

Approved _____ April 6, 1990 _____
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by _____ Michael O'Neal _____ at
Chairperson

3:30 ~~xxxx~~ a.m./p.m. on _____ March 26 _____, 19⁹⁰ in room 313-S of the Capitol.

All members were present except:

Representative Peterson, Roy and Snowbarger, who were excused

Committee staff present:

Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Richard Pinaire, Attorney, Junction City
Sherman Parks, Deputy Assistant Secretary of State
Bill Miskell, Department of Corrections
Attorney General Robert T. Stephan
Rod Bieker, Kansas State Department of Education
Robert C. Barnum, Commissioner of Youth Services, Social and Rehabilitation Services
Sarah E. White, Eldorado
Elisa Cosgrove, Merriam
Chip Wheelen, Kansas Psychiatric Society

HEARING ON SB 313 Military retirement as marital property

Richard Pinaire, Attorney, testified in support of SB 313 which would make retroactive a provision of the law which permits the division of vested or unvested military retirement pay in divorce, separate maintenance or annulment proceedings. The retroactive provision applies only in situations where the parties agreed to such division in a separation agreement entered after February 1, 1983. Presently under Kansas law the court decree would have to be issued after July 1, 1987. The date of February 1, 1983 is the effective date of the federal law permitting such division, see Attachment I.

In answer to a Committee question he said he was interested in the bill referring only to those agreements that already divided military retirement benefits.

There being no other conferees, the hearing on SB 313 was closed.

HEARING ON HB 3062 An exception for certificate of title of a vehicle for verification of documents

Sherman Parks, Deputy Assistant Secretary of State, informed the Committee HB 3062 requires having the certificate of title of a vehicle notarized. The Secretary of State's office would support the bill if the Motor Vehicle Division of the Department of Revenue has no objection to the bill.

There being no other conferees, the hearing on HB 3062 was closed.

HEARING ON HB 3067 Secretary of State to temporarily file fax documents as originals until originals arrive

Sherman Parks, Deputy Assistant Secretary of State, explained HB 3067 establishes who can sign a corporate annual report. He said the report shall be signed by its president, secretary, treasurer or other officer duly authorized so to act, or by any two of its directors, or by an incorporator in the event its board of directors shall not have been elected. The fact that an individual's name is signed on such report shall be prima facie evidence that such individual is authorized to sign the report on behalf of the corporation, however, the official title or position of the individual signing the report shall be designated. The report shall be dated and subscribed by the person as true, under penalty of law.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 3:30 ~~xxx~~/p.m. on March 26, 1990

Mr. Parks submitted an amendment to New Section 5 on page 7 in regard to telefacsimile communications fees. The amendment states the Secretary of State shall prescribe a telefacsimile communication fee in addition to any filing fees to be paid prior to acceptance of a telefacsimile communication. The telefacsimile communication fee shall be deposited into the information and copy service fee fund, see Attachment II.

There being no other conferees, the hearing on HB 3067 was closed.

HEARING ON SB 522 Concerning child abuse

Bill Miskell, Department of Corrections, testified SB 522 is designed to increase the exchange of information between SRS, educators and the courts concerning juveniles at risk. It also makes the investigation of child abuse or neglect the joint responsibility of S.R.S. and law enforcement. The intent of SB 522 is to facilitate earlier and more effective intervention in cases of children at risk and to improve upon the multidisciplinary approach to the investigation of suspected cases of child abuse. He said this same legislation was heard previously by the House Judiciary Committee as HB 2668. SB 522 has been amended to conform with federal law. This was done by changing the language in Section 1 (G) to read "a person who is a member of a multidisciplinary team designated for a particular child"; rewriting Section 1 (H) to read "an agency authorized by a properly constituted authority to diagnose, care for, treat or supervise a child who is the subject of a report or record of child abuse or neglect"; and by deleting all of Section 1 (I) and (J).

Mr. Miskell informed the Committee in Section 2(a)(3), lines 26 and 27 the words "juvenile offender's" should be struck; and in lines 27 and 28 the words "foster parents or legal guardian" should not be struck, see Attachment III.

Attorney General Robert T. Stephan submitted testimony in support of SB 522. He stated in his letter that SB 522 allows for greater accessibility to records and generates cooperation among agencies. As the multidisciplinary team approach is used across Kansas, each party involved must have the same information to do a proper investigation, see Attachment IV.

Rod Bieker, State Department of Education, distributed some amendments to the Committee, see Attachment V. He explained the amendments are strickly technical.

