

Approved 3-28-89  
Date

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 March 23, 1989 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Emalene Correll, Legislative Research  
Bill Wolff, Legislative Research  
Norman Furse, Revisors Office  
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:

Representative Carol Sader  
Katie Pyle, Silver Haired Legislator  
John Miller, State Legislative Committee, AARP  
Elizabeth Taylor, Alcohol and Drug Counselors  
Nancy Loncarick, Clinical Social Worker, Johnson County Mental Health Center  
Jodi Hitchcock, Care Coordinator, Johnson County Area Agency on Aging  
Trish Moore, Director, Johnson County Human Resources and Aging Department  
Aase George, private senior citizen  
Claire McCurdy, Chief Counsel/Special Assistant, Kansas Department on Aging  
Allyn Lockner for Janet Schlansky, Director of Community Services, SRS  
Adult Service Commission  
Information from staff, HB-2434

Mike Kellogg and Jason Kerstetter, pages for Senator Langworthy were welcomed to Senate Public Health and Welfare Committee.

Representative Carol H. Sader appeared before the committee in support of HB-2108 stating that this bill would substantially improve adult protective services in Kansas. The basic intent of this bill is to reduce the increasing incidence of elder abuse in private residences throughout the state. Ms. Sader went through various changes that would be made when K.S.A. 39-1421-1429 is repealed and replaced with a statute that includes investigatory mechanisms and enforcement procedures that are presently lacking. (Attachments 1 and 2)

Katie Pyle, representing the Silver Haired Legislature, told the committee that HB-2108 contained much of what was undertaken in the Judiciary areas and voted unanimously by her group. The provisions of protective services from SRS, the Register of reports and assessment analysis, and the confidentiality of the reports is exceedingly important to protect the elderly. She also praised the use of a toll-free line for abuse reporting.

John Miller, State Legislative Committee, AARP, appeared in support of HB-2108 as amended. Mr. Miller urged the committee for a favorable report on this bill.

Elizabeth Taylor, Alcohol and Drug Counselors, appeared stating a concern over the definition of "family counselor", page 3 of HB-2108. Ms. Taylor stated they were supportive of the bill but urged either deletion or a better defined term. Staff told the committee the term had been deleted in Representative Sader's balloon of HB-2108.

Nancy Loncaric, clinical social worker, Johnson County Mental Health Center, Mission, appeared in support of HB-2108. Ms. Loncaric stated she has worked for a number of years with elderly residents of the community and assured the committee that abuse and neglect is a serious problem ranging from physical abuse, emotional abuse and business and financial exploitation. (Attachment 3)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

room 526-S, Statehouse, at 10:00 a.m./~~p.m.~~ on March 23, 1989

Jodi Hitchcock, Long Term Care Specialist, Johnson County Area Agency on Aging, appeared before the committee in support of HB-2108. Ms. Hitchcock told the committee that many elderly persons are very frail, homebound and in a lower-income bracket, also they are many times dependent on someone to provide for basic needs. Ms. Hitchcock urged a strong mandatory reporting law to help insure the well-being of these persons and others in similar types of situations. (Attachment 4)

Trish Moore, Director, Human Resources and Aging Department of Johnson County, Kansas appeared in support of HB-2108 stating the staff with which she works is often exposed to instances where a client is in or potentially in an abusive situation. Ms. Moore told the committee that in researching other state programs across the country it was found that each state had an innovative and effective program concerning prevention of adult abuse implemented following the passage of such a bill as HB-2108. (Attachment 5)

Senator Salisbury questioned the use of two different definitions of "abuse", one used in the statutes concerning a residential setting and the one used in HB-2108. Senator Salisbury requested a comparison of the two definitions and also information about the Missouri law concerning the abuse issue.

Aase George, a retired social worker from Roeland Park, appeared before the committee in support of HB-2108 telling the committee of several instances where the elderly are very vulnerable. She praised the instigation of a Hot Line to encourage reporting of abuse. (Attachment 6)

Claire McCurdy, Department on Aging, appeared in support of HB-2108 stating support for the bill, both in it's original form and also supporting the changes suggested. It was felt the changes would strengthen the bill. (Attachment 7)

Written testimony by Janet Schlansky, Director of Community Services, SRS was presented to the committee by Allyn Lockner who called attention to the difference in the definition of terms used in the two statutes. It was suggested that these two statutes be reviewed and made more consistent. (Attachment 8)

Written testimony was presented to the committee from Kathleen Renner, Bethany Medical Center, Kansas City, stating support of HB-2108. Ms. Renner stated that in her work as a medical social worker she has seen many cases of abuse and neglect of elderly or handicapped adults and that individuals in private homes are frequently at greater risk. Ms. Renner urged passage of the bill to mandate reporting, authorizing an investigating agency and empowering same to provide for a minimum level of safety and well-being for these dependent adults. (Attachment 9)

Staff told the committee that there was not a recorded vote when the amendments were added to HB-2434 in the House Committee of the Whole on March 6. In visiting with members on both sides of the aisle it appeared the amendment had substantial support. Staff also presented to the committee definitions of supervision adopted by rules and regulations by the Board of Behavioral Sciences as it relates to social work supervision. Direct supervision as used in the bill is not defined. (Attachment 10)

The committee adjourned at 10:58 a.m. and will convene on Monday, March 27, 1989 at 10:00 a.m. in room 526-S.

CAROL H. SADER  
REPRESENTATIVE, TWENTY-SECOND DISTRICT  
JOHNSON COUNTY  
8612 LINDEN DR.  
SHAWNEE MISSION, KANSAS 66207  
(913) 341-9440



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HOUSE OF  
REPRESENTATIVES

TESTIMONY ON HB 2108

Senate Public Health and Welfare Committee

March 23, 1989

COMMITTEE ASSIGNMENTS  
RANKING MINORITY MEMBER:  
PENSIONS, INVESTMENTS AND BENEFITS  
MEMBER: ECONOMIC DEVELOPMENT  
ELECTIONS  
PUBLIC HEALTH AND WELFARE  
JOINT COMMITTEE ON ECONOMIC  
DEVELOPMENT

Mr. Chairman and Members of the Committee:

I come before you today to testify as a proponent of HB 2108, a bill that would substantially improve adult protective services legislation in Kansas. The basic intent of this bill is to reduce the increasing incidence of elder abuse in private residences in communities throughout our state.

Elder abuse generally includes physical abuse, psychological abuse, negligence, and financial exploitation. Like other forms of family violence, unless effectively checked, it tends to recur frequently over an extended period and because of the frailty of its victims, it is always serious and sometimes fatal. It is found among families of all socioeconomic levels and estimates of the extent of elder abuse in the U.S. are upwards of a million victims annually. As many as 1 in 10 Americans over age 65 may suffer from some type of abuse and 1 in 25 will likely be the victim of a moderate to severe incident according to the American Medical Association. I call your attention to the Kansas newspaper articles attached to this testimony detailing these facts.

We presently have a statute governing the reporting and investigation of abused or neglected adults in private residences in Kansas. This is K.S.A. 39-1421-1429. HB 2108 would repeal this law and replace it with a statute that includes investigatory mechanisms and enforcement procedures that are presently lacking.

HB 2108 would make the following improvements in our current statute that attempts to address this problem:

1) In Sec. 1(a), it enlarges the scope of protection for older adults in residential settings by making this act applicable to all adults in non-medical settings. This makes it clear that this statute is intended to include abuse by family care-givers and to expand the powers of SRS in cases of abused or neglected adults residing outside of nursing homes and adult care homes.

2) In Sec. 1(b), 1(c), and 1(f), it includes "mental harm" in addition to physical harm within the definition of "abuse", "neglect" and "in need of protective services."

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Attachment!

3) In Sec. 1(d), it includes "financial resources" and "financial advantage" under the definition of "exploitation."

4) In Sec. 1(e), it adds "fiduciary abuse" to the list of unlawful acts; and it adds "financial management" under a caretaker's responsibilities in Sec. 1(i).

5) It expands the list of mandatory reporters in Sec. 2(a) of the bill and in Sec. 2(d) includes a criminal penalty for a class B misdemeanor is inserted for those who are required to report and fail to do so. (A class B misdemeanor is punishable by up to 6 months in the county jail and/or \$1,000 fine).

