

Approved: 4-11-97  
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Chair Sandy Praeger at 10:00 a.m. on March 31, 1997 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Emalene Correll, Legislative Research Department  
Norman Furse, Revisor of Statutes  
Jo Ann Bunten, Committee Secretary

Conferees appearing before the committee:

Paul Garvin and Joe Kroll, Kansas Department of Health and Environment  
State Representative Dixie Toelkes  
Ann E. Koci, Kansas Department of Social and Rehabilitation Services  
Mike Russell, Kansas Attorney General's office

Others attending: See attached list

**Briefing and Discussion on HB 2278 - Restrictions on persons operating, working or volunteering in adult care homes**

Staff briefed the Committee on HB 2278 with changes that were made by the House Committee of the Whole. (Attachment 1)

Paul Garvin and Joe Kroll, Kansas Department of Health and Environment, briefed the Committee on a balloon of HB 2278 with proposed amendments that addressed the statutory limit on fees for background checks of persons working in adult care homes and deleted reference for background checks on volunteers, emphasized specified areas on page 2, subsections (3) to (8) (b), and established a system providing for an incremental implementation period of the act. (Attachment 2) Committee discussion related to fees for background checks, duplication of effort on checks, and the fiscal impact of the bill which would increase the State General Fund expenditures by \$349,000 as noted by Joe Kroll, KDHE.

State Representative Toelkes, sponsor of the bill, commented that the permissive language was left in the bill so that the administrator of an adult care home would not be mandated to provide a background check on every volunteer, but if there is information on a volunteer that is questionable, the administrator and home would be covered from any liability. It was also pointed out that background checks for legal guardians of the nursing home residents were not exempted in the bill.

**Briefing on SB 375 -Abuse, neglect and exploitation of certain persons**

Ann E. Koci, Adult Protective Services with SRS, briefed the Committee on their proposed amendments to SB 375. (Attachment 3) The bill is currently in Senate Judiciary Committee and proposes significant changes to the state's laws against abuse, neglect and exploitation of dependent adults. Committee discussion related to reporting neglect in adult care homes and misappropriation of residents' property or funds in these homes.

Mike Russell from the Kansas Attorney General's office expressed his support for HB 2278 and SB 375, as well as proposed amendments to HB 2253 currently in Senate Judiciary Committee that relates to mistreatment of a dependent adult as outlined in the balloon of the bill. (Attachment 4)

Comments in support of SB 375 were submitted in writing by Hugh Sage, Commissioner of Mental Health and Developmental Disabilities Services, SRS. (Attachment 5)

**Announcements**

The Chair appointed a subcommittee of Senator Praeger, Chair, and members Senator Hardenburger and Senator Steineger to study HB 2278 and SB 375 and report recommendations to the full Committee at the next meeting. The Chair also appointed a subcommittee to study and bring back recommendations on a Concurrent Resolution on establishing a task force on long-term care services consisting of Senator Praeger, Chair, and members Senator Hardenburger and Senator Lee.

**Adjournment**

The meeting was adjourned at 11:00 a.m.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE  
GUEST LIST

DATE: 3-31-97

NAME	REPRESENTING
LINDA LUBENSKY	KS Home Care Assoc
TK Shively	KANSAS LEGAL SERVICES
MICHAEL A. RUSSELL	AG'S OFFICE
Lynn McDonald	KAC 12
Thomas Jones	SILCK
Una Bray	KDHE
Prof. James	KDHE
Jack Keese	KDHE
J. D. Beh	KATHA
John Kithaber	KS. Health Care Assn.
Nancy Lindberg	Atty Gen.
Tom Bohmetcher	InterHab
Natalie Coe	InterHab
Tom Laine	InterHab
Alvie Loeber	House -
Tom Bell	KHA
Julie Hein	Hein and Weber
Rich Pittman	Health Midwest
Bill Henry	KS Area Agencies on Aging



SESSION OF 1997

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2278**

As Amended by House Committee of the Whole

**Brief\***

H.B. 2278, as amended by the House Committee of the Whole, creates two new statutes, one of which is made supplemental to and a part of the Adult Care Home Licensing Act and one of which is made supplemental to and a part of the Act under which home health agencies are licensed and regulated. The new statutes prohibit certain persons from working or volunteering in an adult care home or home health agency.

Section 1, which would become a part of the Adult Care Home Licensing Act, would make it unlawful to knowingly operate an adult care home if any person who works in the home or, at the option of the operator, any person who regularly volunteers in the home:

1. has a felony conviction for a crime against persons; a conviction for an act that is described in Articles 34, 35, or 36, except failure to support a spouse or child, of Chapter 21 of the *Kansas Statutes Annotated* (crimes against persons, sex offenses, or crimes affecting family relationships and children) or a conviction of an attempt under K.S.A. 21-3301 to commit a crime described in Articles 34, 35, or 36 of Article 21; or has been convicted of any act described in K.S.A. 21-4301 or 4301a (promoting obscenity or promoting obscenity to minors) or similar federal statutes or statutes of another state; or
2. has been adjudicated a juvenile offender for an act that would, if committed by an adult, constitute a felony and which is a crime against persons, an act described in Chapters 34, 35, or 36, except failure to support a spouse or

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.ink.org/public/legislative/fulltext-bill.html>.

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child, of Article 21, or an act described in K.S.A. 21-4301 or 21-4301a or similar federal or state laws; or

3. has committed an act of physical, mental, or emotional abuse or neglect or sexual abuse as validated by the Department of Social and Rehabilitation Services pursuant to K.S.A. 38-1523 (child abuse or neglect) and failed to complete a corrective action plan approved by the Department successfully or had the record expunged; or
4. has had a child declared in a court order in Kansas or another state to be a deprived child or a child in need of care based on an allegation of physical, emotional, or mental abuse or neglect, or sexual abuse; or
5. has had parental rights terminated in Kansas or another state; or
6. has signed a diversion agreement involving a charge of child abuse or a sexual offense; or
7. has been found by the Department of Health and Environment or the Department of Social and Rehabilitation Services to have committed abuse, neglect, or exploitation of a resident of an adult care home or an adult family home, a patient of a medical care facility, an individual with mental retardation or developmental disability receiving services in a community mental retardation facility or residential facility, or an individual who is a patient or resident in a state psychiatric hospital or state institution for the mentally retarded; or
8. has been found by the Department of Social and Rehabilitation Services to have committed an act that constitutes adult abuse, neglect, or exploitation.

Adult care home for the purposes of the new statute created by H.B. 2278 includes any nursing facility, nursing facility for mental health, intermediate care facility for the mentally retarded, assisted living facility, residential health care facility, home plus, boarding care home, and adult day care facility. No person who works for an adult care home who is currently licensed or registered by a Kansas agency to provide professional services in

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the state and who provides such services as a part of the work the person performs in the adult care home would be subject to the provisions of the new law.

The Secretary of Health and Environment is authorized by H.B. 2278 to access court orders or adjudications of any court of record, records in the possession of the Kansas Bureau of Investigation (KBI), reports in the control of Social and Rehabilitation Services for the purpose of determining whether or not an adult care home meets the requirements of the statute created by the bill relating to employees and volunteers if the operator has elected to include volunteers.

In order to comply with the requirements of the new legislation, an adult care home operator is to request information obtained by the Secretary which relates to a person who works in the adult care home or a person who is being considered for employment to determine whether such person is subject to the prohibitions created by H.B. 2278. If the operator of the home elects to include volunteers under this new section of the law, the operator would request information from the Secretary. A charge of \$5.00 is to be made by the Secretary for each name for which information is requested. For the purpose of complying with the proposed new law, any employment agency that provides employees for an adult care home shall supply written certification that such employee is not prohibited from working in the home. No operator of an adult care home or employment agency is to be held liable for damages to any person who is refused employment or discharged by reason of the operator's or employment agency's compliance with the new law if such person acts in good faith to comply with the law. For the purpose of complying with the new law, information relating to convictions and adjudications by the federal government or other states shall not be required until such time as the Secretary of Health and Environment determines the search could reasonably be performed within a two-week period.

Section 2 of H.B. 2278 creates a new law that is made a part of and supplemental to the act under which home health agencies are licensed. The new law prohibits anyone from operating a home health agency if any person working for or, at the option of the operator of the home health agency, regularly volunteering in the home health agency is barred by virtue of coming under one of the prohibitions in the bill. The provisions relating to employ-

ment or volunteering are identical to those made applicable in Section 1 to adult care homes as are the other provisions of the new section.

The prohibitions applied to the operation of an adult care home or a home health agency by H.B. 2278 would be enforceable through the Adult Care Home Licensure Act and the laws under which home health agencies are licensed.

