



## **Disability Rights Center of Kansas**

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## **Governor's Interagency Council on Abuse, Neglect and Exploitation of People with Disabilities**

**Disability Rights Center of Kansas, Inc. (DRC)**  
**Designated Protection and Advocacy System (P&A) for Kansas**  
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- **DRC – State P&A, 501(c)(3), governance is separate from government, no direct control from government or outside interests, focus on the interests of persons with disabilities. Every state & territory has a P&A, created and empowered by federal law.**

The Disability Rights Center (“DRC”) is the designated Protection and Advocacy system for the State of Kansas. The Protection and Advocacy system (P&As) is created by federal statute. DRC, formerly known as Kansas Advocacy and Protective Services (KAPS), is a private, 501(c)(3) non-profit corporation, funded by federal grants. DRC is independent of state government and service providers so it can represent the interest of individual persons with disabilities. DRC’s board of directors is self appointing, with no control by outside interests like government or providers, for the same reason. A majority of the board members are persons with disabilities.

- **Legally-based Advocacy Services – Advocacy for the human, civil and legal rights of Kansans with disabilities (right to not be abuse or neglected, rights under ADA, IDEA, Rehab Act, Fair Housing Act, etc.).**
- **DRC’s direct services to people with disabilities include legal representation, advocacy representation, and self advocacy support. DRC also provides information and referral, public policy advocacy/educating policymakers, and conducting trainings/outreach.**
- **Do Much More than ANE – 12 Priority Areas where DRC provide services**  
1) ANE, 2) Guardianship elimination & alternatives, 3) Healthcare rights, 4)

Community Integration, 5) Accessibility, 6) Employment, 7) Fair Housing, 8) Assistive Technology, 9) Special Education, 10) Rehabilitation Act, 11) Voting and 12) Preventing the Criminalization of Disability.

- Approximately \$1.3 million budget – serve all 12 priorities (not just ANE) – though ANE is greatest focus/cost (See Attached for numbers of ANE cases)

The Disability Rights Center provides legally-based advocacy for the civil and legal rights of persons with disabilities. DRC provides legal representation, advocacy representation, self advocacy support, information and referral, public policy advocacy / educating policymakers, and trainings/outreach. The Disability Rights Center's legal representation includes abuse and neglect cases, Medicaid, Medicare, guardianship, special education, fair housing, Americans with Disabilities Act, Rehabilitation Act, employment and vocational rehabilitation cases. DRC investigates abuse and neglect of persons with disabilities in all settings, from state psychiatric hospitals and institutions to the person's own home.

- DRC's Role in State ANE investigation system is different – particularly the actions DRC takes and the fact that the victims control those actions and the justice they receive.
- State Agency's investigations (Aging, SRS, KDHE) primarily depend on where the person resides (ICFMR, IMD, DD Group Home, etc.). State Agencies (like APS/SRS) have the burden of investigating *every* appropriate allegation within a certain period of time (ex: 30 days).
- DRC's Investigations – does not matter where person resides (any setting). DRC does *not* have to investigate every allegation.
- State Agency's actions (Aging, SRS, KDHE), based on the result of the investigation, *primarily* focus on administrative sanctions, enforcing licensure, potentially pulling licenses, etc. State Agencies serve the interest of the State, and judge what is in the "best interest" of the person with a disability. Input from victim, but actions, steps and remedies are controlled by the State.
- Law Enforcement, Attorney General, Local County and District Attorneys – Prosecution of perpetrators. Prosecutors represent the State in the criminal prosecution, but interact directly with the victim and obtain important input and feedback from the victim. The prosecutor controls the legal actions, not the victim.

- DRC's legal actions are victim controlled. After the investigation is conducted by DRC and if the case is accepted for legal representation, the victim/client works with the DRC attorney and the victim controls the legal decisions. DRC not only represents the "best interest" of the victim of ANE; DRC represents and abides by the decisions of victim. Victim controls the actions, steps and remedies.
- DRC is the only entity in the investigative system that can both conduct investigations and represent the victim in legal proceedings to obtain justice (victim-controlled). DRC's actions are not administrative sanctions or licensure issues, they are tenacious and active legal services and advocacy to obtain justice for the victim.