Robert C. Barnum, Commissioner of Youth Services, Social and Rehabilitation Services, testified in support of SB 522 as amended by the Senate Judiciary Committee. He said the passage of this bill together with a companion measure in HB 2834 would improve the ability of S.R.S. to share information, with appropriate protections, with other agencies. H.B. 2834 encourages and simplifies the development of multidisciplinary teams, see Attachment VI.

Mr. Barnum responded he had no objection to amending lines 31 through 43 on page 1 and lines 1 and 2 on page 2 of HB 2834 into SB 522.

Sarah E. White of EIDorado testified SB 522 violates the privacy rights of children and families, see Attachment VII.

Elisa Cosgrove, Merriam, expressed her views concerning C.A.S.A. in connection with her children being removed from her custody.

There being no other conferees, the hearing on SB 522 was closed.

HEARING ON SB 536 Standard and consideration in termination of parental rights of child in need of care

Chip Wheelen, Kansas Psychiatric Society, testified in support of SB 536 and explained that the bill adds a ninth criterion which may be considered by the court when deciding the issue of termination of parental rights under the Code for Care of Children. The ninth criterion is a statement from a physician that the physical, mental or emotional needs of the child would be better served if parental rights were terminated, see Attachment VIII.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 3:30 ~~xxx~~ p.m. on March 26, 1990.

Sarah White of El Dorado testified in opposition to SB 536. She said there has to be a way to defend the rights of the so-called perpetrator. She suggested the court order treatment for the parents in cases of alcohol or drug abuse and leave the children in the parents' custody. She stressed parental rights should not be severed.

There being no other conferees, the hearing on SB 536 was closed.

The Chairman announced there would be a Committee meeting at 7:30 a.m., March 27, 1990.

The Committee meeting adjourned at 5:10 p.m.

Re: S.B. 313

February 14, 1989

Senator Lana Oleen
Capitol Building
Topeka, KS 66612

Re: Substitute for House Bill No. 2376 amending K.S.A. 23-201

Dear Senator Oleen:

The substitute for HB 2376 amending K.S.A. 23-201 expanded the type of property that could be considered as marital property and specifically included the present value of any vested or unvested military retirement pay as marital property. This bill was effective on July 1, 1987.

The federal law allowing the division of retirement pay, i.e. the Uniformed Services Former Spouses Protection Act, P.L. 97-252, 10 U.S.C. 1403, became effective on February 1, 1983. The Kansas Court of Appeals in Grant v. Grant, 8 K.A. 2d 671 indicated military retirement benefits could not be divided by the Court and as a result, the substitute for House Bill 2376 was introduced and adopted.

I have a particular problem that I need to have cured with respect to these issues. I obtained a Decree of Divorce in May of 1986 and by agreement of both parties, that Decree made provisions for the division of military retirement pay. The case in question was not a "contested case", rather, it was a case where there was a Separation and Property Settlement Agreement. When I sent in the Decree of Divorce to the United States Army Finance and Accounting Center, they sent me back a copy of the enclosed letter which states that House Bill 2376 took effect on July 1, 1987 and that the Decree in question was entered in May of 1986. They further noted that the change in the substantive law made no provision for decrees entered prior to July 1, 1987.

Accordingly, I would like to see another statute enacted or some further amendment to K.S.A. 23-201 which would allow the parties' agreement to take effect so that a direct allotment could be made to my client, who is a former spouse of a retired service member. Although I am sure that the legislative research people will be of assistance, I would appreciate it if the following language could be added to K.S.A. 23-201 or some other statute. I am not really wedded to the language, so much as to the concept. The language I would suggest is as follows:

3/26/90
H. Gud Com.

Attachment I

Senator Lana Oleen
February 14, 1989
Page 2

"(c) The provision of subsection (b) which states that the present value of any vested or unvested military retirement pay shall become marital property at the time of the commencement of an action for divorce, separate maintenance or annulment shall be effective with respect to any decree incorporating a separation agreement entered after February 1, 1983."

I have written a similar letter to Mike Johnston. I hope between the two of you, you can come up with some solution to this problem so that my client, the former spouse of a retired member, can obtain direct payments of her share of her ex-husband's retirement.

Respectfully submitted,

Richard A. Pinaire

RAP:ae
Enc.

