

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE.

The meeting was called to order by Chairperson Jim Morrison at 1:32 p.m. on February 19, 2003, in Room 243-N of the Capitol.

All members were present except Representatives Landwehr, who was excused.

Committee staff present:

Bill Wolff, Legislative Research Department
Renaee Jefferies, Revisor of Statutes' Office
Gary Deeter, Committee Secretary

Conferees appearing before the committee:

Representative Dean Newton
Katy Lamm, Deputy Director, Johnson County Area on Aging
Debbie Collins, Director of Government Relations, Johnson County Developmental Supports
Darrell Donahue, Congressional District Coordinator, AARP
Greg Reser, Director, Licensure and Certification, Bureau of Health Facilities, Kansas Department of Health and Environment
Candy Shively, Deputy Secretary, Kansas Department of Social and Rehabilitative Services
Kathleen Olsen, Kansas Banker's Association
Sandy Barnett, Kansas Coalition Against Sexual and Domestic Violence
Phyllis Gilmore, Executive Director, Behavioral Sciences Regulatory Board
Anna Silva-Keith, Chair, BSRB
Ron McNish, Clinical Director, Johnson County Mental Health Center
John Randolph, Executive Director, Mental Health Center of East Central Kansas, Emporia
Ron Hein, Legislative Counsel, Mental Health Credentialing Coalition
Mark Gleeson, Family and Children Program Coordinator, Office of Judicial Administration
Gary White, Vice President of Legislation, Kansas Trial Lawyers Association
Elizabeth Cauble, PhD, LMSW, Professor, Kansas State University Social Work
Dorothy Stucky Halley, LMSW, Halley Counseling Services, Parsons
Carl Myers, Assistant Professor of Social Work, Washburn University
Sharon Stuewe, LSCSW, President-Elect, Kansas Association of School Social Workers
Sandy Barnett, Kansas Coalition Against Sexual and Domestic Violence
Bonnie Robles, LSCSW, Coordinator of Social Work Serices, Special Education Department, Topeka Public Schools

Others attending: See Guest List.

A motion was made, seconded, and passed to approve the minutes for February 17, 2003.

Representative Peggy Long chaired the meeting for the hearing on HB 2254.

CONTINUATION SHEET

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE on February 19, 2003, in Room 243-N of the Capitol.

Representative Dean Newton reviewed the proposed legislation, which broadens the protection for dependent adults. (Attachment 1) He said that most abuse of dependent adults is financial; He gave anecdotal evidence of such abuse, such as family members or health-care workers obtaining power of attorney and siphoning off a vulnerable person's money. He outlined the two major provisions of the bill:

- It expands the list of mandatory reporters of adult abuse, including financial institution officers.
- It involves law enforcement personnel in addition to Social and Rehabilitative Services (SRS).

Representative Newton said those who report abuse are immune from lawsuits, observing that early detection of abuse reduces damage to the victims.

Kathleen Lamm, Deputy Director, Johnson County Area Agency on Aging, testified in support of the bill. (Attachment 2) She said national statistics indicate that only 1 in 14 incidents of elder abuse or neglect are reported to authorities, noting that in Johnson County reports of adult abuse have increased 338%. She stated that in-home care providers are one of the best sources to alert authorities to abuse.

Greg Reser, Director, Licensure and Certification, Bureau of Health Facilities, Kansas Department of Health and Environment (KDHE), explained that his bureau was responsible to investigate allegations of abuse, noting that the bill created some confusion about whether KDHE's responsibilities were abrogated by directing reports to go to SRS and law enforcement officers, especially since KDHE inspects adult-care facilities and reports abuse to the Attorney General, to a nurse-aide registry, and to law enforcement officers. (Attachment 3) Since the bill excludes institutions for the developmentally disabled, he said he was not clear if that exempted KDHE from any investigation of such an institution.

Candy Shively, Deputy Secretary, Kansas Department of Social and Rehabilitative Services, stated that SRS is responsible to investigate 18 and older adults regarding investigating reports of abuse, stating that SRS receives 17,000 reports of abuse each year. (Attachment 4) She noted a fiscal cost (also included in members' packets of testimony as Attachment 21) of an additional \$1.6 million to the State, saying that some changes could be effected in order to reduced costs. She also noted that the facilities at Topeka (KNI) and Parsons should be included in the bill.

Kathleen Olsen, Kansas Bankers Association, testified that by broadening the list of those required to report adult abuse to include officers or employees of financial institutions, the bill creates a dilemma for financial officers who want to respect the confidentiality of their customers and, if they report suspected abuse, may violate their bank's privacy policy. (Attachment 5) She said the KBA questions the need for this bill.

CONTINUATION SHEET

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE on February 19, 2003, in Room 243-N of the Capitol.

Sandy Barnett, Kansas Coalition Against Sexual and Domestic Violence, spoke in support of the main concepts of the proposed legislation, but expressed concern about the change in wording which describes vulnerable adults as all adults who are harmed by others. (Attachment 6) In so doing, she said, those who counsel victims of sexual or domestic violence would be required to report each event to SRS (17,208 domestic violence victims, 988 sexual assault victims), adding significantly to the SRS workload and reducing a victim's willingness to confide in a counselor. She suggested retaining the current statutory definition of *adult*.

Steve Howe, District Attorney's office, Johnson County, said his office often prosecutes adult abuse, noting a dramatic increase in abuse cases, many of which require law enforcement involvement, an additional intervention established by this bill.

Written testimony was submitted by Debbie Collins, Director of Government Relations, Johnson County Development Supports; Darrell Donahue, Congressional District Coordinator, AARP; Deanne Bacco, Executive Director, Kansas Advocates for Better Care; and Otto Handwerk, Overland Park. (Attachment 7)

The Chair closed the hearing on **HB 2254**.

As Chair, Representative Tom Holland opened the hearing on **HB 2170**.

Phyllis Gilmore, Executive Director, Behavioral Sciences Regulatory Board (BSRB), which has oversight over most of the state's mental health professionals and social-work professionals, said this proposed legislation creates a uniform confidential and privileged communication act for all of the BSRB licensees. (Attachment 8) She said the intent of the bill is to allow confidentiality for mental health professionals without being so broad that it stymies the search for truth and justice.

Anna Silva-Keith, Chair, BSRB, spoke in support of the bill. She said the bill widens the exceptions to privilege, but in mental-health areas there are needs for reporting that must limit confidentiality. (Attachment 9)

Dr. Betsy Cauble, Professor, University of Kansas Social Work Department spoke in opposition to the bill, listing two reasons:

- She said the bill blurs two privacy functions--privilege and confidentiality, privilege being a legal and more comprehensive protection, and confidentiality being a professional, ethical value.
- The bill creates many exceptions to privilege, making it unacceptable in its current form; however, she said would be willing to collaborate with the BSRB to work out differences. (Attachment 10)

CONTINUATION SHEET

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE on February 19, 2003, in Room 243-N of the Capitol.

Dorothy Stucky Halley, Assistant Professor, Pittsburg State University, who with her husband operates Halley Counseling Services, said the exceptions to privilege were the most problematic, requiring a conscientious counselor to explain to a client all the exceptions impinging on his/her privilege in counseling situations, a process which would be confusing to a client. (Attachment 11) She also noted that the bill creates confusion for college teachers, since there are three levels of social work, but the bill applies to only 2 levels of licensure.

Ron McNish, Clinical Director, Johnson County Mental Health Center, and a board member of BSRB, acknowledged the confusion, but noted that the present statutes are even more confusing. He said in nearly every situation, if a third person is privy to information between two people, the attorney-client privilege is breached. He said **HB 2170** eliminates contradictions between the statutes addressing privilege and those addressing confidentiality. (Attachment 12)

John Randolph, Clinical Psychologist and Executive Director of the Mental Health Center of East Central Kansas, said that staff in his facility were often called into court to testify regarding a client, stating that until 1986, statutory privilege varied widely by circumstances. (Attachment 13) In 1986, K.S.A. 65-5601 *et seq.* provided clear and unambiguous statements regarding privilege for patients in treatment facilities, with 14 well-articulated exceptions, statutory boundaries which he said have served citizens well. He said **HB 2170** was modeled after these statutes, providing a balanced privilege between clients and licensees.

Ron Hein, Legislative Counsel, Mental Health Credentialing Coalition, spoke in support of the bill. He noted that attorney-client privilege does not apply to mental health professionals, and he strongly urged the Committee to adjust the law. (Attachment 14)

Mark Gleeson, Family and Children Program coordinator, Office of Judicial Administration, said the bill needed added language to allow licensee to testify in court hearings; he supplied suggested language in Attachment 15.

Gary White, Vice President of Legislation, Kansas Trial Lawyers Association, addressed one fundamental issue that he said had yet to be resolved: the distinction between confidentiality and privilege. He said presently in statute the distinction is clear, but **HB 2170** blends the two. He said in most settings, at the entrance of a third party, communications may be confidential, but they are not privileged, whereas the bill extends privilege to a third party, in effect violating the statutory privilege in present law. He suggested a rewording of the bill in Attachment 16.

Carl Myers, Assistant Professor of Social Work, Washburn University, testified that he was concerned about the negative impact of the bill on the work of therapists. He said the present statutes are clear as to rights of therapists and rights of client, but the proposed legislation complicates that clarity with 16 exceptions which create ethical and professional vagueness and may place a client at risk. (Attachment 17)

CONTINUATION SHEET

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE on February 19, 2003, in Room 243-N of the Capitol.

Sharon Stuewe, LCSW, President-Elect, Kansas Association of School Social Workers, said the bill would be devastating to social workers in public schools, observing that school social workers will find the requirements and exceptions of the bill very difficult to explain to students and families. ([Attachment 18](#))

Stacy Mann, Kansas Coalition Against Sexual and Domestic Violence, said rape and domestic counselors would find it difficult to apply mandates of the bill in crisis situations. ([Attachment 19](#))

Bonnie Robles, LCSW, Coordinator for Social Workers in USD 501 (Topeka) said the proposed bill would diminish the ability of social workers to protect students under their care, especially in group settings; she wondered whether present privileged information would be required to be released by school authorities. ([Attachment 20](#))

Answering a question regarding applicable federal regulations, Ms. Halley said mental health workers are subject to HIPPA (Health Insurance Portability and Privacy Act). Mr. White said if a state law is more restrictive than the federal regulations, the state law takes precedence. He said the list of exceptions was partly to address federal requirements.

Additional written testimony is included as [Attachment 22](#): Larry Hays, Board Member, BSRB; Gary Price, Department of Psychoogy and Research in Education, University of Kansas; Stephenie Roberts, LCSW; and JoAnn Briles-Klein, LCSW.