6) It involves law enforcement in elder abuse similar to law enforcement's statutory involvement in child abuse situations. In Sec. 2(a) and in Sec. 2(c) the bill provides that reports of abuse shall be made to law enforcement when SRS services are not in operation. In Sec. 4(a)(2) it provides that when a criminal act appears to have occurred, law enforcement shall be notified immediately and if the alleged perpetrator is licensed, registered, or otherwise regulated by a state agency, such state agency also shall be notified immediately. The bill further provides, in Section 6, that law enforcement shall be contacted to assist SRS when information on a report indicates that an adult residing in his or her own home or the home of another is in a life-threatening situation.

7) It inserts time frames throughout the statute that would require more expeditious processing of complaints (Sec. 4), especially when information from a reporter indicates imminent danger to the health or welfare of the involved adult.

8) In Sec. 7, it authorizes SRS to solicit necessary records from private persons and agencies subject to professional confidentiality privileges, to assist in investigations.

9) In Sec. 12, it permits the establishment of a hot line (toll-free telephone number) for the reporting of instances of abuse, neglect, or exploitation under the act.

At this point, I would like to briefly explain a number of suggested "clean-up and clarifying" amendments which appear on the balloon before you.

The suggested change on page 1, lines 33-34 are intended to make it clear that this act does not apply to those persons residing in the medical settings covered by KSA 39-1401 (nursing homes, etc.) but does apply to all others (those in private residences, etc.).

On page 2, the deletions on lines 57 and 75-76 are at the suggestion of the Revisor's office for clarification only.

On page 3, after line 85, the suggested change is to add a definition of the term "involved adult" for purposes of clarifying other sections of the Act. The word "involved" is then added before the word "adult" in all subsequent sections.

On lines 94-104, a number of changes are suggested in the list of mandatory reporters under this act to conform to other similar statutes and remove entities not otherwise legally defined.

On page 4 on lines 131-132 and 157-158, redundant language is deleted. After line 135, a new Section (d) is suggested to make it clear that a reporter of adult abuse under one applicable act shall not be required to report under another act as well. The deletion on lines 142-143 is intended to remove the extension of relief from criminal or civil liability to persons who cannot be identified.

On page 5, the deletion on line 176 removes the reference to a statutory list of crimes against persons, many of which are inappropriate for inclusion in this legislation (such as criminal abortion and assault of a law enforcement officer). On lines 186 and 194, the word "report" was mistakenly replaced by "assessment" in the bill and this change is simply a correction.

On page 6 on line 207, meaningless verbage was removed. On lines 215 to 217, the suggested deletion and insertion is intended to simplify and clarify and lastly, the change on lines 225 to 226 is intended to clarify that only SRS shall have access to the relevant records.

The Department of Social and Rehabilitation Services has stated that the bill did not require any additional staff nor any large scale changes in daily activities and no fiscal impact was projected.

HB 2108 is clearly intended to put teeth into the law that must stem the tide of elder abuse in our state as witnessed by the increasing incidence of its occurrence subsequent to the passage of the existing statute. Fortunately, there is still time to close the barn door before the horse gets out and gallops away. I submit that the growing population of older Kansans susceptible to this type of abuse, which is being discribed as a "national disgrace", requires the enactment of HB 2108.

Thank you.

*Carol H. Sader*

CAROL H. SADER  
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 PUBLIC HEALTH AND WELFARE

The Topeka Capital-Journal, Wednesday, March 30, 1988

## Neglect, other abuses plague 1 in 10 seniors

CHICAGO (AP) — As many as one in 10 Americans over age 65 may suffer from some type of abuse, and one in 25 likely will be the victim of a moderate to severe incident, according to an American Medical Association report.

The most common form of abuse of the elderly was simply neglect — leaving an elderly person at home while the care-giver goes to work.

But the number of moderate to severe incidents of abuse has climbed by nearly 100,000 annually each year since 1981, the report concluded.

That is a particularly worrisome trend because researchers estimate only one in five cases of elderly abuse is reported, compared with one in three cases of child abuse.

"Ten years ago, we didn't think child abuse was a problem," said Dr. E. Harvey Estes, a member of the AMA's Council on Scientific Affairs, which prepared the report.

Estes said that there is a consensus in categorizing abuse of the el-

derly as physical, psychological and financial and-or material, and that experts generally agree on the causes of abuse.

"Typically, you have people no longer able to take care of themselves financially who move in with a relative. The situation may simply eat into the care-giver's time, but more likely it will add to his responsibilities and strain the family's budget," said Estes.

"A situation like this can begin with the family neglecting the older person more and more, and in some situations, the severity of the abuse escalates," he said.

The report said abuse was a recurring incident in 80 percent of the cases reported and that a typical victim was likely to be a 75-year-old widow whose economic situation dictates her moving to a younger family member's home.

Most victims also have at least one physical or mental impairment that requires care by others, researchers said.

# Abuse of the elderly: 'An ugly American secret'

## Reports of battered, neglected seniors increasing with 'frightening regularity'

By DAVID LARSEN  
LA Times-Washington Post Service

In Los Angeles, paramedics responding to an emergency call found 77-year-old Virginia Jeter in a waste-and pest-ridden bed. She died Dec. 26 in a hospital. Her daughter, Cynthia Jeter Green, 38, has been charged with involuntary manslaughter and endangering an elderly person through neglect.

Ambulance attendants answering a call found 80-year-old Ofelia Boithillet, whose body showed other signs of neglect, so emaciated that her vertebrae stuck through her skin. After she died Dec. 31, the Los Angeles County District Attorney's Office filed neglect and involuntary manslaughter charges against her son, Roger Louis Hummel, 41, and his wife, Cindy Lee Hummel, 31. Deputy Public Defender Gregory C. Fisher, appointed to represent Cindy Hummel, said that the Hummels had not neglected Boithillet and, "certainly ... weren't trying to cause (her) to suffer or let her lie there until she was dead...."

A 76-year-old widow, who asks that her name not be used, reports that her daughter has inquired about her insurance money, cursed at her and even shoved her. "My husband was an attorney, and he sometimes told me of cases of abuse of older adults," the terrified woman said. "But I never thought it would happen to me."

With frightening regularity, authorities say that they are handling an increasing number of reports of abuse of the elderly, which some experts believe is one of every 25 senior citizens nationwide each year.

Though this ugly secret of American society slowly is receiving more scrutiny, the haunting questions remain: How and why does abuse of the elderly occur? Who is likely to be abused and who is likely to be the abuser?

There are no simple responses, though experts have begun to develop a clearer picture of the problem.

It happens between spouses, some of whom write brutal final chapters to the tale of long tumultuous relationships. It happens between parents and children, some of whom cannot bear the shift in relationship that makes them responsible for trying to resolve unsolvable problems. It happens between the elderly and troubled relatives in their homes, individuals who have mental problems or histories of drug or alcohol abuse.

It happens in degrees. The abuse may be a relative being loud, mean or short with a senior. It can be that someone in their home inflicts psychological trials on the elderly, for example, by hiding their things to make them think they are becoming senile.

But elderly abuse also can become a crime involving violence and even death.

Elder abuse, according to a watershed 1985 report by a congressional subcommittee headed by 88-year-old Rep. Claude Pepper, D-Fla., is a problem that is "increasing nationally."

"Stresses in our society" are partly to blame for that, said Dr. Daniel Thursz, president of the National Council on the Aging Inc. "For instance, the anger and frustrations of adult children, when they are faced with problems they can't solve, sometimes manifests itself, and they lash out."

Many families, he noted, are wracked by role reversals in which elderly

parents, who are in the midst of other major and uncomfortable changes in their lives, also find themselves in the unfamiliar position of having to take directions from their now-adult children.

The children, meantime, find themselves dealing with awkward situations involving their parents.

In "You and Your Aging Parent," Barbara Silverstone and Helen Hyman point out that daily dealings with older people also may provide disturbing reminders to younger people of their own aging, frailties and mortality; this, in turn, may affect how they relate to seniors.

Increased pressures by insurers and government health care programs for shorter periods of hospitalization also may contribute to the problem of elderly abuse, said Dr. Gary W. Small, a Los

Continued on page 2-B, column 5

## Differing degrees of abuse afflict nation's elderly

By DAVID LARSEN  
LA Times-Washington Post Service

Not all elder abuse is physical or violent, said Lee Pearson, assistant manager of criminal justice services for the American Association of Retired Persons. She described how abuse of the aged can occur in varying degrees including:

- **Passive neglect** — In this case, the adult child may agree to care for a parent in their home but may simply not know that the senior requires a certain medication at a certain time. The adult children may still have their own family responsibilities. "And if there is this or other similar neglect, it isn't willful," Pearson said. The care-giver simply may not know everything he or she needs to help.

- **Active neglect** — "This is willful, when the adult child hates the parent.

