Approved January 25, 1988
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

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

10:00 a.m./~~p.m.~~ on January 21, 1988 in room 514-S of the Capitol.

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

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Office of Revisor of Statutes

Conferees appearing before the committee:

Jim Maag, Kansas Bankers Association
Attorney General Robert T. Stephan
Nick Tomasic, Wyandotte County District Attorney
Ruth Merserve, Kansas Coalition for Drug-Free Driving
Galen Davis, Governor's Office, Special Assistant on Drug Abuse
Jim Clark, Kansas County and District Attorneys Association
Terry Harmon, Assistant State Archivist
Ray Hiner, Kansas University Professor and Historian

Jim Maag, Kansas Bankers Association, presented a request for a committee bill concerning definitions of certain terms. Following his explanation, Senator Talkington moved that the bill be introduced. Senator Parrish seconded the motion. The motion carried. A copy of the proposal is attached (See Attachment I).

Senate Bill 111 - Crime of causing injury while driving under the influence of alcohol or drugs.

Attorney General Robert T. Stephan appeared in support of the bill. He stated we must make it clear that drunk drivers who injure or kill others on Kansas roads will suffer substantial consequences. I ask that you raise the penalty on Aggravated Vehicular Homicide to a D felon. I also would recommend that lines 31 and 32 of the bill be amended to read: "This section shall be part of and supplemental to articles 34 of the Kansas criminal code." A copy of his statement is attached (See Attachmnent II).

Nick Tomasic, Wyandotte County District Attorney, urged the passage of the bill. He stated he asked to have the legislation passed last year. The purpose of the bill is to correct an obvious injustice in the Kansas law. He testified the way the law is now if you seriously injure someone or kill someone as a result of an automobile accident involving alcohol, it is not a crime. We cannot file a charge until that person dies. Mr. Tomasic said we should make our laws consistent.

During committee discussion the question was asked of Mr. Tomasic if this law would have a deterrent effect on the people of the state? Mr. Tomasic replied, more people are injured in automobile accidents than they are killed. People need to know if you seriously injure someone under these circumstances, this is the law. Further committee discussion was held on the bill.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,

room 514-S, Statehouse, at 10:00 a.m./p.m. on January 21, 1988

Senate Bill 111 continued

Ruth Merserve, Kansas Coalition for Drug-Free Driving, testified in support of the bill. She stated she had been in five automobile accidents. One accident was caused by drugs and the other by alcohol. The persons who caused the accidents got off on fines and probation. She also was in three accidents in 12 months. The persons who caused these accidents are still out on the street and she is injured for life. She testified the judges are not following the state statute. A copy of her handout is attached (See Attachment III).

Galen Davis, Special Assistant on Drug Abuse, Governor's Office, appeared in support of the bill. He stated if this bill is passed this would remove presumption of probation. In 1986 there were 4,234 injuries which were alcohol related automobile crashes which is up from the 1985 figures. He testified driving under the influence is a crime because we have no way of protecting ourselves from drunk driving.

Jim Clark, Kansas County and District Attorneys Association, appeared in support of the bill. He stated, to allow a person to cause serious bodily injury to another while driving under the influence of alcohol or drugs to be subjected to the same degree of punishment as if no injury occurred is analogous to allowing a person who aims a gun, shoots but does not kill, another person to be subjected only to the punishment of discharging a firearm within the city limits. A copy of his handout is attached (See Attachment IV). Mr. Clark also recommended two amendments.

House Bill 2218 - Preservation of juvenile records for historical research.

Terry Harmon, Assistant State Archivist, testified in support of the bill. He stated if this bill were enacted the state archivist would be allowed, but not required, to accept juvenile court records for deposit in the archives whenever court officials decided to dispose of them. It would help prevent the destruction of an important and rapidly disappearing archival resource in Kansas. A copy of his handout is attached (See Attachment V).

Ray Hiner, Kansas University Professor and Historian, appeared in support of the bill. He stated it should be clear from the outset, however, that I do not base my support for this bill on the antiquarian argument that all historical documents should always be preserved simply because they exist. I am convinced that the study of juvenile court records has a social utility that clearly justifies their preservation. A copy of his statement is attached (See Attachment VI).

The meeting adjourned.