## **Background**

The chief sponsor of H.B. 2278 and another member of the House testified in support of the bill as did representatives of Kansas Advocates for Better Care, the KBI, and Creative Care of Wichita. A representative of the Kansas Home Care Association testified in opposition to the bill and a representative of the Department of Health and Environment identified issues related to the bill. Several of the issues identified by conferees were clarified in Committee discussion when it was explained that making the two new statutes that would be created by the bill supplemental to and a part of the Adult Care Home Licensure Act and the act under which home health agencies are licensed respectively brings into play the enforcement authority of the two acts and that all facilities defined as adult care homes in the Adult Care Home Licensure Act would be covered by the provisions of Section 1.

The House Committee of the Whole amendments deleted convictions for drug offenses as well as nonsupport of a spouse or child from the list of crimes to which the new law applies; made information as to federal or out-of-state convictions or adjudications not required until the Secretary can assure that such information can be obtained and in a reasonable time frame; exempted licensed professionals from the provisions of the new law; and exempted volunteers unless the operator of the adult care home or home health agency chooses to bring persons who regularly volunteer under the purview of the act.

A revised fiscal note was prepared by the Division of the Budget prior to the House Committee amendments to the bill which add a \$5.00 fee to be paid to the Secretary of Health and

Environment for each name submitted for a background check. The revised fiscal note estimates an additional State General Fund expenditure of \$472,313 in FY 1998 based on an estimated KBI background check of 71,750 individuals each year. Of the estimated annual checks, the Department of Health and Environment estimates it would have to do an initial screening of 3,588 of the individuals turned up by the KBI screening, resulting in the need for an additional legal assistant and an additional office assistant. Other costs would represent contractual services and expenditures for office supplies and reimbursement to the KBI. There would be a one-time capital outlay estimated at \$16,910.

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[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 1997

HOUSE BILL No. 2278

By Representatives Toelkes, Adkins, Alldritt, Ballard, Ballou, Beggs, Benlon, Burroughs, Correll, Crow, Dean, Empson, Feuerborn, Findley, Flaharty, Flora, Franklin, Geringer, Gilbert, Grant, Hayzlett, Henderson, Henry, Horst, Howell, Kirk, Krehbiel, Kuether, Landwehr, Larkin, J. Long, Mason, Mayans, Mays, McClure, McKinney, Minor, Nichols, E. Peterson, Phelps, Pottorff, Reardon, Ruff, Sawyer, Sharp, Showalter, Shriver, Sloan, Spangler, Stone, Storm, Thimesch, Tomlinson, Toplikar, Wagle, Weiland, Welshimer and Wempe

(4 policy issues)

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19 AN ACT concerning the department of health and environment; restric-  
20 tions on persons operating adult care homes and home health agencies  
21 or [and on certain persons] working for or regularly volunteering to  
22 assist such homes or agencies.

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

24 Section 1. (a) No person shall knowingly operate an adult care home  
25 if, in the adult care home, there works or, if the operator of the adult  
26 care home has elected to make persons who regularly volunteer  
27 in the adult care home subject to the requirements of this section,  
28 there regularly volunteers any person who:

who operates an adult care home  
allow to work  
delete  
delete

30 (1) (A) ~~Has a felony conviction for a crime against persons,~~ (B) has  
31 a felony conviction under the uniform controlled substances act; (C) has  
32 a conviction of any act which is described in articles 34, 35 or 36 of chapter  
33 21 of the Kansas Statutes Annotated and acts amendatory thereof or sup-  
34 plemental thereto[, except K.S.A. 21-3605 and amendments  
35 thereto,] or a conviction of an attempt under K.S.A. 21-3301 and amend-  
36 ments thereto to commit any such act, or ~~(D) [(C)]~~ has been convicted  
37 of any act which is described in K.S.A. 21-4301 or 21-4301a and amend-  
38 ments thereto or similar statutes of other states or the federal govern-  
39 ment;

(B)

40 (2) has been adjudicated a juvenile offender because of having com-  
41 mitted an act which if done by an adult would constitute the commission  
42 of a felony and which is a crime against persons, is any act described in  
43 articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated and

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1 acts amendatory thereof or supplemental thereto [except K.S.A. 21-  
2 3605 and amendments thereto], or is any act described in K.S.A. 21-  
3 4301 or 21-4301a and amendments thereto or similar statutes of other  
4 states or the federal government;

5 (3) has committed an act of physical, mental or emotional abuse or  
6 neglect or sexual abuse as validated by the department of social and re-  
7 habilitation services pursuant to K.S.A. 38-1523 and amendments thereto  
8 and (A) the person has failed to successfully complete a corrective action  
9 plan which had been deemed appropriate and approved by the depart-  
10 ment of social and rehabilitation services, or (B) the record has not been  
11 expunged pursuant to rules and regulations adopted by the secretary of  
12 social and rehabilitation services;

13 (4) has had a child declared in a court order in this or any other state  
14 to be deprived or a child in need of care based on an allegation of physical,  
15 mental or emotional abuse or neglect or sexual abuse;

16 (5) has had parental rights terminated pursuant to the Kansas juvenile  
17 code or K.S.A. 38-1581 through 38-1584, and amendments thereto, or a  
18 similar statute of other states;

19 (6) has signed a diversion agreement pursuant to K.S.A. 22-2906 *et*  
20 *seq.*, and amendments thereto, or pursuant to K.S.A. 38-1635 and amend-  
21 ments thereto involving a charge of child abuse or a sexual offense;

22 (7) has been found by the department of health and environment or  
23 the department of social and rehabilitation services under K.S.A. 39-1401  
24 *et seq.* and amendments thereto to have committed an act of abuse, ne-  
25 glect or exploitation of a resident; or

26 (8) has been found by the department of social and rehabilitation  
27 services under K.S.A. 39-1430 *et seq.* and amendments thereto to have  
28 committed an act of abuse, neglect or exploitation of an adult.

29 (b) No person shall operate an adult care home if such person has  
30 been found to be a disabled person in need of a guardian or conservator,  
31 or both.

32 (c) In accordance with the provisions of this subsection (c), the sec-  
33 retary of health and environment shall have access to any court orders or  
34 adjudications of any court of record, any records of such orders or adju-  
35 dications, criminal history record information in the possession of the  
36 Kansas bureau of investigation and any report of investigations as au-  
37 thorized by subsection (e) of K.S.A. 38-1523 and amendments thereto in  
38 the possession of the department of social and rehabilitation services or  
39 court of this state, or any reports of investigations, findings or assessments  
40 as provided in K.S.A. 39-1402 and amendments thereto, 39-1404 and  
41 amendments thereto, 39-1411 and amendments thereto, 39-1433 and  
42 amendments thereto and 39-1434 and amendments thereto, in the pos-  
43 session of the department of health and environment or the department

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1 of social and rehabilitation services or court of this state concerning per- delete  
 2 sons working ~~or regularly volunteering~~ in an adult care home. The sec-  
 3 retary shall have access to these records for the purpose of determining  
 4 whether or not the adult care home meets the requirements of this sec-  
 5 tion. The Kansas bureau of investigation may charge to the department  
 6 of health and environment a reasonable fee for providing criminal history  
 7 record information under this subsection.

8 (d) For the purpose of complying with this section, the operator of  
 9 an adult care home shall request from the department of health and  
 10 environment information obtained by the secretary of health and envi-  
 11 ronment under subsection (c) and information available under subsection  
 12 (e)(5) [(c)(4)] of K.S.A. 39-936 and amendments thereto, if any, which  
 13 relates to a person who works ~~or, if the operator has elected to make~~  
 14 ~~persons who regularly volunteer in the adult care home subject to~~ } delete  
 15 ~~the requirements of this section,~~ regularly volunteers in the adult care  
 16 home, or is being considered for employment ~~or, if the operator has~~ } delete  
 17 ~~elected to make persons who regularly volunteer in the adult care~~  
 18 ~~home subject to the requirements of this section,~~ as a volunteer by

19 the adult care home, for the purpose of determining whether such person  
 20 is subject to the provision of this section. The operator may rely on verbal  
 21 information from the department of health and environment to be fol-  
 22 lowed by written confirmation of the verbal report. For the purpose of  
 23 complying with this section, the ~~operator of~~ person who operates  
 24 an adult care home shall receive from any employment agency which provides employees of the  
 25 employment agency to work in the adult care home written certification  
 26 that such employees are not prohibited from working in the adult care  
 27 home under this section. [For the purpose of complying with this  
 28 section, information relating to convictions and adjudications by  
 29 the federal government, or to convictions and adjudications in  
 30 states other than Kansas, shall not be required until such time as  
 31 the secretary of health and environment determines the search for  
 32 such information could reasonably be performed and the infor- person who operates  
 33 mation obtained within a two-week period.] No ~~operator of~~ nor state agency  
 34 care home or, the employees of an adult care home or an employment  
 35 agency, or the operator or employees of an employment agency,  
 36 shall be liable for civil damages to any person refused employment or  
 37 discharged from employment by reason of such operator's compliance  
 38 with the provisions of this section if such operator or employment  
 39 agency acts in good faith to comply with this section.