3/26/90
H. Gud Corr
Att I



DEPARTMENT OF THE ARMY
U.S. ARMY FINANCE AND ACCOUNTING CENTER
INDIANAPOLIS, INDIANA 46249-0001

June 8, 1987

FINCL-G

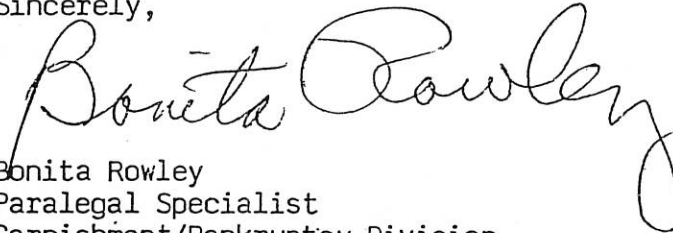
SUBJECT: Dueck, Walter E., SSN 512-50-7258

Richard A. Pinaire
Attorney at Law
811 N. Washington
Junction City, Kansas 66441

Dear Mr. Pinaire:

This follows up our telephone conversation. Information provided by the Senate of Kansas representative informs us that the House Bill 2376 does not become effective until July 1, 1987. Please note that there was no mention of retroactive payments. Thank you for your cooperation in this matter.

Sincerely,


Bonita Rowley
Paralegal Specialist
Garnishment/Bankruptcy Division
Legal Office

3/26/90
H. Jud Com.
Att I



DEPARTMENT OF THE ARMY
U.S. ARMY FINANCE AND ACCOUNTING CENTER
INDIANAPOLIS, INDIANA 46249-0001

July 22, 1987

FINCL-G

SUBJECT: Dueck, Walter E., 512-50-7258, Payments pursuant
to 10 U.S.C. 1408 Former Spouses' Protection Act

Richard A. Pinaire
Attorney at Law
811 North Washington
Junction City, Kansas 66441

Dear Mr. Pinaire:

The House Bill 2376 took effect July 1, 1987. The divorce decree incident to this matter was entered May 1986. The change in the substantive law makes no provision for decrees entered prior to July 1, 1987. Therefore we are unable to honor Mrs. Dueck's request for direct payments. The retiree can however request that an allotment be set up. He needs to put his request in writing giving a date to start and the appropriate amount. This request should be directed to Retired Pay Operations, Dept 96, Indianapolis, Indiana 46216-0001 and must bear his signature. I am sorry that a more favorable response could not be provided.

Sincerely,

Bonita Rowley
Paralegal Specialist
Garnishment/Bankruptcy Division
Legal Office

3/26/90
H. Jud Com
Att I 4



DEPARTMENT OF THE ARMY
U.S. ARMY FINANCE AND ACCOUNTING CENTER
INDIANAPOLIS, INDIANA 46249-0001

FINCL-G

SUBJECT: Request for Information on the Uniformed Services Former Spouses' Protection Act

Richard Pinore
811 North Washington
Junction City, Kansas 66441

317-546-9211

542-2400

The Uniformed Services Former Spouses' Protection Act, P.L. 97-252, 10 U.S.C. 1408, effective 1 February 1983, provides for direct payments to a spouse or former spouse from a retiree's military pay for child support, alimony or as a division of property. It is required that the alimony, child support or division of retired pay be provided in a final court order as this is defined in the Act.

542-2155

This Headquarters has been designated as agent to receive the requests for direct payments from a retiree's U.S. Army pay under Section 1408. The following documents and information should be sent by certified or registered mail to Commander, U.S. Army Finance and Accounting Center, Attn: FINCL-G, Indianapolis, Indiana 46249-0160:

1-317-

542-

2155

1) An application for direct payment from a member's U.S. Army retired pay pursuant to Section 1408 of Title 10, U.S. Code.

2) A certified copy of the court order providing for child support, alimony or a division of retired pay, and, if necessary, other certified supporting documents. The court order must be certified within ninety (90) days immediately preceding its service on this Headquarters at the above address.

Commander
U.S. Army
Finance

3) A certification that the court order is final.

Account
Center

4) If the court order was issued while the member was on active duty and the member was not represented in court, the court order or other documents served, with the court order must show that the rights of the member under the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. 501 et seq., were complied with. A statement by the former spouse or his/her attorney is insufficient.

ATT: FINCL-G

5) If the court order provides a division of retired pay as property, the court order must show that the former spouse and the member were married at least ten (10) years, during which the member performed at least ten (10) years of service creditable towards retirement. Otherwise, the former spouse must furnish evidence that such a requirement was met; for example, a copy of the marriage certificate.