As the designated Protection and Advocacy system (P&A) for the State of Kansas, DRC is an important part of the abuse and neglect system for the state. As the P&A, DRC is different from the state agencies in a couple of major respects. First, DRC can investigate the abuse or neglect of an individual with a disability wherever they receive services. It does not matter whether the person lives in a licensed facility, what type of facility it is, or whether someone receives state money for their care. DRC has conducted abuse and neglect investigations in state psychiatric hospitals, nursing facilities for mental health, intermediate care facilities for the mentally retarded, DD group homes run by a licensed community service provider and serving just 2 or 4 individuals, unlicensed group homes, sheltered workshops, public schools and even cases in which the individual with a disability lives on his or her own or with his or her family.

Second, DRC is the only entity that both has an official place in the abuse and neglect system *and* has the power to represent individuals who are victims of abuse and neglect. In some abuse and neglect cases, DRC attorneys go on to represent the individual by filing a case in court to obtain justice for the victim of ANE. Basically, DRC attorneys can provide all types of civil representation to the victim (change of guardianship, etc.). In some cases, DRC provides advocacy short of legal representation in order to protect the rights of the person or protect them from ANE. While other agencies have authority to take some steps to help an individual (such as KDOA demanding that a nursing facility for mental health write an appropriate plan for a resident as part of its plan of correction, or APS funding a move to a more appropriate living situation), DRC attorneys can represent individuals with disabilities in several areas of civil legal representation in order to help remedy their abuse or neglect situation and obtain justice for the victim.

- **DRC's Federal Access Authority – Different Access, Fills Gaps (See attachment – DRC vs. APS/SRS Access Authority)**
- **DRC – If DRC has a report of ANE or probable cause of ANE, it triggers DRC's federal access authority.**
- **DRC then has “reasonable unaccompanied access” to the person, to their records and reports (including staff records and notes, etc.) and to the place where services are being received (even a private residence).**

DRC has federal authority pursuant to the P&A Acts to have “reasonable unaccompanied access” to individuals with disabilities wherever they receive services and to visit any facility providing care and treatment to individuals with disabilities. DRC is entitled to the records of any individual with a disability if (1) the person or their guardian authorizes us, (2) an individual does not have a guardian and cannot consent and we have a complaint or probable cause to believe they have been abused or neglected, or (3) the individual has a guardian, we have a complaint or probable cause to believe they have been abused or neglected, we contact the guardian and offer our services (upon receipt of the name and contact information for the guardian), or where the guardian fails to respond or refuses to act on behalf of the individual with a disability.

Both the federal and state legislatures have given the P&As authority to access the records of an individual with a disability in order to complete an abuse and neglect investigation. Under the federal P&A Acts, DRC has access to individuals and facilities in order to conduct monitoring or to investigate abuse and neglect, and to obtain an individual's records under certain circumstances. The P&As also are entitled to obtain “reports prepared by entities performing certification and licensure reviews, professional accreditation, or assessments prepared by staff, contractors or related entities.” The P&A also is entitled to reports “prepared by an agency or staff person charged with investigating reports of incidents of abuse or neglect, injury, or death occurring at such location that describes such incidents and the steps taken to investigate such incidents.” The Kansas Department on Aging provides DRC with the survey reports of Intermediate Care Facilities for the Mentally Retarded (“ICFs/MR”) pursuant to 42 U.S.C. § 15043(a)(3)(A), which provides: “. . . the State shall provide to the system a copy of each independent review . . . of an Intermediate Care Facility (Mental Retardation) within the State, not later than 30 days after the availability of such a review.” DRC receives survey reports from NFsMH pursuant to similar authority in the PAIMI statute.

When Congress created the P&As, it empowered the P&As “to investigate incidents of abuse or neglect of individuals with disabilities if the incidents are reported to the system or if there is probable cause to believe the incidents occurred.” Furthermore, the P&As were given the power to “pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of [individuals with disabilities] within the state.”

