Approved March 6, 1987
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Representative Mike O'Neal
Vice-Chairperson at

3:30 ~~xxx~~/p.m. on February 19, 1987 in room 313-S of the Capitol.

All members were present except: Representatives Duncan, Peterson and Wunsch, who were excused.

Committee staff present:
Mike Heim, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Mary Jane Holt, Secretary

Conferees appearing before the committee:
Representative Samuel "Burr" Sifers
Norman Wilks, Director of Labor Relations, Kansas Association of School Boards
John Josserand, Wichita Chamber of Commerce, Wichita
Representative Marvin Smith
Jerry Goodell, Kansas Bar Association
Dan Rice, Legal Counsel, Secretary of State's office
Representative Art Douville

Hearing on H.B. 2107-Limiting liability of directors, officers, volunteers of nonprofit organizations

Representative Sifers testified the bill limits civil liability of directors, officers and volunteers of eleemosynary organizations.

Norman Wilks testified in support of the concept of the bill. He suggested amending Section 1 (a) (1) to include all organizations exempt from federal income tax pursuant to Section 501(c) of the Internal Revenue Code of 1984, as amended, but not to include medical care facilities as defined in K.S.A. 65-425, and amendments thereto, (see Attachment I).

John Josserand informed the Committee that Chambers of Commerce would come under 501(c)(6). He urged the Committee not to limit the bill to 501(c)(3) as there are a lot of people that would come under other 501(c) sections.

Hearing on H.B. 2217-Burglarly while resident absent due to death, injury or illness.

Representative Smith testified the main purpose of H.B. 2217 is to increase the penalty for burglarly that occurs to property when a person is absent due to illness. He recommended the penalty be changed to aggravated burglarly, a Class C felony, (see Attachment II).

The hearing was closed on H.B. 2217.

Hearing on H.B. 2151-Amendments to revised uniform limited partnership act

Jerry Goodell offered an amendment to H.B. 2151 to make the bill consistent with the current Uniform Act, (see Attachment III).

Dan Rice testified in support of H.B. 2151 and offered two amendments to the bill. The first amendment would eliminate the inconsistent treatment of domestic limited partnerships and conform with the corporate code treatment. The second amendment is a technical amendment to the limited partnership annual reporting statutes, (see Attachment IV).

The hearing was closed on H.B. 2151.

Hearing on H.B. 2176-Prohibiting negligence suit by child against parent

Representative Douville testified this bill was designed in response to a court decision that children can sue their parents for ordinary negligence. The bill does not address child abuse.

The testimony of Ron Smith, Kansas Bar Association, who was not present, was distributed to the Committee. The testimony indicated the Kansas Bar Association did not have an official position on H.B. 2176, however, they urged caution in legislatively adopting public policy which says that certain causes of action are forever and under no circumstances allowed, (see Attachment V).

The hearing on H.B. 2176 was closed.

The Vice Chairman announced the Attorney General's Office has requested the Committee introduce four bills. A bill establishing a mandatory minimum sentence for the sale of controlled substances and for providing controlled substances to minors. Extend the three day cancellation period in the present law to health spas and buying clubs. Supplement the Consumer Protection Act and help the Attorney General's office prevent the victimizing of small businesses. Replace old legislation still in effect that conflicts with newer legislation on service of process on the state.

Representative Roy moved to introduce the proposed legislation requested by the Attorney General's Office. Representative Snowbarger seconded the motion. The motion passed.

Representative O'Neal reported the subcommittee on H.B. 2024 determined there should be further study on the issue of whether the comparative negligence statute ought to be more of a comparative fault statute. The subcommittee recommended a Substitute H.B. 2024 to address the economic loss only so it can be acted upon while further study is conducted on the rest of H.B. 2024.

Representative Bideau moved and Representative Walker seconded to adopt the subcommittee report on H.B. 2024. The motion passed.

The meeting was adjourned at 4:25 p.m.

STATE OF KANSAS

MARVIN E. SMITH
REPRESENTATIVE, FIFTIETH DISTRICT
SHAWNEE AND JACKSON COUNTIES
123 N E 82ND STREET
TOPEKA, KANSAS 66617-2209

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER EDUCATION
TAXATION
TRANSPORTATION

FEBRUARY 19, 1987

HB 2217
HOUSE JUDICIARY

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

OUR MAIN PURPOSE FOR INTRODUCING HB 2217 IS TO INCREASE THE PENALTY FOR BURGLARY THAT OCCURS TO PROPERTY WHEN A PERSON IS ABSENT DUE TO ILLNESS, INJURY OR DEATH. FOR A NUMBER OF YEARS FAMILIES IN KANSAS WHO HAVE HAD ACCIDENTS, DEATHS AND OTHER MISFORTUNES THAT HAVE BEEN REPORTED IN THE MEDIA HAVE BEEN VICTIMS OF BURGLARY.

APPROXIMATELY FOUR YEARS AGO FORMER REPRESENTATIVE DAVE WEBB REPORTED THAT THE DAY OF HIS GRANDFATHER'S FUNERAL, THE RESIDENCE WAS RANSACKED AND BURGLARIZED.

THREE YEARS AGO LAST FALL A FARMER, WHO LIVED ALONE IN SOUTHEAST SHAWNEE COUNTY, WAS CAUGHT IN THE PULLEYS OF HIS COMBINE. A NEIGHBOR DISCOVERED HIM TWO DAYS LATER. THE INCIDENT WAS REPORTED BY THE MEDIA. HE WAS HOSPITALIZED FOR A NUMBER OF WEEKS. APPROXIMATELY A WEEK BEFORE RELEASE FROM THE HOSPITAL, HIS PROPERTY WAS BURGLARIZED.

THREE YEARS AGO A FAMILY IN NORTHERN SHAWNEE COUNTY HAD A DEATH. THE NIGHT BEFORE THE FUNERAL THE FAMILY WAS AT THE FUNERAL HOME FOR VISITATION OF FAMILY AND FRIENDS. WHEN THEY RETURNED HOME THEY HAD BEEN VANDALIZED AND RIPPED OFF. WHAT A TRAVESTY! THIS SAME FAMILY HAD IN-LAWS THAT A FEW YEARS PRIOR TO THIS HAD BEEN BURGLARIZED THE DAY OF THE FUNERAL.

