



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.AG.KS.GOV

Testimony in Support of House Bill 2153

**Presented to the Senate Committee on Judiciary
By Deputy Attorney General Steve Karrer**

March 25, 2021

Chair Warren and Members of the Committee:

Thank you for the opportunity to present this written testimony on behalf of Kansas Attorney General Derek Schmidt in support of House Bill 2153.

House Bill 2153 would increase the penalty for specific forms of mistreatment of a dependent adult or elder when victim is a resident of an adult care home. Specifically, if a defendant inflicts physical injury, unreasonable confinement or unreasonable punishment upon a dependent or elder adult who is a resident of an adult care home, the offense will increase from a level 5 felony to level 2 felony. If a defendant omits or deprives treatment, goods or services that are necessary to maintain physical or mental health of an elder or dependent adult who is a resident of an adult care home, the offense will increase from a level 8 felony to a level 5 felony.

Residents of nursing homes are inherently and overwhelmingly vulnerable, as many are physically and/or mentally incapable of defending themselves or reporting abuse or neglect. Moreover, with respect to such residents, nursing homes are contract caregivers – much like common carriers – who accept greater responsibilities to customers by holding themselves out as available for hire. The greater responsibilities manifest in the many applicable Kansas Administrative Regulations with regard to nursing homes (including, but not limited to, required periodic complex assessments, updating of plans of care, and the employment of licensed healthcare providers), and in the terms of the contract covering the care each resident is to receive. At present, contract caregivers of inherently and overwhelmingly vulnerable residents face the same criminal liability to consequences as does an unlicensed, untrained, unsophisticated family member or friend who by default finds themselves as in-home caregivers to dependent adults.

This proposal is aimed at acts of mistreatment which result in, or can result in physical harm to residents. It would make all such offenses presumptive prison. This proposal also removes some of the barriers to seeking an enhanced sentence. At present, the only way of seeking an enhanced penalty for contract caregivers is to seek upward departure – which means that a jury must be

empaneled. Even if this proposal is adopted and made law, upward departure would remain as an option if the facts warranted.

For these reasons, on behalf of Kansas Attorney General Derek Schmidt, I encourage you to report HB 2153 out of committee favorably.

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