

Approved: March 11/1998
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:14 a.m. on March 5, 1998 in Room 514-S of the Capitol.

All members were present.

Committee staff present: Mike Heim, Legislative Research Department
Gordon Self, Revisor of Statutes
Mary Blair, Committee Secretary

Conferees appearing before the committee: Ann Koci, SRS, Commissioner of Adult and Medical Services
Jane Rhys, Kansas Council on Developmental Disabilities
Jim Germer, Kansas Advocacy Protective Services
Martha Hodgesmith, Attorney General's Office
Linda Lubensky, Kansas Home Care Association
F.C. Loganbill, Newton, Kansas
Tom Liang, Interhab, Incorporated

Others attending: See attached list

SB 482--An act concerning expungement; relating to diversion agreements; arrest records; violations of city ordinances

Following a brief discussion of SB 482, Senator Goodwin moved to pass the bill out favorably, Senator Bond seconded. Motion carried.

SB 375--Abuse, neglect and exploitation of certain persons

Conferee Koci testified in support of **SB 375**. She stated that the bill will "provide clarification and needed changes to the current statutes for the investigations of Adult Abuse, Neglect and Exploitation." She briefly discussed the structure and function of the Adult Protective Services Executive Task Force (APSETF) and detailed the work it has done on revisions to **SB 375** since last legislative session. (attachment 1) There was brief discussion on the definition of sexual abuse.

Conferee Rhys testified in support of **SB 375**. She briefly discussed the structure and function of The Kansas Council On Developmental Disabilities stating that it's mission is "to advocate for individuals with developmental disabilities, to see that they have choices in life". She summarized several pertinent changes to the bill. (attachment 2)

Conferee Germer testified in support of **SB 375**. He discussed the structure and function of Kansas Advocacy & Protective Service, Inc. (KAPS) and described the individuals who assisted in developing the current changes to the bill. He detailed: sections 2 and 5 of the bill which expand the list of mandated reporters of abuse, neglect, and exploitation both in the institutional setting as well as the community setting; sections 1 and 4 concerning consistency in and expansion of the definitions of abuse and neglect; sections 3 and 6 concerning consistent investigation procedure; and emergency conservatorship. (attachment 3)

Conferee Hodgesmith testified in support of **SB 375**. She discussed the active role the attorney general's office has played in the "development of language relating to the reporting of crime to law enforcement and changes in the definitions of what constitutes abuse, neglect, or exploitation" and detailed the changes. (attachment 4)

Conferee Lubensky testified in support of the revisions proposed by SRS to **SB 375**, in particular, the deletion of "Home Health Aide" as a new required reporter. She discussed the limited training of a Home Health Aide in abuse, neglect and exploitation stating that "requiring an aide to report suspected abuse independently, without the knowledge of the supervising nurse, undermines the quality of care being provided as a team by the HH agency", discounts the supervising nurse's legal and ethical responsibility and may force the HH Aide, by not being required to inform her superior, to commit acts which constitute insubordination and non-compliance. (attachment 5)

Conferee Loganbill testified in support of **SB 375** and expressed his comments and concerns regarding "fiscal exploitation" by certain "care house complexes and retirement entities." He related his personal experiences with this problem and the difficulty of finding a governmental agency that this problem can be reported to. He stated that these two issues needed to be addressed. ([attachment 6](#)) Brief discussion followed

Conferee Laing testified in tentative support of **SB 375** but strongly objected to proposed amendment language which eliminates home health aides and independent living counselors as mandatory reporters stating that administrative reasons or philosophical distinctions on the part of some opposition groups do not outweigh the need for vigilance. He also proposed two amendments which would require: notification to the organization of complaints being brought against it; and KDHE to report all findings to an organization being investigated. He stated that without clear policy on mandatory reporting he cannot support the bill; he will, however, support the bill with or without his proposed amendments. ([attachment 7](#))

Conferee McDonald testified in support of the substitutes to **SB 375** as recommended by SRS. In summarizing these substitutes, she stated that the definition of abuse, neglect and exploitation are now more consistent and with the definition of sexual abuse there is clarification and consistency between KDHE and SRS. ([attachment 8](#))

Conferee Kiefhaber testified in opposition to **SB 375** unless it was amended to replace adult care homes and other facilities from the bill's language with "no matter what the care or treatment setting is" and to change the definitions on page 2 "to reflect those now being used in our various care and assistance programs." Without these changes he urged the Committee to not pass the bill. ([attachment 9](#))

Written testimony in support of the substitute bill for **SB 375** was submitted by Shannon Jones, Statewide Independent Living Council of Kansas. ([attachment 10](#))

Written testimony in support of SRS revisions to **SB 375** was submitted by Terri Roberts, Kansas State Nurses Association. She offered a language change on page 2, lines 20 and 22 of the bill. ([attachment 11](#))

Written testimony in support of **SB 375** was submitted by Gary Mitchell, KDHE. ([attachment 12](#))

The Chair announced the following subcommittee: Senator Emert, Chair; Senator Oleen; and Senator Goodwin and stated that amendments to the amended SRS bill should be brought to his office (356E) by Tuesday, March 10 at noon.

The meeting adjourned at 10:58. The next scheduled meeting is March 10, 1998

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/5/98

NAME	REPRESENTING
Jim Germer	KAPS
Jane Phyllis	KCOD
Larrie Ann Brown	KS Trout Consulting
Sandra Strand	Ks Advocates for Better Care
Tom Laing	InterHab
JOHN HOUSE	SRS
Michelle Bola	KAPS
Michelle Hayden	KAPS
Jean Kraku	Ks Gshys Prog
John Kiefhaber	Ks Health Care Assn.
Debra Zehr	Ks Assoc Homeost Services for Aging
Lloyd Hull	SRS
Carolyn Quinn	KDHE
Jeanne Tesban-Kuntz	KDOA
Vicki-Lynn Hessel	Budget
Rochelle Chronister	SRS
Mike Taylor	City of Wichita
Glenn M. Gravel	KTLA
Marsha Anderson	CWA

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/5/98

NAME	REPRESENTING
Judy Smith	OWA
Terri Roberts	KSNA

SJ 2
3/5/98
a. 1

**State of Kansas
Department of Social
& Rehabilitation Services**

Rochelle Chronister, Secretary
Janet Schalansky, Deputy Secretary



For additional information, contact:

SRS Office of Research
Suzanne Woods, Director
915 SW Harrison Street, Sixth Floor
Topeka, Kansas 66612-1570
☎785.296.3329 / Fax 785.296.4685

For fiscal information, contact:

SRS Finance Office
Diane Duffy, CFO
915 SW Harrison Street, Tenth Floor
Topeka, Kansas 66612-1570
☎785.296.6216 / Fax 785.296.4676

**Senate Judiciary Committee
Thursday, March 5, 1998**

Testimony: Adult Protective Services

**Adult and Medical Services Commission
Ann Koci, Commissioner
(785) 296-5217**

*Senate Judiciary
3-5-98
att. 1*

Kansas Department of Social and Rehabilitation Services
Rochelle Chronister, Secretary

Senate Judiciary Committee
SB 375

March 5, 1998

Mr. Chairman and members of the committee, I am Ann Koci, Commissioner of Adult and Medical Services. Thank you for providing me this opportunity to testify concerning Senate Bill 375.

