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Aging and Long Term Care Committee

Neutral Testimony on HB 2108 – Informational about needed reforms to APS February 10th, 2011

Chairman Bethel and Members of the Committee, my name is Rocky Nichols. I am the Executive Director for the Disability Rights Center of Kansas (DRC). DRC is the federally mandated, officially designated protection and advocacy organization for Kansans with disabilities. DRC is a 501(c)(3) nonprofit.

We are here providing neutral testimony on the question of moving Adult Protective Services (APS) to the Attorney General's Office. Instead we would like to take this opportunity to offer information and comment about needed reforms for APS regardless of where it is housed. We think it is a good thing that the Legislature is examining the future of APS. In that examination there are some critical and necessary improvements to the division of APS. Reform of APS cannot be about simply where it is housed. It has to be about fundamental changes to the vision, focus and structure of APS.

First we are concerned with the way reports have historically been processed by APS. By the latest estimates we have seen, upwards of 50% of reports are "Screened Out" and never investigated. We're not sure how these reports are screened out, but we know that they are somehow determined as not being appropriate to investigate.

Of the reports that are not screened out, the state focuses half of its Investigations on protecting people with disabilities "From Themselves". Upwards of 50% of all the reports of ANE investigated by state are for "self-neglect" (ex: FY 2005, of the 5116 reports of ANE investigated by SRS/APS, 2710 – over 50% - were allegations of "self-neglect").

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Also, 75% of the confirmed cases are self-neglect. Many in the disability community would argue that protecting people from themselves has the potential to cross over the line from protection to paternalism. Shouldn't the focus be on promoting self-determination and independence? We believe people with disabilities who are independent and engaged in self-determination are less likely to be abused. When the number one area of investigation borders on paternalism and "protecting people from themselves," the system can't focus on getting the real bad guys – the perpetrators of ANE.

We believe there has been too much focus from APS on "protecting people from themselves" and that follow up from APS to these reports should focus more on getting people with disabilities the help they need. Through this process we would like to ensure standard by which the state decides to intervene in a self-neglect case.

- **This is a perfect example of how state law and state policy needs to change. If the Legislature Acts on HB 2108, an amendment should be drafted that refocuses state policy so that the investigations of APS are rebalanced to focus greater efforts on holding perpetrators accountable and less focus on protecting people with disabilities from themselves. We would gladly work with this committee to suggest language to this bill to do just that.**

Investigative Agencies Don't Know IF the Person Has a Guardian, or Who the person's Guardian is, or Which Guardians have Conflicts of Interest, etc. – APS can't conduct an investigation if the Guardian refuses or if consenting adults don't want to be investigated. There is no centralized registry available to investigative agencies of Guardianships and Conservatorships to track all this. This was a huge problem in the Kaufman house case, because SRS was told by Mr. Kaufman that the people there were consenting adults and that they didn't have guardians. That was not true. At different points more than half had Guardians. In fact, Mr. Kaufman WAS the guardian for at least one resident (clear conflict of interest but is unfortunately allowed under law – this must change). There was no guardian/conservator registry for investigative agencies to check this out (SRS, Aging, KDHE, AG, DRC, law enforcement, etc.). The Kansas Supreme Court could operate such a registry. This is

an issue that could be fixed as part of a broader APS reform that could be contained in HB 2108.

We have one final thought about the Attorney General's office regarding APS investigations. In 2006 the Legislature created a new authority and a new program (the ANE Unit) for the AG's office as a response to the horrors and service gaps illustrated in vivid detail by the Kaufman house case in Newton Kansas. However, shortly after starting the new ANE Unit, the Legislature defunded this program and never restored the funding. The Unit served an incredibly important role in protecting the rights of people with disabilities and ensuring that they had access to civil, legal representation so that they could obtain justice. Perhaps before you look at adding new programs to the AG's office like APS functions, you should look at the needed program of the ANE Unit you eliminated and find a way to restart that project.

Thank you for your time and attention to our suggestions.