

Approved April 1, 1986

Date

MINUTES OF THE House COMMITTEE ON Judiciary

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

3:30 ~~xxxx~~ a.m. on March 24, 1986 in room 313-S of the Capitol.

All members were present except:

Representatives Duncan, Fuller, Harper, Luzzati and Teagarden were excused.

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Mary Torrence, Revisor of Statutes' Office
Jan Sims, Committee Secretary

Conferees appearing before the committee:

Linda Stephens, National Federation of Decency
Clark Owens, Sedgwick County District Attorney
Jim Clark, County and District Attorneys' Association
Ben Coates, Director of the Juvenile Offenders' Program, SRS
Rich Hayse, Counsel for Palmer News, Inc.
Mike Boyer, Kansas Bureau of Investigation
Brenda Braden, Attorney General's Office
Bob Clester, Kansas Sheriff's Association

SB 178 - An act concerning crimes and punishments; relating to certain crimes involving obscenity and sexual exploitation of children; defining and classifying the crime of promoting sexual performance by a minor.

Linda Stephens of the National Federation of Decency appeared before the committee in support of SB 178 (Attachment 1)

Clark Owens, Sedgwick County District Attorney, appeared before the committee in support of SB 178. The Chairman asked Mr. Owens if there are any major public policy changes in SB 178 and Mr. Owens stated that for the most part it closes the loopholes in the current pornography bills with some exceptions which he feels should be amended. Mr. Owens suggested that there needs to be the provision which would enable the district attorneys to go after both the owners and the projectionists in movie theatres. The exclusion for projectionists allows the only person who is on hand in the theatre on a daily basis to escape prosecution and should be deleted from the bill. He said this bill goes clearly to the limit of Miller v. California which is the controlling Supreme Court case in this area. Mr. Owens responded to questions by committee members about why some areas of the bill refer to the age of 16 and other areas refer to age 18 (Attachment 2).

Jim Clark of the County and District Attorneys' Association stated that they are in basic agreement with the bill with the amendments presented by Mr. Owens.

Ben Coates, Director of the Juvenile Offenders' Program of SRS appeared in support of SB 178. He offered two amendments concerning nudity at lines 80 and 96 (Attachment 3).

Rich Hayse representing Palmer News, Inc. appeared in opposition to one provision of SB 178 (Attachment 4). He stated that Palmer News is not opposed to the majority of the provisions contained in the bills but it does feel that the section which creates the presumption of knowledge puts their organization and others in the distribution in a Catch 22 situation. He indicated that Palmer News has nothing to do with the content of the materials it distributes. They employ persons to make a review of the magazines and books they handle and in the "adult sophisticate" division they do withhold distribution of materials which they feel goes over the line into the obscene area. This bill asks them to apply contemporary community standards and creates a presumption if they are promoting this material as a part of their business that they are doing so knowingly. They feel that they are attempting to do a good job of screening the materials distributed by them but are concerned that if they should "guess on the wrong side of the line" that they could be prosecuted for knowingly promoting obscenity. They also feel that this

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,
room 313-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on March 24, 1986

invites attack under the constitutionality grounds.

Ben Coates of SRS appeared before the committee in support of SB 704, 705, 706, 707, 708, 709, 710, 711, 712 and 713. He stated that he is particularly in support of 708, 709 and 710.

Mike Boyer of the KBI appeared before the committee in support of all of the bills 704-713 offered by the Attorney General's Task Force. He went through each bill responding to questions of committee members (Attachment 5).

Brenda Braden of the Attorney General's Office stated that the Attorney General's Office supports the entire package of bills.

Bob Clester of the Kansas Sheriffs' Association appeared concerning SB 712. His organization expresses a concern about the word "immediate" in the bill concerning the time for filing reports. He stated that they would rather have "reasonable" or some similar language as there are times when sheriffs simply cannot make a report immediately because of other pressing duties.

Jim Clark of the County and District Attorneys' Association appeared stating that they support the package of bills but would like the opportunity to submit written testimony against the major policy change in SB 707.

The Chairman adjourned the meeting at 5:15 P.M.

Representatives, members of decency organizations in Kansas, and distinguished guests committed to fighting pornography in Kansas:

Let's start with a definition of pornography...it is the literature of sexual deviancy. The pornography industry grosses directly \$4 billion annually and another \$7-8 billion annually by indirect means. The reason it exists is because there is a demand for it. In 1970, the U.S. Senate vote of 60 against and 5 for the Commission Report produced by the Presidential (then Johnson) Commission on Obscenity and Pornography did not affect the media's acceptance of the "no harm in porn" idea and the report became the "Magna Carta" of the porn industry. The Commission Report stated that pornography was:

1. harmless, even of potential therapeutic and cathartic value
 2. had no negative effects on adults and children
 3. was not a social problem
 4. its production and distribution should be free from any regulation or control (From Scott(1985), Pornography-Its Effects on the Family, Community, and Culture, Washington D.C., Child and Family Protection Institute).
- May I point out that this report contained misleading and contradictory information.

President Reagan signed the Child Protection Act into law in May, 1984 and announced the formation of the Attorney General's Commission on Pornography. They are meeting now and will be addressing and correcting the false statements such as "porn is not harmful," etc. made in the 1970 Commission Report. Current research by Malamuth, Donnerstein, and Zilman as described in Scott(1) showed a negative desensitized effect of violent and non-violent porn on normal people as well as on the sex offender. Scott(2) mentioned that research by Martin Roth and Edward Nelson in 1982, emphasized that pornography does create an increased interest in sexual deviancy.

The pornography industry has left the decaying central areas of our cities and the sleazy areas of our towns that it inhabited 10 years ago and has become far more pervasive today...being found in the family marketplace. The variety of porn removed it from the red light district and into your home. Examples of the variety of porn are :

1. pornographic magazines in the family marketplace
2. dial-a-porn on your own home phone (either live telephone conversations with the customer or the dial-it service using prerecorded messages on a 976 prefix)
3. computer transmissions of pornography on your home computer
4. satellite and cable transmission (Playboy channel, Rainbow service, and Pleasure channel) on your own TV because the FCC has failed to regulate U.S. broadcasting.
5. XXX-rated movie theaters in your neighborhood that feature XXX-rated videos and live burlesque with autographed pictures of the featured burlesque queen handed out. May I remind you that 70% of all porn ends up in the hands of minors? 70%! (Henry Boatwright, Chairman of the U.S. Advisory Board for Social Concerns, 3)
6. Lastly, XXX-rated videos available for rental at your neighborhood video rental center.

Adult porn flourished following the passage of the Protection of Children Against Sexual Exploitation Act in 1977 and moved from dirty words and dirty pictures of the 1950's to heterosexual and homosexual intercourse, gynecologic portraits of Playmates of the month, group oral and anal sex, incest, sodomy, bestiality, sadomasochism, urination, and defecation. At this time, however, Scott(4) cited findings by Lanning and O'Brien that underground or black market child porn began to increase as a result of pedophiles operating sex rings and cottages in the suburbs of child porn.

Attachment 1 House Judiciary March 24, 1986

son transmitting the communication to be in imminent danger of damage or destruction.

(c) An offense under this section is a Class B misdemeanor unless, as a result of the commission of the offense, serious bodily injury or property loss in excess of \$1,000 occurs, in which event the offense is a felony of the third degree.

CHAPTER 43. PUBLIC INDECENCY

SUBCHAPTER A. PROSTITUTION

Sec. 43.01. Definitions. In this subchapter:

(1) "Deviate sexual intercourse" means any contact between the genitals of one person and the mouth or anus of another person.

(2) "Prostitution" means the offense defined in Section 43.02 of this code.

(3) "Sexual contact" means any touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person.

(4) "Sexual conduct" includes deviate sexual intercourse, sexual contact, and sexual intercourse.

(5) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ.

Sec. 43.02. Prostitution. (a) A person commits an offense if he knowingly:

(1) offers to engage, agrees to engage, or engages in sexual conduct for a fee; or

(2) solicits another in a public place to engage with him in sexual conduct for hire.

(b) An offense is established under Subsection (a)(1) of this section whether the actor is to receive or pay a fee. An offense is established under Subsection (a)(2) of this section whether the actor solicits a person to hire him or offers to hire the person solicited.

(c) An offense under this section is a Class B misdemeanor, unless the actor has been convicted previously under this section, in which event it is a Class A misdemeanor.

Sec. 43.03. Promotion of Prostitution. (a) A person commits an offense if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he or she knowingly:

(1) receives money or other property pursuant to an agreement to participate in the proceeds of prostitution; or

(2) solicits another to engage in sexual conduct with another person for compensation.

(b) An offense under this section is a Class A misdemeanor.

Sec. 43.04. Aggravated Promotion of Prostitution. (a) A person commits an offense if he knowingly owns, invests in, finances, controls,

supervises, or manages a prostitution enterprise that uses two or more prostitutes.

(b) An offense under this section is a felony of the third degree.

Sec. 43.05. Compelling Prostitution. (a) A person commits an offense if he knowingly:

(1) causes another by force, threat, or fraud to commit prostitution;

or

(2) causes by any means a person younger than 17 years to commit prostitution.

(b) An offense under this section is a felony of the second degree.

Sec. 43.06. Accomplice Witness: Testimony and Immunity. (a) A party to an offense under this subchapter may be required to furnish evidence or testify about the offense.

(b) A party to an offense under this subchapter may not be prosecuted for any offense about which he is required to furnish evidence or testify, and the evidence and testimony may not be used against the party in any adjudicatory proceeding except a prosecution for aggravated perjury.

(c) For purposes of this section, "adjudicatory proceeding" means a proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.

(d) A conviction under this subchapter may be had upon the uncorroborated testimony of a party to the offense.

SUBCHAPTER B. OBSCENITY

Sec. 43.21. Definitions. (a) In this subchapter:

(1) "Obscene" means material or a performance that:

(A) the average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex;

(B) depicts or describes:

(i) patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or

(ii) patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernibly turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs; and

(C) taken as a whole, lacks serious literary, artistic, political, and scientific value.

