AMERICAN
ASSOCIATION
OF RETIRED
PERSONS

26 YEARS OF SERVICE

1984-1985
KANSAS STATE LEGISLATIVE COMMITTEE

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TESTIMONY TO

KANSAS SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

ON

SENATE BILL 72 AND SENATE BILL 89

ON

ADULT ABUSE

FEBRUARY 4, 1985

Morton F. Ewing

Vito R. Ostrander
AARP President

Cyril F. Brickfield
Executive Director

National Headquarters - 1909 K Street, N.W., Washington, D.C. 20049 (202) 872-4700

2/4/85
Attachment II

Adult Abuse is a big problem both in an institution and outside of an institution. There is a law in Kansas that mandates reporting of abuse by certain ones who work with the elderly in institutions, but there seems to be no penalty for not reporting the abuse, (see articles from the Hutchinson News Dec. 23 and Dec. 24, 1984).

There is no law in Kansas that requires the reporting of Adult Abuse outside of institutions. This is a big problem, (see Statistics on Non-Institutional Elderly Abuse), and is increasing because more people are living longer and there is a movement to keep people out of institutions as long as possible.

This problem exists with a frequency and rate only slightly less than Child Abuse, and is not confined to any population group. Most cases are not reported. While the main emphasis should be on trying to correct the situation that is causing the abuse there will be times when more drastic action needs to be taken.

We think that the following provisions should be in the law:

1. Mandatory reporting by people who work with the elderly.
2. A penalty for not reporting when the alleged abuse is noticed.
3. An investigation into the reported case by the designated agency within a reasonable time, (not over 72 hours).
4. Immunity from prosecution to those who are required to report the case for reporting the case.

I am sure that when the time comes that we have to be dependent on someone else for our everyday care that we want to have the machinery in place to assure that we will have the proper care and safeguards to protect us against abuse. At the present time there are those who need this assurance and protection. Thank You.

Hutchinson News Dec. 23, 1984

Abuse reports are on the rise

The abuse of the elderly

Chart shows a year-by-year breakdown of elderly abuse and neglect reports for the past five fiscal years (July through June).

1980	Non-medical: 704	Medical: 0
1981	Non-medical: 940	Medical: 248
1982	Non-medical: 863	Medical: 384
1983	Non-medical: 975	Medical: 350
1984	Non-medical: 921	Medical: 445
1985 (July-November 1984)	Non-Medical: 443	Medical: 242

This is the first of a two-part series which concludes Monday.

By Dale Goter
Harris News Service

TOPEKA — When nurses' aide Lee Ann Young went into the room of an 80-year-old woman at Sedgwick Convalescent Center one morning last May, she could tell something was wrong.

The woman was "very shaky," and her bed sheets were stained with blood, Young later told authorities. In a nearby sink, the aide found tissue paper and a washcloth also bloodied.

When the aide asked the woman what was wrong, the woman said she had been molested by a male employee of the home, the aide reported.

State officials and law enforcement investigators say they were shocked and angered by the alleged incident, but they also were upset because nursing home supervisors decided not to report the incident.

As a result, it was four days be-

fore law enforcement investigators in nearby Newton received an anonymous call reporting that the alleged crime had occurred and that the southern Harvey County nursing home was covering up the incident.

And it wasn't until later that the victim finally was examined by a medical doctor, and that was at the direction of law enforcement authorities.

Authorities subsequently arrested a 29-year-old man who had been fired from the home, charging him with aggravated sexual battery.

But after a series of developments that point to serious shortcomings in state law dealing with the reporting of abuse of the elderly, the charges were dismissed in August.

Assistant Harvey County Attorney Mike Cleary places the blame for the failed prosecution on the nursing home.

Based on the testimony of the victim and of the nurses' aides who attended her, Cleary said he is certain that a rape had occurred.

But because authorities weren't summoned until four days after the incident, vital medical evidence was lost, Cleary contends.

Nursing home officials are reluctant to discuss the specifics of the case, however. They contend the lack of response from investigating agencies and the dismissal of the case in court indicate they acted properly.

"We have received no report back from any government agency on whether we should have had our hands slapped," says Phil Thompson, Regional Administrator for the Hill Haven Corporation, which owns the Sedgwick nursing home and others in Kansas.

A state law passed in 1980 requires nursing home officials to report to the state whenever there is "reasonable cause to suspect or believe" that abuse of a resident has taken place.

But the law provides no penalties against those who violate it, and some state officials say the Harvey

See ELDERLY, Page 2

Elderly

Continued from Page 1

County incident is clear evidence of the need for penalties.

