

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

The meeting was called to order by Chairman James Barnett at 1:30 P.M. on February 8, 2005 in Room 231-N of the Capitol.

All members were present except:

Susan Wagle- excused

Committee staff present:

Emalene Correll, Kansas Legislative Research Department

Terri Weber, Kansas Legislative Research Department

Norm Furse, Office of Revisor of Statutes

Whitney Nordstrom, Committee Secretary

Conferees appearing before the committee:

Gary Daniels, Secretary of SRS

Micheal Donnelly, Disability Rights Center of Kansas

Kevin Graham, Assistant Attorney General Office

Others attending:

See attached list.

Hearing on SB 115

SB 115--Investigation period involving reports of abuse, neglect or exploitation of certain persons.

Upon calling the meeting to order, the Chair announced there would be a hearing on **SB 115**, an act concerning social and rehabilitation services; relating to investigation of reports of abuse, neglect or exploitation; amending K.S.A. 2004 Supp. 39-1433 and repealing the existing section and asked Mr. Norm Furse, Revisor of Statutes, to give a brief overview of the bill.

As there were no questions for Mr. Furse, Chairperson Barnett called upon the first proponent to testify. Gary Daniels, Secretary of Social and Rehabilitation Services, who stated that this proposal provides a more reasonable time frame for SRS to complete its investigation and ensures the SRS investigation does not interfere with a criminal investigation. It also provides the opportunity for increased collaboration between SRS and law enforcement and ensures at risk adults are protected during criminal investigations. A copy of his testimony is (Attachment 1) attached hereto and incorporated into the Minutes as referenced.

The Chair thanked Mr. Daniels for his testimony and asked if the Committee had any questions and/or comments.

Senator Palmer asked when reports of abuse or neglect are reported to SRS does SRS conduct investigation or local authorities. Norm Furse points out that lines 18-20 address Senator Palmer's question.

Chairperson Barnett calls the attention of the Committee to the written testimony provided by Ernest Kutzley, AARP Kansas. A copy of his testimony is (Attachment 2) attached here to and incorporated into the Minutes as referenced.

As there were no opponent or neutral conferees, the Chair then asked the Committee if they would like to work **SB 115**.

Senator Haley motioned to advance the legislation favorably. Senator Brungardt seconded the motion. Motion Passed.

CONTINUATION SHEET

MINUTES OF THE Senate Public Health and Welfare Committee at 1:30 P.M. on February 8, 2005 in Room 231-N of the Capitol.

Hearing on SB 116

SB 116--Injunctive authority to cease operations of unlicensed psychiatric hospital, community mental health centers and facilities for the mentally ill, mentally retarded or other handicapped persons

The next order of business was a hearing on **SB 116**, an act concerning social and rehabilitation services; providing injunctive authority against unlicensed facilities; amending K.S.A. 75-3307b and repealing the existing section. Chairperson Barnett asked Mr. Norm Furse, Revisor of Statutes, to give a brief overview of the bill.

As there were no questions for Mr. Furse, the Chair called upon the first proponent to testify. Gary Daniels, Secretary of Social and Rehabilitation Services, who stated that **SB 116** would add the authority to take injunctive action to current law governing the licensure of these facilities. The addition of this language to the current law will allow the Secretary to seek the closure of facilities and/or providers who do not meet or seek to meet established minimum standards of care and treatment through licensure. The ability to seek closure through an injunction is necessary as other remedial actions related to funding are not an option for SRS with these facilities. A copy of his testimony is (Attachment 3) attached hereto and incorporated into the Minutes as referenced.

Chairperson Barnett thanked Mr. Daniels for his testimony, then asked the Committee for any questions and/or comments.

A range of questions came from Senators Palmer, Brungardt and Journey including how SRS will change the number to five, what kind of scope is involved in this bill, how many agencies get involved upon violations, and how involved does SRS get in licensing.

The second proponent conferee was Michael Donnely, Director of Policy and Outreach for the Disability Rights Center of Kansas. A copy of his testimony is (Attachment 4 and Attachment 5) attached hereto and incorporated into the Minutes as referenced. Mr. Donnely stated **SB 116** gives the state the authority to close down those facilities who either do not meet licensing requirements or who refuse to become licensed. DRC recommends that the Kansas Legislature provide a clear statement of which programs and facilities are required to be licensed. Three amendments were proposed as follows:

- 1) A new section in Kansas law that clearly spells out the state's policy on licensing of group homes and residential programs for people with disabilities.
- 2) It's federal investigatory and access authority to facilities and programs where people with disabilities receive services be placed in state statute.
- 3) Request some technical clean-ups while addressing the issues above.

The Chair thanked Mr. Donnely for his testimony, then asked the Committee for any questions and/or comments.

A range of questions came from Senators Brungardt and Palmer, and Ms. Emalene Correll including if individuals caring for family members would included in this, what other issues might come into play concerning the federal regulations, and does SRS not have authority to check out such instances.

Chairperson Barnett asked Mr. Furse if he has review the proposed amendments. Mr. Furse replied he has briefly reviewed them and recommends that some slight massaging in language occur.

The Chair then asked Mr. Daniels if he would support the proposed amendments. Mr. Daniels stated that he would be able to support the amendments.

Chairperson Barnett called upon the third proponent conferee, Kevin Graham, Assistant Attorney General. A copy of his testimony is (Attachment 6) attached hereto and incorporated into the Minutes as referenced. Mr. Graham testimony included that on behalf of Attorney General Kline asks the Committee to favorably consider **SB 116**, with the proposed amendments, and take this opportunity to insure greater protections for

CONTINUATION SHEET

MINUTES OF THE Senate Public Health and Welfare Committee at 1:30 P.M. on February 8, 2005 in Room 231-N of the Capitol.

Kansans with disabilities of all types.

Chairperson Barnett thanked Mr. Graham for his testimony then asked the Committee for any questions and/or comments.

As there were no there were no opponent or neutral conferees or written testimonies, the Chair announced that the hearing was closed.

Adjournment

As there was no further business, the meeting was adjourned. The time was 2:30 p.m.

The next scheduled meeting is Monday, February 14, 2005.