(2) "Material" means anything tangible that is capable of being us-

What is the relationship between pornography and crime? Dr. Victor Cline of the University of Utah found in a study he conducted that there are 4 stages of escalation to crime while feeding on porn. They are: (1) addiction; (2) escalation from soft to hard porn; (3) trend to become desensitized and the values change; and (4) drive to act out what porn has been seen. Scott(5) cited from Citizens for Decency Through Law that police investigations nationwide reported finding substantial porn collections in the homes of virtually every pedophile they apprehended and arrested. The selling and buying of porn is done at a cost. Included with this testimony is Gary Bishop's, a convicted child killer, testimony on the negative effects of porn giving rise to an insatiable appetite to kidnap, sexually abuse, and murder five young boys.

What about the child victims of adults feeding on porn or the child victims of pedophiles in the business of underground child porn? Children are brought into porn as missing or runaway with or without parents knowledge. Scott(6) reported from the FBI Bulletin of 1984 which stated that every year, 1 million children are photographed in sexually explicit poses or who perform in sexual acts with other children or adults willingly or unwillingly. These children came from two sources: (1) those sexually victimized outside the home or as runaways without parent knowledge and (2) those sexually victimized with the knowledge of the parent. Dependent children are particularly vulnerable as a target for the pedophile as these youngsters can't say "no" as an adult can Scott(7). In Scott(8), Lanning has determined that children are also targets for adults who have difficulty with normal heterosexual relationships, i.e., adults lacking social skills and the ability to meet women. Some of these children will be murdered to silence them as witnesses to sexual victimization or for the pedophiles own sexual gratification. Scott(9) cited findings by Dr. Gene Abel at Columbia who discovered distressing statistics that child molestation was a more serious and frequent crime than rape. The child molesters he studied were each responsible for molesting an average of 68.3 victims and each molested on an average 40 victims before the individual molesters were first reported to the authorities. Abel found that the average rapist on the other hand, assaults only 23 victims, 1/3 that of the pedophile.

Scott summarized(10) the results of one study that points to children not only being missing, but far more are being molested by neighbors and family friends who have themselves been molested as a child. He reported that in the majority of cases, adolescent and adult child molesters have viewed and fed on porn(soft and hard core porn) as these materials have become more and more pervasive. Further, adult porn is used by the pedophile to show the child that sexual deviancy is normal and natural and that it's o.k. to do what is shown in the pictures. The child porn is used by the pedophile for sexual gratification.

Scott(11) cited Hustler, 1982 which referred to the goal of many pedophile organizations as a means of exchange and collection of information from children's addresses to pseudo-scientific articles supporting sex with children. These organizations include the North American Man/Boy Love Association, whose motto is "sex by 8 or it's too late, " the Lewis Carroll Collector's Guild, Pedophile Information Exchange, and the Childhood Sensuality Circle. How many children are sexually victimized in the U.S. annually? Scott(12) cited from the Committee on Sexual Offenses Against Children and Youths statistics that revealed one in five females and one in ten males are sexually assaulted yearly. What is the damage done to these children? Dr. Elizabeth Holland, a pediatrician who treats sexually abused children, has taken a stand in the fight against porn. She stated and I quote, " I cannot erase the hurt and the bewilderment and the fear from the eyes of those who have been affected by pornography as it exists today. And yet, the purveyors of pornography want to bring it into my

ed or adapted to arouse interest, whether through the medium of reading, observation, sound, or in any other manner, but does not include an actual three dimensional obscene device.

(3) "Performance" means a play, motion picture, dance, or other exhibition performed before an audience.

(4) "Patently offensive" means so offensive on its face as to affront current community standards of decency.

(5) "Promote" means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same.

(6) "Wholesale promote" means to manufacture, issue, sell, provide, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, or to offer or agree to do the same for purpose of resale.

(7) "Obscene device" means a device including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs.

(b) If any of the depictions or descriptions of sexual conduct described in this section are declared by a court of competent jurisdiction to be unlawfully included herein, this declaration shall not invalidate this section as to other patently offensive sexual conduct included herein.

Sec. 43.22. Obscene Display or Distribution. (a) A person commits an offense if he intentionally or knowingly displays or distributes an obscene photograph, drawing, or similar visual representation or other obscene material and is reckless about whether a person is present who will be offended or alarmed by the display or distribution.

(b) An offense under this section is a Class C misdemeanor.

Sec. 43.23. Obscenity. (a) A person commits an offense if, knowing its content and character, he wholesale promotes or possesses with intent to wholesale promote any obscene material or obscene device.

(b) An offense under Subsection (a) of this section is a felony of the third degree.

(c) A person commits an offense if, knowing its content and character, he:

(1) promotes or possesses with intent to promote any obscene material or obscene device; or

(2) produces, presents, or directs an obscene performance or participates in a portion thereof that is obscene or that contributes to its obscenity.

(d) An offense under Subsection (c) of this section is a Class A misdemeanor.

(e) A person who promotes or wholesale promotes obscene material or an obscene device or possesses the same with intent to promote or wholesale promote it in the course of his business is presumed to do so with knowledge of its content and character.

(f) A person who possesses six or more obscene devices or identical or similar obscene articles is presumed to possess them with intent to promote the same.

(g) This section does not apply to a person who possesses or distributes obscene material or obscene devices or participates in conduct otherwise prescribed by this section when the possession, participation, or conduct occurs in the course of law enforcement activities.

Sec. 43.24. Sale, Distribution, or Display of Harmful Material to Minor. (a) For purposes of this section:

(1) "Minor" means an individual younger than 17 years.

(2) "Harmful material" means material whose dominant theme taken as a whole:

(A) appeals to the prurient interest of a minor, in sex, nudity, or excretion;

(B) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and

(C) is utterly without redeeming social value for minors.

(b) A person commits an offense if, knowing that the material is harmful:

(1) and knowing the person is a minor, he sells, distributes, exhibits, or possesses for sale, distribution, or exhibition to a minor harmful material;

(2) he displays harmful material and is reckless about whether a minor is present who will be offended or alarmed by the display; or

(3) he hires, employs, or uses a minor to do or accomplish or assist in doing or accomplishing any of the acts prohibited in Subsection (b)(1) or (b)(2) of this section.

(c) It is a defense to prosecution under this section that:

(1) the sale, distribution, or exhibition was by a person having scientific, educational, governmental, or other similar justification; or

(2) the sale, distribution, or exhibition was to a minor who was accompanied by a consenting parent, guardian, or spouse.

(d) An offense under this section is a Class A misdemeanor unless it is committed under Subsection (b)(3) of this section in which event it is a felony of the third degree.

Sec. 43.25. Sexual Performance by a Child. (a) In this section:

(1) "Sexual performance" means any performance or part thereof that includes sexual conduct by a child younger than 17 years of age.

(2) "Obscene sexual performance" means any performance that includes sexual conduct by a child younger than 17 years of age of any material that is obscene, as that term is defined by Section 43.21 of this code.

(3) "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation,

living room and into your living room and into the living room of anyone who wants to plunk down a few dollars and feed on sickness and decay. I can't treat the effects- I can't treat these children who have been abused. The damage is done. I'm reminded of the disease of polio, which we fought for so many years. A child who has polio and comes to me with a withered limb-it's lost it's function. Perhaps, physical therapy will help a little, perhaps it won't. I can't treat the effects of polio -but polio has effectively been conquered in our nation. How? Through a vaccine and we now prevent it. Polio can be treated by prevention -not by treatment of its effects. Pornography? I cannot treat the effects of the pornographers on children. They will wear these handicaps for the rest of their lives. But pornography can be prevented. It can be prevented, it can be conquered, and it can be stopped if we can enlist the help of good people throughout this land who are willing to stand up and be counted in this effort. Please join us and help stop the spread of this filth in our land."(13) A copy of Dr. Holland's presentation accompanies this testimony.

Comments from Mr. Paul McCommon, an attorney with Citizens for Decency Through Law in Phoenix, Arizona, regarding the constitutionality of SB 178 as well as HB 2404 are also included with this testimony.

As a parent myself, as well as an officer in the Topeka Area Chapter-NFD, I urge you to do what you can to get SB 178 onto the floor of the House for a vote.

References

1. p.5 Scott(1985)*
2. p.4 Scott(1085)
3. Dallas Morning News 3/5/84
4. p.3(1984) Scott. Preliminary Draft Pornography: an Update on Recent Published and Unpublished Research, Washington, D.C. Aug.1984.
5. p.10 Scott(1985)
6. p.16 Scott(1985)
7. p.7 Scott(1984)
8. p.9 Scott(1984)
9. p.13 Scott(1985)
- 10.p.7 Scott(1984)
- 11.p.13 Scott(1985)
- 12.p.19 Scott(1985)
- 13.p.6&7 NFD, Jr. Oct. 1984

* 1985 Scott, D.A. Pornography-Its Effects on the Family, Community, and Culture, Washington, D.C., The Child and Family Protection Institute.

Prepared by Linda Stephens, President: Topeka Area Chapter-National Federation for Decency.

3/24/86

GARY BISHOP'S MESSAGE CONCERNING PORNOGRAPHY

From death row in the Utah State Prison, convicted child killer Arthur Gary Bishop sent the following message to Morality In Media's National Conference on Pornography as reported in the October 1985 newsletter of MIM.

"Since our brief discussion (with Wendell J. Ashton, publisher of the *Deseret News* in Salt Lake City) about pornography on April 30, I have done considerable thinking about it and its effects. Pornography is a widespread social problem, so prevalent that many people accept it as normal. I wish I could present a solution to effectively combat this disease, but I can't. Perhaps, though, you could derive some insight from my experience with it.

During my trial, Dr. Victor Cline testified about the adverse effects of pornography. As I listened to his explanations, I could discern how my own life corresponded to these consequences. He stated that as people become addicted to it, their desires escalate, their normal feelings become desensitized, and they tend to act out what they have seen.

So it was with me. I am a homosexual pedophile convicted of murder, and pornography was a determining factor in my downfall. Somehow I became sexually attracted to young boys, and I would fantasize them naked. Certain bookstores offered sex education, photographic, or art books which occasionally contained pictures of nude boys: I purchased such books and used them to enhance my masturbatory fantasies. But it wasn't enough. I desired more sexually-arousing pictures, so I enticed boys into letting me take pictures of them naked. From adult magazines I also located addresses of foreign companies specializing in "kiddie porn," and spent hundreds of dollars on their magazines and films. Such materials would temporarily satisfy my cravings, but soon I would need pictures that were more explicit and revealing. Some of the material I received was shocking and disgusting, at first, but it shortly became commonplace and acceptable--and provided ideas on how to make my own pictures more sensual.

