

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Elwaine F. Pomeroy at
Chairperson

10:00 a.m./~~p.m.~~ on February 24, 1983 in room 514-S of the Capitol.

All members were present ~~except~~: Senators Pomeroy, Winter, Burke, Feleciano, Gaar, Gaines, Hein, Hess, Mulich, Steineger and Werts.

Committee staff present: Mike Heim, Legislative Research Department
Mark Burghart, Legislative Research Department

Conferees appearing before the committee:

Judge David P. Mikesci, Wyandotte County District Court
Tom Kelly, Kansas Bureau of Investigation
Mike Boyer, Kansas Bureau of Investigation
January Scott, Kansas Committee for Prevention of Child Abuse
Pat Ireland, Committee for Prevention of Child Abuse
Yvonne Rawlins, Hutchinson, National Association for the Advancement of Colored People
Andy Kenkel, Kansas Children's Service League
Judy Culley, Kansas Association of Licensed Private Child Care Agencies
Elizabeth Taylor, Kansas Association for the Education of Young Children
Andrea Glenn, Junior League of Topeka

Senate Bill 105 - Amendments relating to Code for Care of Children and Juvenile Offender Code.

Judge David Mikesic presented five recommended amendments for the committee's consideration (See Attachment #1). He explained the recommendations to the committee. He explained another problem is the form for the affidavit for service for publication is lacking, and suggested the affidavit should state reasons for necessity for publication.

Tom Kelly testified his department supports the concept of the Kansas Juvenile Justice Information System as set up at this time. Mr. Kelly stated it is not an identification system. The only identification they know is fingerprints. The chairman asked Mr. Kelly's feeling if the bill mandated that after the juvenile offender was adjudicated as an offender, then have him fingerprinted. Mr. Kelly answered, he had no problem with that. Mr. Kelly then explained the department's identification system.

Mike Boyer explained the synopsis he handed out to the committee (See Attachment #2). He then explained the fiscal impact statement offered by the KBI (See Attachment #3). He presented the department's proposed amendments to the bill (See Attachment #4).

The chairman reported he had a written statement from the Kansas County and District Attorneys Association endorsing the concept of the depository.

January Scott testified since the passage of the juvenile code in the 1982 Legislative Session, numerous concerns have been expressed to their organization that related to the section on child abuse investigation. A copy of her remarks is attached (See Attachment #5).

Pat Ireland discussed with the committee the areas of the bill concerning investigative responsibilities between SRS and law enforcement. She stated SRS has developed highly specialized workers and units of child protection, and she explained their function. She stated a major problem is the duplication of investigation by SRS and law enforcement, and questioned why grandmothers and foster parents are investigated criminally. She also presented the results of the ad hoc committee of the Kansas Committee for the Prevention of Child Abuse. She discussed the problem of duplication of investigating cases, the agency to investigate, who

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~xxx~~ on February 24, 19 83.

Senate Bill 105 continued

is investigated, the difficulty of the laundry list, and people who are left out of the list. She stated the laundry list does not work out. She explained that in the bill it requires the law enforcement officer to use the form from SRS for investigation, and it is burdensome to use forms from another agency.

Yvonne Rawlins presented the three proposals of her organization. They want the juveniles to be released immediately upon bond; no juvenile be incarcerated where adults are housed, they want separate facilities; and they want the parents to be notified immediately after the arrest. She referred to the two newspaper articles that Senator Chaney had handed out to the committee yesterday, when he testified before the committee on the bill. She said they want to know how the system works, and they want to help the system.

Andy Kenkel spoke in support of Sections 15, 16 and 17 of the bill and presented their recommendation. A copy of his remarks is attached (See Attachment #6).

Lois Jebbo testified her organization supports the additions and changes to the present law proposed in the bill. A copy of her remarks is attached (See Attachment #7).

Judy Culley stated her organization is in total support of the bill. A copy of her remarks is attached (See Attachment #8).

Andrea Glenn testified her organization is in support of the bill.

Elizabeth Taylor testified her organization is in support of the bill, particularly Section 16. A copy of remarks is attached (See Attachment #9).

A copy of testimony from Colleen Ellis from The Villages, Inc., is attached (See Attachment #10). She was unable to be present to testify.

The chairman reminded the committee of the additional meeting of the committee at noon today in Room 519-S.

The meeting adjourned.

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Ruth Wilkin	Topeka	Girl Scouts
Judy Culley	P.O. Box 647 Lawrence	KALPCCA
Lain J. Ho	^{KAC} P.O. Box 5283, Topeka 66605	Ks. Action for Children
Andy Kenkel	PO Box 5314 Topeka 66605	Ks Children Services
Quayn H. Scott	214 W. 6th, Suite 30	KCPCCA
Heather Cafferty Wilson	104 Franklin S.W Topeka KS	Coalition for prev. of child abuse
Jean Waide	Topeka	SRS
Andrea Glenn	Topeka	Junior League
Charlotte Adair	Topeka	junior league
Larry Humes	Lawrence	Steinger
Jan Clark	Topeka	KC DTA
Brenda Hoyt	Topeka	AG
Joe Beckman	Johnson Co	Rental Health Assn
Barbara Crist	Johnson County	National Organization for Women
Dr. Webberger	Overland Park	L.W.S. K.
Elker Laner	Johnson County	Mental Health Assn
Suzanne Hardin	8229 Dale Prairie Village Ks	Johnson County, Coalition Prevention Child Abuse
Janetta Issa	5311 Jo. Ave, Ms. Ks	" " " " "
Rachel Strick	Johnson County	" " " " "
Jenith Hoover	214 W. 6th Topeka	KCPCCA
Debbie Stuckler	214 W. 6th Topeka	KCPCCA