The child, say, may go out of the way to deprive the senior of food or care," Pearson said. A congressional subcommittee cited the case of an 80-year-old arthritic woman in the care of a son. He left her alone all day and part of the night. Before leaving the house, he tied her in bed with a rope, leaving a few crackers and a jug of water within her reach. Authorities found the woman sweating in a room where the temperature exceeded 90 degrees.

- **Financial exploitation** — "This is when, for instance, a child prevails on an elderly parent to sign a Social Security or private pension check, then the offspring cashes it and does what he or she pleases with the money," Pearson said. The congressional report cited the case of a senior citizen who was swindled out of a 40-acre orange grove by a trusted nephew. The nephew had included liquor with his elderly relative's medications and then threatened the senior citizen with physical harm until he agreed to sign some forms.

- **Psychological abuse** — "The care-giver in a home setting," Pearson said, "may demean the elderly person. In some cases, this may result in terminal decline, because the person is so hurt and the quality of life is so diminished. The disappointment is vast, and personal acquaintances who might be consulted have themselves died." Congressional researchers found a case involving a family who ordered an aged female relative out of the kitchen whenever they ate. They told the woman, who lived with them, that she was unwanted. She ended up in tears on the steps of a church.

### Topekans: Where to get help

Topeka-area seniors who are being abused or neglected, care-givers who are inflicting abuse, or people who suspect a friend or neighbor is being abused have a couple of options concerning where to turn for help.

According to Joanna Lacoursiere, Aging Clinician for Shawnee Community Mental Health Agency, the first place to report a possible abuse/neglect case is to the **Adult Protective Services division of Social Rehabilitation Services**. She said that **Project Access, Shawnee Community Mental Health Center, the police department and Protective Services** all have "an informal agreement" to work together on cases, or to rotate cases, depending on who's available.

Other area senior activists said they are concerned by a lack of a clear, central location where people can turn for help. They said that while Adult Protective Services is where people should report, results can be slow because that office has only one staff member. They encouraged people to be persistent in following through on their report.

## Battered seniors

Continued from page 1-B

Angeles psychiatrist and co-author of "Parentcare." He noted that "a significant proportion of elder abuse is spousal; the participants have simply grown old together. Generally, spouses live with each other, and the opportunity exists.

Money problems also can be a factor. "If the care-giver is under an economic burden, the resulting stress may contribute to elderly abuse," Small said.

The prevalence of elder abuse, which professionals define as "an act or omission that results in harm or threatened harm to the health or welfare of an elderly person," also can be blamed on "ageism," which Small explained, "essentially is prejudice against old age.

"In this youth-oriented society, unfortunately we all have a tendency to disregard the old in favor of the young."

"For a long time, elder abuse wasn't coming to light, because a lot of the older persons were ashamed to admit it was at the hands of their own children," said Thursz of the national council on aging.

When the congressional subcommittee studied elder abuse, its staff members amassed a grim collection of extreme cases, said Kathy Gardner, the panel's staff director.

The subcommittee, which issued its study calling elder abuse "a national disgrace," had reports of a 74-year-old woman who required emergency treatment after she was beaten on the head with a shoe by her daughter; an elderly woman, disabled by arthritis, who had to have a plate surgically installed in her head after her son hit her with a board, and an elderly man who lived alone and was ganged up on by his three sons, who broke into his home and beat the man so badly he was sent to the hospital three times.

Men — especially sons — are the most likely people to commit abuses; daughters are the next most likely suspects, experts agree.

And "with the increasing existence of extended families nowadays, sometimes the abusers of the elderly are the grandchildren, sometimes teen-agers," said Faye Washington, general manager of the Los Angeles Department of Aging.

Sally Hoover, a gerontologist in Los Angeles, noted that "a significant proportion of elder abuse is spousal; the participants have simply grown old together. Generally, spouses live with each other, and the opportunity exists. Indeed, a study by the Family Research Laboratory at the University of New Hampshire found that 24 percent of abused elderly had been mistreated by their children, but 58 percent had suffered at the hands of spouses.

"One of the major risk factors is living with someone else," noted Karl Pillemer, a University of New Hampshire assistant sociology professor who headed the abuse study. "An abuser doesn't drop by on Saturday nights to beat up his elderly mother. Basically, there are so many more people who live with spouses than with adult children. Therefore, the opportunity for abuse is much greater."

*'In this youth-oriented society, we have a tendency to disregard the old in favor of the young.'*

—Gary Small

"One reason for the reluctance," said Julia Takeda of the Los Angeles County Department of Public Social Services, "is that the person may fear being removed to a strange and new environment."

She said that the elderly, even if they are being maltreated, still feel more at ease in familiar surroundings. "They sometimes are afraid that no one will take care of them if their care-givers are reported to authorities," Takeda said.

"One thing we need are more foster homes for the elderly," Thursz said. "Europe has had this for years, but the concept hasn't yet caught as well here.

"In perspective," he noted, "it is a small percentage of the population that is committing this offense. But any percentage is too high."

CAROL H. SADER  
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## COMMITTEE ASSIGNMENTS

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 MEMBER: ECONOMIC DEVELOPMENT  
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 PUBLIC HEALTH AND WELFARE  
 JOINT COMMITTEE ON ECONOMIC  
 DEVELOPMENT

## Legislative Administrative Services

DATE:         Fri. 5-13-88    

TOPEKA CAPITAL JOURNAL  
 WICHITA EAGLE-BEACON  
 KANSAS CITY STAR  
 KANSAS CITY TIMES  
 EMPORIA GAZETTE

GARDEN CITY TELEGRAM  
 HAYS DAILY NEWS  
 HUTCHINSON NEWS  
 LAWRENCE JOURNAL WORLD  
 LEAVENWORTH TIMES

MANHATTAN MERCUR  
 CLATHE DAILY NEWS  
 PARSONS SUN  
 PITTSBURG MORNING SUN  
 SALINA JOURNAL  
 WINFIELD DAILY COURIER

# 432 cases of abusing elderly were reported in 1986-87

● **By DEBRA LINDQUIST**  
*Morning Sun Staff Writer*

Over the years, there has been publicity on child abuse, however abuse is also happening to older members in the community. But not until recently have people called attention to it.

A seminar on elder abuse was held Wednesday afternoon at the College Heights United Methodist Church in Pittsburg.

According to Jerry Williams, executive director of the southeast Kansas Area Agency on Aging, there were 432 elder abuse cases reported in the nine-county area in southeast Kansas during the fiscal year from July 1, 1986, to June 30, 1987.

"One in every 25 people over 65 will be moderately or severely abused. The problem is here and among us," Williams said. "I think it's significant that the first convention ever (on elder abuse) was held last Nov. 17, in San Antonio, Texas, to address the issue."

Doris Stout, of the Kansas Department on Aging, said there is a federal mandate requiring that each state have a long term care ombudsman to insure the quality of life for the elderly and in Kansas the long term care ombudsman was formed in 1980.

An ombudsman is one who listens and investigates complaints, but does not have administrative power.

"We have seen problems with elder abuse in Kansas out in the community and in the nursing homes," Stout said. Their office received 921 complaints during the last fiscal year.

Stout offered advice on how to avoid being a victim of elder abuse that she received from a book titled Elder Abuse and Neglect written by Mary Joy Quinn and Susan K. Tomita.

She suggested that an elder person plan for the possibility of disability by talking to a law-

yer about living wills, natural death acts and powers of attorney.

"Before you give a power of attorney to anyone, make sure it's a trustworthy person who will carry out your wishes," Stout said. Although a will should be made and reviewed, it should not be revised lightly.

An elder person should also have someone they trust review anything they are asked to sign, Stout said.

Stout pointed out that one may want to give a copy of a "living will" to their pastor or minister.

For convenience, Stout said, one may want to arrange for direct deposit of social security checks or any other payments.

By law, licensed people who work with the elderly population are required to report any information regarding abuse or neglect of an individual to the Social Rehabilitation Services. Any person who fails to do so, is guilty of a Class B misdemeanor which could result in six months in jail and a \$1,000 fine.

Stout pointed out that all reports are confidential and an employer may not fire an employee solely for filing a report.

Matty Foxx, of the SRS office, said the SRS office is mandated to investigate all complaints within 48 hours and complete the investigation within two weeks. She admitted that sometimes it may take a month to complete an investigation because of the number of procedures they have to follow.

All investigations are confidential and the SRS office will not divulge the results unless there is a court order.

"We will discuss our findings with the administration (of a nursing home) after the investigation. Sometimes they are guilty or not guilty," Foxx said.



