Approved February 20, 1984
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Representative Joe Knopp
Vice-Chairperson at

3:30 ~~a.m.~~/p.m. on February 15, 1984 in room 526-S of the Capitol.

All members were present except:

Representatives Cloud and Justice were excused. Representatives Harper, Ediger and Duncan were absent.

Committee staff present:
Jerry Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes' Office
Nedra Spingler, Secretary

Conferees appearing before the committee:

Representative Edgar Moore
Scott Lambers, Administrative Assistant to Overland Park City Manager
Sergeant Larry Dixon, Overland Park Chief of Police
Bob Barnum, Commissioner of Youth Services for the Department of Social and Rehabilitation Services
Jean Sagan, former Juvenile Prosecuter and District Attorney for Douglas County
Representative Max Moomaw
Representative Wanda Fuller
Pat Ireland, Kansas Committee for Prevention of Child Abuse
Dennis Moore, Johnson County District Attorney
Kevin Moriarty, Assistant District Attorney, Johnson County
Gunnar Sundby, Atchison County District Attorney
Clark Owens, Sedgwick County District Attorney
Larry Donalson, Program Coordinator for Sedgwick County Department of Mental Health
Kathy Boyer-Shesol, Executive Director of the Wichita Area Rape Center

Representative Joe Knopp opened the meeting. Representative Bob Frey presided later.

Minutes of the meeting of February 13, 1984 were approved.

Hearings were held on HB 2796, HB 2836 and HB 2835.

HB 2796 - An act relating to care of children.

Representative Edgar Moore said the bill was requested by the police departments of several Johnson County cities who were having difficulty with the restriction on taking runaway children into protective custody. By changing "and" to "or" on line 33, a law enforcement officer may take children under 18 years of age into protective custody when the officer has probable cause to believe they are in need of care. He believed it would be much better for officers to take these children to a safe place and notify their parents or SRS rather than leaving them on the street.

Scott Lambers, administrative assistant to the Overland Park City Manager, said that city and Olathe cooperated in getting HB 2796 introduced and believed it was legislative intent to include its provision in the definition of children in need of care in the code for care of children statute.

Sergeant Larry Dixon gave a statement on behalf of the Overland Park Chief of Police supporting the bill (Attachment No. 1). Changing "and" to "or" gives police two options in taking children into custody. He gave examples of calls received from parents of runaways where, under present law, officers were not able to help them. He believed police officers owed it to parents to be of more assistance in these situations.

The question was raised if children would be taken to jail where there are no county or SRS facilities to accommodate them. Sergeant Dixon said children are not arrested on a criminal charge if the jail is the only facility. A member noted that SRS has said there is a place in every judicial district to take children.

Representative Douville noted another reason for the bill's introduction was because a number of people in Johnson County believed the current law was being more narrowly interpreted there than in other parts of the state. HB 2796 clarifies the intent.

Bob Barnum, Commissioner of Youth Services for the Department of Social and Rehabilitation Services, said the Department has heard of problems regarding present law from judges. These problems are sporadic over the state and more prevalent in Johnson County because of the limited interpretation given the law by a city attorney. Mr. Barnum said SRS supports HB 2796. A member expressed concern that the bill might allow abused children to be taken out of the home after the abuser is arrested. Commissioner Barnum said SRS does not support this.

Jean Sagan, former juvenile prosecutor and district attorney for Douglas County, said, under current law, that office also believed children could not be taken into custody unless they were in imminent danger.

HB 2836 - An act relating to the amount of fine in D.U.I. diversions.

Representative Max Moomaw said the bill allows the prosecuting attorney the same latitude in setting the fine for a diversion agreement as is in a regular D.U.I. conviction. He believed certain offenders on diversion programs should receive stiffer monetary penalties. His statement is attached (Attachment No. 2).

HB 2835 - An act relating to sex offenses involving family members.

Representative Wanda Fuller said the bill was an outgrowth of 1983 sexual assault legislation that changed the penalty for incest from a Class D to a Class B felony. Last year, conferees did not have the opportunity to speak to this change. HB 2835 would make the penalty the same as it was prior to the 1983 change.