2-24-83
Judge Mehesic

RECOMMENDED AMENDMENTS TO CHILD IN NEED OF
CARE CODE AND JUVENILE OFFENDER CODE

#1

Sec. 34 KSA 38-1541 Determination of interested party. At the end of paragraph - add: All motions to determine interested parties must be filed no later than 30 days prior to any hearing on a motion to sever parental rights.

NEED FOR CHANGE: 1) to require all potential interested parties to make their interest known prior to severance hearing; 2) to avoid parties from coming in after severance of parents' rights and delaying adoption of child.

Atch. 1'

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Sec. 25 KSA 38-1528 (a) Child under 18, when law enforcement officer takes into custody.

In section (a) after the second child, add: "Shall be placed in the legal custody of the Secretary and..."

So the sentence will read: When any law enforcement officer takes into custody a child under the age of 18 years, without a Court order, the child shall be placed in the legal custody of the Secretary and shall forthwith be delivered to a Court designated shelter facility, Court Service Officer or other person.

NEED FOR CHANGE: To resolve the issue of who is responsible for the care of any child and the cost of any care for child for the first 48 hours of care prior to the temporary order of custody hearing. Also medical facilities are concerned about who is responsible for required medical treatment during this first 48 hour period, when parents cannot be found.

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Sec. 60 KSA 38-1602 Definitions (b)(3) The automatic waiver provision.

At the end of sentence add: Any person convicted under this section shall thereafter remain an adult for any future offense charged.

NEED FOR CHANGE: It is possible that a 16 or 17 year old could be convicted of a felony and placed on probation or released from custody prior to their 18th birthday, and then be charged with the commission of a misdemeanor. Under the current definition it appears this person would be tried as a juvenile. On a normal waiver the Court usually mandates adult status for all further acts, but this is not the case under the automatic waiver. I doubt juvenile Court could be very effective where the offender has already been into the adult system.

Sec. 78 KSA 38-1624 Juvenile taken into custody

Add new subsection (d) and redesignate (d) as (e) and insert a provision similar to SB 105, page 23, line 170 thru 173. As follows:

In the absence of a Court order to the contrary, the Court or District Attorney or the arresting law enforcement agency shall have the authority to direct release of the alleged juvenile offender prior to the time set out in KSA 38-1632(a).

NEED FOR CHANGE: If the complaining witness changes their mind about prosecution or if the case falls apart due to the lack of evidence after preliminary investigation by the police, then the alleged offender shouldn't have to spend the weekend in detention, and the police or prosecutor should be able to release unless the Court has entered an order to the contrary.

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Sec. 78 KSA 38-1624(c) Juvenile taken into custody -
Procedure.

Strike word "forthwith" and insert in lieu thereof "without
unnecessary delay".

NEED FOR CHANGE: Forthwith means immediately, and it is not
practical to expect police to immediately take an alleged
juvenile offender to Court even prior to all the
investigation and police reports being prepared.

This change would conform this section to the wording of the
adult code in KSA 22-2901. Also if Court is in session it is
not practical to have police sitting around guarding a
juvenile if Court is not available to hear any matter. Also
the Juvenile wouldn't have an attorney, parents probably
wouldn't be there, and the police have already determined
that the juvenile should be detained. So what is the Court
to do?

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Sec. 34 of SB 105, page 38, KSA 41-2721 Cereal malt beverage violation. KSA 21-2721 (b) should be amended as follows: strike all after deemed, and insert, a juvenile offender.

NEED FOR CHANGE: This is a clean-up section and it seems to me that this problem could be better dealt with under the offender code then under the CINC code. What should the Court do with a 16 or 17 year old who goes out with fake ID and buys a 6 pack of beer? I honestly don't feel calling them a child in need of care is the solution. What should the police and SRS do as to investigation on this type case?

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In re Woodard

No. 53,747

IN THE INTEREST OF EVA WOODARD, a Minor Under 18 Years of Age.