The Department of Social and Rehabilitation Services supports Senate Bill 375 and requests this committee approve this legislation which will provide clarification and needed changes to the current statutes for the investigations of Adult Abuse, Neglect and Exploitation. The task force believes with privatization of community services and deinstitutionalization of vulnerable adult populations we need to revise the definitions of abuse, neglect and exploitation, expand the list of mandated reporters, update the procedures related to investigations, include a provision for emergency conservator, and clarify responsibilities between SRS and the Department of Health and Environment.

The proposed legislation was developed by the Adult Protective Services Executive Task Force which has been in existence since February, 1997. This task force meets bimonthly and is composed of representatives from multiple agencies, including the Departments on Aging and Health and Environment, the various SRS Commissions, Provider and Advocacy Associations including the nursing facility industry. The membership insures a broad representation from both government and the private sector.

The task force continued to work on revisions to Senate Bill 375 following the last legislative session. Attached to this testimony is the ballooned bill prepared by the task force.

The proposed statutes make K.S.A. 39-1401 through K.S.A. 39-1404 exclusively a Department of Health and Environment statute and K.S.A. 39-1430 exclusively an SRS statute. For example, SRS investigates reports of abuse, neglect, exploitation to adults in Adult Family Homes and to adults with mental retardation or developmental disabilities receiving services through community agencies/affiliates operated or funded by SRS. Therefore, references to Adult Family Home on lines 20 and 32 of K.S.A. 39-1401 Section I and references to individuals with mental retardation or developmental disabilities on lines 23 through 24 of K.S.A. 39-1401 Section I have been removed from K.S.A. 39-1401 and added to K.S.A. 39-1430, Section 4 (a) beginning on line 37. The task force also recommended deletion of home health aid, line 42 and independent living counselor, line 43 in Section 5, K.S.A. 39-1431 (a) page 8, as mandated reporters.

The one exception to consensus is the use of the term "inappropriate" under the new definitions of adult abuse located in K.S.A. 39-1401, Section I(f), lines 20,22,34. The term will not impose additional constraints above current OBRA or state requirements and should not increase reporting requirements by adult care homes. The only exception would be if they are not in compliance with Medicare or state regulations, which is the current practice. Nor will it increase administrative costs for the adult care

7-2

homes. The changes in this legislation will not effect the scope of investigations under either KDHE or SRS. KDHE will continue investigations of resident to resident and staff to resident abuse, neglect and exploitation in adult care homes.

Other components of the proposed bill include:

- Makes the definitions of abuse, neglect, exploitation more consistent, explicit and less confusing, and provides clarification and consistency between Department of Health and Environment and SRS.
- Adds a definition of sexual abuse to both statutes.
- Establishes consistent time lines for conducting investigations in both adult care homes and the community, which will ensure needed resources are available for the most critical needs in a timely manner.
- Expands the list of mandated reporters to include more persons who provide services to vulnerable adults, including teachers, case managers, guardians/conservators.
- Includes a provision for an emergency conservator which will protect the assets of vulnerable adults.

The proposed Adult Protective Services legislation will provide consistency in the delivery of services to vulnerable adults

Thank you, I will be happy to stand for questions.

SENATE BILL No. 375

By Committee on Ways and Means

2-21

9 AN ACT concerning abuse, neglect and exploitation of certain persons;
0 amending K.S.A. 39-1401, 39-1402, 39-1404, 39-1430, 39-1431, 39-
1 1433, [39-1434,] 39-1435 and 39-1440 and repealing the existing
2 sections.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. K.S.A. 39-1401 is hereby amended to read as follows: 39-
6 1401. As used in this act:

7 (a) "Resident" means:

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

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

11 (3) (2) any individual kept, cared for, treated, boarded or otherwise
12 accommodated in a medical care facility; or

13 (4) any individual with mental retardation or a developmental disa-
14 bility receiving services through a community mental retardation facility
15 or residential facility licensed under K.S.A. 75-3207b and amendments
16 thereto; or

17 (5) (3) any individual, kept, cared for, treated, boarded or otherwise
18 accommodated in a state psychiatric hospital or state institution for the
19 mentally retarded.

20 (b) "Adult care home" has the meaning ascribed thereto in K.S.A.
21 39-923 and amendments thereto.

22 (c) "Adult family home" has the meaning ascribed thereto in K.S.A.
23 39-1501 and amendments thereto.

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

27 (e) (d) "Services which are necessary to maintain physical and mental
28 health" include, but are not limited to, the provision of medical care for
29 physical and mental health needs, the relocation of a resident to a facility
30 or institution able to offer such care, assistance in personal hygiene, food,
31 hing, adequately heated and ventilated shelter, protection from health
32 safety hazards, protection from maltreatment the result of which
33 includes, but is not limited to, malnutrition, deprivation of necessities or

1-4

5-1

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

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

(g) (f) "Abuse" means neglect; infliction of physical or mental injury or deprivation by a caretaker of services which are necessary to maintain physical and mental health any act or failure to act performed intentionally or recklessly that causes or is likely to cause harm to a resident, including:

(1) Infliction of physical or mental injury;

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

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

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

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

(6) fiduciary abuse;

(7) omission or deprivation by a caretaker or another person of goods or services which are necessary to avoid physical or mental harm or illness [or]

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

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

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

(A) any sexual act by a caretaker with a resident; or

(B)

or

.

reasonably

(i) "Exploitation" means intentionally misappropriation of resident property or 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, harassment, duress, deception, false representation or false pretense by a caretaker or another person.

intentionally

1-6

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

out

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

(l) "State psychiatric hospital" means Larned state hospital, Osawatomie state hospital, ^{and} Rainbow mental health facility, ~~and Topoka state hospital.~~

(out)

(m) "State institution for the mentally retarded" means Kansas neurological institute, Parsons state hospital and training center ~~and Winfield state hospital and training center.~~

(out)

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

(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.

