

Kansas Interagency Council on Adult Abuse, Neglect and Exploitation



Established by

Governor Kathleen Sebelius
Executive Order 06-05

January 2007 Report to the Governor

January 18, 2007

The Honorable Kathleen Sebelius
Office of the Governor
Capitol Building
Topeka, KS 66612-1590

Re: Interagency Council on Adult Abuse, Neglect and Exploitation

Dear Governor Sebelius:

In accordance with Executive Order 06-05, it is my pleasure to provide you with the Council's report regarding abuse, neglect, and exploitation of vulnerable adults. All council members have been appointed and have met five times since September 27, 2006. I am very encouraged by the high level of expertise, experience, and personal conviction of the members you appointed to the council.

The council has been working to develop a short-term plan to implement activities and programs in the next six to twelve months. Likewise, long-term goals have been developed for your further review and consideration. The Council's plan includes top priorities and implementation timelines. These recommendations arise, in part, from testimony at public hearings held November 13 and 14, 2006 by the following:

- Shannon Jones, Statewide Independent Living Council of Kansas (SILCK)
- Brad Linnenkamp, Self Advocate Coalition of Kansas
- Jennifer Schwartz, Kansas Association of Centers of Independent Living
- Greg Jones, Southeast Kansas Independent Living Resource Center (SKIL)
- Lou Ann Kibbee, Southeast Kansas Independent Living Resource Center (SKIL)
- Tom Laing, Interhab Resource Network for Kansans with Disabilities
- Rick Cagan, National Association for Mental Illness (NAMI)
- Mike Oxford, Topeka Independent Living Resource Center
- Kathy Lobb, Self Advocate Coalition of Kansas
- William C. Rein, Kansas Department on Aging
- Deanne Bacco, Kansas Advocates for Better Care (KABC)
- Jane Rhys, Kansas Council on Developmental Disabilities
- Craig Knutson, Self Advocate Coalition of Kansas
- Captain Mike Marshall, Johnson County Sheriff's Office
- Margaret Farley, private attorney
- Lynn Kohr, advocate
- Josie Torrez, Statewide Independent Living Council of Kansas (SILCK)

Because these representatives demonstrate a broad range of knowledge in areas of developmental disabilities, physical disabilities, mental illness, and aging, the testimony they were able to provide was insightful and provocative. The lessons learned through their

experience, both personal and professional, allowed for the development of recommendations that are both substantive and compassionate, providing appropriate guidelines without creating undue hardship to those who work so hard every day to assist our fellow Kansans in need.

The proposed recommendations combine a number of initiatives to strengthen protections that state policymakers have already instituted for vulnerable adults, give prosecutors and investigators more effective enforcement measures, and also to better inform the public of the real issues surrounding abuse, neglect and exploitation in the community. Because there is a significant number of vulnerable persons, we believe it is incumbent upon all public officials to provide leadership on this most pressing and disturbing crime category. Therefore, in addition to the proposed short- and long-term recommendations, we have provided a proposed policy statement which we hope you and the Kansas legislators will support and promote.

Governor Sebelius, thank you for your leadership in establishing this Council. The Council has accomplished much in a short time. This work lays the foundation to strengthen safeguards to protect Kansas' most vulnerable residents. With your continued leadership and the collaboration found within this Council and the support of relevant state agencies, the State of Kansas can establish itself as a national leader in the protection of elderly persons and people with disabilities.

Sincerely,

Linda Carter
Chair, Interagency Council on Adult
Abuse, Neglect and Exploitation

HONOR AND DIGNITY FOR ALL KANSANS

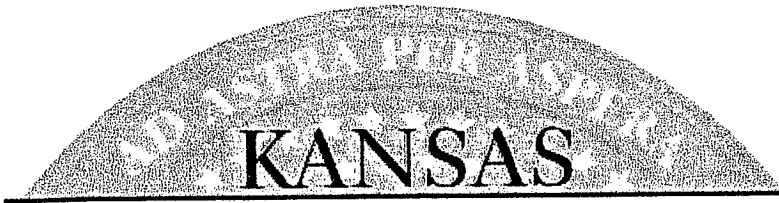
(A Proposed Policy Statement)

The State of Kansas holds a rich tradition built on individualism and respect for its people, including the elderly and those with disabilities. In recognition of these fundamental values, the State of Kansas encourages the adoption of progressive policy by statute or regulation and administrative policies and procedures which favor independence and individual choice in all living situations.

