MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

Held in Room 522, at the Statehouse at 3:30 xx.m./p. m., on January 31, 1978.

All members were present except: Representatives Baker, Hurley, Matlack and Stites, who were excused.

The next meeting of the Committee will be held at 3:30 xx.m./p. m., on February 1, 1978.

These minutes of the meeting held on ________, 19__ were considered, corrected and approved.

Chairman

The conferees appearing before the Committee were:

Rep. Jarchow
Mr. Gary Jarchow, Sedgwick County District Attorney's Office
Rep. Mike Glover
Professor Don Concannon, Washburn University
Ms. Kaye Falley, Shawnee County Court Services
Mr. Jim Claussen, Shawnee County Mental Health Society
Mr. Charles Hamm, SRS
Ms. Judy Teusink, Womens' Political Caucus
Dr. Novotny, Menninger Foundation
Mr. Bill Imming

The meeting was called to order by the Chairman, who stated he had two requests from the Kansas Bar Association for the introduction of bills, one prescribing that an adopted child can inherit only from his adopted parents and not from his natural parents. He explained that presently it is possible for a child to inherit from both in an intestate situation. The second has to do with criminal procedure, and allows a preliminary hearing without a separate hearing for arraignment. It was moved by Rep. Hayes and seconded by Rep. Gillmore that the proposals be introduced and referred back to committee. Motion carried.

The Chairman told the committee that the Chief Justice has called to his attention that in one of the Judicial Districts, they cannot find an attorney who is willing to accept a judgeship, and that the statutes presently prescribe that a nominee must be a resident of the district. They have asked for legislative relief in this matter and there is the matter of a deadline. It was moved by Rep. Hayes and seconded by Rep. Martin that appropriate legislation be drafted and introduced as a committee bill. Motion carried.

The Chairman noted that HB 2400 is a carry over bill by Rep. Jarchow. Rep. Jarchow distributed a printed statement by way of explanation. (See exhibit.) He introduced Gary Jarchow,

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

an attorney with the Sedgwick County District Attorney's office, who explained that he had been involved in the prosecution of child support cases for seven years, and this proposal would solve many problems in that area.

Rep. Mike Glover appeared on behalf of his HB 2290, and introduced Professor Don Concannon, who testified in favor of the proposal. He stated that under the old law, the rules of evidence in the case of rape could have the effect of prejudicing a jury because it allowed testimony regarding personal opinion about the victim's personal traits and also regarding the past relationship of the victim and the defendant. He pointed out that legislation passed two years ago precluded such evidence except in special cases. He pointed out that the defendant still has the right to introduce general evidence about the traits of the person bringing the charge; and explained that HB 2290 amends the statute to preclude such evidence. He stated he had reviewed the Oklahoma and California laws which are similar to this proposal.

Ms. Judy Teusink appeared on behalf of HB 2290. (<u>See printed statement.)</u>

Rep. Glover asked Professor Concannon to discuss HB 2291, which deals with psychotherapist-patient privilege. The professor explained this would establish the same relationship as with an attorney-client situation. He stated he feels there is a need to clarify this matter, and that it gives a uniform privilege for all people involved in treatment. Rep. Foster suggested that licensed clinical social workers should be included in this privilege as well. Professor Concannon stated they are presently given such privilege in the statutes, but that the intent of this bill is to cover them as well. Rep. Lorentz noted that this breaks new ground; that in such proceedings many people are involved--family, friends and others, and if the information held by the psychiatrist is critical in making a determination it would be a violation to allow it to come to the court. The professor stated it would not be a constitutional violation; that he is talking about the extent of limitation.

The Chairman noted that the District and County Attorneys Association has opposition to this legislation and there is material in the files from last year, but Max Moses, the new Executive Director will be submitting material in opposition.

Ms. Kaye Falley of the Shawnee County Court Services appeared in opposition to HB 2462. She pointed out that the State Hospital and the Social and Rehabilitation Services have already implemented this proposal into their program and that it causes monumental problems. She testified that if it is mandated it will tend to bog down the court system still more; that this would especially be true in the case of status offenders. She stated she has been involved in many cases and rarely is a youngster willing to consent to voluntary commitment, and she feels parents should have the right to do what they feel is the right thing. She stated that she doubts that the provision on page two regarding the guardian ad litem would be of any benefit to the children or enhance their rights.