Ind, Ind

46 249

-0001

317-546-92-11

Eric
Siltner

202-224-31213/26/90

U.S. Army Com

Att I 5

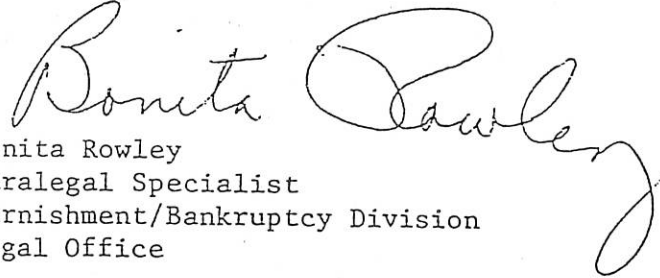
6) If the court order provides a division of retired pay as property, it must appear from the order that the court had jurisdiction over the member by reason of (a) the member's residence, other than because of military assignment, in the territorial jurisdiction of the court, or (b) the member's domicile in the territorial jurisdiction of the court, or (c) the member's consent to the jurisdiction of the court.

Enclosed for your use is an application form (USAFAC Form 0-1767) and a certification of finality form (USAFAC Form 0-1765).

No action may be taken on a request for direct payments from a member's U.S. Army retired pay until all the required forms, documents and information are actually received by this Headquarters at the above office. Once all the required documents have been received and reviewed, the retiree will be notified of the request for direct payments from his/her retired pay, and given thirty (30) days to provide any evidence as to why the court order should not be complied with by this Headquarters.

The applicant former spouse will then be notified of the date and amount of retired pay to be sent to him/her in accordance with the court order and the applicable provisions of law, or the reason why this Headquarters cannot comply with the court order.

Sincerely,



Bonita Rowley
Paralegal Specialist
Garnishment/Bankruptcy Division
Legal Office

3/26/90
N. Jud Corr
Att I 6

SESSION OF 1987

SUPPLEMENTAL NOTE ON SUBSTITUTE FOR
HOUSE BILL NO. 2376

As Amended by House Committee on Judiciary

Brief of Bill*

Substitute for H.B. 2376 amends K.S.A. 23-201, to expand the type of property that can be considered to be marital property. The present value of any vested or unvested military retirement pay would be considered marital property under the bill.

Background

The sponsor stated there is a need for the bill since the case of Grant v. Grant 9 K.A. 2d 671.

* Bill briefs are prepared by the Legislative Research Department and do not express legislative intent.

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H. Jud. Comm.
Att I 7

1 (3) the value of the nonagricultural assets and the agricultural
2 assets, stated separately, owned and controlled by the corporation
3 both within and without the state of Kansas and where situated;

4 (4) the total number of stockholders of the corporation;

5 (5) the number of acres owned or operated by the corporation,
6 the number of acres leased by the corporation and the number of
7 acres leased to the corporation;

8 (6) the number of acres of agricultural land, held and reported
9 in each category under paragraph (5) of this subsection (b), stated
10 separately, being irrigated; and

11 (7) whether any of the agricultural land held and reported under
12 this subsection was acquired after July 1, 1981.

13 (e) ~~Such report shall be signed by the president, treasurer~~
14 ~~or secretary, sworn to before an officer duly authorized to ad-~~
15 ~~minister oaths and forwarded to the secretary of state. The report~~
16 ~~shall be signed by its president, secretary, treasurer or other officer~~
17 ~~duly authorized so to act, or by any two of its directors, or by an~~
18 ~~incorporator in the event its board of directors shall not have been~~
19 ~~elected. The fact that an individual's name is signed on such report~~
20 ~~shall be prima facie evidence that such individual is authorized to~~
21 ~~sign the report on behalf of the corporation; however, the official~~
22 ~~title or position of the individual signing the report shall be des-~~
23 ~~ignated. This report will be dated and subscribed by the person as~~
24 ~~true, under penalty of perjury. At the time of filing its annual report,~~
25 ~~each such foreign corporation shall pay to the secretary of state an~~
26 ~~annual franchise tax in an amount equal to \$1 for each \$1,000 of~~
27 ~~the corporation's shareholder's equity attributable to Kansas, except~~
28 ~~that no such tax shall be less than \$20 or more than \$2,500.~~

29 New Sec. 5. (a) Any instrument filed in accordance with K.S.A.
30 17-6003, and amendments thereto, may be filed by telefacsimile
31 communication. If such telefacsimile communication is accompanied
32 with the appropriate ~~fee~~, and meets the statutory requirements, it
33 shall be effective upon its filing date except that the original in-
34 strument must be filed in the secretary of state's office within five
35 days after its telefacsimile filing date. ~~Failure to file the original~~
36 ~~instrument with the secretary of state's office within such five days~~
37 ~~shall void the telefacsimile filing and such instrument shall not take~~
38 ~~effect until the original is so filed.~~

39 (b) As used in this section, telefacsimile communication means
40 the use of electronic equipment to send or transfer a copy of an
41 original document via telephone lines.