Regardless of age, disability, or other extenuating circumstance, we recognize our common desire to live self-directed lives. In the event this is not a reasonable alternative, we commit to a fully inclusive continuum of choices designed to accommodate the thoughts and feelings of the individual in need to the greatest extent possible.

We reaffirm the intrinsic value and dignity of every Kansan. The State of Kansas accepts the burden to provide its citizens reasonable opportunity for choice and independence in determining living situations, regardless of age or disability. Accordingly, we commit to providing support systems and other arrangements that allow individuals to remain in their own homes and communities.

The State of Kansas resolves to provide minimally invasive support to those citizens in need through a system transparent to public review and administrative accountability. Likewise, the State calls on private, public, and faith-based social service agencies to commit to the care and safety of all Kansans, especially elderly persons and people with disabilities.



**Kansas Interagency Council on Abuse, Neglect and Exploitation
Findings and Recommendations
January 2007**

**Kansas Interagency Council on Adult Abuse, Neglect, and Exploitation
Legislative Recommendations**

1. Recommendation Create a single, statewide, central registry of individuals who have been found to have committed abuse, neglect, or exploitation against vulnerable adults.

Explanation: Currently, three separate ANE perpetrator registries are kept and maintained by separate State agencies. Confirmed perpetrators without certification or licensure are not placed on any centralized registry. This creates undue hardship for those employers, in both the state and private caregiving marketplace, wishing to screen individuals entrusted with the care of vulnerable adults. Furthermore, these registries assist in the protection of abused, neglected, or exploited adults.

Without specifying the exact method by which to accomplish this goal, the Council would like to make clear that it is our intent that implementation of this recommendation will give employers and agencies a single point of entry for all requests for these background checks of confirmed abusers, and that such changes would absolutely prohibit the recycling of known abusers within various provider networks.

2. Recommendation: Expand the current list of prohibited crimes for which perpetrators will be added to a state registry to include: Theft (K.S.A. 21-3701), Forgery (K.S.A. 31-3710), Making False Information (K.S.A. 21-3711), Criminal Use of a Financial Card (K.S.A. 21-3729), and Narcotics (K.S.A. 65-4160 and K.S.A. 21-3701(c)).

Explanation: The current list of crimes for which a care provider may be placed on a perpetrator registry include only person crimes. However, the majority

of reported crimes committed against adult care home residents today are financial in nature. Expanding the current list of prohibited crimes for adult care providers could protect thousands of vulnerable adults from perpetrators not currently included on any state registry because their offenses are limited to theft, forgery, making false information, criminal use of a credit card, or theft and/or misuse of narcotics.

3.Recommendation: Amend K. S. A. 75-7303 to expand the jurisdiction and authority of long-term care Ombudsman to include Intermediate Care Facilities for the Mentally Retarded and Nursing Facilities for Mental Health. Additional personnel and associated expenses would also be required to ensure effectiveness of this expanded authority.

Explanation: At present, the jurisdiction of designated long-term care ombudsman is limited by statute to nursing facilities for the elderly. K.S.A. 75-7303, however, specifically excludes from this jurisdiction "any nursing facility for mental health or any intermediate care facility for the mentally retarded". Residents of these facilities, however, are often in need of the same level of advocacy as is currently afforded to those in elder care facilities. Amending K.S.A. 75-7303 to expand the jurisdiction and authority of long-term care Ombudsman will conform to Federal law.

4.Recommendation: Amend K.S.A. 21-3425 and 21-3437 to create a single definition for mistreatment of a dependent adult, while also providing clarification on the level of the offense.

Explanation: K.S.A. 21-3437 lists "infliction of personal injury, unreasonable confinement or cruel punishment upon a dependent adult" as a level 6 person felony. Conversely, K.S.A. 21-3425 proscribes "the intentional abuse, neglect or ill-treatment of any person, who is detained or confined and who is physically disabled, mentally ill or mentally retarded or whose detention or confinement is involuntary" and defines such an offense as a class A person misdemeanor. These redundant statutes demonstrate very dissimilar penalties for offenses that are alike, if not identical.

5.Recommendation: (Phase 1): Promote legislation to address special justice needs of elderly persons and people with disabilities.

Explanation: Elderly persons and people with disabilities may be in a state of continually deteriorating health or competency. Legislation creating a hearsay exception for victims and witnesses who have deceased or experienced diminished capacity will ensure these vulnerable adults receive equal opportunities for justice. Additionally, abusers exert such a great degree of control that these victims suffer the same fear and intimidation often experienced by battered women and children. Such

legislation would allow the admissibility of testimony presented via videotape or closed circuit television, similar to protections currently in place for child victims and witnesses, would further protect these victims from further trauma than what has already been suffered.