SYLLABUS BY THE COURT

1. JUVENILE CODE—*Procedure*. The juvenile code, K.S.A. 38-801 *et seq.*, as amended, establishes its own complete procedure, separate and apart from the code of civil procedure.
2. INFANTS—*Doctrine of Parens Patriae*. This court has long recognized the State's interest in protecting its children and assuring they receive proper care through the exercise of the doctrine of parens patriae.
3. PARENT AND CHILD—*Severance—Notice to Parents—Application of Doctrine of Parens Patriae*. The exercise of the parens patriae doctrine does not extend to the extreme of severing parental rights without a good faith effort to locate and notify the parents who are to be affected by the court's determination.
4. JUVENILE CODE—*Severance—Notice to Parents*. If feasible, notice must reasonably be calculated to inform parties of proceedings which may directly or adversely affect their legally protected interests.
5. SAME—*Severance—Publication Service—Sufficiency*. Mere publication service without a showing of necessity is insufficient to support an order severing parental rights.
6. PARENT AND CHILD—*Severance—Service by Publication—Sufficiency of Service*. In an action to sever parental rights based upon service by publication under K.S.A. 38-810a(4), it must be affirmatively shown that the party seeking such service exercised reasonable diligence in attempting to identify and locate the parent upon whom such service is desired.
7. SAME—*Severance—Service on Absent Parent*. If the petitioner in an action to sever parental rights knows the whereabouts of an absent parent, service of summons must be effected by one of the ways specified in K.S.A. 38-810a, other than by publication, so that such parent may receive actual notice of the proceeding.
8. SAME—*Severance—Service by Publication—Due Process Requirements*. Before service on an absent parent may be made by publication, due process requires a factual showing that, after the exercise of reasonable diligence, other service calculated to give actual notice is not practical.
9. APPEAL AND ERROR—*Severance—Service on Absent Parent by Publication—Due Process—Appellate Review*. For an appellate court to give meaningful review of whether due process has been afforded in the service of process by publication in a severance of parental rights proceeding, the record should contain the facts upon which the determination to seek publication service was based, and the trial court should include sufficient findings of fact to support its conclusion that reasonable diligence was exercised to locate the absent parent.
10. PARENT AND CHILD—*Severance—Publication Service on Absent Father of Illegitimate Child—Failure of Father to Receive Due Process*. In an action by the father of an illegitimate child to set aside an order severing his parental rights for a failure to receive due process in the service of summons, the

In re Woodard

record is examined and it is held the order of the trial court denying the father's motion is reversed and the case is remanded for further proceedings all as set forth in the opinion.

Appeal from Finney district court, J. STEPHEN NYSWONGER, judge. Opinion filed June 11, 1982. Reversed and remanded for further proceedings.

Van Smith, of Smith Law Office, of Garden City, argued the cause, and *Jay C. Hinkel*, of the same firm, was with him on the brief for appellant.

John Wheeler, of Soldner & Wheeler, of Garden City, guardian ad litem, argued the cause, and *Robert T. Stephan*, attorney general, *Paul D. Handy*, county attorney, and *Denise Grimes*, assistant county attorney, were with him on the brief for appellee.

Philip C. Vieux, of Owen & Vieux, of Garden City, was on the brief *amicus curiae*.

The opinion of the court was delivered by

HOLMES, J.: Steve Woodard appeals from an order of the district court denying his motion to set aside a prior order of the court which severed his parental rights to his illegitimate daughter, Eva Woodard. In the original severance proceeding the only service upon appellant, a California resident, was by publication notice in The Garden City Telegram. When Woodard learned, some ten months later, that his parental rights to Eva had been severed, he took immediate steps to set aside the order of severance. His motion was denied by the district magistrate judge for failure to take a timely appeal and that ruling was upheld upon appeal by the district judge.

Eva Woodard was born August 26, 1978, in Ukiah, California, the daughter of Caroline Pickett and Steve Woodard. Although Caroline and Steve had lived together for a considerable length of time, they were never legally married. Sometime after the birth of Eva, Caroline and the baby departed from California without informing Woodard and he evidently had no knowledge of their subsequent whereabouts. In the spring and summer of 1979, Caroline and Eva were in Garden City, Kansas, where Eva was left in the care of a day-care provider on several occasions. Caroline was quite negligent about returning to pick up the baby and on one occasion left the baby with Mrs. Nowak, the day-care provider, for nearly five weeks without checking on the child. Mrs. Nowak eventually became concerned about the neglect of the child and on August 15, 1979, contacted the Department of Social and Rehabilitation Services (SRS). After an investigation by an SRS social worker, and after interviewing Caroline, SRS

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interests being foreclosed were not residents of the county and all the procedural requirements of the statutes for publication service appeared to be in order. It appears that the owners' names and addresses were, however, readily available to the foreclosing officials. In affirming the trial court's decision setting aside the tax sale this court stated:

"In *Walker v. City of Hutchinson*, 178 Kan. 263, 284 P.2d 1073, the city condemned a part of Walker's property for street purposes. The appraisers who were appointed to determine compensation were required by statute to give at least 10 days notice of their proceedings either in writing or by one publication in the official city paper. They chose the latter method of giving notice. Walker later sought an injunction to prevent the alleged trespass on his property alleging that he had not been notified of the proceedings, knew nothing of them, and that the publication notice was insufficient to satisfy the Fourteenth Amendment's requirements of due process. The trial court denied relief. On appeal, this court affirmed - holding that the notice by publication did not deprive him of due process of law.

"Upon appeal to the supreme court of the United States that court reversed (*Walker v. Hutchinson City*, 352 U S 112, 1 L. ed.2nd 178, 77 S Ct 200) and held that the newspaper publication alone was not adequate notice as required by due process, where, as the facts showed, the owner's (Walker's) name was known to the condemning city and was on the official records. In so holding the court followed the rule announced in *Mullane v. Central Hanover Tr. Co.*, 339 U S 306, 94 L ed 865, 70 S Ct 652, to the effect that, if feasible, notice must reasonably be calculated to inform parties of proceedings which may directly and adversely affect their legally protected interests." p. 453.

