



EQUALITY ♦ LAW ♦ JUSTICE

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Written-Only Opponent Testimony for SB 72
Senate Judiciary Committee
February 16, 2017

Chairman Wilborn and members of the Committee:

My name is Mike Burgess. I am the Director of Policy & Outreach at the Disability Rights Center of Kansas (DRC). DRC is a public interest legal advocacy organization that is part of a national network of federally mandated organizations empowered to advocate for Kansans with disabilities. DRC is the officially designated protection and advocacy system in Kansas. DRC is a private, 501(c)(3) nonprofit corporation, organizationally independent of state government and whose sole interest is the protection of the legal rights of Kansans with disabilities.

Mr. Chairman, thank you for the opportunity to share our concerns and proposed changes for SB 72.

While we have no problem adding EMS providers to the list of mandatory reporters, I ask the committee to consider the following four points that address a couple of changes to the bill as well as other concerns we have including the following:

- 1. Add an exclusion for DRC Kansas employees to Section 2 of the bill. (recommended language is included below)**
- 2. Remove “vulnerable” from the term “vulnerable adult” in definitions and throughout the bill and do not change the current definition of which adults can be protected.**
- 3. Section 2 removes “or is in need of protective services” and adds “or subjected to fiduciary abuse” (Page 4 – beginning on line 2 and referencing some of the stricken language on Page 3)**
- 4. Changes to Sec. 3. KSA 2016 Supp. 39-1433(c) will have a chilling effect reducing future reports of ANE (Page 6 starting on line 33)**

Item #1 - Add an exclusion for DRC Kansas employees to Section 2 of the bill. (see below for recommended language)

We are concerned that we might potentially fall within the definition of being a mandatory reporter. To be safe, we would request this clarifying language to be sure we do not.

Please add the italicized language in Section 2 of the bill on Page 4 beginning on line 32:

An employee of a domestic violence center or an employee or contractor of the organization that is the designated protection and advocacy system pursuant to 42 U.S.C. § 15041 et seq., as such sections exist on the effective date of this act, shall not be required to report information or cause a report of information to be made under this subsection.

As the official protection and advocacy system we are required to keep all the information provided to us confidential, pursuant to federal law. Additionally, our attorneys and advocates must adhere to the code of professional ethics regarding all attorney-client communications. Therefore, under both federal law and the attorney code of ethics, our employees should not be violating confidentiality by having even the remote possibility of being a mandatory reporter. This provides further justification as to why we need to be granted a statutory exemption from the mandatory reporting laws.

Item #2 - Remove “vulnerable” from the term “vulnerable adult” in definitions and throughout the bill and do not change the current definition of which adults can be protected.

We have similar concerns about the changes to this definition as the Kansas Advocates for Better Care. This is a major change. Changing the definition to limit it to only those who are “vulnerable” (a term often reviled in the disability community) who “has a physical, mental or frail condition” is a substantial change in statutory policy and one that at this point we cannot support.

Item #3 - Section 2 removes “or is in need of protective services” and adds “or subjected to fiduciary abuse” (Page 4 – beginning on line 2 and referencing some of the stricken language on Page 3)

It is unclear why “in need of protective services” would be removed as one of the reasons a mandated reporter would make a report. This change would exclude certain adults who may be or are at risk, as indicated by a need of protective services. This change increases the risk an adult would have to experience and a steeper hurdle needed to clear before APS could engage to assist them than what currently exists. The change provides less protection for those who may be victims.

Based on past data, in some years self neglect has been the majority of ANE claims. How would the category of “self neglect” be impacted if “in need of protective services” is dropped from the statute? We do have a strong concern that the entire protective services system may be focusing on “self neglect” and issues of “why would anyone want to live like that” instead of going after perpetrators of abuse, neglect and exploitation. People with disabilities or those in need of protective services should have the dignity to live their lives with freedom and liberty, just like anyone else. We are unclear how this change would impact this problem of focusing too much on supposed “self neglect,” which often are liberty issues.

Item #4 - Changes to Sec. 3. KSA 2016 Supp. 39-1433(c) will have a Chilling Effect Reducing Future of ANE.

The proposed language changes the quality of information given to the reporter from what is currently in statute - “substantiated, that corrective measures will be taken, upon completion of the investigation or sooner, if such measures do not jeopardize the investigation.” In its place, it provides only that an investigation has been “initiated.” We hear from Kansans who are critical and believe reports made to DCF go into a “black hole” where little to nothing is heard from again. We agree with KABC that this can have a chilling effect on Kansans willingness to make reports. If Kansans don’t understand how their reports are helping, they will not be willing to make reports in the future.

Thank you for the opportunity to share our concerns and recommended changes with you. I would be happy to stand for questions at the appropriate time.