HOUSE BILL No. 2108

By Committee on Public Health and Welfare

1-25

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Attachment 2

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AN ACT relating to abuse, neglect and exploitation of certain adults; requiring reports thereof by certain persons; directing investigations thereof by the department of social and rehabilitation services; directing other persons and public and private agencies to assist therein; providing for protective services; declaring certain acts to be unlawful and providing penalties therefor; repealing K.S.A. 39-1421 to 39-1429, inclusive.

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

Section 1. As used in this act:

(a) "Adult" means an individual 18 years of age or older alleged to be unable to protect their own interest and who is harmed; vulnerable to harm or threatened with harm through action or inaction by either another individual or through their own action or inaction. Such term shall include any individual residing in their own home or residing in the home of another individual.

not

a resident as the term "resident" is defined under K.S.A. 39-1401 and amendments thereto

(b) "Abuse" means the willful intentional infliction of injury, unreasonable confinement, fiduciary abuse, intimidation, cruel punishment, omission or deprivation by a caretaker or another person of goods or services which are necessary to avoid physical or mental harm; anguish or illness.

(c) "Neglect" means the failure or omission by one's self, caretaker or another person to provide goods or services which are necessary to ensure safety and well-being and to avoid physical or mental harm; anguish or illness.

(d) "Exploitation" means taking unfair advantage of an adult's physical or financial resources for another individual's personal or financial advantage by the use of undue influence, coercion, har-

48 assessment, duress, deception, false representation or false pretense by  
49 a caretaker or another person.

50 (e) "Fiduciary abuse" means a situation in which any person who  
51 has the care or custody is the caretaker of, or who stands in a  
52 position of trust to, an elderly-or-dependent adult, takes, secretes,  
53 or appropriates their money or property, to any use or purpose not  
54 in the due and lawful execution of such person's trust.

55 (f) "In need of protective services" means that an adult is unable  
56 to provide for or obtain services which are necessary to maintain  
57 physical or mental health or both.

58 (g) "Services which are necessary to maintain physical or mental  
59 health or both" include, but are not limited to, the provision of  
60 medical care for physical and mental health needs, the relocation of  
61 an adult to a facility or institution able to offer such care, assistance  
62 in personal hygiene, food, clothing, adequately heated and ventilated  
63 shelter, protection from health and safety hazards, protection from  
64 maltreatment the result of which includes, but is not limited to,  
65 malnutrition, deprivation of necessities or physical punishment and  
66 transportation necessary to secure any of the above stated needs,  
67 except that this term shall not include taking such person into custody  
68 without consent except as provided in this act.

69 (h) "Protective services" means services provided by the state or  
70 other governmental agency or by private organizations or individuals  
71 which are necessary to prevent abuse, neglect or exploitation. Such  
72 protective services shall include, but shall not be limited to, eval-  
73 uation of the need for services, assistance in obtaining appropriate  
74 social services, and assistance in securing medical and legal services.

75 (i) "Caretaker" means a person who has assumed the responsi-  
76 bility for an adult's care or financial management or both. Such  
77 assumption of responsibility may be voluntary, by contract or by  
78 order of a court of competent jurisdiction.

79 (j) "Secretary" means the secretary of social and rehabilitation  
80 services.

81 (k) "Report" means a report of abuse, neglect or exploitation  
82 under this act.

83 (l) "Law enforcement" means the public office which is vested  
84 by law with the duty to maintain public order, make arrests for

2-2

84 crimes, investigate criminal acts and file criminal charges, whether  
85 that duty extends to all crimes or is limited to specific crimes.

86 Pursuant to section 8, no No person shall be considered to be  
87 abused, neglected or exploited or in need of protective services for  
88 the sole reason that such person relies upon spiritual means through  
89 prayer alone for treatment in accordance with the tenets and practices  
90 of a recognized church or religious denomination in lieu of medical  
91 treatment.

92 Sec. 2. (a) Any person who is licensed to practice any branch of  
93 the healing arts, a licensed psychologist, the chief administrative  
94 officer of a medical care facility, ~~[an adult care home administrator],~~  
95 a licensed social worker, a licensed professional nurse, a licensed  
96 practical nurse, a licensed dentist, a law enforcement officer, ~~[a li-~~  
97 ~~icensed podiatrist, a family counselor including [except] attorneys-~~  
98 ~~at-law, a registered occupational therapist, a registered physical~~  
99 ~~therapist, a probation officer,]~~ a licensed home health agency, ~~[and~~

100 ~~the executive director of an entity which provides homemaker serv-~~  
101 ~~ices]~~ and an employee of a financial institution, who has reason-  
102 able cause to believe that an adult is being or has been abused,  
103 neglected or exploited, ~~[or is in a condition which is the result of~~  
104 ~~such abuse, neglect or exploitation,]~~ or is in need of protective serv-  
105 ices shall report, within six hours from receipt of the information,  
106 such information or cause a report of such information to be made  
107 in any reasonable manner. An employee of a domestic violence  
108 center shall not be required to report information or cause a report  
109 of information to be made under this subsection. Other state agen-  
110 cies receiving reports that are to be referred to the department of  
111 social and rehabilitation services, shall submit the report to the  
112 department within six hours, during normal work days, of receiving  
113 the information. Reports shall be made to the department of social  
114 and rehabilitation services during the normal working week days and  
115 hours of operation. Reports shall be made to law enforcement agen-  
116 cies during the time social and rehabilitation services are not in  
117 operation. Law enforcement shall submit the report and appropriate  
118 information to the department of social and rehabilitation services  
on the first working day that social and rehabilitation services is in  
operation.

(m) "Involved adult" means the adult who is the subject  
of a report of abuse, neglect or exploitation under this  
act.

and the chief administrative officer of

121 (b) The report made pursuant to subsection (a) shall contain the  
 122 name and address of the person making the report and of the care-  
 123 taker caring for the involved adult, the name and address of the  
 124 involved adult ~~(reported)~~ information regarding the nature and ex-  
 125 tent of the abuse, neglect or exploitation, the name of the next of  
 126 kin of the involved adult, if known, and any other information which  
 127 the person making the report believes might be helpful in the in-  
 128 vestigation of the case and the protection of the involved adult.

129 (c) Any other person having reasonable cause to suspect or be-  
 130 lieve that an adult is being or has been abused, neglected or ex-  
 131 ploited ~~or is in a condition which is the result of such abuse or~~  
 132 ~~neglect~~ or is in need of protective services may report such infor-  
 133 mation to the department of social and rehabilitation services. Re-  
 134 ports shall be made to law enforcement agencies during the time  
 135 social and rehabilitation services are not in operation.

(d) A person making a report under subsection (a) shall not be required to make a report under K.S.A. 39-1401 to 39-1410, inclusive, and amendments thereto. A person making a report under K.S.A. 39-1401 to 39-1410, inclusive, and amendments thereto, shall not be required to make a report under this act.

136 ~~(d)~~ Any person required to report information or cause a report  
 137 of information to be made under subsection (a) who knowingly fails  
 138 to make such report or cause such report not to be made shall be  
 139 guilty of a class B misdemeanor.

(e)

140 Sec. 3. (a) Anyone participating in the making of any report  
 141 pursuant to this act, or in any follow-up activity to or investigation  
 142 of such report ~~or any other report of abuse, neglect or exploitation~~  
 143 ~~of an adult~~ or who testifies in any administrative or judicial pro-  
 144 ceeding arising from such report shall not be subject to any civil or  
 145 criminal liability on account of such report, investigation or testi-  
 146 mony, unless such person acted in bad faith or with malicious  
 147 purpose.

148 (b) No employer shall terminate the employment of, prevent or  
 149 impair the practice or occupation of or impose any other sanction  
 150 on any employee solely for the reason that such employee made or  
 151 caused to be made a report, or cooperated with an investigation,  
 152 under this act. A court, in addition to other damages and remedies,  
 153 may assess reasonable attorney fees against an employer who has  
 154 been found to have violated the provisions of this subsection.

155 Sec. 4. (a) The department of social and rehabilitation services  
 156 upon receiving a report that an adult is being, or has been abused,  
 157 neglected, or exploited ~~or is in a condition which is the result of~~

158 ~~such abuse, neglect or exploitation,~~ or is in need of protective serv-  
 159 ices, shall:

160 (1) Make a personal visit with the involved adult:

161 (A) Within 24 hours when the information from the reporter  
 162 indicates imminent danger to the health or welfare of the involved  
 163 adult;

164 (B) within three working days for all reports of suspected abuse,  
 165 when the information from the reporter indicates no imminent  
 166 danger;

167 (C) within five working days for all reports of neglect or exploi-  
 168 tation when the information from the reporter indicates no ~~presence~~  
 169 ~~of~~ imminent danger.

