

Approved 4-27-89
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Wint Winter, Jr. at
Chairperson

10:00 a.m./~~p.m.~~ on March 23, 1989 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Winter, Yost, Moran, Bond, Gaines, D. Kerr, Martin, Morris, Oleen, Parrish, Petty and Rock.

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Jane Tharp, Committee Secretary

Conferees appearing before the committee:

Representative Debara K. Schauf
Jan Waide, SRS Children In Need of Care
Helen Stephens, Private Citizen
Jim Clark, Kansas County and District Attorneys Association
Diane Mates, shawnee County Child Care Association

House Bill 2168 - Foster care parents required to file a report on the child's adjustment, progress and condition.

Representative Debara K. Schauf stated she introduced the bill at the request of foster parents and a judge. She explained the changes made to the bill in the House. She stated the judge said he actually didn't know where the children were internally. There was a special problem with them. A committee member inquired, are we putting a hardship on some foster parents, particularly if they have a number of children at home? Representative Schauf replied she has not heard any opposition to this. The foster parents wanted this. The foster parents say we don't take foster children to make money, it is because we care about them. A committee member stated it seems like we are putting the responsibility in the wrong place. It seems someone in the court should be responsible for them. Don't they have the right to do that now? Representative Schauf replied there is nothing that says SRS is to notify them. The foster parents want officially to become part of the system. Copies of Representative Schauf's handouts are attached (See Attachments I).

Jan Waide, SRS Children in Need of Care, testified they are in support of the intent of this bill. They are concerned about the mandatory language in the bill. She recommended changing "shall" to "may" in line 39. A committee member inquired if foster parents already have the ability to write to the court? Director Waide replied yes. The committee member inquired, do you have trouble with kids getting lost in the system? She replied, not to my knowledge. Copies of her handouts are attached (See Attachments II).

Helen Stephens, Private Citizen, stated in the State of Missouri when I was 22 years old I had custody of a 12 year old. She explained she would call in regularly to report on the boy, and she felt it was no imposition on her part. If it were not for that he might have been lost in the system.

House Bill 2396 - Audio tape recordings of sexually exploiting a child.

Jim Clark, Kansas County & District Attorneys Association, testified his association requested the introduction of the bill. The request was based on an incident which occurred in Miami County, which a father who had been convicted and incarcerated for sexually abusing his children requested the children's mother to force the children to make sexually explicit audio tape recordings, which

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,

room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on March 23, 1989

House Bill 2396 - continued

were then sent to him inside the prison. A copy of his testimony is attached (See Attachment III). Senator Bond moved to report the bill favorably and placed on the consent calendar. Senator Petty seconded the motion. The motion carried.

Senate Bill 78 - Indecent liberties with a child, elements, affirmative defense.

Jim Clark, Kansas County and District Attorneys Association, testified the bill is similar to House Bill 2091, amends K.S.A. 21-3503, indecent liberties with a child, by removing the requirement that the state must prove a negative, that the child victim is not married to the offender, and adding the affirmative defense of marriage. A copy of his testimony is attached (See Attachment IV).

Senator Rock moved to report the bill favorably. Senator Moran seconded the motion. Senator Parrish made a substitute motion to amend the bill by striking "affirmative" in line 32. Senator Moran seconded the motion. The motion carried. Senator Rock moved to report the bill favorably as amended. Senator Moran seconded the motion. The motion carried.

Senate Bill 297 - Crime to knowingly make false allegations of child abuse and neglect.

Jan Waide, SRS, appeared in support of the bill. A copy of her testimony is attached (See Attachment V).

Diane Mates, Shawnee County Child Care Association, appeared in support of the bill. She read a letter from one of her providers who was accused of child abuse. She then played a tape of a person calling the provider and accusing her of child abuse. The caller identified himself as a lawyer. They could not identify the caller in the city directory. Following committee discussion, the chairman stated there is a law concerning harrassment by telephone. This is a crime.

Senator Bond moved to approve the minutes of March 2 and March 3, 1989. Senator Rock seconded the motion. The motion carried.

The meeting adjourned.