Pat Ireland, Kansas Committee for Prevention of Child Abuse, supported the bill. The Class D felony penalty allowed for development of community-based treatment programs for the offender which she believed to be more effective than sending the offender to jail, and children will be less likely to recant their stories if a prison term is not involved. Ms. Ireland's statement is attached (Attachment No. 3). In additional remarks, she noted the Class B charge threatens community corrections as a funding source for treatment programs.

Dennis Moore, Johnson County District Attorney, gave a statement in support of the bill (Attachment No. 4). In additional remarks, he said, as a prosecutor, Class B felony incest cases are the most difficult to prosecute. Having an option in the bill of different classes of felonies would not work because Class B felons and persons charged with indecent liberties are not put in the treatment program. Leaving the Class B penalty in the law would destroy the treatment program.

There was discussion regarding what, if any, the penalty would be regarding a 16- or 17-year-old who had been lewdly fondled by a parent with the child's consent. Kevin Moriarty, Assistant District Attorney, Johnson County, said it would still be a crime for natural parents. The problem occurs when the child is an adopted son or daughter. It was questioned if 16- and 17-year-olds needed additional protection while 18-year-olds do not.

Gunnar Sundby, Atchison County District Attorney, said this county has used the treatment program developed by Johnson County as a diversion program. He opposed the Class B penalty and noted that a person charged with a Class B felony will get newspaper coverage which makes the program more difficult to sell to the judge and the public.

Clark Owens, Sedgwick County District Attorney, said the way the law was presently worded, a stranger that molests a child, a more serious crime and harder to treat, gets a Class C penalty, but a father who may molest his child only under certain circumstances, gets a Class B. By changing the penalty back to Class D these situations could be controlled better. Statistics from the Sedgwick County diversion program substantiate this. He noted that even if a person should go to prison, it is hard to get a conviction. Under the treatment program, more cases are actually filed.

Larry Donalson, program coordinator for the Sedgwick County Department of Mental Health said the problem of incest had not received much attention until recent diversion programs were developed. If the felony class is not changed, needed programs will no longer be funded as a part of community corrections programs.

Jean Sagan spoke of her experience as the former District Attorney for Douglas County, noting that intra-family sex abuse can be treated with diversion programs rather than jail

terms. Under Class B felony aspects, no one will report abuse. Prior to the Douglas County diversion program, of 45 cases reported to SRS, only eight were reported to the District Attorney, and there was a problem getting SRS to turn in these cases. Since the diversion program, every case has been reported. She suggested adding to the statute the circumstances that allow offenders to participate in diversion programs similar to those specified for D.W.I. charges. She believed it was important that incest remain a felony charge, but Class B jeopardizes the diversion program.

Mr. Barnum said SRS is required by law to report incest cases, and the Department is doing so. A member noted SRS may not have reported cases previously because it may not have believed they were prosecutable.

Kathy Boyer-Shesol, executive director of the Wichita Area Rape Center and representing 15 sexual assault centers, said this group supports HB 2835. If the felony classification is not changed, diversion programs will be destroyed. She told of a sex abuse program in Wichita public schools where teachers were trained regarding intra-family sexual abuse. Prior to this program and the availability of a diversion program teachers were reluctant to report cases and children were reluctant to confide in or report to anyone. Since the program, there has been a decrease in reluctance to report. She urged the Committee to pass HB 2835.

The meeting was adjourned at 5:00 p.m.

FEBRUARY 15, 1984

Attachment # 1

TESTIMONY ON HOUSE BILL 2796

BY LARRY R. DIXON

SERGEANT, JUVENILE UNIT, OVERLAND PARK POLICE DEPARTMENT

MY NAME IS LARRY DIXON. I AM A MEMBER OF THE OVERLAND PARK POLICE DEPARTMENT. I AM HERE TODAY ON BEHALF OF MYRON E. SCAFE, CHIEF OF POLICE, TO SPEAK IN SUPPORT OF HOUSE BILL NO. 2796. THIS BILL, IF ENACTED, WOULD ENABLE A POLICE OFFICER TO PROVIDE BETTER SERVICE TO THE JUVENILE, FAMILY, AND COMMUNITY.