170 (2) Complete, within two weeks of receiving a report, a thorough  
 171 investigation and evaluation to determine the situation relative to ~~the~~ involved  
 172 the condition of the ~~adult and what action and services, if any, are~~  
 173 required. The evaluation shall include, but not be limited to, con-  
 174 sultation with those individuals having knowledge of the facts of the  
 175 particular case. When a criminal act has appeared to have occurred  
 176 ~~under K.S.A. 21-3401 to 21-3428, and amendments thereto,~~ law  
 177 enforcement shall be notified immediately and if the alleged per-  
 178 petrator is licensed, registered or otherwise regulated by a state  
 179 agency, such state agency also shall be notified immediately.

180 (3) Prepare, upon completion of the evaluation of each case, a  
 181 written ~~findings~~ assessment which shall include a ~~finding~~ an anal-  
 182 ysis of whether there is or has been abuse, neglect or exploitation,  
 183 recommended action, a determination of whether protective services  
 184 are needed, and any follow-up.

185 Sec. 5. (a) The secretary of social and rehabilitation services shall  
 186 maintain a statewide register of the ~~reports~~ reports, ~~assessments received~~  
 187 and the ~~findings~~ analyses, evaluations and the actions recom-  
 188 mended. The register shall be available for inspection by personnel  
 189 of the department of social and rehabilitation services.

190 (b) Before any person is identified as a confirmed pepe-  
 191 trator of abuse, neglect or exploitation, the person will be given  
 192 due process prior to having such person's name entered into  
 the statewide registry.

(e) Neither the report ~~assessment~~ report, ~~nor~~ the written evaluation or

195 findings analysis shall be deemed a public record or be subject to  
 196 the provisions of the open records act. The name of the person  
 197 making the original report or any person mentioned in such report  
 198 shall not be disclosed unless the person making the original report  
 199 specifically requests or agrees in writing to such disclosure or unless  
 200 a judicial proceeding results therefrom. No information contained in  
 201 the statewide register shall be made available to the public in such  
 202 a manner as to identify individuals ~~except such information iden-~~  
 203 ~~tifying the names of confirmed perpetrators may be disclosed~~  
 204 ~~to a caretaker.~~

205 Sec. 6. In performing the duties set forth in this act, the sec-  
 206 retary of social and rehabilitation services may request the assistance  
 207 ~~of the staffs and resources~~ of all ~~appropriate~~ state departments, agen-  
 208 cies and commissions and may utilize any other public or private  
 209 agencies, groups or individuals who are appropriate and who may  
 210 be available. Law enforcement shall be contacted to assist the de-  
 211 partment of social and rehabilitation services when the information  
 212 received on the report indicates that an adult, residing in such adult's  
 213 own home or the home of another individual, is in a life threatening  
 214 situation.

215 Sec. 7. (a) Any person ~~and public or private agency, including~~  
 216 ~~but not limited to hospitals, schools, attorneys, physicians and other~~  
 217 ~~social services agencies~~ which maintains records relating to the adult  
 218 which are relevant to any investigation conducted by the department  
 219 of social and rehabilitation services under this act shall provide,  
 220 upon the written consent of the adult or the adult's guardian, the  
 221 department of social and rehabilitation services with the necessary  
 222 records to assist in investigations. Any such information shall be  
 223 subject to the confidentiality requirements of section 5 and amend-  
 224 ments thereto.

or agency  
involved

225 (b) ~~Any person, department or agency authorized to carry out~~  
 226 ~~the duties enumerated in this act~~ shall have access to all relevant  
 227 records in accordance with the provisions of subsection (a).

The department of social and rehabilitation services

228 Sec. 8. (a) If the secretary finds determines 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  
 231 and the secretary has reason to believe that the adult lacks capacity

involved

232 to consent, the secretary shall determine whether a petition for  
 233 appointment of a guardian or conservator, or both, should be filed.  
 234 The secretary may petition the district court for appointment of a involved  
 235 guardian or conservator, or both, for an adult pursuant to the pro-  
 236 visions of the act for obtaining a guardian or conservator, or both.

237 (b) If the caretaker of an adult who has consented to the receipt involved  
 238 of reasonable and necessary protective services refuses to allow the  
 239 provision of such services to the adult, the secretary may seek an  
 240 injunction enjoining the caretaker from interfering with the provision  
 2 of protective services to the adult. The petition in such action shall  
 242 allege specific facts sufficient to show that the adult is in need of  
 243 protective services and consents to their provision and that the care-  
 244 taker refuses to allow the provision of such services. If the judge  
 245 finds that the adult is in need of protective services and has been  
 246 prevented by the caretaker from receiving such services, the judge  
 247 shall issue an order enjoining the caretaker from interfering with  
 248 the provision of protective services to the adult.

249 Sec. 9. If an adult does not consent to the receipt of reasonable involved  
 250 and necessary protective services, or if such adult withdraws the  
 251 consent, such services shall not be provided or continued, except  
 252 that if the secretary has reason to believe that such adult lacks  
 253 capacity to consent, the secretary may seek court authorization to  
 254 provide necessary services, as provided in section 10 of this act.

255 Sec. 10. ~~[(a) If the secretary finds has reason to believe that an~~  
 256 ~~adult is being or has been abused, neglected or exploited or is in~~  
 257 ~~a condition which is the result of such abuse, neglect or exploitation~~  
 258 ~~and lacks capacity to consent to reasonable and necessary protective~~  
 259 ~~services, the secretary may petition the district court for appointment~~  
 260 ~~of a guardian or conservator, or both, for the adult pursuant to the~~  
 261 ~~provisions of the act for obtaining a guardian or conservator, or both,~~  
 262 ~~in order to obtain such consent.]~~

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

266 Sec. 11. 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 where continuation of, or

269 modification in, the services provided is warranted. A decision to  
270 continue the provision of such services shall comply with the consent  
271 provisions of this act. Reevaluations of the need for protective serv-  
272 ices shall be made not less than every six months thereafter.

273 Sec. 12. The authority of the secretary under this act shall in-  
274 clude, but is not limited to, the right to initiate or otherwise take  
275 those actions necessary to assure the health, safety and welfare of  
276 an adult, subject to any specific requirements for individual consent **involved**  
277 of the adult. The secretary may establish a toll-free telephone number  
278 for the reporting of instances of abuse, neglect or exploitation under  
279 this act.

280 Sec. 13. Any actions taken under this act shall be consistent with  
281 providing protective services and accommodations in a manner no  
282 more restrictive of an individual's personal liberty and no more  
283 intrusive than necessary to achieve acceptable and treatment  
284 objectives.

285 Sec. 14. K.S.A. 39-1421 to 39-1429, inclusive, are hereby  
286 repealed.

287 Sec. 15. This act shall take effect and be in force from and after  
288 its publication in the statute book.



JOHNSON  
COUNTY  
MENTAL  
HEALTH  
CENTER

Suite 130  
6000 Lamar Ave.  
Mission, KS 66202  
(913) 831-2550

NORTHEAST —  
Suite 130  
6000 Lamar Ave.  
Mission, KS 66202  
831-2550

SOUTHWEST —  
15580 South 169 Highway  
Olathe, KS 66062  
782-2100

COMMUNITY SUPPORT  
SERVICES —  
8015 West 63rd Street  
Merriam, KS 66202  
362-2233

RESIDENTIAL  
CARE FACILITY —  
1125 West Spruce  
Olathe, KS 66061  
780-1306

AFTER HOURS  
EMERGENCY SERVICE —  
384-3535

SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE  
TESTIMONY REGARDING HB-2108

March 23, 1989

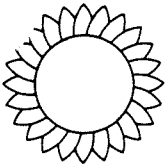
My name is Nancy Loncaric. I am a clinical social worker on the staff of Johnson County Mental Health Center in Mission, Kansas. For the last nine years, I have worked full time for the Mental Health Center as a program specialist in aging.

During these nine years, I have worked with hundreds of elderly residents of our County and their families. My work involves mental health counseling to the elderly and their families and takes me to senior citizen centers, to nutrition sites, and to high-rise apartment projects for the elderly.