GUEST LIST

DATE: February 8th, 2005

NAME	REPRESENTING
Michelle Peterson	K. Governmental Consulting
KEVIN GRAHAM	A.G.
Deanus Priest	SRS
Lori Nuebel	SRS
John Badger	SRS
Janelle Nuesen	Hein Law Firm
B. Mariani	SRS
Kyle Kessler	SRS
Richard Scanning	Kearney & Anes
Tim Votz	D.R.C. Kansas
Mike Donnelly	D.R.C. Kansas
George Mitchell	D.R.C. Kansas
Jeff Cook	interna

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Kansas Department of

Social and Rehabilitation Services

Gary Daniels, Acting Secretary

Senate Public Health & Welfare
February 8, 2005

**SB 115 - Investigation of Abuse, Neglect or
Exploitation of Certain Persons**

Office of the Secretary
Acting Secretary, Gary Daniels
785.296.3271

For additional information contact:
Public and Governmental Services Division
Kyle Kessler, Director of Legislative and Media Affairs

Docking State Office Building
915 SW Harrison, 6th Floor North
Topeka, Kansas 66612-1570
phone: 785.296.0141
fax: 785.296.4685
www.srskansas.org

Senate Public Health & Welfare
2-8-05 Attachment #1

**Kansas Department of Social and Rehabilitation Services
Gary Daniels, Acting Secretary**

Senate Public Health & Welfare
February 8, 2005

SB 115 - Investigation of Abuse, Neglect or Exploitation of Certain Persons

Mr. Chairman and members of the committee, my name is Gary Daniels, Acting Secretary of SRS. Thank you for the opportunity to testify regarding SB 115 which proposes to amend a specific section of the Adult Protective Services statute, K.S.A. 39-1433 (3), relating to the time frame for conducting and completing an investigation and evaluation.

This proposal extends the time frame from 30 to 90 working days for SRS Adult Protective Services investigations in which law enforcement is conducting an ongoing criminal investigation. Current statutes mandate that SRS conclude the investigation within 30 working days.

The proposal requires SRS to conclude its investigation at the end of 90 working days and make a finding. However, it also would allow SRS to reopen the case and submit a new finding based upon additional evidence provided as a result of the criminal investigation. The alleged perpetrator still would be notified, in writing, of the new finding and of the right to appeal. If the alleged perpetrator is licensed, registered or regulated by a state agency, that agency also will be notified of the change in finding.

Over 6,000 reports of abuse, neglect, exploitation and fiduciary abuse were investigated by SRS during FY 2004. Less than 10 percent of these investigations involved criminal investigations.

This proposal provides a more reasonable time frame for SRS to complete its investigation and ensures the SRS investigation does not interfere with a criminal investigation. It also provides the opportunity for increased collaboration between SRS and law enforcement and ensures at risk adults are protected during criminal investigations.

I will be glad to respond to questions.



February 8, 2005

Senator Barnett, Chair
Public Health and Welfare Committee
SB 115

Good afternoon Senator Barnett and Members of the Public Health and Welfare Committee. My name is Ernest Kutzley and I am the Advocacy Coordinator for AARP Kansas. AARP Kansas represents the views of our more than 350,000 members in the state of Kansas. Thank you for this opportunity to express our support and comments on Senate Bill 115.

The American Psychological Association (APA) estimates that every year approximately 2.1 million older Americans are victims of physical, psychological, or other forms of abuse and neglect. Those statistics may not tell the whole story. For every case of elder abuse, neglect or exploitation that is reported to authorities, experts estimate that there may be as many as five cases that have not been reported.

Prosecutions of alleged abusers are difficult because victims may be unable or unwilling to testify as a result of incapacity, fear, shame or misguided loyalty. However, a number of states and local jurisdictions have made significant progress in introducing and implementing new techniques for investigating and prosecuting abuse cases that increase the chances for successful prosecutions. Training for law enforcement and prosecutorial staff is a key component of this strategy.

AARP believes that states should enact and enforce adult protective services laws that provide for investigation, access and intervention in emergency and non-emergency situations of abuse, neglect and exploitation of vulnerable individuals in the community and in long-term care facilities. These laws must balance the individual's autonomy and self-determination with the state's need to protect those people who cannot protect themselves. Any protective action states take should be the least restrictive yet meet the specific needs of the vulnerable individual.

Additional and special efforts are necessary to protect vulnerable older adults. Therefore, we respectfully urge you to give favorable consideration to Senate Bill 115 in order to further protect vulnerable adults from abuse, neglect and exploitation.

Thank you for your consideration in this matter.

Ernest Kutzley
AARP Kansas

*Senate Public Health & Welfare
2-8-05 Attachment #2*

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Kansas Department of

Social and Rehabilitation Services

Gary Daniels, Acting Secretary

Senate Public Health and Welfare Committee
February 8, 2005

SB 116 - Injunctive Authority to Cease Operations



Division of Health Care Policy
Gary J. Daniels, Acting Secretary
785.296.3271

For additional information contact:
Public and Governmental Services Division
Kyle Kessler, Director of Legislative and Media Affairs

Docking State Office Building
915 SW Harrison, 6th Floor North
Topeka, Kansas 66612-1570
phone: 785.296.0141
fax: 785.296.4685
www.srskansas.org

Senate Public Health & Welfare
2-8-05 Attachment #3

**Kansas Department of Social and Rehabilitation Services
Gary Daniels, Acting Secretary**

Senate Public Health and Welfare Committee
February 8, 2005

SB 116 - Injunctive Authority to Cease Operations

Chairperson Barnett, and members of the Senate Public Health and Welfare Committee, I am Gary Daniels, Acting Secretary of the Kansas Department of Social and Rehabilitation Services. I appreciate the opportunity to testify today in support of Senate Bill 116, which is one of SRS' legislative proposals.

Senate Bill 116 would add the authority to take injunctive action to current law governing the licensure of these facilities. The addition of this language to the current law will allow the Secretary to seek the closure of facilities and/or providers who do not meet or seek to meet established minimum standards of care and treatment through licensure. This type of authority is similar to the authority bestowed upon other state agencies with facility licensing responsibilities such as Kansas Department of Health and Environment and the Kansas Department on Aging.