Pierce v. Board of County Commissioners, 200 Kan. 74, 434 P.2d 858 (1967), was another tax foreclosure case in which publication service came under attack. In discussing the rule of *Mullane*, the court stated:

"In our opinion these facts bring this case fairly within the rule of *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 94 L.Ed. 865, 70 S.Ct. 652. The defendant in *Mullane* was trustee of a common trust in which many small trust estates were pooled in one fund for investment administration. Some months after the trust was established, the trustee petitioned for approval of its account as the common trustee, giving notice of the hearing to be held thereon, by publication in a local paper, which strictly complied with the requirements of the New York statute.

"*Mullane*, as special guardian, appeared specially objecting that the notice given and the provisions for giving notice were inadequate to afford due process to the beneficiaries under the Fourteenth Amendment. It appears that the trustee had on its books the names and addresses of the beneficiaries represented by *Mullane*, and had been able to give notice by mail to the beneficiaries who were known at the time the trust was established.

Under these circumstances the Supreme Court overruled the constitutional objections interposed to the publication notice as to those beneficiaries whose

interests or addresses were unknown to the trustee. However, as to known beneficiaries the court said:

'As to known present beneficiaries of known place of residence, however, notice by publication stands on a different footing. Exceptions in the name of necessity do not sweep away the rule that within the limits of practicability notice must be such as is reasonably calculated to reach interested parties. Where the names and post-office addresses of those affected by a proceeding are at hand, the reasons disappear for resort to means less likely than the mails to apprise them of its pendency.' (p. 318.)

"In the course of its opinion, the court said that due process of law at a minimum requires 'that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case' (p. 313) and, continuing in the same vein, the court spoke in the following language:

'But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. . . .' (p. 315.)" 200 Kan. at 82-82.

K.S.A. 60-307(d) requires that an affidavit by one of the parties to the action or the parties' attorney must be filed setting forth specific facts as to why service by publication is necessary. We note that the new juvenile code adopted by the 1982 legislature and effective January 1, 1983 (S.B. 520), requires that a person seeking service by publication in a juvenile proceeding must file an affidavit setting forth that a reasonable, but unsuccessful, effort has been made to ascertain the names and/or residences of the persons upon whom publication service is desired.

Cases from other jurisdictions also support the rule that mere publication service without a showing of necessity is insufficient to support an order severing parental rights.

In Re Beebe, 40 Cal. App. 3d 643, 115 Cal. Rptr. 322 (1974), was an action to declare a four-year-old free of the custody and control of her father. The petition filed in the case alleged that the father had abandoned his child and further alleged that the address of the father was "unknown." Based upon this allegation, the court authorized publication service. Later the father, having found out about the proceedings, attacked the adequacy of the showing to support the publication service. The California statute authorized publication service upon the filing of an affidavit alleging that the parent could not be served in another manner and that reasonable diligence had been used to effect actual service. The court held:

"In a proceeding to declare a minor child free from the custody and control of her father, the mere allegation that the father's address was unknown was

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Eva Woodard was born August 26, 1978, in Ukiah, California, the daughter of Caroline Pickett and Steve Woodard. Although Caroline and Steve had lived together for a considerable length of time, they were never legally married. Sometime after the birth of Eva, Caroline and the baby departed from California without informing Woodard and he evidently had no knowledge of their subsequent whereabouts. In the spring and summer of 1979, Caroline and Eva were in Garden City, Kansas, where Eva was left in the care of a day-care provider on several occasions. Caroline was quite negligent about returning to pick up the baby and on one occasion left the baby with Mrs. Nowak, the day-care provider, for nearly five weeks without checking on the child. Mrs. Nowak eventually became concerned about the neglect of the child and on August 15, 1979, contacted the Department of Social and Rehabilitation Services (SRS). After an investigation by an SRS social worker, and after interviewing Caroline, SRS

interests being foreclosed were not residents of the county and all the procedural requirements of the statutes for publication service appeared to be in order. It appears that the owners' names and addresses were, however, readily available to the foreclosing officials. In affirming the trial court's decision setting aside the tax sale this court stated:

"In *Walker v. City of Hutchinson*, 178 Kan. 263, 284 P.2d 1073, the city condemned a part of Walker's property for street purposes. The appraisers who were appointed to determine compensation were required by statute to give at least 10 days notice of their proceedings either in writing or by one publication in the official city paper. They chose the latter method of giving notice. Walker later sought an injunction to prevent the alleged trespass on his property alleging that he had not been notified of the proceedings, knew nothing of them, and that the publication notice was insufficient to satisfy the Fourteenth Amendment's requirements of due process. The trial court denied relief. On appeal, this court affirmed - holding that the notice by publication did not deprive him of due process of law.