40 (e) For the purpose of subsection (a)(3), an act of abuse or neglect  
 41 shall not be considered to have been validated by the department of social  
 42 and rehabilitation services unless the alleged perpetrator has: (1) Had an  
 43 opportunity to be interviewed and present information during the inves-

207(8)(b)

1 litigation of the alleged act of abuse or neglect; and (2) been given notice  
2 of the agency decision and an opportunity to appeal such decision to the  
3 secretary and to the courts pursuant to the act for judicial review and civil  
4 enforcement of agency actions.

5 (f) The secretary of health and environment shall charge each  
6 person requesting information under this section a fee ~~of \$5 for~~ equal to cost, not to exceed \$10  
7 each name about which an information request has been submit-  
8 ted to the department under this section. ~~v~~ Delete

9 [(g) No person ~~who works for an adult care home and who is~~  
10 currently licensed or registered by an agency of this state to pro-  
11 vide professional services in the state and who provides such serv-  
12 ices as part of the work which such person performs for the adult  
13 care home shall be subject to the provisions of this section.]

14 (g) [(h)] A family member who acts as a volunteer in caring for  
15 a relative in an adult care home [person who volunteers in an adult  
16 care home] shall not be subject to the provisions of this section  
17 because of such volunteer activity ~~[unless the operator of the adult~~  
18 ~~care home in which such person volunteers elects by written notice~~  
19 ~~to the secretary of health and environment to make all persons~~  
20 ~~who regularly volunteer in such adult care home subject to the~~  
21 ~~requirements of this section].~~ Delete

22 (f) (h) [(i)] This section shall be part of and supplemental to the adult  
23 care home licensure act. who operates a home health agency  
allow to work

24 Sec. 2. (a) No person ~~shall knowingly operate a home health agency~~  
25 ~~if, for the home health agency, there works or, if the operator of the~~  
26 ~~home health agency has elected to make persons who regularly~~  
27 ~~volunteer to assist the home health agency subject to the require-~~  
28 ~~ments of this section, there] regularly volunteers to assist the home~~  
29 ~~health agency any person who:~~ Delete

30 (1) (A) Has a felony conviction for a crime against persons, (B) has  
31 a felony conviction under the uniform controlled substances act; (C) has  
32 a conviction of any act which is described in articles 34, 35 or 36 of chapter  
33 21 of the Kansas Statutes Annotated and acts amendatory thereof or sup-  
34 plemental thereto[, except K.S.A. 21-3605 and amendment  
35 thereto,] or a conviction of an attempt under K.S.A. 21-3301 and amend-  
36 ments thereto to commit any such act, or (D) [(C)] has been convicted  
37 of any act which is described in K.S.A. 21-4301 or 21-4301a and amend-  
38 ments thereto or similar statutes of other states or the federal govern-  
39 ment;

40 (2) has been adjudicated a juvenile offender because of having com-  
41 mitted an act which if done by an adult would constitute the commis-  
42 sion of a felony and which is a crime against persons, is any act described in  
43 articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated and

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1 acts amendatory thereof or supplemental thereto [except K.S.A. 21-  
2 3605 and amendments thereto], or is any act described in K.S.A. 21-  
3 4301 or 21-4301a and amendments thereto or similar statutes of other  
4 states or the federal government;

5 (3) has committed an act of physical, mental or emotional abuse or  
6 neglect or sexual abuse as validated by the department of social and re-  
7 habilitation services pursuant to K.S.A. 38-1523 and amendments thereto  
8 and (A) the person has failed to successfully complete a corrective action  
9 plan which had been deemed appropriate and approved by the depart-  
10 ment of social and rehabilitation services, or (B) the record has not been  
11 expunged pursuant to rules and regulations adopted by the secretary of  
12 social and rehabilitation services;

13 (4) has had a child declared in a court order in this or any other state  
14 to be deprived or a child in need of care based on an allegation of physical,  
15 mental or emotional abuse or neglect or sexual abuse;

16 (5) has had parental rights terminated pursuant to the Kansas juvenile  
17 code or K.S.A. 38-1581 through 38-1584, and amendments thereto, or a  
18 similar statute of other states;

19 (6) has signed a diversion agreement pursuant to K.S.A. 22-2906 *et*  
20 *seq.*, and amendments thereto, or pursuant to K.S.A. 38-1635 and amend-  
21 ments thereto involving a charge of child abuse or a sexual offense;

22 (7) has been found by the department of health and environment or  
23 the department of social and rehabilitation services under K.S.A. 39-1401  
24 *et seq.* and amendments thereto to have committed an act of abuse, ne-  
25 glect or exploitation of a resident; or

26 (8) has been found by the department of social and rehabilitation  
27 services under K.S.A. 39-1430 *et seq.* and amendments thereto to have  
28 committed an act of abuse, neglect or exploitation of an adult.

29 (b) No person shall operate a home health agency if such person has  
30 been found to be a disabled person in need of a guardian or conservator,  
31 or both.

32 (c) In accordance with the provisions of this subsection (c), the sec-  
33 retary of health and environment shall have access to any court orders or  
34 adjudications of any court of record, any records of such orders or adju-  
35 dications, criminal history record information in the possession of the  
36 Kansas bureau of investigation and any report of investigations as au-  
37 thorized by subsection (e) of K.S.A. 38-1523 and amendments thereto in  
38 the possession of the department of social and rehabilitation services or  
39 court of this state, or any reports of investigations, findings or assessments  
40 as provided in K.S.A. 39-1402 and amendments thereto, 39-1404 and  
41 amendments thereto, 39-1411 and amendments thereto, 39-1433 and  
42 amendments thereto and 39-1434 and amendments thereto, in the pos-  
43 session of the department of health and environment or the department

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1 of social and rehabilitation services or court of this state concerning per- delete  
2 sons working ~~or regularly volunteering~~ for a home health agency. The  
3 secretary shall have access to these records for the purpose of determining  
4 whether or not the home health agency meets the requirements of this  
5 section. The Kansas bureau of investigation may charge to the department  
6 of health and environment a reasonable fee for providing criminal history  
7 record information under this subsection.

8 (d) For the purpose of complying with this section, the operator of a  
9 home health agency shall request from the department of health and  
10 environment information obtained by the secretary of health and envi-  
11 ronment under subsection (c), if any, which relates to a person who works  
12 for the home health agency ~~or, if the operator has elected to make~~ } delete  
13 ~~persons who regularly volunteer to assist the home health agency~~  
14 ~~subject to the requirements of this section,] regularly volunteers to~~

15 ~~assist the home health agency, or is being considered for employment~~  
16 ~~or, if the operator has elected to make persons who regularly vol-~~ } delete  
17 ~~unteer to assist the home health agency subject to the require-~~  
18 ~~ments of this section,] as a volunteer by the home health agency, for~~

19 the purpose of determining whether such person is subject to the pro-  
20 visions of this section. The operator may rely on verbal information from  
21 the department of health and environment to be followed by written  
22 confirmation of the verbal report. [For the purpose of complying with  
23 this section, information relating to convictions and adjudications  
24 by the federal government, ~~or to convictions and adjudications in~~ or to (3), (4), (5), (6) of this Section  
25 states other than Kansas, shall not be required until such time as  
26 the secretary of health and environment determines the search for  
27 such information could reasonably be performed and the infor- person who operates

28 mation obtained within a two-week period.] No ~~operator of a home~~  
29 ~~health agency or, the employees of a home health agency or an em-~~  
30 ~~ployment agency, or the operator or employees of an employment~~  
31 ~~agency, which provides employees to work for the home health~~ nor state agency  
32 ~~agency, shall be liable for civil damages to any person refused employ-~~  
33 ~~ment or discharged from employment by reason of such operator's com-~~  
34 ~~pliance with the provisions of this section if such operator or employ-~~  
35 ~~ment agency acts in good faith to comply with this section.~~

36 (e) For the purpose of subsection (a)(3), an act of abuse or neglect  
37 shall not be considered to have been validated by the department of social  
38 and rehabilitation services unless the alleged perpetrator has: (1) Had an  
39 opportunity to be interviewed and present information during the inves-  
40 tigation of the alleged act of abuse or neglect; and (2) been given notice  
41 of the agency decision and an opportunity to appeal such decision to the  
42 secretary and to the courts pursuant to the act for judicial review and civil  
43 enforcement of agency actions.

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1 (f) The secretary of health and environment shall charge each  
2 person requesting information under this section a fee of \$5 for  
3 each name about which an information request has been submit-  
4 ted under this section.

equal to cost, not to exceed \$10

5 [(g) No person who works for a home health agency and who  
6 is currently licensed or registered by an agency of this state to  
7 provide professional services in this state and who provides such  
8 services as part of the work which such person performs for the  
9 home health agency shall be subject to the provisions of this sec-  
10 tion.]