The issue reflects a growing concern in recent years about the abuse and neglect of the elderly. Reports of abuse and neglect of the elderly in Kansas nursing homes have increased sharply since the 1980 law was adopted.

In 1980, no reports of abuse, neglect or exploitation of elderly in medical facilities — including nursing homes — were reported to the Kansas Department of Social and Rehabilitation Services. But during the following four years, more than 1,500 reports were received, and about half were either confirmed or determined to be of "potential risk" to an elderly person.

Another 4,403 reports of abuse in non-medical locations have been filed, and state officials say the totals are likely to increase even more as the reporting requirement becomes widely known.

Responding to a Harris News Service investigation of the Harvey County incident and the subsequent follow-up by state agencies, state officials acknowledge that the case points out a serious gap in the protection of Kansas' 25,000 vulnerable elderly nursing home residents.

The case also raises questions about how aggressively state agencies respond when investigating whether a nursing home has complied with state law requiring the reporting of abuse of the elderly.

"I was angry, real angry, when the case was dismissed," Assistant County Attorney Cleary said. "I really believe the nursing home acted improperly and negligently. They did not make the event known to the sheriff's office in a timely fashion, and good evidence was lost because of that."

Although the law requires nursing home administrators and health professionals to report abuse and neglect of the elderly, the lack of penalties renders it ineffective in those few but notable cases where it is violated, according to several

state officials responsible for various programs affecting the elderly and nursing homes.

The original draft of the 1980 bill called for criminal penalties, and legislative proposals for penalties have surfaced several times since the law was adopted. However, faced with opposition from the nursing home industry, the penalties proposals have never been adopted.

This year, the Kansas Department of Social and Rehabilitation Services will propose another penalty bill, according to Robert Harder, the department's secretary. The bill provides criminal misdemeanor penalties for specified individuals who willfully do not report abuse or neglect of the elderly.

Spokesmen for the Kansas Department of Health & Environment, the Kansas Department of Social and Rehabilitation Services and the Kansas Department on Aging say they will lobby for the bill.

They also say the Sedgwick Convalescent Center case should help convince legislators of the need for tough penalties.

Nursing home industry lobbyist Dick Hummel says his Kansas Health Care Association membership will continue to oppose any penalty legislation.

"We've gone back to the record," he says. "The numbers are there the reports are being made and they are being made by professional people."

Hummel also argues that it would be unfair to place criminal sanctions on persons who fail to make the "subjective decision" about whether

an elderly person has been neglected or abused.

On the other side, Robert Harder, secretary of the Kansas Department of Social and Rehabilitation Services, argues that it doesn't take any specific number of example cases to support the need for non-reporting penalties.

"As far as I'm concerned, no certain number of cases is needed," Harder says. "You can defend it right from the beginning. That's not to suggest you need that every day, but there does have to be a penalty."

State seeks tougher abuse laws

By Dale Goter
Harris News Service

TOPEKA — An elderly person in a Kansas nursing home may be as helpless as a tiny child, but critics of the current Kansas law say the elderly are not as well protected as children by the state's abuse statutes.

The Kansas Legislature will be asked to toughen those laws this session, particularly as they deal with the mandatory reporting of suspected abuse. Proponents are calling for criminal penalties against nursing home administrators, nurses and other health professionals who do not report suspected abuse of the elderly.

The issue was dramatized by an incident last summer at the Sedgwick Convalescent Center in southern Harvey County. State officials and law enforcement authorities say the nursing home failed to report a suspected sexual assault upon an 80-year-old resident.

As a result, according to the Harvey County Attorney's office, a charge of aggravated sexual battery against a male employee of the home had to be dismissed because

Hutchinson News Dec. 24, 1984
valuable evidence was lost before authorities were notified.

Although Kansas law requires that suspected abuse of the elderly be reported to the Kansas Department of Social and Rehabilitation Services, failure to report carries no penalties.

Without a penalty in the law, agency heads like Robert Harder at SRS, Barbara Sabol at Kansas Department of Health and Environment and Sylvia Hoagland at Kansas Department on Aging say they can do little to reprimand a nursing home that fails to report abuse and neglect of its residents.

Health and Environment has the power to pull a nursing home's license for a variety of reasons, but failure to report abuse and neglect is not one of them, according to Dick Morrissey, head of the KDHE nursing home licensure program.

"There is nothing in the licensing of a home that ties in with not reporting," Morrissey says. "I don't want to say there is nothing we can do with a nursing home that violates a law. But at the time (of the Sedgwick Convalescent Center report) we made the decision we did

not have the authority to pursue it."

SRS also was required by law to investigate the abuse incident, but it, too, was powerless to deal with the non-reporting issue, according to Jack Gumm, head of SRS adult protective services.