Based on my personal experience over the years, with many elderly residents of our community, I can assure members of this Committee that abuse and neglect of the elderly is a serious and persistent problem. These abusive situations range from physical abuse, to emotional abuse, to business and financial exploitation. The problem is aggravated by the fact that abuse and exploitation is often perpetrated by the very people the elderly would normally trust the most. It is further complicated by the tendency of many elderly citizens to be afraid or ashamed to report what is happening.

Based on my experience, I would urge Committee Members to favorably consider passage of House Bill 2108 as a means to ensure that those who are in these situations receive proper protection and help.

SDH/W  
3-23-89  
Attachment 3



**Johnson County  
Kansas**

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March 23, 1989

Senate Public Health and Welfare Committee

Hearing on House Bill No. 2108 - Mandatory Reporting of Adult Abuse

Testimony of Jodi Hitchcock, Long Term Care Specialist  
Johnson County Area Agency on Aging

My name is Jodi Hitchcock and I am appearing before the committee today to address the issue of Adult Abuse and the need for Mandatory Reporting of abuse cases.

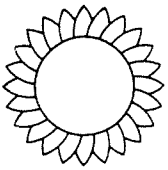
As a direct service provider, I have daily contact with a very special and vulnerable population; the elderly. Many of these elderly persons are very frail, homebound, and of a lower-income bracket. They also are many times dependent on someone to provide some type of service for them, whether it be of a physical, emotional, or financial nature.

Many elderly are dependent on other persons to provide some type of service for them in order to remain in their own homes, and in order to live in a safe environment. However, a safe environment is not always provided for them. Through my work with the elderly, I have been exposed to instances where an elderly person is in or potentially in an abusive situation. The form of abuse which these dependent elderly may experience can be that of physical abuse, verbal or emotional abuse, financial exploitation, neglect, or deprivation. Still there are those elderly who jeopardize their own well-being through self-neglect. Many elderly persons are dependent on others to provide for their basic needs. Because they are dependent on someone to provide for some of their basic needs, they are not in a position to question or change an abusive situation. The abusive person may provide the basic needs an elderly person requires in order to remain in their own home. Some elderly would opt not to report an abusive situation rather than to lose the support they have, even if that support system is one of abuse. The abusive support they have may be the only support they have, and to lose that support would be to jeopardize their remaining independence.

The system we currently have does not provide many alternatives for the older adult if he or she chooses to report an abusive situation. Nor does that system protect them from abuse, as there is no law requiring mandatory reporting of abuse by professionals. I am of the opinion that in order for this vulnerable population to be protected from abuse, we must have a strong mandatory reporting law to help insure the well-being of these persons and others in similar types of situations.

Thank you for your time and consideration.

*SPH/w*  
*3-23-89*  
*Attachment 4*



March 23, 1989

Senate Public Health and Welfare Committee

Hearing on House Bill No. 2108 - Mandatory Reporting of Adult Abuse

Testimony of Trish Moore, Director of the Human Resources and Aging Department of Johnson County, Kansas.

My name is Trish Moore, and I am the Director of the Human Resources and Aging Department of Johnson County. I am appearing before the Committee today to address the issue of adult abuse, the need for mandatory reporting of abuse cases, and to ask your support on House Bill No. 2108.

The Human Resources and Aging Department serves all citizens of Johnson County, but specifically targets low income, elderly, and disabled residents. Because the staff in our department have been exposed to instances where a client is in or potentially in an abusive situation, we are committed to heightening the awareness of this problem. One of the staff from our Aging Division, Jodi Hitchcock, will also be testifying on abuse cases that she experiences first-hand in her job.

We see the issue of adult abuse as a pressing problem not only in our community but also nationally. Because of this concern the Committee for the Prevention of Elder Abuse, of which I am a member, was formed two years ago in Kansas City. It is a metropolitan-wide task force that is made up of community leaders from both Missouri and Kansas.

In November 1988 the Committee sponsored a one day working seminar that dealt with abuse to adults. The seminar brought together over 100 individuals from the Kansas City Metropolitan area. As a result of the seminar, 70 contracts were signed by various human service agencies and organizations to initiate programs that would help in the awareness and prevention of adult abuse.

I would like to share with you the following Mission Statement of the Committee: The purpose of the Committee for the Prevention of Elder Abuse is to assume a leadership role in the development of a broad and diversified community network; to stimulate public awareness about the issue of abuse/neglect/exploitation of the elderly; to serve as a catalyst for education, services, and advocacy efforts through a contract process.

SP&W  
3-23-89  
Attachment 5

Second Page

In researching other state programs across the country, the Committee made an important discovery. Each state that had innovative and effective programs in the prevention of adult abuse implemented these programs after passage of this type of bill.

On behalf of the Committee for the Prevention of Elder Abuse and the Human Resources and Aging Department, I urge you as members of the Senate Public Health and Welfare Committee to support passage of this bill.

TESTIMONY OF AASE GEORGE, 5633 GRANADA, ROELAND PARK, KANSAS 66205

As a retired social worker I have been spending a good deal of my time as a volunteer, helping elderly without family or friends able to assist them. This experience leaves me very aware of the need of frail elderly for protection from abuse and strongly in favor of passage of House Bill #2108 which would make reporting of abuse mandatory and establish a Hot Line for such reports.

Frail elderly dependent on others for needed services often do not know the resources available in the community for assistance, even if they are aware of mistreatment or think a care-giver is stealing or cheating them. Sometimes they are no longer able to see what is going on, let alone take steps appropriate for their own protection. This probably was the case with the old man living only a couple of blocks from me who was murdered one night last spring by a woman he had hired as a care-giver. In that case some neighbors said after his death that they had been suspicious of her and had tried to warn him, but found he paid no attention to them. Finding affordable help is so difficult that a dependent older person may put up with inadequate care or even mistreatment rather than risk being without anyone even when there is some awareness of what is going on.

The vulnerability of the frail elderly is evident when one finds even caring and well-meaning adult children creating situations in which there is actual neglect of a parent, something I have seen more than once. How much more at risk then are the elderly with no close family or friend to offer help as needed. I think, for example, of a frail ninety year old former teacher who was living alone on meager income in a relatively inexpensive apartment only a few blocks from the home where she had lived most of her life but sold some years after the death of both parents. She had tried to stay there taking in roomers but found that she could not count on the income needed to remain after running into several young men who cheated her out of the modest rent she charged. She became too unsteady on her feet to do marketing or laundry except in her own bathroom, did not have the strength or energy to unpack the moving boxes piled in her living quarters, never had been much of a cook and tried to deal with cockroaches by feeding them in the kitchen in the hope of that keeping them from coming into the rest of the apartment. She could not handle her own finances or banking and showed an increasing number of signs of confusion. Her long-time doctor had died some years before and she was getting no medical care. Fortunately for her, the woman in the other apartment on the landing retired and was concerned enough to begin giving assistance. In the end this included handling the woman's finances, marketing, laundry, sharing meals and even taking in the Meals-on-Wheels I arranged for after becoming involved, since the woman was never ready to take them in or eat them when they were brought. Not surprisingly the neighbor finally decided she could not continue this. A nursing home was needed. I found one and together the neighbor and I moved the woman and subsequently cleared out the apartment and sold everything she could no longer use to help pay her bills. Recently we have had to apply for Medicaid for her since funds are running out. None of this does the nursing home patient really understand even when she is told about it, but she is getting needed care. It is easy to see how completely vulnerable to neglect or abuse or both this woman would have been, had the neighbor not happened to be an honest and caring person. When I think of the many elderly in similar situations with no such caring neighbors or friends, I find it frightening.

People these days too often do not want to get involved in other people's lives, but a Hot Line should encourage doing so.

Thank you for your time.

SPAW  
3-23-89  
Attachment 6

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

MARCH 23, 1989

HOUSE BILL 2108

Presentation by Claire McCurdy  
Chief Counsel/Special Assistant  
Kansas Department on Aging

SP490  
3-23-89  
Attachment 7

## A. Introduction

House Bill No. 2108 addresses abuse, neglect and exploitation of those adults who are dependent on someone else for certain needs, and consequently vulnerable to abuse by their caregivers. This is a problem that is occurring with increasing frequency, particularly in the older population in our State. This legislation seeks to provide a method of reporting alleged abuse and providing protective services when they are found to be necessary. The Kansas Department on Aging supports this bill and encourages the committee to move it forward in the legislative process.

## B. Elder Abuse Exists in Kansas and Needs to be Addressed

Reports of abuse of senior citizens are increasing at an alarming rate. The abuse or neglect can take several forms including physical, emotional and financial. Frequently the individual responsible for this treatment of the senior is a family member.