Delete

11 (g) [(h)] A family member who acts as a volunteer in caring for  
12 a relative who is receiving home health services [person who vol-  
13 unteers to assist a home health agency] shall not be subject to the  
14 provisions of this section because of such volunteer activity [unless  
15 the operator of the home health agency for which such person  
16 volunteers elects by written notice to the secretary of health and  
17 environment to make all persons who regularly volunteer to assist  
18 such home health agency subject to the requirements of this sec-  
19 tion].

Delete

20 (f) (h) [(i)] This section shall be part of and supplemental to the  
21 provisions of article 51 of chapter 65 of the Kansas Statutes Annotated  
22 and acts amendatory thereof or supplemental thereto.

4

23 Sec. 3. This act shall take effect and be in force from and after its  
24 publication in the statute book.

Sec 3. The secretary of health and environment shall establish a system providing for incremental implementation of this act providing for all adult care homes and home health agencies to request information required by this act no later than July 1, 1998.

Department of Social and Rehabilitation Services  
Rochelle Chronister, Secretary

**Testimony of Ann E. Koci  
Before the Senate Committee on Public Health and Welfare**

**March 25, 1997**

**Concerning Senate Bill 375 - Adult Protective Services**

Madam Chairman and members of the committee, thank you for providing me this opportunity to testify today concerning Senate Bill 375.

The Department of the Social and Rehabilitation Services supports SB375 and requests this committee approve this legislation which will provide clarification and needed changes to the current statutes for the investigation of Adult Abuse, Neglect and Exploitation. With privatization of community services and deinstitutionalization of vulnerable adult populations we need to revise the definitions of abuse, neglect and exploitation; update the procedures related to investigation; and clarify responsibilities between SRS and KDHE.

Current statutes do not allow sharing information regarding confirmed reports of abuse, neglect and exploitation with providers and consumers. This concerns agencies and individuals who must employ caregivers of vulnerable adult populations, yet have no access to information regarding reports. This legislation will allow SRS to significantly expand the statewide registry to include the names of confirmed abusers of adults which will be made available to prospective employers including consumers who choose to self-direct their attendant care. It would also expand the number of mandated reporters of adult abuse, neglect and exploitation to include those most frequently in contact with the vulnerable adult.

The main components of the proposed bill are:

- \* Provides clarifications and consistency in the definitions of abuse, neglect and exploitation between SRS and KDHE;
- \* Adds a definition of sexual abuse;
- \* Changes the timelines for the investigation of adult abuse, neglect and exploitation, which will ensure needed resources are available for the most critical needs in a timely manner;
- \* Requires the reporting of a criminal act such as rape, as defined under K.S.A. 21-3502, within twenty-four hours;
- \* Through due process, creates a statewide registry of confirmed abusers of adults allowing access by SRS to potential agencies, facilities and consumers for the purpose of employment;
- \* Adds more mandated reporters of abuse, neglect and exploitation of adults including case managers, home health aides, Independent Living counselors and guardians.

We must continue to protect our vulnerable adult population in Kansas. With services shifting to private providers with a community-based focus, we will need to be able to provide more information about confirmed abusers in order to protect adults. Thank you and I will be happy to stand for questions.

Senate Public Health & Welfare  
Date: 3-31-97  
Attachment No. 3



SENATE BILL No. 375

By Committee on Ways and Means

2-21

9 AN ACT concerning abuse, neglect and exploitation of certain persons;  
10 amending K.S.A. 39-1401, 39-1402, 39-1404, 39-1430, 39-1431, 39-  
11 1433, 39-1434, 39-1435 and 39-1440 and repealing the existing  
12 sections.

13  
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 39-1401 is hereby amended to read as follows: 39-  
16 1401. As used in this act:

17 (a) "Resident" means:

18 (1) Any resident, as defined by K.S.A. 39-923 and amendments  
19 thereto; or

20 ~~(2) any client cared for in an adult family home; or~~

21 ~~(3) (2) any individual kept, cared for, treated, boarded or otherwise~~  
22 ~~accommodated in a medical care facility; or~~

23 ~~(4) any individual with mental retardation or a developmental disa-~~  
24 ~~bility receiving services through a community mental retardation facility~~  
25 ~~or residential facility licensed under K.S.A. 75-3307b and amendments~~  
26 ~~thereto; or~~

27 ~~(5) (3) any individual, kept, cared for, treated, boarded or otherwise~~  
28 ~~accommodated in a state psychiatric hospital or state institution for the~~  
29 ~~mentally retarded.~~

30 (b) "Adult care home" has the meaning ascribed thereto in K.S.A.  
31 39-923 and amendments thereto.

32 ~~(c) "Adult family home" has the meaning ascribed thereto in K.S.A.~~  
33 ~~39-1501 and amendments thereto.~~

34 ~~(d) (c) "In need of protective services" means that a resident is unable~~  
35 ~~to perform or obtain services which are necessary to maintain physical or~~  
36 ~~mental health, or both.~~

37 ~~(e) (d) "Services which are necessary to maintain physical and mental~~  
38 ~~health" include, but are not limited to, the provision of medical care for~~  
39 ~~physical and mental health needs, the relocation of a resident to a facility~~  
40 ~~or institution able to offer such care, assistance in personal hygiene, food,~~  
41 ~~clothing, adequately heated and ventilated shelter, protection from health~~  
42 ~~and safety hazards, protection from maltreatment the result of which~~  
43 ~~includes, but is not limited to, malnutrition, deprivation of necessities or~~

1 physical punishment and transportation necessary to secure any of the  
2 above stated needs, except that this term shall not include taking such  
3 person into custody without consent, except as provided in this act.

4 (f) (e) "Protective services" means services provided by the state or  
5 other governmental agency or any private organizations or individuals  
6 which are necessary to prevent abuse, neglect or exploitation. Such pro-  
7 tective services shall include, but not be limited to, evaluation of the need  
8 for services, assistance in obtaining appropriate social services and assis-  
9 tance in securing medical and legal services.

10 (g) (f) "Abuse" means ~~neglect, infliction of physical or mental injury~~  
11 ~~or deprivation by a caretaker of services which are necessary to maintain~~  
12 ~~physical and mental health any act or failure to act performed intention-~~  
13 ~~ally or recklessly that causes or is likely to cause harm to a resident,~~  
14 including:

15 (1) Infliction of physical or mental injury;

16 (2) any sexual act with a resident when the resident does not consent  
17 or when the caretaker or another person knows or should know that the  
18 resident is incapable of resisting or declining consent to the sexual act due  
19 to mental deficiency or disease or due to fear of retribution or hardship;

20 (3) inappropriate use of a physical restraint, isolation or medication  
21 that harms or is likely to harm a resident;

22 (4) inappropriate use of a physical or chemical restraint, medication  
23 or isolation as punishment, for convenience, in conflict with a physician's  
24 orders or as a substitute for treatment, except where such conduct or  
25 physical restraint is in furtherance of the health and safety of the resident  
26 or another resident;

27 (5) a threat or menacing conduct directed toward a resident that re-  
28 sults or might reasonably be expected to result in fear or emotional or  
29 mental distress to a resident;

30 (6) fiduciary abuse;

31 (7) omission or deprivation by a caretaker or another person of goods  
32 or services which are necessary to avoid physical or mental harm or ill-  
33 ness; or

34 (8) medically inappropriate conduct that causes or is likely to cause  
35 physical harm to a resident.

36 (h) (g) "Neglect" means the failure of a caretaker to ~~maintain rea-~~  
37 ~~sonable care and treatment to such an extent that the resident's health~~  
38 ~~or emotional well-being is injured or omission by one's self, caretaker or~~  
39 ~~another person to provide goods or services which are necessary to ensure~~  
40 ~~safety and well-being and to avoid physical or mental harm or illness.~~

41 (i) (h) "Caretaker" means a person or institution who has assumed  
42 the responsibility for the care of the resident voluntarily, by contract or  
43 by order of a court of competent jurisdiction.

(2)(A) Any sexual act by a  
caretaker with a  
resident.

(B)

reasonably

1 ~~(j)~~(i) "Exploitation" means ~~intentionally~~ misappropriation of resident  
2 property or taking unfair advantage of an adult's physical or financial  
3 resources for another individual's personal or financial advantage by the  
4 use of undue influence, coercion, harassment, duress, deception, false  
5 representation or false pretense by a caretaker or another person.

intentionally

6 ~~(k)~~(j) "Medical care facility" means a facility licensed under K.S.A.  
7 65-425 et seq. and amendments thereto but shall not include, for purposes  
8 of this act, a state psychiatric hospital or state institution for the mentally  
9 retarded, including Larned state hospital, Osawatomie state hospital,  
10 Rainbow mental health facility, Topeka state hospital, Kansas neurological  
11 institute, Parsons state hospital and training center and Winfield state  
12 hospital and training center.