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

Copy of testimony from Office of the Attorney General is attached (See Attachment VII).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 3-23-87

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
RICHARD RAINOLDI	400 SW 8 th AVE	KAPE (KANSAS ASSOC. PUBLIC EMPLOYEES)
Mark Steward	Grenola, Ks	:
Jean Steward	Grenola, Ks.	
Shirley Sweet	Grenola, Ks	
Cindy Kelly	Topeka	KASB
Kirby & Stegman	Manetta	Div. of Budget
Rep Debbie Schaw	Topeka	
Paul Shelby	Topeka	OJA
Laurie Johnson	Topeka	Ks. Bar Assoc.
Jim, Clerk	Topeka	KC P.A.I.
Ed Van Peltus	Topeka	A.G.
Mary Slaybaugh	Topeka	SRS
Tim McHenry	Topeka	Ks. Child Abuse Prev. Council
Marie Mapes	Topeka	In. Co. Child Care Assn.
Haney Lindberg	Topeka	AG
Janice Marshall	Topeka	Kansas Psychological Assn.
Patrick Murphy	Manhattan	KTCA
RG FREY	TOPEKA	"
Sandra Skidmore	Topeka	Revenue
Don Lindsey	OSAWATOMIE	UTU
Sandy Bopp	Manhattan	RTLN
Rob Menn	Topeka	SPK for Tom Lee
Ed Steele	Topeka	X.S. - J.R.S.
Bonnie Biggs	Lawrence	
Kuliah Wilson	Topeka	KTCA

BARA K. SCHAUF
 REPRESENTATIVE, EIGHTY-FIRST DISTRICT
 SEDGWICK AND SUMNER COUNTIES
 P.O. BOX 68
 MULVANE, KANSAS 67110
 (316) 777-4608



TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 MEMBER: LABOR AND INDUSTRY
 FEDERAL AND STATE AFFAIRS
 COMMERCIAL AND FINANCIAL
 INSTITUTIONS
 JOINT COMMITTEE ON ADMINISTRATIVE
 RULES AND REGULATIONS

HOUSE BILL 2168

February 27, 1989

RE; Foster Parents Filing a Report with the Court

Mr. Chairman and members of the Committee.

I am Representative Debbie Schauf and I appear before you today to request that KSA38-1565 be amended to require a report from foster parents included with the six months progress report for each child that is filed with the court.

With me today are a District Court Judge, a CASA volunteer, and a foster parent. They will be appearing in support of the change. I have also attached to my testimony copies of letter received from foster parents which further indicate their concern for the welfare of the child.

As I have visited with some of these foster parents, I was surprised to learn that one family has been foster parenting for three years with three different sets of children and has never had a social worker in her home to visit and observe the adjustment of the children in the home. They also have never had the goals for the child placed in their care discussed with them. One foster parent expressed her frustration that a small child in her care was discovered to be sexually abused. The fact was confirmed and an evaluation and counseling was determined to be in order. From the second week of October to the last week of January the foster parent never heard another word despite frequent calls to the social worker. Finally at the end of January, after a concentrated effort on her part and a request to SRS that the child be removed from her home if help was not forthcoming immediately, it was discovered that the information had never been processed. Finally, the court authorized the counseling and it has begun.

*Attachment I
 Senate Judiciary Comm.
 3-23-89*

I urge you to listen and consider what you will hear today from Judge Graber, Mrs. Wallace, the CASA volunteer, and the foster parents who appear before you today. I feel the proposed amendment would enhance the ability to keep track of the needs of children who are cared for by the State.

Thank you and I'll be happy to stand for questions.

2-20-89

Dear Debbie,

First I would like to thank you for speaking in behalf of us foster parents!

I wish this was coming up a little later so we could prove there is a great need here. We have a meeting Feb. 28 and we were going to have a letter already written up for people (foster parents) to sign.

I have four of my own children and three foster children currently. The foster children of Sedgwick County are being drastically overlooked in the system.

No one in the system knows the child as well as the foster parents. Everyone else is too busy to interact with the child to get to know them. They (S.R.S.) place the child in your home and as long as everything goes alright with you that's all you hear from them.

But yet when there is a court hearing these same people give reports that are to ^{be} for the betterment of the child! They don't even know the child!!

I feel someone needs to stand up for the child. Let the judge know what they feel, act or have been going through. You need to allow foster parents to file a court report or have some input at court hearings. We know

the child. We live with them every day through thick and thin. Yet we have no input. Who else knows this child? These children are our future - lets help them now before its to late!

I would really like to be able to be there Monday as this is presented, but its really hard to find a baby-sitter for four children under 5. I'll try!!

May God bless you for all the work you've done for this and the continuing work. I know when you want something you really have to continually stand up for it!

Thanks so much,
Mecca J. Menges

Mecca Menges
1933 W. 60th N.
Wichita, KS. 67204
316-755-0059

February 23, 1989

2117 Richfield
Wichita, Kansas 67207

State House 174-W
Topeka,
Kansas 66612

ATTENTION: Rep. Debbie Schauf

Dear Rep. Schauf:

I am appealing to you for help in a need for foster parents. As a foster parent for many years, there are many needs, however, I will address just one issue.

Our "children" that we have in our home are not being heard. No one seems to be speaking up for them and unless we as foster parents do, there doesn't seem to be anyone else.