Specifically, physical abuse includes such things as withholding food or medication, restricting the person's freedom of movement. For example, the older person may be strapped to the bed for long periods of time, or the caregiver may fail to assist the person with such daily activities as personal hygiene.

Emotional abuse can be a little more nebulous and may include telling the person (s)he is unwanted or unneeded, or hiding things so the older person believes (s)he may be becoming senile. Such treatment undermines the older person's dignity and self-esteem. Often this leads to depression or self-neglect, which can eventually hasten the person's death.

The current law is similar to this bill in several respects (e.g. mandated reporting of suspected abuse by certain persons), but House Bill No. 2108 provides for quicker investigation of suspected abuse, which is important, particularly when the older person is in a potentially life threatening situation. Also, while SRS continues to be the lead agency for investigating reports of suspected abuse, this bill involves law enforcement as a recipient of reports made outside SRS' normal working hours.

## C. House Amendments

The Kansas Department on Aging supported House Bill No. 2108 on the House side. The amendments made by the House Public Health and Welfare Committee and the House Committee of the Whole, and which have been explained to you in detail by Representative Carol Sader have only served to strengthen this legislation. We concur in these changes, and continue to support House Bill No. 2108.

## D. Conclusion

This bill can serve a very worthwhile purpose in protecting Older Kansans from the physical and emotion abuse that is becoming increasingly prevalent in our society.

Thank you for the opportunity to provide input on this important legislation.

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES  
Winston Barton, Secretary  
March 23, 1989

Testimony concerning H.B. 2108

AN ACT relating to abuse, neglect and exploitation of certain adults; requiring reports thereof by certain persons; directing investigations thereof by the department of social and rehabilitation services; directing other persons and public and private agencies to assist therein; providing for protective services; declaring certain acts to be unlawful and providing penalties therefore; repealing K.S.A. 39-1421 to 39-1429, inclusive.

Thank you for allowing me the opportunity to speak to you today regarding H.B. 2108.

Presently there are two (2) statutes mandating the Department of Social and Rehabilitation Services to investigate reports of adult abuse, neglect and exploitation. K.S.A. 39-1401 through 39-1410, which was passed during the 1980 Kansas legislative session and signed into law by former Governor John Carlin, directs the Department to investigate complaints in medical facilities (Adult Care Homes, Adult Family Homes and State Institutions). This statute is being amended this session by H.B. 2206 adding community facilities serving the mentally retarded to the list of facilities covered. K.S.A. 39-1420 through 39-1429 was passed during the 1985 Kansas legislative session. It directs the Department to investigate complaints of adults residing outside of a medical setting (own home, family members home, boarding facility). SRS is currently receiving and investigating reports in both medical and non-medical settings. Since both statutes are so closely related SRS staff have in the past followed the same procedures in investigating complaints received in an adult care home and an individual's home.

As many of you may recall, HB 2925 was introduced during the 1988 legislative session. The purpose of HB 2925 was to consolidate the two adult abuse statutes into one statute that would cover both medical and non-medical reports received by the Department. HB 2108 is only a piece of HB 2925, with the medical having been removed. Proposed Bill 2108 repeals the current non-medical statute K.S.A. 39-1421 through 39-1429. This bill is intended to ensure that vulnerable adults residing in the community will be protected.

SRS is currently receiving and investigating reports of suspected abuse, neglect and exploitation of adults residing outside of a medical setting. The intent of our investigation is to focus on meeting the needs of adults residing in the community who are unable to provide for their own health, welfare and safety. These adults are unable, without assistance from others, to manage their resources, perform the activities of daily living, or protect themselves from harm; and have no one willing or able to assist them in a responsible manner. This does not include abuse found in typical domestic violence situations. Spousal abuse, as it is most commonly known, is the responsibility of law enforcement as per K.S.A.60-3101 through 60-3111. (Protection From Abuse Statute).

S P & W  
3-23-89  
Attachment 8



In the community, self-neglect is one of the most difficult problems for adult protective services to resolve and the source of a substantial portion of reported cases. In self-neglect cases, in-home services are essential to prevent serious mental and medical consequences to the reported. Abuse is related to the frailty of the reported and the pressures that result from caregiving by family members and friends. In-home and community-based services are needed to enable the reported to remain in the home while relieving the stress and pressure on the caregiver that creates an abusive situation. The problem of financial exploitation is even more difficult to resolve. At the time that SRS receives a complaint, the damage has been done and the financial resources have been exhausted. A major effort must be mounted to involve the legal system in the prosecution and restitution in such cases. The Department, therefore, recommends that we work towards a statute that will focus on the delivery of services to vulnerable adults to ensure that these adults receive the proper kind of services at the time the services are needed.

A well designed and effective adult protective service program responds to the needs of the victims and provides for a long-range solution of handling adult abuse, neglect and exploitation. As with every attempt to enhance a service delivery system the issue of funding has to be addressed. Services cannot be provided without sufficient funds.

In FY 88 Adult Protective Service Workers investigated 942 reports on adults residing in the community. 545 were over the age of 60 years. 262 of the reports were confirmed. Self-neglect included 359 (38%) of the reports investigated. 410 (43%) of the adults were determined to be at potential risk and in need of services as a preventive measure. In all, approximately 75 (8%) of those reported received services, however; an additional 335 would have benefited from services if funding had been available.

Protective services include: 1) Community-Based services such as emergency/temporary shelter for the elderly whose living arrangements are shared with the perpetrator, medical assistance when not reimbursed or paid by third parties, or day programs; 2) In-Home services such as homemaker, attendant care, respite, night support, meals on wheels.

While SRS supports the effort to change the current statute, the Department would like to see an effective adult protective service program that will respond to the needs of the reported and will provide for a long-range solution to handling abuse, neglect and exploitation, regardless of where the person resides.

The changes that are suggested in KSA 39 1421-1429 incorporate our suggestions that the emphasis be on providing protective services rather than on enforcement such as the determination of a perpetrator. House Bill 2206 and the corresponding statute as written will now vary considerably from KSA 39 1421-1429. The Department of Social and Rehabilitation Services feels that these differences will be confusing. Examples are:

- 1 Definition of the terms used in the two statutes are different. For example, "abuse" (H.B. 2108) means the intentional infliction of injury, unreasonable confinement, fiduciary abuse, intimidation, cruel punishment, omission or deprivation by a caretaker or another person of goods or services which are necessary to avoid physical or mental harm or illness.

"Abuse" (H.B. 2206) means neglect, willful infliction of physical or mental injury, or willful deprivation by a caretaker of services which are necessary to maintain physical or mental health.

Other definitions which are not consistent are neglect, protective services, caretaker.

We would probably suggest that these two statutes be looked at and made more consistent. If not possible this session, Social and Rehabilitation Services will most likely request those changes next session.

We appreciate this opportunity to testify and would be happy to respond to questions.

Janet Schalansky  
Director of Community Services  
SRS Adult Service Commission  
913-296-4687

cc

Kathleen Renner, LASW  
Bethany Medical Center  
51 North 12 Street  
Kansas City Ks 66102  
913-281-7605  
HB 2108

I support and strongly urge passage of HB 2108 mandating reporting of suspected abuse, neglect, exploitation of dependent adults.

As a medical social worker in acute hospitals in the Kansas City area for the past 14 years I have had too many opportunities to see first-hand the results of abuse and neglect of elderly or handicapped adults. Dependent adults are no less in need of safety, security, and human warmth than are our minor children. Many involved individuals across the State of Kansas applauded the passage of the reporting law for individuals in licensed nursing facilities as a "first step" in protecting the basic rights and needs of elderly adults.

However, it is my firm belief that individuals in private homes are frequently at much greater risk for a number of reasons:

- °They are frequently physically dependent on a caretaker for food, water, bathing, toileting, and are fearful (many times rightfully so), that they will be denied these necessities if they disagree or speak against the caretaker.
- °The caretaker is almost always strong or if not, larger than the individual so as to prevent "getting away from" a caretaker who is inflicting injury.
- °The dependent adult in a private home does not have the hope of "a nicer nurse" coming during the next shift.
- °The adult that is being abused or neglected in a private home rarely has contact with anyone except the caretaker and the caretaker's friends. Virtually never does the individual have the opportunity to talk outside the presence of the caretaker which reinforces his/her fear of punishment or retaliation.