The hearing on **HB 2170** was closed.

The Chair adjourned the meeting at 3:18 p.m. The next meeting is scheduled for Thursday, February 20, in Room 243-N of the Capitol.

**HOUSE HEALTH AND HUMAN SERVICES COMMITTEE
GUEST LIST**

DATE: FEBRUARY 19 2003

NAME	REPRESENTING
Mary Moore	KPA
Shirley K. Bays	BSRB
Ren McHale	BSRB
Gary P. Mc	BSRB
Kathy Jones	BSRB
John D. Randolph	BSRB
Carl Myers	Private Social Worker
Dorothy (Stacy) Halley	Private Social Worker
Sharon Stuebe	LECSU, Ks. Assoc. School Soc. Wkr.
Bonnie A. Robles	School Social Work
Yamona Dierksen	KCSL
Michelle McClellan	Private Social Work - Student
Mailee Brown	KCSOV
Julienne Maslin	Gov. Office
Sandy Barnett	KCSOV
Meredith Hance	STUDENT
Anna Silva-Keith	BSRB
Robert Husting	New Beginning
Mary Jane Kennedy	KDHE
Greg Reese	KDHE

**HOUSE HEALTH AND HUMAN SERVICES COMMITTEE
GUEST LIST**

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NAME	REPRESENTING
Maisie Schremp	BSRB
Candy Shover	SRS
Rosalie Sachs	SES
Kathy Olsen	Ks Bankers Assoc.
Aime Thompson	citizen
Camille Noche	AG
Thyllis D'Amico	BSRP
Michelle Peterson	En. Environmental Consulting
Roger Scurlock	BSRB
Rodine Weltska Johnson	Patrick J. Hurley & Co (KNASW)
JOHN GECKLES	SPEEA
Sky Westerlund	KNASW
Betsy Cauble	KNASW
Mary Witt	KTLA
Johns Ridge	SRS
Patsy Samson	KNDA

DEAN NEWTON
 REPRESENTATIVE, 21ST DISTRICT
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 dnewton@kc.rr.com



COMMITTEE ASSIGNMENTS
 MEMBER: APPROPRIATIONS
 EDUCATION AND LEGISLATIVE
 BUDGET
 JUDICIARY

ROOM 115-S, STATEHOUSE
 TOPEKA, KANSAS 66612-1504
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 newton@house.state.ks.us

TOPEKA
 HOUSE OF
 REPRESENTATIVES

February 18, 2003

The Honorable Jim Morrison
 Chair, Health and Human Services Committee
 State Capitol, Room 171-W
 Topeka, KS 66612

Representative Morrison and Members of the Health and Human Services Committee:

Thank you for the opportunity to appear before you as a proponent of HB 2254. The legislation you have in front of you is the product of extensive collaboration between law enforcement, service providers and individuals who advocate for the elderly and disabled. The main purpose of this legislation is to broaden the protections of dependent adults, including the elderly and those with physical and mental illness disabilities.

There are numerous cases where elderly victims are taken advantage of by various individuals, including family members, home health care workers, trustees and those with power of attorney. Most of the abuse is financial and is done through intimidation, manipulation and deception. Examples of recent abuse this legislation is addressing include:

- A case where five people worked together to steal over \$600,000 in a ten month period from an elderly victim. The victim was recently widowed and was diagnosed with a mental illness. Prior to her husband's death, the victim knew the five perpetrators as business clients of her late husband. Shortly after her husband's death, these individuals worked hard to gain her trust. They used this relationship to steal hundreds of thousands of dollars from the victim.
- An attorney who was assigned as trustee to liquidate the estate of one of his own family members stole over \$100,000 from the rest of his family.
- A home health care nurse who took advantage of a young victim with severe physical disabilities. The nurse placed numerous charges on the victim's credit card without her permission.

Attachment 1
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- Home health care workers in a number of instances have stolen from elderly individuals that have major health problems at the time of the thefts. The thefts were accomplished a variety of ways including fraudulent use of a power of attorney and unauthorized use of the victim's credit cards and checks.

The legislation in front of you is an attempt to address these egregious examples. The key components of this legislation can be broken down into the following categories:

1. Expanding the list of mandatory reporters of adult abuse.

This legislation expands the list of mandatory reporters to include officers of financial institutions, trustees and legal representatives. Financial institutions and others can detect potential abuse early in the process and limit the financial damage done to the victim. *It is important to note that all mandatory reporters are immune from lawsuits for reporting possible abuse.* The sooner law enforcement knows about the fraud the easier it is to prosecute the case.

2. Requires reporting to Law Enforcement in addition to SRS

The law currently requires that abuse be reported to SRS. This bill simply adds one small step and requires that abuse also be reported to law enforcement at the same time. There have been numerous occasions where law enforcement was notified long after abuse has occurred. This greatly impeded the ability of law enforcement to conduct an effective investigation because many victims' mental or physical health had deteriorated in a short period of time. Early law enforcement involvement can also reduce the amount of financial damage done to the victim by halting the flow of money out of their accounts through various law enforcement means. Finally, early law enforcement involvement can help avoid intimidation and manipulation of the victim by the suspect.

As I mentioned above, this legislation is a result of extensive collaboration between law enforcement, service providers and advocates for dependant adults and will substantially help protect these individuals from abuse and fraud. I urge you to pass H.B. 2254 favorably out of committee.

February 19, 2003

Testimony in Support of House Bill 2254

For: Health and Human Services Committee

By: Kathleen S. Lamm,
Deputy Director, Johnson County Area Agency on Aging

Member, Elder Abuse Committee of Johnson County Community Violence
Action Council (COMVAC)

Mr. Chairman and members of the Health and Human Services Committee I am here today to speak in favor of House Bill 2254. As Deputy Director of the Johnson County Area Agency on Aging, I supervise our Area Agency's geriatric care managers and assessors. In addition, I serve on the Johnson County Elder Abuse Committee, a committee of COMVAC. In that capacity, I, along with other members, have given input to the proposed revisions to the statute. Linda Wright, Director of the Area Agency on Aging, serves as Chair of the Elder Abuse Committee. She was unable to be here today, and asks that I represent the Area Agency on Aging and the Elder Abuse Committee. I am also here speaking from my own experiences especially related to clients served by our geriatric care managers.

The National Center on Elder Abuse estimates that only 1 in 14 incidents of elder abuse and neglect are reported to authorities. In our service area, Johnson County, the reports of adult abuse and neglect have increased from 152 in 1995, to 513 in 2001. This is a 338% increase. As more older adults live out their life in a community setting rather than an institutional setting, they are likely to become a victim of abuse that goes unnoted and unreported. We need to update our reporting statute to make those most likely to have contact with older adults mandated reporters of abuse, neglect and exploitation.

This revision would require all legal representatives of adults, both those living in the community and those in a licensed institution, to report suspected abuse, neglect or exploitation. It also provides these representatives with immunity from liability for making a report. Often times the person who has the closest relationship with a vulnerable adult is the individual they have entrusted with durable power of attorney or health care power of attorney.

The inclusion of employees providing assistance funded by Medicaid, Medicare or the Kansas Senior Care Act, will strengthen and clarify the reporting requirement. In our work with providers funded through these programs, we find that, unlicensed in-home workers have the most frequent and intimate contact with the adult for whom they provide care. Older adults often develop a relationship of trust with their in-home workers. The observations by these workers and the information shared with them by the older adult can provide the first indications of abuse, neglect or exploitation. Because this level of in-home

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worker is unlicensed, there is no other authority mandating their reporting of abuse, neglect or exploitation. Our Area Agency's geriatric care managers commonly receive calls from in-home workers who are concerned, yet uncertain as to how to intervene. Although we will always follow up on any concerns of this nature, a direct report from the worker who observed or heard from the older adult would be more accurate and timely than a third party report.

Finally, we support the addition of reporting to local law enforcement during normal business hours, in addition to the current requirement for reporting to them when SRS offices are closed. This will facilitate earlier intervention by law enforcement agencies and will provide clarity as well as consistency of instruction for mandated reporters.

Thank you for this opportunity to comment. I would be happy to answer any questions.

K A N S A S

RODERICK L. BREMBY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR
DEPARTMENT OF HEALTH AND ENVIRONMENT

Testimony on House Bill 2254
to
House Committee on Health and Human Services
Presented by Greg L. Reser, Director, Licensure and Certification, Bureau of Health
Facilities

February 19, 2003

Chairperson Morrison and members of the Health and Human Services Committee, I am pleased to appear before you today to discuss proposed House Bill 2254.

The Bureau of Health Facilities of the Kansas Department of Health and Environment is responsible for investigating allegations of abuse, neglect, or exploitation in adult care homes and medical care facilities under the provisions of KSA 39-1401 et seq. These investigations are conducted in addition to complaints received about the services or quality of care received by residents and patients in these facilities.

KDHE believes that the new definitions of legal representative, financial institution, and government assistance provider in Section 3 (o), (p), and (q) of the bill are beneficial in expanding the persons obligated to report possible abuse, neglect, and exploitation of residents.

However, we find the provisions of New Sections 1 and 2 to be confusing and unclear in some areas. For example, Section 1(a) references SRS receiving reports of "adult abuse and neglect" but does not mention "exploitation" which is defined in Section 3(i). Section 1(d) relates to "any investigation involving a facility subject to licensing or regulation by the secretary of health and environment" being reported promptly to KDHE "upon conclusion of the investigation or sooner if such report does not compromise the investigation." Since KDHE currently conducts investigations of abuse, neglect, or exploitation against "residents" under the provisions of KSA 39-1401 et seq, it is unclear why KDHE would report the investigation to itself. Two possibilities exist: 1) that the provisions of New Section 1 contemplate that SRS is to receive all reports of adult abuse and neglect (but not exploitation?), or 2) KDHE sends results of investigations in facilities it regulates that find abuse and neglect occurred to SRS after the fact so SRS can decide if protective services are required or law enforcement agencies need to pursue criminal investigation. Clarification of these issues would be beneficial. Whenever KDHE currently makes findings of abuse, neglect, or exploitation against perpetrators, appropriate referrals are made to the attorney general's office, licensing boards, registries, or law

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K A N S A S

RODERICK L. BREMBY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF HEALTH AND ENVIRONMENT

enforcement agencies. It is unclear under HB 2554 if those types of referrals would be made only to SRS.