Mr. Jim Claussen with the Shawnee County Mental Health Association, testified they are a volunteer organization, and hoped members would recognize their concerns. He stated they feel it would be a deterrent to prompt treatment; that the bill does not enhance the concept of patients' rights; and would not be in the best interests of family relationships.

Mr. Bill Imming testified that as the parent of a child who has been in a mental institution a year ago, he knows his child would never have signed in voluntarily and it was his responsibility and right to see that proper treatment was rendered. He explained his child had experienced a good recovery and had felt so strongly about similar legislation in the Senate that she had appeared before the committee and urged that such roadblocks not be placed in the way of treatment. He stated he felt certain such legislation would do more harm to the young people of the state than anything which might be done.

Rep. Glover stated it was intended to prevent the practice of involuntary commitment of children, and testified that he felt on many occasions the rights of children were violated and they should not have been committed. Rep. Whitaker inquired if this would apply to mentally retarded children and Rep. Glover stated it would not. Mr. Griggs expressed the opinion the way the bill is drafted it would apply to them because of the amendments made last year. Rep. Martin expressed concern, especially about the discharge proceedings.

Mr. Charles Hamm of SRS stated he had heard of no problems regarding the adoption of the concept as contained in the bill, although if a child demanded to be released he didn't know what would happen. He stated they do have some problems with the courts in this regard.

Rep. Lorentz asked Rep. Glover if he could show a need for this bill, and Rep. Glover stated he would acquire a list of scandalous cases that have come to the attention of authorities in these areas.

Rep. Stites expressed the opinion that the bill would give more rights to kids than to the people who are responsible for them. Rep. Lorentz inquired how many states have enacted such legislation, and Rep. Glover agreed to find out.

Rep. Martin pointed out that he is involved in looking at the definition of mental illness at the present time, and is concerned about some of the things contained in the proposal.

Dr. Novotny of the Menninger Foundation, testified in regard to HB 2291, and stated they are anxious to preserve confidentiality because if patients are to be frank, and if they are to be helped, they must have this assurance. Under the definition in this bill, there would not be this protection. He further testified that there needs to be a trust on the part of the patient and this bill would destroy that.

The Chairman noted the Committee would be taking a look at House Bill 2814 later on, which also amends the same section as does HB 2941.

The Chairman announced that he had just learned that a Senate Committee had previously rejected introduction of the two matters previously authorized by this committee to be introduced as committee bills. He stated that ordinarily it was the policy to introduce matters requested by the KBA, but felt some concern about introducing matters rejected by other committees. After discussion, it was moved by Rep. Mills and seconded by Rep. Ferguson that the matter be reconsidered. Motion was adopted. Members inquired if additional action is necessary, and Rep. Martin, as Rules Chairman for the House, explained, they would just remain as they are--requests only, unless there were additional motions.

The meeting was adjourned.

HOUSE JUDICIARY
1-31-78

NAME	ADDRESS	ORGANIZATION
WILLIAM IMMING	4999 N.W. TOPEKA	PRIVATE CITIZEN
Jim Clausen	1268 Western	Mental Health Assn.
Jim Concannon	2847 Mulvane	Washburn Law
Homer Jarchow	1306 Harrison	Repr 95th Distr
[illegible]	301 N. Brookwood, Derby	Assistant District Atty. 18th Judicial District
[illegible]	221 Woodlawn	Kan Womens Political Caucus
[illegible]	[illegible]	Student
[illegible]	3551 N.W. Brickyard Rd.	Student
Kay Farley	1239 Mar Vicar	Shawnee Co Court Services
[illegible]	6704 [illegible]	Student [illegible]
[illegible]	1259 [illegible]	" "
Steve Starr	Topeka	[illegible]
[illegible]	Topeka	Kansas County & Dist Attys Assn
[illegible]	Lawrence	Lawrence Police Dept.

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House Bill No. 2400 would fill a gap in the existing child support law in Kansas and enable the courts to give teeth to their child support orders. It would enable the district court judge, whenever he made a child support order, or more importantly, when a person became delinquent under his child support order, to order the person responsible for paying the child support to assign a portion of his wages or salary to the clerk of the court as trustee for the person entitled to the payments. The assignment, under New Section 4 of this bill, would be binding on the employer of the person ordered to pay child support. Child support would automatically be deducted from his paycheck and forwarded to the clerk of the court.

