

HOUSE BILL No. 2153

By Committee on Judiciary

1-27

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to crimes against persons; mistreatment of a dependent adult or elder
3 person; increasing criminal penalty when victim is a resident of an
4 adult care home; amending K.S.A. 2020 Supp. 21-5417 and repealing
5 the existing section.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 2020 Supp. 21-5417 is hereby amended to read as
9 follows: 21-5417. (a) Mistreatment of a dependent adult or an elder person
10 is knowingly committing one or more of the following acts:

11 (1) Infliction of physical injury, unreasonable confinement or
12 unreasonable punishment upon a dependent adult or an elder person;

13 (2) taking the personal property or financial resources of a dependent
14 adult or an elder person for the benefit of the defendant or another person
15 by taking control, title, use or management of the personal property or
16 financial resources of a dependent adult or an elder person through:

17 (A) Undue influence, coercion, harassment, duress, deception, false
18 representation, false pretense or without adequate consideration to such
19 dependent adult or elder person;

20 (B) a violation of the Kansas power of attorney act, K.S.A. 58-650 et
21 seq., and amendments thereto;

22 (C) a violation of the Kansas uniform trust code, K.S.A. 58a-101 et
23 seq., and amendments thereto; or

24 (D) a violation of the act for obtaining a guardian or a conservator, or
25 both, K.S.A. 59-3050 et seq., and amendments thereto; or

26 (3) omission or deprivation of treatment, goods or services that are
27 necessary to maintain physical or mental health of such dependent adult or
28 elder person.

29 (b) Mistreatment of a dependent adult or an elder person as defined
30 in:

31 (1) (A) Subsection (a)(1) is a severity level 5, person felony, *except as*
32 *provided in subsection (b)(1)(B);*

33 (B) *subsection (a)(1) is a severity level 2, person felony, when the*
34 *victim is a dependent adult who is a resident of an adult care home, as*
35 *described in subsection (e)(2)(A), during the commission of the offense;*

36 (2) subsection (a)(2) if the aggregate amount of the value of the

1 personal property or financial resources is:

2 (A) \$1,000,000 or more is a severity level 2, person felony;

3 (B) at least \$250,000 but less than \$1,000,000 is a severity level 3,
4 person felony;

5 (C) at least \$100,000 but less than \$250,000 is a severity level 4,
6 person felony;

7 (D) at least \$25,000 but less than \$100,000 is a severity level 5,
8 person felony;

9 (E) at least \$1,500 but less than \$25,000 is a severity level 7, person
10 felony;

11 (F) less than \$1,500 is a class A person misdemeanor, except as
12 provided in subsection (b)(2)(G); and

13 (G) less than \$1,500 and committed by a person who has, within five
14 years immediately preceding commission of the crime, been convicted of a
15 violation of this section two or more times is a severity level 7, person
16 felony; and

17 (3) (A) subsection (a)(3) is a severity level 8, person felony, *except as*
18 *provided in subsection (b)(3)(B); and*

19 (B) *subsection (a)(3) is a severity level 5, person felony, when the*
20 *victim is a dependent adult who is a resident of an adult care home, as*
21 *described in subsection (e)(2)(A), during the commission of the offense.*

22 (c) It shall be an affirmative defense to any prosecution for
23 mistreatment of a dependent adult or an elder person as described in
24 subsection (a)(2) that:

25 (1) The personal property or financial resources were given as a gift
26 consistent with a pattern of gift giving to the person that existed before the
27 dependent adult or elder person became vulnerable;

28 (2) the personal property or financial resources were given as a gift
29 consistent with a pattern of gift giving to a class of individuals that existed
30 before the dependent adult or elder person became vulnerable;

31 (3) the personal property or financial resources were conferred as a
32 gift by the dependent adult or elder person to the benefit of a person or
33 class of persons, and such gift was reasonable under the circumstances; or

34 (4) a court approved the transaction before the transaction occurred.

35 (d) No dependent adult or elder person is considered to be mistreated
36 under subsection (a)(1) or (a)(3) for the sole reason that such dependent
37 adult or elder person relies upon or is being furnished treatment by
38 spiritual means through prayer in lieu of medical treatment in accordance
39 with the tenets and practices of a recognized church or religious
40 denomination of which such dependent adult or elder person is a member
41 or adherent.

42 (e) As used in this section:

43 (1) "Adequate consideration" means the personal property or

1 financial resources were given to the person as payment for bona fide
2 goods or services provided by such person and the payment was at a rate
3 customary for similar goods or services in the community that the
4 dependent adult or elder person resided in at the time of the transaction.

5 (2) "Dependent adult" means an individual 18 years of age or older
6 who is unable to protect the individual's own interest. Such term shall
7 include, but is not limited to, any:

8 (A) Resident of an adult care home including, but not limited to,
9 those facilities defined by K.S.A. 39-923, and amendments thereto;

10 (B) adult cared for in a private residence;

11 (C) individual kept, cared for, treated, boarded, confined or otherwise
12 accommodated in a medical care facility;

13 (D) individual with intellectual disability or a developmental
14 disability receiving services through a community facility for people with
15 intellectual disability or residential facility licensed under K.S.A. 2020
16 Supp. 39-2001 et seq., and amendments thereto;

17 (E) individual with a developmental disability receiving services
18 provided by a community service provider as provided in the
19 developmental disability reform act; or

20 (F) individual kept, cared for, treated, boarded, confined or otherwise
21 accommodated in a state psychiatric hospital or state institution for people
22 with intellectual disability.

23 (3) "Elder person" means a person 60 years of age or older.

24 (f) An offender who violates the provisions of this section may also
25 be prosecuted for, convicted of, and punished for any other offense in
26 article 54, 55, 56 or 58 of chapter 21 of the Kansas Statutes Annotated, or
27 K.S.A. 2020 Supp. 21-6418, and amendments thereto.

28 Sec. 2. K.S.A. 2020 Supp. 21-5417 is hereby repealed.

29 Sec. 3. This act shall take effect and be in force from and after its
30 publication in the statute book.