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

Sec. 2. K.S.A. 39-1402 is hereby amended to read as follows: 39-1402. (a) Any person who is licensed to practice any branch of the healing arts, a licensed psychologist, a chief administrative officer of a medical care facility, an adult care home administrator, a licensed social worker, a licensed professional nurse or, a licensed practical nurse, a bank trust officer, a guardian or a conservator who has reasonable cause to believe that a resident is being or has been abused, neglected or exploited, or is in a condition which is the result of such abuse, neglect or exploitation or is in need of protective services, shall report immediately such information or cause a report of such information to be made in any reasonable manner to the department of health and environment with respect to residents defined under (a)(1) and ~~(a)(3)~~ (a)(2) of K.S.A. 39-1401 and amendments thereto and to the department of social and rehabilitation

or a licensed master level psychologist

or operator

a teacher,

1-6

3 services with respect to all other residents. Reports made to one depart-
 4 ment which are required by this subsection to be made to the other
 5 department shall be referred by the department to which the report is
 6 made to the appropriate department for that report, and any such report
 7 shall constitute compliance with this subsection. Reports shall be made
 8 during the normal working week days and hours of operation of such
 9 departments. Reports shall be made to law enforcement agencies during
 10 the time the departments are not open for business. Law enforcement
 11 agencies shall submit the report and appropriate information to the ap-
 12 propriate department on the first working day that such department is
 13 open for business. A report made pursuant to K.S.A. 65-4923 or 65-4924
 14 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.
 (omit)

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

1-7

1 need of protective services, within 24 hours of receiving such report;
2 initiate an investigation, including a personal visit with the resident
3 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
0 shall include a finding of whether there is or has been abuse, neglect or
1 exploitation; recommended action and a determination of whether pro-
2 tective services are needed. If it appears that a crime has occurred, the
3 appropriate law enforcement agency shall be notified by the department
4 investigating the report.

5 (b) The secretary of social and rehabilitation services shall maintain
6 a register of the reports received and investigated by the department of
7 social and rehabilitation services; the findings, evaluations and the actions
8 recommended. The register shall be available for inspection by personnel
9 of the department of social and rehabilitation services. The secretary of
0 social and rehabilitation services shall forward a copy of any report of
1 abuse, neglect or exploitation of a resident investigated by the department
2 of social and rehabilitation services to the secretary of health and envi-
3 ronment unit; in the case of a report of abuse, neglect or exploitation of
4 a resident of an adult family home; to the secretary of aging.

5 (c) The report received by the department of social and rehabilitation
6 services and the written findings, evaluations and actions recommended
7 shall not be deemed a public record or be subject to the provisions of the
8 open records act. Except as otherwise provided in this section, the name
9 of the person making the original report to the department of social and
0 rehabilitation services or any person mentioned in such report shall not
1 be disclosed unless the person making the original report specifically re-
2 quests or agrees in writing to such disclosure or unless a judicial pro-
3 ceeding results therefrom. Except as otherwise provided in this section,
4 no information contained in the register shall be made available to the
5 public in such a manner as to identify individuals.

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

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



11

19

red, immediately notify the appropriate law enforcement agency;

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

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

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

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

(D) complete, within 30 working days of receiving a report, a thorough investigation and evaluation to determine the situation relative to the condition of the involved resident and what action and services, if any, are required. The investigation shall include, but not be limited to, consultation with those individuals having knowledge of the facts of the particular case; and

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

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

(c) The department of health and environment may inform the chief administrative officer of a facility as defined by K.S.A. 39-923 and amendments thereto of substantial findings of resident abuse, neglect or exploitation.

Sec. 4. K.S.A. 39-1430 is hereby amended to read as follows: 39-1430. 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 or threatened with harm through action or inaction by either another individual or through their own action or inaction. Such term shall not include a resident as the term "resident" is defined under K.S.A. 39-1401 and amendments thereto when (1) such person is residing in such person's own home, the home of a family member or the home of a friend, (2) such person resides in an adult family home as defined in K.S.A. 39-1501 and amendments thereto, or (3) such person is receiving services through a community development disabilities facility or a residential facility licensed pursuant to K.S.A. 75-3307b and amendments thereto. Such term

will not include persons to whom K.S.A. [30-310] et seq. and amendments thereto apply.

(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

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

8 (1) infliction of physical or mental injury;

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

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

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

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

22 (6) fiduciary abuse;

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

26 [(8) medically inappropriate conduct that causes or is likely to cause
27 physical harm to an adult.]

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

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

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

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

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

(A) any sexual act by a caretaker with an adult; or

(B)

OR

.

reasonably

10-1

10-1

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

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

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

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

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

(l) "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.

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

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

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

or a licensed master level psychologist

a teacher,

~~(home health aide does not include those as defined in K.S.A. 39-7,100 (b)(2))~~

(out)

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

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

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

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

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

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

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

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 (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 (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 (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.

1-14

Confirmed

1 (d) The department of social and rehabilitation services may inform
the chief administrative officer and community facilities licensed pursuant
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
every six months thereafter.

8.

9.

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

7-1-1

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

10.

1-15

5/15

C

C

59-3036. Emergency appointment of guardians or conservators; emergency removal of guardians or conservators; appointment of guardian to serve on standby basis.

(1) If during the pendency of a proceeding initiated under K.S.A. 59-3009 and amendments thereto, it appears that there is an imminent danger that the physical health or safety of the proposed ward will be seriously impaired unless immediate action is taken, the proposed ward, or any adult interested in the welfare of the proposed ward, may petition the court in which the proceeding is pending for the emergency appointment of a guardian or conservator.

(2) The petition shall state:

(A) The names and addresses of the individuals and entities entitled to notice; and

(B) the relief requested and the facts and reasons supporting that request.

~~(3) The petition for an emergency guardianship or conservatorship need not be accompanied by a guardianship or conservatorship plan.~~

(3) ~~(4)~~ A hearing shall be held no more than 48 hours after a petition for an emergency appointment has been filed. Notice shall be given in the manner directed by the court.

(4) ~~(5)~~ If the court determines that there is an imminent danger that the physical health or safety of the proposed ward will be seriously impaired or financial resources will be depleted unless immediate action is taken, the court shall appoint a guardian or conservator in the manner prescribed in K.S.A. 59-3014 and amendments thereto. The court shall assign to an emergency appointee only those duties and powers necessary to protect against the imminent danger shown.

(5) ~~(6)~~ The emergency appointment shall remain in effect until the conclusion of the hearing conducted under K.S.A. 59-3013 and amendments thereto.

(b) If at any time the court has probable cause to believe that a guardian is not effectively performing such person's duties and powers, and that there is an imminent danger that the physical health or safety of the ward will be seriously impaired or financial resources will be depleted unless immediate action is taken, the court shall:

(1) Suspend and temporarily replace the guardian with a guardian or conservator meeting the qualifications set forth in K.S.A. 59-3014 and amendments thereto;

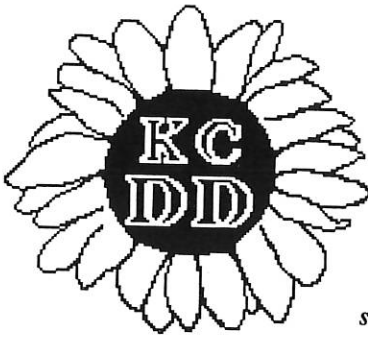
(2) reassign the duties and powers of the suspended guardian to the emergency appointee; and

(3) direct the temporary appointee to file a petition under K.S.A. 59-3029 and amendments thereto within five days if such petition is not already pending, and submit such reports as may be necessary.