SRS did conduct a training session on abuse reporting at the Sedgwick nursing home, but could take no other action against the home, SRS officials say.

The Kansas Nursing Home Ombudsman office, which is part of the Department on Aging, also investigated the report, but could do little more than send a letter of reproach to the nursing home, according to Aging Secretary Hoagland.

Both Hoagland and Harder say their agencies probably should have done more about the case, but were impeded by the lack of penalties for non-reporting.

Hoagland has a similar view of the follow-up effort by the various state agencies.

"I'm dissatisfied with the results of what we all did," she says.

STATISTICS OF
NON-INSTITUTIONAL
ELDERLY ABUSE

January, 1985

One dimension of domestic violence that has only recently gained national recognition is that of elderly abuse. Increased life expectancy and the trend toward home and community based services means that adult children and other family members will be the providers of a significant amount of care to an increasingly larger and older population. The potential for increased abuse exists.

Yet in Kansas there is no specific statute prohibiting elderly abuse in non-institutional settings. The general health and welfare provision (K.S.A. 39-708c(w)) offers only limited protective service. Kansas law provides for protective services for residents in nursing homes. But it makes no provision for other elder abuse even though more reported abuse occurs in non-institutional settings.

Profile of Abused:

- 1) Most likely to be a woman over age 75.
- 2) In 75% of the cases, the victim lived with the abuser.
- 3) In 75% of the cases, the victim had a mental or physical disability which prevented him or her taking care of basic daily needs.
- 4) Victims often had few or no other contacts outside the family and were completely dependent on the caretaker.

Profile of Abuser:

- 1) In 84% of the cases, the abuser was related to the victim.
- 2) 38% of abusers are sons and daughters of the victim.
- 3) Abusers indicated the victim was a source of stress due to high level of care needed or additional financial burden.
- 4) Abuser had experienced other forms of stress: e.g., substance addiction (alcohol or drugs), long term medical complaint; long term financial difficulty.

National Statistics:

- 1) Nationally between 500,000 and 1 million elderly are abused each year.
- 2) Yet only 1 out of 6 cases are reported.
- 3) 80% of elderly care is provided by family and relatives.
- 4) Highest percentage of neglect cases are self-neglect followed by spouse inability to provide care.
- 5) Psychological, physical, and medical abuse is the second highest category of reported cases.

Kansas Statistics:

- 1) 6.8% of elderly are in nursing homes at any one time but another 17% need assistance in caring for themselves.
- 2) In Kansas, SRS received 921 reports of abuse, neglect or exploitation during FY84 with 534 involving victims over age 60.
- 3) 408 reports were confirmed with another 294 potential risk situations.
- 4) 67% of FY84 cases were neglect, 77% due to self-neglect; 17% due to neglect by relatives.
- 5) 28% of FY84 cases were abuse, 25% due to spousal abuse; 35% due to family abuse.

TESTIMONY ON SENATE BILLS 72 and 89 BEFORE SENATE COMMITTEE
February 4, 1985

Thank you, Mr. Chairman and members of the committee. I am Leonard Dodson, Kansas Representative for the National Association of Mature People, better known as NAMP, and one of the twenty-three member organizations of the Kansas Coalition on Aging. It is KCOA that I am representing this morning.

KCOA has given Senate Bill 72 and Senate Bill 89 top priority along with three other concerns: (1) containment of health care costs; (2) long term, in-home care; and, (3) Twenty-four/^{hour} licensed nurse coverage in nursing homes. I might add, KCOA goes through a rigorous process in determining its priorities. You will recognize that a 2/3 majority is difficult to obtain, but we require more than that. All member organizations must agree on prime priorities.

I would like to speak first to Senate Bill 72: We recommend both areas of amendment to the existing law. First, adding to the list of required reporters all those who play a major part in caring for adult home care residents, and who therefore, would be in good positions to see abuse or neglect. As we see it, the present law has worked fairly well -- and the addition of required reporters would improve it. Secondly, if we want to stress the prevention of abuse, neglect and exploitation it makes sense that we add a legal penalty, although the size of the penalty makes it more symbolic than punitive. But, the symbolism is important. It says to those in a position to observe abuse, neglect and exploitation that our society wishes to prevent this and it gives S.R.S. the explicit authority to do something. Effective action on reported cases further emphasizes that some action will be taken and will help prevent conditions that predispose abuse, neglect and exploitation. There is also a message to older Kansans that they are not alone and that they need not fear their primary health care providers because they do have some recourse to legal remedy.

