

Testimony for Public Hearing  
Senate Judiciary Committee  
Chairman Rick Wilborn and Committee Members  
HB 2458  
March 7, 2018

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Advocate for people and daughter of person living with Alzheimer's

Thank you for the opportunity to present testimony on behalf of my mother, who is unable to speak for herself. I am here to talk about the shortcomings of the very law that was put in place to protect her: to protect her from mistreatment and physical abuse. In the late stages of her journey with Alzheimer's, she was a victim of physical abuse by a CNA at an Alzheimer's nursing facility. She needed a courageous voice for justice.

The elder abuse law was put into place to protect dependent and elderly adults. But, the law failed. It did not protect my mother and it does not protect others from the crimes of physical abuse and mistreatment.

In looking at the law, it is very specific in defining charges for fiduciary crimes against dependent adults and elder persons and bringing justice to victims. The monetary amounts are divided into 7 levels with specific charges included. The law goes into great detail. The amendments strengthen this protection.

HB 2458—Am. by HC 4

(2) taking the personal property or financial resources of an elder person for the benefit of the defendant or another person by taking control, title, use or management of the personal property or financial resources of an elder person through:

(A) Undue influence, coercion, harassment, duress, deception, false representation, false pretense or without adequate consideration to such elder person;

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

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

*(D) a violation of the act for obtaining a guardian or conservator, or both, K.S.A. 59-3050 et seq., and amendments thereto; or*

(2)(3) omission or deprivation of treatment, goods or services that are necessary to maintain physical or mental health of such elder person.

(c) Mistreatment of a dependent adult **or an elder person** as defined in:

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

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

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

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

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

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

(E) at least \$1,000 \$1,500 but less than \$25,000 is a severity level 7, person felony;  
(F) less than \$1,000 \$1,500 is a class A person misdemeanor, except as provided in subsection  
(c) (b)(2)(G); and  
(G) less than \$1,000 \$1,500 and committed by a person who has, within five years immediately  
preceding commission of the crime, been convicted of mistreatment of a dependent adult *a*  
*violation of this section* two or more times is a severity level 7, person felony; and  
(3) subsection (a)(3) is a severity level 8, person felony.

Does physical abuse and mistreatment not deserve the same level of detail? Does physical abuse  
not carry the same consideration as financial abuse? The law as written falls short in bringing  
justice. The law fell short for my mother for the physical abuse she suffered.

The law states:

Sec. 2. K.S.A. 2017 Supp. 21-5417 is hereby amended to read as follows: 21-5417. (a)  
Mistreatment of a dependent adult **or an elder person** is knowingly committing one or more of  
the following acts: (1) Infliction of physical injury, unreasonable confinement or unreasonable  
punishment upon a dependent adult **or an elder person**;

(c) Mistreatment of a dependent adult **or an elder person** as defined in: (1) Subsection (a)(1) is a  
severity level 5, person felony;

While this law is intended to protect, it has an obvious flaw; the law does not define physical  
injury. The law does not define unreasonable confinement. The law does not define unreasonable  
punishment.

Because of this failure, district attorneys are left to define it for themselves. Because of this  
failure, my mother's abuser was charged with misdemeanor battery and not a felony, as I believe  
the law was intended. I was told that because my mother did not sustain physical injury, the  
abuse did not qualify as a felony. In addition to not being charged as a felony, I was informed the  
abuser was applying for the diversion program. Completion of a diversion program meant the  
charges would be expunged from her record and she could continue working as a CNA.

With this, my goal became to make sure the caregiver never had the opportunity to work as a  
CNA again working with dependent adults and vulnerable elderly. We went to the media with  
our story. My family and I made multiple calls to the district attorney's office stating our  
disagreement with the possibility of diversion. Ultimately diversion was not granted, and a court  
date was set in municipal court. Our family needed a courageous voice for justice.

Video

The judge was not allowed to see the video as evidence. He read from the police officer's written  
account of the video. The judge became angry as he read the account, stating his father passed  
away from Alzheimer's, and that he did not know what he would have done had he found out his  
father was being abused. He stated he did not understand why this case was in his court, inferring  
the case should have been charged as a felony in district court. The judge sentenced the abuser to  
30 days in jail.

The judge became my mother's and my family's courageous voice for justice. He recognized the failure of the interpretation of the law and made sure the abuser was punished according to his ability. Had it not been for this judge there would not have been justice.

With her sentencing, I assumed that she would immediately lose her license as soon as the state licensing board was notified of her sentencing. I learned that is not the case. In fact, the judicial system is not required to notify licensing boards. I called Kansas Department for Aging and Disability Services, and was thanked for giving them the information. It was 6 months before her name appeared on the list of CNA's who lost their license to abuse, mistreatment or exploitation.

You have the opportunity to be a voice for justice. My mother with Alzheimer's, one of 52,000 in the state of Kansas not including other dementias and dependent adults, need your voice to protect them, to provide justice. I have reviewed summaries of elder abuse laws for each state. Most states have detailed descriptions of abuse and the subsequent charges, while many have more severe charges in the case of physical abuse. Kansas needs to revise the law to detail the levels of abuse, define the charges and specify that diversion is not allowed under any circumstance when the elderly are abused. Will you stand with me to be this courageous voice for justice?