6.Recommendation: (Phase 2): Amend Article 15, Section 15 of the Kansas Constitution, the Crime Victims' Rights Amendment.

Explanation: There is currently no mechanism in place to allow prosecutors to request expedited criminal trials to ensure the victim an opportunity to participate in the justice process. This request could be particularly important in those cases where an elderly or disabled victim is at risk of losing his or her opportunity to participate in proceedings due to diminishing mental or physical health. Modifying the Crime Victims' Rights Amendment to allow prosecutors to request accelerated proceedings in circumstances where the victim's participation is at risk will ensure these basic rights are extended to all victims in Kansas.

7.Recommendation: Increase the penalties for obstructing an investigation of an adult care facility.

Explanation: Residents and employees of adult care facilities who come forward with allegations of ANE are inadequately protected from retaliation by other employees or residents. Enhancing current statutes to increase penalties to those who impede investigations or unfairly retaliate against those who file complaints with licensing agencies will empower prosecutors to better protect vulnerable adults.

**Kansas Interagency Council on Adult Abuse, Neglect, and Exploitation
Administrative Recommendations**

1.Recommendation: Extend the service term of the Kansas Interagency Council on Adult Abuse, Neglect, and Exploitation through 2007 while also expanding the Council to include representation of persons with a developmental disability and a physical disability.

Explanation: The Kansas Interagency Council on Adult Abuse, Neglect, and Exploitation represents a unique confluence of expertise, experience, and enthusiasm for the care and safety of the elderly and disabled. Council members have demonstrated great willingness to work together to advance the State of Kansas as a leader in caring for its most vulnerable citizens. Extending this Council through an additional Executive Order

will build upon the achievements already realized. This extension will ensure the identified long-term goals continue to be pursued while prior successes are also monitored and built upon. To maximize effectiveness of the future efforts of the Council, it is further recommended that a representative of the physically disabled population and a representative of the developmentally disabled population, heretofore unrepresented, are also appointed to serve.

2.Recommendation: Provide reasonable accommodations in courthouses and other public buildings, in compliance with the Americans with Disabilities Act. Request the Supreme Court to consider conducting a thorough review of both program and architectural accessibility of the Kansas Courts to elderly persons and people with disabilities.

Explanation: The Americans With Disabilities Act, Title II, provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subject to discrimination by any such entity.” Elderly people and persons with disabilities have a right to participate in all services offered by the courts and state agencies. Creating an accessible environment for proceedings involving vulnerable adults make it easier for them to participate more fully and receive true access to justice. The Council respectfully requests the Governor to ask the Chief Justice of the Kansas Supreme Court to conduct a thorough review of accessibility of Kansas Courts. Such a review should include stakeholders from the disability community and Kansans with different types of disabilities.

3.Recommendation: Review administrative sanctions currently available and assess for effectiveness.

Explanation: Whether or not state entities, such as SRS, KDHE, or KDOA, who investigate adult abuse, neglect, and exploitation have adequate sanctions available for their use remains unclear. Current sanctions typically revolve around suspension or removal of facility licensure. Further review is recommended to ascertain if this sanction is in use, if a spectrum of sanctions is available to reflect a range of violations, or if other, more effective sanctions might be applied.

4.Recommendation: Direct the Health and Human Services Subcabinet to establish an Adult Abuse, Neglect, and Exploitation Charter Team to develop a collaborative response to adult abuse, neglect, and exploitation.

Explanation: Multiple public and private agencies exist throughout the State to provide support and protective services to vulnerable populations. These entities exist to meet specific needs through carefully designed services. A

cooperative, inter-agency review and communication strategy could help avoid unnecessary duplication of services and provide for more efficient use of current resources. Furthermore, this Charter Team will serve to coordinate state-wide training efforts to professionals and the community while also consolidating agency efforts through application of identified best practice models.

The state agencies engaged in the system of investigation of ANE against elderly persons and people with disabilities, including SRS, KDHE, and KDOA are already represented on the Health and Human Services Subcabinet. The Charter Team should include representatives of these agencies, as well as representatives of the Long-Term Care Ombudsman, the state Protection and Advocacy system, and the Attorney General's ANE Unit.

5.Recommendation: Ensure adequate funding for all agencies involved in the APS system who conduct ANE investigations against vulnerable adult victims.

