Approved April 10, 1985
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Senator Robert Frey at
Chairperson

10:00 a.m./p.m. on March 28, 1985 in room 514-S of the Capitol.

All members were present except: Senators Frey, Hoferer, Burke, Feleciano, Gaines, Langworthy, Parrish, Steineger, Talkington, Winter and Yost.

Committee staff present:

Mary Sue Hack, Office of Revisor of Statutes
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Representative Bob Vancrum
Representative Ed Bideau
Suzanne Hardin, Prairie Village, Kansas
Commissioner Robert Barnum, Social and Rehabilitation Services
John Willard, Olathe Attorney
Sydna Reeves, WaKeeney, Kansas
Jim Clark, Kansas County and District Attorneys Association
Professor Emil Tonkolich, Kansas University Law Professor
Steve Tatum, Johnson County Assistant District Attorney
Georgia Nesselrode, Johnson County District Attorney's Office
Ron Smith, Kansas Bar Association
Elizabeth Taylor, Kansas Association of Domestic Violence Programs

House Bill 2262 - Preferences in awarding custody of child to person other than a parent.

Representative Bob Vancrum, prime sponsor of the bill, stated the purpose of the bill is to establish in statute, which would be the policy of the state, that preference be granted to relatives, and particularly grandparents, of a child placed for adoption when parental rights have been terminated by court. He explained, the two significant changes in the law creates a child placement and child custody preference to relatives, and secondly, to another person with whom the child has close emotional ties. Representative Vancrum stated Judge Herbert Walton is very supportive of the bill. A committee member inquired, why notices to the grandparents or the closest relative, why not other relatives as well? Representative Vancrum replied, he had substantial resistance to broaden the statute of whom to notify. He tried to focus on closest blood relative and they would notify other relatives.

Representative Ed Bideau responded to the committee member's concern notifying relatives. He stated the goal is to try to decide where to put notice requirement so it is the least burdensome and not cause delays. SRS can provide to the court and the county or district attorney's office the names of the relatives and grandparents. The thrust of the bill is to give notice that they can come in and petition the court. The wording in the bill still states best interest of the child is the prime factor to be considered.

Suzanne Hardin, Prairie Village, Kansas, testified this gives the relatives their day in court and allows the court to determine which placement is in the child's best interest. For the child, the family is his community and relatives deemed suitable for parenting can develop emotional bonding with the child and can demonstrate that the child, in his real family, has a permanent predictable environment in which to develop.

House Bill 2262 continued

Copies of her testimony, and letters from Herbert W. Walton, Dr. Herbert C. Modlin, Dr. Wayne Hart, Dr. Arthur Cherry are attached (See Attachments I).

Commissioner Robert Barnum, Social and Rehabilitation Services, stated to provide this needed protection, they are in support of the bill. This will ensure grandparents or other close relative consideration when out of home placement is necessary. In cases where parental rights have not been terminated, they will look to placement to that family. This will reduce the cost of foster care in out of home placements.

John Willard, Olathe Attorney, stated he has been in practice 14 years as guardian ad litem in juvenile court. If want to consider the extended family as a placement, we have to tell them what is going on. He has been involved with grandparents who call him wanting to know what is going on with their grandchildren. He said it is especially important with abused children to try to put them into a situation where they have stability. This is an important piece of legislation, and I hope this is stating what already is the policy of the courts. It is important this bill be passed. A copy of his remarks is attached (See Attachment II).

Sydna Reeves, WaKeeney, Kansas, urged the committee to pass this bill so they will have a chance to adopt their grandchildren who are now in a foster care home. Copies of her testimony and two other letters are attached (See Attachment III).

Substitute for House Bill 2454 - Preliminary examinations and depositions in criminal cases.

Jim Clark, Kansas County and District Attorneys Association, testified his association is in support of the substitute bill. The thrust of the original bill is contained in lines 36 - 38, which amend the statute to allow hearsay evidence to be admitted in the preliminary examination. A copy of his handout is attached (See Attachment IV). He introduced Professor Emil Tonkolich, Kansas University Law Professor.