(c) The court may designate another eligible person selected in accordance with K.S.A. 59-3014 and amendments thereto to assume the duties and powers assigned to the guardian upon the resignation, disability, temporary absence or death of the guardian. The individual so designated, other than an individual designated because of the temporary absence of a guardian, shall submit a report pursuant to K.S.A. 59-3029 and amendments thereto within 10 days after an individual appointed on a standby basis assumes the duties of a guardian. A guardian serving on a standby basis may exercise all of the duties and powers assigned to the predecessor as a guardian until the conclusion of the proceedings under K.S.A. 59-3029 and amendments thereto or, in case of the temporary absence of the predecessor guardian, until the predecessor guardian returns, unless otherwise ordered by the court.

(d) This section shall be part of and supplemental to the act for obtaining a guardian or conservator, or both.

3-5-98
att # 2



Kansas Council on Developmental Disabilities

BILL GRAVES, Governor
TOM ROSE, Chairperson
JANE RHYS, Ph. D., Executive Director

Docking State Off. Bldg., Room 141, 915 Harrison
Topeka, KS 66612-1570
Phone (785) 296-2608, FAX (785) 296-2861

"To ensure the opportunity to make choices regarding participation in society and quality of life for individuals with developmental disabilities"

SENATE JUDICIARY

March 5, 1998

Testimony in Regard to SB 375 CONCERNING ABUSE, NEGLECT, AND EXPLOITATION OF CERTAIN PERSONS.

Mr. Chairman, Members of the Committee, I appear today on behalf of the Kansas Council on Developmental Disabilities in support of SB 375 - Abuse, Neglect, and Exploitation of Certain Persons.

The Kansas Council is a federally mandated, federally funded council composed of individuals appointed by the Governor. Over half of the membership is composed of individuals who are persons with developmental disabilities or their immediate relatives. Also represented are the major agencies who provide services for individuals with developmental disabilities. Our mission is to advocate for individuals with developmental disabilities, to see that they have choices in life.

For the past year I, along with many other individuals, served on Commissioner Koci's Adult Protective Services Executive Task Force. We spent many days carefully reviewing SB 375 and proposing changes. All parties discussed the definition of abuse, neglect and exploitation and most agreed that this was a better definition. We agreed to the inclusion of "fiduciary abuse," the expansion of those who are mandatory reporters, and the consistent timelines for investigation of abuse. We feel that the ability to do emergency conservatorship appointments is greatly needed. I will be brief and state that this proposed bill has had great input from many different constituencies and that it has our total support.

I appreciate the opportunity to testify and would be happy to answer any questions you might have.

Jane Rhys, Ph. D.
Executive Director
Kansas Council on Developmental Disabilities
Docking State Office Building, Room 141
Topeka, KS 66612-1570
785 296-2608
E-Mail jrhyes@idir.net

Senate Judiciary
3-5-98
att # 2

KAPS

5/24 -98
att3

KANSAS ADVOCACY & PROTECTIVE SERVICES, INC.

2601 Anderson Ave., Suite 200
Manhattan, Kansas 66502-2876
Voice/TDD (785) 776-1541
Voice/TDD (800) 432-8276
Fax (785) 776-5783

501 W. Jackson, Suite 425
Topeka, Kansas 66603
Voice/TDD (785) 232-0889
Fax (785) 232-4758
E Mail jgermer@idir.net

*Robert Ochs, President
Sharon Joseph
Kate Shaer*

*Board of Directors:
Josephine Patten, Secretary/Treasurer
Richard Gutierrez
Tim Steininger*

*Martha Blue-Banning
Jane Rhys
Pat Terick*

TO: Senate Judiciary Committee
FROM: Kansas Advocacy & Protective Services, Inc.
RE: Senate Bill 375
DATE: February 25, 1998

INTRODUCTION

My name is James Germer. I am the executive director of Kansas Advocacy & Protective Services, Inc. (KAPS). KAPS is a federally funded nonprofit corporation. KAPS is the designated protection and advocacy agency for individuals with disabilities for Kansas. Each state and territory in the United States has a similar organization. KAPS' role is to advocate for the rights of individuals with disabilities. Pursuant to federal law, KAPS has authority to pursue resolution of disputes through legal, administrative, and other appropriate remedies. It is KAPS' belief that individuals should resolve disputes at the lowest level of intervention, if possible.

KAPS' SERVICES

KAPS administers four federal programs: 1) Protection and Advocacy for Individuals with Developmental Disabilities (PADD), 2) Protection and Advocacy for Individuals with Mental Illness (PAIMI), 3) Protection and Advocacy for Individual Rights (PAIR), and 4) Protection and Advocacy for Assistive Technology (PAAT). Each program has a different federal funding source. KAPS averages approximately 125 requests for assistance each month. KAPS limits the number of cases it accepts for representation based on program priorities developed annually based on public comment. KAPS provides information, legal advice, and referrals to those individuals whose situation does not fall within program priorities.

PADD serves individuals with lifelong disabilities that manifest before age 22 and impair three of seven life activities including mobility, learning, ability to live independently, language, economic self-sufficiency, self-care, and self-direction. KAPS' caseload is approximately 60% special education issues and 40% adults living in residential and community settings.

*Senate Judiciary
3-5-98
att3*

AIMI serves individuals with mental illness that live in 24-hour residential facilities or if an issue arises within 90 days of the individual's discharge from a residential facility. Because of the eligibility limitations imposed by federal law, the PAIMI program primarily serves individuals with mental illness admitted to one of the state psychiatric hospitals or individuals residing in nursing facilities.

PAIR serves "other" individuals with disabilities. PAIR can serve anyone with a lifelong disability if the individual is not eligible for services under either PADD or PAIMI. Because KAPS does not have the funding to serve this large group, PAIR's priorities are generally limited to Americans With Disabilities Act issues, particularly access to state and local government services and access to public accommodations.

The Kansas University Affiliated Program at Parson administers the PAAT Program. KAPS is the legal advocacy component of the program to advocate for individuals with disabilities to obtain assistive technology from public or private funding sources so that they can live and work independently in the community.

SENATE BILL 375 (amendments to KAN. STAT. §§ 39-1401-1440)

KAPS supports Senate Bill 375 and urges this committee to pass the bill. As Commissioner Koci testified, the legislation will provide much needed clarification and changes to the investigation of adult abuse, neglect, and exploitation statutes. This bill is the result of work by many individuals interested in protective services for adults. During the past year a broad range of consumers, advocacy organizations for individuals with disabilities, service providers, professional associations, educators, staff from the Kansas Department of Social and Rehabilitation Services, staff from the Kansas Department of Health and Environment, staff from the Kansas Department on Aging, and staff from the Kansas Attorney General's Office have met often to develop the proposed legislation.

