

February 15, 2017

Chairman Wilborn and Members of Senate Judiciary,

Thank you for the opportunity for Kansas Advocates for Better Care (KABC) to provide testimony today in opposition to SB 72 Reporting of Abuse, Neglect or Exploitation.

We have a number of serious concerns about the substantive changes proposed in SB 72. This bill is essentially a repeat of a 2015 bill, SB 219 from the Department for Children and Families. The Senate Judiciary Committee chose not to forward the bill in 2015 due to concerns raised by our organization and others with the proposed changes. The bill in front of you today does not address the concerns raised by organizations and confirmed by the Judiciary Committee's actions in 2015.

Kansas Advocates for Better Care (KABC) is interested in this legislation because we are concerned solely with quality and safety in long-term care services used by older Kansans – including elders at home or a care facility. KABC is a non-profit organization founded by citizens and with members across Kansas.

Adult Protective Services is a vital underpinning in assuring safety and well-being for older adults who live at home or who live in an adult care facility and are harmed by a person who is not an employee of the facility (KDADS addresses employee harm of an elder.) Older adults overwhelmingly want to remain in their homes with the supportive services needed to meet their needs for functional support and safety. Many older Kansans are able to live at home thanks to the more than 345,000 caregivers that provide about \$3.85 billion annually in unpaid care. However when something goes wrong, Adult Protective Services and law enforcement are the first line of defense to step in and re-establish safety for all adults. Having a strong line of defense when someone is threatened or harmed is paramount. Some of the language in this bill would weaken the existing line of defense for older adults.

1. Section 1. (a) adds the word ***vulnerable*** in front of adult, and goes on to define, the individual as 18 years or older ***who has a physical, mental or frail condition***.

- The proposed change in definitional language is a significant change. The language currently in statute is clear and sufficient and is not strengthened by the proposed language. Existing language in Section 1. KSA 2016 Supp. 39-1430 (a) states: “an individual 18 years of age or older alleged to be unable to protect their own interest and who is harmed or threatened with harm, whether financial, mental or physical in nature, through action or inaction:” This new definition requires the reporter or the investigator to have to put the adult in a specific category of disability for the law to apply.
- The change in language by adding ***vulnerable*** and ***who has a physical, mental or frail condition*** weakens the line of defense for all adults, indicating that Adult Protective Services (APS) would be available to adults with a *perceived/perceivable vulnerability*, and a *diagnosed physical, mental, or frail condition*. Older adults who are not perceived to be “vulnerable” or diagnosed as having “a physical, mental, or frail

condition” could be excluded from the protective services Adult Protective Services is designed to provide, and from the investigation APS is empowered to conduct. This concern is strengthened by language proposed at Sec. 1. (f) which reads: “In need of protective services” means that “*a vulnerable adult is unable to provide for or obtain services which are necessary to maintain physical or mental health or both.*”

- Inclusion of the word “vulnerable” would seem to imply that “Abuse” is redefined in the statute and that the actions listed in Sec. 1 (b) (2)-(5) would be abuse only if they involved a “vulnerable” adult. That list includes sexual acts without consent, unreasonable use of physical restraint, chemical restraint, medication or isolation as punishment, for convenience, in conflict with physician’s orders, and threat or menacing conduct that might reasonably be expected to result in fear or emotional distress to an adult. This list of abusive actions presumably could result in an older adult needing Adult Protective Services, whether or not she/he met the definition of “vulnerable adult” contained in SB 72.
- Older Adults are unlikely to describe themselves as “vulnerable” or “frail” and likely would find the language or its assertion offensive.

2. Section 1. (m) proposes changing language from “a report” to “an investigation.” It reads, “Involved adult” means the *vulnerable* adult who is the subject of (strikethrough “a report”) *an* investigation of abuse, neglect or exploitation under this act.

- The intent of this change is unclear, as is the policy change that it presumably signals. KABC’s question would be is this signaling an expansion of what APS will do or does it signal an exclusion of people or services when a report of abuse or neglect is called into the hotline?