Professor Tonkolich stated he had been a trial attorney in the Department of Justice in Washington D.C. and sometimes it turned into mini-trials, and that is what we are trying to avoid, mini-trials. Forty other states permit hearsay. Eliminating the hearsay requirement will greatly speed up the process, because preliminary examinations sometimes last hours. By excluding hearsay it proposes a tremendous burden on the system. It will save substantial time and money by doing this. Without preliminary examinations and hearsay, it will reduce discovery available to defense. About every court in the United States had said preliminary examination is not a discovery tool. It is to be used as a probable cause determination. This bill will bring Kansas into conformity with the federal government. Discovery should be handled outside of preliminary examination.

The chairman pointed out New Section 2 provides a lengthy method of discovery that doesn't exist now.

Steve Tatum, Johnson County Assistant District Attorney, stated he has been a prosecutor for about 10 years. He started in Wichita, and the first year and a half he did preliminary hearings on a daily basis. This took a lot of the court judges time and the victim of crime's time.

Substitute for House Bill 2454 continued

He said this will be a good bill in that it will have many benefits for many people in the state of Kansas. There will be time savings and dollar savings, because new judges will not have to be appointed. It will speed up cases. It would ease county jails with their crowding problem. Most offices in Kansas have an open file policy. We don't want to deny discovery.

Georgia Nesselrode, Johnson County District Attorney's Office, appeared in support of the bill. She said she had worked in the Johnson County office for eight years. The crime victim goes through trauma, humiliation and being judged when testifying at the preliminary hearing. She asked the committee to consider the emotional well-being of the crime victims, because they do not have help to get through the preliminary hearing. She asked the committee to read her handout from a victim of rape (See Attachment V).

Ron Smith, Kansas Bar Association, testified the bar is in support of the bill. He addressed Section 2 of the bill. He explained this is a compromise bill that is from two separate pieces of legislation. Assuming prosecutors maintain an open file policy, that is fine. In several other states the courts have allowed criminal discovery prior to the time of trial. He explained Section 2 of the bill.

Elizabeth Taylor, Kansas Association of Domestic Violence Programs, appeared in support of the bill. She stated she had nothing to add to what has been heard.

House Bill 2455 - Service of process by mail.

Ron Smith explained the bill was requested by the Wichita Bar Association and the Kansas Bar Association. He said this bill will put the state more into conformity with the way federal courts handle service of process. He explained the bill to the committee. Committee discussion with him followed.

Matt Lynch, Kansas Judicial Council, explained the amendments proposed by the judicial council.

Hearings were concluded on the bills.

The chairman announced he and others would be working on Senate Bill 145 and House Bill 2016 during the noon hour and invited anyone who is interested to join them in his office.

The meeting adjourned.

Copy of guest list attached (See Attachment VI).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE DATE: 3-28-85

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
C A T R	KU Law School	
Steve Tatum	JoCo Asst. D.A.	
Georgia Kesselring	"	
Dr Lois R. Scibetta	503 Kansas Ave	KS St Bd of Nursing
Beulah Reeves	Ness city	Kansas
Barbara Sherlock	Wakeeney KS.	
Sydna K. Reeves	Wakeeney KS	
Leon A. Reeves	Wakeeney, KS.	
Mary Price	Topeka	A.G.'s office - intern
Don Stule	Topeka	Rly Kelly Assn.
Marjorie VanBuren	Topeka	OJA
Jon Damewood	Olathe, KS	
Jo S. Welch	Olathe, KS	attorney
Suzanne Hardin	Prairie Village Ks	
Tom Smith	Topeka	KC Bar Assn
Mike Slothy	Lawrence	Eastern Sen Parish
Matt Lynch	Topeka	Judicial Council
Bob Bamm	"	SRS
Barb Reinert	"	Planned Parenthood

Attch. VI

SENATE JUDICIARY COMMITTEE - HB 2262 - MARCH 28, 1985 3-28-85

Testimony of Suzanne Hardin, Prairie Village

HB 2262 allows relatives their "day in court". Allows the court to determine which placement is in child's best interest in Child Code and Divorce proceedings. Notification is needed. Cost = $1.57. Clerk sends notice.

Testimony is significant: Administrative Judge, Honorable Herbert Walton; Menninger Foundation, Dr. Herbert Modlin; Kansas Dept. SRS; Arthur Cherry, pediatrician and past president of KCPCA; Wayne Hart, child & adolescent psychiatrist; Jon Willard, attorney & guardian ad litem. Are 19 sponsors from the House. It passed with only 10 Nay votes.