13 (k) "Fiduciary abuse" means a situation in which any person who is  
14 the caretaker of, or who stands in a position of trust to, a resident, takes,  
15 secretes, or appropriates their money or property, to any use or purpose  
16 not in the due and lawful execution of such person's trust.

17 (l) "State psychiatric hospital" means Larned state hospital, Osawa-  
18 tomie state hospital, Rainbow mental health facility and Topeka state  
19 hospital.

(o) "Law enforcement" means the public office which is vested by law with the duty to maintain public order, make arrests for crimes, investigate criminal acts and file criminal charges whether that duty extends to all crimes or is limited to specific crimes.

20 (m) "State institution for the mentally retarded" means Kansas neu-  
21 rological institute, Parsons state hospital and training center and Winfield  
22 state hospital and training center.

23 (n) "Report" means a description or accounting of an incident or in-  
24 cidents of abuse, neglect or exploitation under this act and for the purposes  
25 of this act shall not include any written assessment or findings.

26 No person shall be considered to be abused, neglected or exploited or  
27 in need of protective services for the sole reason that such person relies  
28 upon spiritual means through prayer alone for treatment in accordance  
29 with the tenets and practices of a recognized church or religious denom-  
30 ination in lieu of medical treatment.

or a licensed master level psychologist

31 Sec. 2. K.S.A. 39-1402 is hereby amended to read as follows: 39-  
32 1402. (a) Any person who is licensed to practice any branch of the healing  
33 arts, a licensed psychologist, a chief administrative officer of a medical  
34 care facility, an adult care home administrator, a licensed social worker,  
35 a licensed professional nurse or, a licensed practical nurse, a bank trust  
36 officer, a guardian or a conservator who has reasonable cause to believe  
37 that a resident is being or has been abused, neglected or exploited, or is  
38 in a condition which is the result of such abuse, neglect or exploitation  
39 or is in need of protective services, shall report immediately such infor-  
40 mation or cause a report of such information to be made in any reasonable  
41 manner to the department of health and environment with respect to  
42 residents defined under (a)(1) and ~~(a)(2)~~ (a)(2) of K.S.A. 39-1401 and  
43 amendments thereto and to the department of social and rehabilitation

or operator

1 services with respect to all other residents. Reports made to one depart-  
2 ment which are required by this subsection to be made to the other  
3 department shall be referred by the department to which the report is  
4 made to the appropriate department for that report, and any such report  
5 shall constitute compliance with this subsection. Reports shall be made  
6 during the normal working week days and hours of operation of such  
7 departments. Reports shall be made to law enforcement agencies during  
8 the time the departments are not open for business. Law enforcement  
9 agencies shall submit the report and appropriate information to the ap-  
10 propriate department on the first working day that such department is  
11 open for business. A report made pursuant to K.S.A. 65-4923 or 65-4924  
12 and amendments thereto shall be deemed a report under this section.

13 (b) The report made pursuant to subsection (a) shall contain the  
14 name and address of the person making the report and of the caretaker  
15 caring for the resident, the name and address of the involved resident,  
16 information regarding the nature and extent of the abuse, neglect or ex-  
17 ploitation, the name of the next of kin of the resident, if known, and any  
18 other information which the person making the report believes might be  
19 helpful in an investigation of the case and the protection of the resident.

20 (c) Any other person having reasonable cause to suspect or believe  
21 that a resident is being or has been abused, neglected or exploited, or is  
22 in a condition which is the result of such abuse, neglect or exploitation  
23 or is in need of protective services may report such information to the  
24 department of health and environment with respect to residents defined  
25 under (a)(1) and ~~(a)(3)~~ (a)(2) of K.S.A. 39-1401 and amendments thereto  
26 and to the department of social and rehabilitation services with respect  
27 to all other residents. Reports made to one department which are to be  
28 made to the other department under this section shall be referred by the  
29 department to which the report is made to the appropriate department  
30 for that report.

31 (d) Notice of the requirements of this act and the department to  
32 which a report is to be made under this act shall be posted in a conspic-  
33 uous place in every adult care home, adult family home and medical care  
34 facility in this state.

35 (e) Any person required to report information or cause a report of  
36 information to be made under subsection (a) who knowingly fails to make  
37 such report or cause such report to be made shall be guilty of a class B  
38 misdemeanor.

39 Sec. 3. K.S.A. 39-1404 is hereby amended to read as follows: 39-  
40 1404. (a) ~~The department of social and rehabilitation services or~~ The  
41 department of health and environment upon receiving a report that a  
42 resident is being, or has been, abused, neglected or exploited, or is in a  
43 condition which is the result of such abuse, neglect or exploitation or is

1 in need of protective services; within 24 hours of receiving such report,  
2 shall initiate an investigation, including a personal visit with the resident  
3 and, within two weeks of receiving such report, shall complete the inves-  
4 tigation to determine if the resident is being or has been abused, ne-  
5 glected or exploited or is in a condition which is a result of such abuse,  
6 neglect or exploitation. The investigation shall include, but not be limited  
7 to, a visit to the named resident and consultation with those individuals  
8 having knowledge of the facts of the particular case. Upon completion of  
9 the investigation of each case, written findings shall be prepared which  
10 shall include a finding of whether there is or has been abuse, neglect or  
11 exploitation, recommended action and a determination of whether pro-  
12 tective services are needed. If it appears that a crime has occurred, the  
13 appropriate law enforcement agency shall be notified by the department  
14 investigating the report.

15 (b) The secretary of social and rehabilitation services shall maintain  
16 a register of the reports received and investigated by the department of  
17 social and rehabilitation services, the findings, evaluations and the actions  
18 recommended. The register shall be available for inspection by personnel  
19 of the department of social and rehabilitation services. The secretary of  
20 social and rehabilitation services shall forward a copy of any report of  
21 abuse, neglect or exploitation of a resident investigated by the department  
22 of social and rehabilitation services to the secretary of health and envi-  
23 ronment and, in the case of a report of abuse, neglect or exploitation of  
24 a resident of an adult family home, to the secretary of aging.

25 (c) The report received by the department of social and rehabilitation  
26 services and the written findings, evaluations and actions recommended  
27 shall not be deemed a public record or be subject to the provisions of the  
28 open records act. Except as otherwise provided in this section, the name  
29 of the person making the original report to the department of social and  
30 rehabilitation services or any person mentioned in such report shall not  
31 be disclosed unless the person making the original report specifically re-  
32 quests or agrees in writing to such disclosure or unless a judicial pro-  
33 ceeding results therefrom. Except as otherwise provided in this section,  
34 no information contained in the register shall be made available to the  
35 public in such a manner as to identify individuals.

36 (d) The secretary of social and rehabilitation services shall forward  
37 any finding of abuse, neglect or exploitation alleged to be committed by  
38 a provider of services licensed, registered or otherwise authorized to pro-  
39 vide services in this state to the appropriate state authority which regu-  
40 lates such provider. The appropriate state regulatory authority may con-  
41 sider the finding in any disciplinary action taken with respect to the  
42 provider of services under the jurisdiction of such authority. shall:

43 (1) When a criminal act has occurred or has appeared to have oc-

1 curred, immediately notify the appropriate law enforcement agency;

2 (2) make a personal visit with the involved adult;

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

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

7 (C) within five working days for all reports of neglect or exploitation  
8 when the information from the reporter indicates no imminent danger.

9 (D) complete, within 30 working days of receiving a report, a thor-  
10 ough investigation and evaluation to determine the situation relative to  
11 the condition of the involved resident and what action and services, if any,  
12 are required. The investigation shall include, but not be limited to, con-  
13 sultation with those individuals having knowledge of the facts of the par-  
14 ticular case; and

15 (E) prepare, upon a completion of the evaluation of each case, a writ-  
16 ten assessment which shall include an analysis of whether there is or has  
17 been abuse, neglect or exploitation, recommended action, a determination  
18 of whether protective services are needed, and any follow up.

19 (e) (b) The department which investigates the report of health and  
20 environment shall inform the complainant, upon request of the complain-  
21 ant, that an investigation has been made and, if the allegations of abuse,  
22 neglect or exploitation have been substantiated, that corrective measures  
23 will be taken if required.

24 (c) The department of health and environment may inform the chief  
25 administrative officer of a facility as defined by K.S.A. 39-923 and amend-  
26 ments thereto of ~~substantial~~ findings of resident abuse, neglect or exploi-  
27 tation.

