

SENATE BILL No. 354

By Committee on Judiciary

2-7

1 AN ACT concerning crimes and punishments; relating to mistreatment of
2 an elder person or dependent adult; amending K.S.A. 2013 Supp. 21-
3 5417 and repealing the existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2013 Supp. 21-5417 is hereby amended to read as
7 follows: 21-5417.(a) Mistreatment of ~~a~~ *an elder person or dependent adult*
8 is knowingly committing one or more of the following acts:

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

11 (2) ~~taking unfair advantage of a dependent adult's physical or~~
12 ~~financial resources for another individual's personal or financial advantage~~
13 ~~by the use of undue influence, coercion, harassment, duress, deception,~~
14 ~~false representation or false pretense~~ *wrongfully taking the personal*
15 *property or financial resources of an elder person or dependent adult for*
16 *the benefit of the defendant or another person by taking control, title, use*
17 *or management of the personal property or financial resources of an elder*
18 *person or dependent adult through:*

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

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

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

26 (3) omission or deprivation of treatment, goods or services that are
27 necessary to maintain physical or mental health of ~~a~~ *an elder person or*
28 *dependent adult.*

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

31 (1) Subsection (a)(1) is a severity level 5, person felony;

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

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

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

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

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

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

7 (F) less than \$1,000 is a class A person misdemeanor, except as
8 provided in subsection (b)(2)(G); and

9 (G) less than \$1,000 and committed by a person who has, within five
10 years immediately preceding commission of the crime, ~~the offender has~~
11 been convicted of mistreatment of ~~a~~ *an elder person or* dependent adult
12 two or more times is a severity level 7, person felony; and

13 (3) subsection (a)(3) is a severity level 8, person felony.

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

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

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

23 (3) *a court approved the transaction before the transaction occurred.*

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

30 ~~(d)~~ (e) As used in this section;

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

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

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

41 ~~(B)~~ (B) adult cared for in a private residence;

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

1 ~~(4)~~ (D) individual with intellectual disability or a developmental
2 disability receiving services through a community facility for people with
3 intellectual disability or residential facility licensed under K.S.A. 75-
4 3307b, and amendments thereto;

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

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

11 (3) *"Elder person" means the same as provided in K.S.A. 50-676, and*
12 *amendments thereto.*

13 ~~(e)~~ (f) An offender who violates the provisions of this section may
14 also be prosecuted for, convicted of, and punished for any other offense in
15 article 54, 55, 56 or 58 of chapter 21 of the Kansas Statutes Annotated, or
16 K.S.A. 2013 Supp. 21-6418, and amendments thereto.

17 Sec. 2. K.S.A. 2013 Supp. 21-5417 is hereby repealed.

18 Sec. 3. This act shall take effect and be in force from and after its
19 publication in the statute book.