

SESSION OF 2003

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2254

As Amended by Senate Committee on
Ways and Means

Brief*

HB 2254, as amended, relates to reporting adult abuse and neglect. The bill creates new law to designate that both the Department of Social and Rehabilitation Services (SRS) and law enforcement officers have the duty to receive and investigate reports of adult abuse, neglect, exploitation, or fiduciary abuse to determine whether the reports are valid and whether action is required to protect the adult from further abuse or neglect. If disputes develop between agencies, the county or district attorney takes charge of the investigation.

- ! If the Department and law enforcement officers determine that no action is necessary to protect the adult but that a criminal prosecution should be considered, the report of the case must be made to the appropriate law enforcement agency.
- ! If the report indicates that there is adult abuse, neglect, exploitation, or fiduciary abuse and action is required to protect the adult SRS and the appropriate law enforcement agency may conduct joint investigations with a free exchange of information between the agencies. Upon completion of the investigation, a full report must be made to SRS.
- ! Investigations involving a facility under the jurisdiction of the Kansas Department of Health and Environment (KDHE) must be reported to the Secretary upon conclusion of the investigation or sooner if a report does not compromise the investigation.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org/klrd>

Statutes governing the reporting of adult abuse and neglect in adult care homes, medical care facilities, and state psychiatric hospitals or state institutions for the mentally retarded are amended to:

- ! Include law enforcement agencies as investigators of abuse and neglect;
- ! Identify new persons who must report suspected adult abuse:
 - " Legal representatives designated in a durable power of attorney, power of attorney, or durable power of attorney for health care decisions, or a court appointed guardian, conservator, or trustee;
 - " Financial institutions (a bank trust officer and any other officers) of any bank, trust company, escrow company, finance company, savings institution, or credit union chartered and supervised under state or federal law; and
 - " Governmental assistance provider as an agency, or an employee of an agency which is funded solely or in part to provide assistance within the Kansas Senior Care Act, including Medicaid and Medicare.
- ! Delete the criminal immunity for persons reporting as required;
- ! Require the immediate reports KDHE and SRS must make to law enforcement agencies when a criminal act has occurred or has appeared to have occurred to be in writing;
- ! Permit the investigating agency on a report of abuse to inform the complainant that corrective measures will be taken if required upon the completion of the investigation or sooner if such measures do not jeopardize the investigation;
- ! Allow the Secretary of SRS to obtain consent for protective services for a resident from the resident's legal representative, if the resident lacks capacity to consent;
- ! Allow the court, in situations where the caretaker or legal representative of a resident, or both, interfere with the provision of protective

services, to appoint a new legal representative if the court deems that it is in the best interest of the resident;

- ! Authorize investigating law enforcement agencies access to all relevant records associated with a report of abuse; and
- ! Allow an appropriate law enforcement agency to request the assistance of other state departments, agencies, commissions, and local health departments in making its investigation.

Further, HB 2254 amends Kansas statutes that pertain to the reporting of abuse of adults who are alleged to be unable to protect their own interests and who are harmed or threatened with harm, whether financial, mental, or physical in nature. Again, legal representatives, financial institutions, and governmental assistance providers are added as reporters of abuse; appropriate law enforcement agencies are authorized parties to receive reports of abuse and make investigations; removes the criminal immunity for persons reporting as required; requires notification in writing to law enforcement agencies when a criminal act has occurred or has appeared to have occurred; permits the investigating agency on a report of abuse to inform the complainant, or any state regulatory agency if the perpetrator is licensed, registered, or otherwise regulated by the agency, that corrective measures will be taken if required upon the completion of the investigation or sooner if such measures do not jeopardize the investigation; authorizes investigating law enforcement agencies access to all relevant records associated with a report of abuse, subject to confidentiality requirements; allows the Secretary of SRS to obtain consent for protective services for an involved adult from the adult's legal representative, if the adult lacks capacity to consent; and allows the court, in situations where the caretaker or legal representative of an involved adult, or both, interfere with the provision of protective services, to appoint a new legal representative if the court deems that it is in the best interest of the adult.

Background

HB 2254, as amended, was introduced by Representative Newton who explained that the bill was the product of extensive collaboration between law enforcement, service providers, and individuals who

advocate for the elderly and disabled. He noted that the purpose of the bill is to broaden the protections of dependent adults, including the elderly and those with physical and mental illness disabilities.

The Senate Ways and Means Committee made a technical amendment to the bill to clarify the joint investigations would deal with adult neglect as well as adult abuse, exploitation, or fiduciary abuse.

The bill is supported by the Johnson County Area Agency on Aging, Kansas Advocates for Better Care, Kansas Coalition Against Sexual and Domestic Violence, Johnson County Developmental Supports, AARP-Kansas, and SRS.

The fiscal note prepared by the Division of the Budget indicates passage of the bill as originally drafted would have a significant fiscal effect. However, amendments to the bill render it fiscally neutral.