My request for you to consider is that foster parents be allowed to submit a report to the court. After all, we have the children in our home 24 hours a day, seven days a week and we aren't allowed to give a report to the court. Even the CASA worker has more rights than we do and yet we have the children in our home. I don't feel it should be a blanket law. It should be an option that foster parents can exercise if they want to.

Thank you for any help you can provide.

Sincerely,

Mrs. Gloria Mangum

Mrs. Gloria Mangum
Foster Parent

STATE OF KANSAS
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
DIVISION OF SERVICES TO CHILDREN, YOUTH, AND ADULTS

4
Re...-79

YOUTH RESIDENTIAL FACILITY PLACEMENT AGREEMENT

THIS AGREEMENT, entered into this 14 day of FEBRUARY, 1989 by and between the State Department of Social and Rehabilitation Services, hereinafter referred to as the Department, and JAMES DETRICK, RR PERK,
(Name of Youth Residential Facility) (Address)
hereinafter referred to as the Youth Residential Facility for and in consideration of the covenants and stipulations hereinafter made, the Department hereby places John J. Doe, born 11-6-72, with the Youth Residential Facility to remain until discharged, transferred, ordered removed by the Department, or expelled.

The Youth Residential Facility hereby agrees:

1. To permit the child to remain until discharged, transferred, ordered removed by the Department, or expelled.
2. To abide by applicable child care licensing regulations of the state of Kansas.
3. To cooperate with the Department in planning and carrying out the plan for the child.
4. To obtain needed medical and dental care for the child.
5. To notify the Department and parents within 24 hours or next working day of any a) serious illness or injury, b) runaway, c) major incident or event of the child.
6. To obtain prior permission from the Department before a) taking the child outside of the state of Kansas, b) moving child to another address and/or facility.
7. To provide at least 48 hours Foster Family Home/7 days Residential notice to the Department in asking for removal of the child, and inform the Department the reason(s) for which the child is unwelcomed.
8. To provide regular progress reports at _____ intervals, beginning _____.
9. To preserve and relinquish upon termination of the placement all personal possessions of the child.
10. To maintain up-to-date records as required by placing agency.

The Department hereby agrees:

1. To make payment at the established rate of 11⁰⁰ per day effective 2/14/89 (or as indicated in (Date of placement) the current major purchase of service contract) until last day of placement. There is no reimbursement for the day youth leaves. Such rate will not be reduced or increased without prior notice and renegotiation in accordance with Department administrative policies for purchase of service. This rate includes food, shelter, clothing, personal allowance, transportation, and incidental expenditures.
2. To pay for all health care as provided by Title XIX.
3. To share plans, goals, and other pertinent information concerning the child that are needed to provide appropriate care.
4. To provide 48 hours Foster Family Home/7 days Residential notice unless the child has been placed with the Youth Residential Facility for longer than six (6) months, in which case 30 days notice of planned transfer shall be given, except that, if said removal is court ordered, or is done for the protection of the child, there is no notice requirement.
5. To provide regular progress reports on the family and plans for the child at _____ intervals.
6. To provide social services and permanency planning on behalf of the child.
7. To notify Youth Residential Facility of all pending court actions and court determinations.
8. To pick up personal possessions of discharged residents within 30 days. Items not picked up within this time limit, may be disposed by the Youth Residential Facility.

Safeguarding of Client Information

The use or disclosure by any party of any information concerning a resident for any purpose not directly connected with the administrative responsibility of the Department or Youth Residential Facility with respect to services in this agreement are prohibited except on written consent of the Department or upon the order of an appropriate court.

THE PARTIES AGREE that this agreement is supplemental and in addition to any other written agreements or contracts between the parties which may exist or may hereafter be entered into and further agree to: _____

Youth Residential Facility

Social Services Supervisor
Chief

Social Service Worker

Distribution: White, Child's SRS Record; Yellow, Youth Residential Facility

This form supersedes Form CY-837.

Previous editions of this form are obsolete.

SJC
3-23-89

Schary

I APPEAR BEFORE YOU TODAY IN SUPPORT OF HOUSE BILL NO. 2168.
MY NAME IS ZELLA WALLACE, I AM FROM SEDGWICK COUNTY, I VOLUNTEER MY TIME AS
A CASA WORKER. FIRST, I WOULD LIKE TO MAKE IT CLEAR I AM NOT REPRESENTING
THE CASA PROGRAM BUT, AS A CONCERNED INDIVIDUAL.