The obvious advantage of a wage assignment law for payment of child support is that the employee never sees the child support money and therefore never has the opportunity to convert it to his own use. Child support would arrive to the person having custody of the children at the same time of the month each month or each pay period and in the full amount ordered by the court. The order of the court would be fully complied with at least as long as the person responsible for paying the child support was employed. Repeated contempt proceedings or monthly garnishment actions would be unnecessary as long as the employee held his job.

The increasing disregard of child support orders in contemporary society has put unnecessary hardship on the person having custody of the children and forced many to resort to public assistance, or welfare. In an effort to deal with this problem, and recoup public assistance monies from parents who have neglected to support their children, federal and state legislation emphasizing child support enforcement has been enacted. Public Law 93-647, which went into effect August 1, 1975 and amended Title IVD of the Social Security Act, provided for federal monetary assistance to the states for their efforts in this area, but also made it incumbent that they begin IVD child support programs providing for child support legal services to those not receiving public assistance and enlarged efforts in collecting child support from parents of children receiving public assistance or face a loss of federal aid to dependent children funds. The 1976 House Bill No. 2703, most of which now appears in K.S.A. 39-753 through K.S.A. 39-759, helped implement the federal law in this state and provided for additional causes of action to establish paternity and enforce child support obligations. It also ended the restriction on wage garnishment where child support had been assigned to welfare by amending K.S.A. 60-2310. It failed, however, to provide for wage assignment, a child support collection aid found in the domestic relations laws of approximately half the states.

Enactment of House Bill No. 2400 would make it easier for the state to carry out its IVD child support program, which is just now building up steam, by adding an alternative remedy not now available to those involved in enforcing child support obligations. Besides helping ensure that children of parents not receiving public assistance receive the full support they need, which it is sure to do,

this bill would help prosecuting attorneys or those charged with carrying out the IVD child support program return tax dollars to the state in the form of increased collections of child support monies assigned to welfare by those receiving public assistance.

The biggest advantage wage assignment has over alternative remedies is that it need not be repeated. A wage assignment would remain in effect until further order of the court or, naturally, until employment terminated. Attorneys would not have to file repeated garnishment actions or contempt proceedings, often with less than satisfactory results. Judges and clerks would not have to waste the time necessary for conducting contempt hearings and handling contempt and garnishment papers. A constant flow of child support money would be ensured as long as the employee remained at work, at a minimum expense to the courts and parties.

The cost to the employer would be alleviated by the provision that allows him to deduct $1.00 for his costs each time he remits child support money to the clerk of the court.

Since the amount deducted by the employer cannot exceed the amount of the employee's current child support obligation and the employee cannot be discharged as the result of a wage or salary assignment, he has little cause to complain. Many employees who conscientiously pay their child support even welcome this mannner of paying it.

Under House Bill No. 2400, child support orders in all possible actions could be enforced by court-ordered wage or salary assignment. It applies to child support orders made under the Uniform Reciprocal Enforcement of Support Act (K.S.A. 23-473), the Paternity Act (K.S.A. 38-1106) and the divorce laws (K.S.A. 60-1610 (a)).

It should be noted that the wage or salary assignment would be discretionary with the court. It would not be a right of the party entitled to the child support. Oftentimes, a wage or salary assignment would not be the necessary or proper remedy for nonpayment of child support; but when it would be necessary or proper, however, it would be a valuable tool available to the court.

THE KANSAS WOMEN'S POLITICAL CAUCUS
TESTIMONY ON HOUSE BILL 2290
BEFORE
THE HOUSE JUDICIARY COMMITTEE

1-31

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JANUARY 31,1978

My name is Judy Teusink and I am the registered lobbyist for the Kansas Women's Political Caucus. I am speaking in favor of House Bill 2290 regarding evidentiary rules relating to rape and related crimes. The KWPC's task force on rape has prepared an extensive report, part of which I would like to share with you. As well as providing pertinent information on the subject in general, it also speaks to the bill at hand. In the past testimony in a rape case has often centered around the the complaining witnesses prior sexual conduct to prove that she in some way deserved to be raped. Women themsevles in fact grow up with this myth that it was somehow her fault that this crime was committed against her. The absurdity of this thinking is only recently being challenged.

Although the KWPC has gone on record as favoring a comprehensive sexual assualt bill and has had assurance that this committee will sponsor such a bill, we do support this bill, 2290, as a partial remediation of an extensive problem.