Another concern for KDHE is the removal of "state institution for the mentally retarded", Kansas neurological institute and Parsons state hospital and training center" from the exclusion of "medical care facility" in Section 3 (j). Since the two referenced facilities are licensed as medical care facilities it appears KDHE might need to investigate complaints at these facilities since Section 3(a)(2). With this language previously removed, KDHE has not conducted investigations at these facilities. This has always been under the purview of the Kansas Department of Social and Rehabilitation Services and we would recommend this not be changed.

I thank you for the opportunity to appear before you today and will gladly stand for questions the committee may have on this topic.

Kansas Department of

Social and Rehabilitation Services

Janet Schalansky, Secretary

House Health & Human Services Committee

February 19, 2003

HB 2254 - Dependent Persons

Integrated Service Delivery
Candy Shively, Deputy Secretary
785-296-3271

For additional information contact:
Office of Planning and Policy Coordination
Marianne Deagle, Director

Docking State Office Building
915 SW Harrison, 6th Floor North
Topeka, Kansas 66612-1570
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**Kansas Department of Social and Rehabilitation Services
Janet Schalansky, Secretary**

House Health & Human Services Committee
February 19, 2003

HB 2254 - Dependent Persons

Mr. Chairman and members of the Committee, thank you for the opportunity to appear on HB 2254. My name is Candy Shively, Deputy Secretary for the Department of Social and Rehabilitation Services. This legislation enacts several changes to the adult abuse, neglect, and exploitation statutes.

The Department provides adult protective services to adults ages 18 and over who are in need of protection from abuse, neglect, or exploitation. Abuse includes both mental and physical abuse and includes sexual and fiduciary abuse. Neglect covers personal neglect and neglect by a caretaker or other person. Exploitation can be of a physical as well as financial nature. Emergency support services as well as guardianship/conservatorship services are also provided. In FY 02, the Department responded to over 17,000 adult protective service reports.

Although SRS had several concerns about the original language of the bill, Representative Newton has worked cooperatively with us to resolve most of them. The balloon he is offering will take care of most of our issues and we are here today in general support of the bill. The remaining concern we do have is that Section 1 may create confusion as to the roles SRS and law enforcement play in the process.

The language of new Section 1 requires SRS and law enforcement agencies to work cooperatively in the investigation of adult abuse. We support this provision as SRS currently has both the statutory and policy responsibility to involve law enforcement in investigations when it appears a criminal act may have occurred. Each entity then has the responsibility to take appropriate follow-up actions, with SRS responsible for determining if protective services are needed during the criminal investigation. It is our belief this is the intent of new Section 1 and we recommend further wording changes to specify investigations related to criminal intent. We also recommend this section refer more broadly to reports of abuse, exploitation, fiduciary abuse, and neglect as defined later in statute. These instances could all involve criminal intent.

Both new Section 2, as well as amendments to K.S.A. 39-1408 and 39-1437, appear to require the Department to petition for guardianship or conservator services if the resident refuses services and is found to lack capacity. Current statutory language is permissive around this issue as the agency is often not directly involved in petitioning for such services but relies on other resources including the Kansas Guardianship Program. It is also our

understanding the new language will be modified to continue the current permissive provision.

The change to K.S.A. 39-1407(m) removes the Department's investigative responsibility for adult abuse occurring in the SRS institutions for mental retardation, the Kansas Neurological Institute and Parsons State Hospital. Again, we understand this was not intended and the authority will remain with the Department.

Other changes made to the bill are positive additions including the expansion of mandated reporters in K.S.A. 39-1402 and 39-1431. The Department supports the bill with the stated clarifications.

Thank you.

February 19, 2003

TO: House Committee on Health and Human Services

FROM: Kathleen Taylor Olsen, Kansas Bankers Association

RE: HB 2254, Reporting Adult Abuse

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today regarding **HB 2254**. Of interest to the banking community are the changes made by Section 4 of the bill, to K.S.A. 2002 Supp. 39-1402(a). This section lists the people, by profession, who must report the abuse or exploitation of an adult when they have a reasonable cause to believe an adult is or has been abused or exploited. The bill would broaden the list of people required to report such abuse to include officers or employees of financial institutions.

We at the KBA field many calls from bankers who care about their adult customers and who, when the banker suspects financial abuse is occurring, want to report what they are seeing to someone who can help that customer. The dilemma that bankers face, however, is whether, in so reporting, they are breaching the implied contract of confidentiality they have with their customers. In addition, since the enactment of the federal regulation governing customer privacy, the bankers are concerned that such a report would be in violation of the bank's own privacy policy.

Subsection (c) of K.S.A 39-1402, currently allows anyone having a reasonable cause to suspect that an adult is being abused or exploited to report that information to the proper authorities. As we field the calls of bankers wanting to voluntarily report their suspicions, we have used this provision of the law to encourage bankers to make those reports.

K.S.A. 39-1403, gives some peace of mind to bank officers and employees who suspect abuse is occurring with regard to a customer and who report it. This provision states that anyone making a report of suspected abuse under this act shall not be subject to any civil liability on account of such report, unless that person acted in bad faith or with malicious purpose. In addition, the federal privacy rules permit a bank to share some customer information in order to protect against actual or potential fraud, or to the extent specifically permitted or required under law.

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HB 2254, Reporting Adult Abuse
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In conclusion, we believe that Kansas bankers want to help their customers and are doing so under the current provisions of the law which allow any person with a reasonable cause to suspect abuse or exploitation of an adult to report it. We question the need to make such reporting by bank officers and employees mandatory.



KANSAS COALITION AGAINST SEXUAL AND DOMESTIC VIOLENCE

220 SW 33rd Street, Suite 100 Topeka, Kansas 66611
785-232-9784 • FAX 785-266-1874 • coalition@kcsdv.org

HB 2254

Dear Chairman Morrison and Members of the Committee;

The Kansas Coalition Against Sexual and Domestic Violence is a private non-profit group representing victims of domestic and sexual violence and the advocacy programs serving them. The 27 member programs reported serving more than 1,000 sexual assault victims, 21,250 domestic violence victims and sheltering 4,621 people during 2001. In the same time period the program hotlines responded to more than 29,000 crisis calls. In 2001, law enforcement reported 19,870 incidents of domestic violence, of which 17,208 injuries that were sufficient enough to be noted by law enforcement officers were also reported. Law enforcement also responded to 988 sexual assault reports.

HB 2254 expands the definition of abuse to include financial exploitation and requires financial officers and guardians/conservators to report abuse.

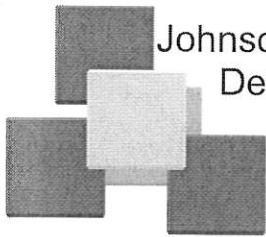
But, on page 9, line 4, HB 2254 also amends K.S.A. 39-1430, and changes the definition of "adult" from vulnerable adults to all adults who are harmed by self or others. This definition of "adult" is also used to define the population of people who mandated reporters must report abuse against. The change in the definition of "adult" will require the reporting of all domestic violence regardless of whether the victims are "vulnerable" adults or able to "look out for their own interests," which will result in many thousands of additional reports each year.

This change in the definition of "adult" would mean that each of the 17,208 domestic violence and 988 sexual assault incidents that resulted in an injury reported to law enforcement would need to be reported to Adult Protective Services. This bill would also have a chilling effect on victims who confide in doctors, therapists, and others who have become part of the safety net for this population of adults.

Additionally, the reporting of abuse does not inherently translate into appropriate responses that enhance the victims' safety. Lack of an appropriate response in domestic violence cases is more than an inconvenience; it may be fatal. More women and children are injured or killed at the time of leaving an abuser than at any other time.

KCSDV requests that you leave the definition of "adult" as it exists in current statute.

Attachment 6
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Johnson County
Developmental Supports

10501 Lackman Road, Lenexa, KS 66219
Fax (913) 492-5171 Phone (913) 492-6161

To: Representative Jim Morrison, Chair
Members, Health and Human Services Committee

From: Debbie Collins, Director of Government Relations

Date: February 19, 2003

Re: HB 2254

Thank you for this opportunity to offer support of HB 2254, concerning the reporting and investigation of adult abuse, neglect and exploitation.

Johnson County Developmental Supports (JCDS) is the Community Developmental Disability Organization (CDDO) for Johnson County. In our various roles, we provide or help arrange community-based services to nearly 1,000 men, women and children with mental retardation and other developmental disabilities in Johnson County. Additionally, we manage a county-wide waiting list of about 200 people who are at present, without services due to funding shortages.

The people that we support are among the most vulnerable citizens in Kansas. Many are not their own legal guardians and as such, they rely heavily upon family members, service providers, and other caretakers in the community to make decisions that are in their best interests. Clearly, this reliance upon others makes them "easy targets" for abuse, neglect and exploitation of physical, mental and financial means.

JCDS is supportive of any measure that strengthens the ability of local law enforcement departments, including the District Attorney's office, to fully protect our population from abusive practices both in the community and in the state institutions. We offer our full support of HB 2254 and thank Representative Newton for his advocacy efforts on behalf of vulnerable Kansans.

Thank you for your consideration of this measure. If you should have any questions, please feel free to contact me at (913) 492-6161 ex. 230.

*Attachment 7
HHS 2-19-03*



Kansas

February 19, 2003

Chairman Morrison
Chairman Health and Human Services

Good morning Chairman Morrison and Members of the House Health and Human Services Committee. My name is Darrell Donahue and I am a Congressional District Coordinator for AARP Kansas. AARP Kansas represents the views of our more than 348,000 members in the state of Kansas. Thank you for this opportunity to express our support for HB 2254.

AARP believes that all Americans have the right to be free from discrimination, crime, and physical and emotional abuse, neglect, intimidation and financial exploitation.

The rapid increase in the number of older people needing care will require the development, improvement and expansion of a variety of protective services, ranging from simple household-chore services to money management, conservatorships and guardianships.

Elder abuse occurs without reference to race, religion, income, education, place of residence or living arrangement. Because abuse is not always reported, information on who is likely to suffer a particular type of abuse is unavailable.

AARP believes that states should:

- Expand community-based programs, which provide services such as counseling, information and referrals, and personal money management to help prevent and stop abuse.
- Develop public awareness programs, promote interagency coordination and expand in-home services, including respite care, to help identify, prevent and treat cases of elder abuse.
- Increase awareness among the general public and professionals, which could be an effective factor in identifying elder abuse, according to experts.
- Provide strong legal protections against and effective protective services addressing all forms of exploitation and abuse of incapacitated and vulnerable adults.

Additional and special efforts are sometimes necessary to protect vulnerable older adults. Therefore, we respectfully urge you to give favorable consideration to this House Bill 2254 and expand protections for vulnerable adults from abuse, neglect and exploitation.