CASA IS A COURT APPOINTED SPECIAL ADVOCATE. AFTER A PROGRAM OF SPECIALIZED
TRAINING WE ARE ASSIGNED A CASE INVOLVING A CHILD OR CHILDREN IN ONE FAMILY
AS THEY MAKE THEIR WAY THROUGH THE COURT SYSTEM. WE ARE AUTHORIZED TO
CONTACT ANY INTERESTED PARTY OR INSPECT ALL RECORDS RELATING TO THESE
CHILDREN. WE THEN MAKE A REPORT TO THE COURT AS TO THE CASA WORKERS'
RECOMMENDATIONS. NOT ALL CHILDREN ARE ASSIGNED A CASA VOLUNTEER.

MY CASE EXPERIENCES HAVE LEFT ME WITH SERIOUS CONCERNS ABOUT THE INFORMATION
AVAILABLE TO THE COURT. TOO MANY TIMES THE SOCIAL WORKER IS ASSIGNED TO SO
MANY CASES, THEY HAVE LITTLE OPPORTUNITY TO REALLY DEVELOP A RELATIONSHIP
WITH THE CHILD OR THE FOSTER PARENTS. IN ONE CASE THE FOSTER MOTHER WAS SO
FRUSTRATED, SHE CALLED EMCU "EXPLOITED AND MISSING CHILDRENS UNIT"; ON
ANOTHER CASE THE FOSTER MOTHER WROTE THE JUDGE. CHILDREN LUCKY ENOUGH TO
HAVE A GOOD CASA VOLUNTEER HAVE A LITTLE MORE CHANCE OF BEING EVALUATED.

SOMETIMES THE CASA WORKER AND THE SOCIAL WORKER DO NOT AGREE ABOUT WHAT
WOULD BE BEST FOR THE CHILD.

IT WOULD SEEM LOGICAL TO ME, A FOSTER PARENT WHO HAS THE RESPONSIBILITY OF
TAKING CARE OF THESE CHILDREN, ALSO OUGHT TO BE INCLUDED IN THE REPORTING TO
THE JUDGE.

PAGE 2.

AS A CASA VOLUNTEER, WE ARE NOT ALLOWED TO REVEAL NAMES OR DISCUSS FULLY A SPECIFIC CASE WITH ANY ONE OTHER THAN THOSE INVOLVED IN THE CASE. HOWEVER; CAN SHARE, IN VERY GENERAL TERMS, ONE SITUATION THAT EXHIBITS THE NEED FOR THIS LEGISLATION. THE CASE INVOLVED A CHILD , NOW SIX (6); HER YOUNGER SISTER AND HER BROTHER; THEY ARE NOW IN A FOSTER HOME. THEY WERE PLACED THERE BECAUSE OF BEATINGS BY SOMEONE UNKNOWN (MOTHER, FATHER, OR THE MOTHER LIVE IN BOYFRIEND). WHILE IN THE FOSTER HOME SHE WAS DOING UNNATURAL SEXUA THINGS. THE FOSTER MOTHER STARTED ASKING HER QUESTIONS, THE FOSTER MOTHER THEN CALLED THE SRS WORKER ASSIGNED TO THIS CASE , LEAVING WORD FOR HER TO CALL AND EXPLAINED WHY SHE WAS CALLING. SHE CALLED FOR THREE STRAIGHT DAYS WITH NO RESPONSE FROM THE SOCIAL WORKER; SHE THEN CALLED EMCU. THEY TOOK A STATEMENT AND THE CHILD WAS LATER SENT TO A DR.; WHO COLLABORATED, REPEATED SEXUAL ABUSE HAD OCCURRED.

THESE CHILDREN HAVE BEEN IN THIS FOSTER HOME FOR OVER A YEAR. THE FOSTER MOTHER TOLD ME, SHE HAS NOT HAD A SOCIAL WORKER IN HER HOME EXCEPT TO BRING THE FIRST CHILD. SHE PICKED UP THE OTHER TWO CHILDREN WHEN A SOCIAL WORKER CALLED HER TO DO SO. A SOCIAL WORKER PICKED UP THE OLDEST GIRL TO TAKE HER TO THE DOCTOR, WHEN THE FOSTER MOTHER WAS UNABLE TO TAKE HER. I DO NOT INTEND TO DEMEAN SRS, THEY DO NOT HAVE ENOUGH SOCIAL WORKERS TO GIVE THE ATTENTION TO EACH CASE OR CHILD THE INDIVIDUAL WORKERS WOULD LIKE.

PAGE 3.

THE JUDGE HAS NEVER HEARD DIRECTLY FROM THE FOSTER PARENTS, AND THE FOSTER PARENTS DO NOT KNOW IF, HE IS OR WILL BE AWARE OF THEIR CONCERNS FOR THE CHILD. FOR THE BEST CARE OF THESE CHILDREN, I FEEL, THE INFORMATION THE JUDGE RECEIVES SHOULD HAVE A REPORT FROM THE PEOPLE WHO ARE CLOSEST TO THEM EVERY DAY. FOR THAT REASON, I STRONGLY SUPPORT THIS BILL.