A copy of the guest list is attached (See Attachment V).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE DATE: 1-21-88

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Ruth Meserve	Prairie Village Ks	Ks Coalition for Drug Free Driving
Don Meserve	" "	Guest
Larry Hinton	Topeka	SRS ADAS
Terry Harmon	Topeka	Ks. State Hist. Society
Ray Hemi	2571 ARK. LAWRENCE	Univ. of Kansas
Don Stumbaugh	Topeka	CVRB
Jane Soderis	Topeka	Governors Office
Linda Fund	Topeka	DOA
Galen Davis	Topeka	Governors Office
Amy Campbell	Manhattan	Senator Hofmeister
Addison S. Arin	Topeka	Eagle Beacon
Brenda Braden	Topika	AG
Jim Maag	"	Ks Bankers Assoc.

Attch. V

1-21-88

New Section 1. For the purposes of this act, the following terms have the meanings given them:

(1) "Credit agreement" means an agreement to lend or delay repayment of money, goods, or things in action, to otherwise extend credit, or to make any other financial accommodation;

(2) "Creditor" means a person who extends credit or extends a financial accommodation under a credit agreement with a debtor; and

(3) "Debtor" means a person who obtains credit or receives a financial accommodation under a credit agreement with a creditor.

New Sec. 2. A debtor may not maintain an action on a credit agreement unless the agreement is in writing and is signed by the creditor and the debtor.

New Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Attch. I

1-21-88

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

TESTIMONY OF ATTORNEY GENERAL
ROBERT T. STEPHAN
ON SENATE BILL 111

Mr. Chairman and members of the committee:

As you are well aware, we have a serious problem in this state with drunk drivers. In 1986, 224 of the 500 traffic fatalities in Kansas involved alcohol. The Legislature previously has responded to this problem by enacting tougher legislation for DUI cases in which someone is killed. In such cases, the drunk driver may be convicted of aggravated vehicular homicide which is a class E felony.

But what if that drunk driver does not cause the death of the young mother who happens into the drunk driver's path? What happens if the young mother is permanently paralyzed or suffers a head injury that deprives her of the ability to ever know or recognize her children again? Under the present laws, the driver may be charged with driving under the influence of alcohol or drugs. That is all. There are no stricter penalties for the drunk driver if his victim does not die, regardless of the years of agony he has caused his victim and the victim's family.

Attch. II

I am asking you to pass Senate Bill 111 which would establish the crime of Causing Injury While Driving Under the Influence of Alcohol or Drugs as a class E felony. We must make it clear that drunk drivers who injure or kill others on Kansas roads will suffer substantial consequences. Although not included in this bill, I also ask that you raise the penalty on Aggravated Vehicular Homicide to a D felony.

I would recommend that lines 31 and 32 of Senate Bill 111 be amended to read: "This section shall be part of and supplemental to article 34 of the Kansas criminal code." Inclusion of that language would remove this crime from presumptive probation and would not provide the judge with an excuse for failure to imprison the driver in appropriate cases.

I would add that Senate Bill 111 would enact into law one of the proposals made by the Governor and myself for stiffening DUI sanctions. By changing the class of crime for vehicular homicide, another of our proposals would be accomplished.

Thank you for your consideration.

1-21-88

Kansas Coalition for Drug Free Driving

P.O. Box 58093 Topeka, KS 66658 913-286-0555

January 21, 1988

To: Senate Judiciary Committee

Re: Senate Bill 111

The Kansas Coalition for Drug Free Driving is a statewide coalition of antidrunk and drugged driving groups. Members include MADD (Mothers Against Drunk Driving), RID (Remove Intoxicated Drivers), Kansans for Highway Safety, Kansas PTA, Insurance Womenof Wichita and the Kansas ASAP Association.

Our Coalition supports SB 111 which establishes a class E felony crime for aggravated vehicular injury. DUI drivers who seriously injure innocent victims should face stiffer punishment. Kansas law currently allows these drivers to be charged under the DUI misdemeanor traffic law. In July, 1985 the aggravated vehicular homicide law took effect, but Kansas still does not protect the victims who seriously injured. In 1986 there were 4,218 Kansans injured by the DUI driver.

We understand the concern for the establishment of new crimes which will result in more people being sent to our already over-crowed prisons. However, we are much more concerned with the innocent victims being sent to our hospitals and to our cemetaries due to the irresponsible behavior of DUI drivers.