Research = 10,000 - 15,000 Kansas children pass through SRS yearly. At any one time 5,000 children are in SRS custody. 3,997 are in foster or group homes. Only 393 of the 5,000 are placed with relatives. 230 are adopted yearly. 191 are awaiting final adoption.

Cost Effective Data: 1) 130 of the 191 adoption cases will receive monthly payments equivalent to foster care subsidy during child's minority. 2) Foster care for 12 year old for 30 day month = $270.00. Relative caring for same child = $000.00. If relative needs assistance(ADC shared living) = $167.00. Yearly Cost of Foster Care: 1)Johnson and Leavenworth Counties = $1,800,000.00; Shawnee & Douglas Counties = $2,629,848.00; Sedgwich County= $3,894,276.00. Savings of Time & Work: Placement with relatives = less paper work and less time monitoring the child.

Impact: The child should be in the least disruptive & least restrictive placement. For the child, the family is his community. Relatives deemed suitable for parenting can develop emotional bonding with the child & can demonstrate that the child, in his real family, has a permanent predictable environment in which to develop. Placing the child with even the best intentioned strangers, cannot provide to the child advantages of his roots and a sense of belonging within his extended family over time and space. Foster care "drift" is abuse to the child. Foster homes are temporary or only semi-permanent & deprive the child of a sense of belonging within his family. We focused on "best interest of child" in determining close emotional ties with "another person" but not a relative. Refer to letters of Judge Walton (pg. 4), Dr. Modlin (pg 5,5a), Dr. Hart (pg 6), Art Cherry (pg 7) who support this position. "I would not amend the law to provide that the relatives must have close emotional ties with the child...relatives have more of a basic or root desire to care for their own"(Judge Walton). "There are a number of meritorious reasons why relatives may not have had opportunity of developing "close ties" with a child relative" (see pg 3,3a letter by S. Hardin). Ongoing "close ties" are not relavent to the extended families enduring capacity to care for the child in a closely bonded environment over time.

3/28/85 Attch. I

March 25, 1985

To The Senate Judiciary Committee:

HB 2262 is scheduled for a hearing before your committee Thursday, March 28th.

There are many significant supporters of HB 2262. Some are:

Kansas Department of Social and Rehabilitative Services.
The Menninger Foundation,
Greater Kansas City Association for Education of Young Children.
Arthur C. Cherry, Topeka pediatrician and past president of the Kansas Committee for Prevention of Child Abuse.
Wayne Hart, child and adolescent psychiatrist at the Family and Child Psychiatric Clinic in Kansas City; on the staff at Crittenton Center for Emotionally Disturbed Youth, Marillac Center for Children, Ozanam Home for Boys and Kansas Neurological Institute.
Kansas Grandparents Care Network, Inc. representing over 400 members.
Jon S. Willard, Olathe attorney and guardian ad litem.
Judge Herbert Walton, Administrative Judge of the Tenth Judicial District.

The supporters of HB 2262 would like to ask you to consider the bill for passage as it presently reads. To attach an amendment to the bill or to alter the wording would not, in our opinion, be in the child's best interest. The bill is fair to all parties seeking custody of the child. It asks the court to consider the relative first if that placement would be in the best interest of the child.

A consideration requiring the relative to have close emotional ties with the child would recreate some decided disadvantages for the child and the relatives that presently exist.

There are a number of meritorious reasons why relatives may not have on-going "close ties" with the particular child relative:

1. The relative and child may not be physically close due to different geographical locations.
2. The child may have been in a day care setting that would have interfered with the development of close ties between the relative and child.
3. The child may have been with foster parents or in a residential care facility that would have prevented the development of close ties between child and relative.
4. One parent could have reduced the opportunity for close ties between a relative and child for personal reasons that should not have spilled over into the child-relative relationship.

In drafting HB 2262 we focused on "the best interest of the child" in determining not to require close ties between a relative and a child relative. Our reasons were:

1. The extended family member's enduring capacity to care for the child relative over a period of time is a significant consideration that is in the best interest of the child.
2. Family roots are vital to the child when it is possible to place the child with relatives. Removal of the child from all family members is additional trauma to the child. Placement with a relative leaves the child's world - e.g. his community - intact. This is in the best interest of the child and his future development.