Attachment II
House Judiciary 2/19/87

PRESENTLY THE LAW IS JUST CONSIDERED BURGLARY WITH A CLASS D FELONY AS THE PENALTY. THIS PROPOSED LEGISLATION WOULD INCLUDE THESE CIRCUMSTANCES AS AGGRAVATED BURGLARY AS CLASS C FELONY.

IT SEEMS TO ME THAT CRIMINALS WHO PREY ON CITIZENS WHO ARE UNDER DURESS FROM INJURY, DEATH AND MISFORTUNE BY BURGLARIZING THEIR PROPERTY SHOULD BE PENALIZED MORE THAN CLASS D FELONY.

ONE OF MY CONSTITUENTS FROM THE 50TH DISTRICT WHOSE FAMILIES HAVE BEEN VICTIMS OF THESE CIRCUMSTANCES IS PRESENT TODAY.

I WOULD LIKE FOR THE COMMITTEE TO GIVE FAVORABLE CONSIDERATION TO THIS PROBLEM.

National Conference of Commissioners on Uniform State Laws
645 North Michigan Avenue, Suite 510, Chicago, Illinois 60611-(312) 321-9710

John M. McCabe
Legislative Director

February 13, 1987

Mr. Ronald D. Smith
Legislative Counsel
Kansas Bar Association
1200 Harrison
P.O. Box 1037
Topeka, KS 66601

Dear Ron:

I reviewed H.B. 2151, as I noted by phone yesterday. I have only one critical comment. Section 8(a)(1) and (2) of H.B. 2151 has language that is slightly different from the final version of the Uniform Act. The Uniform Act language is in Section 301(a)(1) and (2) on page 25 of the attached copy of the Uniform Act. The language in H.B. 2151 is from an earlier draft of the Uniform Act.

There is a reason for changing this language. It is possible for a limited partnership to be formed after the date the certificate is filed. See Section 3(b) of H.B. 2151 and Section 201(b) of the Uniform Act. It is possible for a person to become a limited partner under Section 8(a)(1) of H.B. 2151, by its current language, before the limited partnership is actually formed. This is more of a technical problem than a real, substantive problem, but the current language of the Uniform Act avoids the technical possibility without changing the real, intended meaning of the provision.

Thank you for your kind attention.

Sincerely,

John M. McCabe
Legislative Director

JMM:cms
Enc.

Attachment III
House Judiciary 2/19/87

Offered by KBA:

Proposed House Judiciary Committee amendment to HB 2151:

On page 7, line 232 by striking "on the"; in line 233 by striking all before the semicolon;

In line 234, by striking everything after "(1) and inserting "at the time the limited partnership is formed; or"

By striking all of line 235.

In line 236, after the "(2)" by striking all of the remainder of the line and inserting in lieu thereof "at any later time specified in the records of the limited partnership for becoming a limited partner."

By striking all of line 237.

Bill Graves
Secretary of State

2nd Floor, State Capitol
Topeka, KS 66612-1594
(913) 296-2236

STATE OF KANSAS

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE
ON HB 2151
FEBRUARY 19, 1987
BY DANTON B. RICE

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

I am Dan Rice and I am legal counsel for the Secretary of State's office. I am here today to testify in support of HB 2151 and to answer any questions the committee might have concerning the bill and the Kansas Limited Partnership statutes.

I. BACKGROUND

I would like first to give the committee a very brief background of the development of the law which governs Kansas limited partnerships. In 1916 the National Conference of Commissioners on Uniform State Laws recommended passage of the Uniform Limited Partnership Act, known as ULPA. The Uniform Limited Partnership Act was eventually adopted by every state except for Louisiana. The Kansas legislature adopted ULPA in 1967. All Kansas limited partnerships formed prior to January 1, 1984 are subject to ULPA and therefore the law is still on the books.

As more limited partnerships were created and the number of limited partners and amount of invested capital increased, the ambiguities and flaws in ULPA were discovered which prompted the National Conference of Commissioners to propose the adoption of the Revised Uniform Limited Partnership Act (RULPA) in 1976.

The Revised Uniform Limited Partnership Act was adopted by Delaware in 1982 after it was modified to dovetail with the Delaware Corporate Code. Since the Kansas General Corporation Code was modeled after the Delaware code, in 1983 Kansas adopted most of the modifications made to RULPA by Delaware and further modified the act to conform with our corporate code whenever possible.

In 1985 Delaware adopted further modifications to RULPA which became effective August 1, 1985, and significantly amended the 1976 RULPA and the 1982 Delaware Act. On August 8, 1985, the Commissioners approved amendments to RULPA which make a number of improvements on the prior uniform law.

The bill presented here today will amend the Kansas Revised Uniform Limited Partnership Act to reflect the 1985 RULPA suggested amendments. In drafting HB 2151 many provisions of 1985 Delaware act, which tie their limited partnership laws to the Delaware corporate code, were included along with modifications for accommodation of the Kansas corporate code.

II. SUMMARY OF HB 2151

I will not burden the committee with a detailed analysis of the amendments proposed by HB 2151, however I do think it is important to be aware of the basic changes proposed.

The amendment to 56-1a101 will allow partnerships to file a restated certificate of limited partnership just as corporations are currently allowed to file restated articles of incorporation (K.S.A. 17-6605). This will be an important change as many limited partnerships will elect to consolidate and edit their certificates in light of the rest of the amendments proposed.

The amendment to 56-1a102 will delete the restriction that a name of a limited partnership may not contain words which indicate that it is organized for purposes other than which appear in the certificate. The rationale for this change is that because of the changes in the requirements of the certificate there will no longer be a method of checking the purpose of the limited partnership.

The 1985 RULPA significantly reduces the amount of information to be included in the initial certificate of limited partnership and the amendment to 56-1a151 reflects that reduction. Under current law there are twelve requirements in a certificate of limited partnership. The section as amended will require inclusion of only the name of the limited partnership; the address of the limited partnership's registered office; the name and address of the limited partnership's agent for service of process; the name and the business, residence, or mailing address of each general partner and the latest date upon which the limited partnership is to dissolve. These changes should substantially ease the administrative burden placed upon limited partnerships under prior law.