The Coalition would urge you to support SB 111. Our members represent the very strong opinion of 70-80% of Kansas voters to get tough on DUI drivers. Kansans want DUI drivers punished for for endangering all of us.

We appreciate your scheduling the hearing of SB 111.

Attch. III

1-21-88

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

SENATE BILL 111

The Kansas County and District Attorneys Association appears in support of SB 111. To allow a person to cause serious bodily injury to another while driving under the influence of alcohol or drugs to be subjected to the same degree of punishment as if no injury occurred is analogous to allowing a person who aims a gun, shoots but does not kill, another person to be subjected only to the punishment of discharging a firearm within the city limits.

This bill recognizes the more serious nature of an offense in which an injury occurs, just as our criminal law now recognizes that if a the victim of the firearm offense does not die, the perpetrator may be found guilty of aggravated battery, a Class C felony; or attempted first or second degree murder, Class B or C felonies, respectively.

There are two amendments we would suggest:

1. That since the bill makes causing an injury while DUI, a class E felony, then K.S.A. 21-3405a, aggravated vehicular homicide (killing a human being while DUI) should be raised to a class D felony. This is still not as severe as the firearm offense discussed above, and is the same penalty as burglary of an unoccupied building, or throwing a rock from a bridge or overpass which injures a vehicle passenger.

2. That the increased severity of the crime may require definition of the degree of injury. One suggestion is the use of great bodily harm, disfigurement or dismemberment, the same language as the aggravated battery statute, K.S.A. 21-3414.

Attch. IV

1-21-88

COMMENTS CONCERNING HOUSE BILL NO. 2218

Presented to the Senate Judiciary Committee
by Terry Harmon, Assistant State Archivist

January 20, 1988

I appreciate very much this opportunity to appear before the committee as a representative of the State Historical Society's department of archives. As custodian of the official state archives, this department has the responsibilities of identifying, assembling, and preserving state and local government records possessing permanent value and of making such records available to the public for research, legal proceedings, or other purposes.

House Bill No. 2218 was prepared by the staff of the department of archives as a small but important step in our efforts to fulfill this large mission. It was introduced in the 1986 legislative session as H.B. 2846. Twice it has been approved by the House, but inadequate time has remained in each session for action by the Senate.

This bill is an effort to revise two Kansas statutes which prevent preservation of juvenile court records in the state archives.

The archives staff believes that these records have much potential research value. The manner in which our judicial system handles juvenile crime and children in need of care is an important aspect of social and legal history. These records provide a unique view of child-rearing practices, the operations of social welfare agencies, public attitudes toward social problems, and a wide variety of other matters which are of great interest to historians, sociologists, political scientists, and persons working in other fields. Scholars obviously cannot gain a satisfactory understanding of such matters if all the relevant records are destroyed.

Most court records in Kansas have to be microfilmed and then have to be offered to the State Historical Society before they may be destroyed. Supreme Court Rule no. 108, however, allows destruction of all juvenile court records without microfilming five years after each case is closed. The Supreme Court has decided, moreover, that K.S.A. 38-1506 and 38-1607 prevent transfer of these records to the State Historical Society and has suggested that a legislative remedy be sought for the problem.

Such a remedy is needed as soon as possible. Administrative judges order disposal of juvenile records rather frequently because the courthouse space they occupy is needed for other purposes. Some court officials have held records for us for several years pending the outcome of this legislative effort. Others have refused to delay the destruction of all juvenile records in their custody which have met the five-year retention requirement.

If this bill were enacted the state archivist would be allowed, but not required, to accept juvenile court records for deposit in the archives whenever court officials decided to dispose of them. We would, in other words, be able to consider the documents involved in each disposal notice and reach a decision about whether to preserve them. In some circumstances we would retain only the oldest records or a representative sample. Only a small percentage of those currently being created would be transferred to the archives. The Historical

Attach. V

Society would not acquire the original documents if they have been microfilmed, unless examination of the film indicates that it is very unsatisfactory in quality.

This bill would not create a new program. It would merely authorize adding one more type of documents to the many series of state and local government records being preserved in the state archives. Handling juvenile court records would be a very small part of the department's overall operations, and the projected annual cost of approximately $600 easily could be absorbed at current funding levels.