DURING 1983, WE PROCESSED 145 RUNAWAY REPORTS THROUGH THE JUVENILE UNIT. NEEDLESS TO SAY, PARENTS OF RUNAWAYS ARE STILL CONCERNED ABOUT THEIR CHILDREN'S WELFARE REGARDLESS OF THE CHANGE OF LAW IN 1983. THESE PARENTS EXPECT (SOMETIME DEMAND) THEIR LOCAL POLICE TO MAKE MORE OF AN EFFORT THAN THE PRESENT LAW ALLOWS TO FIND THEIR CHILD. WHEN WE AS POLICE OFFICERS EXPLAIN THE PRESENT K.S.A. (1983 SUPP) 38-1527 (b) and "IMMINENT DANGER" REQUIREMENT, THE PARENT IS NOT TOO IMPRESSED. THEY OBVIOUSLY EXPECT US TO BE OF MORE ASSISTANCE TO THEIR PLIGHT.

OUR REQUEST IS TO CHANGE ONE WORD IN THE AFOREMENTIONED STATUTE. FROM "AND" TO "OR". BY MAKING THIS CHANGE, IT WILL ALLOW THE POLICE OFFICER TWO OPTIONS INSTEAD OF ONE FOR TAKING THE CHILD INTO CUSTODY.

Atch. 1

WE WOULD NOW HAVE THE OPTION TO TAKE THE CHILD INTO CUSTODY FOR BEING A RUNAWAY AND NOT HAVE TO HAVE THE ELEMENT OF "IMMINENT DANGER" also.

THIS CHANGE WOULD SERVE ALL INVOLVED (JUVENILE, FAMILY, LAW ENFORCEMENT, S.R.S, AND COURT SERVICES PERSONNEL) PARTICIPANTS MUCH BETTER, I BELIEVE.

ONCE AGAIN, ON BEHALF OF THE OVERLAND PARK POLICE DEPARTMENT, I SPEAK IN FAVOR OF THIS BILL. I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE THIS COMMITTEE. I WOULD BE HAPPY TO ANSWER ANY QUESTIONS THAT YOU MIGHT HAVE.

STATE OF KANSAS

MAX MOOMAW
REPRESENTATIVE, 117TH DISTRICT
HODGEMAN LANE AND
PARTS OF FINNEY AND
NESS COUNTIES
R R 2, BOX 45
DIGHTON, KANSAS 67839

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER EDUCATION
ELECTIONS

Attachment # 2

Testimony before the Judiciary Committee on House Bill 2836

February 15, 1984

Mr. Chairman and Committee Members:

I am Representative Max Moomaw. H.B. 2836 deals with the fine to be assessed when diversion is granted in a D.U.I. case. Under current law, the minimum fine of $200 is assessed. H.B. 2836 sets the fine at the same level as a D.U.I. conviction $200-$500. The 1984 performance audit report on D.U.I. reviewed six counties--Cloud, Gray, Johnson, Neosho, Sedgwick, and Thomas. 312 cases were reviewed; of these 133 or (42% of the arrests) ended in diversion agreements. Diversion is being used in D.U.I.'s a substantial portion of the time. This bill would allow the Prosecuting Attorney the same latitude in setting the fine for a diversion agreement as in a regular D.U.I. conviction. The fine in both cases would be $200-$500 for a first-time offender.

Atch. 2

KANSAS COMMITTEE FOR
PREVENTION OF CHILD ABUSE

214 West 6th, Suite 301
Topeka, Kansas 66603-3792
913-354-7738

Attachment # 3

TESTIMONY OF

PAT IRELAND

ADVOCACY CHAIRPERSON

KANSAS COMMITTEE FOR PREVENTION OF CHILD ABUSE

on

HOUSE BILL 2835

HOUSE JUDICIARY COMMITTEE

February 15, 1984

Kansas Committee for Prevention of Child Abuse strongly supports House Bill 2835.

Please see the attached briefing paper which explains why child victims of incest will be benefited by the provisions of this bill.