The amendment to 56-1a152 will remove the requirement of an amendment to the certificate of limited partnership for the admission or withdrawal of a limited partner. This will make managing the certificate significantly easier for limited partnerships with many partners whose identities and contributions change frequently and reflects the changes in the requirements of certificates of limited partnership.

The amendment to 56-1a154 will delete the requirement that all partners must sign or that there must be a power of attorney given to a general partner before partnership documents may be executed. This section will ease the administrative burdens of a limited partnership by requiring only the signature of general partners to execute partnership documents.

The amendment to 56-1a155 dealing with the amendment or cancelation of a certificate by the court will allow any person adversely affected by a failure to execute a partnership document to petition the district court to direct the execution. The previous section only allowed a partner or assignee of a partner to petition the court for this remedy.

The amendment to 56-1a201 adds the provision that a person becomes a limited partner on the later of the date of original filing or the date stated in the certificate.

The amendment to 56-1a203 dealing with the limited liability of limited partners adds to the list of activities which a limited partner may engage in without being considered a general partner for liability purposes. A limited partner is a general partner if they participate in the control of the business. The bill as presented adds to the list of activities which do not evidence participation in the control of business: being an officer, director, or shareholder of a general partner that is a corporation; guaranteeing an obligation of the limited partnership; taking an action required by law to bring a derivative action in the name of the limited partnership; or requesting or attending a meeting of partners.

The amendment to 56-1a251 provides that if the partnership agreement is silent on the admission of new general partners they may be admitted only upon specific written consent of all partners. This is a change reflects the change in the requirements of the certificate of a limited partnership.

The amendment to 56-1a252 makes a similar change with respect to the withdrawal of a general partner. Unless otherwise provided in the partnership agreement or with consent of all partners the person ceases to be a general partner if they engage in certain prohibited acts.

The amendment to 56-1a302 is in response to the fact that a limited partnership no longer will necessarily set forth the promised contributions of the partners. Under our current code, except as provided in the certificate of limited partnership, a partner could be obligated to perform any promise to contribute to the limited partnership even if unable to perform because of death, disability, or other reason. Under this amendment, if a partner does not make the

required contribution, that partner is obligated at the option of the limited partnership to contribute cash equal to that portion of the agreed value, as stated in the records of the partnership (rather than in the certificate of limited partnership), of the contribution that has not been made.

The amendment to 56-1a502 deletes the requirement that the registration of a foreign limited partnership must include the names and addresses of of the partners if it is not filed in a public record in the home state. Instead the Uniform Commissioners have substituted a provision which requires the address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions. This amendment will be of help in cutting down the paper work required to file foreign registration statements from several states.

III. AMENDMENTS

The Secretary of State offers for your consideration the attached two amendments to HB 2151. The first is an amendment to K.S.A. 56-1a-606 which is the section dealing with the franchise tax to be paid by domestic limited partnerships.

Under the current statutes, domestic limited partnerships pay "$1 for each $1000 of the partners' net capital accounts" (56-1a-606) while foreign limited partnerships pay "$1 per $1000 of the partners' net capital accounts located in or used in the state" (K.S.A. 56-1a-607). In other words, a Kansas limited partnership must pay the state of Kansas franchise fees on their partners' net capital accounts regardless of where the accounts are located, but a foreign limited partnership only pays a franchise fee on net capital accounts located in Kansas.

In addition, the corporate code requires both domestic and foreign corporations to pay franchise fees only on shareholder equity attributable to Kansas.

The amendment the Secretary of State offers does away with this inconsistent treatment of domestic limited partnerships and will conform with are corporate code treatment.

The second amendment the Secretary of State is seeking is a minor technical amendment to the limited partnership annual reporting statutes. Under the present corporate code (K.S.A. 17-7507) a corporation less than 6 months old is not required to file an annual report. The Revised Uniform Limited Partnership Act nor the Uniform Limited Partnership Act contain similar provisions.

An example of this difference would be: if a limited partnership with a 12/31 year end files a certificate on or after July 1 of a given year the first annual report is due by April 15 of the succeeding year, i.e. if the limited partnership files July 1, 1984 the first annual report is due April 15, 1985. In contrast a corporation with a 12/31 year end filing articles of incorporation on or after July 1 of a given year files its first annual report April 15 of the next succeeding year, i.e. if articles filed July 1, 1984 the first annual report is due April 15, 1986.

In the past the customary practice of our office, as well as that of the bar, has been that the first annual report of a limited partnership is not due until the next succeeding year if the certificate is filed the last six months of the limited partnerships tax year.

The concern that has been brought to the attention of our office is the possibility of liability in a situation where an injured plaintiff was attempting to pierce the limited liability of a limited partnership. It could be argued that the certificate of a limited partnership should be cancelled after April 16 following the year in which the limited partnership is first filed even though its certificate was filed in the last six months. Although the risk of this issue being raised in litigation may be minimal, the Secretary of State's office requests the introduction of this amendment for the benefit of both the bar and the limited partnerships in the state.

If the committee has any questions I would be happy to try to answer them.

56-1a606. Annual reports and franchise taxes; domestic limited partnerships. (a) Every limited partnership organized under the laws of this state shall make an annual report in writing to the secretary of state, showing the financial condition of the limited partnership at the close of business on the last day of its tax period next preceding the date of filing. If the limited partnership's tax period is other than the calendar year, it shall give notice of its different tax period to the secretary of state prior to December 31 of the year it commences the different tax period. The annual report shall be filed at the time prescribed by law for filing the limited partnership's annual Kansas income tax return. If the limited partnership applies for an extension of time for filing its annual income tax return under the internal revenue code or under K.S.A. 79-3221 and amendments thereto, the limited partnership shall also apply, not more than 90 days after the due date of its annual report, to the secretary of state for an extension of the time for filing its report and an extension shall be granted for a period of time corresponding to that granted under the internal revenue code or K.S.A. 79-3221 and amendments thereto. The application shall include a copy of the application to income tax authorities.

(b) The annual report shall be made on a form prescribed by the secretary of state. The report shall contain the following information:

(1) The name of the limited partnership;

(2) a reconciliation of the partners' capital accounts for the preceding taxable year as required to be reported on the federal partnership return of income; and

(3) a balance sheet showing the financial condition of the limited partnership at the close of business on the last day of its tax period next preceding the date of filing.