Thank you for your consideration in this matter.

Darrell Donahue
AARP Kansas



**Kansas Advocates
for
Better Care**

Promoting Quality Long-term Care since 1975

913 Tennessee, Suite 2
Lawrence, KS 66044-6904
phone: (785) 842-3088
toll-free: (800) 525-1782
fax: (785) 749-8029
e-mail: info@kabc.org
website: www.kabc.org

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EXECUTIVE DIRECTOR
Deanne Bacco

HB 2254
reporting abuse, neglect and exploitation
February 14, 2003

Honorable Chairman Morrison and
Health and Human Services Committee Members

Kansas Advocates for Better Care has a long history of promoting quality long-term care and therefore strongly supports the concepts of this legislation for such improvements as:

- the reporting and investigating of adult abuse, neglect and exploitation (ANE) is proposed to include law enforcement entities (in the community and in facilities)
- the list of mandatory reporters of ANE is made to include: officers or employees or financial institutions, a legal representative, a governmental assistance provider
- the definition of "caretaker" is expanded to include those persons who have legal authority or not
- judges can issue an order enjoining caretakers or legal representatives from interfering with provision of services, when facts are provided showing withholding of services has been occurring
- reporting, investigating and safeguarding improvements are made for those vulnerable adults living in community settings who are at the mercy of their caretakers and service providers.

Improvements to KSA 39 have long been needed. We urge you to give favorable attention to this bill and advance the cause of protecting vulnerable adults from abuse, neglect and exploitation.

Thank you for this valuable opportunity to comment on HB 2254.
Deanne Bacco, Executive Director

From: "Howe, Stephen, DAT" <Stephen.Howe@jocoks.com>
To: "garyd@house.state.ks.us" <garyd@house.state.ks.us>
Date: 2/18/03 9:42AM
Subject: FW: Adult Abuse Statute

Steve: Please forward the following:

Honorable Dean Newton
Kansas House of Representatives

I am writing to urge the passage of House Bill 2254 concerning Adult Abuse. I am a member of the Elder Issues Committee of the Johnson County Community Violence Action Committee. I have dedicated my life to the protection of the less fortunate, having spent the past 45 years as a career FBI Agent, police officer, crime victim advocate and a speaker before thousands of Johnson County Elderly. For the past three years I have written articles on frauds and scams against the elderly that appears in "The Best Times," which reach 39,000 households of those 60+.

I am aware that current Kansas statute does not adequately protect the Elderly of Kansas against neglect, exploitation, and abuse. I am aware of the proposed benefits in House Bill 2254 increase protection for our elderly citizens. I strongly urge passage of this proposed bill. If I can be of service to this end, do not hesitate to contact me.

Sincerely,
Otto T. Handwerk
9513 West 122 Terrace
Overland Park, KS. 66213

**HOUSE TESTIMONY
HEALTH AND HUMAN SERVICES
FEBRUARY 12, 2003**

HB 2170

Mister Chairman and Committee Members:

Thank you for the opportunity to testify today in support of HB 2170. I am Phyllis Gilmore the Executive Director of the Behavioral Sciences Regulatory Board (BSRB).

The BSRB is the licensing board for most of the state's mental health professionals, the doctoral level psychologists, the master level psychologists, the clinical psychotherapists, the bachelor, master and clinical level social workers, the master and clinical level professional counselors, and the master and clinical level marriage and family therapists. Additionally, some of the drug and alcohol counselors are registered with the board, although most of them are certified with SRS at the present time. (Please see attached chart.)

HB 2170 creates a uniform confidential and privileged communication act for all of the BSRB licensees. It is believed that the current law, which provides for attorney-client privilege is confusing to clients and licensees. It is generally accepted that the bill addresses a valid concern. However varying views arise in the details.

There are those who would prefer more protection of privacy for clients and there are those who would wish for less privacy and more access to information. The members of the BSRB have worked for over 11/2 years to prepare the bill you have before you. This was a very deliberate and thoughtful effort on their part and has been unanimously agreed to by all of the members, which includes every profession and all of the public members.

The idea presented in HB 2170 was actually first submitted as a result of testimony before the Task Force on Mental Health Providers which was a two-year task force created by the 1998 Legislature. Ron Smith, then General Counsel for the Kansas Bar Association, testified on this subject. He states, "The ideal statutory privilege is broad enough to speak to the valid concerns of mental health professionals about confidentiality without being so broad that it stymies the search for truth and justice. These suggestions come to you from my personal opinion, not as a suggestion of the KBA. Instead of incorporating by reference all the attorney-client laws, cases and rulings, you may want to write your own privilege statute, introduce it through legislation, then let the legislative committee process allow interest groups, ...to tell you why they do, or do not, like the proposal. They might be able to help you write a good statute that is not overbroad."

We have taken that advice and are here today with the belief that the bill before you is a compromise bill that does not lean too heavily in either direction. Obviously, it is a public policy decision as to whether we have met that balance.

Thank you for the opportunity to speak to you this afternoon. I will be happy to stand for questions.

Respectfully submitted,

Phyllis Gilmore
Executive Director

*Attachment 8
HHS 2-19-03*

Behavioral Sciences Regulatory Board

Members Appointed by the Governor:

James Easter, *Public Member*
 Charles Frankenfeld, *Social Work Member*
 Patricia Grimwood, *Professional Counselor Member*
 Larry Hays, *Psychology Member*
 Wesley Jones, *Marriage and Family Therapist Member*
 Jay Mann, *Masters Level Psychologist Member*
 Ronald McNish, *Psychology Member*
 Connie Morris, *Public Member*
 Linda Ward Mosier, *Public Member*
 Anna Silva-Keith, *Public Member*
 James Williams, *Social Work Member*

Phyllis Gilmore, Executive Director
 7 Staff Members

Professions Regulated by the Behavioral Sciences Regulatory Board:

	Registered	Associate	Bachelor	Masters	Clinical	Doctorate
Psychology						X
Social Work		X New license no longer issued	X	X	X	
Professional Counselor				X	X	
Masters Level Psychology				X	X	
Marriage and Family Therapy				X	X	
Registered Alcohol and Other Drug Abuse Conselors	X					

Date: February 19, 2003

TO: Representative Jim Morrison, Chair and Health and Human Service Committee Members

FM: Anna Silva-Keith, Chair, Behavioral Sciences Regulatory Board

RE: HB 2170

I appreciate the opportunity to address you this afternoon regarding HB 2170. I am Anna Silva-Keith, Chair of the Behavioral Sciences Regulatory Board, a public member, not a mental health professional, and the child of a parent with mental illness.

I am seeking your support of HB 2170, a bill that improves the law and eliminates confusion between parties about the limits of privilege and confidentiality.

To the lay person, many of the statutory changes are invisible to a consumer of services, except in the area of informed consent to the *expanded exceptions* to privilege. It is here that public protection is increased because it widens the exceptions to privilege for consumers that receive services from licensed professionals that work in the community and not only in mental health centers or state hospitals.

All Kansans that seek the service from a mental health professional deserve the right to know that what they share is protected under law and that the private discussions that they have with the person, that they build a trusting professional relationship with, stays private. However, there are instances whereby the professional has a responsibility to share information in order to protect other members in a family or the community, such as the threat of crimes against others or even child abuse. In these cases the right to privilege should not apply.

I believe the State has a responsibility to protect *all* of its citizens and be a partner in assuring that legislation that seeks to resolve ambiguity among the legal profession and entire mental health community is approved.

Thank you for your time and consideration.

Sincerely,

Anna Silva-Keith
5 Century Parkway
Neodesha, KS. 66757

Attachment 9
AAS 2-19-03

Testimony: HB 2170

House Health and Human Services Committee Wednesday, February 19, 2003

Testimony presented by A. Elizabeth Cauble, Ph.D, LMSW

Good afternoon. My name is Betsy Cauble. I am a Professor at Kansas State University Social Work Program. I also currently serve as the President of the Kansas Chapter, National Association of Social Workers, (KNASW). KNASW is the professional association of social work in Kansas. Thank you for the opportunity to express the association's concerns about HB 2170.

KNASW opposes HB 2170 for the following reasons.

HB 2170 takes two very distinct and different privacy functions and inappropriately blends them together. Specifically, HB 2170 combines privilege and confidentiality.

Privilege is the highest level of protection within a legal proceeding with the purpose that information cannot be revealed unless the client has given explicit permission to do so. Exercising privilege occurs in a legal proceeding and no other arena. Confidentiality is ethics-guided practice that exists in all practice arenas.

The problem in blending these two different concepts, is that privilege and confidentiality serve very different purposes. Privilege is designed to protect a client's information from being revealed in a legal proceeding. Confidentiality is designed to protect the client's information in the course of receiving social work service.

Many social workers never need to exercise privilege on behalf of a client, because most social workers do not testify in court. All social workers engage in confidentiality, as that is a basic element of everyday practice.

There is a high number of exceptions to the privilege/confidentiality of HB 2170. Currently, confidentiality and privilege exist except when there is a suspicion of child abuse or adult abuse; harm to self or others; or when a complaint is lodged against a licensee through BSRB. Privilege does not apply in a group setting, as that involves third parties.

HB 2170 would create a plethora of exceptions (sixteen exceptions) which must be explained to clients. Additionally, KNASW has concerns that this legislation could potentially conflict with federal laws or policies pertaining to confidentiality, such as substance abuse, special education, or others.

KNASW urges your opposition to HB 2170 in its current form. KNASW would like the opportunity to work with BSRB and other interested parties to develop legislation that achieves an appropriate level of privilege for clients and that may be applied in all social work settings.

Attachment 10
HHS 2-19-03

Testimony in Opposition of House Bill 2170
Dorothy Stucky Halley, LMSW
February 18, 2003

Chair Morrison and Members of the Committee,

I appreciate the opportunity to be with you today, expressing my concerns about, and opposition of House Bill 2170. I am Dorothy Stucky Halley, from Crawford County, in Southeast Kansas. I am a licensed social worker, and serve as the Practicum Director in the Social Work Program at Pittsburg State University. In addition, my husband, Steve Halley, LSCSW, and I operate Halley Counseling Services in Girard and Parsons, through which I work primarily with domestic violence perpetrators, and some victims. Prior to my work at PSU, I worked as the director of Safehouse, a battered women's shelter program for over a decade. It is from this background, then, that I come to you opposing this proposed legislation for the following reasons:

1) *Some of the exceptions to privilege in HB 2170 leave victims of domestic violence and sexual assault vulnerable to inadvertently lose their right to privileged communication.* Most notably, exceptions number 1 and 6 appear to be problematic. Imagine that a victim of domestic violence is being counseled by an LMSW or LSCSW social worker in a local shelter or counseling agency. Section (e)(1) of HB 2170 creates an opportunity for a violent husband to initiate a proceeding to involuntarily commit his wife to treatment and thereby break her privilege. The information he would gain could potentially be used against her at a later date, such as a divorce proceeding. This situation could not happen with the current law. The same problem could occur for a victim of a sexual assault whose perpetrator is a family member.