Senate Bill 375 is the result of these meetings in which everyone had an opportunity to explain their unique interests and perspectives on the reporting and investigating of adult abuse, neglect and exploitation. KAPS believes the result is a bill that, if enacted, will do much to improve the current system.

MANDATED REPORTERS

KAPS supports the bill for several reasons. First, Sections 2 and 5 substantially expand the lists of mandated reporters of abuse, neglect, and exploitation. In the institutional setting (Section 2), the additions are teachers, bank trust officers, guardians, conservators, and adult care home operators. These are individuals often not associated with institutions but who nonetheless may have a great deal of contact with residents and are often quite knowledgeable about a resident's care and financial situation. In the community setting (Section 5), the additional mandated reporters also include teachers, case managers, guardians, conservators, bank trust officers, rehabilitation counselors, holders of powers of attorney, and operators of residential care facilities. Again, these additions are appropriate since these individuals have frequent contact

th adults living in the community.

CONSISTENT DEFINITIONS OF ABUSE AND NEGLECT

Second, the bill (Sections 1 and 4) will provide consistent definitions of the terms "abuse" and "neglect" in the institutional and community settings. Currently, the definitions of these terms are different in the two sections (KAN. STAT. § 39-1401{f}, {g} and § 39-1430{b}, {c}). The difference can lead to the incongruous situation where an act or omission to act that is abusive or neglectful in one setting may not be considered so in the other setting. Such differences are not helpful for SRS' and KDHE's credibility with the public, adults with disabilities, or disability advocacy groups. Another example of this inconsistency is "fiduciary abuse." Currently, in the community setting this is a recognized type of abuse (KAN. STAT. § 39-1430{e}); no similar notion exists in the statutes governing abuse and neglect in institutions. The proposed legislation will do much to rectify these inconsistencies.

EXPANDED DEFINITION OF ABUSE

Third, the bill (Sections 1 and 4) will not only make the definitions of abuse and neglect more consistent, it will also expand the definition of abuse to clearly include certain situations: physical or mental injury, sexual abuse, inappropriate physical or chemical restraints, threatening or menacing conduct, fiduciary abuse, omission of necessary goods or services, and inappropriate medical conduct. An expanded definition of abuse will make clear to all care givers what behavior is abusive in Kansas and what behavior could cause a care giver to be placed on the statewide registry.

CONSISTENT INVESTIGATION PROCEDURES

Fourth, the bill (Sections 3 and 6) will require KDHE and SRS to report criminal acts to the appropriate law enforcement agency immediately and establishes time lines for investigating adult abuse, neglect, and exploitation. SRS and KDHE must meet with the involved adult within twenty-four hours if the reporter suggests imminent danger to the adult. If the reporter does not suggest imminent danger for abuse situations, the agencies must initiate contact with the adult within three days. When the reporter does not suggest imminent danger for neglect and exploitation situations, the agencies must initiate contact within five days. The agencies must complete their investigations within thirty working days of receiving the report. Just as the bill makes the definitions more consistent between the institutional and community settings, it will also make the investigation time lines and the agencies' follow-up procedures more consistent.

EMERGENCY CONSERVATORSHIP

Fifth, the bill will permit the appointment of emergency conservators if someone is exploiting an adult's funds, savings, checking account or other assets. The guardianship statutes have long permitted emergency guardianships when a proposed ward is in imminent physical danger. Under current law, when financial exploitation is suspected, an individual's assets are difficult to protect while a protective services investigation is ongoing and a conservatorship action is pending. This can lead to further dissipation of assets. The proposed emergency conservatorship will help alleviate this problem. Under proposed legislation, the court can appoint someone to immediately have conservator duties (on an emergency temporary basis only) over the individual's assets while the exploitation investigation is ongoing and the petition

: the appointment of a limited or plenary conservator is pending.

CONCLUSION

KAPS urges the Committee to recommend passage of Senate Bill 375, amending the investigation of adult abuse, neglect, and exploitation statutes. The proposed legislation will do much to improve the investigations conducted by SRS and KDHE; that in turn will do much to improve the lives of individuals with disabilities living in institutional and community settings by making clear that Kansas will aggressively and thoroughly investigate incidents of adult abuse, neglect, and exploitation. The other benefit of this legislation for adults with disabilities will be that SRS will develop a useable statewide registry of abusive, neglectful, or exploitive care givers. This is an important step toward eliminating this undesirable element in the care giver workforce.

I also want to emphasize again that Senate Bill 375 is the result of work by many persons active in the disability community. The bill's language represents some compromises by everyone involved. Nevertheless, the disability community has shown by its involvement and support of the bill that a majority believe this bill will help create a more responsive state system to investigate and eliminate adult abuse, neglect and exploitation. Rarely has such a large group of individuals and organizations involved with disability issues appeared before the legislature to support almost without reservation proposed legislation. That is occurring for Senate Bill 375 because so many have a stake in the issue and because everyone recognizes the need to improve the current system.

Thank you for taking time to consider KAPS' comments regarding this important bill.



State of Kansas

Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

5-5-98
att
4

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
FAX: 296-6296

**TESTIMONY OF
OFFICE OF THE ATTORNEY GENERAL
BEFORE THE SENATE JUDICIARY COMMITTEE
RE: SB 375
ABUSE, NEGLECT AND EXPLOITATION OF CERTAIN PERSONS
March, 5, 1998**

Chairman Emert and Members of the Committee:

Thank you for the opportunity to discuss SB 375 - Abuse, Neglect and Exploitation of Certain Persons. I am Martha Hodgesmith, Deputy Attorney General, Medicaid Fraud and Abuse Division.

The Attorney General supports the balloon amendments to K.S.A. 39-1401 et. seq. and K.S.A. 39-1430 et. seq. The time has come to revise these statutes to make them consistent with each other. More importantly, we must improve them to protect the interests of the vulnerable citizens of the State of Kansas who are elderly and/or have physical or mental disabilities.

Staff from the Attorney General's office have been active participants in the SRS Adult Services Executive Task Force and the legislative work group dedicated to developing the legislation before you today. We assisted in the development of language relating to the reporting of crime to law enforcement and changes in the definitions of what constitutes abuse, neglect, or exploitation.

In order to ensure the timely involvement of law enforcement, the balloon as submitted has language to amend K.S.A. 39-1404 (a) (1) and K.S.A. 39-1433 (a) (1) 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

Senate Judiciary
3-5-98
att 4

Page 2

SB375

Office of the Attorney General

March 5, 1998

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. Depending on the progress of the facts that are provided and verified, they may not notify law enforcement agencies until up to two weeks after an incident.

The existence of such a two week time gap can result in the loss of important evidence that law enforcement is best suited and authorized to obtain and preserve. This lapse of time is unacceptable for a proper investigation and prosecution of a crime. Moreover, SRS' and KDHE's investigation focuses on removing the resident or adult from any imminent or immediate danger and identifying deficiencies in service, not necessarily conducting a criminal investigation. This needed change is not for the purpose of interfering with an SRS or KDHE investigation, but to ensure that a proper parallel criminal investigation is conducted when it appears a crime has occurred.

