

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

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

10:00 a.m./~~pm~~ on March 13, 1984 in room 514-S of the Capitol.

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

Committee staff present: Mary Torrence, Office of Revisor of Statutes
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Representative Wanda Fuller
Pat Ireland, Kansas Committee For Prevention of Child Abuse
Dennis Moore, Johnson County District Attorney
Clark Owens, Sedgwick County District Attorney
Jean Sagan, private citizen
Larry Donaldson, Sedgwick County Sexual Abuse Treatment Program
Debbi Debbrecht, Sedgwick County Coordinator, Wichita Police Department and Wichita School System
Representative Robert Vancrum
Scott Lambers, Overland Park
Captain John Round, Overland Park Police Department
Chris McKenzie, League of Kansas Municipalities
Tom Kelly, Kansas Bureau of Investigation

House Bill 2835 - Sex offenses involving family members.

Representative Wanda Fuller presented background to the bill. She stated the reason the law needs to be reinstated is because offenders for incest are very treatable; and the whole purpose of this bill is to allow that to happen. The chairman referred to Section 4 of the bill and pointed out the Kansas Parentage Act deletes all references to legitimate and illegitimate children, and similar changes probably will be made in this bill as in the Kansas Parentage Act.

Pat Ireland testified in support of the bill. A copy of her testimony is attached (See Attachment No. 1).

Dennis Moore testified in support of the bill. Copies of his handouts are attached (See Attachments No. 2). He urged the committee to reinstate the law regarding incest as it was prior to 1983.

Clark Owens testified in support of the bill. He stated it is not often that a prosecutor asks penalties be decreased, but with this problem this will help. The child won't tell if daddy will be sent to jail. These cases will end up dismissed because they are harder to prosecute. By having the diversion program, we are bringing about greater degree of control over the problem. This will meet objectives to treat the family; keep the family together and minimize victimization of the child. Mr. Owens said he went back through records in Sedgwick County, the average year one or two cases were filed. Last year 22 aggravated cases were filed because people have become aware the problem can be treated, and it won't split up the family.

Jean Sagan appeared on her own behalf from the perspective of trying to save the child from continuing victimization. She spoke in support of lowering the penalty to allow the problem to be addressed. She said children very much love the person who has abused them. The child is told consistently, don't tell about this or I will go to jail. If the offender violates the diversion, that person will go to jail. The purpose of our criminal code is rehabilitation.

Larry Donaldson testified in support of the bill. He said, in addition, Sedgwick County District Attorney's office, law enforcement, education and the mental health community support the bill. This approach works well with the whole network of agencies involved

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on March 13, 1984

HB 2835 continued

with this problem. Mr. Donalson reported there are two types of sexual abuse offenders, the fixated offenders, and these offenders are extremely dangerous. The type of offender they are interested in are the regressed offenders, and they are very selective for therapy. He reported the ratio is the regressed offenders are involved in 58% to 65% of the sexually abused children reported, and that is incest that occurs within the family. Some people guess it is higher than that. Mr. Donalson explained the fixated offender is a person who grabs someone from a parked car or in a parking lot, and this person is usually reported. He said, in regard to community corrections funding, we are having a lot of difficulty with funding. If Senate Bill 692 passes, that will basically shut down this program, and all the rest, unless this bill goes through. If this bill passes, there is a strong chance of receiving the majority of funding from the Sedgwick County Community Corrections.

Debbi Debbrecht testified in support of the bill, and she said she supports the previous statements made. She stated as an educator she has observed a changed attitude in reporting sexual abuse. There is more willingness to report the abuse, because of the diversion program. They see the program as appropriate treatment for an offender. They see the program as preserving the family unit; children or offender don't want to be taken out of the home. The child doesn't want the offender to leave the home. She explained she is involved in working with abused children and reporting the offense. She learned from this year's workshop they are more aware of treatability of the regressed offenders. She stated she feels the treatment programs are vital to the community.

House Bill 2846 - Municipal court complaint signed by police not required to be sworn.

Representative Robert Vancrum explained his bill was requested by some law enforcement agencies. He explained the bill.

Scott Lambers appeared in support of the bill and introduced Captain John Round.

Captain Round testified in support of the bill. A copy of his remarks is attached (See Attachment No. 3).

Chris McKenzie testified in support of the bill. He explained that municipal court complaints would not have to be sworn to when signed by a law enforcement officer, just as traffic complaints presently are handled.

Senate Bill 803 - Repository of information on missing and unidentified deceased persons.