In proposing these statutory changes, the Historical Society is seeking a reasonable compromise which would meet the needs of researchers and also provide adequate protection for privacy rights of individuals mentioned in confidential records. H.B. 2218 would prohibit disclosure of information in most juvenile court records acquired by the Historical Society for 70 years after their creation, unless a researcher obtained an order from a district court judge authorizing examination of the records. In granting access to the documents, judges could prohibit disclosure of personally identifiable information found in them. Scholars would have no need to reveal the names of individuals involved in juvenile proceedings. Their concern would be gaining a general understanding of how the judicial system functioned or what the records revealed about our society.

If members of the committee believe that greater protection of confidentiality is needed than this bill would provide in its present form, consideration might be given to adding language similar to that found in K.S.A. 1986 Supp. 59-2931(a)(2) and 76-12b11(a)(2). These laws authorize research use of state hospital patient records and resident files of state institutions for the mentally retarded by "scholarly investigators" if they pledge not to reveal the names of individuals found in the records to unauthorized persons.

Preserving confidential records in the state archives would not be a radical change in policy. We already have restricted records of the correctional institutions, the Commission on Civil Rights, and other agencies. K.S.A. 45-407 requires the archives staff to continue enforcing any restrictions on public access to records in their custody which would apply if the documents were still held by the agency of origin. No problems have arisen over a period of many years with regard to improper disclosure of confidential records held by the State Historical Society. Such documents are just as safe in the state archives as they are in the storage areas of courthouses.

Attached to this statement is a copy of a letter which the State Historical Society received from a graduate student at Cornell University. It illustrates very well the scholarly research needs we hope to meet through adoption and implementation of this bill.

Favorable action on H.B. 2218 by the Judiciary Committee would be appreciated very much. It would help prevent the destruction of an important and rapidly disappearing archival resource in Kansas.

Department of History
450 McGraw Hall
Cornell University
Ithaca, NY 14850

June 1, 1986

Kansas State Historical Society
120 W. 10th Street
Topeka, KS 66612

Dear Sir or Madam,

I am a doctoral student in American History at Cornell University and am writing to inquire into the location and availability of records concerning juvenile delinquency in Kansas from approximately 1920 to 1940. I understand that Kansas had a number of state institutions which accepted or were operated specifically for juvenile delinquents during the 1920s and 1930s, and I wonder if you can advise me of the whereabouts of records from these schools. I would also appreciate any information you might be able to give me about records from the various juvenile courts, private or county schools, clinics, and agencies in your state that also worked with delinquent youths. The names of the state institutions are as follows:

Industrial School for Boys, Topeka
Girls' Industrial School, Beloit
Kansas State Industrial Reformatory

I am interested in both administrative records and individual case files. I realize that many records of this sort are restricted and will be happy to provide further information or file an application in order to gain access to institutional documents. My interest is not in the identity of any individual, but rather, in the general characteristics, values, and behavior of juvenile delinquents and in the policies and expectations of their caretakers.

Any assistance you can offer me in this matter will be greatly appreciated. I look forward to hearing from you.

Sincerely,

Ruth M. Alexander

Ruth M. Alexander

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upon a verbal order noted in the patient's medical records and subsequently signed by the physician. The attending physician shall review regularly the drug regimen of each patient or proposed patient under the physician's care and shall monitor any symptoms of harmful side effects. Prescriptions for psychotropic medications shall be written with a termination date not exceeding 30 days thereafter but may be renewed.

(b) Any patient who is receiving treatment pursuant to the provisions of K.S.A. 59-2909, 59-2912, 59-2917 or 59-2918, and amendments thereto, and who objects to medication prescribed shall have such objection recorded and entered in the patient's medical record. If after a full explanation of the reasons for the medication such patient still objects to the medication, it may be administered over the patient's objections. Such objections must be submitted to administrative review by the medical director or psychiatric designee within five days of the objection. In no case shall experimental medication be administered without the patient's consent.

(c) During the course of treatment the responsible physician or psychologist or such person's designee shall consult with the patient, or the patient's guardian, and give consideration to the views the patient or guardian expresses concerning treatment and any alternatives.

(d) Consent for medical or surgical treatments not intended primarily to treat a patient's mental disorder shall be obtained in accordance with applicable law.

History: L. 1986, ch. 211, § 26; July 1.

