



Aging and Long Term Care Committee
Neutral Testimony on HB 2656 –
Information about the needed reform to APS & the system investigating
ANE for adults with disabilities
February 14th, 2012

Chairman Bethel and Members of the Committee, my name is Rocky Nichols. I am the Executive Director for the Disability Rights Center of Kansas (DRC). DRC is the federally mandated, officially designated protection and advocacy organization for Kansans with disabilities. DRC is a 501(c)(3) nonprofit.

We are here providing neutral testimony on the question of moving Adult Protective Services (APS) to the Attorney General's Office. Instead we would like to take this opportunity to offer information and comment about the need reforms for APS and the system that investigates abuse, neglect and exploitation (ANE) for adults with disabilities, regardless of where APS is housed. In all honesty, changing the letterhead of the agency that oversees APS is not going to fix the underlying problems with inconsistent ANE investigations in Kansas. A change of letter head is not necessarily going to reform APS and the entire ANE system. We think it is a good thing that the Legislature is examining the future of APS. In that examination there are some critical and necessary improvements to the division of APS. Reform of APS cannot be about simply where it is housed. It has to be about fundamental changes to the vision, focus and structure of APS.

DRC has four main points we are making in this testimony:

- **#1 – The focus and operations of APS has several problems to be reformed**
- **# 2 – There is a wide disparity in the intensity and scope of investigation ANE receives depending on where you happen to live. This is wrong, and must change. You should have the same intensity and type of investigation regardless where you live.**
- **#3 – Instead of transferring an existing program (i.e., APS) to the Attorney General's office, the Legislature should fully fund the ANE Unit program and the**

justice it can provide to persons with disabilities. This program was started in the aftermath of the Kaufman House case.

- **#4 – Other ANE investigation reforms are needed first**

#1 – The focus and operations of APS has several problems to be reformed:

Upwards of 50% of cases are Screened Out & Never Investigated by APS – First, we are concerned with the way reports of ANE have historically been processed by APS. When examined data from a few years ago, APS had screened upwards of 50% of reports are “Screened Out” and never investigated. The Kaufman house was screened out previously by APS. That seems like an extremely high percentage. Is this evidence of an over worked and underfunded system? What reforms need to be made to ensure that the appropriate cases are investigated?

Of the Reports NOT Screened Out, upwards of 50% of the actual APS investigations are cases of self neglect, indicating perhaps a paternalistic bent where we are “protecting people from themselves” – Of the reports that are not screened out, the state focuses half of its Investigations on protecting people with disabilities “From Themselves”. Upwards of 50% of all the reports of ANE investigated by state are for “self-neglect” (ex: FY 2005, of the 5116 reports of ANE investigated by SRS/APS, 2710 – over 50% were allegations of “self-neglect”). Making matters worse, 75% of the *confirmed* cases from this time period are cases of self-neglect. Many in the disability community would argue that protecting people from themselves has the potential to cross over the line from protection to paternalism. Shouldn’t the focus be on promoting self-determination and independence? Shouldn’t the focus be on holding perpetrators accountable? When the number one area of investigation borders on paternalism and “protecting people from themselves,” the system can’t focus on getting the real bad guys – the perpetrators of ANE.

#2 – There is a wide disparity in the intensity, scope & protocols of an ANE investigation depending on where you happen to live. This is wrong, and must change. You should have the same intensity and type of investigation regardless where you live:

The type, intensity and protocols of the investigation vary widely by depending on where you happen to live. If you live in your own apartment and are served by an HCBS Waiver, APS handles the ANE investigation. Often times, APS will conduct an actual investigation into the allegation of ANE (even with the concerns of focus we mentioned before). However, if you live in a nursing facility, often times the nursing home itself will self report the incident, and will write the actual draft report of the incident. It is then up to KDOA to decide if they are going to do a paper review of the nursing home’s own self report, of if they will conduct an actual independent investigation. That is a BIG disparity in the intensity, scope and protocols of the investigations – and it is all dependent on where you happen to live. The

standard should be that adults get the same coordinated, intensive-type of ANE investigations as children receive, regardless of where they happen to live.