As I continued to digress further into my perverted behavior, more stimulation was necessary to maintain the same level of excitement. Finding and procuring sexually arousing materials became an obsession. For me, seeing pornography was like lighting a fuse on a stick of dynamite; I became stimulated and had to gratify my urges or explode. I persisted in taking photographs of boys, encouraging suggestive and perverted stances; shortly this became a starting point for me to physically fondle and involve them in mutual masturbation. I knew that what I was doing was wrong, but I perceived my money and gifts as compensation for any emotional harm sustained by them. I guess I was seeking the love and companionship generated between a man and his wife. Such tender feelings were incapable of being produced under these conditions. All boys became mere sexual objects, their only purpose being to heighten and intensify my sensual feelings. My conscience was desensitized, and my sensual appetite entirely controlled my actions. The day came when I invited a small neighborhood boy into my apartment, molested him, and then killed him in fear of being caught. Over the few years I kidnapped, sexually abused, and murdered four other boys.

Pornography wasn't the only negative influence in my life, but its effect on me was devastating. I lost all sense of decency and respect for humanity and life, and I would do anything or take any risk to fulfill my deviant desires. If pornographic material would have been unavailable to me in my early stages, it is most probable that my sexual activities would not have escalated to the degree they did.

Pediatrician treats porn victims

EDITOR'S NOTE: The following presentation was given by Dr. Elizabeth Holland to a meeting of the Board of Governors of the Memphis Chapter of NFD. Dr. Holland has served as Chairman of the Memphis and Shelby County Child Abuse Committee; Chairman of Pediatrics at St. Joseph Hospital; and for the past ten years she has been the doctor at St. Peter's Home for Children in Memphis. She is a graduate of Rhodes University in Memphis and of the University of Tennessee Medical School.

By Dr. Elizabeth Holland, M.D.

I have not come here today to shock you, though perhaps this might well happen. I have not come here today to offend your sensibilities—though again, I recognize that this may take place. I have come simply to share with you a few of my experiences over the past ten years in treating victims of pornographers. Of treating the children who have been affected, who have been abused, who have been damaged for life by those who feed on pornography.

There exist in our nation and in our area and in our community those men and women who have abused, who have been damaged for life by those who feed on pornography. There exist in our nation and in our area and in our community those men and women who have a sickness, who need to feed on dirty pictures and pornography. And when touching pictures and fantasizing and looking no longer satisfies these people's insatiable appetite, then they move. And they move to live children. I know—because I treat these children.

Recently there came into my office a distraught mother with a 14-year-old son, a 12-year-old daughter, an 11-year-old daughter and an eight-year-old son. As her story unfolded, it appeared that her 14-year-old son had been purchasing pornographic magazines and reading them in his bedroom and after reading them and arousing himself sexually to the point that he could no longer contain himself, he would go into the bedrooms of his 12-year-old sister, of his 11-year-old sister, and of his eight-year-old brother and rape them—several times weekly. It further unfolded that this has been continuing for five years. If you can subtract with me, the 14-year-old boy was nine when he began his activities. His 12-year-old sister was seven. His 11-year-old sister was six. And his eight-year-old brother was three years old when he began to be raped by his nine-year-old brother who fed on pornography and graduated to live children.

I treated a young boy in my office who was four years old. His family was divorced. He lived with his mother. He visited his father on week-ends. From the time he was two, when the child would return home to his mother after visiting his father, he would cry and be irritable—and none of us could figure out why. At age four we learned that the father of this two-year-old boy had been systematically raping this child in his home—

many times, every week-end, for two years. The father bought pornographic magazines. He shared them with his two-year-old child and then forced his two-year-old child into anal intercourse. This child's rectum looked like hamburger meat.

I have been told by many children who have been there—I have never seen this house—but I have been told that there is a house in Memphis. It's called a "safe" house. Children are abducted from our streets and taken to this house where they are photographed in various sexual poses with each other, with adults, with men, with women, with animals. They are photographed and the pictures are distributed to the various kiddie porn magazines which are sold throughout this country. And yet, do you know what I hear when I speak out against pornography? When I stand and tell these stories to people who are not concerned? Do you know what I hear? I hear from them that I don't have the right to determine what someone else watches in their living room. I wouldn't subscribe to the Playboy channel, but what right do I have to say that someone who is willing to pay the money can't subscribe? I don't have the right to prevent this from being offered in the Memphis area. I don't have the right to prevent you from watching it if you'd like—yet I look at the children who have been abused and who have been beaten and who have been battered by those who feed on this pornography. I say that I not only have the right to prevent this pornography from spreading in this community, I have a moral obligation.

Let me paraphrase for you very a story that you're all familiar with—Ezekiel, Chapter 3. The Lord is calling Ezekiel. He says, "Oh, son of man, I have made you a watchman of the house of Israel. I send you to the House of Israel with my warning. You must go to them and you must warn them of their wicked ways. If you refuse to do and the wicked man dies in his sins, then I will hold you to blame and his blood is on your hands. If you go and warn him and he refuses to listen, he will die in his sins but you are blameless. And if you go and warn him and he listens, and he repents, then he will come unto life and you have saved your soul." Do I have the right to speak out against evil that exists in this world and in my community and in my neighborhood? As God said to Ezekiel, I must go and you must go. If we refuse to go, those of us who have been spoken to and commanded by the Lord, if we refuse to go, the blood of these innocent children is on our hands.

There was a little girl brought into my office not long ago. She was four years old. She had a torn and lacerated vagina. She

was brought in by the police. It seems her father, her uncle, and her brothers would buy pornographic literature and would pass it around among themselves and would laugh and would tell dirty jokes—and finally, when they were tired of reading and tired of fantasizing, they would take this four-year-old child and they would all rape her. The child had been taken to another doctor, one year previously, for the same problem. This doctor had chosen to ignore the signs and the symptoms; prescribed ointment; and sent a three-year-old girl back into this situation for another year of torture and fear and pain. Now who's to blame? The family? Yes. But what about the one who knew? What about the one who understood and refused to act because he did not want to get involved? I submit that his guilt is a great or greater than those who actually perpetrated this violence on that innocent child.

I have treated two young girls, ages nine and 11. Their father purchased sadistic pornographic literature. One afternoon he took the mother and the two daughters onto his front porch with a pile of sadistic pornographic literature and he required that they all share in and look at it. And then he took a gun and he held it to the mother's head and he proceeded to rape her unmercifully in front of his two daughters. And when he had finished raping her he calmly pulled the trigger and blew her head off in front of his daughters. Then he held the gun to their heads and he raped them in the same manner and he said to them, "I will kill you in the same manner if you tell anyone what I have done." I treated these children for two years before I could get one word out of either child. They lived in abject terror because of what they had seen and what they had experienced.

I treated a three-year-old son who visited his mother on week-ends and one day, during a check-up after such a visit, I noticed he had large, draining sores on his penis. After further investigation it turned out that this mother, every week-end, had been taking her three-year-old son, placing his penis inside her vagina, and bouncing him there several hours at a time. The child had venereal disease. The venereal disease we can treat. The scars from the experience we cannot treat.

Don't tell me I don't have the right—and don't tell me that you don't have the right—or the obligation—to speak out against the criminal spread of pornography in our midst.

Another thing I hear is, "It'll never work. There are too many of them—there are too few of us. They're too big. There's too much money involved. Keep up the good work, brother, I agree with what you're doing but you're fighting a losing battle. I mean, why

sh. "I turn in my converter? I enjoy my TV. It's not going to work. They'll never remove Playboy, they'll never refuse to offer it. Why should I deprive myself of the shows I enjoy? You're fighting a losing battle. Count me out."

Once again, let me paraphrase for you a story that you all know. We'll go to the 12th chapter of Acts. Peter and James had been preaching in the streets. Herod had had James killed with a sword. Peter had been thrown into prison and he was chained between two guards in a dark dungeon. And in the middle of the night the angel of the lord appeared to Peter and he said, "Stand up." And Peter stood up. And when Peter stood up the chains fell off. And then the angel said, "Put on your clothes. Put on your shoes. Put on your coat, and follow me." Peter did. And followed the angel out of the dungeon, out to the iron gate which had no key, and the iron gate opened to them of its own accord. You see, I'd like you to notice in this story that God did not do one thing for Peter that night that Peter could do for himself. God could have picked up Peter from that dungeon and translated him to the home of Mary, the mother of John Mark, where the church had gathered and was praying for his release. God could have done that. But He didn't. He said, "Stand up." And Peter obeyed. And then the chains fell off.

You know, I can almost hear old Peter in that dungeon, if he had been infected with the defeated attitude that prevails among many Christians today. I can hear him in that dungeon when the angel appeared and said, "Stand up." He said, "Oh, no. I mean, these chains are heavy and I might wake up those guards on either side. There are two of them and there is only one of me. And actually, I've gotten fairly comfortable down here." No. Peter stood up and the chains fell off. And the Lord said, "Come. Put on your clothes. Follow me. Put on your coat."

And Peter says, "Now, angel, I don't think you've thought this through very carefully. I mean, we have to go through this whole jail and there are guard everywhere. We have to crawl up those creaky steps—man, have you heard those steps creak? And once we get out, don't forget that big iron gate out here. There's no way! There's no key. We can't climb that gate! No, I think I'd rather lay here. Maybe they'll let me live. Maybe they'll just flog me and let me go. No, I don't think I'll go with you—but thank you. Thanks or trying. Thanks for thinking about me."

Peter got up and he followed that angel and he obeyed the Lord and he went and when he reached the impossible iron gate, the iron gate opened to him of its own accord. You see, God's call on my life and God's call on your life is to do the things that are possible and to trust him with the things that

are impossible.