The Coalition on Aging also endorses Senate Bill 89: As members of this committee know, more and more older and frail people are choosing to remain in their own homes rather than going into nursing homes. Both S.R.S. and KCOA wish to make this a viable choice. We of KCOA feel that SB 89 has a message to older Kansas, saying although they may be dependent, and need assistance in performing the activities of daily living, they do have some recourse should situations of abuse, neglect and exploitation arise. They thus have greater control over their lives and have some responsibility for improving their conditions. This bill, if enacted, will improve protective services that S.R.S. already provides. It will protect service workers by placing their work on a sound legal footing. This is a more professional way of approaching services and will make them more effective.

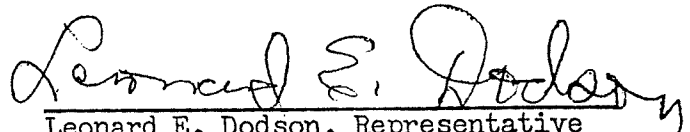
This bill maintains a very desirable balance between the right of the individual to choose where, how and with whom he will live and the responsibility of public agencies and primary care-givers to protect that person from his own vulnerability.

We particularly favor Section 8, with its intent to allow the individual maximum freedom and assistance while maintaining maximum protection and the prevention of abuse, neglect and exploitation. While this bill gives care providers and S.R.S. protective workers more access to the individual's living situation, the initiating

2/4/85
Attachment III

responsibility is with the individual. The law would require that attention be paid to complaints and outlines a method of procedure.

In summary, I would like to state again that the Kansas Coalition on Aging is interested mainly in prevention of, rather than prosecution of, acts of abuse, neglect and exploitation. We feel these two bills represent a reasonable approach to maintaining a desirable balance between restrictions, restraints, penalties and the rights of individuals. I further wish to emphasize that these bills also speak to older Kansans and the Kansas Coalition on Aging's 23 member organizations. We hope that they will be passed. I thank you.


Leonard E. Dodson, Representative
The Kansas Coalition on Aging

Ronald Meyer
Supt. Aging -
2-4-85

TESTIMONY ON SB-72
TO SENATE JUDICIARY COMMITTEE
BY KANSAS DEPARTMENT ON AGING
FEBRUARY 4, 1985

Bill Brief:

SB-72 provides that mandated reporters of abuse and neglect of residents in adult care facilities be expanded and that knowingly failing to report abuse or neglect of adult care facility residents by mandatory reporters is a Class B misdemeanor.

Summary Provisions:

1. Expansion of mandated reporters to include:
 - a certified psychologist
 - employee of adult care homes, adult family homes or medical facilities
 - any law enforcement official.
2. A mandatory reporter would be guilty of a Class B misdemeanor only if the reporter knowingly fails to report.
3. A Class B misdemeanor is the same penalty as in the child abuse statute for failure to report. (up to \$1,000 fine and/or six months in prison).
4. Immunity of reporters from civil liability continues under K.S.A. 39-1403.

Testimony:

SB-72 by providing for expansion of mandated reporters of abuse or neglect of residents in adult care facilities is helping to assure greater protection of a frail, elderly population. The committee may want to consider expanding the mandated reporter section still further to include ministers, rabbis, and Christian Science practitioners. People in these occupations are professionals who regularly visit residents.

The inclusion of a penalty provision for knowingly failing to report abuse or neglect is essential. The LTC Ombudsman program in the recent past has had several cases of alleged sexual abuse (rape or molestation) which were not reported initially. This presents a serious problem in terms of law enforcement officials being unable to gather sufficient, necessary and appropriate evidence to lead to charges and convictions of alleged perpetrators.

As with the child abuse statute, professionals who care for our elderly, but may be reluctant and hesitate to report, need a clear definition of both legislative intent and their personal responsibility. A penalty provision for failure to report abuse or neglect of adult care facility residents makes it clear that there are consequences for an omission of duty which may impact adversely on a frail elderly adult care facility resident.

2/4/85
Attachment IV

KANSAS DEPARTMENT ON AGING
FEBRUARY 4, 1985

Adult Abuse/Neglect/Exploitation in Medical or Adult Care Facility

Statement of Problem or Issue

Adult care home residents are usually old, frail and sick. Over half of the residents in Kansas nursing homes have no family who visit and assist them. They are totally dependent on their caregivers. Presently K.S.A. 1983 Supp. 39-1402 does not require certified psychologists, employees of a medical facility, law enforcement officers, ministers, rabbis or Christian Science practitioners to report abuse or neglect in an adult care or medical facility and has no penalty for persons who have any information and knowingly fail to report.