I'LL BE HAPPY TO ANSWER ANY QUESTIONS THAT I CAN.

I APPRECIATE THE OPPORTUNITY TO COME BEFORE YOU ON BEHALF OF MANY MANY CHILDREN IN FOSTER CARE, NOW AND IN THE FUTURE.

THANK YOU.

TO: House Judiciary committee Members

FROM: Barbara Hansen - Harvey County Foster Parent

DATE: Febr. 28, 1989

I wish to extend my thankfulness to this committee for giving us an audience at the hearing of HB2168. As foster parents, my husband and I feel our voice needs to be heard and made an integral part of the decision making process regarding our foster children. Therefore, again we ask that you support this bill without the change in terminology that the S.R.S. representative suggested ("shall becoming "may" in lines 39 and 41.) If this change is not made mandatory we feel our voice will continue to go unheard.

Respectively Yours

Barbara Hansen

Barbara Hansen



STATE OF KANSAS

MIKE HAYDEN, *Governor*

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Docking State Office Building, Topeka, Kansas 66612-1570

☎ (913) 296-3271

March 23, 1989

WINSTON BARTON
Secretary

THELMA HUNTER GORDON
Special Assistant

TIM OWENS
General Counsel

ANN ROLLINS
*Public Information
Director*

Administrative
Services
J. S. DUNCAN
Commissioner

Adult Services
JAN ALLEN
Commissioner

Alcohol and Drug
Abuse Services
ANDREW O'DONOVAN
Commissioner

Income Maintenance/
Medical Services
JOHN ALQUEST
Commissioner

Mental Health/
Retardation Services
AL NEMEC
Commissioner

Rehabilitation
Services
GABE FAIMON
Commissioner

Youth Services
ROBERT BARNUM
Commissioner

The Honorable Wint Winter, Jr.
State Senate
Statehouse
Topeka, KS 66612

Dear Senator Winter:

Attached please find thirty copies of an attachment to my testimony in support of Senate Bill 297. This attachment was inadvertently left off the testimony. I apologize for any inconvenience this may have caused.

Sincerely,

Janice S. Waide, Director
Division of Children in Need of Care

JSW:dh
Attachment

*Attachment II
Senate Judiciary Committee
3-23-89*

81
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(h) ~~Reporting of an allegation of child abuse and neglect known
to be false is a class B misdemeanor.~~

Malicious

Sec. 2. K.S.A. 1988 Supp. 38-1522 is hereby repealed.

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

DEPARTMENT OF SOCIAL & REHABILITATION SERVICES
Winston Barton, Secretary

Testimony in Support of HB 2168

AN ACT CONCERNING THE CODE FOR CARE OF CHILDREN; RELATING TO THE FOSTER PARENT FILING A REPORT WITH THE COURT; AMENDING KSA 38-1664 AND KSA 1988 SUPP. 38-1565 AND REPEALING THE EXISTING SECTIONS.

Mr. Chairman, Members of the Committee, I appear here today in support of the intent of HB 2168.

We believe that foster parents are key members of the foster care team. We agree that foster parents who live with the children in our custody on a 24-hour per day basis have invaluable information that can be very helpful to a judge in the decision making process. We support direct communication of information from the foster parents to the court.

Though strongly supporting the intent of this bill, certain provisions are problematic. We would recommend that the language be changed so that the provision of information by foster parents becomes a right, not an obligation. We are concerned that the mandatory language places yet another burden on foster parents who may be loaded down already with the duties of providing care for our children plus their own family. We are concerned that the requirement to make a report to the court will be frightening to people whose communication skills may not be well developed. This concern would be a negative factor in our recruitment and retention efforts which are always on-going due to there always being more children needing homes than there are homes.

We would therefore recommend that the word "shall" appearing on line 39 be changed to "may". In this way those foster parents desiring to supply information directly to the court may. Those foster parents having no need to do so would not be required to make a report simply to meet a requirement of a law.

Page Two

This bill would also require that SRS notify the foster parent of the name of the judge and the address of the court two weeks prior to the date their report is due . We estimate that this will have an approximate fiscal impact of \$250,000 based on the need to add 17 clerical positions to provide these notifications in a timely way.