### **DRC – Access Authority Fills Gaps in the System, Plays a Different Victim-Controlled Role for Obtaining Justice.**

### **CASE EXAMPLES THAT SHOW DIFFERENT ROLES EACH PARTNER PLAYS (DRC, SRS, Aging, KDHE, AG, etc.).**

#### **Example #1 - Kaufman House Case – Newton Kansas**

- For over 20 years people with mental illness resided at the Kaufman house and were subjected to a “house of horrors” that included forced slavery, forced seclusion in a bare room where the windows were boarded up and used a bucket for a bathroom, forced to walk around and farm in the nude, forced sexual acts on themselves and others, all while Mr. Kaufman video taped these atrocities and billed the taxpayers and bilked the residents for these “services.”
- At least 12 Reports of ANE to State ANE Investigative Agencies (11 to SRS, 1 to KDHE) over a 20 year period. Four of the reports of ANE were from former residents or their family members.
- Kaufman House refused to be licensed and either deceived the government or took actions to avoid licensure, rightfully frustrating the State.
- When SRS Investigations were conducted, SRS was typically told the residents do not have guardians and that they engaged in these actions by free choice. The Kaufmans did not tell SRS the truth. Many residents had guardians, and Mr. Kaufman was in fact the guardian for at least one of the residents.
- Focus from the State seemed to be on licensure, getting the House licensed, and how that would then enable administrative sanctions by the State.
- From 1984 to 2004 – State did not get any residents out and to safety. None of the 12 allegations of ANE were confirmed.
- Feb. 2004, Attorney General makes a report of ANE occurring at the Kaufman House to DRC. This triggers DRC’s access authority.
- Feb. 2004 to May 2004 – DRC uses its federal access authority to conduct an extensive investigation of the Kaufman house. Obtains records, reports, video taped evidence.

- May 18, 2004, DRC employees go to the Kaufman house in Newton, Ks, accompanied by local law enforcement to execute our access authority, complete the on-site portion of the investigation and talk to residents of the Kaufman house. One of the residents for whom Mr. Kaufman was court appointed guardian enters into an attorney-client relationship with DRC attorneys, and DRC begins providing civil representation to her (“Barb T”).
- May 19, 2004, DRC attorneys provide legal representation to the first victim and take civil legal actions to protect her. The victim controls and directs the legal services provided by DRC to get her justice. An emergency order from the Court suspending Mr. Kaufman’s guardianship is granted to DRC. DRC gets “Barb T” out of the deplorable conditions of the Kaufman house and to safety. Federal authorities and prosecutors had their first witness free from the abusive Kaufman house and free from the Kaufman’s influence.
- May, 2004 through October 2004 – DRC and the Kansas Attorney General work closely with federal authorities (HHS, Department of Justice, OIG, US Attorney’s office) as they begin the process of re-examining the a criminal case against the Kaufmans.
- Oct 26, 2004 – The Kaufman house is raided. Arlan and Linda Kaufman are arrested. DRC accompanies the FBI and DOJ in their raid and arrest of the Kaufmans. DRC attorneys are appointed by the court to provide support to the victims to ensure that their rights are protected and proper services and supports are provided (housing, mental health care, etc.). Within days a Grand Jury has indicted Arlan and Linda Kaufman on a total of 62 counts, ranging from involuntary slavery/servitude of persons with mental illness, to defrauding taxpayers and billing Medicare for so-called “therapy,” mail fraud, conspiracy.
- Oct, 2005 to November 3, 2005 – Trial against the Kaufmans takes place in US District Court in Wichita Kansas. Kansas Attorney General’s office offers support and staff to assist federal prosecutors in their case. DRC provides civil representation to 13 of the former victims of the Kaufman’s abuse and former residents of the Kaufman house.
- November 7, 2005 – The Jury finds the defendants guilty as charged on a cumulative 61 of 62 counts. Arlan Kaufman is found guilty on all 31 charges and Linda Kaufman was found guilty on 30 of the 31 charges.
- January 23, 2006 – Judge sentences Arlan Kaufman to 30 years and Linda Kaufman to 7 years.
- February 7, 2006 – Judge hears arguments on restitution for the victims of the Kaufman’s abuse. DRC represents 13 of the former residents in restitution. Judge rules in favor of the victims.