Attch. I

3. "Close ties" are germane to the child's age and not to what is best for the child.
    a) an infant develops close ties quickly because of total dependency on the caretaker. This closeness is not relative to the infants well-being over a period of time.
    b) an older child takes longer developing "close ties". Again, the child develops close ties because of physical proximity with the caretaker which does not pertain to what is in the best interest of the child for the rest of that child's life.
4. A child's "close ties" with foster parents or a regular non-related caretaker lets the observer know the child has been in their care for a length of time. It does not determine the well-being of the child or if it is the best placement for the child over a period of time.

Children develop close ties with many people throughout their childhood. This is desirable for healthy social development. Families do not give up their right to raise their children because they have close ties with other adults in the community. It should be no different for the children who have been removed from the custody of their parents. Those children still have extended family.

Children should be allowed preferential placement with a relative irregardless of the immediate "close ties" with others because of the ambiguity of those relationships. We feel it should not be a requirement for the court to have to consider whether "close ties" exist with a relative when assessing the appropriateness of the child's relative for placement.

Again, we support HB 2262 as it presently reads: .....1. a relative of the child and 2. a person with whom the child has close emotional ties.

Sincerely yours,

Suzanne H. Hardin

Suzanne H. Hardin

Attch. I

3-28-85

STATE OF KANSAS
TENTH JUDICIAL DISTRICT

HERBERT W. WALTON
DISTRICT JUDGE, DIVISION NO. 1
JOHNSON COUNTY COURTHOUSE
OLATHE, KANSAS 66061

DIXIE KURTZ
ADMINISTRATIVE ASSISTANT

VICKI KUNKEL, C.S.R.
OFFICIAL COURT REPORTER

(913) 782-5000 EXT. 460

March 20, 1985

The Honorable Edward Bideau
Kansas Representative
Room 182 West
State House
Topeka, Kansas 66612

In re: House Bill 2262

Dear Representative Bideau:

I write this letter relative to House Bill 2262 or more specifically the provisions contained in Section 3(d). In my judgment the bill correctly reflects the first priority of the placement of children with a relative or with a person having close emotional ties with the child. In the final analysis the judge should give preference to what is in the best interest of the child and it would appear to me that blood relatives have more of a basic or root desire to care for their own. Therefore, I would not amend the law to provide that the relatives must have close emotional ties with the child. The judge will see that the placement serves the interest of the child.

It is further my understanding that Section 1, which contained portions of the Uniform Child Custody Jurisdiction Act, has been removed from the bill.

It was a pleasure talking with you and I compliment you on your knowledge and understanding of matters involving the family.

With kindest regards, I remain,

Sincerely yours,

Herbert W. Walton

HWW/dlh

Attch. I

3-2

The
Menninger
Foundation

March 25, 1985

Mrs. Susan Hardin
8229 Nall
Prairie Village, Kansas 66208

Dear Mrs. Hardin:

I understand that a current House Bill will be considered by the Senate Judiciary Committee. I also understand that a suggestion has been made to amend the bill by requiring emphasis or priority in placing children with those to whom the children has a meaningful emotional tie, whether such persons are relatives or people entirely outside the family structure. The importance of an "emotional tie" is obvious and must not be discounted. At the same time, if this tie, this apparently comfortable situation for the child, is a recently developed one in a foster family, there may be additional factors to be considered. Concerned and responsible relatives, such as grandparents, aunts and uncles, can provide a permanent, long-term relationship which has certain advantages.

Children need a sense of security if they are to grow and develop optimally. A home setting which can be experienced as dependable and continuous over time, contributes to that sense of security. Foster homes, unfortunately, have an aura of temporary or only semi-permanent nature built into the designation of "foster", meaning not real. This aura will be emphasized if other foster children move in and out of the home on occasion.

A pair of blood relatives deemed suitable for parenting can develop satisfactory emotional bonding with the child and, with conviction, can demonstrate that the child, in his real family, has a permanent, predictable environment within to develop. There are exceptions to

(continued)

Box 829
Topeka, KS 66601
913 273 7500

Attch. I

all these statements, but as a general rule, a sense of belonging within one's family and an opportunity for contact with members of the extended family, are opportunities for the child which should receive serious consideration.