Submitted by

Janice S. Waide
Director, Division of Children in
Need of Care
Department of Social & Rehabilitation
Services
296-3282

OFFICERS

James Puntch, Jr., President
Terry Gross, Vice-President
Rodney Symmonds, Sec.-Treasurer



DIRECTORS

Daniel L. Love
James Flory
Gene Porter
Randy Hendershot

Kansas County & District Attorneys Association

827 S. Topeka Ave., 2nd Floor • Topeka, Kansas 66612 • (913) 357-6351

EXECUTIVE DIRECTOR • JAMES W. CLARK, CAE

Testimony in Support of

HOUSE BILL 2396

The Kansas County and District Attorneys Association requested introduction of House Bill 2396, and the House Judiciary Committee introduced the bill on our behalf. The bill passed the House 125 to 0.

The purpose of the bill is narrow: simply to extend the protection of K.S.A. 21-3516 to include the production of audio tapes. The request was based on an incident which occurred in Miami County, in which a father who had been convicted and incarcerated for sexually abusing his children requested the children's mother to force the children to make sexually explicit audio tape recordings, which were then sent to him inside the prison. More details of the incident are attached in a letter from former Miami County Attorney David Heger, who recommended that our Association promote this measure.

While the impact of audio recordings over a visual performance may not seem as great, we would ask you to recall the financial considerations involved in the recent debate over dial-a-porn operations. There obviously is a demand for oral representations of sexual acts.

More importantly, the basic purpose of the statute, the exploitation of children, may be as great if they are required to utter words or sounds of a sexually explicit nature as if they are required to act them out before a visual medium. For these reasons, we request the committee to recommend the bill favorably for passage.

Attachment III

JGC
3-23-89

DAVID R. HEGGER
Attorney at Law
P.O. Box 403
Paola, Kansas 66071
[913] 294-4819

March 1, 1989

TO: Judiciary Committee

I am writing to you concerning House Bill 2396, a proposed amendment to K.S.A. 21-3516, Sexual Exploitation of a Child. The statute presently prohibits in Section (1)(b) "possessing any film, photograph, negative, slide, book, magazine, or other printed or visual medium". It does not include audio recordings. Based upon a case which I prosecuted last year, I believe this to be a serious oversight.

In that particular case, a mother of two young children, a two-year-old girl and a five-year-old boy, was communicating with a twice-convicted child molester who was incarcerated at the Kansas State Penitentiary in Lansing. Letters describing explicit sexual conduct toward children, including her own, were recovered from both the prisoner and the mother. Also recovered were tapes from the woman to the prisoner. Some of the tapes were recovered from the prisoner's cell at Lansing. The voices of three children were on one of the tapes. Two of the children were the mother's own children, and the third child was a nine-year-old neighbor girl.

The children were obviously coached on what to say. The children, especially the nine-year-old, asked the prisoner the size of his sexual organ. The nine-year-old stated that she wanted to have oral sex with the prisoner. The two-year-old described her breasts and spoke in crude sexual terms. The mother's voice could be heard on the tape coaching the children on what to say. From interviews of the children, it was clear that they were parroting what they had been told to say.

Letters from the prisoner to the mother in Miami County indicated that the mother was making the tapes at the request of the prisoner. The tapes, along with the letters, included the most graphically detailed sexual language that I have ever encountered in eight years of criminal prosecution. Because of the limitations contained within K.S.A. 21-3516, it was not possible to prosecute the prisoner

h 1, 1989

TO: Judiciary Committee
Page Two

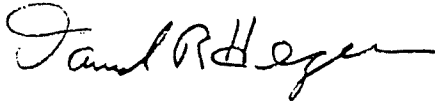
for possession of the tapes. Audio statements are not presently considered to be sexual exploitation of a child.

Although the prisoner was successfully prosecuted under a solicitation charge, I was alarmed that audio tapes were not covered. If we had not recovered letters from the prisoner to the mother, we would not have been able to prosecute him. I am deeply concerned that the next time a similar case is discovered, the prosecutor in that case will only have audio tapes as evidence and will not be able to prosecute someone in possession of audio tapes upon which children are being grossly used to satisfy the deviant sexual desires of the possessor of the tapes.

Therefore, I respectfully request that you amend K.S.A. 21-3516 to include possession of audio tapes in paragraph (1)(b) of the statute, and to include in the definition of sexually explicit conduct in paragraph (2)(a) audio statements graphically describing sexual acts. Under paragraph (1)(a), these additions would only cover those children under 16 years of age and would not pertain to adults.

I thank you for your attention.