42 Sec. 6. K.S.A. 17-2718 and 17-7504 and K.S.A. 1989 Supp. 17-
43 7503 and 17-7505 are hereby repealed.

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H. Gud Com.
Attachment II

fees

The secretary of state shall prescribe a telefacsimile communication fee in addition to any filing fees to cover the cost of the services. The fee must be paid prior to acceptance of a telefacsimile communication under this section. The telefacsimile communication fee shall be deposited into the information and copy service fee fund.

STATE OF KANSAS



DEPARTMENT OF CORRECTIONS

OFFICE OF THE SECRETARY

Landon State Office Building
900 S.W. Jackson—Suite 400-N
Topeka, Kansas 66612-1284
(913) 296-3317

Mike Hayden
Governor

Steven J. Davies, Ph.D.
Secretary

March 26, 1990

TESTIMONY

SENATE BILL 522

Concerning Child Abuse

Senate Bill 522 was introduced at the request of the Criminal Justice Coordinating Council (CJCC). The CJCC is chaired by the Secretary Of Corrections, and it's membership includes the Chief Justice of the Kansas Supreme Court, the Attorney General, the Secretary of Social and Rehabilitation Services, the Chairman of the Kansas Parole Board, the Governor's Chief Legal Counsel, one District Court Judge, and four members of the Legislature.

The CJCC held several hearings during the fall and winter of 1989 regarding improvements which could be made to the system of juvenile services, ranging from children "at risk" to juvenile offenders. Development of the provisions contained in S.B. 522 was endorsed by all child advocacy groups which appeared before the CJCC as a means of improving the ability of existing agencies and care providers to more effectively deal with juvenile issues.

S.B. 522 is designed to increase the exchange of information between SRS, educators, and the courts, concerning juveniles at risk. It also makes the investigation of child abuse or neglect the joint responsibility of SRS and law enforcement. The intent of S.B. 522 is to facilitate earlier and more effective intervention in cases of children at risk, and to improve upon the multidisciplinary approach to the investigation of suspected cases of child abuse.

The House Committee on the Judiciary has seen this legislation previously in the form of House Bill 2668. During the first hearing in this committee on this bill, several concerns were raised regarding a conflict between the original wording of this legislation, and with Federal Law, which could have had serious implications for both SRS and the Department of Education. S.B. 522 has been amended to resolve those conflicts.

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H. Jud Com.

Attachment III

This has been done by:

- * striking the language in Section 1 (G), after the words particular child (so that (G) now reads "a person who is a member of a multidisciplinary team designated for a particular child")
- * rewriting Section 1 (H) to now read "an agency authorized by a properly constituted authority to diagnose, care for treat or supervise a child who is the subject of a report or record of child abuse or neglect." and,
- * deleting all of Section 1 (I) and (J).

The language in Section 2 (a) (3) (Page 3, Line 26, 27, and 28) regarding juvenile offenders has been modified, as this bill does not deal with juvenile offenders, but rather, with children who are suspected abuse or neglect victims. Unfortunately, the revised language currently strikes reference to foster parent or legal guardian, which should be included, and does not strike reference to the juvenile offender in reference to the Court Appointed Special Advocate (C.A.S.A.). We would recommend those lines be rewritten to read "a representative of the secretary, C.A.S.A., foster parents or legal guardian, a court services officer".

During the February 12 hearing on H.B. 2668, a question was raised regarding the language in Sections 5, 6, and 7, "Relevant information, reports, and records shall be made available to the department of corrections upon request and a showing that the former juvenile has been convicted of a crime and placed in the custody of the secretary of the department of corrections." Each member of the House Committee on the Judiciary should have received a written response to that question.

3/26/90
H. Jud Comm.
Att III



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

March 26, 1990

Representative Mike O'Neal
House Judiciary Committee
State Capitol, Room 426-S
Topeka, Kansas 66612

RE: Senate Bill 522

Dear Representative O'Neal:

I strongly urge the Committee's support for Senate Bill 522. This bill allows the system for investigating child abuse to be more responsive to those directly involved in the investigation. Law enforcement officers and SRS workers need to be able to draw necessary information and to avoid duplicating efforts. This bill would allow for greater accessibility to records and generate cooperation among agencies, which is necessary to protect the child. As the multi-disciplinary team approach is used across Kansas, each party involved must have the same information to do a proper investigation.