59-2928. Restraints and seclusion. (a) Restraints or seclusion shall not be applied to a patient unless it is determined by the head of the treatment facility or a physician or psychologist to be required to prevent substantial bodily injury to such patient or others. The extent of the restraint or seclusion applied to the patient shall be the least restrictive measure necessary to prevent injury to the patient or others, and the use of restraint or seclusion shall not exceed three hours without medical reevaluation, except that such medical reevaluation shall not be required, unless necessary, between the hours of 12:00 midnight and 8:00 a.m. When restraints or seclusion are applied, there shall be monitoring of the patient's condition at a frequency determined by the treating physician or psychologist, which shall be no less than once per hour. The head of the treatment facility or a physician or psychologist shall sign a statement explaining the treatment necessity for the use of any restraint and seclusion and shall make such statement a part of the permanent treatment record of such patient.

(b) The provisions of subsection (a) shall not prevent, for a period not exceeding two hours without review and approval thereof by the head of the treatment facility or a physician or psychologist:

(1) Staff at the state security hospital from confining patients in their rooms when it is considered necessary for security or proper institutional management;

(2) the use of such restraints as necessary for a patient who is likely to cause physical injury to self or others without the use of such restraints; or

(3) the use of restraints when needed primarily for examination or treatment or to insure the healing process.

History: L. 1965, ch. 348, § 28; L. 1976, ch. 243, § 31; L. 1986, ch. 211, § 22; July 1.

59-2929. Rights of patients. (a) Every patient being treated in any treatment facility, in addition to all other rights preserved by the provisions of this act, shall have the following rights:

(1) To wear the patient's own clothes, keep and use the patient's own personal possessions including toilet articles and keep and be allowed to spend the patient's own money;

(2) to communicate by telephone, both to make and receive confidential calls, and by letter, both to mail and receive unopened correspondence, except that if the head of the treatment facility should deny a patient's right to mail or to receive unopened correspondence under the provisions of subsection (b), such correspondence shall be opened and examined in the presence of the patient;

(3) to conjugal visits if facilities are available for such visits;

(4) to receive visitors each day;

(5) to refuse involuntary labor and to be paid for any work performed other than the housekeeping of the patient's own bedroom and bathroom subject to the provisions of K.S.A. 1986 Supp. 59-2943;

(6) not to be subject to such procedures as psychosurgery, electroshock therapy, experimental medication, aversion therapy or hazardous treatment procedures without the written consent of the patient and the written consent of a parent, guardian or other person *in loco parentis*, if such patient has a living parent or a guardian or other person *in loco parentis;*

(7) to have explained, the nature of all medications prescribed, the reason for the prescription and the most common side effects and, if requested, the nature of any other treatments ordered;

(8) to communicate by letter with the secretary of social and rehabilitation services, the head of the treatment facility and any court, physician, psychologist, minister of religion, including Christian Science practitioner or attorney. All such communications shall be forwarded at once to the addressee without examination and communications from such persons shall be delivered to the patient without examination;

(9) to be visited by the patient's physician, psychologist, minister of religion, including Christian Science practitioner or attorney at any time; and

(10) to be informed orally and in writing of the patient's rights under this section upon admission to a treatment facility.

(b) The head of the treatment facility may, for good cause only, restrict a patient's rights under this section, except that the rights enumerated in subsections (a)(5) through (a)(10), and the right to mail any correspondence which does not violate postal regulations, shall not be restricted by the head of the treatment facility under any circumstances. Each treatment facility shall adopt regulations governing the conduct of all patients being treated in such treatment facility, which regulations shall be consistent with the provisions of this section. A statement explaining the reasons for any restriction of a patient's rights shall be immediately entered on such patient's medical record and copies of such statement shall be available to the patient and the parent, guardian or person *in loco parentis*, if such patient is less than 18 years of age, and the patient's attorney. In addition, notice of any restriction of a patient's rights shall be communicated to such persons in a timely fashion.

(c) Any person willfully depriving any patient of the rights protected by this section, except for the restriction of such rights in accordance with the provisions of subsection (b), shall be guilty of a class C misdemeanor.

History: L. 1965, ch. 348, § 29; L. 1976, ch. 243, § 32; L. 1986, ch. 211, § 23; July 1.