I would like to call the committee's attention to a few section of the enclosed report.

November 12, 1977

KANSAS WOMENS' POLITICAL CAUCUS

RAPE TASK FORCE

REPORT

MEMBERS

Carol Megrail - Chairperson
Edna Davenport
Susan Haller
Yvonne Hoch
Juanita Slayton

RAPE - THE FACTS

Rape... what is it? Currently, Kansas statutes define rape as "penetration of the female sex organ by a male sex organ committed by a man with a woman not his wife, and without her consent wnen committed under any of the following circumstances: (a) When a woman's resistance is overcome by force or fear; or (b) When the woman is unconscious or physically powerless to resist; or (c) When the woman is incapable of giving her consent because of mental deficiency or disease, which condition was known by the man or was reasonable apparent to him; or (d) When the woman's resistance is prevented by the affect of any alcoholic liquor, narcotic, drug, or other substance administered to the woman by the man or another for the purpose of preventing the woman's resistance unless the woman voluntarily consumes or allows the administration of the substance with knowledge of its nature." Rape of a child under sixteen is covered under statute 21-3503, Indecent liberties with a child.

Going beyond the legal implcations, rape can be defined as "the ultimate violation of the self short of homocide...an act of violence and humiliation in which not only is the fictim's very existence threatened and the inner and most private space invaded, but all sense of autonomy and control is totally demolished." Under the category of sexual assault, it is simply sexual contact to which one party does not consent.

Rape is the least reported crime in the United States today due to fear or embarrassment on the part of the victim. The Federal Bureaus of Investigation estimates that only one or two out of ten persons actually does report the crime. Yet, one out of every fifteen women will be raped

at some time in their lives. This year, there will be over 250,000 victims in this country alone. Victims can be and are of any age, appearance, sex, or social status. A rape can occur anywhere, but over one-third occur in the victim's home. Contrary to popular belief, a rapist is not acting out of sexual desire, but is using sex as a weapon to control, humiliate, and punish another person. Eighty-five per cent of offenders use some form of overt force. Twenty-five per cent of the time, some form of forced fellatio, cunnilingous, or sodomy occurs. Threats of injury or death are often used to terrify victims into cooperation, or immobilize them by fear. Over half of known rapists are under twenty-five, and three out of five are married, leading normal sex lives. Many times an offender is a friend, acquaintance, or relative of the victim. Instead of being a "spur of the moment" crime, there is evidence to support the contention that over fifty per cent of the rapes occurring are planned in advance. Studies show that a rapist will rape again and again, usually within two weeks, and often in the same area. There is no "typical" rapist, every color and economic class is represented. Because of myths concerning rape, such as: that people "secretly enjoy being raped"; they "lie about rape in order to get even"; "nice girls don't get raped"; or even "noone can be raped against their will"; juries frequently acquit suspects (up to 50% in some districts), resulting in low prosecution and conviction rates, plus additional reluctance on the part of victims to report the crime.

Rape is one of the most feared of all crimes, second only to murder. Few crimes are better calculated to leave their victim with lasting psychological wounds.

THE VICTIM

Psychologically, the victim of rape suffers not only the initial, brutal attack and the fear that accompanies it, but also must work through the various stages of the crisis called Rape Trauma. This may take months or years depending upon the previous emotional state of the victims, and/or the support they receive following the assault.

The first stage of the trauma is linked directly to the realization on the part of the victims that they could have been killed. There is shock, disbelief, and a general inability to function normally. They worry that somehow they are at fault, and are fearful about telling friends and family, much less the police, less they be blamed or not believed. Even though they may have reached a safe place with people around, they need constant reassurance that they are safe. If the rapist has been someone they know, they may have lost all trust in people. Frequent mood swings, (from anger to guilt to anger, for example), are common along with abnormal sleep patterns, appetite changes, or specific physical symptoms brought on by the rape. This phase may last a few days to a few weeks until steps of at least outward adjustment to the situation are taken, and they enter the second stage.