Background Data

The current law passed in 1980 only required certain professionals (any persons licensed to practice any branch of the healing arts, the chief administrative officer of a medical care facility, an adult care home administrator, an adult family home administrator, a licensed social worker, a licensed professional nurse, and a licensed practical nurse), who have reasonable cause, to report instances of abuse and neglect and does not require other persons (volunteers, aides and other employees, etc.) to report.

Currently, aides who provide 80-90% of direct care and non-professional help, psychologists, law enforcement officials, ministers, rabbis or Christian Science practitioners are not required by law to file reports.

Residents of adult care facilities are suffering from increasingly more complex medical problems. Thus they are more dependent and in need of increasing levels of care. This leads to increases in stress levels among those who must provide the needed care which in turn increases the potential for abuse and neglect.

There are no penalty provisions for knowingly failing to report.

Other states, such as Missouri, have felt that both mandated reporting and specifying penalty provisions for non-reporting have enhanced the protection of frail, elderly persons in nursing homes.

The Long Term Care Ombudsman unit has documented evidence of failure to report an allegation of sexual abuse.

Since the number of reports of abuse increased after the current laws was passed, it seems logical to believe that the number of reports will increase again when the classes of persons who must report are expanded and when penalties are added for failure to report.

Current Policy

The current status has limited kinds of mandated reporters of abuse or neglect of residents and no penalty provision. The current law provides immunity of the reporter.

Recommended Changes

Mandate additional reporters and specify a penalty provision for knowingly failing to report abuse, neglect, or exploitation of adult care facility residents.

John Grace - K.A.H.A.
2-4-85-



The Organization of
Nonprofit Homes and
Services for the Elderly

Kansas Association of Homes for the Aging
One Townsite Plaza
Fifth and Kansas Avenue
Topeka, Kansas 66603

913-233-7443

COMMENTS RE: SENATE BILL 72
by
JOHN R. GRACE, EXECUTIVE DIRECTOR
KANSAS ASSOCIATION OF HOMES FOR THE AGING

THANK YOU MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE

Our association supports the intent of Senate Bill 72.

The nearly 27,000 elderly residents of adult care homes of Kansas are a very frail and vulnerable group. Many of them have no family and rely upon the staff of the facility for their social support system. Because they are "at risk" more than you or I, we need reasonable, effective, and fair legal protections for them. We need a comprehensive program that identifies potential 'abusers', prevents cases of abuse, and prosecutes vigorously those who abuse the elderly.

The current KSA 39-1402 covers Licensed personnel of the adult care facility. The licensed employee has achieved a level of professional competence necessary for making judgements and decisions about the care of the resident.

Unlicensed employees are covered under section (c) of KSA 39-1402. "Any other person having reasonable cause to suspect...may report such information..."

If the Committee feels this is not adequate, I suggest you add "certified medication or nurse aide, social service designee". These persons are required by law to complete a state approved training course in caring for the elderly. The State can then specify in the course content specific training on the definition of abuse and the reporting requirement.

The second aspect of Senate Bill 72 adds a penalty of Class B Misdemeanor to those persons who "knowingly fail to make such report".

The purpose of the penalty provision is presumably, to force those persons who are observing abuse and neglect to report this information to the state. Evidently the

2/4/85
Attachment V

page 2
Comments Re:
Senate Bill 72

state believes that abuse is occurring to a large degree and is not being reported. We believe the issue is not simple. Another component here is defining what is "abuse or neglect".

The definition in the KSA 39-1402 is very broad.

(e) "Abuse" means neglect, willful infliction of physical or mental injury or willful deprivation by a caretaker or services which are necessary to maintain physical and mental health"

(f) "Neglect" means the failure of a caretaker to maintain reasonable care and treatment to such an extent that the resident's health or emotional well being is injured.

If a resident who is a victim of Alzheimer's Disease wanders outside on a cold night, and is found twenty minutes later, is this neglect? Should I report this knowing that if I don't I may be charged with a class B misdemeanor? Will the threat of the penalty if I don't report abuse and neglect, cause an over-reaction to report every incident of perceived abuse and neglect?

The penalty provision is not the entire answer to the problem. People need to know what is a more clear definition of abuse, and what examples of abuse must be reported. Secondly, a more comprehensive approach to identification of potential abusers, preventing abuse, and prosecuting those who abuse, will provide for a more safe environment for residents of adult care homes.

Once an investigation is completed, the facility should be notified of the intended actions of the Department or Law Enforcement Agency. Otherwise, the elements of fear, suspicion, and untrust will prevail among the residents, staff and administration of the home.

Thank you Mr. Chairman and Members of the Committee.