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Under these circumstances the Supreme Court overruled the constitutional objections interposed to the publication notice as to those beneficiaries whose

interests or addresses were unknown to the trustee. However, as to known beneficiaries the court said:

'As to known present beneficiaries of known place of residence, however, notice by publication stands on a different footing. Exceptions in the name of necessity do not sweep away the rule that within the limits of practicability notice must be such as is reasonably calculated to reach interested parties. Where the names and post-office addresses of those affected by a proceeding are at hand, the reasons disappear for resort to means less likely than the mails to apprise them of its pendency.' (p. 318.)

"In the course of its opinion, the court said that due process of law at a minimum requires 'that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case' (p. 313) and, continuing in the same vein, the court spoke in the following language:

'But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. . . .' (p. 315.)" 200 Kan. at 82-82.

K.S.A. 60-307(d) requires that an affidavit by one of the parties to the action or the parties' attorney must be filed setting forth specific facts as to why service by publication is necessary. We note that the new juvenile code adopted by the 1982 legislature and effective January 1, 1983 (S.B. 520), requires that a person seeking service by publication in a juvenile proceeding must file an affidavit setting forth that a reasonable, but unsuccessful, effort has been made to ascertain the names and/or residences of the persons upon whom publication service is desired.

Cases from other jurisdictions also support the rule that mere publication service without a showing of necessity is insufficient to support an order severing parental rights.

In Re Beebe, 40 Cal. App. 3d 643, 115 Cal. Rptr. 322 (1974), was an action to declare a four-year-old free of the custody and control of her father. The petition filed in the case alleged that the father had abandoned his child and further alleged that the address of the father was "unknown." Based upon this allegation, the court authorized publication service. Later the father, having found out about the proceedings, attacked the adequacy of the showing to support the publication service. The California statute authorized publication service upon the filing of an affidavit alleging that the parent could not be served in another manner and that reasonable diligence had been used to effect actual service. The court held:

"In a proceeding to declare a minor child free from the custody and control of her father, the mere allegation that the father's address was unknown was

From Judge Dave Mikasi

751

Sec. 34 of SB 105, page 38, KSA 41-2721 Cereal malt beverage violation. KSA 21-2721 (b) should be amended as follows: strike all after deemed, and insert, a juvenile offender.

NEED FOR CHANGE: This is a clean-up section and it seems to me that this problem could be better dealt with under the offender code then under the CINC code. What should the Court do with a 16 or 17 year old who goes out with fake ID and buys a 6 pack of beer? I honestly don't feel calling them a child in need of care is the solution. What should the police and SRS do as to investigation on this type case?

15



THOMAS E KELLY
DIRECTOR

2-24-83
2
KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL
STATE OF KANSAS
3420 VAN BUREN
TOPEKA, KANSAS 66611
(913) 267-5000



ROBERT T. STEPHAN
ATTORNEY GENERAL

Senate Bill 105
Synopsis

- Sec. 4 - Deletes original language which is now obsolete.
- Sec. 23 - Allows central repository to have access to law enforcement files.
- Sec. 24 - Allows retention of data for statistical purposes upon expungement of record.
- Sec. 25 - Compels disposition reporting from county and district attorneys.
- Sec. 28 - Replaces and redefines that language deleted by Section 4. Establishes the Kansas Juvenile Justice Information System as part of the K.B.I.'s central repository function. Directs participation from all entities having participation in the juvenile systems.
- Sec. 29 - Removes prohibition of K.B.I. maintaining juvenile data.
- Sec. 30 - Compels detention facilities, jails or youth residential facilities to report admissions.
- Sec. 35 - Removes information maintained in the established system from the public records act.

Atch. 2



THOMAS E KELLY
DIRECTOR

KANSAS BUREAU OF INVESTIGATION

2-24-03
#3

DIVISION OF THE OFFICE OF ATTORNEY GENERAL
STATE OF KANSAS
3420 VAN BUREN
TOPEKA, KANSAS 66611
(913) 267-5000



ROBERT T. STEPHAN
ATTORNEY GENERAL

Senate Bill 105 Fiscal Impact

Although not requested by the Division of the Budget the following fiscal impact statement is offered by the K.B.I.

1. Forms and associated costs - \$1,290.00
2. Personnel
 - Data Entry Operator, with fringe benefits - \$13,808.00
 - Clerk III, with fringe benefits - \$13,213.00
3. Equipment
 - Data Entry Terminal - \$2,100.00

Attch. 3



THOMAS E. KELLY
DIRECTOR

KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL
STATE OF KANSAS
3420 VAN BUREN
TOPEKA, KANSAS 66611
(913) 267-5000

4

2-24-83
M. Boyer



ROBERT T. STEPHAN
ATTORNEY GENERAL

Senate Bill 105 Proposed Amendment

Current Code 38-1611 Fingerprints

Remove "may" from 38-1611(2) replace with "shall".

Strike 38-1611(c).

Insert new (c) providing for submission to central repository.

Rationale

Overall service to prosecutors preparing case.

Certainty in providing information to prosecutors on the "three strikes and out" procedure pursuant to 38-1602(b) (3) definition.

Without certainty requests to verify overall record of individual is open to question, possible law suit and would add to the burden of prosecutors to ascertain validity of information received from the statistical system.