I have similar concerns for Section (e)(6) when a person is a victim of rape or domestic violence. (e)(6) says that there is no privilege necessary for the emergency treatment of a client. Who will decide what information is "necessary"? Furthermore, if information is revealed to a third party, privilege is lost. This means that when the rape or domestic violence case goes to court, this private information may be revealed, which could cause damage to the client.

It is not merely a matter of having difficulty explaining 16 exceptions to the clients; it is the responsibility to adequately inform each client of how these exceptions could create exposure that becomes daunting. I don't know how one can adequately inform clients about all of the ways their privileged communication could be changed to non-privileged status due to no fault of their own. Ultimately, with these exceptions, I cannot assure my clients that anything they say to me is, in fact, going to remain a privileged communication. **Consequently, although this proposed legislation may have had as its intent to increase protection of the public, at least for certain populations, such as victims of rape or domestic violence, there would be much less protection.**

2) Another concern is prompted by my teaching social work students at the bachelor level. *This proposed legislation confuses the definition of confidentiality and its meaning*

Attachment 11
HHS 2-19-03
Dorothy

for bachelor level social workers. HB 2170 would become part of the social work practice act whereas for the other BSRB disciplines it would become a separate law apart from their practice act. In social work, we have three levels of licensure, but the definitions in HB 2170 will apply to only two levels of licensees. This will lead to many confusing discussions for students regarding their understanding of confidentiality and how it applies to them, versus Kansas definition of confidentiality and why it does not apply to them.

It is for these reasons that I urge you to oppose HB 2170.

Dorothy Stucky Halley, LMSW, Practicum Director
Pittsburg State University, Dept. of Social Sciences
1701 S. Broadway
Pittsburg, Kansas 66762

Phone: 620-235-4339

E-mail: dhalley@pittstate.edu

**KANSAS HOUSE COMMITTEE
ON
HEALTH AND HUMAN SERVICES**

TESTIMONY ON

HB No. 2170

February 19, 2003

**Ron McNish, Ph.D., Member
Behavioral Sciences Regulatory Board**

and

**Clinical Director
Johnson County Mental Health Center
Mission, Kansas**

*Attachment 12
HHS 2-19-03*

House Bill 2170 was developed to clarify the legal status of confidential and privileged communications that occur between a therapist and client in psychotherapy. Current statutes that govern confidential and privileged communications between a client and therapist are unclear at best, and are often contradictory. House Bill 2170 was written with the intent of clarifying the scope of confidentiality and privilege in therapy, clarifying the exceptions to confidentiality and privilege in therapy, and eliminating contradictions in the law.

Under existing law, the statutes that govern most BSRB licensed mental health professionals include language that states that *“the confidential relations and communications between a licensed professional and the client are placed on the same basis as provided by law for those between an attorney and the attorney’s client.”* To the layman, and to many professionals, this would appear to offer the highest possible degree of protected communication; we have all come to respect the high degree of protection that is afforded a client when communicating with his attorney. However, the attorney-client privilege fails to adequately address the unique needs for confidential and privileged communications in psychotherapy.

As an example, attorneys are free to disclose the names of their clients; in fact, this is often expected to be the case. In contrast, clients in psychotherapy expect their involvement in therapy will be absolutely confidential and that their names will not be revealed. Right or wrong, we are all aware that clients can be damaged when others (including employers, neighbors, relatives, and others) become aware that they have sought mental health counseling.

As a second example, privilege between an attorney and a client ceases to exist when a third person is present. Yet, this is often a central element to therapy, such as when a client’s partner joins them for couples counseling, when a client engages in group therapy, or even when a teacher joins a session to help a troubled youth. In each

of these instances, it is critical that the client be able to expect that the therapist will maintain the confidentiality of these communications.

These unique needs for confidentiality and privilege in the mental health setting were legally recognized when the legislature enacted KSA 65-5602, regarding confidential and privileged communications of clients who receive services in “*treatment facilities*.” This statute specifically states that therapist-client communications will be held confidential and that “*the privilege extends to individual, family, or group therapy under the direction of the treatment personnel and includes members of the patient’s family*.” Furthermore, it states that confidential communications “*shall extend to those persons present to further the interests of the patient in the consultation, examination, or interview; ancillary personnel; persons who are participating in the diagnosis and treatment under the direction of the treatment personnel, including members of the patient’s family; and any other persons who the patient reasonably believes needs the communication to assist in the patient’s diagnosis or treatment*.” Finally, this statute also clearly identifies fourteen exceptions to privilege, which provides tremendous clarity for both therapists and clients who need to fully understand the scope of privilege.

In enacting this statute (KSA 65-5602), the Legislature clearly recognized the need to allow confidential and privileged communications to occur even in the presence of certain involved third parties. Unfortunately, this statute (KSA 65-5602) applies only to treatment personnel who work in defined “*treatment facilities*” which include Community Mental Health Centers and State Psychiatric Hospitals who together employ approximately 1,000 BSRB licensed mental health providers. While these providers and their clients benefit by the clarity of this law, the status of confidential communications remains unclear because they also operate under professional licensure laws which continue to place confidential communications and privilege on the same level as attorney-client privilege. So, are communications in couples therapy

confidential? Are communications in group therapy confidential? Is the fact that an individual is receiving psychotherapy confidential? Are communications confidential when a therapist invites a teacher to attend a session with a teenager who has psychological problems at school? The answer to these questions is not clear, because the laws governing these professionals are contradictory.

We should not forget the 4,000+ BSRB licensed professionals who do not work in *"treatment facilities"* for whom there is no statutory clarity regarding the scope of confidentiality and privilege other than rather vague language that places it at the same level as attorney-client privilege. It is a disservice to the thousands of clients who are served by these professionals who expect absolute assurance of confidential and privileged communications with clearly identified exceptions.

It is for these reasons that we have proposed HB2170. This bill parallels current statutory language (KSA 65-5602) that covers confidentiality and privilege for staff who work in treatment facilities, and this bill would extend this clarity of language to all other BSRB licensed professionals. Furthermore, this would eliminate the contradictions in statute that currently confuse the 1,000 professionals, and the 90,000+ clients who they serve annually.

In short, I urge you to support HB 2170.

Thank you for the opportunity to testify.

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

Hearing on H.B. 2170

February 19, 2003

Mr. Chairman and Members of the Committee, I am John Randolph, a clinical psychologist, and I have worked at the Mental Health Center of East Central Kansas in Emporia for going on thirty years. I serve as the Executive Director, as I have for the last twenty-six years.

In the seventies and early eighties, clients/patients of our Center and other mental health centers could not be assured of confidentiality if they happened to receive treatment from certain therapists, such as those whose credential was a masters degree in psychology. For instance, if in the future such a patient were involved in some civil litigation, the record of their very personal communications could be subpoenaed, even if the litigation had nothing to do with the reasons for their having sought treatment. We were greatly concerned about the experiences of some of our clients, who became distraught when what they thought was confidential was later required to be revealed in court. Clients of licensed (doctoral) psychologists were covered by the attorney-client privilege, but we found the application of that privilege to the variety of treatment circumstances in our Center to be uncertain and confusing.

Thankfully, in 1986, the Kansas Legislature passed into law K.S.A. 65-5601 et seq, Article 56, CONFIDENTIAL COMMUNICATIONS AND INFORMATION. This statute provides a clear and unambiguous statement of privilege for patients of treatment facilities. Further, the law includes fourteen well-articulated exceptions to privilege, including such information required to be reported as pertaining to child abuse. These exceptions reflect public policy concerns that take precedence over absolute privilege. We have found this statute to serve our patients well over the last (almost) seventeen years. We inform our patients of the exceptions to privilege, a just and fair arrangement discussed at the beginning of treatment. Similarly, we believe that the needs of the courts have been properly served as well. Our clinicians are in various courts weekly, and testify either on the basis of releases signed by our patients or exceptions to privilege as set forth in the statute.

House Bill 2170 is modeled after 65-5601 et seq. It provides the same confidentiality safeguards for clients of persons licensed by the Behavioral Sciences Regulatory Board who are seen in settings other than those defined as treatment facilities in 65-5601. For the attorney-client privilege, which is not a good fit for the complexities of treatment situations, it substitutes an apt, unambiguous, and balanced privilege for consumers of licensee services. While I do have some uneasiness about one or two of the exceptions in House Bill 2170, which are in addition to those in 65-5603, I believe that the bill's provisions represent excellent public policy development.

Attachment 13
HHS 2-19-03

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Ronald R. Hein

Attorney-at-Law

Email: rhein@heinlaw.com

**TESTIMONY RE: HB 2170
HOUSE HEALTH AND HUMAN SERVICES COMMITTEE
Presented by Ronald R. Hein
on behalf of
MENTAL HEALTH CREDENTIALING COALITION
February 19, 2003**

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Mental Health Credentialing Coalition. The Coalition is comprised of the members of the Kansas Association for Marriage and Family Therapy, the Kansas Association of Masters in Psychology, and the Kansas Counseling Association/Kansas Mental Health Counselors Association.

The Mental Health Credentialing Coalition supports HB 2170. In keeping with the philosophy of the MHCC, we believe there should be consistency in the statutes regarding mental health professionals in order to avoid confusion for clients and other persons.

Currently, Professional Counselors, Masters Level Psychologists, Psychologists, Masters Level Social Workers, Clinical Psychotherapists and Specialist Clinical Social Workers all "piggyback" onto the attorney/client privilege. Although these professional statutes do not cite the specific statute, it is assumed that it the statute referred to is the "lawyer/client privilege statute" set out at K.S.A. 60-426. The Marriage and Family Therapists have their own confidentiality wording, as do the associate and bachelor level social workers. Psychiatrists do not have their own statute, but are generically governed by the physician/patient privilege set out at K.S.A. 60-427.

When one has an opportunity to read all these statutes, what is particularly striking is the inconsistency regarding the treatment of several issues.

