

SENATE BILL No. 671

By Committee on Ways and Means

3-5

9 AN ACT concerning mistreatment and abuse of certain persons; amend-
10 ing K.S.A. 21-3437 and K.S.A. 2007 Supp. 39-1401 and repealing the
11 existing sections.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 21-3437 is hereby amended to read as follows: 21-
15 3437. (a) Mistreatment of a dependent adult is knowingly and intention-
16 ally committing one or more of the following acts:

17 (1) Infliction of physical injury, unreasonable confinement or cruel
18 punishment upon a dependent adult;

19 (2) taking unfair advantage of a dependent adult's physical or financial
20 resources for another individual's personal or financial advantage by the
21 use of undue influence, coercion, harassment, duress, deception, false
22 representation or false pretense by a caretaker, *a person who receives,*
23 *has access to, handles or controls a dependent adult's property* or another
24 person; or

25 (3) omitting or depriving treatment, goods or services by a caretaker
26 or another person which are necessary to maintain physical or mental
27 health of a dependent adult.

28 (b) No dependent adult is considered to be mistreated for the sole
29 reason that such dependent adult relies upon or is being furnished treat-
30 ment by spiritual means through prayer in lieu of medical treatment in
31 accordance with the tenets and practices of a recognized church or relig-
32 ious denomination of which such dependent adult is a member or
33 adherent.

34 (c) *Mistreatment may be established by evidence that includes, but is*
35 *not limited to, the failure of a person to make payment for any services*
36 *provided by an adult care home or other health care provider when such*
37 *person receives, has access to, handles or controls a dependent adult's*
38 *property.*

39 (d) For purposes of this section: "Dependent adult" means an indi-
40 vidual 18 years of age or older who is unable to protect their own interest.
41 Such term shall include:

42 (1) Any resident of an adult care home including but not limited to
43 those facilities defined by K.S.A. 39-923 and amendments thereto;

- 1 (2) any adult cared for in a private residence;
- 2 (3) any individual kept, cared for, treated, boarded or otherwise ac-
3 commodated in a medical care facility;
- 4 (4) any individual with mental retardation or a developmental disa-
5 bility receiving services through a community mental retardation facility
6 or residential facility licensed under K.S.A. 75-3307b and amendments
7 thereto;
- 8 (5) any individual with a developmental disability receiving services
9 provided by a community service provider as provided in the develop-
10 mental disability reform act; or
- 11 (6) any individual kept, cared for, treated, boarded or otherwise ac-
12 commodated in a state psychiatric hospital or state institution for the
13 mentally retarded.
- 14 ~~(e)~~ (1) Mistreatment of a dependent adult as defined in subsec-
15 tion (a)(1) is a severity level ~~6~~ 4, person felony. *In addition to the term of*
16 *imprisonment authorized by law, the offender shall be fined not less than*
17 *\$75,000.*
- 18 (2) Mistreatment of a dependent adult as defined in subsection (a)(2)
19 is a severity level ~~6~~ 4, person felony if the aggregate amount of the value
20 of the resources is \$100,000 or more. *In addition to the term of impris-*
21 *onment authorized by law, the offender shall be fined not less than*
22 *\$75,000.*
- 23 (3) Mistreatment of a dependent adult as defined in subsection (a)(2)
24 is a severity level ~~7~~ 5, person felony if the aggregate amount of the value
25 of the resources is at least \$25,000 but less than \$100,000. *In addition to*
26 *the term of imprisonment authorized by law, the offender shall be fined*
27 *not less than \$50,000.*
- 28 (4) Mistreatment of a dependent adult as defined in subsection (a)(2)
29 is a severity level ~~9~~ 7, person felony if the aggregate amount of the value
30 of the resources is at least \$1,000 but less than \$25,000. *In addition to*
31 *the term of imprisonment authorized by law, the offender shall be fined*
32 *not less than \$25,000.*
- 33 (5) Mistreatment of a dependent adult as defined in subsection (a)(2)
34 is a ~~class A person misdemeanor~~ severity level 10, person felony if the
35 aggregate amount of the value of the resources is less than \$1,000. *In*
36 *addition to the term of imprisonment authorized by law, the offender shall*
37 *be fined not less than \$1,000.*
- 38 (6) Mistreatment of a dependent adult as defined in subsection (a)(3)
39 is a class A person misdemeanor. *In addition to the term of confinement*
40 *in the county jail as authorized by law, the offender shall be fined not less*
41 *than \$500.*
- 42 (7) Mistreatment of a dependent adult as defined in subsection (a)(2)
43 is a severity level 9, person felony if the aggregate amount of the value

1 of the resources is less than \$1,000 and committed by a person who has,
2 within five years immediately preceding commission of the crime, been
3 convicted of mistreatment of a dependent adult two or more times.

4 Sec. 2. K.S.A. 2007 Supp. 39-1401 is hereby amended to read as
5 follows: 39-1401. As used in this act:

6 (a) "Resident" means:

7 (1) Any resident, as defined by K.S.A. 39-923 and amendments
8 thereto; or

9 (2) any individual kept, cared for, treated, boarded or otherwise ac-
10 commodated in a medical care facility; or

11 (3) any individual, kept, cared for, treated, boarded or otherwise ac-
12 commodated in a state psychiatric hospital or state institution for the
13 mentally retarded.

14 (b) "Adult care home" has the meaning ascribed thereto in K.S.A.
15 39-923 and amendments thereto.

16 (c) "In need of protective services" means that a resident is unable
17 to perform or obtain services which are necessary to maintain physical or
18 mental health, or both.

