

Approved: 12-18-2010

Date

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Pat Colloton at 8:20 a.m. on March 5, 2010, in Room 546-S of the Capitol.

All members were present except:

Representative Stan Frownfelter- excused  
Representative Lance Kinzer- excused  
Representative Charlie Roth- excused

Committee staff present:

Sean Ostrow, Office of the Revisor of Statutes  
Lauren, Kansas Legislative Research Department  
Jackie Lunn, Committee Assistant

Conferees appearing before the Committee:

Marc Bennett, Deputy District Attorney, 18<sup>th</sup> Judicial District, representing the Kansas County and District Attorneys Association (KCDAA)

Others attending:

See attached list.

Marc Bennett, Deputy District Attorney, 18<sup>th</sup> Judicial District, representing the Kansas County and District Attorneys Association (KCDAA)

**SB 67 - Sub for S 67 by Committee on Judiciary – Amending the crime of mistreatment of a dependent adult**

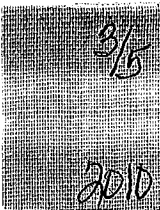
Chairperson Colloton called the meeting to order and opened the hearing on **SB 67** and called on Sean Ostrow, Office of the Revisor of Statutes, to explain the bill. Mr. Ostrow stated the bill would amend the crime of mistreatment of a dependant adult. Mr. Ostrow explained all the changes section by section while addressing the questions of the Committee.

Chairperson Colloton introduced Marc Bennett, Deputy District Attorney, 18<sup>th</sup> Judicial District, representing the Kansas County and District Attorneys Association (KCDAA), to give his testimony as a proponent of the bill. Mr. Bennett presented written copy of his testimony. (Attachment 1) Mr. Bennett stated the bill would amend K.S.A. 21-3437, relating to the mistreatment of a dependent adult by increasing the penalty for Mistreatment of a Dependand Adult from a severity level 6 person felony to a severity level 5 person felony; changing minor language to clarify that the statute applies not only to care givers but to all persons; outlawing the infliction of unreasonable punishment rather than outlawing cruel punishment as the current statute does and creating the crime of endangering a dependent adult.

A question and answer session followed.

Chairperson Colloton called the Committee's attention to the "written only" proponent testimony of the following: Joe Ewert, KAUSA (Attachment 2) and Mitzi E. McFatrach, Executive Director, Kansas Advocates for Better Care (Attachment 3)

Chairperson Colloton called for anyone else to testify on **SB 67**, being none, she closed the hearing and adjourned the meeting at 9:15 a.m. with the next meeting scheduled for March 8, 2010 at 1:30 p.m. in room 144-S.



# CORRECTIONS & JUVENILE JUSTICE GUEST LIST

DATE: 3-5-10

NAME	REPRESENTING
John Peterson	Ks Assoc of Honor + Service Club



Kansas County & District Attorneys Association

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House Committee on Corrections and Juvenile Justice

March 5, 2010

**Testimony in Support of Senate Substitute for SB 67**

Submitted by Marc Bennett, Deputy District Attorney 18<sup>th</sup> Judicial District  
On behalf of the Kansas County and District Attorneys Association

Honorable Chairman Colloton and Members of the Committee:

Thank you for the opportunity to address the Committee regarding Senate Substitute for Senate Bill 67. On behalf of Nola Tedesco Foulston, District Attorney, Eighteenth Judicial District and the Kansas County and District Attorney Association, I am here today to express our support of this legislation.

Senate Bill 67 seeks to amend K.S.A. § 21-3437, relating to the mistreatment of a dependent adult by (1) increasing the penalty for Mistreatment of a Dependant Adult from a severity level 6 person felony to a severity level 5 person felony; (2) changing minor language to clarify that the statute applies not only to caregivers but to all persons; (3) outlawing the infliction of unreasonable punishment rather than outlawing cruel punishment as the current statute does and (4) creating the crime of endangering a dependant adult.