HB 2170 would provide a statutory privileged communication and confidentiality statute which would govern communications for all of the licensees of the BSRB, and would repeal the current individual statutes. HB 2170 also approaches confidentiality from the perspective of health care, and specifically mental health care, and not from the attorney-client perspective. We think this change is warranted, and urge this committee to approve HB 2170.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

*Attachment 14
HHS 2-19-03*



State of Kansas

Office of Judicial Administration

Kansas Judicial Center

301 SW 10th

Topeka, Kansas 66612-1507

(785) 296-2256

Testimony to House Health and Human Services Committee

Re: HB 2170

February 18, 2003

Mr. Chairman, members of the committee, thank-you for the opportunity to testify in support of HB 2170. My name is Mark Gleeson and I am the Family and Children Program Coordinator for the Office of Judicial Administration.

House Bill 2170 creates a new law regarding privileged and confidential communications for certain professions regulated by the Behavioral Sciences Regulatory Board. Our concern with HB 2170 is in section (g). By defining certain court hearings where licensees are permitted to testify, this bill could be interpreted as excluding the licensee from testifying at all other hearings. We also believe this bill, by specifically referencing testimony in section (g), may require a licensee to testify in person rather than submit a report to the court. When information in the report is not contested, the person preparing the report is often not called to testify.

As a substitute, I have provided the committee with alternative language that would permit a licensee to testify at any court hearing and to provide written reports to the court or to a person designated by the court. This should remove any inference that a licensee would not be able to provide information to the court in virtually any type of hearing including domestic relations, juvenile offender, child in need of care, criminal and civil cases.

Thank you for your time and attention. I will remain to answer any questions.

Attachment 15
AHS 2-19-03

House Bill 2170
By Committee on Health and Human Services

Amendment provided by the Office of Judicial Administration

New Section 1.

(g) Nothing in this section or in this act shall be construed to prohibit any licensee from testifying in court hearings ~~concerning matters of resident abuse, adult abuse, adoption, child abuse, child neglect or severance of parental rights~~ **or from submitting reports to the court or to persons designated by the court.**

To: House Committee on Health and Human Services

From: Gary D. White, Jr., Vice President of Legislation
Kansas Trial Lawyers Association

Re: HB 2170

Date: February 18, 2003

Chairman Morrison and members of the House Committee on Health and Human Services. Thank you for the opportunity to submit comments regarding HB 2170. My name is Gary D. White, Jr. and I currently serve as Vice President of Legislation for the Kansas Trial Lawyers Association.

The Behavioral Sciences Regulatory Board has introduced HB 2170, which would create a new privilege for nearly all of the licensees that it regulates. In evaluating privilege, it is important to distinguish between what is meant by the terms "confidential" and "privilege." Confidential refers to a licensee's ethical obligation to not disclose information from or about his client. Privilege on the other hand refers to the ability of a client to prevent a licensee from disclosing confidential communications to a third person, generally pursuant to legal process. As such, by creating a privilege, the bill seeks to prevent information from being disclosed pursuant to legal process.

In Kansas, no common law privileges are recognized and all relevant evidence is admissible unless statutory grounds exist for exclusion. *State v. Clovis*, 248 Kan. 313, 323, 807 P.2d 127 (1991). In *State v. Berberich*, 267 Kan. 215, 978 P.2d 902 (1999), the Kansas Supreme Court recognized that "[t]he effect of that statute is to create another privilege and thus close another window to the light of truth . . . because it has the effect just stated, it should be strictly construed and applied . . ." [Emphasis added]. *Id.* at 227, 978 P.2d at 910 quoting with approval *State v. Gotfrey*, 598 P.2d 1325 (Utah 1979).

As drafted, HB 2170 would make certain communications privileged that would not be privileged under the attorney-client privilege, physician-patient privilege, minister-penitent privilege or the spousal privilege.

For example, under Sec. 1(c) communications made by those persons participating in the professional services of the client would be privileged. Thus, communications between a licensee and a third person—not the client—would be privileged under the bill. None of the privileges that I have identified would make a communication with a non-client privileged. For instance, an attorney's conversation with a witness or a spouse who is not a client would not be subject to the attorney-client privilege. Likewise, a physician's communication with his patient's spouse would not be subject to the physician-patient privilege. While this information may be confidential in the sense that a licensee should not voluntarily disclose the information about a client to third persons, the information should not be privileged so that it cannot be compelled by legal process.

Attachment 16
HHS 2-19-03

In Sec. 1(e)(15), we have proposed a change to include the phrase “in a prosecution of a client for a felony or for a prosecution under K.S.A. 8-1567 or.” While this provision is not critical to the bill, the amendment would make the bill consistent with the physician-patient privilege under K.S.A. 60-427, which applies to psychiatrists and other health care providers. In *State v. Berberich*, 267 Kan. 215, 223, 978 P.2d 902 (1999), the Kansas Supreme Court indicated:

We deem it of great significance that a psychiatrist comes under K.S.A. 60-427(b) and, thus, would not have a privilege in a felony case. . . . It would seem inconsistent to grant a greater privilege to counselors and psychologists than the privilege given to a psychiatrist.

We are simply pointing out this inconsistency to you and are providing information to you so that you have the information when making your evaluation of the bill. Whether the privilege should be applied to felony cases or DUI cases is a public policy decision that you must decide.

Thank you again for the opportunity to express our concerns about HB 2170. We have attached a balloon with proposed modifications that we would request be made to the bill.

HOUSE BILL No. 2170

By Committee on Health and Human Service

2-4

AN ACT concerning the behavioral sciences regulatory board; relating to professions regulated by the board; privileged and confidential communications; amending K.S.A. 65-6315 and repealing the existing section; also repealing K.S.A. 65-5810, 65-6410, 74-5323 and 74-5372.

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

New Section 1. (a) As used in this section:

(1) "Ancillary personnel" means any employee or supervisee of a licensee or any employee of the licensee's practice setting.

(2) "Client" means a person who receives professional services from a licensee.

(3) "Confidential communication" means any form of information transmitted in confidence by action or declaration between a client and licensee or ancillary personnel, or generated in confidence by a client, licensee or ancillary personnel in the course of professional services. Confidential communication shall include communications between a licensee and another licensee or ~~other~~ health care provider.

in the course of professional services,

(4) "Licensee" means any person licensed by the behavioral sciences regulatory board with the exception of baccalaureate social workers and associate social workers.

(5) "Personal representative of a client" means:

(A) A parent of a minor client;

(B) a guardian, guardian ad litem or conservator of a client;

(C) an executor, administrator or other legal representative of a deceased client's estate; or

(D) an attorney or other person designated in writing by a client; or

(E) any other person authorized by law.

(6) "Professional services" means services provided by a licensee to a client within the licensee's authorized scope of practice.

(b) A client of a licensee has a privilege to prevent a licensee or ancillary personnel from testifying or otherwise disclosing any confidential communication or that the client has been or is currently receiving professional services.

~~(c) The client's privilege under subsection (b) extends to communications made by those persons participating in professional services of the~~

(c) Information provided by those persons, including family members, participating in the professional services of the client shall be treated as confidential by a licensee but shall not be privileged under subsection (b).

1 ~~client, including members of the client's family.~~

2 (d) The privilege under subsection (b) may be claimed by the client
3 or by the personal representative of a client. The licensee shall claim the
4 privilege on behalf of the client unless the client or personal represen-
5 tative of the client has made a written waiver of the privilege that has
6 been provided to the licensee or unless one of the exceptions provided
7 by subsection (e) is applicable.

8 (e) The client's privilege under subsection (b) shall not extend to:

9 (1) A legal proceeding to involuntarily commit the client to in-patient;
10 or out-patient treatment for mental illness, alcoholism or drug
11 dependency;

12 (2) an examination or evaluation of the psychological, mental, alcohol
13 or drug dependency, personality or emotional condition of the client
14 which is conducted pursuant to an order entered by a judge;

15 (3) a court ordered examination or evaluation concerning the psy-
16 chological or emotional development or needs of a child pursuant to
17 K.S.A. 38-1514 and amendments thereto;

18 (4) any legal proceeding in which the psychological, mental, alcohol
19 or drug dependency, personality or emotional condition of the client is
20 an element or factor of the claim or defense of the client, or, after the
21 client's death, in any proceeding in which any party relies upon any of
22 the client's conditions as an element of a claim or defense;

23 (5) information that the licensee is required by law to report to a
24 public official, including but not limited to, child abuse pursuant to K.S.A.
25 38-1522 and amendments thereto, adult abuse pursuant to K.S.A. 39-
26 1431 and amendments thereto and resident abuse pursuant to K.S.A. 39-
27 1402 and amendments thereto;

28 (6) information necessary for the emergency treatment of a client. In
29 such circumstances the licensee shall document the reasons for disclosure
30 of the communication and make such statement a part of the licensee's
31 treatment record of the client;

32 (7) information necessary to protect a person who has been threat-
33 ened with physical harm or serious bodily injury by a client;

34 (8) any information to any state or national accreditation or certifi-
35 cation or licensing authority for audit or evaluation purposes, but the
36 licensee shall obtain, before such disclosure is made, written assurance
37 that the name of any client ~~or former client~~ shall not be disclosed to any
38 person not otherwise authorized by law to receive such information;

39 (9) any information which is required by state law or regulation, or
40 federal law or federal regulations to be available for audit, evaluation or
41 other legally authorized purposes and (A) which concerns ~~individuals~~ who
42 reside in or are receiving services from a treatment facility or (B) which
43 concerns ~~individuals~~ who are receiving professional services from a

} clients

1 licensee;
2 (10) any information relevant to the collection of a bill for profes-
3 sional services rendered by a licensee;

4 (11) any information sought by a coroner serving under the laws of
5 Kansas when such information is material to an investigation or proceed-
6 ing conducted by the coroner in the performance of such coroner's official
duties;

8 (12) any information relevant to investigation or adjudication of a
9 alleged violation of the act, or rules and regulations adopted thereunder,
10 under which the licensee practices;

11 (13) ~~if authorized by this act or as otherwise provided by Kansas law,~~
12 health care information as permitted to be used or disclosed pursuant to
13 federal standards for privacy of individually identifiable health informa-
14 tion, 42 C.F.R. part 160 *et seq.* and amendments thereto and 42 C.F.R.
15 164 *et seq.* and amendments thereto;

or as authorized by this act or as otherwise
authorized by Kansas law.

16 (14) drug or alcohol abuse client records as permitted to be used or
17 disclosed pursuant to federal regulations concerning the confidentiality
18 of such records, 42 C.F.R. part 2; ~~or~~

in a prosecution of a client for a felony or for a
prosecution under K.S.A. 8-1567 or

19 (15) any information that pertains to criminal conduct that occurred
20 where the licensee practices or against the licensee or ancillary personnel;
21 or

22 (16) any information that a client intends to commit a crime.