As you know, children who are abused must be protected and each cry for help must be answered as expeditiously as possible. Please support Senate Bill 522.

Sincerely,

Robert T. Stephan
Attorney General

RTS:mr
cc: House Judiciary Committee

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H. Jud Com

Attachment IV

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Attachment V

SENATE BILL No. 522

By Committee on Judiciary

1-19

10 AN ACT concerning child abuse; amending K.S.A. 38-1514, 38-1608,
11 38-1609, 38-1661 and 38-1662 and K.S.A. 1989 Supp. 38-1507,
12 38-1523, 38-1523a and 38-1607 and repealing the existing sections.
13

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

15 Section 1. K.S.A. 1989 Supp. 38-1507 is hereby amended to read
16 as follows: 38-1507. (a) All records and reports concerning child abuse
17 or neglect received by the department of social and rehabilitation
18 services or a law enforcement agency in accordance with K.S.A. 38-
19 1522 and amendments thereto are confidential and shall not be dis-
20 closed except under the following conditions:

21 (1) Upon the order of any court after a determination by the
22 court issuing the order that the records and reports are necessary
23 for the conduct of proceedings before it and are otherwise admissible
24 in evidence, except that access shall be limited to *in camera* in-
25 spection unless the court determines that public disclosure of the
26 information contained in the records and reports is necessary for the
27 resolution of an issue then pending before it.

28 (2) The secretary or the law enforcement agency where the report
29 is filed shall authorize access to any records or reports concerning
30 child abuse or neglect to any of the following persons upon order
31 of any court and may authorize access to such persons without a
32 court order if the child involved is a subject of the record or report:

33 (A) A person licensed to practice the healing arts who has before
34 that person a child whom the person reasonably suspects may be
35 abused or neglected;

36 (B) a court-appointed special advocate for a child, which advocate
37 reports to the court, or an agency having the legal responsibility or
38 authorization to care for, treat or supervise a child;

39 (C) a parent or other person responsible for the welfare of a
40 child, or such person's legal representative with protection for the
41 identity of reporters and other appropriate persons;

42 (D) the guardian *ad litem* for such child;

43 (E) a police or other law enforcement agency investigating a

report of known or suspected child abuse or neglect;

(F) an agency of another state charged with the responsibility of preventing or treating physical, mental or emotional abuse or neglect or sexual abuse of children within that state, if the state of the agency requesting the information has standards of confidentiality as strict or stricter than the requirements of this code; or

(G) a person who is a member of a multidisciplinary team designated for a particular child, if the person has signed a confidentiality agreement with standards as strict or stricter than the requirements of this code; or

(H) a person who is a member of a multidisciplinary team designated for a particular child, an agency authorized by a properly constituted authority to diagnose, care for, treat or supervise a child who is the subject of a report or record of child abuse or neglect.

(I) the principal of the school attended by the child, who shall distribute the records or reports to the child's teachers or school counselor, or other persons involved in the child's education or determinations of the child's educational needs, for the purpose of determining and meeting the child's needs. The records or reports shall not be further disclosed by such teacher, school counselor or other person without approval of the court or by being presented as admissible evidence; or

(H) law enforcement officers.

(b) No individual, association, partnership, corporation or other entity shall willfully or knowingly permit or encourage the unauthorized dissemination of the contents of records or reports concerning child abuse or neglect received by the department of social and rehabilitation services or a law enforcement agency in accordance with K.S.A. 38-1522 and amendments thereto except as provided by this code. Violation of this subsection is a class B misdemeanor.

(c) Records or reports given to persons described in paragraphs (a)(2)(A) and (H) shall not be further disclosed to persons who are not members of the multidisciplinary team without prior approval of the court.

Sec. 2. K.S.A. 38-1514 is hereby amended to read as follows: 38-1514. (a) Of child. (1) Psychological or emotional. During proceedings under this code, the court, on its own motion or the motion of the guardian ad litem for the child, may order an evaluation and written report of the psychological or emotional development or needs of a child who is the subject of the proceedings. The court may refer the child to a state institution for the evaluation if the secretary advises the court that the facility is a suitable place to care

for, treat or evaluate the child and that space is available. The expenses of transportation to and from the state facility may be paid as a part of the expenses of temporary care and custody. The child may be referred to a mental health center or qualified professional for evaluation and the expenses of the evaluation may be considered as expenses of the proceedings and assessed as provided in this code. If the court orders an evaluation as provided in this section, a parent of the child shall have the right to obtain an independent evaluation at the expense of the parent.