## **WHAT DOES THE KAUFMAN HOUSE CASE SHOW?**

- Shows an inherent flaw in not having a centralized Guardianship & Conservatorship Registry in which investigative agencies can access (this significantly hampered SRS, law enforcement and prosecutors).
- Shows that focusing on licensure and administrative sanctions cannot always obtain justice for the victim. Perhaps shows that the current list of administrative sanctions are not sufficient to hold providers accountable.
- Shows that when you allow Guardians & Conservators to have conflicts of interest over people with disabilities that it creates a systemic flaw that puts people with disabilities at risk of abuse, neglect and exploitation (Mr. Kaufman was the Guardian/Conservator, Landlord, Service Provider & alleged abuser).
- Shows the difference in the access authority of APS vs. DRC (P&A) and how that difference made a huge impact in the investigations.
- Shows the importance of collaboration between the investigative system and prosecutors, especially when the civil legal actions are being controlled by the victims (assisted the prosecutors greatly in ensuring the victims had their own legal representation).
- Shows the absolute need that victims of ANE who are people with disabilities must be believed and that they must have access to legal services that are victim controlled – so that they can choose their path to obtaining justice. It wasn't until the victims had access to an agency with the proper authority to investigate and provide the attorneys to take legal actions that are controlled by the victim that things started to change rapidly (within 6 months Kaufmans indicted).

### **Example #2 - Providence/Indian Trails NF for Mental Health – Topeka, Ks**

- Facility recruited a known sexual predator to reside at the facility. This person had a 30 year history of sexually abusing and preying on low functioning males. He was also convicted of sexually assaulting a 9 year old boy.
- According to official Dept. of Aging Survey report, facility did not take adequate steps to protect the other residents from this known sex predator.
- Because of this lack of protection and error by the facility, a resident was sexually assaulted and anally raped by this known sex predator.
- See attached Topeka Capital Journal Article
- See attached Dept. of Aging Survey on Indian Trails (select pages).

### **WHAT DOES THE INDIAN TRAILS NFMH CASE SHOW?**

- This case clearly shows the difference between State Agency's responses to ANE that focus on findings on survey reports, administrative sanctions, and licensure issues and DRC's response for legal representation that is victim controlled.

- In spite of a 181 page report with numerous findings, and several other subsequent reports with additional problems, this facility remains open and its license was never pulled.
- The two columns in the State survey report are “statement of deficiencies” and “providers corrective plan of action.” Nowhere on the survey report is there a column labeled “justice for the victim” or “civil litigation and criminal prosecution to obtain justice for the victim.” That is what makes DRC as the P&A and the new ANE Unit different.
- The current DRC litigation is being directed and controlled by the victim/client, and DRC attorneys are working with the client to obtain justice for the rape and sexual assault he was forced to endure due to the inadequate measures taken by the facility to protect its residents.

### **Other Examples of DRC Cases and Legal Work:**

As you can see, DRC’s federal P&A access authority helps us fill gaps that are left by the state abuse and neglect system. The Kaufman House case helps illustrate DRC’s important gap-filling role. In the Kaufman House case, DRC was able to visit with a resident over the objection of her guardian, Mr. Kaufman (who was also the alleged abuser). DRC had “reasonable unaccompanied access” to the victim. We also were able to visit with other residents of Kaufman House. The fact that the home had not been a licensed facility for several years did not affect DRC right to access the place, the people and the records at all. Finally, instead of being limited to threatening some administrative sanction against the provider, we were able to help meet the needs of the individual residents with mental illness through legal representation to obtain justice.

After DRC has conducted its ANE investigation involving a person with a disability, the DRC response is client-driven. If DRC takes the alleged victim on as a client for legal representation, DRC attorneys discuss the potential remedies with the client. The client decides the remedy and controls the type of justice that they want to obtain. However, sometimes the person with a disability takes care of the problem with little assistance from DRC. Such actions include firing a neglectful personal care attendant or moving out of a facility and into another living situation. In these instances we help the person self advocate for their right to be free from ANE.