As we all have come to learn, what goes on "behind closed doors" in the so-called sanctity of private homes can be hideous beyond belief. In recognizing this we have acted to protect other groups in our society, namely children and battered spouses. It is totally unacceptable to shun this group of dependent adults who have little or no recourse and no protection under the law. True, if a crime against a person has been committed, a dependent adult has

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as much right as you and I to seek justice through the courts. But how is this 86 year old, 102 lb. great-grandmother whose vision is too poor to dial a phone, who is prevented bodily from leaving her room when "company" is present, who gets confused from time to time, ever going to access help and persevere through lengthy, demanding legal processes? It is ludicrous to assume such capabilities and a farce to deny there is a need.

Please review these brief synopses of case examples:

°A 65 year old malnourished lady, Mrs. F, with severe crippling arthritis is left in a boarded up house with no water by her adult grandson. She is unable to walk and cannot get meals or get up to the bedside commode. She is soiled with excrement and has no means to bathe. Meals on Wheels are no longer delivered because she cannot open the door and it is kept locked by the grandson who does not live there. In May 1986, referrals were made to a home health agency, SRS Adult Services and the County Health Department. The grandson and daughter on several occasions refused to let representatives in with their keys. A letter to SRS ended in part: "Mrs F's living situation represents a danger to her well being. Because of the family's unwillingness to cooperate, we have been unable to take the necessary action to protect Mrs F and provide her with safe living arrangements. We cannot overstate the danger Mrs F presents to herself if she is allowed to continue to live as she has been."

This lady was hospitalized in November 1987, for profound emaciation and mutiple Stage IV decubitus ulcers. She apparently laid on newspapers to pass urine and BM as much of the "bedsore" area had newspaper stuck to the raw, open flesh.

Again, family refused to cooperate. This lady remained hospitalized for 9 weeks at a cost of \$64,749. There was no protective service law that gave authority to ready, willing and able social service agencies to intervene and act on behalf of this pitiful lady.

°A 76 year old, bedfast female was hospitalized for severe dehydration and accompanying kidney failure. She was cared for by a daughter who was hostile and agitated when approached by the staff. The patient reported that she had a problem

with wetting the bed at home and so was prohibited from having fluids. In questioning the daughter, she acknowledged this was true, i.e.: that withholding of water was a punishment for incontinence which she believed to be intentional. Daughter refused nursing home placement because she relied on the old woman's Railroad Retirement income.

°A 51 year old retarded individual is hospitalized due to medication non-compliance and toxicity. Mr B was filthy; his mother claimed to be guardian for him. She admits she withholds his medications if he isn't "good," that she has him bathe only once a month, that she wishes "he would die," that her son and she share the same bed and that it's usually wet with urine. The clinic who schedules monthly appointments for Mr B reports that Mr B has kept appointments only twice in the past 14 months. She refused to allow him to be placed in a group home or MR facility. A report was made to SRS Adult Services with an accompanying letter from the attending physician. SRS acknowledges they have had numerous reports filed over the years but do not have authority to proceed legally to rescind guardianship. No protective action was taken.

°A 79 year old chronically ill, debilitated obese lady who lacked mental competence to give or refuse consent went home against the advise of physician, nurses and social worker with her husband after a hospitalization. It was apparent to health providers that the husband could not handle the round-the-clock care of his wife but yet he refused home services. Six days later, the patient was readmitted with severe, extensive skin breakdown and accompanying infection because she had lain on the sofa continuously for those 6 days. Husband was unable to move her or clean her. Her hospitalization was lengthy and costly. A report to Protective Services had not been made prior to the readmission primarily because SRS did not have the legal authority to investigate and proceed with protection of the client.

HB 2108

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I cannot urge strongly enough the passage of a bill to mandate reporting, authorizing an investigating agency and empowering same to provide for a minimum level of safety and well-being for these dependent adults.

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102-2-1a. Definitions. (a) "LBSW" means licensed baccalaureate social worker.

(b) "LMSW" means licensed master social worker.

(c) "LS-SW" means a licensed specialist (name of specialty) social worker.

(d) "Social work practice specialty" means a post-masters degree practice with emphasis upon a specific, identifiable field of practice and methods of helping. The minimum requirements for a license in a specialty shall be two years of post-masters experience under supervision in that practice specialty from one licensed in, or qualified for licensing in, that specialty as established by the board and successful completion of an examination approved by the board for this purpose.

(e) "Licensed specialist clinical social worker" means a person who has a masters or doctoral degree in social work, who meets the requirements for experience and supervision in K.A.R. 102-2-12, and who has passed an examination approved by the board.

(f) "Clinical social work" means a social work practice specialty which has as its goal the maintenance and enhancement of the psychosocial functioning of individuals, families, and groups by increasing the availability of intrapersonal, interpersonal, and societal resources. Psychotherapy is a part of, but not synonymous with, clinical social work.

✓ (g) "Social work supervision" means the actions and process of critically directing, and overseeing the supervisee's total practice in which:

(1) the The supervisor is located in close geographic proximity to the site of serve service so as to be physically available within a reasonable period of time;

(2) the supervisor assumes ultimate responsibility for social work serv- ices provided by the supervisee;

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ATTORNEY GENERAL

By Ronald H. H. S. S. Ass.

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(3) the supervisor performs the administrative, educational, and supportive roles of supervision through a continual process. This process shall have as its objective:

(A) the integration of theory and practice, including articulation of rationales for assessment and intervention;

(B) the development and appropriate application of intervention skills and techniques;

(C) the development of self-evaluation skills; ~~enabling a gradual shift from critique by the supervisor to critique by the supervisee and self-assessment of personal growth issues;~~ and

(D) continual acquisition of professional knowledge; and

(4) the supervisor is a licensed social worker or an individual who is eligible for licensing.

(h) "Social work consultation" means a time-limited contractual relationship in which:

(1) ~~the~~ The primary function is a problem-solving process related to the enhancement of specific knowledge or skills;

(2) the four objectives of clinical social work supervision as defined in K.A.R. 102-2-1a(g) are lacking;

(3) the consultant has no legal, administrative, or professional authority over or responsibility for the professional functioning of the consultee; and

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By R. MULLIS Asst.

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(4) an educational service is provided to care-givers and direct service to clients is not included. Social work consultation shall not meet the supervision requirements.

(i) "Private, independent practice of social work" means the provision of social work services by a self-employed person, a member of a partnership, a member of a professional corporation, or a member of a group practice who is not accountable to a social work supervisor.

(j) "Practicum" means a supervised experience wherein a student applies classroom theory to actual practice situations.

(k) "Continuing education" means a formally organized learning experience which has education as its explicit, principal intent, and which is oriented towards the enhancement of social work practice, values, skills and knowledge.

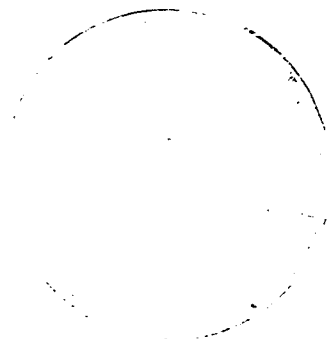
(l) "Prior-approved continuing education" means:

(1) single-program material that has been submitted by a provider to the board, approved by the board, and assigned a continuing education number:

(2) any program offered by a provider with approved-provider status; or

(3) academic social work courses taken for credit or audited.

(m) "Retroactively-approved continuing education" means material submitted for continuing education credit by the licensee after attending the workshop, conference, seminar, or other offering and that is reviewed and subsequently approved by the board.



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(n) "Providers of continuing education" means individuals, groups, professional associations, schools, institutions, organizations, or agencies approved by the board to offer continuing education programs on either approved-provider status or single program-provider status.

(1) "Approved-provider status" means that the provider has been approved by the board to provide any continuing education program. Approved-provider status may be granted for a one-year probationary period to new applicants. After completion of the probationary year, approved-providers may reapply for approval every three years.

(2) "Single program-provider status" means that the provider has been granted approval to offer a specific continuing education program.

(o) "Social service designee" means a person who participates in the delivery of social work service who is not licensed under the social work act but who is supervised by a licensed social worker pursuant to K.S.A. 75-5348(a).

(p) A "client or patient" means a person who is a direct recipient of social work services. Such services may be therapeutic in nature. (Authorized by K.S.A. 1987 Supp. 74-7507, ~~as amended by L. 1987, Ch. 315, Sec. 17~~; implementing K.S.A. 1987 Supp. 74-7507, ~~as amended by L. 1987, Ch. 315, Sec. 17~~; and K.S.A. 75-5352; effective, T-85-36, Dec. 19, 1984; effective May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended P-

April 3, 1989

APPROVED  
ATTORNEY GENERAL

By RICHARD H. 11-15-88 Assoc.

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