The importance of language that amends K.S.A. 39-1401 and K.S.A. 39-1430 to change the definition of abuse, neglect, and exploitation is crucial. The proposed definitions will clearly specify what types of acts are proscribed and are required to be reported. The statutes currently contain inconsistent definitions. By amending the statutes, the definitions will be consistent in each statute. Furthermore, the amendments will clearly define the situations that are reportable incidents. Clarity benefits reporters, those who may be caring for vulnerable persons and the vulnerable persons themselves.

Thank you for your consideration of my comments. The Attorney General urges your favorable consideration of Senate Bill 375 as proposed to be amended.

4-2



Kansas Home Care Association • 1000 Monterey Way, E2 • Lawrence, Kansas 66049 • (785) 841-8611
Fax (785) 749-5414

To: Senator Tim Emert, Chair, Senate Judiciary Committee
From: Linda Lubensky, Kansas Home Care Association
Date: February 25, 1998
Re: S.B. 375, Abuse, Neglect, and exploitation of certain persons.

On behalf of the Kansas Home Care Association, I would like to express our support for the revisions proposed by SRS to S.B. 375. Our association has worked with SRS, and other interested groups, for over a year now, to help craft revisions that could be supported by the various industries, as well as strengthen the effectiveness of the Adult Protective Service laws.

Should you accept these revisions, we feel that the resulting legislation would be a positive vehicle to addresses some of the major problems existing in the current APS statutes. The definitions of abuse, neglect, and exploitation would be clarified, as well as the roles of the Kansas Department of Health & Environment and the Kansas Department of Social and Rehabilitation Services. It would add a definition of sexual abuse, speak to time-lines for conducting investigations, and expand the list of mandated reporters. A provision is also included to allow for an emergency conservator, when necessary to protect the assets of a vulnerable adult.

One of the proposed revisions, of particular importance to us, is the deletion of "Home Health Aide" as a new required reporter. We have been adamantly opposed to the inclusion of the aide for a number of reasons. A Home Health Aide is a paraprofessional whose limited training requirements include only a minimal amount on abuse, neglect and exploitation. Requiring an aide to report suspected abuse independently, without the knowledge of his/her supervising nurse, undermines the quality of care being provided as a team by the HH agency. That agency is required, by state and federal regulations, to insure the coordination of care for each patient. Moreover, the supervising nurse has a legal, and ethical, responsibility to be aware of, and address, the needs of that patient. To not inform the supervising nurse would actually be considered a form of insubordination and non-compliance. On-going communication between all agency staff involved in a patient's care is vital to any effective care-planning process.

KHCA is, however, committed to working with SRS and APS in improving the reporting process and will help in identifying

Senate Judiciary
3-5-98
att 5

existing problems and developing solutions. A committee has recently been created for that purpose and we look forward to the cooperative effort.

The protection of adults at risk for abuse and exploitation is a responsibility that we take seriously. We have appreciated the opportunity to provide input and feel that the SRS proposed revisions will result in a workable and more-effective system to protect vulnerable adults.

55 sub
3-5-95
att 6

My name is Fernan C. Logantill
and reside in a Retirement complex. My
address is 3024 Ivy Dr., N. Newton, Ks.

My comments and concerns
regarding today's agenda is as follows:

My concern is 2 fold. First not
enough emphasis is placed on the
"Fiscal" and "Fiscal exploitation" area.
In other words, the protection of the
fiscal assets of such persons involved.
Not only from the different persons
mentioned in the Bill, but also the
"Management" and "Boards" of institutions
looking after these people. They have
to have strict identifiable guidelines
and methodology there to, to hold them
to those guidelines. People in Care Home
Complexes, and Retirement entities, all of
a sudden become "Cash Flow" resources,
profit centers and the like. Then all
sorts of fiscal maneuvering starts to
take place, and these people become
unwittingly cash resources for these
so called care people, their business
and/or complexes.

Senate Judiciary
3-5-95
att 6

Secondly, there has to be ways to report this fiscal exploitation to the governmental monitoring agencies involved.

We are aware of and, in our minds, a fiscal exploitation situation. To try and find a governmental agency that will accept responsibility, and do something is, in our minds, non-existent.

We have spent time in Tapeka, trying to find such agencies. We were given offices and people to see here and in Rukhita. We ran all of these down. All, none, said they could do nothing, not their area of concern. Most suggested different offices, places, but these also declined, no one was responsible.

A friend took on this chore. He is politically savvy, and thought this would be "no problem" His letdown of people called, is legion. He was, as we were, given offices, addresses, and people plus phone numbers, and it was all a "wild goose chase", all of this to no avail. No one person or office would say that this was

their realm of responsibility. they either declined, or passed you on to some other ^{Person} ~~person~~, or place.

Therefore, these 2 areas must be strictly identified and addressed. Protection of ASSETS from expropriation, not only from persons, but also the business their to + their Administrators and their Boards.

Also an easily approachable identifiable agency, that recognizes their obligation to this matter at hand.

InterHab

The Resource Network
for Kansans with Disabilities

700 SW Jackson - Suite 803 - Topeka, Kansas 66603-3758 - interhab@ink.org
voice 913/235-5103 - tty 913/235-5190 - fax 913/235-0020

TO: Senator Tim Emert, Chair
Senate Judiciary Committee

FR: Tom Laing, Executive Director 
InterHab: The Resource Network for Kansans with Disabilities

RE: Senate Bill 375, and proposed amendments
by the Adult Protective Services (APS) Task Force

InterHab supports the efforts of SRS to find consensus in updating laws that provide for reporting and investigation of abuse, neglect and exploitation of dependent persons. Under current law, InterHab member staff and other similarly licensed service providers are mandated reporters of ANE. While it is true that ANE cases will always be present, we appreciate that the state, in cooperation with responsible community organizations, continues to seek ways to remedy those problems through systemic improvements in the process, so we can prevent future cases through heightened local vigilance and remove offenders from the system whenever the facts warrant such an action.

We appear today in hopes that Senate Bill 375 can be adopted and moved through the process, but must first register strong concerns regarding one of the proposed balloon amendments. Additionally, we offer two sets of brief amendments for your additional consideration.

I. Objections to proposed amendment language:

Our sole objection to the proposed amendments is the elimination of two groups, which were included in the original bill as mandatory reporters -- home health aides and independent living counselors. (reference on page 8 of the balloon bill draft)

We see no reason why any group of service providers, working in the home of a dependent person, should be exempt from mandatory reporting laws

Senate Judiciary
3-5-98
att 7

*STUD
.98
att #7*

when other service providers, serving dependent persons in the more public settings of the community, are included. These organizations, which have asked to be excluded from the bill in many instances serve persons with similar levels of needs, are paid by tax dollars from the same source, with dollars appropriated under the same federal law.