The Organization of
Nonprofit Homes and
Services for the Elderly

Kansas Association of Homes for the Aging
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Fifth and Kansas Avenue
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913-233-7443

STAFF OF THE KANSAS ASSOCIATION OF HOMES FOR THE AGING

JOHN R. GRACE, EXECUTIVE DIRECTOR

John is a licensed Adult Care Home Administrator. For the past 6 years, he has been the Executive Director of Meadowlark Hills, a community sponsored retirement center in Manhattan. He is currently the Chairman of the Board of Adult Care Home Administrators of the Dept. of Health and Environment. He also sits on the Governors Advisory Council on Aging. John was graduated from Washburn University in 1975 and received a Masters Degree in Gerontology from North Texas State University in 1977.

STEWART ENTZ, DIRECTOR OF LEGAL AND LEGISLATIVE AFFAIRS

Stu is an attorney and partner in the Law Firm of Colmery, McClure, Letourneau, Entz, Merriam. He has been with the association for the past eleven years. Stu has been active in the American Association of Homes for the Aging in Washington, serving on several of their committees.

Lynelle King - 2-4-85 -

KSNA

the voice of Nursing in Kansas

To: Senate Public Health and Welfare Committee Members

From: Lynelle King, RN, MSN, Executive Director

Date: February 4, 1985

Subject: Support of SB 72 - Reporting abuse or neglect of residents

This is to formalize the statements I made before your committee today.

KSNA, the professional association for Registered Nurses in Kansas, supports the reporting of abuse and neglect as outlined in SB 72. RNs have been among those groups previously mandated to report such abuse or neglect and we are very pleased that SB 72 adds "teeth" to the law by providing a penalty for failure to report (see lines 51-54). We believe the penalty is quite appropriate and in no way harsh in view of the situation.

KSNA supports all employees of a medical facility, adult care home or adult family home being required to report. They must take responsibility for the welfare of the vulnerable persons in their institution. While knowledge and judgment will vary widely among the different classes of employees, yet there surely are blatant types of abuse which any employee should be able to recognize.

The language in SB 72 is drawn so as to be fair to employees, for instance line 29 "reasonable cause to believe that a resident is being abused" and lines 52, 53: "who knowingly fails to make a report . . ." An added aspect of fairness to the employee is the protection provided them from being fired for such reporting.

Mandating reporting we believe would be cost-effective insofar as it would deter some abuse. Abuse and neglect are costly - they lead to additional length of stay, additional medical bills and could cause transfer to a facility with higher skill level, due to the damage or complications of the abuse or neglect.

Thank you for the opportunity to comment.

2/4/85

Attachment VI

SB 72 Marilyn Bradt
2-4-85



KINH Kansans for Improvement of Nursing Homes, Inc.

913 Tennessee, suite 2 Lawrence, Kansas 66044 (913) 842 3088

TESTIMONY SUBMITTED TO
THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE
CONCERNING SB 72

February 4, 1985

We would all prefer to believe that there is no abuse or neglect in Adult Care Homes, but we know it does occur. We must be able to identify it and deal with the abusers and with the homes that tolerate abuse.

Approximately 40% of the residents of nursing homes have no family nor friends nor visitors to observe the quality of care and the character of treatment they receive. Medical professionals, social workers, and nursing home staff are virtually their only hope of defense against abuse or neglect when it does happen.

Certain designated persons are now required to report suspected abuse to SRS authorities who then make an impartial investigation to determine whether abuse has occurred. KINH believes that the addition, as in SB 72, of several other classifications of persons to the list of those required to report abuse would greatly strengthen the statute.

KINH has supported the inclusion of a penalty provision for failure to report suspected abuse since the adult abuse act was first considered. Without a penalty provision, the state merely says, in effect, that certain persons must report suspected abuse in nursing homes, but that no serious consequences will follow if they do not do so. That does not attach the importance to the need for reporting abuse that we believe the law must have if it is to be effective.

Attachment III
2/4/85

There is precedent in the statute that deals with child abuse for this kind of penalty. That statute has been in place and working for several years. Elderly persons in nursing homes are no less vulnerable to mistreatment than children, and no more able, in many instances, to speak up in their own defense. We believe it is the state's responsibility to provide a workable, enforceable mechanism to protect these helpless people. KINH is in full support of SB 72.

S.B. 72 Sabol
2-4-85

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

TESTIMONY ON SENATE BILL 72

PRESENTED TO THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

FEBRUARY 4, 1985

This is the official position taken by the Kansas Department of Health and Environment on Senate Bill 72.

BACKGROUND INFORMATION:

The statutes requiring reporting of abuse or neglect for persons in medical care facilities and adult care homes (KSA 39-1401 et seq.) do not require that unlicensed employees of adult care homes or medical care facilities report suspected abuse or neglect. Also, the statutes do not include any penalty for knowingly failing to report suspected abuse or neglect.