Explanation: The Council finds that each agency involved in the investigation of ANE against elderly persons and people with disabilities does incredibly important and difficult work. The system has an awesome responsibility and by most every reasonable account, it is not provided enough funding to accomplish the task. Though funding is always tight, the council believes you get the investigative system that you pay for. Therefore the council recommends that all agencies that conduct these investigations of ANE are in need of additional State funding and resources for additional staff. *If Kansas is to maintain its commitment to providing support and, where necessary, protection to vulnerable adults, it must also commit to providing adequate resources to meet this end.*

6.Recommendation: Establish a Guardianship Registry to be maintained and administered by courts.

Explanation: Establishing a Guardianship Registry will ensure those applying for registration have attended training required by the court and have experience with the needs of impaired elderly people, the physically disabled, mentally ill, developmentally disabled and/or other incapacitated persons. This will assist in ensuring the quality of guardians, thereby reducing or preventing ANE.

7.Recommendation: Enhance current systems in place to serve adults at risk of abuse, neglect, and exploitation through the development of prevention-based strategies and piloting of prevention models designed to serve such adults. In addition, provide greater access to resources to serve needs identified at the earliest and most appropriate intervention point.

Explanation: Through building on current resources and creating new sources, such as regional multidisciplinary teams and Gatekeeper models, systems designed to serve adults at risk of abuse, neglect, and/or exploitation will be enhanced to increase identification of at-risk adults in the community. Coordination of efforts between agencies working with at-risk adults will address needs, identify service gaps, and develop appropriate resources and intervention strategies.

8.Recommendation: Implement pilot projects on Multi-disciplinary teams, which have been proven to be best practice approach for ANE cases.

Explanation: The Council has determined that the multi-disciplinary team (MDT) approach used in investigations of ANE is a model approach that we recommend be implemented in pilot projects in Kansas. This multi-disciplinary approach is effective and it improves ongoing communication between law enforcement staff, APS, professionals and related agencies.

The Council believes that the adult system of ANE investigations is at a similar crossroads as domestic violence and child ANE investigations were in the 1970's. Seniors and Kansans with disabilities need our leaders to step forward and create changes in the system, just as change was brought about in the domestic violence and child protective service system.

The Council recommends that change be made to modify the system that investigates ANE of frail elderly and adults with disabilities to embrace the best practice models identified in the literature on MDT. It should not matter where the person with a disability resides—nursing facility, state hospital, group home, community setting, etc. – the investigation model should be consistent. The Council recognizes it will take much time, energy and effort to create change. The best way to start is through pilots on MDT.

Kansas Interagency Council on Adult Abuse, Neglect, and Exploitation

Professional Training Recommendations

1.Recommendation: Develop and implement a curriculum to train mandated reporters and social service professionals to understand and address the abuse or suspected abuse of vulnerable adults.

Explanation: Kansas law requires mandated reporters to report abuse, neglect, and exploitation when it is suspected. Understanding circumstances in which reporting is required and to whom suspected ANE should be reported are critical to instigating effective and meaningful intervention or prevention. This understanding stems from knowledge of the signs and symptoms of abuse. Effective intervention results from applying known methods of screening, diagnosis, and documentation coupled with knowledge of and close communication with community resources dedicated to the prevention of ANE. Coordination provided by the ANE Charter Team (please see Administrative Recommendation #4) would ensure each of these needs would be met through collaboration with service providers, medical professionals, victims, and law enforcement.

2.Recommendation: Mandate training and continuing education of vulnerable adult abuse at all statewide law enforcement training academies through subject matter experts.

Explanation: Law enforcement officers throughout the nation and this State are coping with a rising tide of crime that includes neglect and financial exploitation of vulnerable adults. Training these officers to recognize and adequately respond to these incidents is critical to the fight against ANE. While these matters may be touched upon in current curriculum addressing matters such as domestic violence and victims' rights, a program of study designed by the ANE Charter Team in concert with designated subject matter experts, including victims, would provide greater emphasis on this emergent problem. This would also allow for more in-depth training to include topics seldom addressed, such as HIPPA exemptions and issues unique to self-neglect among vulnerable adult populations.

Kansas Interagency Council on Adult Abuse, Neglect, and Exploitation

On-Going Public Education Recommendations

1.Recommendation: Provide vulnerable adults the information needed to make confident, sound decisions regarding self-directed care and related support services.

