

OFFICE OF DISTRICT ATTORNEY

STEPHEN M. HOWE, DISTRICT ATTORNEY
Vanessa M. Riebli, Assistant District Attorney

Judiciary Committee
Attention: Jeff King, Chairman
District 15, Capitol Office, Room 341-E
Topeka, KS 66061

RE: Senate Bill 19 – Mistreatment of a Dependent Adult

Dear Chairman King:

Thank you for this opportunity to submit a written response in support of Senate Bill 19.

Over the last several years, we have experienced an increase in dependent adult cases presented to our office by law enforcement, financial institutions and care facilities. The majority of these cases involve the elderly who are financially exploited by caregivers, relatives, friends or neighbors. Unfortunately, in many cases the elder is also being neglected by not being provided sufficient care, food and/or medicine.

Our elder victims reside both in care facilities and private homes. Often times, the crime is reported by a financial institution that notices out of the ordinary withdrawals from accounts that in the past had little to no activity. Nursing home administrators report to law enforcement when the person designated as the elder's power of attorney or conservator has neglected to pay the nursing home bill for several months or even years.

In our cases, an analysis of the suspect's bank account yields a clear pattern of spending on personal items, not related to the elder's care. In one case, our suspect purchased a new Dodge Charger while his mother had no food in her house. In another case, our suspect used his mother's funds on vacation while being over \$20,000 in arrears to her care facility. Finally, in a recent case a "caregiver" obtained a power of attorney and obtained bank funds and made credit card purchases with an estimated loss of approximately \$81,000 to our elder. Our elder had to be hospitalized for approximately two weeks before she could be released to a care facility after being removed from the care of our suspect.

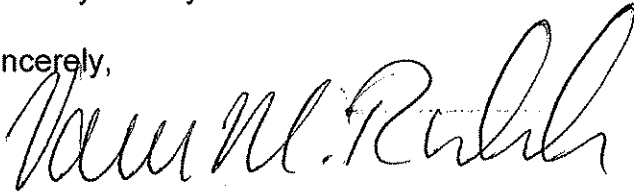
In these types of cases, the suspect often times has a power of attorney, has his or her name on the checking account belonging to the elder or is the elder's conservator. In many instances, the elder is not aware of the financial exploitation due to their mental or physical incapacity. Thus, when the crime occurs without the elder's knowledge or involvement, it cannot be prosecuted under the Mistreatment of a Dependent Adult statute because no "undue influence, coercion, harassment, duress, deception, false representation or false

pretense" occurs as required by the current statute. Rather, the crime is prosecuted under the theft statute which has lesser penalties. This issue was litigated in *State v. Anderson*, 260 P.3d 1248 (2011).

Thus, the proposed amendment that provides a definition for "undue influence" to include the fraudulent use of legal powers granted to the suspect would enable prosecutors to utilize the Mistreatment of a Dependent Adult statute to better protect our dependent adults and more appropriately punish the offenders who perpetrate crimes against one of our most vulnerable populations. We would ask this committee to support the bill as drafted.

I thank you for your time.

Sincerely,



Vanessa M. Riebli
Assistant District Attorney
Section Chief – Economic Crime Unit
Johnson County District Attorney's Office
P.O. Box 728
Olathe, KS 66051