23 (f) Nothing in this section or in this act shall be construed to prohibit
24 any licensee from seeking collaboration or consultation on behalf of a
25 client with professional colleagues or administrative superiors, or both,
26 within an agency, institution or organization where the licensee is
27 employed.

28 (g) Nothing in this section or in this act shall be construed to prohibit
29 any licensee from testifying in court hearings concerning matters of res-
30 ident abuse, adult abuse, adoption, child abuse, child neglect or severance
31 of parental rights.

32 Sec. 2. K.S.A. 65-6315 is hereby amended to read as follows: 65-
33 6315. (a) No licensed social work associate or licensed baccalaureate social
34 worker, secretary, stenographer or clerk of a licensed social work associate
35 or licensed baccalaureate social worker or anyone who participates in
36 delivery of social work services or anyone working under supervision of
37 a licensed social worker may disclose any information such person may
38 have acquired from persons consulting such person in the person's profes-
39 sional capacity or be compelled to disclose such information except:

40 (1) With the written consent of the client, or in the case of death or
41 disability, of the personal representative of the client, other person au-
42 thorized to sue or the beneficiary of an insurance policy on the client's
43 life, health or physical condition;

1 (2) when the person is a child under the age of 18 years and the
2 information acquired by the licensed social worker indicated that the child
3 was the victim or subject of a crime, the licensed social worker may be
4 required to testify fully in relation thereto upon any examination, trial or
5 other proceeding in which the commission of such a crime is a subject of
6 inquiry;

7 (3) when the person waives the privilege by bringing charges against
8 the licensed social worker but only to the extent that such information is
9 relevant under the circumstances.

10 ~~(b) The confidential relations and communications between a li-~~
11 ~~censed master social worker's or a licensed specialist clinical social~~
12 ~~worker's client are placed on the same basis as provided by law for those~~
13 ~~between an attorney and an attorney's client.~~

14 ~~—(c) (b) Nothing in this section or in this act shall be construed to~~
15 ~~prohibit any licensed *baccalaureate* social worker or licensed *associate*~~
16 ~~*social worker* from testifying in court hearings concerning matters of adult~~
17 ~~abuse, adoption, child abuse, child neglect, or other matters pertaining~~
18 ~~to the welfare of children or from seeking collaboration or consultation~~
19 ~~with professional colleagues or administrative superiors, or both, on be-~~
20 ~~half of the client. There is no privilege under this section for information~~
21 ~~which is required to be reported to a public official.~~

22 Sec. 3. K.S.A. 65-5810, 65-6315, 65-6410, 74-5323 and 74-5372 are
23 hereby repealed.

24 Sec. 4. This act shall take effect and be in force from and after its
25 publication in the statute book.

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House Health and Human Service Committee
Kansas State Legislature
February 19, 2003
Regarding House Bill 2170
Testimony of Carl S. Myers, LSCSW

Chairman Morrison and members of the committee.

My name is Carl S. Myers. I am an assistant professor of social work at Washburn University teaching in the Baccalaureate Social Work Program and I work part-time as a clinical social worker in private practice.

I am speaking in opposition to HB 2170 with concerns about the potential negative impact upon consumers of social work services.

As a clinical social worker, I provide psychotherapy services to individuals and families who present concerns around many aspects of their emotional, behavioral and social functioning. The nature of our work with clients involves deeply personal disclosure of private thoughts, feelings, impulses, behaviors and difficulties in social functioning. The element of privacy, safety and trust is absolutely essential if treatment is to be effective through a therapeutic relationship.

Our commitment to clients under the social work code of ethics requires that clients be advised of their rights to privileged communications, and the social worker's obligation to them regarding preserving their confidentiality, including the limitations of confidential communications. Our code of ethics requires that clients are provided with "informed consent" in gaining services, including the right to refuse services.

Under our current practice act, the social worker's obligation to maintain confidentiality is very rigorous and simply stated. The exceptions of confidentiality are also clear and may be simply stated regarding mandated reports. The emphasis is to assure that the client understands their rights and the social worker's obligations as clearly as possible.

In my opinion, the specification of sixteen exceptions to the client's privilege outlined in HB 2170 greatly complicates the process of providing a client with informed consent for treatment and has the significant potential of creating confusion and doubt that a provider of services is seeking to enhance the client's well-being! In some ways this bill appears to do more to abrogate the social worker's obligation to the client than it does to define and preserve client's rights to privacy in their personal communications with the social worker.

As a practitioner, I would find it extremely difficult to meet professional ethical obligations to clients and at the same time uphold the letter of this law if it were passed in this form.

I urge the committee to report this bill adversely.

Attachment 17
HHS 2-19-03

House Health and Human Services Committee

February 19, 2003

Regarding House Bill 2170

My name is Sharon Stuewe. I am a Licensed Specialist Clinical Social Worker, and I am the President Elect of the Kansas Association of School Social Workers. Our Association represents approximately 300 school social workers that provide social work services to special education and regular education students in public schools throughout the State of Kansas. I am here to speak in opposition of HB 2170.

The working relationship between social worker and clients consist of two key elements; trust and safety. With a client's right to privacy protected, there is a greater possibility they will share private information more freely. This bill specifically provides for sixteen exceptions to a client's privilege. The client's perception that he or she can risk sharing thoughts, feelings, mistakes and failures with a social worker may be severely compromised. Since this relationship is the medium for effective intervention and positive outcomes, the ability of the social worker to facilitate positive client change will be directly impacted.

HB 2170 presents unique difficulties for school social workers. The sixteen exceptions under which privilege would not apply, would have a devastating affect on the ability of school social worker to intervene in the very circumstances and risk factors that currently compromise the educational success of the students we serve.

Explaining to a student how information will be used is critical, not just because it builds trust, but also because a social worker has an ethical responsibility to obtain informed consent from each client. The sheer number of exceptions provided for in HB 2170 would make this task extremely difficult, if not impossible.

In the school setting, children and adolescents frequently divulge private information about parents, siblings, and other family members. The exceptions outlined by this bill would allow a broad range of parties to access this private information. This bill overrides the ability of any parent to control the circumstances under which information is to be revealed.

A common theme of social work practice in the school setting is mediation of peer conflict. Many of these encounters include the verbal "threat of physical harm". Under the current statutes, all social workers are mandated reporters, required to report to proper authorities if a client is a potential threat to himself or others, or is experiencing abuse or neglect. The current law has proven to be effective and appropriate. However, this bill severely compromises the ability of the school social worker to implement appropriate interventions, including mediation, counseling, or disciplinary action.

Our opposition to this bill arises from this basic premise: The school social worker is often the first level of mental health intervention for many students. With the number of exceptions to privacy allowed by this bill, it is predicable that many students would chose not to see out or accept intervention from a school social worker until a situation has reached a crisis level. We believe the adoption of this bill would severely limits services to children in the public schools.

I appreciate the opportunity to address this issue, and I urge the committee to report this bill adversely.

House Health and Human Services Committee
February 19, 2003
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I appreciate the opportunity to address this issue, and I urge the committee to report this bill adversely.

Attachment 18
HHS 2-19-03



KANSAS COALITION AGAINST SEXUAL AND DOMESTIC VIOLENCE

220 SW 33rd Street, Suite 100 Topeka, Kansas 66611
785-232-9784 • FAX 785-266-1874 • coalition@kcsdv.org

HB 2170

Dear Chairman Morrison and Members of the Committee;

The Kansas Coalition Against Sexual and Domestic Violence is a private non-profit group representing victims of domestic and sexual violence and the advocacy programs serving them. The 27 member programs reported serving more than 1,000 sexual assault victims, 21,250 domestic violence victims and sheltering 4,621 people during 2001. In the same time period the program hotlines responded to more than 29,000 crisis calls. Many of these programs employ social workers or other licensed professionals regulated by the Behavioral Sciences Regulatory Board.

KCSDV opposes HB 2170 because it is cumbersome to apply in the kind of crisis situations to which domestic violence and sexual assault advocacy programs respond. It is not reasonable to expect a victim of domestic violence giving a report to law enforcement officers or receiving treatment in an emergency room to be able to sort out what she can and cannot say confidentially to her advocate. Likewise, it is not appropriate to talk about confidentiality exceptions while trying to explain to a rape victim what is happening to her during the collection of forensic evidence during a rape examination.

An advocate's role is specifically designed to stand outside of other systems to ensure that the victim has emotional support and self-determination.

HB 2170 severely compromises the role of an advocate.

KCSDV urges you to oppose HB 2170.

*Attachment 19
AHS 2-19-03*

**To The Honorable Representative, Jim Morrison, Chairperson,
And Members of the Committee on Health and Human Services.**

Re: HOUSE BILL No. 2170

If the current statute, K.S.A. 65-6315, that governs the disclosure of information by social workers in Kansas **has not been proven to be harmful to clients, I ask that this Committee not consider amending it.** If the current statute has proven harmful, and therefore, needs to be amended, I have several concerns related to the proposed House Bill No. 2170. Three of my concerns and one question are as follows:

1. Clients potentially can be harmed under Section 1(d).
2. The meaning of the word "privilege" is unclear in Section 1.
3. Implementation of Section 1 would be extremely difficult given sixteen exceptions and the broad language used to describe them.
4. How will this statute interface with the Individuals With Disabilities Education Act-Revised (IDEA-R) and the Family Educational Rights and Privacy Act (FERPA)?

#1. In a school setting, Section 1(d) places the client in potential harm by exposing the student to the misuse of confidential communications outside of a legal proceeding.

Example: Page 2, Section 1(d), When a personal representative has the right to waive the client's privilege, how can a student be assured of "confidential communication"?

- Currently, although the social worker may communicate with the "personal representative" of a client, the social worker is not compelled to share "confidential communication." Under this proposed section, when a student shares communication about being abused by the very person who has waived the client's privilege, that same representative has the right to the student's "confidential communications" about the alleged abuse, perhaps prior to the involvement of Child Protection Services.

#2. The word "privilege" needs to be defined along with the other terms in Section 1(a).

Examples: Throughout Section 1, it seems as though "privilege" is used in some sentences as meaning "confidential" or a "right". However, in other sentences it seems to be used as a term with a special legal meaning.

- Page 1, Sec. 1(b), line 38. "A client...has a privilege to prevent" seems to mean "the right to prevent"
- Page 2, Sec. 1(d), "privilege" in this paragraph seems to imply the claiming of a legal term.
- Page 2, Sec. 1(e), Is "privilege" used in this sentence to mean the client's right or the legal term?