I am outraged when I am told that I do not have the right to speak out against pornography in our community. I am outraged when I am told that it's a battle we cannot win—therefore, we must not try. I am outraged when I put my hands in the wounds of abused, battered children who have fed on pornographers' filth. I am outraged when I sit and hold a beautiful young girl on my lap and she wraps her arms around my neck and cries, "Why? Why did he hurt me?" I have no answer for her except that good men and good women and good ministers sat back and did nothing.

I treated a family who came into my office—they were brought in by the police. There was a mother and father, middle twenties. There was a four-year-old boy and a three-year-old girl. It seems that the mother and father were producers of kiddie porn and they had used their children for two years as models. The children were required to strip naked and to engage in sexual acts with each other. To engage in sexual acts with adults. To engage in sexual acts with animals. I have seen eight-by-ten glossy prints produced by this family with this four-year-old boy and three-year-old girl engaged in sexual intercourse at the same time there was a dog with his hairy penis in the little girl's mouth and a rooster with the little boy's penis in his mouth. And at the same time the mother would take cups of blood and pour it over the children's heads. And you know, people buy this filth. There's a market for this. It's a multi-million-dollar business in our nation today. And because of this these children have suffered untold harm.

Now who do you think bears the responsibility for these children? The mother and

Polio can be treated by prevention—not by treatment of its effects. Pornography? I cannot treat the effects of the pornographers on children. They will wear these handicaps for the rest of their life.

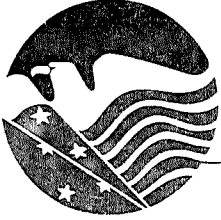
father who photographed? Yes. They are their responsibility. What about the distributors of kiddie porn who take this material and distribute it? What about those who buy it and feed on it and create the market? I would say to you that they're all responsible. But I would also say to you that those of us in this room and myself, we are responsible if we choose to not become involved in the fight against this filth. If we choose to allow it to happen and do not raise our voices in protest, then the blood which flowed down

these children's heads, this blood is on our hands.

God calls us to do the possible. He'll take care of the impossible. What's possible to us? You're going to hear this morning long lists of things that are possible to you. Take note. Take careful note. But I would say to you that there is one thing that is possible to all of us and I would earnestly enlist your support in fervent, groaning prayer before the Lord God Almighty. We need to fall on our faces and say, "God, we have sinned in what we have done and what we have failed to do." James tells us that the "effectual, fervent prayer of a righteous man availeth much," and when we reach out and touch the hem of his garment, then God will answer us. We must reach out and claim his promises. God has said, "If my people...will humble themselves and pray, if they will seek my face, and if they will turn from their wicked ways, then I, the Lord will hear their prayer in Heaven, I will forgive their sins and I will heal their land."

This is our possibility, friends. We have to reach out and touch and claim the power of Almighty God for the cleansing and the healing of our land. You see, I'm a doctor. I can suture lacerations, I can put band-aids on wounds, I can put ointments, I can give antibiotics. I cannot heal the damage that has been done to these children who have been abused by those who feed on pornography.

I cannot erase the hurt and the bewilderment and the fear from the eyes of those who have been affected by pornography as it exists today. And yet, the purveyors of pornography want to bring it into my living room and into your living room and into the living room of anyone who wants to plunk down a few dollars and feed on sickness and disease and decay. I can't treat the effects—I can't treat these children who have been abused. The damage is done. I'm reminded of the disease of polio, which we fought for so many years. A child who has polio and comes to me with a withered limb, it's lost its function. Perhaps physical therapy will help a little, perhaps it won't. I can't treat the effects of polio—but polio has effectively been conquered in our nation. How? Through a vaccine, and we now prevent it. Polio can be treated by prevention—not by treatment of its effects. Pornography? I cannot treat the effects of the pornographers on children. They will wear these handicaps for the rest of their life. But pornography can be prevented. It can be prevented, it can be conquered, and it can be stopped if we can enlist the help of good people throughout this land who are willing to stand up and be counted in this effort. Please, please, join us and help stop the spread of this filth in our land. Please, help us protect the innocent children. Please.



Citizens for Decency through Law, Inc.

November 26, 1985

Mrs. Linda L. Stephens
Topeka Area Chapter-NFD
P.O. Box 67004
Topeka, Kansas 66667

Re: Proposed Kansas obscenity legislation

Dear Mrs. Stephens:

Thank you for your letter and for sending me copies of pending legislation. I have reviewed these statutes and will very briefly give you my thoughts on these efforts.

First of all, as to House Bill No. 2404, I find nothing unlawful or inappropriate in this proposed revision of § 21-4301a of the Kansas code. The present version of § 4301a merely increases the penalties for distributing obscenity where the distribution is to a minor. The amended version of § 4301a would be a "harmful to minors" statute which would make it a crime to distribute or display to children any material material which is "harmful" to them. There is binding authority in your state on this subject because of the recent federal case in which the Wichita "harmful to minors" statute was upheld. I have enclosed a copy of this case for your use and would recommend that any effort to amend state law conform closely to the Wichita opinion. I have also enclosed a paper on the subject of "harmful to minors" statutes with my recommendations on one or two changes in the Wichita law which would not affect its constitutionality.

As to Senate Bill No. 178, I have several comments and suggestions. First of all, the bill proposes amendments to § 21-3516. § 3516 would contain two crimes: sexual exploitation of a child, and promoting sexual performances by a minor. The first crime would define a minor as "under sixteen." The second crime would define a minor as "under eighteen." It would be my recommendation that all definitions relating to child pornography define a child as "under eighteen." This would be consistent with federal law (18 U.S.C. § 2255) which defines a minor as "under eighteen." You might also wish to push for a stronger child pornography statute which would make the mere possession of child pornography a crime and also suggest removing the "for profit" aspect of the proposed statute. States such as Arizona and Florida make the mere possession of child pornography a crime and can serve as a model for such legislation. The proposed statute, by making it a crime only to distribute child pornography "for profit," would create a tremendous loophole in your law. As you are aware, much of the traffic in child pornography is not for profit but is between pedophiles or child molesters. By limiting your state law to commercial enterprises, you would leave the vast bulk of the market in this material untouched in your state.

Mrs. Linda L. Stephens
November 26, 1985
Page 2

Senate Bill No. 178 would also provide amendments to current § 4301 of your state law which makes it a crime to promote obscenity. In subsection (2) of this bill, I would encourage your legislators to delete the presumption of knowledge. Such presumptions have encountered difficulty in several states and are unnecessary. In the alternative, I would advise a good definition of "knowingly or recklessly" which would make the presumption unnecessary and would avoid those legal problems associated with presumptions. I would recommend a definition of "knowledge" such as those contained in the Georgia and Arizona statutes. In subsection (3)(a)(iii), I would recommend the omission of the "educational" value test. The serious value test as enunciated by the Supreme Court only requires that the material lack "serious literary, artistic, political, or scientific value." The Court has never made mention of an "educational" requirement. In subsection (3)(b) of the proposed amendments, I would recommend removing the requirement that material be "tangible." As you are aware, the traffic in obscenity has entered new markets in the last several years such as "dial-a-porn" (telephone) communications, satellite, cable television, video cassettes, etc. By having this "tangible" requirement in your statute, you might be restricting yourself as to the enforcement and in my experience, some of these new technologies which are readily available to children are exactly the types of distribution that you should want to prosecute in your state. I readily agree with the changes proposed in subsections (3)(c) and (4). By defining "devices" in subsection (3)(c), there will be no necessity to prove the three-part test of obscenity. Devices once shown to be primarily designed for the stimulation of human genital organs, are presumed obscene. They can also be seized in plain view as contraband, unlike other alleged obscene materials. I further agree with the omission of subsection (4) which created an exemption for the prosecution of projectionists. Since this is a very organized and "organized crime" industry, to exclude certain employees from prosecution is a serious mistake and would hinder the enforcement of this law.

The final aspect of Senate Bill No. 178 would be to amend § 4301(a). I have no legal objection to the proposed amendment of this section, but it would add nothing to your current state law as it would only increase the penalty for a second offense of distribution of obscenity to a minor. House Bill 2404 would be a much more appropriate and useful amendment to this section and as I stated earlier, it is supported by recent federal case law in your state.

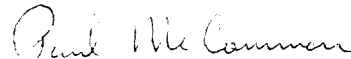
I would advise you to make these recommendations known to the sponsors of this legislation. I would be happy to work further with these legislators if that is their wish. I could probably save them a great deal of time in locating authority for the suggestions and recommendations that I have made based on federal law and the laws of other states. As to other local ordinances in your state, we do not have a copy of them in our files. If you wish to send them to me, I would be happy to take a look at them. At present, however, it would seem that the bills which you have already sent as amended and with my suggestions would make law enforcement much easier in your state.

Mrs. Linda L. Stephens
November 26, 1985
Page 3

Also keep in mind that you have a full range of federal obscenity and child pornography legislation which is available for enforcement in your state by the U.S. Attorney and federal law enforcement agencies.

I hope that these comments and suggestions will prove useful. If I can do anything further to assist you or those legislators with whom you are in contact, please let me know. Best of luck in your efforts.

Sincerely,



Paul C. McCommon III
Legal Counsel

PCM/lak

Enclosures

SEDGWICK COUNTY DISTRICT ATTORNEY

18th Judicial District

Sedgwick County Courthouse
Annex — Second Floor
535 North Main
Wichita, Kansas 67203

CLARK V. OWENS
District Attorney

(316) 268-7281

HENRY H. BLASE
Chief Deputy

August 27, 1984

Limitations On Prosecution Of Obscenity Cases

1. Civil Injunction suits are unconstitutional as applied to movie theaters and book stores.

The Kansas nuisance abatement statute as applied to promoting obscenity has been held to be unconstitutional. This statute has become the most effective tool in controlling the problem of massage parlors being used as houses of prostitution. The civil injunction action was more effective than criminal prosecution.

In 1976, the Kansas Supreme Court ruled in the case of State of Kansas v. Motion Picture Entitled "The Bet", 219 Kan. 64 that the courts may no longer order movie theaters and book stores to be padlocked for violating the promoting obscenity statutes. This remedy that is so effective against massage parlors is not available to be used by prosecutors against theaters and book stores. This limitation cannot be changed by legislation. It would require either an amendment to the United States Constitution or the Kansas Supreme Court would have to reverse its interpretation of the Constitution.