Fiscal Impact

1. Personnel
Fingerprint Technician, with fringe benefits - \$15,578.00

Attch 4

2-24-83

214 West 6th, Suite 301
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913-354-7738



KANSAS COMMITTEE FOR PREVENTION OF CHILD ABUSE

#5

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January H. Scott

TESTIMONY

OF

JANUARY H. SCOTT

Before

SENATE JUDICIARY COMMITTEE

February 24, 1983

Since the passage of the Juvenile Code in the 1982 Legislative Session, numerous concerns have been expressed to our organization related to the section on child abuse investigation. These concerns prompted Kansas Committee to organize an ad hoc committee to study this section. As many of you recall, Section 16, K.S.A. Supp. 38-1523 (beginning on page 18 of S.B. 105) was introduced in its entirety during the 1982 legislative session. It was not studied or recommended by the Juvenile Code Advisory Committee, the Judicial Council or the Interim Judiciary Committee.

I served as Chairperson of the Ad Hoc Committee. The Ad Hoc Committee began meeting last fall, and met three hours a day, once a week for four weeks. A substantial amount of time was spent between meetings on research, communication, and development of written material for study by the committee. The committee chose as its primary goal to have an investigation statute which provided the greatest protection for the child.

Representatives from the following organizations served on the Ad Hoc Committee:

- Kansas Committee for Prevention of Child Abuse
- Kansas Children's Service League
- Kansas Action for Children
- Kansas Association of Licensed Private Child Care Agencies
- Kansas Association for Education of Young Children
- Foster Parents' Association
- Child abuse/neglect unit of Wyandotte County Court Services
- Johnson County Sexual Abuse Program

Atch. 5

Testimony of
January H. Scott
February 24, 1983
Page Two

KANSAS COMMITTEE FOR THE PREVENTION OF CHILD ABUSE



#5

Included on the committee were two former Assistant District Attorneys, one from Shawnee County and one from Johnson County, who had had previous experience prosecuting deprived cases.

In addition, Major Troy Hampton of the Wichita Police Department acted as a law enforcement consultant to the committee.

The Ad Hoc Committee is very appreciative of Youth Services Commissioner Robert Barnum allowing three of his personnel to attend our meetings as resource consultants. They were:

Jan Waide - Administrator, Child Protection and Family Services Section

Aleene Griggs - Child Protection Specialist

Jim Baze - Section Chief, Lawrence SRS



AD HOC COMMITTEE
ON CHILD ABUSE INVESTIGATIONS

CHAIRPERSON: January H. Scott, Kansas Committee for Prevention of Child Abuse

MEMBERS OF THE COMMITTEE

Pat Ireland: Kansas Committee for Prevention of Child Abuse

Cynthia Robinson: Kansas Action for Children, former Johnson County
Assistant District Attorney assigned to deprived
child cases

Nancy Lignitz: Child Abuse Consultant, Johnson County Mental Health Center

Pat Joseph: Former Shawnee County Assistant District Attorney assigned to
deprived child cases

Joyce Ritter/Mary Edwards: Child abuse/neglect unit, Wyandotte County
Court Services

Bill Preston: Kansas Association of Licensed Private Child Care Agencies

Andy Kenkel: Kansas Children's Service League

Elizabeth Taylor: Kansas Association for Education of Young Children

Lorraine Atkinson/Wanda Parks: Foster Parents' Association

Law Enforcement Consultant: Major Troy Hampton, Wichita Police Department

The following people were invited to serve on the Committee but did not
participate. They have been provided all materials prepared by the
Committee: Jim Clark, Kansas County and District Attorney's Association;
Fred Howard, Kansas Police Officers' Association; Adrian Farver, Kansas
Sheriff's Officers' Association.

Resource Consultants from the Department of Social and Rehabilitation Services:

Jan Waide: Administrator, Child Protection & Family Services Section,
Youth Services

Aleene Griggs: Child Protection Specialist

Jim Baze: Section Chief, Lawrence SRS

Kansas Action for Children, Inc.

2053 Kansas Avenue • P.O. Box 5283 • Topeka, Kansas 66605 • 913/232-0550

2-24-83

L. Jabo

February 24, 1983

7

SUMMARY OF TESTIMONY ON SB 105
OFFERED BY KANSAS ACTION FOR CHILDREN, INC.

Mr. Chairman and Members of the Committee:

Kansas Action for Children (KAC) supports the additions and changes to present law proposed in SB 105.

KAC has done extensive public education on the new Juvenile Codes; it being our 1981-82 annual project. As part of that project the agency held six public forums. Of the two topics of most concern, one was the handling of initial reports under the Code for Care of Children.

In response to these concerns and those heard following the passage of SB 520, KAC became a member of an ad hoc committee. This committee was formed to study the reporting and investigation of abuse or neglect.

It is the opinion of our agency that SB 105 proposes sound solutions based on the following components:

- * in depth research
- * broad spectrum of expertise utilized
- * cooperation of agency and organization personnel in identifying potential problems
- * careful consideration of possible solutions

Our organization strongly emphasizes the importance of having responsibilities specifically assigned by law. We feel more children will have better protection if the concepts in Sec. 16 are preserved.