In this stage, the victims take steps to protect themselves from the situation and their feelings. Many change jobs or move several times. They try to convince themselves and relatives that they are just fine. Meanwhile, there is still an inability to concentrate, and the occurrence of frequent nightmares. There is usually trouble with personal relationships. If married, or in a sexual relationship, there may be a withdrawal from that

partner. (Eighty per cent of all married victims are divorced or having marital problems a year after the assault.) Phobias may arise concerning people or the location of the attack. Whether victims prosecute, their individual personalities, and how secure they feel, determines the length of this phase, but it may last over a period of years. Seeing someone who reminds them of the rapist, for example, may send them into a panic, and may precipitate them into the third stage and depression. They may or may not realize the cause, depending on the information they have received prior to this point. A need to talk with others about what has happened is characteristic, although they may fear upsetting family and friends. If a very deep depression, they may need professional help.

In addition to this trauma, the victims will experience age-related stresses. Children may fear punishment from upset parents. If the rape was the first sexual experience, they may have problems concerning their feelings about sex. If living alone for the first time, they may have fears concerning their ability to take care of themselves, and move back home. Married victims may not tell their spouses, thus receiving no support or understanding. If there are children, there is the concern of what to tell them, and of whether they can take care of them adequately. An older person may already be in aperiod of crisis due to changing family roles or relationships. The myth that it is much worse for a younger person, may keep them from receiving the comfort they need.

Although all victims experience this trauma to some extent, they may express themselves in different ways. Some may be very verbal, emotional, etc., while others may be calm, controlled, or even say "this will hit me later". Outward demeanor is no actual barometer to a victim's feelings or anguish. Rape is an assault upon a person's integrity, sense of safety, and personal identity producing severe and long-lasting trauma and social disruption to the victims and those around them.

THE COMMUNITY

Depite advances in community handling of sexual assault, certain major problems remain. The advances made so far have been the result of efforts generated on an individual basis in various parts of the country. No systematic attempt on the national level has been made either to identify the problems and needs of the criminal justice system in dealing with this crime, or resolving inequitable and inconsistent treatment of victims and suspects.

Rape victims clearly require a comprehensive range of services from persons in the fields of medicine, law, and mental health. Perhaps the most important guarantee of their getting thishelp is related to how much information the agencies or individuals have received concerning victims' special needs. This information may be distributed in many ways. Methods may include television and radio news releases, interviews, newspaper articles, brochures, teacher packets, multi-lingual materials for minority groups, plus training programs and workshops for those who potentially have contact with victims of sexual assault. This includes the general public.

These training programs are especially important for hospital personnel and police departments who may be the first contact the victim has following an attack. Besides obtaining necessary evidence, treating physical injury, and providing information and treatment for venereal disease and pregnancy, these facilities have unique opportunities for assisting a victim by integrating a victim's emotional needs into their policy and procedure. They may, for example, give victims of sexual assault priority treatment, create special units trained in sensitivity to deal with the

crime, provide private examining rooms, and give a victim information as to what will be done and why. Barriers to this in the past have been based on prejudice, bureaucracy, organizational survival being placed above clients' needs, and institutional indifference. Citizen group pressure for revision of protocol systems and change of fundamental attitudes in personnel, has at times been effective in improving the quality of treatment a victim receives.

These groups, usually called Rape Crisis Centers, have sprung up to meet the need for information and educational programs on sexual assault in the community. Often, they are responsible for a greater sensitivity on the part of the media as well. Besides this function, many members serve as victim advocates, or counselors, providing not only physical, emotional, and in some cases, legal or monetary support, but also providing a source for referrals. Unfortunately, there has been erratic funding for such agencies due to unawareness or distrust by those who may not understand their role.

For the victims who take their cases to court, there are other potential problems. Lack of sensitivity and understanding of the crime, inadequate collection of evidence, turnovers in prosecutors' offices, burnout due to large case loads, and lack of expertise provide reasons for victim "dropout", low prosecution rates, and lower conviction rates. Add to this laws which require corroboration and/or resistence, fail to protect males or spouses, limit the definition of rape to sexual intercourse, and which may define penalties based on a victim's age or past behavior, and you see the difficulty of insuring justice. Large recidivism rates on the part of convicted rapists,(failure of rehabilitative programs), easily obtained paroles, a reluctance by juries to convict and judges to sentence due to myths or severe penalties also add to the confusion thus making sexual

assault the serious communitywide problem it is. As possible corrections to this, various groups have implemented and/or urged: changes in laws which deal with sexual assault; the hiring of sensitive (in some cases) women prosecutors, seminars on the proper handling of rape trials; and agressive prosecution of these cases.