The Secretary of SRS has statutory authority per KSA 75-3307b for setting of standards, inspection, and licensing of facilities for persons with mental illness, mental retardation, or developmental disabilities. It is implied through this statute that SRS has responsibility for ensuring the health and safety of the populations that reside in these facilities through the creation of regulations that set out requirements for minimum standards. While existing law does allow for the creation of regulations and inspection of facilities, it does not currently enable the Secretary to take action against facilities which refuse to obtain or to maintain an appropriate license. The absence of enforcement authority hampers the Secretary's ability to ensure the health and safety of individuals residing in facilities or who are receiving services from facilities which refuse to obtain a license or refuse to maintain a license in good standing.

The majority of facilities that SRS licenses under this statute receive funding from SRS for the provision of services to individuals with mental illness or a developmental disability. Continued funding from SRS is contingent upon the facility maintaining a license in good standing. However, Residential Care Facilities or group homes for individuals with mental illness usually **do not** receive funding from SRS. Thus the ability to seek closure through an injunction is necessary as other remedial actions related to funding are not an option for SRS with these facilities.

I would ask your support of Senate Bill 116.



Disability Rights Center of Kansas

3745 SW Wanamaker Road ♦ Topeka, KS 66610

785.273.9661 ♦ 877.776.1541 (V/TDD)

785.273.9414 FAX ♦ www.drckansas.org

info@drckansas.org

Testimony to the Senate Public Health and Welfare Committee

February 8, 2005

Chairman Barnett and members of the committee, my name is Michael Donnelly. I am the Director of Policy and Outreach for the Disability Rights Center of Kansas, formerly Kansas Advocacy and Protective Services (KAPS). The Disability Rights Center of Kansas (DRC) is a public interest legal advocacy agency, part of a national network of federally mandated and funded organizations legally empowered to advocate for Kansans with disabilities. As such, DRC is the officially designated protection and advocacy system for Kansans with disabilities. DRC is a private, 501(c)(3) nonprofit corporation, independent of both state government and disability service providers. As the federally designated protection and advocacy system for Kansans with disabilities our task is to assist persons with disabilities, regardless of age or disability, to live in the most integrated setting possible, and to ensure that they receive the appropriate medical care, support services and treatment in a safe and effective manner as promised by federal, state and local laws. That responsibility includes the responsibility to investigate allegations of abuse, neglect and exploitation in adult care homes, residential care facilities and other places where persons with disabilities reside and receive services.

SB 116 is one of several responses to the number of group homes and other residential facilities that serve people with disabilities in Kansas that have allowed licensure to lapse, or who have refused to be licensed. One such case that has gained national attention is the Kaufman case out of Newton Kansas. I have attached four newspaper articles to my testimony as a means of getting you background information on the case. Kansas Attorney General Phill Kline and the DRC have partnered to offer several pieces of legislation that we believe will reduce the likelihood of these kinds of cases in the future. SB 116 and the amendments we are offering today are important in closing the loopholes that made the Kaufman Case possible.

In short, the Kaufman House case is a situation where there was an unlicensed group home for persons with mental illness where the owner was providing the residential services, therapy for the residents, medication distribution and, in at least one instance, was the guardian of a resident. SRS informed the Kaufmans in 1986 that their group homes were required to be licensed and the Kaufmans fought that order up to the Kansas Supreme Court. The Kansas Supreme Court ordered the Kaufman's to become licensed in 1991 and yet they continued operating without a license through most of 2004.

Kansas Attorney General Phill Kline contacted DRC in February 2004 to explore our ability to respond the claims and evidence of abuse at the Kaufman's group homes. General Kline was frustrated that despite all of the evidence that had been collected by multiple state agencies no one had taken action to close them down. He found several loopholes that allowed the Kaufmans to stay in business, and furthermore, found his hands were tied because the statute of limitations had run out on the various allegations of abuse. As a result of his referral DRC investigated the situation in Newton, contacted one "complaintant" who resided there, acted to move her ("Pam") out of the home to a safe place and petitioned to terminate Mr. Kaufman's guardianship over her.

The US Department of Justice then asked "Pam" to be there witness. The result was the execution of arrest and search warrants on October 26, 2004 with DRC attorneys and advocates on hand to protect the rights of the residents of the group homes. Since that time the Kaufmans have been indicted on more than 30 federal counts. The group homes are closed and all of the residents are now living in safe places.

Among the lessons that need to be learned from this very public case is that no person with disabilities should be left without protections just because they live in a group home of fewer than five (5) people. A second lesson is that the state needs to develop a more coordinated investigation and response system to act on reports of abuse neglect and exploitation, including, but not limited to the ability of the state to immediately shut down unlicensed, and un-monitored group homes and residential programs.

If enacted into law, SB 116 closes one loophole and provides the teeth that the state needs to close down unlicensed facilities. The loophole it does not close in its current form is what facilities and programs should be licensed. DRC proposes three amendments to SB 116 (attached) that we believe strengthen the states investigation and response system, and closes the loophole of licensure.

1. DRC recommends a new section in Kansas law that clearly spells out the state's policy on licensing of group homes and residential programs for people with disabilities. Neither state law, nor regulations have one concise statement of policy that says the state takes seriously it's responsibility to ensure that residents of group homes, regardless of size are not subject to abuse, neglect and exploitation
2. DRC recommends that it's federal investigatory and access authority to facilities and programs where people with disabilities receive services be placed in state statute. Although the protection and advocacy agency access authority is sprinkled through several other statutes, DRC would like to make it clear in this statute that all facilities serving persons with disabilities as described in K.S.A. 75-3307b are required to allow the protection and advocacy agency (DRC) access to its facilities, residents and records in order to carryout its investigative responsibilities.
3. DRC respectfully requests some technical clean-ups while addressing the issues above. First, K.S.A. 75-3307b uses antiquated language in referring to persons with disabilities. We would like to take this opportunity to clean-up what is open. Secondly, we would like to amend the one statute that refers to our organization with it's old name. We request that the legislature modify K.S.A. 65-5603 to refer to the protection and advocacy system for Kansas rather than its old name Kansas Advocacy & Protective Services.

Again, SB 116 is a giant step in the right direction. It gives the state the authority to close down those facilities who either do not meet licensing requirements or who refuse to become licensed. DRC recommends that the Kansas Legislature provide a clear statement of which programs and facilities are required to be licensed. And, that the state clarify the authority of the protection and advocacy system to access the programs and facilities serving Kansans with disabilities in order to carryout its mandates under federal law.



