

STATE OF KANSAS
Tenth Judicial District

OFFICE OF DISTRICT ATTORNEY
STEPHEN M. HOWE, DISTRICT ATTORNEY

March 5, 2018

Senate Judiciary Committee
Attention: Rick Wilborn, Chairman
State Capitol, Room 346-S
Topeka, KS 66612

RE: House Bill No. 2458

Chairman Wilborn and Committee Members:

Thank you for the opportunity to submit written testimony in support of HB No. 2458.

The decision in *State v Maxon*, 32 Kan.App.2d 67 (2003), highlighted the need to increase the penalties for the abuse of our elder and dependent adult citizens. In response to this, the legislature passed several bills that strengthened penalties for these types of crimes to include the enactment of an "elder person" statute in 2014.

HB No. 2458 continues our fight to protect our elderly and dependent adult citizens by: (1) punishing those who physically abuse our elder persons, (2) lowering the dollar amount threshold for felony prosecution of the financial abuse/exploitation of our elder persons, (3) lowering the age requirement to be classified as an elder person, thus promoting uniformity with other Kansas statutes as well as other states and enabling prosecutors to protect more of our vulnerable citizens; (4) punishing individuals that violate the requirements as set forth in the act for obtaining a guardian or conservator, and (5) recognizing physical and financial abuse of our elder and dependent adult citizens causes grave harm that demands punishment at the highest level when death results.

Physical Abuse

K.S.A. 21-5417(b) currently does not punish the "infliction of physical injury, unreasonable confinement or unreasonable punishment" of our elder persons. K.S.A. 21-5417(a)(1) recognizes the increased harm to our vulnerable citizens when physical abuse occurs and punishes the act as a felony when perpetrated against our dependent adults. However, our citizens that are classified as elder persons pursuant to K.S.A. 21-5417(g)(3) are not provided the same protection. This is an omission in the law that must be corrected.

Threshold Amount for Elder Person Financial Abuse/Exploitation

Elder persons in Kansas are currently afforded less protection under our current law than non-elder persons when a theft of less than \$5,000 occurs. K.S.A. 21-5417(d)(1)(E) currently requires the aggregate amount of the value of the personal property or financial resources to be at least \$5,000

when an offender financially exploits an elder person. In contrast, the amount of loss to charge a felony when a dependent adult is the victim is set at \$1,500. Further, the Kansas theft statute (K.S.A. 21-5801) sets the threshold for a felony at \$1,500. Thus, under the “specific statute” rule of law, a prosecutor must charge a misdemeanor for the financial abuse of an elder person unless the amount taken is \$5,000 whereas if the same crime were to be perpetrated against a non-elder person the threshold amount is only \$1,500.

Age of “Elder Person”

K.S.A. 21-5417(g)(3) sets the age of 70 for an elder person. This age is not consistent with other Kansas statutes that increase penalties for perpetrating crimes against our vulnerable citizens. Further, in a survey conducted by our office, 30 states have specific elder abuse statutes. Kansas and Colorado are the only states that set the age at 70. Sixteen states set the age at 60, two set the age at 62, and ten set the age at 65.

Guardian/Conservator Act

In 2014, the legislature added “a violation of the Kansas power of attorney act” language for both elder persons and dependent adults. The legislature recognized that having a power of attorney was not a license to steal and individuals must act lawfully and in compliance with the act. As a prosecutor, I have observed numerous individuals with a power of attorney act in violation of the document’s granted powers and violate the fiduciary relationship owed to the grantor. It should naturally follow that the same criminal consequences be available to prosecutors when individuals violate the specific duties and responsibilities set forth in the act for obtaining a guardian or conservatorship.

Inherently Dangerous Felony

K.S.A. 21-5402(c) currently does not list a felony violation of K.S.A. 21-5417 as an “inherently dangerous felony.” Crimes such as felony theft of property and burglary have been considered “inherently dangerous felonies” for many years in Kansas. Many studies support the premise of the extreme emotional and physical impact on our elders and dependent adults when they are victims of physical and financial abuse. Thus, felony violations of K.S.A. 21-5417 should be added to the list of “inherently dangerous felonies” in Kansas, allowing for the prosecution of felony murder when an elder person or dependent adult dies as a result of a felony violation of K.S.A. 21-5417.

There are serious holes in our current elder laws that need to be closed. This is critically important since we are dealing with some of our most vulnerable members of our communities. The proposed changes hold offenders accountable while providing the protections our elder citizens deserve.

I thank you for your time and would be happy to answer any questions you may have regarding the proposed legislation.

Sincerely,



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