Kansas Action for Children also supports Sec. 23, Subsection (a) #5 establishing the Kansas Juvenile Justice Information System. It is our agency's position that good statistical data is essential for policy setting and program planning.

I appreciate this opportunity to express the agency's opinions and thank you for your time.

Atch. 7



Established in 1893

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P.O. Box 5314, Topeka, KS 66605
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#6

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SENATE BILL 105
FEBRUARY 24, 1983

Mr. Chairman and members of the Senate Judiciary Committee.
Thank you for allowing me to appear before you today. Kansas Children's Service League would like to speak in support of Sections 15, 16 and 17 of Senate Bill 105.

We feel that these changes in Child Abuse and Neglect reporting are practical for the following reasons.

1. Section 16 is not asking SRS to perform any function that it was not performing in December of 1982.
2. The child abuse investigation procedures in Section 16 and 17 is an efficient use of both SRS and law enforcement personnel.
3. These procedures will not require the training of large numbers of law enforcement personnel in the particularities of child abuse.
4. These procedures involve law enforcement in those cases that are most in need of their particular skills, i.e. those cases in which the abuse has been especially violent and evidence needs to be gathered for the county attorneys office.
5. Section 17 recognizes that law enforcement needs to be involved immediately to protect the child in imminent danger; to protect children when SRS is not open for business and provides for that coverage.
6. Provides for interagency cooperation between law enforcement, SRS and schools in order that the child might be protected from harm.

In Section 16, Subsection F on Page 21 of Senate Bill 105, we would take note of the fact that the Department of Social and Rehabilitation Services is mandated to "assist" law enforcement in taking necessary action to protect the child. We wonder if the word "assist" might be interpreted in the future to mean that SRS would be required to do an immediate investigation of every allegation of Child Abuse and Neglect when they are not open for business. We feel that the department should work out a procedure to consult with law enforcement but should not be required, with their current staffing pattern, to conduct investigations during non-agency hours.

We would recommend that the additional wording to included on Line 88 as follows: "to include consultation, if needed, when the department is not open for business".

In this way SRS can advise law enforcement on the placement of children if it appears to the law enforcement personnel that the child is in imminent danger and should be removed from the home immediately.

HONORARY DIRECTOR
Clemens Rucker, M.D., Topeka
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Attch. 6

2-24-83
8

TO: Senate Judiciary Committee

RE: Position of Kansas Association of Licensed Private Child Care Agencies (KALPCCA)
on SB 105

FROM: Judith A. Culley, Administrator, The Shelter, Inc., Lawrence, Kansas

DATE: February 24, 1983

The Kansas Association of Licensed Private Child Care Agencies is a state-wide organization of agencies that provide out-of-home placements for children in need of shelter and/or treatment. Our members provide 2/3 of the group residential beds that SRS contracts for, excluding detention facilities. It is the desire of our group, then, to advocate for quality care for children in group settings and for all children in the state of Kansas.

Our organization is in total support of SB 105. We are particularly in support of the amended Section 16 KSA Supp. 38-1523, making SRS the primary agency responsible for investigation of all abuse and neglect reports, with law enforcement and district attorney's offices becoming involved as needed. We are in support of this section for the following reasons:

1. We think that SRS workers are the most thoroughly trained and most experienced people to do all abuse and neglect investigations, regardless of who the alleged perpetrator is. Their training and experience allows them to assess the degree of trauma to the people involved, the best way of approaching the investigation so as not to exacerbate the situation, and the best way to approach treatment. Criminal prosecution will still be possible for any perpetrator, as SRS workers will refer criminal concerns to law enforcement.

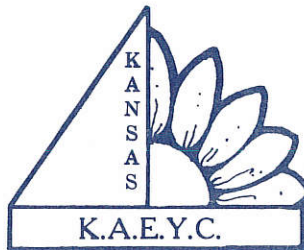
2. Because of their training and experience, we want SRS workers to do abuse and neglect investigations in our facilities. We are committed to providing the best possible care available to children, and we think that SRS workers can provide the best information to agency administrators on how we can improve our service. Improving services should be the goal of any investigation in a licensed facility.

3. Investigations done initially by SRS workers will cause the least possible trauma to children in licensed facilities. With law enforcement handling initial investigations, children are likely to be questioned twice, SRS workers becoming involved as a licensing concern. Two investigations are unnecessarily traumatic if there is the possibility, when there is not a criminal concern, that the work could be done with one investigation by SRS. Initial investigations by law enforcement can also cause a child to believe, perhaps unnecessarily, that there are serious problems in a facility in which he or she lives. This causes more insecurity for children already in tenuous situations.

4. Investigations done initially by SRS will cause the least possible trauma to anyone caring for children in a licensed home, thus insuring more consistent care for children. By far the majority of people who work in child care are motivated by a sincere concern for children. Law enforcement investigation provided for in the current code may be seen by those people as an implication that they have seriously broken the law and are subject to criminal prosecution regardless of the actual nature of the complaint. This is unduly traumatic on an initial investigation to people providing child care. The problem has the most serious consequences in family foster care, where under the current code, any report of a spanking goes to law enforcement. Initial law enforcement investigations in foster care could cause a serious decrease in the number of foster homes available and in the interest shown by law enforcement in investigation.