Tom Kelly appeared to explain the bill. He stated this type of legislation followed the incidence of the drownings in Colorado. The Federal Bureau of Investigation has set up a file for anyone missing may be entered into the file. Judge Mike Elwell supports this concept. He reported Oklahoma and Colorado have the law, and many of the states reply upon the FBI for information. The biggest thrust of the bill is that it is mandatory to report bodies to the FBI. The largest problem would be with runaway children. There are 70 missing persons noted in the record for the state of Kansas, but that does not include runaway children. Director Kelly explained it took Oklahoma two years to get their program started. The starting date might take a year because the bureau needs time for some training and to get set up. He stated the bureau is frequently involved when skeletal remains are found; this touches a need when a mandate is made. The chairman inquired if there were any suggestions for amendments? Committee discussion was held with him concerning adding a penalty clause to the bill. Director Kelly replied, he feels the penalty clause should be in there. In answer to a question, Director Kelly replied most police departments will maintain reported missing children, but there is no requirement that they file it. Senator Winter noted he had talked with Judge Mike Elwell, and Judge Elwell asked him to express his strong support for this bill because of his work with missing children. This has been a very positive tool to identify missing children.

Senator Winter moved to approve the minutes of February 28, 1984; Senator Burke seconded the motion, and the motion carried.

The meeting adjourned.

3-13-84

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Kaeti Dyk	5167 Lonest Whitewater	
Mildred Zuercher	411 S. Elm Whitewater	
Antwone Schmitt	125 SE 8th Newton	
Kim Erdell	204 W 5th	Topeka Police Dept.
Lee Sipes	" "	" " "
Jed V. Baehni	" "	" " "
Caroline Ailes	9137 Switzer, Overland Park	Shannon Mission PTA
Marsha Williams	9051 W 60th Len. Merriam, KS 66202	
Ruth Williamson	8208 Rosehill Rd, LENEXA	SHN. Msn. KS. PTA
Suella Calkins	5242 Bond Shawnee	Shannon Mission PTA
Lottie Ann Harris	9715 N. 92nd St. Overland Park, KS	PTA
Vicki Strickland	10004 W. 95th Overland Park, KS	PTA
Chris McKenzie	Topeka	League of Ks. Municipalities
Kath Ann Hacker	Olatche	Pres. Ks. Assn. of Educ. Bdr.
Joe Caspary	Olatche, Ks.	Tolson County DA's Office
Debra DeLorecht	Wichita, KS	Police / School Liaison Program
Clark V. Owens	535 N. Main, Wichita	District Attorney
Cheryl W. Daska	Wichita, Ks	Sedg. Co. Mental Health
Dorothy H. Scott	Topeka	KCPAA
Pat Sells	Lawrence	ICCPCA
Manda Fuller	Wichita	St. Leo
Jim Gore	Topeka	KCPAA
Nate Sagan	729 Illinois	
Clean Sagan	729 Illinois, Lawrence	self
John Round	10202 Nieman, D.P.	Overland Park Police

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Marietta Anderson	217 No. Holyoke Wichita	Planned Parenthood
Bill N. Fox	703 Litchfield "	" "
Barb Rarient	Topeka	K. Williams Political Causes
Rita Schlagowsky	Newton	Real Kans Extension
Maryrie Brown	Newton	" "
W. D. Belter	Oberland Park	Owens Brown
Bud Burke	Leawood	Senate



**KANSAS COMMITTEE FOR
PREVENTION OF CHILD ABUSE**

3-13-84
Attach. 1
214 West 6th, Suite 301
Topeka, Kansas 66603-3792
913-354-7738

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TESTIMONY OF

PAT IRELAND

ADVOCACY CHAIRPERSON

KANSAS COMMITTEE FOR PREVENTION OF CHILD ABUSE

on

HOUSE BILL 2835

SENATE JUDICIARY COMMITTEE

March 13, 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. 1



**KANSAS COMMITTEE FOR
PREVENTION OF CHILD ABUSE**

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

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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 chargeback 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.

OFFICE OF DISTRICT ATTORNEY

DENNIS W. MOORE
DISTRICT ATTORNEY

JOHNSON COUNTY COURTHOUSE
P.O. Box 728, 6TH FLOOR TOWER
OLATHE, KANSAS 66061
913-782-5000, EXT. 333

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 subject 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.

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

- (1) to protect the child;
- (2) to correct the offender's 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.

JOHNSON COUNTY CHILD
SEXUAL ABUSE TREATMENT PROGRAM

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 obvious 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 offender's behavior.