2. The Kansas definition of obscenity is not as restrictive as it could be.

The Kansas definition of obscenity as set forth in K.S.A. 21-4301 is less restrictive than is permitted by the United States Constitution. In the State of Kansas, the following three elements must be proven to establish that a material is obscene:

(1) The average person applying contemporary standards would find that such material or performance, taken as a whole, appeals to the prurient interest, and

(2) That the material or performance has patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, and

(3) That the material or performance, taken as a whole, lacks serious literary, educational, artistic, political or scientific value.

*Attachment 2
House Judiciary
March 24, 1986*

The foregoing definition follows the guidelines set forth in the landmark United States Supreme Court decision of Miller v. California, 413 U.S. 15, 37 L.Ed. 2d 419, 93 S Ct 2607 (1973) in all respects, except one. Section (2) of the Kansas definition only adopted one-half of the Miller definition. In that decision, the United States Supreme Court ruled that the states have the right to regulate the following types of material as being obscene:

"(a) Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated.

(b) Patently offensive representations or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals."

In 1976, the Kansas Legislature amended the obscenity statute to comply with the Miller decision, however, was less restrictive. The Kansas Legislature failed to adopt subsection (b) and does not prohibit simulated acts set forth in subsection (a). Therefore, it can be concluded that the State of Kansas does not intend to prohibit representations of masturbation, excretory functions and the lewd exhibition of the genitals. This omission may have been an oversight, or intentional, but regardless the Kansas definition is not as restrictive as the Constitution permits. This loophole in the law may be corrected by amendment to the state statute and city ordinance, provided that the community desires that the law be more restrictive.

3. The projectionist and assistant projectionist at pornographic theaters are exempt from prosecution.

The Kansas obscenity statute set forth at K.S.A. 21-4301, provides that the projectionist and assistant projectionist at movie theaters may not be prosecuted for promoting obscenity unless they have a financial interest in the business. The theaters are using this exemption as a shield against prosecution. The theaters are organized as corporations and the only people that are physically present at the facility are the projectionist and assistant projectionist. Prosecutors are unable to prove that the directors of the corporation have knowledge of the content of the movies and are therefore left with a prosecution only against the corporation. We do not have effective control over the theater since we cannot put a corporation in jail.

The clerks of adult book stores may be prosecuted for promoting obscenity, but their counterparts in movie theaters are exempt by law. This projectionist exemption has been held to be unconstitutional by the Supreme Court of Ohio in Pack v. City of Cleveland, 438 N.E.2d 434 (1982), however, other states have held that it is constitutional.

The state statute could be amended to eliminate the projectionist exemption. The city ordinance governing the same cannot be amended until the state statute is changed since the statute specifically mandates that the city ordinance contain the exemption.

4. The owners of the adult movie theaters and book stores generally cannot be prosecuted.

In order to prosecute an individual for promoting obscenity it is necessary to prove beyond a reasonable doubt that the person charged has knowledge of the content of the particular magazine or movie that is the subject of the prosecution. The owners of the business hire clerks and projectionists to handle the pornographic magazines and movies. It is quite difficult, if not impossible, to prove that the owners had knowledge of the content of the magazines and movies that were sold. While this may seem to be a technicality, knowledge or "scienter" is an essential element of the crime.

The State of Delaware has found a partial solution to this problem. A Delaware statute, 11 Del. C. section 1363 provides:

"A person who disseminates or possesses obscene material in the course of his business is presumed to do so knowingly or recklessly."

This statute establishes a presumption that the owner knows the content of the magazines and movies that are sold in his store. This statute has been found to be constitutional by the Delaware Supreme Court in Gottleib v. Delaware, 406 A. 2d 270 (1979). Prosecuting the owner of the adult theater or book store is much more effective than prosecuting the clerks. Both the Kansas statute and the city ordinance could be amended to include this presumption.

5. The Kansas statute makes it very difficult to elevate the crime of promoting obscenity to a felony.

The Kansas statute, K.S.A. 21-4301 provides that a conviction for promoting obscenity on both the first and second offense is a misdemeanor. It is only on the third conviction that the crime is elevated to a felony. Even then the third offense must be committed within two years after a previous conviction for the new offense to be considered a felony.

To obtain more effective control over obscenity the state statute could be amended to provide that only the first conviction is a misdemeanor and any subsequent conviction be a felony. Depending upon the attitude of the public in providing strong sanctions against obscenity, the statute could even provide that the first conviction is a felony. This is a matter which requires the input of the community to determine as a matter of public policy how strong the sanctions should be. The city ordinance could not be amended in this regard since only misdemeanors may be established by city codes.

6. The Kansas statute does not prohibit the sale of artificial sexual devices.

The Kansas statute which prohibits obscenity does not address the problem of artificial sexual devices. To be obscene under the state definition the material must represent an ultimate sexual act. Devices such as rubber penises, vaginas and vibrating dildos do not fall within this definition.

Some states have enacted statutes that specifically address artificial sexual devices. The State of Georgia prohibits as obscene material "any device designed or marketed as useful primarily for the stimulation of human genital organs". This statute has been held to be constitutional by the Georgia Supreme Court in Sewell v. Georgia, 233 S.E.2d 187 (1977) and the United States Supreme Court refused to hear an appeal of that decision in Sewell v. Georgia, 435 U.S. 982, 56 L.Ed.2d 76, 98 S Ct 1635.

Again, depending upon whether the community wishes to ban this type of product, both the state statute and city ordinance could be amended to prohibit the same.

7. The Kansas statute could be amended to prohibit child pornography per se.

The Kansas statutes do not have a specific provision for child pornography, but rather incorporate it in the general obscenity statute. The Kansas statute could be updated to provide for the more strenuous prohibition of child pornography as permitted by the United States Supreme Court decision of New York v. Ferber, 102 S Ct 3348 (1982). This decision allows for legislation to prohibit distribution of material which portrays children in sexual activity without the need to prove the other elements of the general obscenity statute. While there are no reports of the adult theaters or book stores selling child pornography in Wichita, this change could provide us with more effective control if it should occur in the future. Both state statute and city ordinance could be amended to include this provision.

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Statement Regarding Senate Bill No. 178

1. Title

An act concerning crimes and punishments; relating to certain crimes involving obscenity and sexual exploitation of children; defining and classifying the crime of promoting sexual performance by a minor.

2. Purpose

To prevent the sexual exploitation of children and to insure that the specific problem of minors dancing nude in "pop shops" is included in that prohibition.

3. Background

House Bill No. 2712 and No. 2929 were introduced to address the specific problem of minors dancing nude in pop shops. Senate Bill No. 178 was introduced to prohibit the sexual exploitation of children. The bills are clearly compatible and, as amended, Senate Bill No. 178 addresses the specific issues as well as the general problem of sexually exploited children.

4. Effect of Passage

Both the specific problem of nude dancing by minors and the general problem of sexual exploitation of children will be prohibited.

5. SRS Recommendation

SRS recommends passage.

Robert C. Harder
Office of the Secretary
Social and Rehabilitation Services
296-3271

*Attachment 3
House Judiciary
March 24 1980*

0269 *tion of the crime under this section.*

0270 (4) Upon any conviction ~~for~~ of promoting obscenity to
0271 minors, the court may require, in addition to any fine or impris-
0272 onment imposed, that the defendant enter into a reasonable
0273 recognizance with good and sufficient surety, in such sum as the
0274 court may direct, but not to exceed ~~fifty thousand dollars~~
0275 ~~(\$50,000)~~ \$50,000, conditioned to the effect that, in the event the
0276 defendant is convicted of a subsequent offense of promoting
0277 obscenity to minors within two ~~(2)~~ years after such conviction,
0278 the defendant shall forfeit the recognizance.

0279 (5) This section shall be a part of and supplemental to the
0280 Kansas criminal code.

0281 Sec. 5. K.S.A. ~~21-3516~~, 21-4301 and 21-4301a and K.S.A.
0282 1985 Supp. 21-3516 are hereby repealed.

0283 Sec. 6. This act shall take effect and be in force from and
0284 after its publication in the statute book.

As Amended by Senate Committee

Session of 1985

SENATE BILL No. 178

By Senators Francisco, Anderson, Daniels,
Feleciano, Morris and Yost

2-7

0019 AN ACT concerning crimes and punishments; relating to certain
0020 crimes involving obscenity and sexual exploitation of chil-
0021 dren; defining and classifying the crime of promoting sexual
0022 performance by a minor; amending K.S.A. ~~21-3516~~, 21-4301
0023 and 21-4301a and K.S.A. 1985 Supp. 21-3516 and repealing
0024 the existing sections.

0025 *Be it enacted by the Legislature of the State of Kansas:*

0026 Section 1. K.S.A. ~~21-3516~~ is hereby amended to read as fol-
0027 lows: ~~21-3516~~. (1) Sexual exploitation of a child is:

0028 (a) Employing, using, persuading, inducing, enticing or
0029 coercing a child under 16 years of age to engage in sexually
0030 explicit conduct for the purpose of promoting any film, photo-
0031 graph, negative, slide, book, magazine or other printed or visual
0032 medium performance; or

0033 (b) being a parent, guardian or other person having custody
0034 or control of a child under 16 years of age and knowingly
0035 permitting such child to engage in, or assist another to engage in,
0036 sexually explicit conduct for the purpose of promoting any film,
0037 photograph, negative, slide, book, magazine or other printed or
0038 visual medium performance.

0039 (2) As used in this section and section 2:

0040 (a) "Child" means any person who is less than sixteen (16)
0041 years of age;

0042 (b) (a) "Sexually explicit conduct" means actual or simu-
0043 lated sexual intercourse; including genital-genital, oral-genital,
0044 anal-genital, or oral-anal contact, whether between persons of
0045 the same or opposite sex; bestiality; masturbation; sado-maso-
0046 chistic abuse for the purpose of sexual stimulation; or lewd

0047 exhibition of the genitals or pubic area of any person.

0048 (c) (b) "Promoting" means procuring, selling, providing,

0049 lending, mailing, delivering, transferring, transmitting, distri-

0050 buting, circulating, disseminating, presenting, exhibiting, pro-

0051 ducing, directing, manufacturing, issuing, publishing, or adver-

0052 tising for pecuniary profit.