STRENGTHS:

Senate Bill 72 would significantly strengthen the abuse/neglect reporting requirements by requiring all employees of adult care homes or medical care facilities to report suspected abuse or neglect. Since the vast majority of care in adult care homes is provided by unlicensed persons, it is impractical to exclude those unlicensed employees from the requirement to report suspected abuse or neglect.

Senate Bill 72 would also implement a misdemeanor penalty for knowingly failing to report suspected abuse or neglect. At the present time, there is no clear authority to enforce the requirement that designated persons report suspected abuse or neglect.

WEAKNESSES:

None identified.

DEPARTMENT'S POSITION:

The department strongly recommends that the committee report Senate Bill 72 favorable for passage.

Presented by: Barbara J. Sabol, Secretary
Kansas Department of Health
and Environment

2/14/85
Attachment VIII



Kansas Health Care Association

Member of
ahca

Dick Hummel -
-4-85-

TESTIMONY PRESENTED BEFORE THE
SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

By

Dick Hummel, Executive Director
Kansas Health Care Association

February 4, 1985

SENATE BILL NO. 72

"AN ACT concerning mandatory reporting of incidents of abuse or neglect of residents of certain facilities."

Mr. Chairman and Committee Members:

On behalf of the Kansas Health Care Association (KHCA), a voluntary, non-profit organization representing 250 adult care homes and over 18,000 nursing home beds, thank you for this opportunity to appear in opposition to SB No. 72.

We hope to prove to you, with facts from the record, that such a bill as this is unnecessary. First, we ask that you shed the cloak of emotional fervor that always has accompanied it, for the provisions of this bill pertaining to nursing homes are not new:

To Require All Nursing Home Employees to Report Cases of Suspected Abuse or Neglect or Be Subject to a Class B Misdemeanor.

NOT NEW:

1. The framers of the Act in 1980 considered but rejected these ideas.
2. SB 170 in 1983 by Senator Jan Meyers. Passed Senate Judiciary Committee, but re-referred to Committee where it died in 1984.
3. HB 2762 in 1984. Died in House Public Health and Welfare Committee.

We will now analyze the bill, and then show you facts and evidence from the SRS reporting records to prove that the current reporting requirements under the law are working.

"We Care"

A. All Nursing Home Employees To Report Suspected Abuse or Neglect.

Currently professionally trained and qualified long-term health care staff must report suspected neglect or abuse. Any other person may submit a report, e.g., bakery delivery person, visitor, consumer representative. Expanding mandatory coverage to all employees would include: janitors, housekeepers, kitchen workers, laundry personnel, secretarial staff and aides and orderlies to mention a few.

Now consider what they would be required, with "reasonable cause" or suspicion, to report on:

Abuse - means neglect, willful infliction of physical or mental injury or willful deprivation by a caretaker of services which are necessary to maintain physical or and mental health. Neglect - means the failure of a caretaker to maintain reasonable care and treatment to such an extent that the resident's health and emotional well-being is injured.

We maintain that reporting should be left to the judgment of trained and qualified health professionals.

B. Class B Misdemeanor (\$1,000 Fine and/or Six Months Imprisonment).

The argument for this has been that without a "hammer" reports won't be made and that the reports which are made are not indicative of the "wide spread abuse" of our nursing home residents. Heresay, hysteria and speculation, in our opinion.

Examine the SRS reporting records. Attached are copies of the agency's monthly reports; to summarize:

FY 83 (July 82 - June 83)

Reports Made: 359
Unconfirmed: 165 (46%)
Reporters (Medical Personnel): 174 (48%)

FY 85 (July 84 - November 84)

Reports Made: 242
Unconfirmed: 124 (51%)
Reporters (Medical Personnel): 98 (40%)

First, you see that a system is in place, and that medical personnel are complying with the law.

In addition, a close analyses and comparison by months in these two reporting periods reflects a 63% increase in the number of reports filed in the FY 85 five-month period compared to the 12 months in FY 83.

This supports our position that the threat of fine or imprisonment is unnecessary to persuade, cajol, or coerce additional reporting. Reports have been made, are being made, and have increased.

If the numbers aren't enough in the judgment of the bill's proponents, we might ask them what "quota" is acceptable? Conversely, considering the number of reports compared to the number of patient days of care we provide each year, over nine million, we maintain that Kansas adult care homes are doing an excellent job of rendering safe, comfortable and quality care to our residents.

Mr. Chairman, adult care homes are responsible providers of care to the elderly and infirmed, day-in and day-out. We neither condone nor accept patient mistreatment or abuse, be it patient-patient, patient-staff or staff-patient. In the instances when it does occur, justice is swiftly metted out -- grounds for immediate employee discharge.