(c) Every limited partnership subject to the provisions of this section which is a limited corporate partnership, as defined in K.S.A. 17-5903 and amendments thereto, and which holds agricultural land, as defined in K.S.A. 17-5903 and amendments thereto, within this state shall show the following additional information on the report:

(1) The number of acres and location, listed by section, range, township and county of each lot, tract or parcel of agricultural land in this state owned or leased by the limited partnership; and

(2) whether any of the agricultural land held and reported under subsection (c)(1) was acquired after July 1, 1981.

(d) The annual report shall be signed by the general partner or partners of the limited partnership, sworn to before an officer duly authorized to administer oaths and forwarded to the secretary of state. At the time of filing the report, the limited partnership shall pay to the secretary of state an annual franchise tax in an amount equal to $1 for each $1,000 of the partners' net capital accounts located in or used in this state at the end of the preceding taxable year as required to be reported on the federal partnership return of income, except that no annual tax shall be less than $20 or more than $2,500.

(e) The provisions of K.S.A. 17-7509 and amendments thereto, relating to penalties for failure of a corporation to file an annual report or pay the required franchise tax, and the provisions of subsection (a) of K.S.A. 17-7510 and amendments thereto, relating to forfeiture of a domestic corporation's articles of incorporation for failure to file an annual report or pay the required franchise tax, shall be applicable to the certificate of partnership of any limited partnership which fails to file its annual report or pay the franchise tax within 90 days of the time prescribed in this section for filing and paying the same. Whenever the certificate of partnership of a limited partnership is forfeited for failure to file an annual report or to pay the required franchise tax, the limited partnership may be reinstated by filing a certificate of reinstatement, in the manner and form to be prescribed by the secretary of state and paying to the secretary of state all fees and taxes, including any penalties thereon, due to the state. The fee for filing a certificate of reinstatement shall be the same as that prescribed by K.S.A. 17-7506 and amendments thereto for filing a certificate of extension, restoration, renewal or revival of a corporation's articles of incorporation.

New Section

LIMITED PARTNERSHIPS; FIRST ANNUAL REPORT AND FRANCHISE TAXES; NO REDUCTION OR PRORATION OF FRANCHISE TAX DUE TO CHANGE IN TAX PERIOD.

No limited partnership shall be required to file its first annual report under this act, or pay any annual franchise tax required to accompany such report, unless such limited partnership has filed its certificate of limited partnership or certificate of good standing at least six (6) months prior to the last day of its tax period. If any limited partnership shall file with the secretary of state a notice of change in its tax period, and the next annual report filed by such limited partnership subsequent to such notice is based on a tax period of less than twelve (12) months, there shall be no reduction or proration of the annual tax required to accompany such report.

KANSAS ASSOCIATION OF SCHOOL BOARDS

5401 S. W. 7th Avenue Topeka, Kansas 66606
913-273-3600

TESTIMONY ON HOUSE BILL NO. 2107
BEFORE THE HOUSE JUDICIARY COMMITTEE

BY

NORMAN D. WILKS, DIRECTOR OF LABOR RELATIONS
Kansas Association of School Boards

February 19, 1987

Mr. Chairman, members of the committee, thank you for the opportunity to appear on behalf of the Kansas Association of School Boards.

We support the concept of House Bill 2107. We also believe that directors, officers, and volunteers of charitable organizations should be free from individual liability. The organization should continue to be responsible for the acts of its officers, directors, and volunteers.

The concept of the bill should be applied to all 501(c) organizations. The concept of limiting individual liability to willful or wanton misconduct, or initial tortious conduct is beneficial to all 501(c) organizations. Civic leagues, labor organizations, business leagues, chamber of commerce, volunteer clubs, fraternal organizations, etc., should be included.

In our opinion, section 1(a)(1) of the bill should be amended to include all organizations exempt from federal income tax pursuant to section 501(c) of the Internal Revenue Code of 1984, as amended, but not to include medical care facilities as defined in K.S.A. 65-425, and amendments thereto.

We support passage of the bill with the above amendment.

Attachment I
House Judiciary 2/19/87

26 USCA 501

§ 501. Exemption from tax on corporations, certain trusts, etc.

(a) Exemption from taxation.—An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

(b) Tax on unrelated business income and certain other activities.—An organization exempt from taxation under subsection (a) shall be subject to tax to the extent provided in parts II, III, and VI of this subchapter, but (notwithstanding parts II, III, and VI of this subchapter) shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

(c) List of exempt organizations.—The following organizations are referred to in subsection (a):

(1) any corporation organized under Act of Congress which is an instrumentality of the United States but only if such corporation—

(A) is exempt from Federal income taxes—

(i) under such Act as amended and supplemented before the date of the enactment of the Tax Reform Act of 1984, or

(ii) under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act, or

(B) is described in subsection (*l*).

e

(2) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under this section.

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

(4) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

(5) Labor, agricultural, or horticultural organizations.

(6) Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(7) Clubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder.

(8) Fraternal beneficiary societies, orders, or associations—

(A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and

(B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents.

(9) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

(10) Domestic fraternal societies, orders, or associations, operating under the lodge system—

(A) the net earnings of which are devoted exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes, and

(B) which do not provide for the payment of life, sick, accident, or other benefits.

(11) Teachers' retirement fund associations of a purely local character, if—

(A) no part of their net earnings inures (other than through payment of retirement benefits) to the benefit of any private shareholder or individual, and

(B) the income consists solely of amounts received from public taxation, amounts received from assessments on the teaching salaries of members, and income in respect of investments.

(12) (A) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 percent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses.

(B) In the case of a mutual or cooperative telephone company, subparagraph (A) shall be applied without taking into account any income received or accrued—

(i) from a nonmember telephone company for the performance of communication services which involve members of the mutual or cooperative telephone company,

(ii) from qualified pole rentals, or

(iii) from the sale of display listings in a directory furnished to the members of the mutual or cooperative telephone company.

(C) In the case of a mutual or cooperative electric company, subparagraph (A) shall be applied without taking into account any income received or accrued from qualified pole rentals.