The issue is, "Will the state require all service providers to maintain an official statutory role as reporters of ANE violations?" Under this bill, some are, and some are not. If that is the ultimate policy, then it says very clearly that the state has no policy on the reporting of abuse, neglect and exploitation, but instead has policies which are inconsistent and therefore inadequate.

There may be administrative reasons or philosophical distinctions, which some groups may apply as reason to oppose their coverage such laws, but those reasons, do not outweigh the need for vigilance. I believe that the people have a right to expect the state to exercise moral authority on this issue, and in this hearing, you speak for the people. In the instance of this law, it falls to the Legislature to ultimately define the duties of those who perform human service work with state resources.

We urge you to make clear policy in the law that every provider of supports and services for vulnerable persons, whose funding for such services is derived from legislative appropriations, has an obligation to be trained and required to comply with mandatory ANE reporting laws.

II. Additional proposed amendments:

In addition, we have two sets of amendments that we would ask you to consider.

The first set addresses the need to notify organizations against whom complaints are filed, whenever possible, so that a vulnerable person's interests are immediately addressed. The second set addresses the rights of organizations to be notified of the results of ANE investigations.

a) Notification of complaints:

We believe organizations that provide services and supports to dependent persons have the best capacity and the most immediate ability to terminate an abusive, exploitative or negligent situation if one has been identified.

We recommend language be added (in both the SRS and KDHE statutes) requiring the state to notify an organization at which (an) instance(s) of abuse, neglect or exploitation has been alleged. We would support waiving this requirement only if the state has cause to believe such notification would endanger the health, safety or welfare of a person being served, or if there is cause to believe notification would jeopardize the integrity of the investigation.

b) KDHE should be obligated to report all findings to an organization that has been investigated.

On line 24, page 6 of the bill, after the word "environment" delete the word "may" and replace with the word "shall". And, on line 26, delete all after the word "thereto" and replace it with the following words "of the results of all such investigations arising as a result of complaints reported under this act."

Similar language is requested in the SRS statute, (see page 11, lines 1-4) for the same reasons.

III. Summary

It is our hope that we will be able to support SB 375, and to support the continuation of the work of SRS to reform the ANE laws. However, we need clear policy on mandatory reporting.

If such a policy cannot be determined in these hearings, we do not recommend passage of the bill until such time as the legislature has considered (in interim session) these issues and made recommendations.

Additionally, we urge your adoption of amendments to this bill which would ensure that complaints, whenever possible, are reported to the provider of services where the alleged violation has occurred. And, finally we ask that the state be required to provide all findings to the organization where such investigation was located.

Thank you for your time and your consideration of these comments.

74



55wd
3-5-98 #8

Gina McDonald
President/CEO

Member Agencies:

ILC of Southcentral Kansas
Wichita, KS
316/942-6300 Voice/TT

Independence, Inc.
Lawrence, KS
785/841-0333 Voice
785/841-1046 TT

Independent Connection
Salina, KS
785/827-9383 Voice/TT

LINK, Inc.
Hays, KS
785/625-6942 Voice/TT

The Whole Person, Inc.
Kansas City, MO
816/561-0304 Voice
816/531-7749 TT

Topeka Independent Living Resource Center
Topeka, KS
785/233-4572 Voice/TT

Southeast Kansas Independent Living, Inc.
Parsons, KS
316/421-5502 Voice
316/421-6551 TT

Center for Independent Living for Southwest Kansas
Garden City, KS
316/276-1900 Voice

Center for Independent Living
Hutchinson, KS
316/663-3989 Voice

Resource Center for Independent Living, Inc.
Osage City, KS
785/528-3105 Voice

KACIL Capitol Office
501 Jackson, Suite 450
Topeka, KS 66603
785/233-4550 Voice/TT
785/233-4231 Fax

Senate Judiciary Committee
Senator Tim Emert, Chair
Testimony regarding S.B. 375
March 5, 1998

Mr. Chairman and members of the committee, thank you for the opportunity to testify on S.B. 375. My name is Gina McDonald and I represent the Kansas Association of Centers for Independent Living (KACIL). KACIL is an organization of eleven Centers for Independent Living (CIL's). CIL's promote the rights and dignity of people with all types of disabilities. We provide training, support and advocacy to ensure that all people with disabilities can live in the community of their choice.

KACIL supports the substitutes to S.B. 375 recommended by Social and Rehabilitation Services. As more individuals are moving back into communities it is important that there be protections in place for those individuals who are vulnerable. This bill will ensure the definition of abuse, neglect and exploitation are more consistent. It adds a definition of sexual abuse and it provides clarification and consistency between the Department of Health and Environment and SRS.

KACIL and other advocacy groups and service providers have been involved in the crafting of this bill for over two years now. We appreciate the level of participation we have had on this bill and congratulate the Department of SRS for including all the people who will be affected by this bill in the development.

Please consider passage of S.B. 375. Thank you for your time.

Senate Judiciary
3-5-98
att 8



KHCA

STW
3-5-98

Member of
ahca

Kansas Health Care Association

221 SOUTHWEST 33rd STREET
TOPEKA, KANSAS 66611-2263
(785) 267-6003 • FAX (785) 267-0833

TESTIMONY

before the

SENATE JUDICIARY COMMITTEE

by

John L. Kiefhaber, Exec. Vice President

KANSAS HEALTH CARE ASSOCIATION

Chairperson Emert and members of the Committee:

The Kansas Health Care Association, representing over 200 professional nursing facilities, assisted living/residential health care facilities and long term care units of hospitals across the State of Kansas, appreciates the opportunity to speak before you today in opposition to S. B. 375, unless amended. The bill was originally developed to specify a new reporting responsibility for health care professionals and others to report any instances of abuse, neglect or exploitation of adults. However, through an interagency workgroup process of drafting the bill's language the focus of the proposal shifted to the setting where adults in need of care actually reside. After talking to representatives of SRS, KDHE, and the Attorney General's office it appears to us that there is no necessity for pinning adult family homes, adult care homes, medical care facilities, or state psychiatric hospitals to the front page of this bill.

The intent of this proposal should be to specify the reporting responsibilities of individuals no matter what the care or treatment setting is. Therefore, if action is taken by the Committee to pass this bill we would request an amendment to remove "adult care homes" and other facilities from the bill's language.

A second issue brought up by this bill is the definition of abuse on Page 2, lines 10-35. Professional nursing facilities already have a double layer of requirements under state licensing statutes administered by KDHE and under federal Medicare and Medicaid certification requirements that specifically define abuse, neglect and exploitation, harm to a resident, use of physical or chemical restraints, etc. which are now applied in a complicated annual and complaint-based survey and certification process. The definitions in this bill do not match the definitions for many of these terms already being applied now. Each term has a precise

Senate Judiciary
3-5-98
Att 9

medical and legal meaning that has been operationalized within the various health care programs. Under this bill there would be a third layer of regulation of care provided in our nursing homes and other facilities. Many times this would not be a problem, but we believe adding new and inconsistent definitions could open up the opportunity for federal fraud and abuse auditors or plaintiff attorneys to attempt to hold facilities responsible for a whole array of abuse and neglect charges that were never intended under the licensing or the certification programs we now have. This double or triple jeopardy is unfair and unnecessary in order to establish new reporting requirements for cases of abuse, neglect and exploitation.