The Kansas Interagency Council on Adult ANE, in its report to the Governor, agreed that this is a significant problem. In its 2007 report it found that: “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.” In that report, this blue ribbon Council, appointed by the Governor, made several interesting findings, including: “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.”

#3 – Instead of transferring an existing program (i.e., APS) to the Attorney General’s office, the Legislature should fully fund the ANE Unit program and the justice it can provide to persons with disabilities. This program was started in the aftermath of the Kaufman House case.

In 2006 the Legislature created a new authority and a new program (the ANE Unit) within the Attorney General’s office as a response to the horrors and gaps in justice illustrated in vivid detail by the Kaufman house case in Newton Kansas. However, shortly after starting the new ANE Unit, the Legislature defunded this program and never really restored the funding to provide individual justice to victims of ANE. The Unit can serve as an incredibly important role in protecting the rights of people with disabilities and ensuring that they had access to civil, legal representation so that they could obtain justice. **Perhaps before you look at adding new programs to the AG’s office, like this APS function, you should first fund the program you current have on the books that was intended to obtain justice for people with disabilities. This ANE Unit program remains a promise unfulfilled.**

#4 – Other ANE investigation reforms are needed first

Investigative Agencies Don’t Know IF the Person Has a Guardian, or Who the person’s Guardian is, or Which Guardians have Conflicts of Interest, etc. – APS can’t conduct an investigation if the Guardian refuses or if consenting adults don’t want to be investigated. There is no centralized registry available to investigative agencies of Guardianships and Conservatorships to track all this. This was a huge problem in the Kaufman House case, because SRS was told by Mr. Kaufman that the people there were consenting adults and that they didn’t have guardians. That was not true. At different points more than half had Guardians. In fact, Mr. Kaufman WAS the guardian for at least one resident (clear conflict of interest but is unfortunately allowed under law – this must change). There was no guardian/conservator registry for investigative agencies to check this out (SRS, Aging,

KDHE, AG, DRC, law enforcement, etc.). The Kansas Supreme Court could operate such a registry. This is an issue that could be fixed as part of a broader APS reform that could be contained in HB 2656.

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.

Lack of Secondary Investigation or Quality Control . Some states have “secondary investigations” conducted as a check of the thoroughness and quality assurance of the work product of the primary investigation. This process of secondary investigations acts as a quality control on the investigation, accountability, etc. 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 determine what is in the “best interest” of the person with a disability. They might get input from victim, but actions, steps and remedies are controlled by the State.

Are Licenses Pulled? Is it an Empty Threat? Are the current options of Administrative Sanctions Sufficient? – When a provider is responsible for the actions of ANE or the actions of their employees, most of the remedies afforded to the state-run Investigative system (Aging, SRS, KDHE) center around the threat of pulling the providers license. How often are licenses pulled? If the numbers show that licenses are not pulled that often, then what other remedies and enforcement tools do these agencies need to hold bad providers accountable? Does the way in which the licensure system is setup systematically make licenses less likely to be pulled?

Implement pilot projects on Multi-disciplinary teams, which have been proven to be best practice approach for ANE cases. The Council report from 2007 recommended that the state an approach for Adult ANE investigations similar to the way systems for domestic violence and Child Protective Services have done since the 1970’s. A Multidisciplinary approach to ANE for adults would improve ongoing communication between law enforcement staff, APS, professionals and related agencies.

Prevention-based strategies, aide and assistance. Over the years there have been many calls for the state to 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.

- **Before the legislature shuffles APS to a new agency, you must first reform the ANE investigation system and refocus state policy so that the types of concerns in our testimony (ex: the investigations of APS are rebalanced, investigations are consistent, perpetrators are held accountable, and reforms are meaningful). We would gladly work with this committee or any other to develop language to do just that.**

Thank you for your time and attention to our suggestions.