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Testimony in Support of House Bill 2458

**Presented to the Senate Judiciary Committee
By Deputy Attorney General Steven Karrer
March 7, 2018**

Chairman Wilborn and Members of the Committee:

Thank you for the opportunity to appear on behalf of Attorney General Derek Schmidt and provide testimony in support of HB 2458. My name is Steven Karrer and I am a Deputy Attorney General in charge of the Fraud and Abuse Litigation Division. This division includes the ANE unit which focuses on abuse, neglect, and exploitation of elder and dependent adults.

Attorney General Schmidt is currently serving as the president of the National Association of Attorneys General (NAAG). General Schmidt announced in August of 2017 his presidency would focus on strengthening efforts nationwide to combat elder abuse. General Schmidt's initiative is titled "Protecting America's Seniors: Attorneys General United Against Elder Abuse." This initiative will culminate in a NAAG Presidential Initiative Summit that Attorney General Schmidt will host in Manhattan, Kan., on April 17-18, 2018.

As part of the General's focus nationwide, he also looked inward and assessed how we could strengthen our efforts in Kansas. The General teamed with Johnson County District Attorney Steve Howe and Sedgwick County District Attorney Marc Bennett along with their staffs to review Kansas statutes. HB 2458 is the product of this review.

HB 2458 strengthens protection of elders by making mistreatment of a dependent or elder adult an "inherently dangerous felony" for purposes of felony murder as defined in K.S.A. 21-5402 and also makes it a level 5 person felony to inflict physical injury, unreasonable confinement or unreasonable punishment upon an elder adult. If one doubts these enhancements are necessary, one must look no further than the impact abuse has on elders. Elders who experienced abuse, even modest abuse, had a 300 percent higher risk of death when compared to those who had not been abused.¹

HB 2458 not only strengthens protection of elders and dependent adults, but also provides statutory uniformity and clarity.

HB 2458 amends the definition of “elder” for purposes of K.S.A. 21-5417, to be a person of 60 years of age or older. This amendment would make 21-5417 consistent with other Kansas statutes. There are at least five Kansas statutes which define “elder” as a person of 60 years of age or older. K.S.A. 21-5417, as currently written, is the only statute defining “elder” as a person of 70 years of age. By amending the statutory age of “elder” to “60” Kansas would also become consistent with the Federal definition under both, the Older Americans Act of 1965 and the Elder Justice Act of 2010. Consistency is not the only reason for amending the age of “elder”. According to the Centers for Disease Control and Prevention, the symptoms of Dementia/Alzheimer’s disease can first appear after the age of 60.ⁱⁱ Mental Impairment is one of the main factors which can make an older adult vulnerable to abuse. According to the National Center on Elder Abuse, between one-fourth and one-half of all people with dementia suffer abuse of some kind.ⁱⁱⁱ

HB 2458 also provides uniformity as it relates to the amounts of loss that determine the level of offense. The base level of loss is currently \$1,000 for dependent adults and \$5,000 for elder adults. HB 2458 amends base level of loss to \$1,500 for both offenses, which matches the recent amendments in the theft statute, K.S.A. 21-5801.

Finally, HB 2458 continues the clarification provided by the legislature in 2014 regarding the use of legal relationships to abuse elder and dependent adults. Many continue to believe that because there is a legal relationship between a victim and their abuser, it somehow makes the abuse a “civil” matter and removes criminal culpability. Of course this is not true. HB 2548 now finishes the clarification begun in 2014 by stating clearly it is a crime to be a guardian or conservator and to use the ward or conservatee’s money or property for the benefit of the guardian or conservator without permission of the Court.

We firmly believe that HB 2458 makes common sense changes to the current statute for the furthered protection of elder and dependent adults, while also providing needed clarity and uniformity within our state statutory framework. For these reasons, on behalf of Kansas Attorney General Derek Schmidt, I encourage you to report HB 2458 out of committee favorably, as written.

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ⁱ *Research, What is the Impact of Elder Abuse?*, National Center on Elder Abuse, <http://ncea.acl.gov/whatwedo/research/statistics.html> (last visited Jan. 29, 2018) (citing X. Dong, M. Simon, C. Mendes de Leon, T. Fulmer, T. Beck, & L. Hebert, *Elder Self-Neglect and Abuse and Mortality Risk in a Community-Dwelling Population*, 302(5) *Journal of the American Medical Association* 517 (2009)).

ⁱⁱ *Deaths from Alzheimer’s Disease, Who has Alzheimer’s Disease*, Centers for Disease Control and Prevention, <http://www.cdc.gov/features/alzheimers-disease-deaths/index.html> (last updated Jan. 29, 2018).

ⁱⁱⁱ *Research, Abuse of Adults with Dementia?*, National Center on Elder Abuse, <http://ncea.acl.gov/whatwedo/research/statistics.html> (last visited Jan. 29, 2018) (citing P. Tronetti., *Evaluating Abuse in the Patient with Dementia*, 30(4) *Clinics in Geriatric Medicine* 825 (2014)).