If the Committee acts to pass this bill we would request amendment of the Page 2 definitions to reflect those now being used in our various care and assistance programs.

We urge the Committee to not pass S. B. 375. Thank you.

Whitten-
35 3-98
att 10

SILCK

Statewide Independent Living Council of Kansas

700 S.W. JACKSON, SUITE 212, TOPEKA, KS 66603

(785) 234-6990 VOICE / TDD

(785) 234-6651 FAX

**Testimony Presented to
Senate Judiciary Committee
by
Statewide Independent Living Council of Kansas
Shannon Jones
March 5, 1998**

The Statewide Independent Living Council of Kansas (SILCK) is mandated by the federal Rehabilitation Act to study existing services for people with disabilities and make recommendations to improve and expand services that will enable Kansans with disabilities to achieve their optimum level of independence and improve their quality of life.

The SILCK supports the substitute bill for SB 375. We also commend the efforts of SRS in preparing this legislation and appreciate the manner in which they have solicited stakeholder input while addressing consumers needs throughout the process. The revisions provide a consistency in the definitions of abuse, neglect and exploitation.

All of the proposed revisions are necessary to protect consumers of services in the community and provide the necessary tools for adult protective services staff to conduct investigations and ensure safety for the consumer.

The SILCK supports the intent and the efforts which have been present in the development of Substitute for SB 375. We encourage that it be heard and passed this session.

*Senate Judiciary
3-5-98
att 10*



700 SW Jackson, Suite 601
Topeka, Kansas 66603-3731

785/233-8638 * FAX 785/233-5222
www.nursingworld.org/snas/ks

the Voice of Nursing in Kansas

55 5-98 att 11
Debbie Folkerts, A.R.N.P.--C.
President

Terri Roberts, J.D., R.N.
Executive Director

FOR MORE INFORMATION CONTACT

Terri Roberts JD, RN
Executive Director
Kansas State Nurses Association
700 SW Jackson, Suite 601
Topeka, Kansas 66603-3731
785-233-8638
March 5, 1998

WRITTEN TESTIMONY

S.B. 375 CONCERNING ABUSE, NEGLECT AND EXPLOITATION
OF CERTAIN PERSONS

Chairperson Emert and members of the Senate Judiciary Committee, the Kansas State Nurses Association has been monitoring the discussions regarding the abuse reporting statutes and wants to conceptually support the revisions being proposed today by Ann Koci, Commissioner of Adult and Medical Services from SRS.

Since the last legislative session ended a number of individuals and groups have worked together to prepare changes/admndments to S.B. 375 that clarify the statutes and are focused on the intent of protecting vulnerable residents/clients entrusted to the care of others.

We have some concerns about the proposals (ballons being offered today) being made to add to the definition of ABUSE sections (page 2, line 16 and page 7, line 7) "any sexual act by a caretaker with a resident" because there might be circumstances in which the caretaker is a spouse to the resident, or adult. We believe that the language in the bill is sufficient in this regard.

Additionally, the federal laws (HHS) related to the definition of ABUSE use the term "unreasonable confinement". While we understand the need to create a more definitive list with regard to this concept (restraints, etc) we believe the term "inappropriate" in the definition of ABUSE (page 2, lines 20 and 22) should be replaced with the word "unreasonable" to conform with the federal definitions and other state definitions.

Thank you.

Senate Judiciary
3-5-98
att 11



5Jub
3-5-98
412

KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Gary R. Mitchell, Secretary

WRITTEN TESTIMONY PRESENTED TO THE
SENATE JUDICIARY COMMITTEE

by
Gary R. Mitchell
Secretary of Health and Environment

February 25, 1998

SENATE BILL 375

Thank you for the opportunity to submit testimony on Senate Bill 375. The state Legislature addressed statutes dealing with adult abuse, neglect, or exploitation in 1990 with passage of House Bill 2800. The primary purpose was to assign investigation authority to the Kansas Department of Health and Environment (KDHE) for facilities licensed by KDHE and to the Kansas Department of Social and Rehabilitation Services (SRS) for community issues and facilities licensed by SRS. Since implementation of this statute, administrative and legal experience indicates that a few changes might be appropriate.

This legislative proposal originated with SRS suggesting substantive changes during the 1992 legislative session. KDHE supported those changes, but the legislation was introduced too late in the session to receive full consideration. After the 1992 legislative session, the agencies agreed that KDHE would take the initiative to draft a bill addressing mutual concerns, resulting in 1993 House Bill 2119. In 1995, Senate Bill 305 was introduced at both agencies' request and was successful in the Senate, but did not achieve House approval.

Passage of SB 375 will allow KDHE and SRS to work from common and improved definitions of abuse, neglect and exploitation; allow for greater collaboration between the agencies on issues that do overlap; and provide for more successful prosecution of those persons who are truly abusive or neglectful. This bill also will clarify agency responsibilities and make the law more consistent with the administrative practices that have evolved by both agencies in order to make the law workable.

The bill does a number of specific things to improve the state's ability to deal with adult abuse, neglect or exploitation:

- (1) By adding intent, physical or mental injury and sexual abuse to the definition of abuse, this definition will be strengthened and allow for resources to be focused on issues that are truly abusive or neglectful, and further promote the prohibition of perpetrators working in adult care homes and health care facilities.
- (2) By including misappropriation of property in the definition of exploitation, both agencies will be able to pursue cases of theft, which we have not been able to successfully pursue because of the existing definition.
- (3) This bill would further clarify that Section 1401 through 1411 is the primary responsibility of KDHE and 1430 through 1442 the primary responsibility of SRS.
- (4) Passage of this bill will result in the same time frames for investigation and resolution of complaints for both institutional issues by KDHE and community issues by SRS. We believe that the impact on a person who is abused or neglected is the same whether or not they live in an institution or community setting and the time frames for agencies to respond should be the same.
- (5) The bill makes further consistencies between the agencies pertaining to the definitions of reports, law enforcement, and specifying requirements about notice to regulatory authorities and similar issues.

Passage of this bill will enable both KDHE and SRS to investigate, pursue and prosecute cases of abuse, neglect or exploitation in a manner consistent with the intent of the original legislation, yet in a more efficient and productive way. Accordingly, KDHE requests the committee's favorable consideration of SB 375.

Again, I thank the committee for the opportunity to submit testimony on Senate Bill 375. Please feel free to contact me if you have questions or concerns about this bill and its impact or implications for KDHE.