19 (d) "Services which are necessary to maintain physical and mental
20 health" include, but are not limited to, the provision of medical care for
21 physical and mental health needs, the relocation of a resident to a facility
22 or institution able to offer such care, assistance in personal hygiene, food,
23 clothing, adequately heated and ventilated shelter, protection from health
24 and safety hazards, protection from maltreatment the result of which
25 includes, but is not limited to, malnutrition, deprivation of necessities or
26 physical punishment and transportation necessary to secure any of the
27 above stated needs, except that this term shall not include taking such
28 person into custody without consent, except as provided in this act.

29 (e) "Protective services" means services provided by the state or other
30 governmental agency or any private organizations or individuals which are
31 necessary to prevent abuse, neglect or exploitation. Such protective serv-
32 ices shall include, but not be limited to, evaluation of the need for serv-
33 ices, assistance in obtaining appropriate social services and assistance in
34 securing medical and legal services.

35 (f) "Abuse" means any act or failure to act performed intentionally
36 or recklessly that causes or is likely to cause harm to a resident, including:

37 (1) Infliction of physical or mental injury;

38 (2) any sexual act with a resident when the resident does not consent
39 or when the other person knows or should know that the resident is
40 incapable of resisting or declining consent to the sexual act due to mental
41 deficiency or disease or due to fear of retribution or hardship;

42 (3) unreasonable use of a physical restraint, isolation or medication
43 that harms or is likely to harm a resident;

- 1 (4) unreasonable use of a physical or chemical restraint, medication
2 or isolation as punishment, for convenience, in conflict with a physician's
3 orders or as a substitute for treatment, except where such conduct or
4 physical restraint is in furtherance of the health and safety of the resident
5 or another resident;
- 6 (5) a threat or menacing conduct directed toward a resident that re-
7 sults or might reasonably be expected to result in fear or emotional or
8 mental distress to a resident;
- 9 (6) fiduciary abuse; or
- 10 (7) omission or deprivation by a caretaker or another person of goods
11 or services which are necessary to avoid physical or mental harm or illness.
- 12 (g) "Neglect" means the failure or omission by one's self, caretaker
13 or another person with a duty to provide goods or services which are
14 reasonably necessary to ensure safety and well-being and to avoid physical
15 or mental harm or illness.
- 16 (h) "Caretaker" means a person or institution who has assumed the
17 responsibility, whether legally or not, for the care of the resident volun-
18 tarily, by contract or by order of a court of competent jurisdiction.
- 19 (i) "Exploitation" means misappropriation of resident property or in-
20 tentiously taking unfair advantage of an adult's physical or financial re-
21 sources for another individual's personal or financial advantage by the use
22 of undue influence, coercion, harassment, duress, deception, false rep-
23 resentation or false pretense by a caretaker or another person. *Exploita-*
24 *tion shall include, but not be limited to, fiduciary abuse.*
- 25 (j) "Medical care facility" means a facility licensed under K.S.A. 65-
26 425 *et seq.* and amendments thereto but shall not include, for purposes
27 of this act, a state psychiatric hospital or state institution for the mentally
28 retarded, including Larned state hospital, Osawatimie state hospital and
29 Rainbow mental health facility, Kansas neurological institute and Parsons
30 state hospital and training center.
- 31 (k) "Fiduciary abuse" means ~~a situation in which any person who is~~
32 ~~the caretaker of, or who stands in a position of trust to, a resident, takes,~~
33 ~~secretes, or appropriates the resident's money or property, to any use or~~
34 ~~purpose not in the due and lawful execution of such person's trust. *the*~~
35 ~~*misappropriation of funds or property by a person who receives, has*~~
36 ~~*access to, handles or controls a resident's property, including, but not*~~
37 ~~*limited to, social security income, pension, cash or other resident income.*~~
38 ~~*Fiduciary abuse may be established by evidence that includes, but is not*~~
39 ~~*limited to, documented proof that an adult care home has sent, by certified*~~
40 ~~*mail return receipt delivery, notification of a failure to pay the adult care*~~
41 ~~*home's expenses incurred by a resident, to the person who receives, has*~~
42 ~~*access to, handles or controls a resident's property.*~~
- 43 (l) "State psychiatric hospital" means Larned state hospital, Osawa-

1 tomie state hospital and Rainbow mental health facility.

2 (m) “State institution for the mentally retarded” means Kansas neu-
3 rological institute and Parsons state hospital and training center.

4 (n) “Report” means a description or accounting of an incident or
5 incidents of abuse, neglect or exploitation under this act and for the pur-
6 poses of this act shall not include any written assessment or findings.

7 (o) “Law enforcement” means the public office which is vested by
8 law with the duty to maintain public order, make arrests for crimes and
9 investigate criminal acts, whether that duty extends to all crimes or is
10 limited to specific crimes.

11 (p) “Legal representative” means an agent designated in a durable
12 power of attorney, power of attorney or durable power of attorney for
13 health care decisions or a court appointed guardian, conservator or
14 trustee.

15 (q) “Financial institution” means any bank, trust company, escrow
16 company, finance company, saving institution or credit union, chartered
17 and supervised under state or federal law.

18 (r) “Governmental assistance provider” means an agency, or em-
19 ployee of such agency, which is funded solely or in part to provide assis-
20 tance within the Kansas senior care act, K.S.A. 75-5926 *et seq.*, and
21 amendments thereto, including medicaid and medicare.

22 No person shall be considered to be abused, neglected or exploited or
23 in need of protective services for the sole reason that such person relies
24 upon spiritual means through prayer alone for treatment in accordance
25 with the tenets and practices of a recognized church or religious denom-
26 ination in lieu of medical treatment.

27 Sec. 3. K.S.A. 21-3437 and K.S.A. 2007 Supp. 39-1401 are hereby
28 repealed.

29 Sec. 4. This act shall take effect and be in force from and after its
30 publication in the statute book.