Couple indicted on servitude charges

Newton residents allegedly forced to work in nude

The Associated Press

Thursday, December 30, 2004

Topeka — A Newton couple already charged with forcing mentally ill residents of a group home to work on their farm were indicted Wednesday on 35 charges.

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The indictment, returned by a federal grand jury, replaces one issued in November, charging Arlan D. Kaufman, 68, and his wife, Linda J. Kaufman, 61, with a single count of involuntary servitude.

The Kaufmans now face 16 counts of health care fraud, 10 counts of mail fraud, three counts of holding group home residents in involuntary servitude, two counts of forcing them to perform labor and a single count each of conspiracy, obstructing a federal audit and making false documents, the U.S. attorney's office said. The 35th count is a forfeiture charge through which prosecutors are seeking to reclaim more than \$200,000 that authorities allege the Kaufmans received by submitting fraudulent bills to the federal Medicare program.

The Kaufmans, who were arrested in October, have operated a group home for adults with mental disabilities in Newton since 1995. The original involuntary servitude charge stemmed from an allegation that residents of the home were forced to work in the nude at a farm in Potwin, about 50 miles southeast of the group home, in 1999.

The new indictment accuses the Kaufmans of forcing group home residents to perform sexually explicit acts and manual labor. The indictment also alleges that the Kaufmans videotaped some of the residents' sexual contacts during purported therapy sessions.

James Wyrsh, a Kansas City, Mo., the Kaufmans' attorney, said Wednesday night that he had not seen the indictment but that the Kaufmans, "intend to plead not guilty and vigorously defend themselves."

The Kansas Department of Social and Rehabilitation Services conducted an investigation in 2001 that resulted in the suspension of Arlan Kaufman's social work license. That year, 30 videotapes were seized of "nude therapy" sessions.

Linda Kaufman, a nurse whose license has been suspended, was in charge of dispensing medication at the group home

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THE HUTCHINSON NEWS

online edition

Couple accused of enslaving mentally ill

Operators of Newton group home charged with forcing residents to work on farm, often in the nude

By Jessica Self

NEWTON - A Newton couple who allegedly operated an unlicensed group home for the mentally ill made a first appearance Wednesday in federal court, charged with forcing the residents to work on their farm, often in the nude.

Arlan D. Kaufman, 68, and Linda J. Kaufman, 61, were arrested Tuesday after 20 FBI agents - from Wichita, Kansas City and Dodge City - served search warrants on two Newton group homes that served residents with mental illnesses.

Six adults were removed from the home and are in the care of Kansas social service workers, FBI spokesman Jeff Lanza said.

In November 1999, Butler County Sheriff's deputies were called to a rural residence owned by Arlan Kaufman on reports individuals were working outdoors in the nude, according to a criminal complaint and affidavit by investigators filed in federal court.

According to the complaint:

Officers arrived on the scene and found four naked individuals removing nails from wood that was lying near a bar.

Arlan Kaufman told officers the individuals were residents of the Kaufman Treatment Center and they were members of a therapy group.

Neighbors were contacted by law enforcement officials and they reported on more than one occasion they had witnessed the Kaufmans bringing individuals to the farm near Potwin, in northwest Harvey County, to perform manual labor, including carpentry work, in the nude.

Later that month, deputies spoke with the residents, who said Arlan Kaufman does not pay them for their work and that he receives many of their Social Security Disability and Medicare benefits.

An unidentified female resident told deputies the Kaufmans took her and other residents on a trip to Florida and they were "having to pay off the cost of the trip."

Deputies reported Linda Kaufman was present for the interviews, and the individuals "would look at Linda Kaufman, as if seeking approval, prior to answering each question."

In June 2001, officials interviewed Linda Kaufman and she said the patients do not work for the Kaufmans to pay off expenses, but she did verify the patients had worked without clothing on the farm.

Ryan Filson, a special agent with the U.S. Department of Health and Human Services who filed the affidavit, said that based on the investigation the Kaufmans on more than one occasion used a stun gun to "shock one resident on his stomach, testicles and feet," punished individuals for violating rules by taking away their clothes, directed residents to work the nude, discouraged residents from contacting their families and friends and controlled the residents' finances and prescription medicines.

Investigators also believe no doctors or other mental health professionals provided any treatment to the residents of the home for the past 15 years.

In court Wednesday, the Kaufmans are charged under a law that makes it illegal to hold or sell another person into "any condition of involuntary servitude," which is prohibited by the 13th Amendment banning slavery.

Violators can be sentenced to up to 20 years in prison.

The Kaufmans have been operating "Kaufman House Residential Group Treatment Center, Inc." in Newton since about 1985, the complaint says.

Many of the residents, placed in the facility by their legal guardians, suffer from a mental illnesses that "significantly impaired their ability to make competent decisions."

The alleged treatment center is not licensed by the state, Lanza said.

According to the Associated Press, Rocky Nichols, executive director of Kansas Advocacy and Protective Services, a federally funded protection and advocacy organization, said the agency received a report in May from a mentally disabled woman in her 50s who claimed her guardian and therapist had sexually abused her for more than 20 years.

The agency got an emergency order the same day to suspend the Kaufmans' guardianship authority and removed the woman from the home, Nichols said.

The agency then worked with federal authorities to get the rest of the adults out of the home, Nichols said.

Arlan Kaufman was a licensed social worker but his license lapsed in 2002.

According to the Associated Press, the state's Behavioral Sciences Regulatory Board suspended Arlan Kaufman's clinical social worker license in an emergency order dated Aug. 9, 2001. The order includes allegations of sexual exploitation by Kaufman of dependent adults who had been paying room and board to the couple for years.

The Associated Press also reported the Kansas State Board of Nursing suspended Linda Kaufman's nursing license Feb. 18. That emergency order says 30 videotapes recording what the couple called "nude therapy" were seized from Linda Kaufman's bedroom.

In the sessions, Arlan Kaufman is shown encouraging adults to masturbate before the group and shave each other's pubic hair, among other acts. The videotapes also depict instances in which he touches the genitals of both male and female patients, the order states.

The emergency order suspending Arlan Kaufman's license also details similar incidents, based on videos dated to 1998 and 2001.