(D) For purposes of this paragraph, the term "qualified pole rental" means any rental of a pole (or other structure used to support wires) if such pole (or other structure)—

(i) is used by the telephone or electric company to support one or more wires which are used by such company in providing telephone or electric services to its members, and

(ii) is used pursuant to the rental to support one or more wires (in addition to the wires described in clause (i)) for use in connection with the transmission by wire of electricity or of telephone or other communications.

For purposes of the preceding sentence, the term "rental" includes any sale of the right to use the pole (or other structure).

(13) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for the purpose of the disposal of bodies by burial or cremation which is not permitted by its charter to engage in any business not necessarily incident to that purpose and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(14) (A) Credit unions without capital stock organized and operated for mutual purposes and without profit.

(B) Corporations or associations without capital stock organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for, and insurance of shares or deposits in—

(i) domestic building and loan associations,

(ii) cooperative banks without capital stock organized and operated for mutual purposes and without profit, or

(iii) mutual savings banks not having capital stock represented by shares.

(C) Corporations or associations organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for associations or banks described in clause (i), (ii), or (iii) of subparagraph (B); but only if 85 percent or more of the income is attributable to providing such reserve funds and to investments. This subparagraph shall not apply to any corporation or association entitled to exemption under subparagraph (B).

(15) Mutual insurance companies or associations other than life or marine (including inter-insurers and reciprocal underwriters) if the gross amount received during the taxable year from the items described in section 822(b) (other than paragraph (1) (D) thereof) and premiums (including deposits and assessments) does not exceed $150,000.

(16) Corporations organized by an association subject to part IV of this subchapter or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 percent per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, on dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose.

(17) (A) A trust or trusts forming part of a plan providing for the payment of supplemental unemployment compensation benefits, if—

(i) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees

under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of supplemental unemployment compensation benefits,

(ii) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary or his delegate not to be discriminatory in favor of employees who are officers, shareholders, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees, and

(iii) such benefits do not discriminate in favor of employees who are officers, shareholders, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees. A plan shall not be considered discriminatory within the meaning of this clause merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan.

(B) In determining whether a plan meets the requirements of subparagraph (A), any benefits provided under any other plan shall not be taken into consideration, except that a plan shall not be considered discriminatory—

(i) merely because the benefits under the plan which are first determined in a nondiscriminatory manner within the meaning of subparagraph (A) are then reduced by any sick, accident, or unemployment compensation benefits received under State or Federal law (or reduced by a portion of such benefits if determined in a nondiscriminatory manner), or

(ii) merely because the plan provides only for employees who are not eligible to receive sick, accident, or unemployment compensation benefits under State or Federal law the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such laws if such employees were eligible for such benefits, or

(iii) merely because the plan provides only for employees who are not eligible under another plan (which meets the requirements of subparagraph (A)) of supplemental unemployment compensation benefits provided wholly by the employer the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such other plan if such employees were eligible under such other plan, but only if the employees eligible under both plans would make a classification which would be nondiscriminatory within the meaning of subparagraph (A).

(C) A plan shall be considered to meet the requirements of subparagraph (A) during the whole of any year of the plan if on one day in each quarter it satisfies such requirements.

(D) The term "supplemental unemployment compensation benefits" means only—

(i) benefits which are paid to an employee because of his involuntary separation from the employment of the employer (whether or not such separation is temporary) resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, and

(ii) sick and accident benefits subordinate to the benefits described in clause (i).

(E) Exemption shall not be denied under subsection (a) to any organization entitled to such exemption as an association described in paragraph (9) of this subsection merely because such organization provides for the payment of supplemental unemployment benefits (as defined in subparagraph (D) (i)).

(18) A trust or trusts created before June 25, 1959, forming part of a plan providing for the payment of benefits under a pension plan funded only by contributions of employees, if—

(A) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of benefits under the plan,

(B) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are officers, shareholders, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees, and

(C) such benefits do not discriminate in favor of employees who are officers, shareholders, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees. A plan shall not be considered discriminatory within the meaning of this subparagraph merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan.

(19) A post or organization of past or present members of the Armed Forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization—

(A) organized in the United States or any of its possessions,

(B) at least 75 percent of the members of which are past or present members of the Armed Forces of the United States and substantially all of the other members of which are individuals who are cadets or are spouses, widows, or widowers of past or present members of the Armed Forces of the United States or of cadets, and

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(20) an [1] organization or trust created or organized in the United States, the exclusive function of which is to form part of a qualified group legal services plan or plans, within the meaning of section 120. An organization or trust which receives contributions because of section 120(c)(5)(C) shall not be prevented from qualifying as an organization described in this paragraph merely because it provides legal services or indemnification against the cost of legal services unassociated with a qualified group legal services plan.

(21) A trust or trusts established in writing, created or organized in the United States, and contributed to by any person (except an insurance company) if—

(A) the purpose of such trust or trusts is exclusively—

(i) to satisfy, in whole or in part, the liability of such person for, or with respect to, claims for compensation for disability or death due to pneumoconiosis under Black Lung Acts;

(ii) to pay premiums for insurance exclusively covering such liability; and

(iii) to pay administrative and other incidental expenses of such trust (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the trust and the processing of claims against such person under Black Lung Acts; and

(B) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(i) the purposes described in subparagraph (A), or

(ii) investment (but only to the extent that the trustee determines that a portion of the assets is not currently needed for the purposes described in subparagraph (A)) in—

(I) public debt securities of the United States,

(II) obligations of a State or local government which are not in default as to principal or interest, or

(III) time or demand deposits in a bank (as defined in section 581) or an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act, 12 U.S.C. 1752(6)) located in the United States, or

(iii) payment into the Black Lung Disability Trust Fund established under section 9501, or into the general fund of the United States Treasury (other than in satisfaction of any tax or other civil or criminal liability of the person who established or contributed to the trust).

For purposes of this paragraph the term "Black Lung Acts" means part C of title IV of the Federal Mine Safety and Health Act of 1977, and any State law providing compensation for disability or death due to pneumoconiosis.