Senate Substitute for Senate Bill 67 is necessary to protect a group of Kansas' most vulnerable citizens. The natural consequences of the aging process or other impairments of dependent adults may include infirmities because of advanced age, frailty, mental deterioration or physical and mental emotional dysfunction. These conditions may leave an adult defenseless and more vulnerable to any power or control asserted against them by others. Many dependent adults lack assistance from competent financial caretakers. In some instances, because of lack of medical treatment, or because of medications they may be required to take, they become confused or depressed. Dependent adults are often subject to intimidation by others who prey on their fear of loneliness and rejection by making demands and threats to abandon them.

Elder citizens and dependent adults are particularly vulnerable and often are willing to put their trust in people that show them attention and affection. Often this trust is misplaced and to the detriment of the dependent adult. Dependent adults are more easily exploited because of their implicit trust. As such, laws are necessary to protect these vulnerable citizens.

In Sedgwick County, prosecutors have been working with Triad of South Central Kansas ("Triad"), an organization comprised of volunteers in law enforcement, social services and

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Attachment # 1-1

seniors to increase awareness in quality of life issues for seniors. In addition, prosecutors have been working with the Financial Abuse Specialist Team ("F.A.S.T."). F.A.S.T. is a group of professionals who volunteer to work together to help prevent financial abuse of vulnerable adults and to assure that victims receive adequate support, advocacy and attention from the legal and human services.

The work of Triad and F.A.S.T. have shown that additional legislative efforts are necessary to assist a group of our most vulnerable citizens in our community by crafting appropriate legislative enactments. Senate Substitute for Senate Bill 67 provides that penalties for violation of existing portions of the statute, especially as it relates to financial crimes, should be enhanced. The current statute provides a ladder of penalties from a person misdemeanor to a level 6 person felony, depending on the type of mistreatment. Under the current statute, unless an offender has a significant criminal history, the sentence will most likely be probation. No form of mistreatment of persons dependent on others for their mental, physical and financial health and well-being should be considered less severe than another. Grading the severity level of a crime of this nature by economic loss does not necessarily reflect the impact of the crime. For example, the theft of a hundred dollars from a dependent of limited means can be just as damaging as stealing \$100,000 from a wealthy dependent. A uniform severity level for all forms of mistreatment makes clear that as a matter of public policy, Kansans want dependent adults protected from those who would harm them, no matter the mechanism of the harm. A severity level 5 designation will allow the court to sentence an offender to either probation or imprisonment, assuming a limited criminal history, ensuring appropriate accountability for the crime based on the facts of each case.

In addition, Senate Substitute for Senate Bill 67 omits language that could be interpreted as limiting the statute to only caretakers. By clarifying that the criminal behavior applies to all persons and not just caretakers, the bill will eliminate an unreasonable defense to the crime, preventing persons charged with mistreatment from claiming they were not a caretaker and thus, their behavior was not criminal.

Senate Bill 67 also provides for the creation of a new crime, endangering a dependent adult. The crime of endangering a dependent adult is modeled after the crime of endangering a child and will criminalize behavior not currently addressed by any State statute. The new crime of endangering a dependent adult is necessary to safeguard dependent adults and stop behavior before it rises to the level of mistreatment of a dependent adult. Endangering a dependent adult would be a class A person misdemeanor, as is the crime of endangering a child.

We believe Senate Bill 67 seeks to recognize that any violation of a mistreatment of a dependent adult is a very serious offense and has serious affects on the victim. Certainly physical abuse of a dependent adult should be a person felony. In addition, omitting or depriving treatment, goods or services that are necessary to maintain physical or mental health should be a person felony as failure to provide such could result in death of the dependent adult. Currently it is a misdemeanor offense.

It is critical the people of the State of Kansas be provided with laws to protect a group of our most vulnerable citizens. We urge your favorable consideration and support for Senate Substitute for Senate Bill 67. I would be happy to stand for questions.