A detention hearing for the Kaufmans is scheduled for 1:30 p.m. Wednesday, followed by a preliminary hearing Nov. 10.

- *The Associated Press contributed to this story.*

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THE HUTCHINSON NEWS

online edition

Newton group home eluded officials

By Jason Probst

Two days after federal officials shuttered a group home for the mentally ill in Newton, state officials are struggling to determine how the operation - and the alleged abuses that happened there - slipped through the regulatory cracks.

Arlan D. Kaufman, 68, and Linda J. Kaufman, 61, were arrested Tuesday after an investigation that revealed patients at group homes run by the couple allegedly were held in an involuntary state of servitude, were forced to work in the nude and at least one was shocked repeatedly with a stun gun.

An FBI spokesman said Tuesday that the group home operation was not licensed or regulated by a state agency at the time of Tuesday's arrests. In 1986, the Kansas Department of Social and Rehabilitation Services instructed the Kaufmans to obtain a state license to continue operating as a "residential care facility."

Despite a ruling from the Kansas State Supreme Court in 1991 that ordered the Kaufmans to obtain the license from SRS, the couple never did.

Instead, SRS officials think changes were made to the group homes that allowed the center to avoid SRS regulation.

According to Mike Deines, SRS spokesman, one part of being a regulated residential care facility is that it consists of five to 40 beds.

The Kaufmans operated two separate homes - one with two beds and one with four, according to court documents.

"There wasn't a classification for this home," Deines said. "We were well aware of what was going on, and we worked with local law enforcement. SRS doesn't have any legal authority to go into a house and shut it down."

As the FBI and U.S. Department of Health and Human Services continue to investigate allegations of abuse and torture at the Kaufman operation, details of the state's efforts leading up to the federal case are beginning to come into focus.

1985 to 2001

For about 17 years, Arlan and Linda Kaufman owned and operated the Kaufman Treatment Center or Kaufman House Residential Group Treatment Center Inc., according to an affidavit from an agent with

the Department of Health and Human Services.

Arlan was a licensed social worker who was responsible for the daily care of the residents, and authorities think Linda distributed medication and provided other caretaking obligations for the residents of the Kaufman House.

Arlan Kaufman

The Kansas Behavioral Sciences Regulatory Board suspended Arlan Kaufman's social work license Aug. 9, 2001, after it reviewed videotapes from a Kaufman home showing him practicing beyond the scope of that license, said Roger Scurlock, an investigator with the KBSRB.

"We didn't have any witnesses and found it difficult to do anything in the investigation," Scurlock said. "But the tapes graphically showed what was happening."

According to The Associated Press, the videotapes showed Arlan Kaufman encouraging adults to masturbate before the group and shave one another's pubic hair, among other acts. The videotapes also depict instances where he touched the genitals of male and female residents.

Scurlock said the tapes showed Kaufman was becoming a danger to his clients, and after a review by staff counsel, the KBSRB drafted an emergency order for the suspension of Kaufman's license.

A day after watching the tapes, Scurlock called the SRS, and other agencies became involved in the investigation, including the inspector general with the Department of Health and Human Services.

Although Arlan Kaufman lost his license, authorities believe the Kaufmans continued to run the group homes for mentally ill in Newton.

Linda Kaufman

On Feb. 18, 2004, the Kansas State Board of Nursing suspended the nursing license of Linda Kaufman based on the videotapes. A member of the board then contacted the Kansas Attorney General's Office, spokesman Whitney Watson said.

"We faced a two-year statute of limitations," he said of the 1999 videotape incident. "We were not able to take any action, but we immediately started to look for any possible way to do something."

The attorney general's office contacted SRS, the Harvey County Attorney's Office and Kansas Advocacy and Protective Services, a federally funded protection and advocacy organization.

Watson said that a member of the SRS office and a Newton Police Department detective went to the Kaufmans' group homes Feb. 25 and reported "no indication of abuse that would substantiate an investigation."

Judge's order

After an investigation by KAPS, a judge ordered May 19 that a mentally disabled woman in her 50s be removed from the Kaufman homes after she claimed her guardian and therapist - Arlan Kaufman - had sexually abused her for years.

"We got her out of there - far, far away from there," said Rocky Nichols, executive director for KAPS. "She didn't want to be there. She confirmed the abuse was taking place."

The agency then worked with federal authorities to attempt to remove the remaining adults in the home, he said.

The Kaufmans were arrested Tuesday by FBI agents and charged under a law that makes it illegal to hold or sell another person into "any condition of involuntary servitude." They could face 20 years in prison if convicted.

The remaining adults in the homes were appointed new guardians, Nichols said, and his agency remains the guardian for court proceedings.

"We strive to have people with disabilities treated with respect," he said. "The things we found during the investigation were really concerning, amazingly concerning."

The Kaufmans remain in jail, awaiting a detention hearing Wednesday, to be followed by a preliminary hearing Nov. 10.

Following the Kaufmans' arrests, advocacy groups are expressing outrage at the state's alleged slow pace in investigating and removing individuals from the home.

"Everyone should live with dignity, and there was an enormous lack of that in this case," said Karen Manza, executive director of the National Alliance for the Mentally Ill.

"We think it's absolutely disgusting that so many organizations knew what was going on and did nothing to stop it."

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Posted on Sun, Oct. 31, 2004

Alleged abuse was known to many in state

While authorities knew something was amiss in group homes for the mentally ill, they couldn't build a good case.

BY STEVE PAINTER
Eagle Topeka bureau

TOPEKA - Charges filed in federal court last week against the owners of Newton group homes for mentally ill people sent shock waves through the state's mental health community.

Allegations of slavery. Reports of "nude therapy" sessions in which residents were forced to take part in degrading activities, including improper sexual contact by the therapist.

How could it happen, perhaps for years, without anybody outside the home knowing about it?

The fact is, lots of people did know something was amiss. Investigations were conducted. Reports were made.

Federal, state and local law enforcement and social service agencies all have evidence on file in the case, some of it in public records, much of it not.

But until Tuesday, none of that activity brought an end to the alleged abuse that took place at the two homes run by Arlan and Linda Kaufman in Newton.

Advocates for the mentally ill are calling for changes to head off ongoing or future abuse in an unknown number of unlicensed group homes across Kansas.