3. Section 2. KSA 2016 Supp. 39-1431 – regarding the reporting by a mandated reporter in describing the adult subject of the report

- SB 72 would remove “or is in need of protective services” and add “*or subjected to fiduciary abuse*”
- It is unclear why “in need of protective services” would be removed as one of the reasons a mandated reporter would make a report. This change would exclude certain adults who may be or are at risk, as indicated by a need of protective services. This change increases the risk an adult would have to experience and a steeper hurdle needed to clear before APS could engage to assist them than what currently exists. The change provides less protection for older adults who may be victims.
- Many of the reports that APS gets now are categorized as “self neglect.” How would the category of “self neglect” be impacted if “in need of protective services” is dropped from the statute?

4. Section 2. KSA 2016 Supp. 39-1431 – listing of mandated reporters

- Proposed language adds “optometry” and changes “registered” to “licensed addition counselors and licensed clinical addiction counselors”.
- Proposed language adds “firefighters, emergency medical services personnel, court services officers, community corrections officers” to the list of mandated reporters.
- KABC supports the inclusions of professionals who likely and more often come in contact with older adults and be aware of possible health safety concerns.

5. Section 3. KSA 2016 Supp. 39-1433 (a) (2) -- APS actions upon receipt of report
 - Proposed language reads: make a *face-to-face assessment* with the involved adult:. This would replace make a personal visit with the involved adult:
 - What is the policy or practical change which the agency is seeking with this change in language. Would a face to face assessment include skyping, video chatting, or other internet based visual communication options? If so, it would seem to lessen the quality of information gathered. If the intention is to provide for an in-person assessment of the situation, harm, risk, and for needed services for an individual about whom a report was made, then it would clarify APS' role and perhaps lend greater authority to their visit. If the latter is the intent, we would support this change.
6. Sec. 3. KSA 2016 Supp. 39-1433(c) – DCF information to reporter/complainant.
 - The proposed language changes the quality of information given to the reporter from what is currently in statute which states - “substantiated, that corrective measures will be taken, upon completion of the investigation or sooner, if such measures do not jeopardize the investigation.” The proposed language provides only that an investigation has been “initiated.” On a regular basis KABC receives calls from neighbors, family members, banking officers, and others who have made a report but state that current DCF practice is to give them little or no information regarding complainant status. This current practice has a chilling effect on their willingness to report problems they see continuing forward. For a complainant to hear that there has been a substantiation of the report, validates their concern, and leads them to believe that APS is involved and actions will be taken, and provides a foundation for future reporting if safety concerns persist. Saying that an investigation has been initiated provides complainants with no sense that cause will be or has been found, that action will be taken, or that services to remedy will be provided. The reporter is left in limbo and often goes back and forth about whether to report further instances of concern – feeling that it does no good to report or that their report will not lead to relief for the older adult.
7. Sec. 7. KSA 2016 Supp. 39-1443 (d) – Investigations concerning certain facilities.
 - Licensing for adult care homes is through the Kansas Department of Aging and Disability Services. This section references health and environment, but not KDADS. Is this an oversight/error? When APS investigates reports of abuse, neglect, or exploitation which occurs in an adult care facility but not by a facility employee, is there already a mechanism to share a report with KDADS? Would it be appropriate to incorporate it here?

KABC asks the Committee to not forward this bill as it does not serve older Kansans in need of protective services.

Mitzi E. McFatrigh, on behalf of the Board of Directors, Members and Volunteers

KABC is a not-for-profit organization whose mission is to improve the quality of long-term care for elders in all settings – nursing and assisted facilities and in-home. KABC is not a provider of government funded services. For 41 years KABC's role has been as a resource and advocate for older adults and families and as a resource to policy makers on aging and quality care issues. KABC provides consumer education information. KABC tracks and reports on older adult quality care performance issues.