28 Sec. 4. K.S.A. 39-1430 is hereby amended to read as follows: 39-  
29 1430. As used in this act:

30 (a) "Adult" means an individual 18 years of age or older alleged to  
31 be unable to protect their own interest and who is harmed or threatened  
32 with harm through action or inaction by either another individual or  
33 through their own action or inaction. Such term shall not include a resi-  
34 dent as the term "resident" is defined under K.S.A. 39-1401 and amend-  
35 ments thereto when (1) such person is residing in such person's own  
36 home, the home of a family member or the home of a friend, (2) such  
37 person resides in an adult family home as defined in K.S.A. 39-1501 and  
38 amendments thereto, or (3) such person is receiving services through a  
39 community ~~development~~ disabilities facility or a residential facility li-  
40 censed pursuant to K.S.A. 75-3307b and amendments thereto. Such term  
41 shall not include persons to whom K.S.A. 39-3101 et seq. and amendments  
42 thereto apply.

43 (b) "Abuse" means the intentional infliction of injury, unreasonable

resident

resident

confirmed

services and their affiliates  
operated or funded by the  
department of social and  
rehabilitation services.

39-1401

1 confinement, fiduciary abuse, intimidation, cruel punishment, omission  
2 or deprivation by a caretaker or another person of goods or services which  
3 are necessary to avoid physical or mental harm or illness; any act or failure  
4 to act performed intentionally or recklessly that causes or is likely to cause  
5 harm to an adult, including:

6 (1) Infliction of physical or mental injury;

7 (2) any sexual act with an adult when the adult does not consent or  
8 when the caretaker or another person knows or should know that the  
9 adult is incapable of resisting or declining consent to the sexual act due  
10 to mental deficiency or disease or due to fear of retribution or hardship;

(2)(A) Any sexual a  
by a caretaker with  
aWadult.

11 (3) inappropriate use of a physical restraint, isolation or medication  
12 that harms or is likely to harm an adult;

(B)

13 (4) inappropriate use of a physical or chemical restraint, medication  
14 or isolation as punishment, for convenience, in conflict with a physician's  
15 orders or as a substitute for treatment, except where such conduct or  
16 physical restraint is in furtherance of the health and safety of the adult;

17 (5) a threat or menacing conduct directed toward an adult that results  
18 or might reasonably be expected to result in fear or emotional or mental  
19 distress to an adult;

20 (6) fiduciary abuse;

21 (7) omission or deprivation by a caretaker or another person of goods  
22 or services which are necessary to avoid physical or mental harm or ill-  
23 ness; or

24 (8) medically inappropriate conduct that causes or is likely to cause  
25 physical harm to an adult.

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

reasonably

30 (d) "Exploitation" means misappropriation of an adult's property or  
31 intentionally taking unfair advantage of an adult's physical or financial  
32 resources for another individual's personal or financial advantage by the  
33 use of undue influence, coercion, harassment, duress, deception, false  
34 representation or false pretense by a caretaker or another person.

35 (e) "Fiduciary abuse" means a situation in which any person who is  
36 the caretaker of, or who stands in a position of trust to, an adult, takes,  
37 secretes, or appropriates their money or property, to any use or purpose  
38 not in the due and lawful execution of such person's trust.

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

42 (g) "Services which are necessary to maintain physical or mental  
43 health or both" include, but are not limited to, the provision of medical

1 care for physical and mental health needs, the relocation of an adult to a  
 2 facility or institution able to offer such care, assistance in personal hy-  
 3 giene, food, clothing, adequately heated and ventilated shelter, protection  
 4 from health and safety hazards, protection from maltreatment the result  
 5 of which includes, but is not limited to, malnutrition, deprivation of ne-  
 6 cessities or physical punishment and transportation necessary to secure  
 7 any of the above stated needs, except that this term shall not include  
 8 taking such person into custody without consent except as provided in  
 9 this act.

10 (h) "Protective services" means services provided by the state or  
 11 other governmental agency or by private organizations or individuals  
 12 which are necessary to prevent abuse, neglect or exploitation. Such pro-  
 13 tective services shall include, but shall not be limited to, evaluation of the  
 14 need for services, assistance in obtaining appropriate social services, and  
 15 assistance in securing medical and legal services.

16 (i) "Caretaker" means a person who has assumed the responsibility  
 17 for an adult's care or financial management or both.

18 (j) "Secretary" means the secretary of social and rehabilitation serv-  
 19 ices.

20 (k) "Report" means a ~~report of abuse, neglect or exploitation under~~  
 21 ~~this act~~ description or accounting of an incident or incidents of abuse,  
 22 neglect or exploitation under this act and for the purposes of this act shall  
 23 not include any written assessment or findings.

24 (l) "Law enforcement" means the public office which is vested by law  
 25 with the duty to maintain public order, make arrests for crimes, investi-  
 26 gate criminal acts and file criminal charges, whether that duty extends to  
 27 all crimes or is limited to specific crimes.

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

30 No person shall be considered to be abused, neglected or exploited or  
 31 in need of protective services for the sole reason that such person relies  
 32 upon spiritual means through prayer alone for treatment in accordance  
 33 with the tenets and practices of a recognized church or religious denom-  
 34 ination in lieu of medical treatment.

35 Sec. 5. K.S.A. 39-1431 is hereby amended to read as follows: 39-  
 36 1431. (a) Any person who is licensed to practice any branch of the healing  
 37 arts, a licensed psychologist) the chief administrative officer of a medical  
 38 care facility, a licensed social worker, a licensed professional nurse, a  
 39 licensed practical nurse, a licensed dentist, a law enforcement officer, a  
 40 case manager, a guardian or conservator, a bank trust officer, a rehabil-  
 41 itation counselor, a social security payee, a holder of a power of attorney,  
 42 a home health aide, an owner or operator of a residential care facility, an  
 43 independent living counselor and the chief administrative officer of a li-

or a licensed master  
level psychologist

(home health aide does  
not include those  
as defined in K.S.A.  
39-7100(b)(9))



1 censed home health agency, the chief administrative officer of an adult  
 2 family home and the chief administrative officer of ~~a community devel-~~  
 3 ~~opmental disabilities facility~~ licensed under K.S.A. 75-3307b and amend-  
 4 ments thereto who has reasonable cause to believe that an adult is being  
 5 or has been abused, neglected or exploited or is in need of protective  
 6 services shall report, ~~within six hours~~ immediately from receipt of the  
 7 information, such information or cause a report of such information to  
 8 be made in any reasonable manner. An employee of a domestic violence  
 9 center shall not be required to report information or cause a report of  
 10 information to be made under this subsection. Other state agencies re-  
 11 ceiving reports that are to be referred to the department of social and  
 12 rehabilitation services, shall submit the report to the department within  
 13 six hours, during normal work days, of receiving the information. Reports  
 14 shall be made to the department of social and rehabilitation services dur-  
 15 ing the normal working week days and hours of operation. Reports shall  
 16 be made to law enforcement agencies during the time social and reha-  
 17 bilitation services are not in operation. Law enforcement shall submit the  
 18 report and appropriate information to the department of social and re-  
 19 habilitation services on the first working day that social and rehabilitation  
 20 services is in operation.

21 (b) The report made pursuant to subsection (a) shall contain the  
 22 name and address of the person making the report and of the caretaker  
 23 caring for the involved adult, the name and address of the involved adult,  
 24 information regarding the nature and extent of the abuse, neglect or ex-  
 25 ploitation, the name of the next of kin of the involved adult, if known,  
 26 and any other information which the person making the report believes  
 27 might be helpful in the investigation of the case and the protection of the  
 28 involved adult.

29 (c) Any other person having reasonable cause to suspect or believe  
 30 that an adult is being or has been abused, neglected or exploited or is in  
 31 need of protective services may report such information to the depart-  
 32 ment of social and rehabilitation services. Reports shall be made to law  
 33 enforcement agencies during the time social and rehabilitation services  
 34 are not in operation.

35 (d) A person making a report under subsection (a) shall not be re-  
 36 quired to make a report under K.S.A. 39-1401 to 39-1410, inclusive, and  
 37 amendments thereto. ~~A person making a report under K.S.A. 39-1401 to~~  
 38 ~~39-1410, inclusive, and amendments thereto, shall not be required to~~  
 39 ~~make a report under this act.~~

40 (e) Any person required to report information or cause a report of  
 41 information to be made under subsection (a) who knowingly fails to make  
 42 such report or cause such report not to be made shall be guilty of a class  
 43 B misdemeanor.

services and their  
 affiliates operated  
 or funded by the  
 department of social and  
 rehabilitation services  
 or

1 (f) Notice of the requirements of this act and the department to which  
 2 a report is to be made under this act shall be posted in a conspicuous  
 3 place in every adult family home as defined in K.S.A. 39-1501 and amend-  
 4 ments thereto and community ~~developmental disabilities facility~~ or other  
 5 facility licensed under K.S.A. 75-3307b and amendments thereto.