In Sedgwick County, only 35 to 40 people with mental illness reside in licensed group homes, said Karen McNally, director of community support services at Comcare of Sedgwick County.

McNally said she doesn't know how many unlicensed homes are in the county, who operates them or what conditions they offer. Comcare does not place residents in unlicensed homes.

The Kaufmans' lawyer, Jim Wyrsh of Kansas City, Mo., declined to comment on the case Friday. His firm is preparing to respond to the federal charges that the couple forced mentally ill people who lived at their group homes to work for them against their will.

Tracing who knew what, and when they knew it, is complicated by the secrecy surrounding reports of abuse.

But it is clear that many people knew what was going on.

Frustrated in Newton

Newton Police Chief Jim Daily's first involvement in the Kaufman case came in February 2001, a month after he took the job.

His office helped a federal agency, Health and Human Services' Office of Inspector General, execute a search warrant at the Kaufman group home.

Agents confiscated about 30 tapes that state officials, in documents suspending the Kaufmans' professional licenses, say depict sexual abuse and humiliation of residents at the home.

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Acting on knowledge of those tapes--but not having possession of them--Daily said his department sent officers to the home several times to attempt to talk to residents.

They had little success, he said. Residents appeared fearful of talking to officers and called the Kaufmans.

"We met with resistance each and every time that we went to inquire about the things that were going on there," Daily said. "It made it extremely difficult to corroborate anything that was being alleged."

Harvey County Attorney David Yoder said he, likewise, was frustrated with his inability to act. Based on what the officers could come up with, the only crime they could prosecute was misdemeanor sexual battery of one resident.

"That really wasn't enough that we could come down on these people and shut this place down," he said.

"We were frequently stonewalled because so many of the residents there had been--I hate to use the word brainwashed--but influenced not to talk to us."

Only one resident would talk to the officers about the abuse that was taking place, he said.

Her information prompted a call to Attorney General Phill Kline's office, who called on the Kansas Advocacy and Protective Services, which intervened in May to get Arlan Kaufman's guardianship of the woman revoked.

Unable to act

Two years before the Kaufman homes were searched, Butler County authorities investigated a report of nude adults working at a home near Potwin. They were residents of the Kaufman group home.

Jan Satterfield, Butler County attorney, said she also had trouble building a case against the Kaufmans. She didn't learn of any alleged physical or sexual abuse until she read news reports about the charges filed last week.

The only crime that seemed to fit, Satterfield said, was mistreatment of a dependent adult, which is a level six felony.

But she said that Kansas Department of Social and Rehabilitation Services officials in the Hutchinson office told her that the adults living at Kaufman House did not qualify as dependent adults.

The difference between a dependent adult and a disabled adult is technical in Kansas law, but Satterfield said Kaufman knew the distinction well.

"He knew those fine lines and took advantage of them," she said.

She said that when SRS officials refused to testify that the residents were dependent adults, she shared her evidence with the Harvey County attorney's office and several administrative offices in Topeka and Kansas City.

SRS activity

The Kansas Department of Social and Rehabilitation Services does not reveal, because of confidentiality requirements in state law, whether it has received a report of abuse or has an ongoing investigation.

An SRS spokesman did say Friday that the agency has copies of some of the tapes confiscated in the federal raid. None were turned over to Harvey County authorities because they were part of the federal investigation, SRS spokesman Mike Deines said.

Don White, a spokesman for Health and Human Services in Washington, said the agency "does not provide information on open investigations that may or not be before the office of inspector general."

An April 29, 2004, letter from SRS to the Kansas State Board of Nursing indicates that SRS had eight of the videotaped nude therapy sessions and that the agency conducted its own investigation of abuse in 2001.

Roger Scurlock, a special investigator for the state Behavioral Sciences Regulatory Board, said he viewed a small portion of the videotapes in Wichita on June 27, 2001.

"That's what actually gave us the evidence to suspend the license (of Arlan Kaufman). The tape gave us evidence, and we acted on that," he said.

The day after viewing the tapes, Scurlock said, he reported the abuse to the SRS office in Hutchinson.

The board suspended Kaufman's license as a clinical social worker on Aug. 9, 2001.

Whether the Kansas State Board of Nursing filed a report with SRS could not be determined late last week. A receptionist said Friday that no one was available to address the issue until Monday.

Linda Kaufman's nursing license has been suspended.

Calling for changes

The Kaufmans lost a lawsuit against SRS when the Kansas Supreme Court ruled in 1991 that their home must be licensed by the state. Still, they refused to become licensed and SRS could not force the issue.

A top SRS official said the agency is already preparing recommendations for legislators and policymakers, including authority for SRS to take action against homes that refuse to obtain a license.

"We do want that authority," said Lori Nuebel, interim director for community programs and field services in SRS' mental health division.

"If a license is really going to mean something, we need that authority," she said.

The agency began meeting in September with stakeholder groups to discuss ways not only to issue or revoke licenses, she said, but to issue cease and desist orders to homes that operate without a license.

Mental health advocates say that should only be the start.

Rocky Nichols, executive director of Kansas Advocacy and Protective Services, said Kansas' guardianship law is too weak. In this case, Arlan Kaufman was not only the woman's guardian, but the operator of the group home.

"That's just a blatantly, crystal clear conflict of interest and a problem with the law," Nichols said. "He was the therapist, the guardian, the provider of all kinds of services. He also happened to be the alleged abuser."

Karen Manza, executive director of the National Alliance for the Mentally Ill-Kansas, considers Kansas' mental health system to be in "an extremely fragile state."

State and private long-term care institutions have closed over the past decade as emphasis shifted to community-based care.

What has evolved, she said, is "vast inconsistencies" in those community options, which she contends are often underfunded and make a "hodgepodge of private, local and state agencies."

"All the agencies who knew of the treatment had the opportunity to intervene and didn't," she said. "Without people looking out for their best interests, there's always the potential for tragedies such as this."

*Contributing: Josh Funk of The Eagle
Reach Steve Painter at (785) 296-3006 or spainter@wichitaeagle.com.*

The following is offered as An Amendment to Senate Bill 116:

Italicized portions = Original SB 116 Bill

Bold Italicized portions = DRC requested amendments

Bold Strikethroughs = DRC requested deletions

Michael Donnelly

- 1. AN ACT concerning social and rehabilitation services; providing injunctive
- 2. authority against unlicensed facilities; amending K.S.A. 75-3307b
- 3. and repealing the existing section; amending K.S.A. 65-5603.