#3. The general wording of several of the exceptions will make it extremely difficult to know how to comply with the statute as it relates to current or former clients.

Examples from page 2, Sec. 1(e):

- (2), Currently, judges do not order public schools to conduct evaluations. Will this statute change that? If the court orders the evaluation, does the resulting information belong to the court or the school district?

Attachment 20
HHS 2-19-03

- (4), Does “any legal proceeding” include Manifestation Determination Reviews required by IDEA-R prior to the suspension or expulsion of a student receiving special education services? Does it include the suspension and expulsion hearings or all legal actions taken by the school district?
- (9)(B), Currently, the State Board of Education does not examine social work client records during an audit of social work services. Will this exception give them such authority and, thereby, reveal confidential communications about students and their parents?
- (10), Does this exception give a school district the authority to release “privileged” information in the course of collecting unpaid student fees?

#4. Has the Office of the Reviser of Statutes had the opportunity to review the proposed Bill for any potential conflicts with IDEA-R or FERPA?

Thank you for allowing me the opportunity to present my concerns.

Respectfully submitted,

Bonnie Robles, Licensed Specialist Clinical Social Worker
Coordinator of Social Work Services
Special Education Department
Topeka Public Schools

KANSAS

DIVISION OF THE BUDGET
DUANE A. GOOSSEN, DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

February 19, 2003

The Honorable Jim Morrison, Chairperson
House Committee on Health and Human Services
Statehouse, Room 171-W
Topeka, Kansas 66612

Dear Representative Morrison:

SUBJECT: Fiscal Note for HB 2254 by Representative Newton

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2254 is respectfully submitted to your committee.

HB 2254 would create a duty for the Kansas Department of Social and Rehabilitation Services (SRS) and law enforcement officers to receive and investigate reports of adult abuse and neglect. Currently SRS is not required to investigate adult abuse in nursing facilities, and it is assumed that the bill would not require SRS to investigate those abuse reports because of the use of the term "adult" rather than "resident." However, the bill would increase the Department's responsibilities in two ways. First, SRS would be required to seek appointment of a guardian or conservator for a nursing facility resident who lacks the capacity to consent to services and is the victim of abuse or neglect. Second, the bill would increase the Department's responsibility to secure a guardian and to petition for protective injunctions against those legally responsible for abused adults who lack the mental facility to make reasonable decisions, or when the responsible person disputes the need for assistance. Presently, the Department is permitted, but not required, to perform these actions. HB 2254 would make these actions mandatory for the Department.

Estimated State Fiscal Effect				
	FY 2003 SGF	FY 2003 All Funds	FY 2004 SGF	FY 2004 All Funds
Revenue	--	--	--	--
Expenditure	--	--	\$1,548,091	\$1,548,091
FTE Pos.	--	--	--	22.0

The Honorable Jim Morrison, Chairperson
February 19, 2003
Page 2—2254fn

Passage of HB 2254 would require the addition of one social worker and one attorney in each of the eleven SRS management areas. The additional staffing would be necessary to handle the increase in emergency adult protective assistance required by the bill. Additional salary expenditures for the 22.0 new FTE positions would total \$965,715 in FY 2004. Additional other operating expenditures in FY 2004 would total \$182,376, and emergency support expenditures, such as guardian expenditures and other non-administrative costs, would total \$400,000. These additional expenditures would be borne by the State General Fund, and are not included in *The FY 2004 Governor's Budget Report*.

Sincerely,



Duane A. Goossen
Director of the Budget

cc: Jackie Aubert, SRS
David Dallam, KDHE
Jerry Sloan/Amy Hyten, Judiciary
Derrick Sontag, Attorney General's Office

**HOUSE TESTIMONY
HEALTH AND HUMAN SERVICES
FEBRUARY 19, 2003**

HB 2170

Mister Chairperson and Committee Members:

Thank you for the opportunity to submit written testimony in support of HB 2170. I am Larry Hays and have served on the Behavioral Sciences Regulatory Board (BSRB) for the past six years as a psychology representative.

This bill addresses current law regarding privilege and confidential communications. What is privilege? The concept of privilege is the right of the client and not of the licensee. It prevents confidential communication revealed in a professional relationship from being disclosed in a court of law without the consent of the client unless there is an exception to the privilege.

Privileges are enacted by statute to discourage fear of disclosure in person's participating in professional relationships that are dependent on the person's full disclosure. These professional relationships are viewed by the legislature as extremely important and beneficial to society. Separate privilege statutes have been developed that are appropriate to the functions of each profession that has a privilege provision. One profession does not have a higher privilege than another. Rather, each profession has a privilege that is created in statute to the unique functions of that profession. Appropriate exceptions to privilege are based on the unique functions of each profession.

I want to address three areas of confusion regarding Kansas' current statutes of privilege and confidentiality that apply to licensees of the BSRB.

1. Kansas' current law involves basically two conflicting privilege statutes. These statutes apply on the basis of the licensees' place of employment. Licensees who work in mental health centers or state hospitals function under the Confidential Communications and Information statute (K.S.A. 65-5602). This statute recognizes the unique functions of providing mental health services to individuals, groups and families and includes appropriate exceptions to privilege.

Licensees who do not work in mental health centers or state hospitals function under other statutes (K.S.A. 2000 Supp.74-523 for Ph.D. psychologists; K.S.A. 2000 Supp. 74-5372 for clinical psychotherapists and masters level psychologists; K.S.A. 2000 Supp. 65-6315 for clinical specialist social works and masters social workers; K.S. A. 2000 Supp. 65-5810 for clinical professional counselors and professional counselors). These statutes apply privilege on the basis of the attorney-client relationship and do not recognize the unique functions of providing mental health services to individuals, groups and families and do not include appropriate exceptions to privilege.

2. To base privilege and confidential communication for licensees of the BSRB on the same basis provided by law for those between an attorney and client is problematic. The provision of mental health services is fundamentally different than providing legal services. The content of communication between a client and an attorney

*Attachment 22
HHS 2-19-03*

focuses around the legal issue being addressed. The content of communication between a client and a mental health professional focuses around the assessment and treatment of mental disorders as well as other problems of living.

The goals for an attorney's services include meeting with the client individually to prepare a defense or to file legal actions in accordance with the rules of law. The goals for a therapist's services include meeting with the client in individual, group, or family therapy for the purpose of reducing symptoms and improving functioning. The methods of treatment depend upon an assessment of the client's needs and presenting problems.

3. Licensees of the BSRB are required to provide informed consent to clients before beginning services. Informed consent includes making the client aware of exceptions to privilege, that is, those areas where privilege does not apply. Clients must understand the limitations to their confidentiality if they are to make informed decisions about whether to enter into treatment and whether to disclose personal information during sessions. For example, the client needs to be aware that the licensee is required to report child abuse.

For BSRB licensees who do not work in state hospitals or mental health centers, they are required to provide information to clients about exceptions involving the attorney-client privilege. To name a few, these exceptions include telling the client that privilege does not apply to:

- Communications if the judge finds sufficient evidence legal services were sought in order to enable or aid the commission or planning of a tort or crime.
- Communications relevant to an issue between parties all of whom claim through the client, regardless of whether the respective claims are by testate or interstate succession or by inter vivos transactions.
- Communications made in the presence of third persons.

It is clear that these exceptions make no sense to client's seeking mental health services or to the licensees who provide the services. The roles of the attorney and therapist are fundamentally different. One result of this ambiguity of the current law is that judges and attorneys often disagree on what attorney-client privileges and confidentiality mean when applied to client's receiving mental health services.

In summary, the proposed bill reduces the confusion by judges, attorneys, clients and BSRB licensees about the meaning and limits of privilege and confidentiality. The current bill offers more public protection by expanding the exceptions to privilege for clients who receive services from BSRB licensees who do not work in a mental health center or state hospital.

Respectfully submitted ,

Larry W. Hays, Ph.D.

The University of Kansas

Department of Psychology and Research in Education

Testimony regarding HB 2170
House Health and Human Services Committee
Presented by Gary E. Price, Ph. D
Professor, Department of Psychology and Research in Education,
Counseling Psychology Program
Member of the License Professional Counselor Advisory Committee
February 19, 2003

Mr. Chairman, Members of the Committee:

My name is Gary Price. I am a faculty member in the Department of Psychology and Research in Education. I teach in the Counseling Psychology program and I am a member of the Licensed Professional Counselor Advisory Committee. I support passage of HB 2170 for the following reasons:

1. The HB 2170 confidentiality/privilege statute more clearly represents the nature of a client-counselor relationship than does the attorney-client confidential rule.
2. The exceptions to confidentiality specified in HB 2170 more clearly represent the nature of the client-counselor relationship than the exceptions specified for the attorney-client relationship.
3. HB 2170 would provide greater clarity and ensure greater protection of the public, making the licensed professional's informed consent or other information disclosure easier for the client to understand.
4. HB 2170 would make the law of confidentiality and privileged communication consistent across all of those mental health professionals providing clinical services.
5. HB 2170 would establish consistency for mental health professionals practicing in treatment facilities and private practice.

Thank you for your willingness to consider this testimony. I hope you will concur with me and support HB 2170.

From: "Stephenie Roberts" <sr@rheop.com>
To: <morrison@house.state.ks.us>
Date: 2/18/03 7:37PM
Subject: HB 2170

Dear Chairman Morrison:

I am writing in response to news that HB 2170 will be before the hearing committee tomorrow. As a Licensed Clinical Social Worker in the State of Kansas I am opposed to reducing standards or qualifications for licensing. As a non-native Kansan who moved here from Mississippi, I found the licensing procedures reasonable. We owe it to the citizens of this state to insure that individuals entrusted with the care of such sensitive and personal issues are well trained, competent, and meet the same requirements that Kansas natives do. Why lower standards? The professionals already employed here do not recommend the proposed change. I encourage members of the committee to leave these standards in place.

Sincerely, Stephenie Roberts, LSCSW ACSW CADC

CC: <GaryD@house.state.ks.us>

From: "JoAnn Briles-Klein" <j.briles-klein@rheop.com>
To: <morrison@house.state.ks.us>
Date: 2/18/03 1:04PM
Subject: HB 2170

I am writing to inform you of my concern regarding HB 2170. I had not anticipated it coming up for a hearing this soon and have not had the opportunity to formulate a statement. I do want you to know I am opposed to eroding the confidentiality of the client/therapist relationship. It is vital to maintain the privilege of the client/clinical social worker therapeutic relationship as is currently protected in regulation.

CC: <GaryD@house.state.ks.us>