(22) A trust created or organized in the United States and established in writing by the plan sponsors of multiemployer plans if—

(A) the purpose of such trust is exclusively—

(i) to pay any amount described in section 4223(c) or (h) of the Employee Retirement Income Security Act of 1974, and

(ii) to pay reasonable and necessary administrative expenses in connection with the establishment and operation of the trust and the processing of claims against the trust,

(B) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(i) the purposes described in subparagraph (A), or

(ii) the investment in securities, obligations, or time or demand deposits described in clause (ii) of paragraph (21)(B),

(C) such trust meets the requirements of paragraphs (2), (3), and (4) of section 4223(b), 4223(h), or, if applicable, section 4223(c) of the Employee Retirement Income Security Act of 1974, and

(D) the trust instrument provides that, on dissolution of the trust, assets of the trust may not be paid other than to plans which have participated in the plan or, in the case of a trust established under section 4223(h) of such Act, to plans with respect to which employers have participated in the fund.

(23) any [2] association organized before 1880 more than 75 percent of the members of which are present or past members of the Armed Forces and a principal purpose of which is to provide insurance and other benefits to veterans or their dependents.

KANSAS BAR ASSOCIATION

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February 19, 1987
HB 2176

Mr. Chairman. Members of the House Judiciary Committee. I am Ron Smith, KBA Legislative Counsel

KBA no official position on this bill. However, we generally urge caution in legislatively adopting public policy which says that certain causes of action are forever and under no circumstances allowed.

This paper should be considered a research document, not a position by KBA.

Foundation of the Doctrine

The parent-child immunity doctrine, like interspousal tort immunity, is a common law doctrines based on two concepts: (1) preserving the sanctity of the home and the family relationship, and (2) guarding against the potential for fraud and collusion.

The common law was not entirely virtuous. It also gave us oddities like the husband's right to beat his wife providing he used a switch no larger than his thumb. At common law the wife was chattel, and incapable of bringing a suit or being sued without the joinder of her husband. Suits between husband and wife were precluded, and that theory has been extended over to the children.

Interestingly, Article XV, Section 6 of the Kansas Constitution grants rights to women by stating:

> "The legislature shall provide for the protection of the rights of women, in acquiring and possessing property, real and personal and mixed, separate and apart from the husband and shall also provide for their equal rights in the possession of their children."

Emancipation in HB 2176 brings up a rather interesting problem. Marriage of teenagers has the effect of "emancipating" a child, so the 16-year-old married child may sue her parent, while the unmarried 17-year-old sibling cannot. The parent-child relationship has not

Attachment V
House Judiciary 2/19/87

changed; only the legal status changed, yet it affects the right to bring an action.

Since statutes granting immunity are narrowly construed, the phrase "parent or parents" of the minor child also raises a problem. Does the language cover foster parents? Stepparents? Custodial parents v. noncustodial parents? If the concept is extended too far, then the purpose of the immunity -- maintenance of "family" -- is eroded. Generally, however, the common law has extended the parental immunity doctrine to cover negligence supervision by foster parents. Mayberry v. Pryor, 352 NW 2d 322 (1984).

Compulsory Auto Insurance

The major exception to the rule is auto negligence cases. In Kansas, the Nocktonick case allows members of the household to sue for injuries suffered by the negligence of another member of the household, if they were "insureds" under the contract. Such rulings are based primarily on the competing public policy between existence of compulsory automobile insurance, designed to compensate everyone in an auto accident, and the immunity doctrine. Unah v. Martin 676 P2d 1366 (Oklahoma 1984) The Supreme Court of Oklahoma has also indicated that an unemancipated minor child may fully recover damages from the employer of the child's parent when the parent's negligence in operating the employer's vehicle within the scope of his employment proximately caused the injury to the child. The employer had attempted to rely on the parental immunity rule to escape liability. Hooper v. Clements Food Company, 694 P2d 943 (Oklahoma 1985)

HB 2176 would overturn the Kansas Nocktonickdecision.

Exercise of Reasonable Authority

Michigan goes opposite from what this bill attempts. They allow children to bring suits based on ordinary negligence with two exceptions: (1) the alleged negligent act involved in exercise of reasonable parental authority over the child, and (2) the alleged negligent act involved in exercise of reasonable parental discretion with provision of food, clothing, housing, medical and dental services and other care. In those instances, immunity is the rule. (Mayberry, p. 323)

Another problem is created between the distinction of negligent parental supervision and an affirmative act of negligent parental supervision. For example, if a parent is negligent showing a very young child how to "twirl and fire" a loaded revolver, should HB 2176 prevent a lawsuit against that parent by the child? Affirmative negligence by the parent is an exception to the general rule. See Willis v. KMART Corporation, 354 NW 2d 442 (Minnesota 1984).

There has also been a trend in the cases to hold the parent liable to the child if a "dangerous instrumentality is entrusted to the child." St. Pierre v. City of Watervliet, 485 NYS 2d 685 (New York 1985). For example, should the parent have some of the responsibility with regard to negligently entrusting a very young minor child with a as a snowmobile? Or an all-terrain vehicle?

Intentional Torts

There are some forms of intentional torts for which the civil justice system may be an appropriate forum for society to discipline the parents. I have enclosed a copy from the National Law Journal indicating a child was able to sue a parent in another state for child molestation. HB 2176 would prohibit the filing of such lawsuits.

While you can argue that the criminal law is available, a criminal action requires evidence beyond reasonable doubt. Civil actions require only a preponderance standard. Sometimes prosecutors decline to prosecute if the evidence is shaky. In Claus Von Bulow's case, the children could not convict him in two attempted murder trials, so they sued in civil court for money damages, including punitive damages.

As the article from U.S. News and World Report, January 23, 1984, indicates, family violence is an area of growing frustration for social workers in this country. While such intentional torts would not be covered under most insurance policies insuring parents, this Act would prohibit the lawsuit against the parent even if there wasn't insurance coverage. That seems inconsistent with the other societal requirements of an orderly household and protecting persons from abuse. The definition of "negligence" in line 40 of the bill includes intentional wrongdoing as well as ordinary negligence.

Comparative Negligence of the Parent with the Child

From a policy view, if the parent's negligence can be measured in through comparative negligence at the insistence of the third party to diminish recovery by the plaintiff child, why is it improper to allow the child to join the parent in the lawsuit?