0053 (c) "Performance" means any play, film, photograph, nega-

0054 tive, slide, book, magazine or other printed or visual medium.

0055 (3) Sexual exploitation of a child is a class E D felony.

0056 (4) This section shall be part of and supplemental to the

0057 Kansas criminal code.

0058 Section 1. K.S.A. 1985 Supp. 21-3516 is hereby amended to

0059 read as follows: 21-3516. (1) Sexual exploitation of a child is:

0060 (a) Employing, using, persuading, inducing, enticing or

0061 coercing a child under 16 years of age to engage in sexually

0062 explicit conduct for the purpose of promoting any film, photo-

0063 graph, negative, slide, book, magazine or other printed or visual

0064 medium; or any play or other live performance;

0065 (b) possessing any film, photograph, negative, slide, book,

0066 magazine or other printed or visual medium in which a real

0067 child under 16 years of age is shown engaging in sexually explicit

0068 conduct with intent to arouse or satisfy the sexual desires or

0069 appeal to the prurient interest of the offender, the child or

0070 another; or

0071 (c) being a parent, guardian or other person having custody

0072 or control of a child under 16 years of age and knowingly

0073 permitting such child to engage in, or assist another to engage in,

0074 sexually explicit conduct for any purpose described in subsection

0075 (1)(a) or (b).

0076 (2) As used in this section and section 2:

0077 (a) "Child" means any person who is less than 16 years of

0078 age;

0079 (b) (a) "Sexually explicit conduct" means actual or simu-

0080 lated sexual intercourse or sodomy, including genital-genital,

0081 oral-genital, anal-genital or oral-anal contact, whether between

0082 persons of the same or opposite sex; masturbation; sado-mas-

0083 ochistic abuse for the purpose of sexual stimulation; or lewd

Exhibition in the nude, s

0084 exhibition of the genitals or pubic area of any person.

0085 (c) (b) "Promoting" means procuring, selling, providing,

0086 lending, mailing, delivering, transferring, transmitting, distri-

0087 buting, circulating, disseminating, presenting, producing,

0088 directing, manufacturing, issuing, publishing, displaying, ex-

0089 hibiting or advertising:

0090 (i) For pecuniary profit; or

0091 (ii) with intent to arouse or gratify the sexual desire or

0092 appeal to the prurient interest of the offender, the child or

0093 another.

0094 (c) "Performance" means any film, photograph, negative,

0095 slide, book, magazine or other printed or visual medium, or any

0096 play or other live presentation.

0097 (3) Sexual exploitation of a child is a class E D felony.

0098 (4) This section shall be part of and supplemental to the

0099 Kansas criminal code.

0100 New Sec. 2. (1) Promoting sexual performance by a minor is

0101 promoting any performance that includes sexually explicit con-

0102 duct by a child under 18 years of age, knowing the character and

0103 content of the performance.

0104 (2) Promoting sexual performance by a minor is a class E

0105 felony.

0106 (3) This section shall be part of and supplemental to the

0107 Kansas criminal code.

0108 Sec. 3. K.S.A. 21-4301 is hereby amended to read as follows:

0109 21-4301. (1) Promoting obscenity is knowingly or recklessly:

0110 (a) Manufacturing, issuing, selling, giving, providing, lend-

0111 ing, mailing, delivering, transmitting, publishing, distributing,

0112 circulating, disseminating, presenting, exhibiting or advertising

0113 any obscene material or obscene device; or

0114 (b) Possessing any obscene material or obscene device with

0115 intent to issue, sell, give, provide, lend, mail, deliver, transfer,

0116 transmit, publish, distribute, circulate, disseminate, present, ex-

0117 hibit or advertise such material or device; or

0118 (c) Offering or agreeing to manufacture, issue, sell, give,

0119 provide, lend, mail, deliver, transmit, publish, distribute, cir-

0120 culate, disseminate, present, exhibit or advertise any obscene

(d) "Nude" means any state of undress in which the human genitals, pubic region, buttock, or the female breast, at a point below the top of the areola, is less than completely and opaquely covered

0121 material or obscene device; or

0122 (d) Producing, presenting or directing an obscene perform-
0123 ance or participating in a portion thereof which is obscene or
0124 which contributes to its obscenity.

0125 (2) Evidence that materials or devices were promoted to
0126 emphasize their prurient appeal or sexually provocative aspect
0127 shall be relevant in determining the question of the obscenity of
0128 such materials, and shall create or devices. There shall be a
0129 presumption that the a person promoting the same obscene
0130 materials or obscene devices did so knowingly or recklessly if:

0131 (a) The materials or devices were promoted to emphasize
0132 their prurient appeal or sexually provocative aspect; or

0133 (b) the person promotes the materials or devices in the
0134 course of the person's business.

0135 (3) (a) Any material or performance is "obscene" if the
0136 average person applying contemporary community standards
0137 would find that such:

0138 (i) The material or performance, taken as a whole, appeals to
0139 the prurient interest; that

0140 (ii) the material or performance has patently offensive repre-
0141 sentations or descriptions of (A) ultimate sexual acts, normal or
0142 perverted actual or simulated, including sexual intercourse or
0143 sodomy, or (B) masturbation, excretory functions, sadomaso-
0144 chistic abuse or lewd exhibition of the genitals; and that

0145 (iii) the material or performance, taken as a whole, lacks
0146 serious literary, educational, artistic, political or scientific value.

0147 (b) "Material" means any tangible thing which is capable of
0148 being used or adapted to arouse interest, whether through the
0149 medium of reading, observation, sound or other manner.

0150 (c) "Obscene device" means a device, including a dildo or
0151 artificial vagina, designed or marketed as useful primarily for
0152 the stimulation of human genital organs.

0153 (d) "Performance" means any play, motion picture, dance or
0154 other exhibition performed before an audience.

0155 (e) "Sexual intercourse" and "sodomy" have the meanings
0156 provided by K.S.A. 21-3501 and amendments thereto.

0157 (3) (4) It is a defense to a prosecution for obscenity that:

0158 (a) The persons to whom the allegedly obscene material was
0159 disseminated, or the audience to an allegedly obscene perform-
0160 ance, consisted of persons or institutions having scientific, edu-
0161 cational or governmental justification for possessing or viewing
0162 the same;

0163 (b) the defendant is an officer, director, trustee or employee
0164 of a public library and the allegedly obscene material was ac-
0165 quired by such library and was disseminated in accordance with
0166 regular library policies approved by its governing body; or

0167 (c) the allegedly obscene material or obscene device was
0168 purchased, leased or otherwise acquired by a public, private or
0169 parochial school, college or university, and that such material
0170 was either sold, leased, distributed or disseminated by a teacher,
0171 instructor, professor or other faculty member or administrator of
0172 such school as part of or incident to an approved course or
0173 program of instruction at such school.

0174 (4) The provisions of this section and the provisions of ordi-
0175 nances of any city prescribing a criminal penalty for exhibit of
0176 any obscene motion picture shown in a commercial showing to
0177 the general public shall not apply to a projectionist, or assistant
0178 projectionist, if such projectionist or assistant projectionist has no
0179 financial interest in the show or in its place of presentation other
0180 than regular employment as a projectionist or assistant projec-
0181 tionist. The provisions of this section shall not exempt any
0182 projectionist or assistant projectionist from criminal liability for
0183 any act unrelated to projection of motion pictures in commercial
0184 showings to the general public.

0185 (5) The provisions of this section and the provisions of ordi-
0186 nances of any city prescribing a criminal penalty for exhibit of
0187 any obscene motion picture shown in a commercial showing to
0188 the general public shall not apply to a projectionist, or assistant
0189 projectionist, if such projectionist or assistant projectionist has
0190 no financial interest in the show or in its place of presentation
0191 other than regular employment as a projectionist or assistant
0192 projectionist and no personal knowledge of the contents of the
0193 motion picture. The provisions of this section shall not exempt
0194 any projectionist or assistant projectionist from criminal liabil-

0195 ity for any act unrelated to projection of motion pictures in
0196 commercial showings to the general public.

0197 (5) (6) Promoting obscenity, for the first or second offense, is
0198 a class A misdemeanor, except that upon conviction for the
0199 second such offense committed within two (2) years after con-
0200 viction for the first offense, a fine shall be imposed in an amount
0201 not less than two thousand five hundred dollars (\$2,500) nor
0202 more than five thousand dollars (\$5,000) in addition to or instead
0203 of any confinement; and promoting obscenity, for a third or
0204 subsequent offense committed within two (2) years after a pre-
0205 vious conviction for such offense, is on conviction of a first
0206 offense and a class E felony on conviction of a second or
0207 subsequent offense. Conviction of a violation of a municipal
0208 ordinance prohibiting acts which constitute promoting obscen-
0209 ity shall be considered a conviction of promoting obscenity for
0210 the purpose of determining the number of prior convictions and
0211 the classification of the crime under this section.

0212 (6) (7) Upon any conviction for of promoting obscenity, the
0213 court may require, in addition to any fine or imprisonment
0214 imposed, that the defendant enter into a reasonable recogni-
0215 zance with good and sufficient surety, in such sum as the court
0216 may direct, but not to exceed fifty thousand dollars (\$50,000)
0217 \$50,000, conditioned to the effect that, in the event the defend-
0218 ant is convicted of a subsequent offense of promoting obscenity
0219 within two (2) years after such conviction, the defendant shall
0220 forfeit the recognizance.

0221 Sec. 4. K.S.A. 21-4301a is hereby amended to read as fol-
0222 lows: 21-4301a. (1) Promoting obscenity to minors is promoting
0223 obscenity, as defined by K.S.A. 21-4301 and amendments
0224 thereto, where the recipient of the obscene material or obscene
0225 device or a member of the audience of an obscene performance is
0226 a child under the age of eighteen (18) 18 years. Any material or
0227 performance is "obscene" if the average person applying con-
0228 temporary community standards would find that such material or
0229 performance, taken as a whole, appeals to the prurient interest;
0230 that the material or performance has patently offensive repre-
0231 sentations or descriptions of ultimate sexual acts, normal or

0232 perverted; and that the material or performance, taken as a
0233 whole, lacks serious literary, educational, artistic, political or
0234 scientific value.

