

MINUTES OF THE SENATE COMMITTEE ON JUDICIARYThe meeting was called to order by Senator Jeanne Hoferer at
Chairperson10:00 a.m./p.m. on April 1, 1985 in room 514-S of the Capitol.

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

Committee staff present:

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

Conferees appearing before the committee:

Commissioner Robert Barnum, Social and Rehabilitation Services
Dennis Moore, Johnson County District Attorney
Clark Owens, Sedgwick County District Attorney
Joe Cosgrove, Johnson County Assistant District Attorney

House Bill 2059 - Mental care and treatment of child in need of care.

Commissioner Robert Barnum, Social and Rehabilitation Services, explained the two changes to the Kansas Code for Care of Children relating to mental care and treatment and educational decisions concerning child in custody of SRS. He explained the passage of these provisions will clarify authority granted to SRS in temporary custody cases and ensure more timely provision of services in these areas. A copy of a statement by Robert C. Harder is attached (See Attachment I). A committee member inquired how this bill relates to Senate Bill 259 that was in the education committee. Commissioner Barnum replied the provisions in Senate Bill 259 would remain.

Substitute for House Bill 2105 - Exploitation of a child.

Dennis Moore, Johnson County District Attorney, appeared in support of the bill. He explained this would make it a crime to possess any film photograph, negative, slide, book, magazine or other printed or visual medium in which a real child is shown engaging in sexually explicit conduct with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender, the child or another. For example, photograph albums are found with pictures of young children in obscene poses. He passed around pictures to the committee members that were taken from an album such as this. He explained this bill would make it a crime to possess this kind of material. A committee member inquired why age 16 and not 18? Mr. Moore replied it is consistent with the indecent liberties statute.

Clark Owens, Sedgwick County District Attorney, appeared in support of the bill. He said it brings about two important changes in our law. It will cover a loophole in the law involving situations of noncommercial exploitation of children and it will take care of child pornography. Child pornography is not the same type of pornography as seen in bookstores; it is sold in black market. The passage of this bill will bring about much greater control of the situation. A committee member inquired if it was possible to use contributing to the delinquency of a minor statutes? Mr. Owens replied, we tried that; they could prove he took pictures but could not prove he was fondling the children. It is only a misdemeanor violation in those statutes.

Joe Cosgrove, Johnson County Assistant District Attorney, appeared in support of the bill. He added he found in his prosecution the most

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on April 1, 1985

Substitute for House Bill 2105 continued

serious of sex offenders are the ones that possess this type of material, and he feels this bill will help in this type of prosecution.

Senator Burke moved to report the bill favorably. Senator Gaines seconded the motion. The motion carried.

Staff pointed out the crime of sodomy appears under the aggravated criminal statute, and it also appears in the indecent liberties of a child section. It should be taken out of the indecent liberties section. It should not appear in both sections.

Senator Burke then moved to reconsider action taken on the bill. Senator Winter seconded the motion. The motion carried.

Following committee discussion, Senator Burke moved to amend the bill as staff had indicated. Senator Gaines seconded the motion. The motion carried.

House Bill 2059 - Mental care and treatment of child in need of care.

Committee discussion was held on the bill. Senate Bill 252 was considered to be amended into this bill. It was the consensus of the committee to wait until the House committee had hearings on the bill.

The meeting adjourned.

Copy of the guest list is attached (See Attachment II).

FORMAT FOR LEGISLATIVE SUMMARIES - 1985

State Department of Social and Rehabilitation Services

Statement Regarding HB 2059

- 1. Title - An Act concerning the Kansas Code for Care of Children; relating to mental care and treatment and educational decisions; amending K.S.A. 1984 Supp. 38-1513 and repealing the existing section.
- 2. Purpose - K.S.A. 38-1513 gives the Secretary the authority to consent to hospital, medical, surgical and dental treatment when the child has been placed in SRS custody after disposition. The statute does not indicate if this provision provides authority for the Secretary to provide mental care and treatment. This bill would clearly grant this authority.

Similarly new Section 2 would clarify that for children in the custody of the Secretary, the agency could be responsible to make educational decisions for the child.

- 3. Background - For children in the custody of SRS, parental rights terminated, the Code specifies that the Secretary is guardian for the child. SRS's Legal Staff have determined that on the basis of parental rights being terminated, SRS may authorize mental care and treatment for the child. However, for those children whose parental rights have not been terminated, our legal staff has questioned whether we have specific authority.

Many of the children in SRS custody are in need of mental care and treatment as the result of their tramatic past experiences. It is, therefore deemed essential that SRS have authority to provide such treatment as necessary for the effective care and treatment of the child.

PL 94-142 requires the development of an Individual Education Plan (IEP) for each exceptional child. This IEP must be completed and signed by the parent or legal guardian before special educational services can be provided to the child. In those instances where the parent or legal guardian is unavailable, the statute allows appointment of an educational advocate. This individual must be someone outside the educational system who reviews the IEP to insure it is in the best interest of the child. Our social workers clearly have this authority where parental rights have been terminated. This bill seeks similar authority where the parents fail or refuse to sign for children in our temporary custody.

- 4. Effects of Passage - It is believed passage of these provisions will clarify authority granted to SRS in temporary custody cases and insure more timely provision of services in these areas.
- 5. SRS Recommendation - SRS recommends passage of this bill.

Robert C. Harder
Office of the Secretary
Social and Rehabilitation Services
296-3271
April 1, 1985

Attch. I
4/1/85