4.

5. *Be it enacted by the Legislature of the State of Kansas:*

6. ***New Section 1: The state of Kansas will take proactive measures to help ensure***
 7. ***that Kansans with disabilities residing in a group home, or other congregate***
 8. ***setting of two or more persons will be protected from abuse, neglect and***
 9. ***exploitation. The respective state agencies will promulgate the necessary rules and***
 10. ***regulations to ensure that the providers of group homes, or other congregate***
 11. ***settings of two or more persons who are not self-directing their services, or the***
 12. ***facilities themselves are licensed and monitored in order to ensure that the***
 13. ***residents are free from abuse, neglect and exploitation.***

14. Section 2. K.S.A. 75-3307b is hereby amended to read as follows: 75-

15. 3307b. (a) The enforcement of the laws relating to the hospitalization of
 16. mentally ill persons of this state in a psychiatric hospital and the diagnosis,
 17. care, training or treatment of persons in community mental health centers
 18. or facilities for ~~the mentally ill, mentally retarded or other handicapped~~
 19. ***persons persons with mental illness, developmental disabilities or other***
 20. ***persons with disabilities*** is entrusted to the secretary of social and
 21. rehabilitation services. The secretary may adopt rules and regulations on the
 22. following matters, so far as the same are not inconsistent with any laws of this state:

- 23. (1) The licensing, certification or accrediting of private hospitals as
- 24. suitable for the detention, care or treatment of mentally ill persons, and
- 25. the withdrawal of licenses granted for causes shown;
- 26. (2) the forms to be observed relating to the hospitalization, admission,
- 27. transfer, custody and discharge of patients;
- 28. (3) the visitation and inspection of psychiatric hospitals and of all
- 29. persons detained therein;
- 30. (4) the setting of standards, the inspection and the licensing of all
- 31. community mental health centers which receive or have received any
- 32. state or federal funds, and the withdrawal of licenses granted for causes
- 33. shown;
- 34. (5) the setting of standards, the inspection and licensing of all facilities
- 35. for ~~the mentally ill, mentally retarded or other developmentally disabled~~ ***persons***
- 36. ***with mental illness or individuals with developmental disabilities***
- 37. ~~persons~~ receiving assistance through the department of social and
- 38. rehabilitation services which receive or have received after June 30, 1967,
- 39. any state or federal funds, or facilities where ~~mentally ill, mentally retarded~~
- 40. ~~or other developmentally disabled~~ ***persons with mental illness or developmental***
- 41. ***disabilities*** reside who require supervision
- 42. or require limited assistance with the taking of medication, and
- 43. the withdrawal of licenses granted for causes shown. The secretary may
- 44. adopt rules and regulations that allow the facility to assist a resident with
- 45. the taking of medication when the medication is in a labeled container
- 46. dispensed by a pharmacist. No license for a residential facility for eight

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1. or more persons may be issued under this paragraph unless the secretary
 2. of health and environment has approved the facility as meeting the licensing
 3. standards for a lodging establishment under the food service and
 4. lodging act. No license for a residential facility for the elderly or for a
 5. residential facility for persons with disabilities not related to mental illness
 6. or ~~mental retardation~~ **developmental disability**, or both, or related conditions shall be
 7. issued under this paragraph;

8. (6) reports and information to be furnished to the secretary by the
 9. superintendents or other executive officers of all psychiatric hospitals,
 10. community mental health centers or facilities for ~~the mentally retarded~~ **persons with**
 11. **developmental disabilities** and facilities serving other ~~handicapped~~ **persons with**
 12. **disabilities** receiving assistance through the department of social and rehabilitation
 13. services.

14. (b) An entity holding a license as a community mental health center
 15. under paragraph (4) of subsection (a) on the day immediately preceding
 16. the effective date of this act, but which does not meet the definition of a
 17. community mental health center set forth in this act, shall continue to be
 18. licensed as a community mental health center as long as the entity remains
 19. affiliated with a licensed community mental health center and continues
 20. to meet the licensing standards established by the secretary.

21. *(c) Notwithstanding the existence or pursuit of any other remedy,*
 22. *the secretary of social and rehabilitation services, as the licensing agency,*
 23. *in the manner provided by the act for judicial review and enforcement of*
 24. *agency actions, may maintain an action in the name of the state of Kansas*
 25. *for injunction against any person or facility to restrain or prevent the*
 26. *operation of a psychiatric hospital, community mental health center or*
 27. *facility for the mentally ill, mentally retarded or other handicapped persons*
 47. *persons with mental illness, developmental disabilities or other*
 28. *persons with disabilities operating without a license.*

29. ***(d) The state protection and advocacy system shall have reasonable***
 30. ***unaccompanied access to public and private facilities and programs in the***
 31. ***State which render care, treatment or services for individuals with***
 32. ***disabilities, and to those individuals with disabilities who receive care,***
 33. ***treatment or services from those facilities and programs, and to the records***
 34. ***of individuals with disabilities who receive services from those facilities and***
 35. ***programs.***

36. Sec. 3. K.S.A. 75-3307b is hereby repealed.

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

1. **Sec. 5 K.S.A. 65-5603 is hereby amended to read as follows: 65-5603. (a)**
 2. **The privilege established by K.S.A. 65-5602 and amendments thereto shall**
 3. **not extend to:**

4. **(1) Any communication relevant to an issue in proceedings to**
 5. **involuntarily commit to treatment a patient for mental illness, alcoholism or**
 6. **drug dependency if the treatment personnel in the course of diagnosis or**
 7. **treatment has determined that the patient is in need of hospitalization;**

8. **(2) an order for examination of the mental, alcoholic, drug dependency or**
 9. **emotional condition of the patient which is entered by a judge, with respect to**
 10. **the particular purpose for which the examination is ordered**