Sincerely yours,

H.C. Modlin

Herbert C. Modlin, M. D.
Noble Professor of Forensic Psychiatry

HCM:st

Attch. I

The Family and Child Psychiatric Clinic, Inc.

Active Member, American Association of Psychiatric Services for Children

4400 BROADWAY • KANSAS CITY, MISSOURI 64111-3372 • TEL. 561-2025

Child Psychiatry
Adult Psychiatry
Clinical Psychology
Social Work
Educational Services

March 15, 1985

To Whom It May Concern:

In regard to House Bill #2262, I believe that extended family members should be considered first for custody of children who have been removed from the parent's environment or in divorce cases where parent's rights are severed, when deemed in the best interests of the child, before resources outside of the extended family be considered for custody.

Wayne Hart M.D.

Wayne Hart, M.D.
Child & Adolescent Psychiatrist

WH:jw

Attch. I

3-85

ARTHUR C. CHERRY, M.D.
3118 WESTOVER ROAD
TOPEKA, KANSAS 66604

Honorable Bob Vancrum
State of Kansas House of Representatives
State Capitol Room 115-S
Topeka, Kansas 66612

February 16, 1985

Dear Representative Vancrum:

I am writing in support of the House bill concerning custody of children in need of care. My background and reason for concern is over twenty-five years as a practicing pediatrician in Kansas. I also have a special interest in children and their potential abuse. I have served on the Board of Directors of the Kansas Committee For Prevention of Child Abuse having just finished a two year term as president of that organization. In my experience and in reviewing data from SRS it is apparent that children in foster care are particularly vulnerable to abuse. Particularly tragic is the propensity of those children to move from one foster home to another depriving them of the nurturing experience of a family. It is also apparent that these children grow up lacking experiences which help them to form strong ties as they themselves become parents. The result is a life of violence and more abuse.

This bill appropriately directs the court to place the child with a relative or person with close emotional ties. It appropriately directs notification of the child's grandparents before placement.

It is apparent that the provisions of this bill will result in an additional effort to search out such family members. In my opinion this extra effort will reap great rewards. The placement of the child with caring family members will result in a much greater chance of that child growing up to be a useful and productive citizen who will not repeat the cycle requiring a greater investment of effort and money in the future.

I hope that your committee will give favorable consideration to this bill.

Sincerely,

Arthur Cherry M.D.

Arthur Cherry, M.D.

Attch. I

TESTIMONY OF JON S. WILLARD
TO SENATE JUDICIARY COMMITTEE
March 28,1985
213B E. Santa Fe, Box 575
Olathe, Kansas 66061

3-28-85

1. Basic intent of act is to encourage placement of children with extended family whenever that is feasible rather than to have them in foster care with strangers.

2. Placement with extended family when available is psychologically beneficial as it lessens the trauma of removing the child from the immediate family.

3. Such placement will generally be easier to monitor by the State and will be less expensive in terms of the support paid to the foster parent.

4. In order to be reasonably considered as resources, the extended family (usually grandparents) must be informed of the dispositional hearing so that they can participate; the interested party statute is a seldom used vehicle and it presupposes the family member knows the existence of the proceedings which is often not the case.

5. The advantages of such placements will benefit the child as well as the State who is interested in the child's welfare; any minor inconvenience in additional notification provisions are far outweighed by these substantial benefits.

3/28/85 Attch. II

HB2262

Dear Senator Frey & Members of the Committee:

We want to adopt our grandchildren who are now in a Foster care home.

We have a strong bond of love for these children and they for us.

The six most important people in a childs life are the childs parents and the grandparents.

If the childs parents fail and the grandparents are able to take them and give them a good homeI believe that they should be given the first chance to do so.

We helped our daughter to raise her three daughters in our home for 1&½ years. The girls have strong ties with us. They are 2,3,and 4 years of age. Why must they go to strangers when we are able and willing to take responsibility for them.

We urge the passing of this bill so that we may have the chance to adopt in the next court hearing.

Because we didn't know enough about law and lawyers we have lost what we hold most dear our grandchildren.

Please help grandparents be reunited with their grandchildren Lets stop the trauma and anxiety that our grandchildren suffer, through no fault of their own.

Please bring joy to Grandparents all over Kansas who are in need of the passing of this bill. Thank you for concern in this matter.