59-2931. Disclosure of records. (a) The district court records, treatment records or medical records of any patient or former patient that are in the possession of any district court or treatment facility shall be privileged and shall not be disclosed except as otherwise provided in this act or under any of the following conditions:

(1) Upon the written consent of (A) the patient or former patient, if an adult who has no guardian; (B) the patient's or former patient's guardian, if any; or (C) a parent, if the patient or former patient is under 18 years of age, except that a patient or former patient who is 14 or more years of age and who requested voluntary admission shall have capacity to consent to release of the records without parental consent. The head of any treatment facility, other than an adult care home, who has the records may refuse to disclose portions of such records if the head of the treatment facility states in writing that such disclosure will be injurious to the welfare of the patient or former patient.

(2) Upon the sole consent of the head of the treatment facility who has the records after a written statement by the head of the treatment facility that such disclosure is necessary for the treatment of the patient or former patient. The head may make such disclosure to the patient or any former patient, the patient's next of kin, any state or national accreditation agency or scholarly investigator without making such determination but the head of the treatment facility shall require, before such disclosure is made, a pledge from any state or national accreditation agency or scholarly investigator that such agency or investigator will not disclose the name of any patient or former patient to any person not otherwise authorized by law to receive such information.

(3) Upon the order of any court of record after a determination by the court issuing the order that such records are necessary for the conduct of proceedings before it and are otherwise admissible as evidence.

(4) In proceedings under this act, upon

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rules and regulations. If any fines are prescribed, the rules and regulations shall prescribe administrative procedures for the imposition and collection thereof. Any action pursuant to such procedures is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

History: L. 1973, ch. 373, § 3; L. 1984, ch. 344, § 1; L. 1986, ch. 318, § 141; July 1.

Article 12b.—STATE INSTITUTIONS FOR THE MENTALLY RETARDED

Law Review and Bar Journal References:

"Constitutional Law: Although Mentally Retarded Not a Quasi-Suspect Class, Denial of Special Use Permit Deprived Applicants of Constitutional Right [*City of Cleburne v. Cleburne Living Center*, 105 S.Ct. 3249 (1985)]," Betsy J. Morgan, 25 W.L.J. 575 (1986).

76-12b09.

Law Review and Bar Journal References:

"Constitutional Law: Although Mentally Retarded Not a Quasi-Suspect Class, Denial of Special Use Permit Deprived Applicants of Constitutional Right [*City of Cleburne v. Cleburne Living Center*, 105 S.Ct. 3249 (1985)]," Betsy J. Morgan, 25 W.L.J. 575, 583 (1986).

76-12b11. Records of institution; limitations on disclosure; application of other statutes to records. (a) The records of any resident or former resident of a state institution for the mentally retarded that are in the possession of the institution shall be privileged and shall not be disclosed except under any of the following conditions:

(1) Upon the written consent of: (A) The resident or former resident, if an adult who has no guardian; (B) the resident's or former resident's guardian, if any; or (C) a parent, if the resident or former resident is under 18 years of age. The superintendent of the institution which has the records may refuse to disclose portions of such records if the superintendent states, in writing, that the disclosure will be injurious to the welfare of the resident or former resident.

(2) Upon the sole consent of the superintendent of the institution which has the records after a written statement by the superintendent that the disclosure is necessary for the care, training or treatment of the resident or former resident. The superintendent may make the disclosure to the resident or former resident, the resident's next of kin, any state or national accreditation agency or any scholarly investigator without making that determination, but, before the disclosure is made, the superintendent shall require a pledge from any state or national accreditation agency or scholarly investigator that such agency or investigator will not disclose the name of any resident or former resident to any person not otherwise authorized by law to receive that information.

(3) Upon the order of any court of record after a determination by the court that the records are necessary for the conduct of proceedings before it and are otherwise admissible as evidence.

(4) To any other person if such disclosure is required by federal law or regulation implementing a federal grant-in-aid program in which the state is participating.

(5) As provided in K.S.A. 74-5515.

(b) To the extent the provisions of K.S.A. 1986 Supp. 65-5601 to 65-5605, inclusive, and amendments thereto are applicable to the records of any resident or former resident of a state institution for the mentally retarded that are in the possession of the institution, the provisions of K.S.A. 1986 Supp. 65-5601 to 65-5605, inclusive, and amendments thereto shall control the disposition of information contained in such records.

History: L. 1985, ch. 269, § 1; L. 1986, ch. 212, § 9; July 1.

Cross References to Related Sections:

Privilege of patient of treatment facility to prevent disclosure of treatment and of confidential communications, see 65-5601 *et seq.*

Article 14.—PARSONS STATE HOSPITAL AND TRAINING CENTER

76-1411.