0235 (2) Notwithstanding the provisions of K.S.A. 21-3202 and
0236 amendments thereto to the contrary, it shall be an affirmative
0237 defense to any prosecution under this section that:

0238 (a) The defendant had reasonable cause to believe that the
0239 minor involved was eighteen (18) 18 years old or over, and such
0240 minor exhibited to the defendant a draft card, driver's license,
0241 birth certificate or other official or apparently official document
0242 purporting to establish that such minor was eighteen (18) 18
0243 years old or more.

0244 (b) The allegedly obscene material was purchased, leased or
0245 otherwise acquired by a public, private or parochial school,
0246 college or university, and that such material was either sold,
0247 leased, distributed or disseminated by a teacher, instructor,
0248 professor or other faculty member or administrator of such school
0249 as part of or incident to an approved course or program of
0250 instruction at such school.

d 0251 (c) The defendant is an officer, director, trustee or employee
0252 of a public library and the allegedly obscene material was ac-
0253 quired by a public library and was disseminated in accordance
0254 with regular library policies approved by its governing body.

0255 (3) Promoting obscenity to minors is a class A misdemeanor,
0256 for on conviction of the first offense, with a mandatory fine of not
0257 less than two thousand five hundred dollars (\$2,500) nor more
0258 than five thousand dollars (\$5,000) in addition to or instead of
0259 any imprisonment imposed upon conviction; for the second such
0260 offense committed within two (2) years after conviction for the
0261 first such offense it shall be a class E felony; and for a third or
0262 subsequent offense committed within two (2) years after a pre-
0263 vious conviction for such offense it shall be and a class D felony
0264 on conviction of a second or subsequent offense. Conviction of a
0265 violation of a municipal ordinance prohibiting acts which con-
0266 stitute promoting obscenity to minors shall be considered a
0267 conviction of promoting obscenity to minors for the purpose of
0268 determining the number of prior convictions and the classifica-

(c) Any exhibition in a state of
nudity is for a bona fide scien-
tific or medical purpose, or for
an educational or cultural purpose
for a bona fide school, museum or
library.

OPPOSITION ON BEHALF OF
PALMER NEWS, INC.
TO ONE PORTION OF SB 178

1. Role of Wholesale Agency
2. Forced Distribution
3. Attempted Compliance: The Guess
4. SB 178
5. Proposed Solutions

HOUSE JUDICIARY COMMITTEE

March 24, 1986

*Attachment 4
House Judiciary
March 24, 1986*

ACIDA

RESEARCH and TECHNOLOGY COMMITTEE

Newsletter

This is the first newsletter from the ACIDA Research and Technology Committee. This committee will be reporting on trends and changes in the periodical distribution industry. We will also try and keep the ACIDA membership informed with statistical information which we feel may be of benefit.

Our first newsletter concerns itself with product information. We hope that the information provided will be useful to you.

1985 TITLE SURVEY

Active Titles:	2203	Weekly Frequency:	38
Bi-Weekly Frequency:	15	Tri-Weekly Frequency:	6
Monthly Frequency:	674	Bi-Monthly Frequency:	452
Quarterly Frequency:	320	Semi-Annual Frequency:	61
Annuals & One Shots:	737		

010	CAPITAL DISTRIBUTING COMPANY:	165
015	CURTIS CIRCULATION COMPANY :	629
020	DELL DISTRIBUTING, INC. :	69
025	CBS MAGAZINE MARKETING :	128
028	FLYNT DISTRUTING COMPANY :	67
030	WARNER PUBLISHER SERVICES :	347
035	INTERNATIONAL CIRCULATION :	179
040	KABLE NEWS COMPANY :	397
060	SELECT MAGAZINES, INC. :	163
070	TRIANGLE PUBLICATIONS, INC. :	17
100	TIME DISTRIBUTING, INC. :	15
172	DYNASTY MEDIA DISTRIBUTING :	25
627	NATIONAL PERIODICAL :	9
640	JOHNSON PUBLISHING COMPANY :	3
716	DISTICOR :	15
777	TRANSAMERICAN EXPORT :	4
889	ALL AMERICA DISTRIBUTORS :	11

It is important to remember that this survey does not contain all of the products which can be classified as "local interest". The next newsletter will breakdown the title survey by product categories.

Top Six Bimonthlies in Retailer Profits

1. Bride's	\$130,339
2. Modern Bride	114,905
3. Woman	70,243
4. Better Homes & Gardens — Country Home	77,979
5. Colonial Homes	62,190
6. The Mother Earth News	58,327

Top Six Biweeklies in Retailer Profits

1. Soap Opera Digest (13X)	\$284,293
2. Rolling Stone	205,135
3. Us	199,851
4. TV Crosswords (9X)	96,950
5. PC Magazine (13X)	52,749
6. Fortune (13X)	52,478

Dollar Expenditures: Top 100

USING ABC FAS-FAX figures and our own calculations, we've come up with this list of Top 100 Profit Performers in single copy sales for the six-month period ending June 30, 1985. (Figures have been rounded off.)

These 100 titles represent a healthy cross section of categories; all 100 titles earned profits of more than \$1.7 million and 10 magazines topped the \$10 million mark.

Rank	Title	Dollars Spent	Rank	Title	Dollars Spent	Rank	Title	Dollars Spent
1.	TV Guide	\$132,274,804	34.	Us	5,995,536	69.	DC Comics	2,557,004
2.	National Enquirer	68,623,937	35.	McCall's	5,980,203	70.	U.S. News & World Report	2,508,667
3.	Penthouse	62,496,000	36.	GQ-Gentlemen's Quarterly	5,894,130	71.	Motor Trend	2,498,064
4.	People	60,426,000	37.	Cheri	5,852,406	72.	National Lampoon	2,388,576
5.	Family Circle	43,432,722	38.	Sports Illustrated	5,749,331	73.	Better Homes & Gardens: Country Homes	2,339,347
6.	Woman's Day	40,665,964	39.	Pillsbury Classics	5,541,966	74.	"TEEN"	2,323,467
7.	Cosmopolitan	29,515,169	40.	Country Living	5,276,209	75.	Ebony	2,311,890
8.	Playboy	28,077,966	41.	Harper's Bazaar	5,251,200	76.	Southern Living	2,301,810
9.	The Star	23,898,701	42.	Forum	5,213,910	77.	Compute!'s Gazette	2,264,060
10.	Globe	23,889,694	43.	Omni	5,175,840	78.	Car Craft	2,208,486
11.	Woman's World	23,414,606	44.	Jet	5,080,594	79.	House & Garden	2,194,920
12.	Good Housekeeping	21,068,213	45.	Better Homes & Gardens	5,015,961	80.	Popular Science	2,192,694
13.	Glamour	17,500,334	46.	Marvel Comics	5,004,070	81.	Esquire	2,181,630
14.	National Examiner	14,638,696	47.	Genesis	4,864,020	82.	Science Digest	2,150,136
15.	Vogue	13,828,518	48.	Money	4,776,435	83.	True Story	2,109,495
16.	Weekly World News	11,922,264	49.	Circus	4,563,363	84.	Woman	2,107,282
17.	Life	10,632,585	50.	Seventeen	4,519,719	85.	Petersen's 4 Wheel & Off Road	2,100,857
18.	Time	10,105,241	51.	Shape	4,463,983	86.	Time (Atlantic)	2,077,125
19.	Mademoiselle	9,902,634	52.	Barron's	4,018,725	87.	Soap Opera Digest	1,968,179
20.	Club	9,507,089	53.	Easyriders	3,945,585	88.	Byte	1,946,553
21.	TV Guide (English & Canada)	9,369,870	54.	Club International	3,910,713	89.	Popular Hot Rodding	1,930,415
22.	Gallery	9,358,524	55.	Bride's	3,909,276	90.	Grit	1,923,675
23.	Reader's Digest	8,430,471	56.	Hot Rod	3,641,040	91.	Discover	1,912,545
24.	Ladies' Home Journal	8,239,617	57.	The Sun	3,578,947	92.	Dell Crossword	1,876,644
25.	Newsweek	7,891,455	58.	Modern Bride	3,447,150	93.	Colonial Homes	1,865,700
26.	Muscle & Fitness	7,812,483	59.	Hit Parader	3,441,609	94.	16 Magazine	1,801,601
27.	Macfadden's Women's Group	7,353,510	60.	Road & Track	3,342,984	95.	Sport	1,801,572
28.	High Society	7,229,273	61.	Car & Driver	3,319,421	96.	Gun & Ammo	1,798,392
29.	Self	7,225,429	62.	House Beautiful	2,962,779	97.	Town & Country	1,775,430
30.	Redbook	6,606,054	63.	TV Crosswords	2,908,496	98.	Daytime TV	1,773,954
31.	Playgirl	6,568,983	64.	Popular Mechanics	2,823,309	99.	Four Wheeler	1,771,800
32.	New Woman	6,257,855	65.	The Sporting News	2,716,058	100.	McCall's Crafts	1,768,545
33.	Rolling Stone	6,154,036	66.	Soldier of Fortune	2,655,072			
			67.	Architectural Digest	2,647,863			
			68.	Compute!	2,652,752			

M:TB

transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise any obscene material; or

(d) Producing, presenting or directing an obscene performance or participating in a portion thereof which is obscene or which contributes to its obscenity.

Evidence that materials were promoted to emphasize their prurient appeal or sexually provocative aspect shall be relevant in determining the question of the obscenity of such materials, and shall create a presumption that the person promoting the same did so knowingly or recklessly.

(2) (a) Any material or performance is "obscene" if the average person applying contemporary community standards would find that such material or performance, taken as a whole, appeals to the prurient interest; that the material or performance has patently offensive representations or descriptions of ultimate sexual acts, normal or perverted; and that the material or performance, taken as a whole, lacks serious literary, educational, artistic, political or scientific value.

(b) "Material" means any tangible thing which is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound or other manner.

(c) "Performance" means any play, motion picture, dance or other exhibition performed before an audience.