We respectfully request your unfavorable reporting of SB 72 -- reporting of suspect abuse or neglect should be left to professional persons and the imposition of a Class B misdemeanor is unwarranted.

I'd be happy to respond to any questions.

State of Kansas
 Department of Social and Rehabilitation Services
 Adult Services

ADULT ABUSE/NEGLECT/EXPLOITATION REPORTING AND INVESTIGATION
 FISCAL YEAR 1985 (July, 1984 through June, 1985)

MEDICAL

REPORTS RECEIVED	Nov., 1984		Year to Date		PERPETRATORS	Nov., 1984		Year to Date		
	#	%	#	%		#	%	#	%	
Total	34		242		Abuse:	19		92		
Age Range	21 - 105		21 - 105		Self	--	--	--	--	
Average Age	67		66		Spouse	--	--	1	1	
Male	8	24	75	31	Family/Relatives	2	11	3	3	
Female	26	76	167	69	Staff	11	58	18	20	
60 years and older	25	74	174	72	Other	6	32	70	76	
					Neglect:	17		149		
INVESTIGATIVE FINDINGS					Self	1	6	8	5	
Total Reports	34		242		Family/Relatives	3	18	5	3	
Confirmed	10	29	71	29	Staff	12	71	38	26	
Potential Risk	9	26	47	19	Other	1	6	98	66	
Unconfirmed	15	44	124	51	Exploitation:	3		14		
					Self	--	--	--	--	
ABUSE *					Family/Relatives	1	33	4	29	
Total Reports	19		91		Staff	2	67	3	21	
Investigative Findings	Confirmed	6	32	24	26	Other	--	--	7	50
	Pot.Risk	7	37	23	25	REPORTERS				
Spouse Abuse Reports	--		1		Self	1	3	12	5	
Investigative Findings	Confirmed	--	--	1	100	Family	7	21	44	18
	Pot.Risk	--	--	--	--	Neighbor/Friend	--	--	25	10
						Guardian/Conservator	--	--	8	3
NEGLECT *						Community Agencies	4	12	10	4
Total Reports	17		149			SRS Staff	3	9	18	7
Investigative Findings	Confirmed	4	24	43	29	* Medical Personnel (N.H.-M.D.-Health Dept. Hospital Staff)	17	50	98	40
	Pot.Risk	4	24	23	15	Police	--	--	1	1
						Lawyer/Court Services	--	--	--	--
EXPLOITATION *						Anonymous	2	6	25	1
Total Reports	3		14			Other	--	--	1	1
Investigative Findings	Confirmed	1	33	7	50					
	Pot.Risk	1	33	5	36					

* Some cases are reported in more than one category (abuse, neglect, exploitation)

STATE OF KANSAS
 Department of Social and Rehabilitation Services
 Adult Services

ADULT ABUSE/NEGLECT/EXPLOITATION REPORTING AND INVESTIGATION
 FISCAL YEAR 1983 (July, 1982 through June, 1983)

MEDICAL

REPORTS RECEIVED	June, 1983		Year to Date ✓		PERPETRATORS				
	#	%	#	%	#	%	#	%	
Total	31		359 ✓		Abuse:				
Age Range	18-102		17-105		16				
Average Age	70		62		188				
Male	10	32	118	33	Self	0	0	2	1
Female	21	68	241	67	Spouse	1	6	4	2
60 years and older	24	77	232	65	Family/Relatives	0	0	4	2
					Guardian/Conservator	0	0	0	0
					Other/ Staff	15	94	178	95
					Neglect:				
					15				
					164				
					Self	1	7	13	8
					Family/Relatives	1	7	8	5
					Guardian/Conservator	0	0	0	0
					Other/Staff	13	87	143	87
					Exploitation:				
					0				
					25				
					Self	0	0	2	8
					Family/Relatives	0	0	10	40
					Guardian/Conservator	0	0	4	16
					Other/Staff	0	0	9	36
					REPORTERS ✓				
					Self	2	6	16	4
					Family	6	19	62	18
					Neighbor/Friend	2	6	29	8
					Guardian/Conservator	0	0	0	0
					Community Agencies	0	0	2	1
					SRS Staff	1	3	27	8
					Medical Personnel (N.H.-M.D.-Health Dept. Hospital Staff)	19	61	174	48
					Police	0	0	1	0
					Lawyer/Court Services	0	0	0	0
					Anonymous	1	3	38	11
					Other	0	0	10	3

Some cases are reported in more than one category (abuse, neglect, exploitation)