Another concern for victims is the monetary expense which follows or may follow being raped including: fees for medical/psychological help; loss of time from the job; or possible the cost of an abortion or menstrual extraction. To alleviate this particular problem has been made a priority item by women's groups and some communities who have tapped various programs and sources for this purpose.

Follow-up in emotional care, a relatively new idea, has been dealt with in various ways around the country. Rape Centers and concerned individuals, initially, and recently, hospitals and mental health centers, have developed programs to deal with this need and to contribute to the education of the general public which may through its misconceptions contribute to further guilt or pain on the part of a victim. However, there are still no regularly established course requirements in this field for professionals which leaves many victims without the help they need.

Taken as a whole, although promising strides have been made in the area of victim care and the assessment of sexual assault, services are still sporadic in many communities. Twenty-four states have changed their statutes dealing with this crime in the past five years. Although a step in the right direction, many feel that more changes and more programs are needed in order to achieve more enlightened and sensitive procedures in an area heretofore characterized by widespread misunderstandings concerning victims and their attackers.

1-31

Under[illegible]ing supplied for the House Judiciary Committee hearing on HB 2462, 1/31/78/

TESTIMONY AND COMMENTS FOR THE SENATE JUDICIARY COMMITTEE

January 24, 1978

Re: An Act Relating to Mentally Ill Persons (S.B. 550)

Senator Pomeroy, Ladies and Gentlemen:

As a child psychiatrist practicing here in Topeka, and as a member of the Kansas Psychiatric Association (Kansas District Branch of the American Psychiatric Association), I feel privileged to share with you some remarks built out of concerns regarding the current proposed changes in the mental health laws. I would in no way question the necessity to have appropriate mechanisms for protecting the interests of children, adolescents, and parents. I have chosen an occupation that speaks for the health, growth and development, and life-fulfilling satisfactions available to people following healthy childhood experiences. It is from this background that I would speak to the issues.

The major issue of concern relates to the change in age of voluntary admission for adolescents. I feel that changing the age from 18 years to 14 years will be detrimental to the child and adolescent in need of help.

A) The Adolescent's Rights and Needs:

I believe that the child and adolescent has a right to a future and to have growth experiences that provide opportunities for a meaningful future, providing hope and maximum development of individual potential.

We, as parents, and the State government have definite responsibilities to insure the welfare of our children. For example we, as parents, consider that certain limitations may be necessary from time to time in the promotion of future benefits for our children. We demonstrate this through manditory education which does not allow a child "total freedom." This is accepted by concerned adults as an

important "limitation" on the child's activity in the best interest of the child's future.

If current difficulties in maturation (usually noted by the school, behavioral or personal problem) indicate the likelihood of future disabilities, especially activity that is likely to create juvenile delinquency and involvement in the juvenile court, does not the adolescent have the right to expect that parents or other adults will provide treatment and help? Many times the adolescent is attempting to attract attention through such difficulties and in the deepest sense wants help.

The right to treatment must be seen, for the developing child and adolescent, at least as important as "the right to freedom," especially if such "freedom" provides the opportunities for the likelihood of future difficulty. Such freedom becomes a "set-up" for the adolescent. A mistaken concept that frequently is held states: "Structure, rules, and guidelines will prevent growth and expansion of the personality." This, if applied in a general way, is psychologically incorrect and potentially harmful to the child. Only after the child and adolescent have first incorporated into his or her personality solid impulse control and good judgement is it fair to allow increasing freedoms for that child. Indeed it might be seen that the adults in the environment, by not providing adequate structure, are actually encouraging problems.

The presently proposed change lowering the age from 18 years to 14 years might provide present and "temporary" freedoms for the child, but future growth and development, I believe, may be compromised. Legal safeguards may thus preclude age-appropriate growth opportunities when such growth opportunities can only come through a treatment process. From the clinical point of view, we as clinicians deeply hope that the

child or adolescent coming for help comes with a positive attitude and expectation for feeling better. We also recognize that all of us, at any age, fear change, even if it would be better and we know that it is needed. Going to the dentist seems to be a time honored point of procrastination! From the standpoint of physical care, we hold parents responsible for their minor children and take them to court for neglect if this responsibility is not accepted. With the proposed change in the age for voluntary admission are we giving a double message to parents: We hold you responsible for physical care, but not for the emotional well-being of your child?