(3) It is a defense to a prosecution for obscenity that: (a) The persons to whom the allegedly obscene material was disseminated, or the audience to an allegedly obscene performance, consisted of persons or institutions having scientific, educational or governmental justification for possessing or viewing the same;

(b) the defendant is an officer, director, trustee or employee of a public library and the allegedly obscene material was acquired by such library and was disseminated in accordance with regular library policies approved by its governing body; or

(c) the allegedly obscene material was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incident to an

approved course or program of instruction at such school.

(4) The provisions of this section and the provisions of ordinances of any city prescribing a criminal penalty for exhibit of any obscene motion picture shown in a commercial showing to the general public shall not apply to a projectionist, or assistant projectionist, if such projectionist or assistant projectionist has no financial interest in the show or in its place of presentation other than regular employment as a projectionist or assistant projectionist. The provisions of this section shall not exempt any projectionist or assistant projectionist from criminal liability for any act unrelated to projection of motion pictures in commercial showings to the general public.

(5) Promoting obscenity, for the first or second offense, is a class A misdemeanor, except that upon conviction for the second such offense committed within two (2) years after conviction for the first offense, a fine shall be imposed in an amount not less than two thousand five hundred dollars (\$2,500) nor more than five thousand dollars (\$5,000) in addition to or instead of any confinement; and promoting obscenity, for a third or subsequent offense committed within two (2) years after a previous conviction for such offense, is a class E felony.

(6) Upon any conviction for promoting obscenity, the court may require, in addition to any fine or imprisonment imposed, that the defendant enter into a reasonable recognizance with good and sufficient surety, in such sum as the court may direct, but not to exceed fifty thousand dollars (\$50,000), conditioned to the effect that in the event the defendant is convicted of a subsequent offense of promoting obscenity within two (2) years after such conviction, the defendant shall forfeit the recognizance.

History: L. 1969, ch. 180, § 21-4301; L. 1970, ch. 128, § 1; L. 1976, ch. 159, § 1; L. 1980, ch. 98, § 2; July 1.

Source or prior law:

21-1102, 21-1102a, 21-1102d, 21-1105, 21-1115.

Judicial Council, 1968: The section is adopted from the proposed New York law. The definition of obscenity is similar to the provision of the Model Penal Code, 251.4; Illinois Criminal Code, 11-20 (b); and the Colorado Proposal, 40-18-2. It appears to conform with the Supreme Court tests of *Roth v. United States*, 354 U.S. 476; *Manual Enterprises v. Day*, 370 U.S. 478; *Mishkin v. New York*, 383 U.S. 502; and *Ginzburg v. U.S.*, 383 U.S. 463.

0121 material or *obscene device*; or

0122 (d) Producing, presenting or directing an obscene perform-
0123 ance or participating in a portion thereof which is obscene or
0124 which contributes to its obscenity.

0125 (2) Evidence that materials or *devices* were promoted to
0126 emphasize their prurient appeal or sexually provocative aspect
0127 shall be relevant in determining the question of the obscenity of
0128 such materials; ~~and shall create or devices. There shall be a~~
0129 presumption that ~~the a~~ person promoting ~~the same obscene~~
0130 *materials or obscene devices* did so knowingly or recklessly if:

0131 (a) *The materials or devices were promoted to emphasize*
0132 *their prurient appeal or sexually provocative aspect; or*

0133 (b) *the person promotes the materials or devices in the*
0134 *course of the person's business*^

0135 ~~(2)~~ (3) (a) Any material or performance is "obscene" if the
0136 average person applying contemporary community standards
0137 would find that ~~such~~:

0138 (i) *The material or performance, taken as a whole, appeals to*
0139 *the prurient interest; that*

0140 (ii) *the material or performance has patently offensive repre-*
0141 *sentations or descriptions of (A) ultimate sexual acts, normal or*
0142 *perverted actual or simulated, including sexual intercourse or*
0143 *sodomy, or (B) masturbation, excretory functions, sadomaso-*
0144 *chistic abuse or lewd exhibition of the genitals; and that*

0145 (iii) *the material or performance, taken as a whole, lacks*
0146 *serious literary, educational, artistic, political or scientific value.*

0147 (b) "Material" means any tangible thing which is capable of
0148 being used or adapted to arouse interest, whether through the
0149 medium of reading, observation, sound or other manner.

0150 (c) "*Obscene device*" means *a device, including a dildo or*
0151 *artificial vagina, designed or marketed as useful primarily for*
0152 *the stimulation of human genital organs.*

0153 (d) "Performance" means any play, motion picture, dance or
0154 other exhibition performed before an audience.

0155 (e) "*Sexual intercourse*" and "*sodomy*" have the meanings
0156 *provided by K.S.A. 21-3501 and amendments thereto.*

0157 ~~(3)~~ (4). It is a defense to a prosecution for obscenity that:

^, knowing that such materials or devices are obscene.

Testimony before House Judiciary
Senate Bills 706, 708-713
March 24, 1986
Michael E. Boyer, Supervisor
Missing Persons System
Kansas Bureau of Investigation

Member - Attorney General's Task Force on Missing and
Exploited Children

Mr. Chairman and Members of the Committee:

As a member of the Attorney General's Task Force and supervisor of the state's Missing Persons System as defined in KSA 75-712b I wish to offer the following testimony on the Missing Persons bills under consideration by this committee. In general, all the bills are desirable to enhance the missing persons effort in Kansas. Since July 1, 1985 when KSA 75-712b became effective, Kansas has joined the very elite states in this national effort and Kansas has made the quantum leap with very little monetary expenditure and very few personnel dedicated to the effort. The one element missing from the package of bills under consideration is necessary enhancements to the clearinghouse effort. However, these bills go a long way toward addressing elements of concern and provide some "cleanup" to this desired end of all parties involved in the process working in the same direction. More may need to be done; however, this package represents a crucial step in the right direction.

On the respective bills:

SB 706- Addresses issue of parental abductions. Would suggest returning the age to 16 (line 26). The one shortcoming in this bill is that it does not address the issue of the custodial parent unfairly secreting the child from the non-custodial parent. This comment is not to be construed as a recommendation at this point; the observation is advisory in nature.

SB 708- Prostitution under 16 years of age.

SB 709- Expungement.

SB 710- Statute of limitations.

SB 711- Videotape legislation.

SB 712- Places in the statutes the Rule and Regulation currently in place in the state Missing Persons System (SA 75-712b) and, further, directs that an "immediate investigation shall be commenced" pursuant to the report received. Timeliness is crucial in all Missing Persons reports. Much valuable time is often lost if immediate action does not occur.

SB 713- Addresses the issue of out-of-state missing persons, properly entered into the national missing persons system (NCIC). One of the most serious problems today is that of inter-state cooperation. This bill places Kansas in the position of assisting another state in the recovery of a missing person appropriately reported in that state.

There remains a serious deficiency in this bill that apparently will be reserved for interim committee study. With the passage of SB 713, Kansas

*Attachment 5
House Judiciary
March 24 1986*

would afford another state more protection for their children than we currently afford our own! The in-state missing persons, specifically the runaway, is not covered by this bill. Specifically, law enforcement should be directed to act upon any verified missing persons report found in either the national system or the state missing persons system. Currently, areas of the state refuse to act upon a verified missing person's report "unless the child is willing to accompany the the officer." This doe not appear to be good public policy in terms of the missing persons effort. I would urge serious attention to the issue of protecting our own citizens at the same time we move to protect another state's citizens.

Thank you for your attention and support of these missing persons related bills. While we may still have some distance to go, these measures and others currently in process (SB 704, SB 705, SB 593, HB 2301, etc.) definitely begin the journey on the proper foot.

March 24, 1986

To members of the House Judiciary committee:

Knopp, Chairperson; Wunsch, Vice-chairperson; Bideau, Buehler, Cloud, Douville, Duncan, Fuller, Harper, O'Neal, Snowbarger, Vancrum, Walker;

Solbach, Ranking Minority Member; Adam, Luzzati, Roy, Shriver, Teagarden, Wagon, Whiteman.

In regard to Senate Bill No. 178 for passage in the House.

* * * * *

What is the price that America will pay for the freedom of permissiveness, promiscuity plus other forms of pornography???????????

* * * * *

The sexual libertines cry out - "Everyone should do as he pleases with his own body." And we all pay for the consequences. A substantial portion of the population of our nation's mental hospitals consists of patients who are paretics, person with paresis, the irreversible brain damage resulting from syphilis. Their indiscretions are now the taxpayers' expense because of money allotted to keep their vegetative minds housed indefinitely, not to mention the jails overflowing with uncontrollable converts with minds polluted by porno. America's consciousness is being slowly indoctrinated to accept a pornographic view of life as normal.

Increased pornography & obscenities - means increased crime - a documented statistic! The Law's attitude toward pornography is reflected throughout our society. An eminent law professor has observed, "We tend to act within the range of what we think is tolerated by society." In other words, we all, like children tend to go as far as we envision external peer pressure will allow. Therefore, if pornography is readily available, the impressionable mind will assume that the community approves of such immorality. Those with perverse compulsions may begin to feel that indulgence, rather than discipline, is the road to fulfillment. It is sad that our leaders cannot at least declare themselves in opposition to pornography and thereby make a moral statement as to the desirable type of society we wish to sanction.

Pro-pornography advocates argue that pornography is a "victimless" crime, a viable outlet for suppressed fantasies seeking some release. But if we really want the truth, why not ask those who read pornography - and their victims? If pornography is victimless, then prostitution, drug trafficking and the exploitation of runaways would not be a menace! Pornography's effect on our culture is but a reflection of its demeaning impact on all our citizens. It may be argued that seeing a porno movie will not cause one to become a rapist, but it is undeniable that we are changed by what we experience. This is the foundation of education and learning. The longer such conduct is practiced, the greater are the chances that a permanent, self-enforcing neurosis will result and affliction of crime victims.

THE BOTTOM LINE: Indicates our State obscenity laws MUST be strengthened and our only hope, lies in good sound legislation. But we need it now, in this 1986 Session. We must restore our moral values and outlaw once and for all, by legislation, all of these people who live by and promote such immorality! Thank you for your support!

Lois-Ann Beal(272-1523)

Topeka Area Chapter National Federation for Decency
Executive Board

House Judiciary
March 24 1986