DENNIS W. MOORE
DISTRICT ATTORNEY

CHARGE FORM

AGGRAVATED CRIMINAL SODOMY

D. A. 's Name _____

Date of Offense _____

Defendant's Name _____

unlawfully, knowingly, willfully and feloniously commit

a) sodomy with a child under sixteen years of age, to-wit:

_____, who was not married to

_____, or

** b) cause a child under sixteen years of age, to-wit:

_____ to engage in sodomy with a person,

to-wit: _____ or an animal, to-wit: _____

c) sodomy with a person, to-wit: _____

who did not consent to the sodomy or caused a person, to-wit:

_____, to engage in sodomy with a

person, to-wit: _____ or an animal, to-wit:

_____ when the said _____

- i) was overcome by force or fear;
- ii) was unconscious or physically powerless;
- iii) was incapable of giving consent due to mental deficiency or disease which was known or reasonably apparent to the said

_____, or

iv) see statute.

in violation of K.S.A. 21-3506 and K.S.A. 21-4501(b).

** delete commit when using(b)

WITNESSES:

CRIME	K.S.A.	P.I.K.	CLASSIFICATION
Rape	21-3502	57.01*	B Felony
Indecent Liberties With a Child - <i>Any Child under 16.</i>	21-3503	57.05	<u>C Felony</u> - <i>Consent not here.</i>
Aggravated Indecent Liberties With a Child <i>↳ natural, step or adoptive.</i>	21-3504	57.06	B Felony
Criminal Sodomy - <i>illegal to be a homosexual or have sex to put</i>	21-3505	57.07	B Misdemeanor
Aggravated Criminal Sodomy	21-3506	57.08 (A,B,C)	B Felony
Adultery	21-3507	57.09	C Misdemeanor
Lewd and Lascivious Behavior	21-3508	57.10	B Misdemeanor
Enticement of a Child	21-3509	57.11	D Felony
Indecent Solicitation of a Child	21-3510	57.12	A Misdemeanor
Aggravated Indecent Solicitation of a Child	21-3511	57.13	E Felony
Prostitution	21-3512	57.14	B Misdemeanor
Promoting Prostitution	21-3513	57.15	A Misdemeanor
Habitually Promoting Prostitution	21-3514	57.16	E Felony
Patronizing a Prostitute	21-3515	57.17	C Misdemeanor
Sexual Exploitation of a Child	21-3516	57.12A	E Felony
Sexual Battery	21-3517	57.19	A Misdemeanor
Aggravated Sexual Battery } <i>Good if you can't make a rape.</i>	21-3518	57.20-57.24	D Felony
Incest - Child 16 or more	21-3602	58.03	E Felony
Aggravated Incest - Child can be 16 or more.	21-3603	58.04	D Felony

21-3501 - Definitional Statute
21-3505 - New Rape Statute

RAPE
*See Also 57.02
57.03 - *credibility.*
57.04
INSTRUCTIONS

*Sexual Fondling - catchall phrase, different from Unlawful Sex act.
- look at the
Sexual Battery - is a lesser included of Rape. - helpful.
State v. Mann - Rape Trauma Syndrome.*

March 13, 1984

TESTIMONY ON HOUSE BILL 2846

By John E. Round

Captain, Operations Division, Overland Park Police Department

My name is John Round. I am a member of the Overland Park Police Department. I am here today on behalf of Myron Scafe, Chief of Police, to speak in support of House Bill No. 2846. This bill, if enacted, would eliminate the need for misdemeanor complaints initiated by police officers to be notarized.

During 1983, several thousand misdemeanor prosecutions were initiated by police officers in Overland Park. At the present time, those misdemeanor complaints must be notarized prior to the time that the accompanying Notice to Appear is served on the defendant. This present procedural requirement is burdensome for two reasons. First, the procedure creates unnecessary delay, because often there is no notary immediately available during late night hours, and a defendant is then detained until such time as the documents can be notarized. Second, there is frequently a cost factor relating to overtime salary expenses resulting from calling a notary back to duty after the end of that person's work day.

It is our belief that eliminating this requirement would have no significant impact upon the municipal court system or upon municipal prosecutions. The notarization requirement is purely procedural and appears to serve no real purpose. It does not relate to the substantive issues involved in the courtroom. Courts do not rely upon the notarized complaint -- rather, they have in the past and will continue in the future, to rely upon sworn testimony provided by witnesses.

Once again, on behalf of the Overland Park Police Department, I speak in favor of this bill. I sincerely appreciate the opportunity to appear before this Committee. I would be happy to answer any questions that you might have.