Sincerely,



David R. Heger, #09277
Attorney at Law

DRH/jj

OFFICERS

James Puntch, Jr., President
Terry Gross, Vice-President
Rodney Symmonds, Sec.-Treasurer



DIRECTORS

Daniel L. Love
James Flory
Gene Porter
Randy Hendershot

Kansas County & District Attorneys Association

827 S. Topeka Ave., 2nd Floor • Topeka, Kansas 66612 • (913) 357-6351

EXECUTIVE DIRECTOR • JAMES W. CLARK, CAE

Testimony in Support of **Senate Bill 78**
by
James W. Clark, KCDA Executive Director

Senate Bill 78, similar to House Bill 2091, amends K.S.A. 21-3503, indecent liberties with a child, by removing the requirement that the State must prove a negative, that the child victim is not married to the offender, and adding the affirmative defense of marriage. Such an amendment may help to eliminate many of the reversals of conviction that are now taking place due to the State's failure to allege the element of non-marriage, which began with State v. Jackson, 239 Kan. 232 (June 13, 1986) and are continuing.

Admittedly, many of these cases resulted from an attempt by the Kansas County and District Attorneys to assist prosecutors by preparing complaint forms for use in drawing up the initial charge. When the Jackson case hit, we notified all the prosecutor offices in the state, but unfortunately, the damage had already been done.

There is a similar problem in cases charging aggravated criminal sodomy, 21-3506. In Ditges v. State, an unpublished opinion decided on September 9, 1988, the Court of Appeals applied the Jackson rationale and reversed a conviction of aggravated criminal sodomy for the State's failure to allege that the victim was not married to the offender. There have been numerous cases since then. One glowing exception has been State v. Wade, 61678, decided by the Supreme Court on January 20, 1989. In that case the Information failed to allege that the victim was not married to the defendant, but it did allege that she was five years old. Applying common sense, the Supreme Court, after finding no statutory minimum age for marriage in Kansas, applies the common law minimum of 12 for a female and 14 for a male. Finding that marriage was a legal impossibility under the facts alleged, the Supreme Court finds no jurisdictional defect.

In conclusion, while we support SB 78, we also suggest that if this change is determined to be the appropriate remedy, that similar changes should be made to the aggravated criminal sodomy statute.

Attachment IV

SJC
3-23-89

Indecent Liberties with a Child
Sec. 21-3503, K.S.A.; Penalty Sec. 21-4501 [c]
unlawfully, feloniously and willfully

A

engage in an act of sexual intercourse with a child under the age of sixteen (16); to-wit: _____, who was not his spouse.

or B

engage in lewd (fondling) (touching) of the person of _____(child), a child under the age of sixteen (16) years, with the intent to (arouse) (satisfy) the sexual desires of _____(child)____
OR (offender) OR both.

or C

engage in lewd (fondling) (touching) of his (her) person by a child under the age of sixteen (16) years; to-wit: _____
_____, with the intent to (arouse) (satisfy) the sexual desires of _____(child)____ OR _____(offender)____ OR both.

21-3506. Aggravated criminal sodomy.

Aggravated criminal sodomy is:

(a) Sodomy with a child who is not married to the offender and who is under 16 years of age;

(b) causing a child under 16 years of age to engage in sodomy with any person or an animal; or

(c) sodomy with a person who does not consent to the sodomy or causing a person, without the person's consent, to engage in sodomy with any person or an animal, under any of the following circumstances:

(i) When the victim is overcome by force or fear;

(ii) when the victim is unconscious or physically powerless;

(iii) when the victim is incapable of giving consent because of mental deficiency or disease, which condition was known by the offender or was reasonably apparent to the offender; or

(iv) when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance administered to the victim by the offender, or by another person with the offender's knowledge, unless the victim voluntarily consumes or allows the administration of the substance with knowledge of its nature.

(2) Aggravated criminal sodomy is a class B felony.

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Winston Barton, Secretary

Testimony in Support of S.B. 297
AN ACT MAKING FALSE REPORTING OF CHILD ABUSE AND NEGLECT A MISDEMEANOR

(Mr. Chairman), Members of the Committee, I am appearing today in support of Senate Bill 297 which makes the false reporting of child abuse and neglect a misdemeanor. I will suggest certain changes in language to address some concerns about the effect of the passage of the bill.

The Department of Social and Rehabilitation Services requested the introduction of similar legislation in the 1988 session of the legislature. The intent of that bill was to avoid unnecessary disruption of families and to discourage the flagrant mis-use of the child protection system. The bill received a negative reaction from some individuals and organizations who feared that its provisions would introduce confusion in the minds of potential reporters about when to report and might cause fewer valid cases to be reported out of the reporter's concern about prosecution. The Department acknowledges these concerns while continuing to support the intent of the bill before this committee.