Atch. 3

KANSAS COMMITTEE FOR
PREVENTION OF CHILD ABUSE

214 West 6th, Suite 301
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PROPOSED CHANGES IN THE INCEST STATUTES

BACKGROUND

Until the 1983 legislative session, aggravated incest had been a D felony and incest an E felony under Chapter 21, Article 36. This class of felony allowed for the development over the last four years in Kansas of treatment programs for offenders and victims in which the offender is charged criminally and placed on diversion or probation. The offender must move out of the home and not return until permission is granted by the court. These programs have been found to be much more beneficial to the child victim than placing the child in foster care through juvenile court or than sending the offender to prison.

In addition, D and E felonies are exempted offenses under the Community Corrections Act with the exception of Article 35 sex crimes (incest is an Article 36 crime). Therefore, Community Corrections has an incentive to fund incest treatment programs. Johnson and Sedgwick Counties have both received some Community Corrections funding for their incest programs. However, the Sedgwick program's future Community Corrections funding is in question because of the change to a B felony for incest cases made in the 1983 session.

REVISIONS MADE IN THE 1983 SESSION

In the 1983 legislative session, incest with a child under the age of 16 was made a B felony and it was shifted to the title "Aggravated Indecent Liberties with a Child". Children 16 or over were left under the incest statutes. (Previously, all children under 18 were covered by the D or E felony incest statutes.) Secondly, the step parent and adoptive parent were deleted from the list of offenders for the 16 and over child, leaving a gap. (There was not testimony from the child sexual abuse treatment community on these changes as they were not aware of the proposed revisions.)

PROBLEMS WITH THE 1983 REVISIONS

1. It will be difficult to spread the diversion/treatment programs to new counties because B felony cases are not ordinarily granted diversion or probation. Therefore, it will be much more difficult to sell the program to additional district or county attorneys.

2. Problems created where programs currently exist:

   a. Offenders' attorneys are less likely to recommend the confession necessary for diversion or the guilty plea necessary for the District Attorney to recommend probation on a class B felony. Thus, more children will have to go through trials.

   b. Judges are much less likely to grant probation for class B felony cases.

3. Sending an offender to prison or placing a child in foster care does not help the victim but in fact re-victimizes the child:

   a. The child still loves the parent or relative, wishes to be safely reunited with the offender, and feels guilt for the offender's incarceration. The safe reunification of the family is possible only through the treatment programs, not through incarceration and release.

   b. Effective treatment of the child requires working with both the offender and the child.

   c. The child suffers the economic stress of the offender being incarcerated because in most cases the offender is the father or stepfather.

REVISIONS PROPOSED FOR THE 1984 SESSION

The changes proposed would basically return the incest statutes to the way they were before the 1983 changes were made. Two clean-ups to the pre-1983 statutes are included in the proposed 1984 revisions. All child victims are now included under "Aggravated Incest" (D felony) and all adult/adult incest is now under "Incest" (E felony).

(NOTE: If there is a particularly heinous case the offender can still be charged with Indecent Liberties, C felony; Rape, B felony; or Aggravated Sodomy, B felony.)

KANSAS INTRAFAMILY CHILD SEXUAL ABUSE (INCEST) PROGRAMS

Kansas has been in the forefront in the treatment of intrafamily child sexual abuse with the development of the first Kansas program in Johnson County four years ago. Since that time, 19 counties have received training on the diversion/treatment programs through SRS funding. Twelve counties have programs including Wyandotte and Sedgwick Counties, and six counties are developing programs. The program in operation the longest, Johnson County, has served 250 persons and has had no recidivism following the offenders' return to the home.

STATE OF KANSAS
Tenth Judicial District

OFFICE OF DISTRICT ATTORNEY

Attachment 4

DENNIS W. MOORE
District Attorney

Johnson County Courthouse
P.O. Box 728, 6th Floor Tower
Olathe, Kansas 66061
913-782-5000, Ext. 333

January 12, 1984

JOHNSON COUNTY CHILD SEXUAL ABUSE TREATMENT PROGRAM

To the public, incest is perhaps one of the most despicable crimes. On an emotional level it is hard to feel more than outrage at a man who would sexually abuse his daughter. However, the reality of prosecuting a case of incest requires more than an emotional response. Traditionally, it has been difficult to successfully prosecute an incest case. In the normal case, the only witness for the State is the victim, a frightened little girl who is called upon to testify against her father. Because the last incident may have occurred days or weeks prior to the time it comes to the attention of authorities, there is no physical evidence to corroborate the child's statement. To many prosecutors, these factors make the State's burden of proving the guilt of the defendant beyond a reasonable doubt appear very difficult, if not impossible. Thus, the traditional prosecution approach has been to encourage counseling to correct the problem in hopes that the problem will go away. It does not.