DRC’s involvement and advocacy can also help the individual with a disability eliminate the source of abuse or neglect. Examples of when this has happened include working with parents and schools to develop appropriate behavior intervention plans so that physical discipline, seclusion and restraint in schools is not



used to violate the rights of a student with a disability. In response to our advocacy on behalf of individual clients, community service providers have changed staffing schedules to prevent neglect of an individual on the DD waiver. DRC advocates and attorneys have helped several individuals with mental illness move out of one of the most notorious nursing facilities for mental health and into the community. DRC has asserted the client's rights to the Community Mental Health Center services and advocated for appropriate community services for the individual.

In a few cases where abuse or neglect has occurred, DRC attorneys may file a lawsuit on behalf of the victim. In such cases DRC attorneys represent the person with a disability or, in the case of individuals who have died, DRC attorneys represent the surviving family members of the person with a disability. Some examples of our litigation cases include representing an individual who was raped by a known sexual predator at a nursing facility for mental health, representing four residents of an Intermediate Care Facility for the Mentally Retarded (ICF/MR) who were abused and neglected by staff, including being left in the shower for over an hour and restrained by staff, representing an individual whose service provider removed him from his own apartment into a group home against his will and the expressed wishes of his guardian, and a few cases in which the negligence of a nursing home, nursing facility for mental health, or sheltered workshop led to the death of the person with a disability.

Other times, the client who has been abused or neglected needs other types of legal representation to remedy or prevent the recurrence of abuse, neglect or exploitation. We have represented clients in guardianship cases to remedy abuse and neglect. DRC attorneys have provided legal representation to remove guardians who exploited their wards. DRC asserted clients' rights under the guardianship statute to make guardians move people with disabilities out of institutions and into the community. In one of our most public cases, a DRC attorney represented former residents of Kaufman House and asserted their victim's rights during the criminal prosecution of Arlan and Linda Kaufman.

### **Background and History of the Protection and Advocacy system:**

The Developmental Disabilities Assistance and Bill of Rights Act (DD Act) was enacted to protect the civil and human rights of persons with developmental disabilities because "inhumane and despicable conditions" were discovered at New York's Willowbrook State School for persons with developmental disabilities. Willowbrook was a New York State institution where people with developmental disabilities were literally warehoused and treated like animals. Willowbrook was overcrowded and severely understaffed. Former U.S. Senator Robert Kennedy

rightfully labeled it a "snake pit." An expose by a budding, young television report (Geraldo Rivera) found the residents naked and dirty and without any educational or recreational programs. There was a tremendous public outcry about the lack of treatment for the residents and the horrible conditions. Congress responded by passing the Developmental Disabilities Assistance and Bill of Rights Act in 1975. The DD Act created the first protection and advocacy program, directed at persons with developmental disabilities.

The Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act was passed in 1986 to protect individuals with mental illness who are similarly "vulnerable to abuse and serious injury." With the passage of PAIMI, the Protection and Advocacy Systems (P&As) now could investigate abuse and neglect for persons with developmental disabilities and mental illness. All other disabilities would be added shortly after the passage of PAIMI. Under PAIMI P&As were (among other things) created to "(1) investigate incidents of abuse and neglect of persons with disabilities; (2) pursue legal, administrative, and other appropriate remedies on behalf of such persons to ensure the enforcement of their constitutional and statutory rights; and (3) provide information and referrals relating to programs and services addressing the needs of these persons." PAIMI specifically empowers the State's P&A, which is an independent agency, with the ability to "investigate incidents of abuse and neglect of individuals with mental illness if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred."

The P&As were originally created to address abuse and neglect in the institutions where people with disabilities were warehoused. However, in recent years both the DD Act and PAIMI Act were rewritten to place a greater emphasis on serving persons with developmental disabilities or mental illness in the community. Even after Congress expanded the scope of people the P&A can serve, the greatest priority for the P&As and for DRC still is addressing abuse and neglect.