The adolescent may not have sufficient capacity to understand the consequences of current behavior, especially if problems are present. Denial of problems, even for adults, is very strong. By asking the youngster to decide for himself whether he wants help may be putting far too much pressure and responsibility upon the youngster. The law recognizes that in other aspects adolescents are not able to make such judgements (such as entering into contracts), and if the age change is acted upon, there would be obvious inconsistencies.

The inconsistency in "legal age" puts parents in a position in which the law requires them to be responsible for their child's behavior, but without parental authority to obtain help if this is needed for their youngster.

Lowering the age from 18 to 14 years may be a situation where the concept of "freedom" conflicts with what is increasingly being seen as a right, the right to adequate health care in a timely manner.

Adolescents who should have access to treatment may not obtain help through mental health facilities if the procedures require parents

to go to court, and thus, through a cumbersome and painful process.

From clinical experience it is not surprising to find that without help, the child may continue with problems and end up in other caring systems in society, namely the juvenile court and penal system. The courts are already seeing youngsters in increasing numbers who need psychological help, but who are being referred back to the court because the youngsters are not signing for voluntary help on their own initiative as is the current state institutional guideline. They are locked up in detention, whereas active treatment is necessary.

B) The Family and the Adolescent:

Such a change in the age requirements might well promote increasing disintegration and break-down of the family unit.

As was mentioned by Senator Pomeroy in his presentation yesterday to the Kansas Council for Children and Youth, we need to reemphasize the family unit. This is stated by educators, religious and community leaders and not just by child psychiatrists. Parents are already faced with problems of erosion of their parental responsibility and authority. It should not be assumed by the state that parental rights and responsibilities regarding seeking help be changed without good cause. Methods can be instituted to prevent parental or adult abuse of inappropriate hospitalization. Such "dumping" as was claimed in the Bartley vs. Kremens case is infrequent. It is well recognized among legal and mental health professionals that the findings in this case are open to review indepth and solid conclusions need to be established before action is taken to change laws.

In our clinical work we find it extremely important that for treatment, a trusting relationship must be fostered. This trusting relationship is between the adolescent, the treatment team, and the

parents. From our hospital experience we have noted that such a trusting relationship is developed over a period of time. Having the adolescent in the hospital provides him an opportunity to build these relationships. The ability to reach out and form relationships appears to weigh heavily as a prognostic sign in success or failure of treatment.

Admission procedures that might prompt parent/adolescent distance through legal steps should be minimized. If the parents and child are put in adversary positions, a greater breach of relationship is likely to take place. If through such an adversary process the court finds "in favor" of the adolescent, where is he to go following such an experience? Does the court continue its interest over several years? Does the child go back to the home and to the parental relationships ruptured through such an adversary process?

In the well-known Bartley vs. Kremens case, Judge Broderick stated in his dissenting opinion, "The majority (in their opinion) has described an 'overdose' of due process,and more consideration (should) be given to parent/child relationships."

C) The State Position and its Relationship to the Adolescent:

One must remember that during the adolescent period, there is age-appropriate desire to rebell and take increasing risks. This is done in a way to test out one's ability and position.

Is it likely that through the proposed change in the statute the State will unknowingly put the adolescent into the position to encourage and try out this activity against his best interest?

I would again remind you that one must seriously consider whether the change downward in age as proposed will put the child into the

decision-making responsibility before an age-appropriate judgement has been acquired. And, what is likely to happen with this judgement under the pressures of heated emotions?

The statute as written requires that "dangerousness" be demonstrated. However, I propose that a more appropriate and sufficient standard would be "the need for treatment," thus emphasizing the developmental differences (and difference in legal requirements) for children and adolescents when compared to adults. If we wait for the child to demonstrate "dangerousness" we may be too late.

RECOMMENDATIONS:

1) No change should be made in the age for voluntary admission to mental hospitals for the treatment of children and adolescents.

2) Further study should be undertaken, determining what safeguards and procedures are needed. This would follow the recommendation given in professional literature and would give us a chance in Kansas to develop a model that incorporates collaborative input available from:

   a. Juvenile law.

   b. Consumers (through the Mental Health Association)

   c. Psychiatric Social Workers

   d. Psychologists

   e. Educators

   f. Child Psychiatrists (choosing one from the private sector, Community Mental Health Center, and State Hospital)

3) The study and research of this area should be granted <u>sufficient time</u> and <u>financial support</u> to provide the best process available for our families, parents, and children in the State of Kansas.

Erwin T. Janssen, M.D.