Preserving the "Family"

The Ohio Supreme Court has held that a parental immunity rule could not apply where the suit was brought by a child against the estate of a deceased parent, since obviously the preservation of peace and harmony in the family and the prevention of fraud and collusion would not be present. Dorsey v. State Farm Mutual Automobile Insurance Company, 457 NE 2d 1169 (1984)

Interference with the family can come from intentional acts, too. In Wilson v. Wilson, 742 F2d 1004 (6th Circuit, 1984) a federal court interpreted a Tennessee tort law that the child plaintiff filed suit against her adoptive father alleging that he made sexual advances.

Social workers know the majority of people who abuse children are known to the children and have abused and misused their position of control and responsibility. Most often this is the father, the mother, the next door neighbor, the minister, the boy scout leader, and those people who find themselves and actually put themselves in positions of being involved with children so that they can manipulate them. It makes little sense to allow the child to file a civil suit against any one of these people for that particular form of misuse and abuse, but not allow them to sue if their abuser happens to be a parent.

Public policy should speak to whether the immunity of the parent should be forfeited by parental action which amounts to "gross misconduct". HB 2176 prohibits all types of civil actions between parent and child, if personal injuries are alleged.

Encouragement of Fraud and Collusion

Since encouragement of fraud and collusion is the main reason for the parent-child immunity doctrine, many of the courts rejecting such immunity reject this argument as a "slander to the integrity of the judicial system." While undoubtedly spurious and unmeritorious claims can be filed, what has changed most since statehood is the thoroughness of discovery proceedings in civil actions. At common law, the old Field Code Pleadings set up a system where neither side knew the other's witnesses, and it was a form of "trial by ambush." Fraud and collusion was easier to get away with in the 19th century than in the latter decades of the 20th. Rights of discovery on all litigants can ferret out and preclude recovery in unmeritorious claims -- regardless of whether the litigants are related.

In the Nocktonick decision, writing for the majority, Justice Prager said:

> "We recognize a practical problem, that of possible collusion between parent and child aimed at securing an unjustified recovery from an insurance company. But the possibility of collusion exits to a certain extent in any case. We depend upon juries and trial judges to sift through the evidence and determine the facts and arrive at proper jury verdicts. Experience has shown that courts are quite adequate for the task. In litigation between parent and child, judges and juries are naturally mindful of that relationship and will be even more on the alert for improper conduct. Furthermore, . . . the insurance

company has the right to disclaim liability when there is a lack of cooperation with the insurance company on the part of the insured. Lack of cooperation may be found in inconsistent or contradictory statements by the insured or in collusion between the insured party and the insured which results in false statements to the company." (p. 768-769)

Insurance Company Controls on Vexatious Claims

The Insurance industry is not helpless in investigating claims involving parents and children. The companies are not going to pay claims without close scrutiny. The insurer's ability to investigate and discover fraudulent suits is also recognized in Coffindaffer v. Coffindaffer, 244 SE 2d 342.

Since the era of the common law, changes in rules of civil procedure allowing imposition of attorney fee sanctions for filing frivolous lawsuits also curbs unmeritorious claims. (KSA 60-211) These remedies were not available at common law. The filing of fraudulent or vexatious lawsuits, when one member of a family is suing another, would not make much sense since the award of attorney's fees and costs would harm the claimant.

Public Policy Questions

1. Does it make sense that public policy indicate not allowing a lawsuit maintains peace in the family while allowing a lawsuit between parent and child creates conflict and weakens the family tie? If a child is injured in an accident that is the fault of the parent, and the parent's only homeowner's insurance would cover the damages (assuming no fraud), is the better policy that the family unit is preserved but it is forced into poverty or public assistance to care for the child when insurance was purchased for such purposes?

2. If a jury can determine the truth enough to impose criminal liability on a parent for sexual or child abuse, can we say the same group of citizens is incapable of determining enough truth as to whether civil liability should lie, too?

Stepfather Must Pay $500,000 to Abused Child

By Conrad E. Yunker
Special to The National Law Journal

CORVALLIS, Ore. — A state court jury here has awarded $500,000 to a 21-year-old woman whose stepfather forced her to have sex with him for a seven-year period starting when she was 11 years old.

The Benton County Circuit Court jury levied $250,000 each in general and punitive damages against the stepfather on theories of intentional and reckless infliction of mental distress and civil liability for violating criminal laws.

The defendant, 63-year-old Garth Brodie, earlier pleaded guilty to second-degree sexual abuse, a Class A misdemeanor in Oregon. *Hansford v. Brodie*, 44156.

Judge Frank D. Knight rejected defense claims that each sex act was a separate tort and that recovery for most acts, therefore, would be barred by Oregon's two-year statute of limitations.

He ruled that familial sexual abuse, in which the victim is unable to perceive the wrongfulness of the defendant's conduct, is a continuing tort.

Under a variation of the discovery rule, the judge decided, the statute did not start to run until the plaintiff perceived both the injury and her ability to bring the defendant within legal process.

The defense also argued that sex acts not barred by the statute were consensual because the girl was over 18. Judge Knight allowed the jury to consider that defense.

Evidence at the two-day trial showed that Mr. Brodie, who married the girl's mother one year after the girl's birth, maintained a strict, religious environment at their Corvallis home, and told her it was God's will that she have sex with him.

"He was her mentor, spiritually and religiously," said plaintiff's lawyer Michael S. Morey of Portland's Holmes, DeFrancq & Schulte, P.C. "He told her he had talked to God about it, that she had inherited a muscle deficiency from her mother, and the only way it could be corrected was by stimulation."

The acts came to light after the girl enrolled in the University of Washington at age 18, Mr. Morey said. A boyfriend who was taking a class on human sexuality recognized in her behavior characteristics typical of previously abused children.

She started therapy soon afterward, complained to police, and finally filed suit after Mr. Brodie pleaded guilty to the criminal charge.

Attempts to subpoena Mr. Brodie to testify were unsuccessful. He did not attend the trial, and the jury was informed he was unavailable because of a "sudden" business trip.

Defense lawyer Robert G. Ringo of Corvallis' Ringo and Stuber, P.C., argued that the Mr. Brodie had been punished enough and should pay only nominal damages and no punitive damages.