3/28/85
Attach III

Sincerely,

Leon & Sydna Reeves

Leon M. Reeves Sydna Reeves

GAYLE MOLLENKAMP
REPRESENTATIVE, 118TH DISTRICT
LOGAN, GOVE, TREGO, GRAHAM
AND PARTS OF NESS AND
ROOKS COUNTIES
HC2, BOX
RUSSELL SPRINGS, KANSAS 67755

STATE OF KANSAS

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: ENERGY AND NATURAL RESOURCES
LOCAL GOVERNMENT
PENSIONS, INVESTMENTS AND
BENEFITS

March 18, 1985

Lillian M. Naasz
624 N. 6th
Wakeeney, Kansas 67672

Dear Mrs. Naasz:

I received your letter concerning HB 2262.

I am pleased to inform you it passed the House, 114 yes, 10 no. If it passes the Senate, then it will go to the Governor. When the Governor signs it, we are home free.

Thanks for your letter. I also share your feelings. We were foster parents for about ten years. We understand the trauma these children go through.

Your Representative of the 118th

Gayle Mollenkamp

Gayle Mollenkamp

GM: jw

Attch. III

Re: HB #2262

To Whom it may concern:

My husband and myself had cared for the physical and emotional needs of our grand daughter, now age nine years, mostly in our home for about four years thus forming a strong bond between us. She was taken from us and we were denied any visitation by the step father.

After two and one half years we filed a petition based on legislation passed in 1984reguarding rights of grand parents visitation. It was at this time that the Child's parents declaired her a child in need of care thus placing our grand daughter in foster care. This was a very negative experience for the child.

With the help of an attorney we found her after eight weeks only to learn that she had been terribly abused by her step father (physically)

Had HB #2262 been law at this time our grand daughter would have been spared a lot of trauma, the state considerable money and she would be in our home rather than in a foster home.

HB #2262 is vitally needed. We urge its passing.

We rejoice with other Kansas grand parents in knowing the good work done by our legislators for the good of our grand children and for our state.

Yours truly,
Native Kansans
Ulysses E. Naasz
Lillian M. Naasz

Lillian M. Naasz

624 N. 6th.
WaKeeney, Ks. 67672

Attch. III

Kansas County & District Attorneys Association
827 S. Topeka Ave., 2nd Floor • Topeka, Kansas 66612 • (913) 357-6351
EXECUTIVE DIRECTOR • JAMES W. CLARK

Substitute
for
HOUSE BILL 2454

The Kansas County and District Attorneys Association is in support of Substitute HB 2454. The thrust of the original bill is contained in lines 36 - 38, which amend the statute to allow hearsay evidence to be admitted in the preliminary examination.

I. **Constitutionality** Both the U.S. Supreme Court and the Kansas Supreme Court have ruled that the Constitution does not prohibit the use of hearsay evidence at the preliminary hearing. Gerstein v. Pugh, 420 U.S. 103; State v. Sherry, 233 Kan. 920

II. **Legislative Determination.** When the Kansas Court of Appeals ruled that hearsay evidence was admissible, it did so in reliance on earlier Kansas cases decided prior to the recodification of the Code of Civil Procedure, saying that such sweeping changes did not intend to prevail over case law. State v. Cremer, 8 Kan. App. 2d 694. The Supreme Court, however, reversed that decision, finding that the general revisions to the Code of Civil Procedure made the rules of evidence applicable to every civil or criminal proceeding, **except where specifically relaxed by procedural rule or statute.** State v. Cremer, 234 Kan. 594. In short, determination of whether hearsay evidence is admissible is a legislative determination.

III. **Policy Question.** At issue is whether Kansas wishes to join the majority of states, and the federal government, in allowing hearsay evidence at the preliminary. The obvious benefit is reducing the inconvenience, expense and anguish of witnesses; as well as reducing delay and congestion in the court dockets. On the other hand, we have heard that the present system allows attorneys to better prepare their cases, and provides discovery to criminal defendants. Neither of these reasons are the intended purpose of the preliminary hearing, which is to determine probable cause to hold a defendant for trial. The defense bar's concern, however, is dealt with at New Section 2 of the bill, which allows defendants to take depositions of witnesses listed on the complaint or information. On balance, the Substitute Bill is a workable compromise between concern for both victims and defendants.

