

**21-5417. Mistreatment of a dependent adult; mistreatment of an elder person.** (a) Mistreatment of a dependent adult is knowingly committing one or more of the following acts:

- (1) Infliction of physical injury, unreasonable confinement or unreasonable punishment upon a dependent adult;
- (2) taking the personal property or financial resources of a dependent adult for the benefit of the defendant or another person by taking control, title, use or management of the personal property or financial resources of a dependent adult through:
  - (A) Undue influence, coercion, harassment, duress, deception, false representation, false pretense or without adequate consideration to such dependent adult;
  - (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
- (3) omission or deprivation of treatment, goods or services that are necessary to maintain physical or mental health of such dependent adult.

(b) Mistreatment of an elder person is knowingly committing one or more of the following acts:

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

(d) Mistreatment of an elder person as defined in:

- (1) Subsection (b)(1) 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 \$5,000 but less than \$25,000 is a severity level 7, person felony;
  - (F) less than \$5,000 is a class A person misdemeanor, except as provided in subsection (d)(1)(G); and
  - (G) less than \$5,000 and committed by a person who has, within five years immediately preceding commission of the crime, been convicted of mistreatment of an elder person two or more times is a severity level 7, person felony; and
- (2) subsection (b)(2) is a severity level 8, person felony.

(e) It shall be an affirmative defense to any prosecution for mistreatment of a dependent adult or mistreatment of an elder person as described in subsections (a)(2) and (b)(1) that:

- (1) The personal property or financial resources were given as a gift consistent with a pattern of gift giving to the person that existed before the dependent adult or elder person became vulnerable;
- (2) the personal property or financial resources were given as a gift consistent with a pattern of gift giving to a class of individuals that existed before the dependent adult or elder person became vulnerable;
- (3) the personal property or financial resources were conferred as a gift by the dependent adult or elder person to the benefit of a person or class of persons, and such gift was reasonable under the circumstances; or
- (4) a court approved the transaction before the transaction occurred.
- (f) No dependent adult or elder person is considered to be mistreated under subsection (a)(1), (a)(3) or (b)(2) for the sole reason that such dependent adult or elder person relies upon or is being furnished treatment by spiritual means through prayer in lieu of medical treatment in accordance with the tenets and practices of a recognized church or religious denomination of which such dependent adult or elder person is a member or adherent.

(g) As used in this section:

- (1) "Adequate consideration" means the personal property or financial resources were given to the person as payment for bona fide goods or services provided by such person and the payment was at a rate customary for similar goods or services in the community that the dependent adult or elder person resided in at the time of the transaction.
- (2) "Dependent adult" means an individual 18 years of age or older who is unable to protect the individual's own interest. Such term shall include, but is not limited to, any:
  - (A) Resident of an adult care home including, but not limited to, those facilities defined by K.S.A. 39-923, and amendments thereto;
  - (B) adult cared for in a private residence;
  - (C) individual kept, cared for, treated, boarded, confined or otherwise accommodated in a medical care facility;
  - (D) individual with intellectual disability or a developmental disability receiving services through a community facility for people with intellectual disability or residential facility licensed under K.S.A. 75-3307b, and amendments thereto;
  - (E) individual with a developmental disability receiving services provided by a community service provider as provided in the developmental disability reform act; or
  - (F) individual kept, cared for, treated, boarded, confined or otherwise accommodated in a state psychiatric hospital or state institution for people with intellectual disability.
- (3) "Elder person" means a person 70 years of age or older.

(h) An offender who violates the provisions of this section may also be prosecuted for, convicted of, and punished for any other offense in article 54, 55, 56 or 58 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2016 Supp. 21-6418, and amendments thereto.

**History:** L. 2010, ch. 136, § 52; L. 2011, ch. 91, § 33; L. 2012, ch. 91, § 15; L. 2014, ch. 90, § 1; L. 2014, ch. 139, § 1; July 1.

Section was also amended by L. 2011, ch. 30, § 21, but that version was repealed by L. 2011, ch. 91, § 41.