

## REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

The Committee on **Judiciary** recommends **HB 2121**, as amended by House Committee, be amended on page 1, following line 6, by inserting:

"Section 1. K.S.A. 2020 Supp. 21-5417 is hereby amended to read as follows: 21-5417.

(a) Mistreatment of a dependent adult or an elder person is knowingly committing one or more of the following acts:

(1) Infliction of physical injury, unreasonable confinement or unreasonable punishment upon a dependent adult or an elder person;

(2) taking the personal property or financial resources of a dependent adult or an elder person for the benefit of the defendant or another person by taking control, title, use or management of the personal property or financial resources of a dependent adult or an elder person through:

(A) Undue influence, coercion, harassment, duress, deception, false representation, false pretense or without adequate consideration to such dependent adult or elder person;

(B) a violation of the Kansas power of attorney act, K.S.A. 58-650 et seq., and amendments thereto;

(C) a violation of the Kansas uniform trust code, K.S.A. 58a-101 et seq., and amendments thereto; or

(D) a violation of the act for obtaining a guardian or a conservator, or both, K.S.A. 59-3050 et seq., and amendments thereto; or

(3) omission or deprivation of treatment, goods or services that are necessary to

maintain physical or mental health of such dependent adult or elder person.

(b) Mistreatment of a dependent adult or an elder person as defined in:

(1) (A) Subsection (a)(1) is a severity level 5, person felony, except as provided in subsection (b)(1)(B);

(B) subsection (a)(1) is a severity level 2, person felony, when the victim is a dependent adult who is a resident of an adult care home, as described in subsection (e)(2)(A), during the commission of the offense;

(2) subsection (a)(2) if the aggregate amount of the value of the personal property or financial resources is:

(A) \$1,000,000 or more is a severity level 2, person felony;

(B) at least \$250,000 but less than \$1,000,000 is a severity level 3, person felony;

(C) at least \$100,000 but less than \$250,000 is a severity level 4, person felony;

(D) at least \$25,000 but less than \$100,000 is a severity level 5, person felony;

(E) at least \$1,500 but less than \$25,000 is a severity level 7, person felony;

(F) less than \$1,500 is a class A person misdemeanor, except as provided in subsection (b)(2)(G); and

(G) less than \$1,500 and committed by a person who has, within five years immediately preceding commission of the crime, been convicted of a violation of this section two or more times is a severity level 7, person felony; and

(3) (A) subsection (a)(3) is a severity level 8, person felony, except as provided in subsection (b)(3)(B); and

(B) subsection (a)(3) is a severity level 5, person felony, when the victim is a dependent adult who is a resident of an adult care home, as described in subsection (e)(2)(A), during the commission of the offense.

(c) It shall be an affirmative defense to any prosecution for mistreatment of a dependent adult or an elder person as described in subsection (a)(2) that:

(1) The personal property or financial resources were given as a gift consistent with a pattern of gift giving to the person that existed before the dependent adult or elder person became vulnerable;

(2) the personal property or financial resources were given as a gift consistent with a pattern of gift giving to a class of individuals that existed before the dependent adult or elder person became vulnerable;

(3) the personal property or financial resources were conferred as a gift by the dependent adult or elder person to the benefit of a person or class of persons, and such gift was reasonable under the circumstances; or

(4) a court approved the transaction before the transaction occurred.

(d) No dependent adult or elder person is considered to be mistreated under subsection (a)(1) or (a)(3) for the sole reason that such dependent adult or elder person relies upon or is being furnished treatment by spiritual means through prayer in lieu of medical treatment in accordance with the tenets and practices of a recognized church or religious denomination of which such dependent adult or elder person is a member or adherent.

(e) As used in this section:

(1) "Adequate consideration" means the personal property or financial resources were given to the person as payment for bona fide goods or services provided by such person and the payment was at a rate customary for similar goods or services in the community that the dependent adult or elder person resided in at the time of the transaction.

(2) "Dependent adult" means an individual 18 years of age or older who is unable to protect the individual's own interest. Such term shall include, but is not limited to, any:

(A) Resident of an adult care home including, but not limited to, those facilities defined by K.S.A. 39-923, and amendments thereto;

(B) adult cared for in a private residence;

(C) individual kept, cared for, treated, boarded, confined or otherwise accommodated in a medical care facility;

(D) individual with intellectual disability or a developmental disability receiving services through a community facility for people with intellectual disability or residential facility licensed under K.S.A. 2020 Supp. 39-2001 et seq., and amendments thereto;

(E) individual with a developmental disability receiving services provided by a community service provider as provided in the developmental disability reform act; or

(F) individual kept, cared for, treated, boarded, confined or otherwise accommodated in a state psychiatric hospital or state institution for people with intellectual disability.

(3) "Elder person" means a person 60 years of age or older.

(f) An offender who violates the provisions of this section may also be prosecuted for, convicted of, and punished for any other offense in article 54, 55, 56 or 58 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2020 Supp. 21-6418, and amendments thereto.";

On page 3, following line 10, by inserting:

"Sec. 3. K.S.A. 22-2809 is hereby amended to read as follows: 22-2809. (a) Any person who is released on an appearance bond may be arrested by such person's surety or any person authorized by such surety and delivered to a custodial officer of the court in ~~any~~ the county in the state ~~in which such person is charged~~ where the complaint subject to the bond was filed. Such person who is arrested as provided in this section shall be brought before any magistrate having power to commit for the crime charged. The magistrate shall indorse on the bond, or a certified copy of such bond, the discharge of such surety upon the sworn statement, either written or oral,

of the surety setting forth the reasons for the discharge. The magistrate may commit the party who is arrested as provided in this section. Such person committed as provided in this section shall be held in custody until released as provided by law.

(b) As used in this section, "custodial officer of the court" means the sheriff or the keeper of the jail in the county."

On page 6, in line 19, after the first "K.S.A." by inserting "22-2809 and"; also in line 19, after "Supp." by inserting "21-5417 and";

And by renumbering sections accordingly;

On page 1, in the title, in line 1, after the semicolon by inserting "increasing criminal penalty for mistreatment of a dependent adult or elder person when the victim is a resident of an adult care home;"; in line 2, after the second semicolon by inserting "surrender of obligor by surety; release of surety; requiring delivery to county where the complaint subject to the bond was filed; adding a definition of custodial officer of the court;"; in line 3, after the first "K.S.A." by inserting "22-2809 and"; also in line 3, after "Supp." by inserting "21-5417 and"; and the bill be passed as amended.

\_\_\_\_\_  
Chairperson