The Child Sexual Abuse Treatment Program in Johnson County began more than three years ago as a cooperative effort between the Mental Health Center, Social and Rehabilitation Services (SRS) and the District Attorney's Office.

The Kansas Code for Care of Children, K.S.A. 38-1521 provides:

> It is the policy of this state to provide for the protection of children who have been subjects to physical, mental or emotional abuse or neglect or sexual abuse by encouraging the reporting of suspected child abuse and neglect, insuring the thorough and prompt investigation of these reports and providing preventive and rehabilitative services when appropriate to abused or neglected children and their families so that, if possible, the families can remain together without further threat to the children.

Atch. 4

In accordance with the stated policy, the objectives of this program are:

(1) to protect the child;
(2) to correct the offenders behavior; and
(3) if possible, consistent with the first objective, to keep the family unit together.

This program seeks to accomplish these objectives by investigation by police agencies and SRS, prosecution and diversion through the District Attorney's Office and a treatment program for the victim, the offender and the entire family through the Mental Health Center.

Upon receiving a report of suspected child sexual abuse, a joint investigation is conducted by the local police agency and the child protection worker with SRS. The reports of both agencies are forwarded to the District Attorney's Office and if the information is sufficient, a complaint and warrant is filed against the alleged offender. The defendant is arrested, booked into the county jail and has a first appearance before the court. He is advised of the program and normally makes application within a relatively short time. A copy of the eligibility criteria is attached and it is important to note that this program is designed to treat only intra-familial sexual abuse and cases where no force or threat of force was used. If force was used, the case is treated as a rape case and the defendant is not eligible for the program.

After application to the program is made, a diversion conference is scheduled in the District Attorney's Office. Present are the defendant, his attorney, the District Attorney, the Assistant District Attorney in charge of prosecuting the case, the coordinator of the treatment program, and the psychologist or psychiatrist who may have evaluated the defendant.

One of the requirements for being accepted into the program is an acknowledgement by the defendant that he has committed one or more of the acts alleged. Kansas law prohibits use of any statement made by the defendant during the diversion conference in a subsequent proceeding, should diversion be denied. In determining whether a defendant is an appropriate candidate for diversion, I solicit input from treatment personnel, and I try to determine the defendant's attitude towards involvement in this program and whether he is willing to accept responsibility for the crime committed. If it is determined that defendant does not have an appropriate attitude or for whatever reason will not

benefit from the program, diversion is denied and prosecution proceeds. If diversion is granted, the defendant and his attorney are required to enter into a written diversion agreement with the District Attorney which subjects him to a highly structured treatment program at his own cost for up to three years. Conditions of diversion require that defendant have no contact with the child or other children determined at risk without written permission from the program coordinator and the District Attorney. He is also required to attend weekly individual and group counseling sessions at his cost as directed by the program coordinator.

Child victims and the wives of defendant are encouraged to become involved in group counseling sessions at the Mental Health Center. Although the defendant is criminally responsible for his behavior, the problem is viewed as a family problem and if the family is to remain together in the future it is important that the family be involved in the treatment program.

After a period of time and after the defendant has acknowledged to the child that he was wholly responsible for the act (this is done in the presence of a therapist), the defendant is gradually, over a period of time, reintegrated into the family. This is done only after the child has received instruction in how to protect herself from further incident and after personnel in the treatment program are confident that sexual abuse will not happen again.

If the defendant successfully completes the program, criminal felony charges after a three year period are dismissed. Failure to successfully complete the program results in prosecution of the original charge.

While there are obviously risks involved in this program, I believe this program is the most responsible method of dealing with the crime and the problem of incest. It assures protection of the child and appears to be successful in correcting the offenders behavior.

DENNIS W. MOORE
District Attorney

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