Explanation: To uphold a commitment to self-directed care built on independence and individual choice, an objective, statewide database regarding support service providers should be developed and made available online. Provision of information should include, but not be limited to, the following:

- Contact information of each facility
- Licensure and certification information
- Administrator information
- Management firms
- Prior Owners
- Not for profit status(if not for profit, a copy of agency Form 990 should be available)
- Private pay rates
- Medicaid Reimbursement Rates
- Occupancy rates

Providing such information can empower consumers to make intelligent choices. Creating a central storehouse of service provider information available to consumers and guardians throughout the state will also instill a greater degree of public accountability for these agencies.

2.Recommendation: Increase awareness of contributing factors of ANE perpetrated by family members who give care.

Explanation: The value of services provided nationally by family caregivers each year is estimated at \$257 billion. This estimate is twice what is spent on homecare and nursing services annually. Failure to address and work to prevent the problem of ANE perpetrated by these providers will only result on further strain to an already overtaxed system. Providing education regarding caregiver stress, coping mechanisms, available resources, and other strategies will help reduce this ANE category.

3.Recommendation: Promote public awareness programs to increase social responsibility in preventing or addressing ANE among vulnerable adults.

Explanation: Through agencies represented on the ANE Coordinating Council, an effective, far reaching public outreach campaign utilizing print and visual media can be constructed at minimal cost. These efforts are vital to making the general public aware of the pressing social issue of adult ANE. In addition to increasing general awareness of this problem, outreach efforts can also educate the public as to who vulnerable adults are, what constitutes ANE, preventive measures, reporting procedures, resources available, and other vital information.

Kansas Interagency Council on Adult Abuse, Neglect, and Exploitation
Long-Term Recommendations

1.Recommendation: Expand and/or improve Guardianship/Conservatorship standards to minimize or prevent abuse and neglect by guardians as follows:

- A. Educate healthcare providers regarding the presumption of competency, identifying the need for guardianships, and alternatives to guardianship.**
- B. Amend the probate court forms to ensure the appointment of guardians is appropriate and/or necessary.**
- C. Require guardian ad litem to provide evaluations and reports regarding functional capacity and requests for full guardianship.**
- D. Provide initial and continuing education and training to probate judges regarding cognitive and physical impairments, mental health issues, and aging.**
- E. Develop minimal ethical standards for professional guardians.**
- F. Increase the recruitment and training of volunteer guardians and use state-agency funded and –monitored guardians as guardians of last resort.**

Explanation: Implementation of a statewide education effort regarding competency and appropriate appointment of guardians will reduce the number of unnecessary guardianships. Furthermore, this statewide edification initiative will aid in the preservation of the rights of vulnerable adults when possible, thereby minimizing their vulnerability to abuse and exploitation. Minimal ethical standards should also be developed and enforced for non-professional guardians.

2.Recommendation: Establish a pilot Fiduciary Abuse Specialist Team (FAST) to investigate financial elder abuse.

Explanation: In response to the rapidly increasing percentage of financial frauds and scams among elders, a FAST team should be created, comprised of public and private sector professionals. Each team member provides case consultation services, education, and training on a pro bono basis, at both regularly scheduled case conferences and on emergency cases where prompt action is needed to avert imminent unlawful depletion or transfer of an elder's assets.

3.Recommendation: Require long term care facilities to report all deaths of residents that occur in the facility to law enforcement.

Explanation: At present, deaths that occur within long term care facilities result in death certificates signed by in-house physicians. This prevents any investigation from being conducted by a disinterested medical professional to determine cause of death, contributing factors, or signs of abuse. Requiring long term care facilities to contact law enforcement upon the death of any resident will allow trained officers to determine if indicators of criminal activity are present that require further investigation. This timely response will allow for preservation of critical evidence in cases where neglect or mistreatment committed by the facility has contributed to the death of the resident.

- OR -

4.Recommendation: Require State Coroner Offices throughout Kansas to conduct on-site investigations of all long term care facility resident deaths.

Explanation: At present, deaths that occur within long term care facilities result in death certificates signed by in-house physicians. This prevents any investigation from being conducted by a disinterested medical professional to determine cause of death, contributing factors, or signs of abuse. Requiring long term care facilities to contact the State Coroner who, in return, would be required to conduct an on-site review of the circumstances of the death will reveal signs of ANE that might otherwise go undetected.

5.Recommendation: Establish a Fatality Review Panel for vulnerable adults.

Explanation: Through a comprehensive review of statistical data and specific case records, systemic failures, policy weaknesses, and deficient practices can be identified and remedied. Findings reported to the ANE Charter Team will subsequently be disseminated to the appropriate agencies or incorporated into training curricula as needed.