To: Representative Colloton, Chair, and Members of the House Corrections and Juvenile Justice Committee,  
From: Joe Ewert, KAHSA Government Affairs Director  
Date: Thursday, March 04, 2010

### Testimony in Support of Senate Bill 67

Thank you, Madam Chair and Members of the Committee. I am Joe Ewert, Government Affairs Director of the Kansas Association of Homes and Services for the Aging. Over 20,000 older Kansans are served everyday by KAHSA's 160 not-for-profit nursing homes, retirement communities, assisted living and senior housing facilities, and community-based service programs.

Financial abuse of senior citizens is a serious and increasing problem in Kansas. Our members are witnessing a growing trend of individuals or family members operating as Power of Attorney who simply do not distinguish a difference between the funds of their principal, and those of their own. They use deceit, coercion, intimidation and emotional abuse to get their way. They refuse to pay healthcare, pharmacy and other bills of their principal and instead use the elder's resources for their own personal pleasure and benefit. Victims of fiduciary abuse are often left destitute, in mental anguish, and in increased jeopardy because they cannot pay for necessary services to maintain their health and safety. Too often fiduciary abuse is not considered a crime by those involved.

We support Senate Bill 67. It increases the penalty for convictions of "mistreatment of dependent adult by taking unfair advantage of a dependent adult's physical or financial resources, in cases when the aggregate value of the resources exceeds \$100,000.

Senate Bill 67 is one step forward in addressing this growing problem. Much more work is needed. We urge the Legislature to pass SB 67 this year.

Thank you for consideration of this serious issue. I would be happy to answer questions.

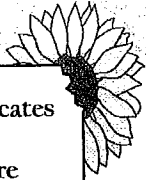
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Corrections and Juvenile Justice  
Date: 3-5-10  
Attachment # 2

*"Advocating for Quality Long-Term Care" since 1971*

Kansas Advocates  
for  
Better Care



March 5, 2010

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House Committee on Corrections and Juvenile Justice  
Chairperson Colloton, Vice-chairperson Patton  
Committee Members: Representatives Barnes, Bethell, Brookens, Brown,  
Frownfelter, Kinzer, McCray-Miller, Moxley, Pauls, Roth, and Spalding

From Kansas Advocates for Better Care, a non-profit organization speaking up  
on behalf of frail elders and vulnerable adults receiving long-term care in Kansas for 35  
years.

Dear Chairwoman Colloton, Vice Chairman Patton and Committee Members,

Kansas Advocates for Better Care is presenting written testimony today on behalf of our  
members, volunteers and the Board of Directors. We are a citizen group whose mission is  
to advocate for public policies that will improve the health and safety for frail elders and  
vulnerable adults who receive long-term care in nursing homes, assisted living and their  
own homes.

**We urge you to recommend and favorably pass Sub for SB 67 which would amend  
the crime of mistreatment of a dependent adult and increase certain penalties for  
mistreatment.**

Adults living in long-term care settings or receiving long-term care at home, rely on legis-  
lators and legislation; regulators and regulation to create public policy that offers safe-  
guards to protect citizens and to appropriately punish those who abridge another's right to  
safety. The increase in penalties for mistreatment of a dependent adult is an appropriate  
tool to hopefully deter and further to punish those who would mistreat a dependent adult.

**With regards to the wording of lines 17 and 18 (page 1)**

**"(1) Infliction of physical injury, unreasonable confinement or ~~cruel~~ unreasonable  
punishment upon a dependent adult;"**

Crafters of the legislation have changed the language from **cruel to unreasonable  
punishment** upon a dependent adult. Our question/comment would be "When is cruel or  
unreasonable punishment or indeed punishment (without the qualifier of unreasonable or  
cruel) outside of a judicial proceeding, appropriate for a dependent adult? Merriam-  
Webster defines punishment as:

- 1 : the act of punishing
- 2 a: suffering, pain, or loss that serves as retribution
- b: a penalty inflicted on an offender through judicial procedure
- 3 : severe, rough, or disastrous treatment.

Thank you for your consideration of our testimony.

Mitzi E. McFatrach

Corrections and Juvenile Justice

Date: 3-5-10

Attachment # 3

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