6 Sec. 6. K.S.A. 39-1433 is hereby amended to read as follows: 39-  
 7 1433. (a) The department of social and rehabilitation services upon re-  
 8 ceiving a report that an adult is being, or has been abused, neglected, or  
 9 exploited or is in need of protective services, shall:

10 (1) When a criminal act has occurred or has appeared to have oc-  
 11 curred, immediately notify the appropriate law enforcement agency;

12 ~~(1)~~ (2) make a personal visit with the involved adult:

13 (A) Within 24 hours when the information from the reporter indi-  
 14 cates imminent danger to the health or welfare of the involved adult;

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

17 (C) within five working days for all reports of neglect or exploitation  
 18 when the information from the reporter indicates no imminent danger.

19 ~~(2)~~ (3) Complete, within ~~two weeks~~ 30 working days of receiving a  
 20 report, a thorough investigation and evaluation to determine the situation  
 21 relative to the condition of the involved adult and what action and serv-  
 22 ices, if any, are required. The evaluation shall include, but not be limited  
 23 to, consultation with those individuals having knowledge of the facts of  
 24 the particular case. ~~When a criminal act has appeared to have occurred,~~  
 25 ~~law enforcement shall be notified immediately and~~ If the alleged perpe-  
 26 trator is licensed, registered or otherwise regulated by a state agency,  
 27 such state agency also shall be notified immediately.

28 ~~(3)~~ (4) Prepare, upon completion of the ~~evaluation~~ investigation of  
 29 each case, a written assessment which shall include an analysis of whether  
 30 there is or has been abuse, neglect or exploitation, recommended action,  
 31 a determination of whether protective services are needed, and any fol-  
 32 low-up.

33 (b) The secretary of social and rehabilitation services shall forward  
 34 any finding of abuse, neglect or exploitation alleged to have been com-  
 35 mitted by a provider of services licensed, registered or otherwise author-  
 36 ized to provide services in this state to the appropriate state authority  
 37 which regulates such provider. The appropriate state regulatory authority  
 38 may consider the finding in any disciplinary action taken with respect to  
 39 the provider of services under the jurisdiction of such authority.

40 (c) The department of social and rehabilitation services shall inform  
 41 the complainant, upon request of the complainant, that an investigation  
 42 has been made and if the allegations of abuse, neglect or exploitation have  
 43 been substantiated, that corrective measures will be taken.

services and their  
 affiliates operated  
 or funded by the  
 department of social  
 and rehabilitation  
 services or

1 (d) *The department of social and rehabilitation services may inform*  
2 *the chief administrative officer and community facilities licensed pursuant*  
3 *to K.S.A. 75-3307b and amendments thereto of substantiated findings of*  
4 *resident abuse, neglect or exploitation.*

5 Sec. 7. K.S.A. 39-1434 is hereby amended to read as follows: 39-  
6 1434. (a) The secretary of social and rehabilitation services shall maintain  
7 a statewide register of the reports, ~~assessments received and the analyses,~~  
8 ~~evaluations and the actions and the confirmed findings of the abuse, ne-~~  
9 ~~glect and exploitation actions~~ recommended. The register shall be avail-  
10 able for inspection by personnel of the department of social and rehabil-  
11 itation services *and other agencies or facilities for the purpose of*  
12 *determining employment. Persons with a confirmed finding of abuse, ne-*  
13 *glect or exploitation of an adult shall have the right to appeal that decision*  
14 *pursuant to K.S.A. 75-3306 and amendments thereto.*

15 (b) Neither the report, assessment or the written evaluation analysis  
16 shall be deemed a public record or be subject to the provisions of the  
17 open records act. The name of the person making the original report or  
18 any person mentioned in such report shall not be disclosed unless the  
19 person making the original report specifically requests or agrees in writing  
20 to such disclosure or unless a judicial proceeding results therefrom. No  
21 information contained in the statewide register shall be made available to  
22 the public in such a manner as to identify individuals.

23 Sec. 8. K.S.A. 39-1435 is hereby amended to read as follows: 39-  
24 1435. In performing the duties set forth in this act, the secretary of social  
25 and rehabilitation services may request the assistance of all state depart-  
26 ments, agencies and commissions and may utilize any other public or  
27 private agencies, groups or individuals who are appropriate and who may  
28 be available. Law enforcement shall be contacted to assist the department  
29 of social and rehabilitation services when the information received on the  
30 report indicates that an adult, residing in such adult's own home or the  
31 home of another individual, *an adult family home, a community devel-*  
32 *opment disabilities facility or residential facility* is in a life threatening  
33 situation.

34 Sec. 9. K.S.A. 39-1440 is hereby amended to read as follows: 39-  
35 1440. Subsequent to the authorization for the provision of necessary pro-  
36 tective services, the secretary shall initiate a review of each case within  
37 ~~45~~ 60 days to determine where continuation of, or modification in, the  
38 services provided is warranted. A decision to continue the provision of  
39 such services shall comply with the consent provisions of this act. Re-  
40 evaluations of the need for protective services shall be made not less than  
41 every six months thereafter.

42 Sec. 10. K.S.A. 39-1401, 39-1402, 39-1404, 39-1430, 39-1431, 39-  
43 1433, 39-1434, 39-1435 and 39-1440 are hereby repealed.

1 Sec. 11. This act shall take effect and be in force from and after its  
2 publication in the statute book.



State of Kansas

Office of the Attorney General

CARLA J. STOVALL  
ATTORNEY GENERAL

March 31, 1997

Senator Sandy Praeger  
Room 128-S State Capitol  
Topeka, Kansas 66612-1504

Re: HB 2278 and SB 375

Dear Senator Praeger,

I am writing to confirm with you and the Committee on Public Health and Welfare my support of HB 2278 with the addition to it of SB 375. SB 375 specifically addresses efforts to amend K.S.A. 39-1401, K.S.A. 39-1404, K.S.A. 39-1430 and K.S.A. 39-1433 to revise these statutes to make them consistent with each other. This legislation reflects the work of my office, SRS, and KDHE to develop a comprehensive revision to adult abuse/neglect reporting procedures in Kansas in order to protect the interests of the vulnerable citizens of the State of Kansas.

SB 375 - ADULT ABUSE AND NEGLECT REPORTING

**Reports to Law Enforcement**

Of major importance to my office is the language in SB 375 which amends K.S.A. 39-1401 and K.S.A. 39-1433 to require immediate notification of the appropriate law enforcement agency by KDHE and SRS upon receiving a report of abuse, neglect or exploitation if it appears that a crime has occurred. Under the current law, SRS and KDHE have up to two weeks to complete an investigation of a report of abuse, neglect or exploitation; thus creating a situation in which law enforcement may not in fact become involved in the case until up to two weeks after an incident has been reported.

Delay in contacting law enforcement agencies can result in important evidence being lost. This lapse of time is unacceptable for proper investigation and prosecution of a crime. SRS and KDHE investigations focus on removing the resident or adult from any imminent or immediate danger and identifying deficiencies, not necessarily conducting a criminal investigation. It is not my

intent to interfere with SRS or KDHE investigation, but to ensure that a proper parallel criminal investigation is conducted when it appears a crime has occurred. This amended language will achieve that goal.

### **Definition of Abuse**

A second significant change crucial to the effectiveness of the law is to amend K.S.A. 39-1401 and K.S.A. 39-1430 to change the definition of abuse. The proposed definition of abuse would clearly specify what types of acts are proscribed and are required to be reported. The statutes currently contain inconsistent and vague definitions of abuse. By amending the statutes, the definition of abuse will be consistent in each statute. Furthermore, it will clearly define the situations that are reportable incidents.

In addition to the committee's consideration and support for SB 375, I would also ask the committee to consider the inclusion of changes my office proposed to the crime of Mistreatment of a Dependent Adult as found in HB 2253. I have attached additional information on the effect of HB 2253 for the committee's consideration. In our work with SRS and KDHE to develop the changes to the reporting laws, it was recognized that there needed to be amendments to the criminal law to insure its effectiveness and consistency with the amended reporting laws.

The goals in HB 2278, SB 375, and HB2253 are closely related. They all seek to implement a clear direction on policies and procedures related to effective protection of dependent persons. Your committee has the opportunity to deliver to the full Senate and the House a set of laws that can assist my office, SRS, and KDHE in this very important work of protecting the most vulnerable of Kansas citizens.

Very truly yours,



Carla J. Stovall  
Attorney General

CARLA J. STOVALL, ATTORNEY GENERAL  
OFFICE OF THE ATTORNEY GENERAL  
Senate Public Health and Welfare Committee  
March 31, 1997

HB 2253 - MISTREATMENT OF A DEPENDENT ADULT

**Reckless Acts**

The first significant change HB 2253 would accomplish is to add reckless acts of abuse of dependent adults to the crime of mistreatment of a dependent adult. My office has reviewed patient abuse cases where the perpetrator's actions did not rise to the level of an intentional act of abuse but would have constituted a reckless act of abuse. The victims of a reckless act of abuse deserve as much protection as the victims of intentional abuse. My office has conducted an extensive survey of other State's statutes in this area. Approximately fifteen other States criminally proscribe reckless acts of abuse.