History: L. 1953, ch. 391, § 15; L. 1973, ch. 369, § 24; L. 1977, ch. 105, § 26; Repealed, L. 1985, ch. 304, § 1; July 1.

Article 15.—NORTON STATE HOSPITAL; TUBERCULOSIS HOSPITAL (CHANUTE)

76-1510c.

History: L. 1963, ch. 442, § 1; L. 1967, ch. 472, § 1; L. 1980, ch. 299, § 4; L. 1982, ch. 357, § 33; Repealed, L. 1985, ch. 304, § 1; July 1.

1-21-88

Statement
to
Senate Judiciary Committee
concerning
House Bill No. 2218
1/21/88

I want to thank Chairman Frey and members of the Judiciary Committee for allowing me to make this brief statement concerning House Bill No. 2218. As I understand it, the primary purpose of this proposed legislation is to permit the preservation of juvenile court records and other similar documents by the Kansas State Historical Society. I strongly favor this objective. It should be clear from the outset, however, that I do not base my support for this bill on the antiquarian argument that all historical documents should always be preserved simply because they exist. I am convinced that the study of juvenile court records has a social utility that clearly justifies their preservation.

If we expect the study of America's past to reach its full potential as a social enterprise, then it must be a study of all its people. In the last two decades a growing number of historians have committed themselves to constructing a history of American life that includes the experience of all groups regardless of their class, race, gender, religion, ethnicity, or age. The study of children is a vital element of this new social history which is transforming our understanding of our past and present.

Children are crucial to the study of America's past for several reasons. Though not powerful, their sheer numbers and the value adults have placed on having children have made them very influential as groups and as individuals. Children have been an omnipresent element throughout our history. When the first humans came to North America from Asia millennia ago, children came with them. When the Pilgrims came to Plymouth in the 1620's, their children came with them and too often died with them. Twelve years after the first

Attch. VI

adventurers landed at Jamestown, they were joined by children who were soon put to work. When settlers moved from the coastal plain into the eastern forests and mountains, their children went with them. Children, as well as adults, crossed the Cumberland Gap, the Ohio, the Mississippi, the Missouri, the Kaw, the wide plains, and the searing deserts, the rugged Rockies and the high Sierras to reach the Pacific. Children, as well as adults, were crammed into the holds of ships that brought slaves and immigrants to our shores. Children, as well as adults, were killed in the tragic struggle between Indians and whites for this continent. Until well into this century large numbers of children worked alongside adults in the fields, textile factories, coal mines, and steel mills of this country. Children, as well as adults, experienced the consequences of wars and depressions. And children, as well as adults, were brought before our courts. Children were excluded from virtually no aspect of our past. Without children any history of America is incomplete, flawed, and even misleading.

Even so, children present special problems for historians. As historical subjects, they are very inarticulate, at times practically silent. Children, especially young ones, are obviously much less likely than adults to write letters, keep diaries, make speeches, lobby for legislation and run for political office. Thus historians of childhood are forced to depend heavily on historical documents created by adults, many of which do not deal directly with children. For this reason alone, juvenile court records are particularly valuable because they focus primarily on children.

In more precise terms, juvenile court records can provide insight into all of the basic questions I have suggested for the history of childhood:

1. What have been the attitudes of adults toward children?
2. What were the conditions that helped to shape the development of children?

3. What has been the subjective experience of being a child in the past?
4. How have children influenced adults and each other?
5. What have been the social, cultural, and psychological functions of children?

By their very nature, juvenile court records offer many opportunities to analyze the limits adults imposed on children and what happened when these limits were challenged.

Juvenile court records have a significance that goes beyond their special value to historians of childhood. For example, it would be impossible to complete a valid study of the efficacy of juvenile courts and their policies without access to their records. Legal historians will find these records indispensable when they try to assess the impact of juvenile law on society. Historians of the family, educational historians, and scholars interested in the history of gender and ethnicity will also find these records to be important sources for their research. The juvenile court can be viewed as an arena where difficult social issues affecting children are dealt with explicitly. As such, they provide a window into the heart of American society and culture.

Juvenile courts were created in part to promote the interests of children. It is for precisely this reason that I support House Bill No. 2218. With rigorous procedures and guidelines in place to protect the identity of individuals, it will be possible to use our knowledge of the experience of the juvenile courts to help us make wise decisions affecting the welfare of children in the future.

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