(2) Medical. During proceedings under this code, the court may order an examination and report of the medical condition and needs of a child who is the subject of the proceedings. The court may also order a report from any physician who has been attending the child stating the diagnosis, condition and treatment afforded the child.

(3) Educational. The court may ^{order} the chief administrative officer of the school which the child attends or attended to provide to the court information that is readily available which the school officials believe would properly indicate the educational needs of the child. ^{The order may direct that} If the resources of the school permit, the school may conduct an educational needs assessment of the child and send a report of the assessment to the court. The educational needs assessment may include a meeting involving any of the following: The child's parents, the child's teachers, the school psychologist, a school special services representative and other persons that the chief administrative officer of the school, or the officer's designee, considers appropriate, a representative of the secretary, ~~the juvenile offender's~~ ^{the child's} C.A.S.A., ~~the juvenile offender's~~ ^{the child's} foster parents or legal guardian, a court services officer, and other persons that the chief administrative officer of the school or the officer's designee considers appropriate.

(b) Of parent or custodian. (1) Physical, psychological or emotional. During proceedings under this code, the court may order an examination, evaluation and report of the physical, mental or emotional status or needs of a parent or any other relative being considered as one to whom the court may grant custody. Written reports and other materials relating to the examination and evaluation may be considered by the court but, if requested by any interested party in attendance, the court shall require the person preparing the report or other material to appear and testify.

(2) Parenting skills. At any dispositional hearing, the court may receive and consider written reports from any physician or qualified person concerning the parenting skills or ability to provide for the physical, mental or emotional needs and future development of a

3/26/90
H. Paul Com
Att II 2

child by a parent or other relative being considered for custody. If requested by any interested party in attendance at the dispositional hearing, the court shall require the person preparing the report to appear and testify.

(c) Confidentiality of reports. (1) Reports of court ordered examination or evaluation. No confidential relationship of physician and patient, psychologist and client or social worker and client shall arise from an examination or evaluation ordered by the court.

(2) Report from private physician, psychologist or therapist. When any interested party to proceedings under this code wishes the court to have the benefit of information or opinion from a physician, psychologist or social worker with whom there is a confidential relationship, the interested party may waive the confidential relationship but restrict the information to be furnished or testimony to be given to those matters material to the issues before the court. If requested, the court may make an in camera examination of the proposed witness or the file of the proposed witness and excise any matters that are not material to the issues before the court.

Sec. 3. K.S.A. 1989 Supp. 38-1523 is hereby amended to read as follows: 38-1523. (a) Investigation for child abuse or neglect. The state department of social and rehabilitation services and law enforcement officers shall have the primary duty to receive and investigate reports of child abuse or neglect for the purpose of determining whether the report is valid and whether action is required to protect the child from further abuse or neglect. If the department determines and such officers determine that no action is necessary to protect the child but that a criminal prosecution should be considered, the department and such law enforcement officers shall make a report of the case to the appropriate law enforcement agency.

(b) Joint investigations. When a report of child abuse or neglect indicates (1) that there is serious physical injury to or serious deterioration or sexual abuse of the child and (2) that action may be required to protect the child, the investigation shall be conducted as a joint effort between the department of social and rehabilitation services and the appropriate law enforcement agency or agencies, with a free exchange of information between them. If a statement of a suspect is obtained by the law enforcement agency, a copy of the statement shall be provided to the department of social and rehabilitation services on request.

(c) Investigation of certain cases. Suspected child abuse or neglect which occurs in an institution operated by the secretary shall be investigated by an agent under the direction of the attorney

general. Any other suspected child abuse or neglect by persons employed by or of children of persons employed by the state department of social and rehabilitation services shall be investigated by the appropriate law enforcement agency under the direction of the appropriate county or district attorney, and not by the state department of social and rehabilitation services.

(d) Coordination of investigations by county or district attorney. If a dispute develops between agencies investigating a reported case of child abuse or neglect, the appropriate county or district attorney shall take charge of, direct and coordinate the investigation.

(e) Investigations concerning certain facilities. Any investigation involving a facility subject to licensing or regulation by the secretary of health and environment shall be promptly reported to the state secretary of health and environment.

(f) Cooperation between agencies. Law enforcement agencies and the department of social and rehabilitation services shall assist each other in taking action which is necessary to protect the child regardless of which party conducted the initial investigation.