"This is going to be a real battle at collection," contended Mr. Morey, who offered evidence to show mortgages introduced by the defense were a sham and that the defendant was fully able to pay the damages. He said he expects Mr. Brodie to appeal.

Family Violence Emerges From The Shadows

Regardless of the shame and the risks, individuals are blowing the whistle on close relatives who abuse them.

The harm family members inflict on one another in private is now becoming a matter of public record as more people in desperation seek outside help.

Wives and children are coming forward as never before to report cases of beatings. Elderly parents tell of grown children who abuse them, and youngsters are in counseling for hurting their own brothers and sisters.

What has been described as the last taboo—incest—also is being discussed openly in the wake of two recent events: A January 9 ABC-television movie and the real-life case of a 12-year-old California girl kept in solitary confinement for eight days while authorities tried to convince her to testify against the stepfather who allegedly molested her.

The movie, "Something About Amelia," dealt with a 13-year-old girl who was sexually abused by her father. ABC reported that it was watched by 60 million people, and hot lines in many crisis centers for victims of domestic violence reported two to three times more calls than usual the day after the film was shown. Some calls came from adults who had been sexually abused by relatives years before but had never felt free to discuss their trauma.

Says Northfield, Ill., psychiatrist Mary Giffin: "Incest is a secret that sometimes doesn't come out—even in therapy—for months, years later. It's far more evident than one could ever have guessed, and it can be found among the affluent and the low income."

Fear of testifying. Psychologist Henry Giarretto of Parents United, a California group working with incest victims and offenders, estimates that about 1 in every 6 people has been involved in some form of incestuous relationship.

Yet most victims are afraid to prosecute. That was the case with the California girl, who eventually was returned to her mother following detention in a juvenile hall. During that time, she refused to testify against her stepfather, a Vacaville physician.

Without counseling, psychiatrists say, victims often become chronically depressed or turn to alcohol, drugs or promiscuity. Sexual abuse at home also leads many youngsters to run away.

Incest is just one part of a much wider family-violence problem. Experts say as many as 6 million children suffer from beatings or neglect each year. In addition, some 65 percent of all couples engage in some form of physical abuse during their marriage, estimates sociologist Murray Straus, who heads the Family Violence Research Center at the University of New Hampshire. Serious beatings take place in about 25 percent of these cases.

Federal Bureau of Investigation figures show that 3,312 people were murdered by relatives in 1982.

Says Straus: "One of the ironies of the family is that it is one of the most loving and supportive of groups—and one of the most violent."

What's worse, notes psychiatrist James Comer of the Yale University Child Study Center, is that many people who were abused as children become abusers themselves as adults. "Children imitate and model," he explains. "They learn control and management of feelings from parents."

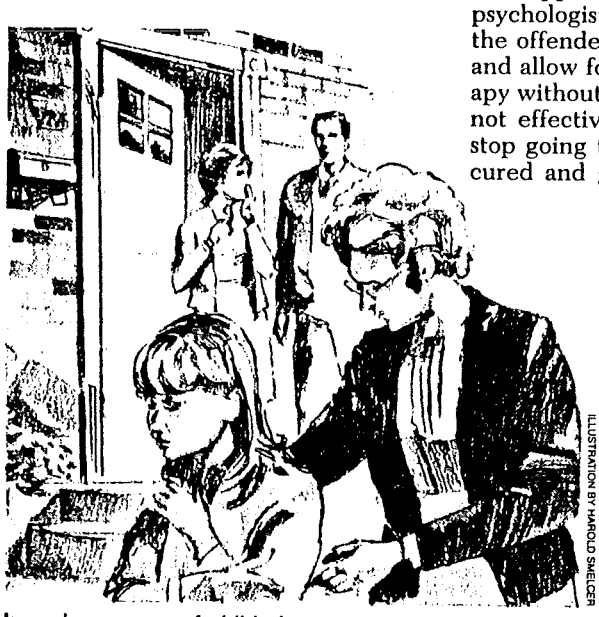

ILLUSTRATION BY HAROLD SNELGER

In serious cases of child abuse, youngsters are usually taken to foster homes or temporary shelters.

Why the surge in family troubles? Dr. Bertrand New, a psychiatrist at Westchester Medical Center–New York Medical College, cites personal and economic setbacks, alcoholism and the greater strains modern society puts on many families.

It's easier to take such frustrations out on family members, says Straus, "simply because they are there," yet the close emotional ties tend to keep abuses from becoming known to others.

Whatever form domestic violence takes, psychological treatment is generally preferred. A whole network of shelters has sprung up around the nation to aid battered and abused children and wives.

For offenders. Those who commit these offenses can receive treatment through a growing system of self-help groups. Parents Anonymous, with 1,500 chapters in the U.S., has counseled some 250,000 people over the last 14 years and maintains a toll-free hot line—(800) 421-0353—for those in need.

In addition, the National Child Abuse Hotline, reached by calling (800) 422-4453, has skilled counselors on duty 24 hours a day and can provide information and identify locations of emergency shelters. It gets about 3,000 calls each month.

Parents United, for those involved in incest, has 110 similar programs. The best approach for these families, says psychologist Giarretto, is to prosecute the offender but to provide treatment and allow for probation. Offering therapy without threat of criminal justice is not effective. "The abuser would just stop going to therapy, declare himself cured and go home and do the same thing again," he adds.

Many programs emphasize prevention. In New Jersey, the Parent Linking Project gives moral support and parenting tips to teenage parents, a group found to be more likely to abuse or neglect children. Another program in San Antonio helps parents cope with the added strains of caring for disabled or handicapped children.

There also has been a surge in new prevention efforts aimed at victims, especially children. These include TV and radio announcements, newspaper and magazine advertisements, films and even puppet shows. Bubbylonia Encounter, a film for grade-school children, helps youngsters identify instances of sexual abuse.

On the federal level, the National Institute of Mental Health is spending nearly 1 million dollars a year on research in domestic violence.

A Justice Department task force also has been holding hearings on family violence in several cities and will issue a report later this year. Observes Atty. Gen. William French Smith: "The problem, according to our statistics, is a bad one. It is worse than the public generally knows." □

By JEANNYE THORNTON