We sincerely appreciate the efforts made by Senator Pomeroy and other members of this committee. The changes you have proposed demonstrate a concern for the children of this state and a knowledge of the ways to provide the best care for those children.

Atch. 8



Kansas Association for the Education
of Young Children, Inc.
TESTIMONY ON S.B. 105

February 24, 1983

Dear Senate Judiciary Members:

Thank you for this opportunity to present the concerns of the Kansas Association for the Education of Young Children on S.B. 105.

KAEYC, with 800 members, is comprised of child care professionals including those in educational institutions and in the various child caring facilities. KAEYC is part of the National AEYC with a total membership of almost 40,000.

I am here today to express our support of S.B. 105 particularly section 16 beginning on page 18.

Concerning joint investigation, we are pleased with this concept since the investigating process will have access to both areas of expertise, that being the law enforcement agency and the department of social and rehabilitation services. As the Juvenile Code reads after last year's revision and as it would read if amended by SRS's proposal, third party investigations would be conducted by law enforcement officers. In particular for KAEYC, third party includes child caring facilities. It is our opinion that SRS has greater skilled interviewing techniques when dealing with children. SRS has been dealing specifically with children for some time and has trained personnel to investigate in a manner that intends to protect the welfare of the child. We feel this is very important for that young child.

In reference to subsection (e) of section 16, we are pleased with the requirement for prompt reporting to the secretary of health and environment when a licensed or regulated child caring facility is involved.

Thank you for your consideration of this legislation. If I can be of further assistance to you, please feel free to contact me.

Sincerely,

Elizabeth E. Taylor

Atch. 9

THE VILLAGES, INC.

Testimony

TO: Senate Judiciary Committee, State of Kansas
 FROM: Colleen Ellis, LSCSW, Program Director
 RE: Senate Bill 105
 DATE: February 24, 1983

The Villages, Inc., is a non-profit organization founded in 1964 in Topeka, Kansas, by Dr. Karl Menninger. It began as an experiment, as a trial foster home project for neglected and deprived children. Eagle Ridge Village, west of Topeka, is comprised of five homes; Pleasant Ridge Village is comprised of three homes in Lawrence. The Villages' newest project in Indiana presently has a total of five homes. Each of our homes has the capacity for ten children ranging in age from six through seventeen years.

The Villages' child care educational program was established in 1974 to provide training for surrogate parents, child care workers, counselors, social workers and administrators of child care facilities. Five-day workshops have been held monthly on child care and management since 1974 serving over 2,500 participants from forty-nine states. Future training plans include opening the Dr. Karl and Jeanetta Lyle Menninger National Parent Training Center in the spring/summer of 1983.

The Villages, Inc., believes fellowship within a family establishes the cornerstone for a solid foundation as an adult. Our homes and workshops reflect comradeship through the combined sharing of knowledge, support and experience. The concepts presented in the workshops are based on practical knowledge gained from experiences in our pilot project, Eagle Ridge Village. It is due to this practical knowledge and experience that The Villages supports the passage of Senate Bill 105 and commends the exemplary effort of the Senate Judiciary Committee for the proposed amendments to the juvenile code.

Specifically, The Villages endorses the passage of Section 16, Paragraphs A and B, of Senate Bill 105. It is believed that the state Department of Social and Rehabilitation Services is the most appropriate agency to have the primary duty of investigating reports of abuse and neglect involving children in out-of-home care.

Over ninety per cent of the children in residence in Villages homes are children that indeed have suffered from physical, emotional and/or sexual abuse in their previous homes. They come to us highly traumatized and vulnerable. They are rarely emotionally "normal." In many instances, memories of police interrogations and investigations in these multi-problem families are vivid. The training and orientation of the police officer is different from the training of a social worker. Our practical experience tells us about the great importance of minimizing additional trauma to these children.

In order to accomplish this goal, it is helpful for the investigator to have an intimate understanding of the entire foster care system and the traumatic effects of separation and placement. The Kansas Department of Social and Rehabilitation Services has indeed trained its social work staff in this endeavor.

The Villages also supports Section 16, Paragraph B, of Senate Bill 105 because it addresses the need for joint investigations in more severe cases of abuse and neglect. As an administrator at The Villages, I am keenly interested in uncovering and investigating all suspected situations of child abuse. It appears the Department of Social and Rehabilitation Services is more experienced in identifying the more subtle and less obvious forms of abuse and neglect, particularly those situations involving emotional trauma to children. These situations, unfortunately, do exist and the skill, expertise and sensitivity of a well-trained social worker can aid in uncovering such situations.

It is inevitable that the Department of Social and Rehabilitation Services would be involved in some aspect of an investigation of third-party abuse since it is Social and Rehabilitation Services along with the Kansas Department of Health and Environment that has the licensing, monitoring and regulatory responsibilities for facilities such as The Villages.

If Section 16, Paragraphs A and B, of Senate Bill 105 is not passed, already traumatized vulnerable children would be subjected to an additional interrogation and investigation.

In summary, The Villages, Inc., commends the Senate Judiciary Committee for all of its hard work in the production of this Bill. It is a Bill that speaks sensitively to the protection needs of children in out-of-home care.

CE:js