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**Testimony in Support of Senate Bill 17
Amendments to K.S.A. 21- 5512, Unlawful Sexual Relations**

**Presented to the Senate Judiciary Committee
By Assistant Attorney General John Bryant**

January 23, 2013

Mr. Chairman and Members of the Committee:

On behalf of Kansas Attorney General Derek Schmidt, I thank you for the opportunity to speak to you on the very important issue of abuse of some of our most vulnerable citizens. Protecting our citizens that have reached the later stages of life, as well as those adults that have various cognitive or other disabilities, must be a priority.

K.S.A. 21-5512, and amendments thereto, has long been utilized to protect individuals, young and old, from becoming involved in sexual activity, voluntarily or otherwise, with individuals that are in a position of influence or authority over them. The recognition being that because of the level of control that certain individuals hold over others, even perceived control, individuals might be convinced to engage in activity that they might otherwise refuse. The goal of the proposed amendment is to recognize that there is another class of individuals that may be subject to unwanted sexual activity.

This measure was recommended by the Attorney General's Senior Consumer Advisory Council, chaired by former Attorney General Bob Stephan.

Examples:

Our adult care facilities are full of individuals, young and old, who are particularly vulnerable and at risk of mistreatment by their care providers and others. "Jane" was a resident of a long-term care facility in Kansas. She suffered from various illnesses, including Alzheimer's and dementia. She was placed in a unit of the facility to provide specialized care for her condition. It goes without saying that "Jane" was unable to protect herself, and relied upon others to provide for her care. One evening a staff member at the facility was using "Jane's" room for sexual liaisons. During the course of the evening "Jane" was sexually abused. Under the circumstances of this case, the victim was unable to consent to any sexual activity due to her medical condition(s) regardless of what she might have expressed to the perpetrator. While this may have

been a clear case of sexual abuse, others are not nearly as easy to decide. In this case because it was not seen as a crime but rather something that would be dealt with internally at the facility, the victim's abuse was not reported properly to law enforcement and valuable evidence of the assault was lost.

Our next victim was a victim of a severe brain injury. As a result of her injuries she was rendered incapable of caring for herself. Her family, including her husband, was unable to provide the level of care required and made the difficult decision to place the victim in a long-term care facility to ensure that she received the requisite level of care. This individual was capable of making decisions, although the concern was that due to her injuries she was not making rational decisions. An employee of the facility befriended the victim, eventually convincing the victim to agree to engage in sexual intercourse. Upon learning of the sexual abuse perpetrated on the victim the family immediately sought legal relief. In evaluating the facts a determination had to be made as to the victim's ability to consent to engage in sexual intercourse. It soon became a battle of experts. Lost in the battle was the fact that this was a married woman that would likely never have engaged in such activity prior to suffering the injuries that resulted in her placement at the facility. The end result was that because of carefully choosing his victim, the employee was able to perpetrate a crime without suffering the consequences of his actions.

Goal of the statute as written:

Provide protection for individuals that could become involved in sexual activity with another because of an imbalance of power, influence or control over that individual.

Expansion of the statute to include residents of adult care homes:

It has been estimated that nearly 75 percent of the residents in adult care facilities, nationwide, require assistance with at least three (3) activities of daily living (ADLs). These can include toileting, eating, medication, transportation, as well as other routine activities that you and I may take for granted. With this degree of reliance by residents on the individuals that are providing their care it is easy to see how caregivers can be placed in a position of great influence over the residents. In addition to the imbalance of power inherent in this type of relationship, we are also dealing with victims who may not have family or anyone else they can talk to about what is happening. Some of the people in these facilities are often isolated and alone. And in these situations, victims of this type of crime could often be alone for extended periods of time with the perpetrator. This allows for residents to become subject to unwanted sexual activity, largely because they feel pressured to agree, are afraid to tell the perpetrator "no" or may not be completely aware of what they are "consenting" to.

As with other groups of people protected under this statute, our vulnerable adults deserve to be free from unwanted sexual activity. We currently provide similar protections to these individuals to protect them from physical and financial abuse. This amendment takes the next logical step.

It is known that there is a percentage of people in these facilities who are subject to sexual abuse. One study reported that of the percentage of people who suffer physical or financial abuse in a care facility, more than 30 percent of those involve instances of sexual abuse.

In other sex offenses the State is required to prove that there was no consent. This could place the prosecution in a situation where because of a victim's declining health or inability to testify we cannot present any testimony that the act was not consensual. The amendment to the current statute allows an alternative in charging thereby giving the prosecution a way to handle that type of situation more effectively. Further where consent may have been given due to the situation, the victims can still see justice done.

An exception for married couples currently included in the law, would apply in cases where one spouse lives in a long-term care facility and the other works or volunteers there.