11. (3) any proceeding in which the patient relies upon any of the
12. aforementioned conditions as an element of the patient's claim or defense, or,
13. after the patient's death, in any proceeding in which any party relies upon any
14. of the patient's conditions as an element of a claim or defense;
15. (4) any communication which forms the substance of information which
16. the treatment personnel or the patient is required by law to report to a public
17. official or to be recorded in a public office, unless the statute requiring the
18. report or record specifically provides that the information shall not be
19. disclosed;
20. (5) any information necessary for the emergency treatment of a patient or
21. former patient if the head of the treatment facility at which the patient is
22. being treated or was treated states in writing the reasons for disclosure of the
23. communication and makes such statement a part of the treatment or medical
24. record of the patient;
25. (6) information relevant to protect a person who has been threatened with
26. substantial physical harm by a patient during the course of treatment, when
27. such person has been specifically identified by the patient, the treatment
28. personnel believes there is substantial likelihood that the patient will act on
29. such threat in the reasonable foreseeable future and the head of the treatment
30. facility has concluded that notification should be given. The patient shall be
31. notified that such information has been communicated;
32. (7) any information from a state psychiatric hospital to appropriate
33. administrative staff of the department of corrections whenever patients have
34. been administratively transferred to a state psychiatric hospital pursuant to
35. the provisions of K.S.A. 75-5209 and amendments thereto;
36. (8) any information to the patient or former patient, except that the head of
37. the treatment facility at which the patient is being treated or was treated may
38. refuse to disclose portions of such records if the head of the treatment facility
39. states in writing that such disclosure will be injurious to the welfare of the
40. patient or former patient;
41. (9) any information to any state or national accreditation, certification or

1. licensing authority, or scholarly investigator, but the head of the treatment
2. facility shall require, before such disclosure is made, a pledge that the name
3. of any patient or former patient shall not be disclosed to any person not
4. otherwise authorized by law to receive such information;
5. (10) any information to ~~Kansas advocacy and protective services, inc.~~ *the*
6. *state protection and advocacy system* which concerns individuals who reside
7. in a treatment facility and which is required by federal law and federal rules
8. and regulations to be available pursuant to a federal grant-in-aid program;
9. (11) any information relevant to the collection of a bill for professional
10. services rendered by a treatment facility; or
11. (12) any information sought by a coroner serving under the laws of Kansas
12. when such information is material to an investigation or proceeding
13. conducted by the coroner in the performance of such coroner's official duties.
14. Information obtained by a coroner under this provision shall be used for
15. official purposes only and shall not be made public unless admitted as
16. evidence by a court or for purposes of performing the coroner's statutory
17. duties;
18. (13) any communication and information between or among treatment
19. facilities regarding a proposed patient, patient or former patient for purposes
20. of promoting continuity of care between the state psychiatric hospitals and
21. the community mental health centers; the proposed patient, patient, or former
22. patient's consent shall not be necessary to share evaluation and treatment
23. records between or among treatment facilities regarding a proposed patient,
24. patient or former patient; as used in this paragraph (13), 'proposed patient'
25. and 'patient' shall have the meanings respectively ascribed thereto in K.S.A.
26. 2003 Supp. 59-2946 and amendments thereto;
27. (14) the name, date of birth, date of death, name of any next of kin and
28. place of residence of a deceased former patient when that information is
29. sought as part of a genealogical study; or
30. (15) any information concerning a patient or former patient who is a
31. juvenile offender in the custody of the juvenile justice authority when the
32. commissioner of juvenile justice, or the commissioner's designee, requests
33. such information.
34. (b) The treatment personnel shall not disclose any information subject to
35. subsection (a)(3) unless a judge has entered an order finding that the patient
36. has made such patient's condition an issue of the patient's claim or defense.
37. The order shall indicate the parties to whom otherwise confidential
38. information must be disclosed.
39. Sec. 3 This act shall take effect and be in force from and after its
40. publication in the Kansas register.



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

PHILL KLINE
ATTORNEY GENERAL

120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.KSAG.ORG

BEFORE THE SENATE COMMITTEE ON
PUBLIC HEALTH AND WELFARE

Regarding Senate Bill No. 116
Testimony of
Kevin A. Graham
Assistant Attorney General

Chairman Barnett and Member of the Committee:

Thank you for permitting me to appear before you today on behalf of Kansas Attorney General Phill Kline in support of SB 116, as the bill is proposed to be amended with the addition of the language provided to you by the Disability Rights Center of Kansas.

As you are aware, the original language of SB 116 was proposed by the Kansas Department of Social and Rehabilitation Services (SRS) to address a serious problem with unlicensed group homes in our State. SB 116 will allow SRS to obtain injunctive relief against group homes that are already required to be licensed and regulated under Kansas law that provide services to mentally ill Kansans. Unfortunately, not all small-bed group homes (serving between 2 and 5 persons) are required to be licensed, and this means that the original language of SB 116, while beneficial for some situations, would not be effective for all group homes that serve persons with disabilities - creating an accountability loophole. It is reasonable to conclude that if appropriate legislative steps are taken to close some of the current gaps in oversight and accountability for certain types of small group homes then certain problems (and abuses) may migrate to other types of homes where those protections are not in place.

Working in conjunction with Executive Director Rocky Nichols and the staff of the Disability Rights Center, language has been developed in the form of an amendment to SB 116 that would broaden the impact of SB 116 so that additional, currently unlicensed group homes will be subjected to appropriate levels of accountability. The proposed amendment would ensure that gaps in state accountability for small bed group homes are closed so that we can hopefully prevent future cases like that of the Kaufman house and insure that adequate and qualified care and services are provided to Kansans with disabilities. The original language of SB 116 would close these loopholes only for small group homes that serve Kansans with mental illness - which leaves Kansans with other disabilities (not mentally ill) potentially at risk. The proposed amendment

language would also make it clear that the Disability Rights Center would be authorized under State law (as they already are under federal law) to investigate abuse, neglect and exploitation in programs and facilities that serve or house Kansans with disabilities.

On behalf of Attorney General Kline, I ask you to favorably consider SB 116, with the proposed amendments, and take this opportunity to insure greater protections for Kansans with disabilities of all types.

Respectfully submitted,

OFFICE OF THE ATTORNEY GENERAL
PHILL KLINE

A handwritten signature in black ink, appearing to read "Kevin A. Graham", followed by a long horizontal line extending to the right.

Kevin A. Graham
Assistant Attorney General