False and malicious reporting is most often the result of family squabbles and divorce custody cases in which one of the parties accuses the other of child abuse in order to inflict revenge or to gain custody of a child. Other false reports may grow from a motive of retaliation by the subject of an abuse or neglect investigation against a person they suspect of having made the report. The problem of false reporting of child abuse causes unwarranted stress on families and diverts time and services from legitimate child protection activities. It may also have the effect of eroding public trust in the protecting agency and bring about calls for weakening the laws designed to protect children.

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The problem is not thought to be extensive but it is serious when it occurs. The Department of Social and Rehabilitation Services does not record data on malicious reports but we believe the vast majority of the 13,838 unfounded reports received by the agency in fiscal year 1988 were made in good faith by people with a genuine concern for children. In other cases, however, where the department had reason to doubt the veracity or motives of the reporter there was, and is, little we could do to dissuade them from making obviously spurious reports as there is no penalty for doing so. In practice, few cases will need to go to prosecution but the bill is potentially useful for alerting the occasional offender that their behavior may be subject to penalty and useful for pursuing a legal remedy when appropriate.

In addition, this bill would assist the Department in its efforts to educate the public about the appropriate use of the child abuse reporting law.

The advantages of the bill, notwithstanding, this agency is concerned that in the worthwhile effort to reduce the number and impact of false and malicious reports the state does not place a chill on reports by well-meaning individuals through fear that they might be prosecuted. To reduce this possibility we would recommend the wording be changed to parallel K.S.A. 38-1526 where the term "malice" is used. With these changes there would likely be less confusion in the mind of potential reporters whether they were violating the law. The bill, in amended form, would define the malicious reporting of child abuse or neglect as a class B misdemeanor.

With this or a similar change in wording, the Department of Social and Rehabilitation Services supports the enactment of S.B. 297.

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STATEMENT OF
DEPUTY ATTORNEY GENERAL EDWIN A. VAN PETTEN
TO THE SENATE JUDICIARY COMMITTEE
RE: S.B. 78
March 23, 1989

It is always a pleasure to address lawmakers in a request to support a matter such as is before you with Senate Bill 78.

The Kansas Court of Appeals has interpreted K.S.A. 21-3503 to require that the prosecution include in the complaint a statement that the victim is not married to the offender. This element must be included even when the victim and offender are of the same sex and when the victim is a small child.

The injustices that have arisen due to this requirement are the release of serious sexual offenders into society based solely upon an oversight of the prosecuting attorney involved.

As you can see, this is an understandable oversight as these are extremely emotional cases by nature and quite often are filed quickly when the information comes to light to avoid further harm. In such cases, it is easy to allow ourselves to see the obvious and to forget that the complaint must clearly state that a four year old male victim is not married to a 50 year old male offender, for instance.

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At any rate, it does not matter if there is blame or not. The important thing is that by simply amending the law, as is now before you, the people we are here to protect, the children, may be less victimized. The simple fact is that this is a problem which arises like a specter numerous times each year and invariably results in a sex offender being released into society to cause more harm and damage or destroy more lives.

I see no need to recite to you the horror stories of sex abuse victims. The victims who, because of their injuries to mind as well as to body, quite often go on to be offenders themselves.

I strongly urge you to support Senate Bill 78, which will simplify and hopefully stop a serious problem within our criminal justice system.

Salina
12
24
88

Molestation conviction reversed because of wording of complaint

By Harris News Service

TOPEKA — The Kansas Court of Appeals has reversed the May 1987 Labette County conviction of an Oswego man for child molestation because the complaint against him failed to say he was not married to the victims.

The court reversed the conviction of Silven R. Lee on two felony counts of taking indecent liberties with a child. The court said the original complaint filed against Lee was "fatally defective" in not specifying that Lee was not married to the two children he was charged with molesting.

"It seems kind of silly, but it's the law," Labette County Attorney John Bullard said of the reversal. Bullard represented the prosecution during Lee's appeal.

Lee was convicted by a Labette County jury in connection with an incident on Dec. 20, 1986. He was accused of molesting a 7-year-old girl and a 5-year-old boy in the back seat of a car while it was en route from Columbus to Oswego.

During Lee's trial, the jury was shown videotapes on which the two children reportedly described the incident. Lee later testified that he did nothing at all to the boy and only kissed the girl on the cheek.

He was sentenced in June 1987 to five- to 20-year prison terms on the two felony convictions. He served 10 months at the Kansas State Penitentiary in Lansing before being released on bond in May 1988 pending the appeal.

The appeals court heard the case Nov. 30, and announced its decision Dec. 16.

In its opinion, the court referred to the state law that defines indecent liberties as the commission of a sexual act "with a child who is not married to the offender and who is under 16 years of age." Although the complaint filed against Lee included a reference to the age of the alleged victims, no allegation was made in the document that the children were not married to Lee.

In reversing the conviction, the appeals court cited a prior case.