**Increase in Severity Level of Crime of Mistreatment of a Dependent Adult**

The second significant change is to increase the severity level for the offense of intentional mistreatment of a dependent. Presently, abuse of a child is a severity level 5, person felony and mistreatment of a dependent adult is currently a severity level 6, person felony.

The increase in severity level is warranted for intentional mistreatment of a dependent adult for two reasons. First, those who intentionally abuse our dependent adults ought to face potential incarceration. The severity level 6 classification provides that many of those who are convicted of this offense will receive presumptive probation. The increase in severity level would allow judges throughout this state to place those convicted of this offense in prison, without having to depart from the sentencing guidelines. Our children **and** our dependent adults are far more susceptible to abuse than other citizens. As such, the penalties for convictions of intentional abuse should be the same.

**Amendments to Make Definition of Abuse Consistent with Reporting Act Changes (SB 375) and Language to Clarify Scope of Criminal Remedies**

Following the HB 2253 's introduction, my staff has worked to develop a set of amendments that reflect my commitment to making the law as clear as possible for those who have the responsibility to comply with the law. I believe that will be accomplished by the amendments as follow:

1. Delete Subsections 1(A) and (B) on page 1, lines 17-20 and add New Subsections 1 and 2 on page 1, line 17.

NEW SUBSECTIONS 1 AND 2 CLEARLY DEFINE THE TYPES OF ABUSES THAT THE STATUTE PROSCRIBES AND WOULD BE CONSISTENT WITH THE DEFINITION OF ABUSE AS SUPPORTED BY MY OFFICE IN SB 375.

2. Exclusive Remedies -- New Subsection (c) on page 1, lines 35-36.

NEW SUBSECTION (c) PROPOSES THAT THE STATUTE IS NOT INTENDED AS AN EXCLUSIVE REMEDY FOR THE PROSECUTION OF PATIENT ABUSE CASES. THIS IS INCLUDED TO MAKE IT CLEAR THAT OTHER MORE SPECIFIC STATUTES WOULD BE AVAILABLE FOR USE WHEN THE SITUATION WARRANTS IT, FOR EXAMPLE IN THE CASE OF A RAPE OF A NURSING HOME RESIDENT.



HOUSE BILL No. 2253

By Committee on Judiciary

9 AN ACT concerning crimes and punishment; relating to mistreatment of
10 a dependent adult; amending K.S.A. 21-3437 and repealing the existing
11 section.

12
13 Be it enacted by the Legislature of the State of Kansas:

14 Section 1 K.S.A. 21-3437 is hereby amended to read as follows: 21-
15 3437 (a) Mistreatment of a dependent adult is knowingly and intention-
16 ally committing one or more of the following acts:

17 (1) ~~intentionally causing infliction of physical injury, unreason-~~
18 ~~able confinement or cruel punishment upon a dependent adult; or~~
19 ~~recklessly causing infliction of physical injury, unreason-~~
20 ~~able confinement or cruel punishment upon a dependent adult;~~

21 (2) ~~intentionally taking unfair advantage of a dependent adult's phys-~~
22 ~~ical or financial resources for another individual's personal or financial~~
23 ~~advantage by the use of undue influence, coercion, harassment, duress,~~
24 ~~deception, false representation or false pretense by a caretaker or another~~
25 ~~person; or~~

26 (3) ~~intentionally omitting or depriving treatment, goods or services~~
27 ~~by a caretaker or another person which are necessary to maintain physical~~
28 ~~or mental health of a dependent adult.~~

29 (b) No dependent adult is considered to be mistreated for the sole
30 reason that such dependent adult relies upon or is being furnished treat-
31 ment by spiritual means through prayer in lieu of medical treatment in
32 accordance with the tenets and practices of a recognized church or relig-
33 ious denomination of which such dependent adult is a member or ad-
34 herent.

35 (c) For purposes of this section: "Dependent adult" means an indi-
36 vidual 18 years of age or older who is unable to protect their own interest.
37 Such term shall include:

- 38 (1) Any resident of an adult care home including but not limited to
- 39 those facilities defined by K.S.A. 39-923 and amendments thereto;
- 40 (2) any adult cared for in a private residence;
- 41 (3) any individual kept, cared for, treated, boarded or otherwise ac-
- 42 commodated in a medical care facility;
- 43 (4) any individual with mental retardation or a developmental disa-

inflicting abuse that causes or is likely to
cause harm upon a dependent adult by committing one or more of the
following acts:

(A) Infliction of physical or mental injury; or
(B) inappropriate use of a physical restraint, isolation or
medication that harms or is likely to harm a dependent adult; or

(C) inappropriate use of a physical or chemical restraint,
medication or isolation as punishment, for convenience, in conflict with a
physician's order or as a substitute for treatment, except where such
conduct or physical restraint is in furtherance of the health and safety of
the dependent adult or another person; or

(D) a threat or menacing conduct directed toward a
dependent adult that results or might reasonably be expected to result in
fear or emotional or mental distress to a dependent adult.

(2) Recklessly inflicting abuse that causes or is likely to
cause harm upon a dependent adult by committing one or more of the
following acts:

(A) Infliction of physical or mental injury; or
(B) inappropriate use of a physical restraint, isolation or
medication that harms or is likely to harm a dependent adult; or

(C) inappropriate use of a physical or chemical restraint,
medication or isolation as punishment, for convenience, in conflict with a
physician's order or as a substitute for treatment, except where such
conduct or physical restraint is in furtherance of the health and safety of
the dependent adult or another person.

(3)

(4)

(c) Nothing herein shall be construed to prohibit the
prosecution of any caretaker or any other person under any other laws of
the State of Kansas.

(d)

4-6

1 bility receiving services through a community mental retardation facility  
2 or residential facility licensed under K.S.A. 75-3307b and amendments  
3 thereto;

4 (5) any individual with a developmental disability receiving services  
5 provided by a community service provider as provided in the develop-  
6 mental disability reform act; or

7 (6) any individual kept, cared for, treated, boarded or otherwise ac-  
8 commodated in a state psychiatric hospital or state institution for the  
9 mentally retarded

10 ~~(d) Mistreatment of a dependent adult as defined in subsection~~  
11 ~~(a)(1)(A) is a severity level 5, person felony. Mistreatment of a dependent~~  
12 ~~adult as defined in subsection (a)(1) or (1)(B) is a severity level 6, person~~  
13 ~~felony. Mistreatment of a dependent adult as defined in subsection (a)(2)~~  
14 ~~and (a)(3) is a class A person misdemeanor.~~

15 Sec. 2. K.S.A. 21-3437 is hereby repealed

16 Sec. 3. This act shall take effect and be in force from and after its  
17 publication in the statute book.

(e) Mistreatment of a dependent adult as defined in  
subsection (a)(1) is a severity level 5, person felony. Mistreatment of a  
dependent adult as defined in subsection (a)(2) is a severity level 6,  
person felony. Mistreatment of a dependent adult as defined in subsection  
(a)(3) and (a)(4) is a class A person misdemeanor.



KANSAS DEPARTMENT OF SOCIAL  
AND REHABILITATION SERVICES

915 SW HARRISON STREET, TOPEKA, KANSAS 66612

ROCHELLE CHRONISTER, SECRETARY

**MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES SERVICES**  
Fifth Floor Docking State Office Building  
(913) 296-6140  
Facsimile: (913) 296-6142

**Senate Committee on Public Health and Welfare**  
**Concerning Senate Bill 375 Pertaining to Abuse, Neglect and**  
**Exploitation of Vulnerable Adults**

March 31, 1997

Chair Praeger and Members of the Committee, I am Dr. Hugh Sage, Commissioner of Mental Health and Developmental Disabilities Services, and I thank you for the opportunity to present testimony concerning abuse, neglect and exploitation protection for vulnerable adults.

As you know, services to adults with developmental disabilities, mental retardation and/or mental illness have changed dramatically in the recent past and will continue to change as hospital closure efforts progress. A major part of those changes involve the receipt of decentralized community-based services, in smaller and more personally-molded settings, for people who sometimes are in greater need of safety, security and diligent professionals than other adults. As the number of community service providers grows, and the number of people getting those services rises, it is increasingly important that employers be able to make informed employment decisions with regard to the people providing those services.

We agree with the two primary driving philosophies in this bill: 1.) To increase the number of people who are mandated to report suspected incidents of abuse, neglect or exploitation; and, 2.) To establish a central registry which details information about people who have been confirmed, after investigation and a fair appeal process, to have committed actions which constitute abuse, neglect or exploitation toward a vulnerable adult.

Increased vigilance required of people who interact with these adults, and increased information to service providers to aid in sound employment decisions, fosters our ultimate goals that people with disabilities be empowered by having their basic human rights recognized, respected and enforced, so that they can truly experience a life they prefer and value. We should expect nothing less.

Senate Public Health & Welfare  
Date: 3-31-97  
Attachment No. 5