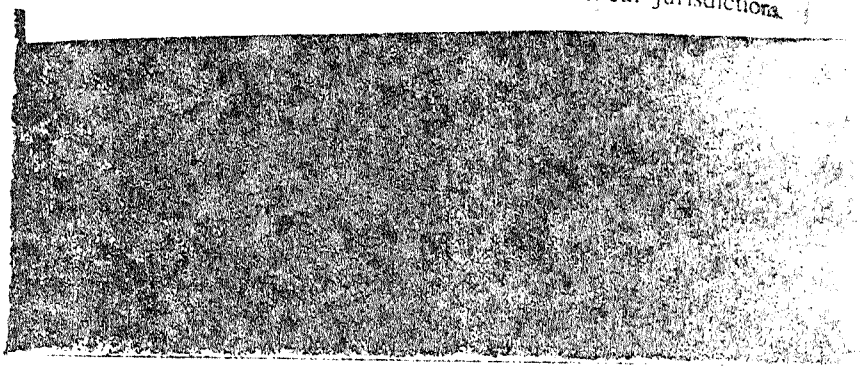
3/28/85
Attch. IV

Executive and Legislative Recommendation 3:
Legislation should be proposed and enacted to ensure that hearsay is admissible and sufficient in preliminary hearings, so that victims need not testify in person.

Victims of crime are frequently required to come to court time after time in connection with a single case. Separate appearances are often required for the initial charging of the case, preliminary hearing, and grand jury testimony, in addition to repeated appearances for pre-trial conferences and the trial itself. The penalty for the victim's failure to appear at any court proceeding is usually dismissal of the case.

Requiring the victim to appear and testify at a preliminary hearing is an enormous imposition that can be eliminated. A preliminary hearing, as used in this context, is an initial judicial examination into the facts and circumstances of a case to determine if sufficient evidence for further prosecution exists. It should not be a mini-trial, lasting hours, days, or even weeks, in which the victim has to relive his victimization. In some cases, the giving of such testimony is simply impossible within the time constraints imposed. Within a few days of the crime, some victims are still hospitalized or have been so traumatized that they are unable to speak about their experience. Because the victim cannot attend the hearing, it does not take place, and the defendant is often free to terrorize others.

It should be sufficient for this determination that the police officer or detective assigned to the case testify as to the facts, with the defendant possessing the right of cross-examination. The defendant's right to pre-trial discovery of the government's case outside the courtroom and pursuant to local rules would remain intact. The sufficiency of hearsay at a preliminary hearing is firmly established in the federal courts, as well as in a number of local jurisdictions.



Attch. IV

3-28-85

February 24, 1985

The House Judiciary Committee
Topeka, Kansas

RE: House Bill 2454 to amend KSA 22-2902

Members of the House Judiciary Committee:

Last year at this time I came to Topeka to testify before you as a victim of crime. This year I am unable to personally testify, but again I am asking you to amend the preliminary hearing statute KSA 22-2902 by adopting House Bill 2454.

I was a victim of rape four years ago at the age of twenty. Due to very strong evidence in my favor, and my belief in our system of justice, I felt very confident and unafraid about going to trial---until the preliminary hearing. I was asked humiliating, irrelevant, detailed questions about my past that no attorney would have dared to ask before a jury. It was insinuated that because I lived alone, I was promiscuous; because I jogged in shorts, I had asked for it. I left the preliminary hearing stunned and disillusioned. I was mortified at the thought of going through this again at the trial. By the trial date I was so afraid and upset I literally almost could not walk into the courtroom. As I found out, none of what was said in the preliminary carried over to the trial, which made the preliminary hearing almost useless as a means of discovery.

The primary use of a preliminary hearing for the defense attorney seems to be to upset and intimidate the victim and to try to frighten them into not being able to testify at the trial. By intentionally putting the victim under extreme pressure, they are able to elicit answers that may not be interpreted the way the victim intended. These senseless, degrading questions leave the victim feeling used and defeated by our system.

Considering all the other detrimental aspects of the preliminary hearing, such as time and money spent, it seems senseless to put victims and witnesses through this added emotional trauma.

On behalf of victims and witnesses, I ask for your careful consideration in eliminating these traumatic, time-consuming, and costly preliminary hearings.

Sincerely,

Valerie

Valerie

3/28/85
Attch. I