(g) Cooperation between school personnel and investigative agencies. Elementary and secondary schools, the state department of social and rehabilitation services and law enforcement agencies shall cooperate with each other in the investigation of reports of suspected child abuse or neglect. Administrators of elementary and secondary schools shall provide to employees of the state department of social and rehabilitation services and law enforcement agencies access to a child in a setting on school premises determined by school personnel for the purpose of the investigation of a report of suspected child abuse or neglect. To the extent that safety and practical considerations allow, law enforcement officers on school premises for the purpose of investigating a report of suspected child abuse or neglect shall not be in uniform.

(h) The secretary or the secretary's designee or a law enforcement officer may request disclosure of documents, reports or information in regard to a child, who is the subject of a report of abuse or neglect, by making a written verified application to the district court. Upon a finding by the court there is probable cause to believe the information sought will assist in the investigation of a report of child abuse or neglect, the court may issue a subpoena, subpoena duces tecum or an order for the production of the requested documents, reports or information and directing the documents, reports or information to be delivered to the applicant at a specific time, date and place.

The time and date of delivery shall not be sooner than five days

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1 after the service of the subpoena or order, excluding Saturdays,
2 Sundays and holidays. The court issuing the subpoena or order shall
3 keep all applications filed pursuant to this subsection and a copy of
4 the subpoena or order in a special file maintained for that purpose.
5 Upon receiving service of a subpoena, subpoena duces tecum or an
6 order for production pursuant to this subsection, the party served
7 shall give oral or written notice of service to any person known to
8 have a right to assert a privilege or assert a right of confidentiality
9 in regard to the documents, reports or information sought at least
10 three days before the date of delivery.

11 (i) The written verified application shall be in substantially the
12 following form:

13 Name of Court
14 In the Interest of _____ Case No.
15 Name(s)
16 Date of birth: _____
17 Each a child under 18 years of age.

18 WRITTEN APPLICATION FOR DISCLOSURE OF INFORMATION

19 County of _____
20 ss
21 State of Kansas

22 The undersigned applicant being first duly sworn alleges and states as follows:

- 23 1. The applicant is _____
- 24 2. There is an investigation being made into the report of alleged abuse or neglect
25 in regard to the above-named child or children.
- 26 3. The following documents, reports and/or information are requested. (List
27 specifically.)
- 28 4. The reasons for the request are:
29 Further applicant saith not.

30 _____
31 Applicant

32 Subscribed and sworn to before me
33 this _____ day of _____, 19____

34 _____
35 Notary Public

36 My commission expires:
37 _____

38 (j) Any parent, child, guardian ad litem, party subpoenaed or
39 subject to an order of production or person who claims a privilege
40 or right of confidentiality may request in writing that the court
41 issuing the subpoena or order of production withdraw the subpoena,
42 subpoena duces tecum or order for production issued pursuant to
43 subsection (i). The request shall automatically stay the operation of

1 the subpoena, subpoena duces tecum or order for production and
2 the documents, reports or information requested shall not be deliv-
3 ered until the issuing court has held a hearing to determine if the
4 documents, reports or information are subject to the claimed priv-
5 ilege or right of confidentiality, ^{and where relevant} it is in the best interests of the
6 child for the subpoena or order to produce ~~shall~~ be honored. The
7 request to withdraw shall be filed with the district court issuing the
8 subpoena or order at least 24 hours prior to the specified time and
9 date of delivery, excluding Saturdays, Sundays or holidays, and a
10 copy of the written request must be given to the person subpoenaed
11 or subject to the order for production at least 24 hours prior to the
12 specified time and date of delivery.

13 Sec. 4. K.S.A. 1989 Supp. 38-1523a is hereby amended to read
14 as follows: 38-1523a. (a) Upon recommendation of the state depart-
15 ment of social and rehabilitation services or the county or district
16 attorney, the court may appoint a multidisciplinary team to assist in
17 gathering information regarding a child alleged to be a child in need
18 of care by reason of physical, mental or emotional abuse or neglect
19 or sexual abuse.

20 (b) The state department of social and rehabilitation services, as
21 deemed appropriate, may appoint a multidisciplinary team to assist
22 the department in making recommendations regarding provision of
23 services to a child who has been adjudicated a child in need of care
24 by reason of physical, mental or emotional abuse or neglect or sexual
25 abuse.

26 (c) Any person appointed as a member of a multidisciplinary team
27 may decline to serve and shall incur no civil liability as the result
28 of declining to serve.

29 (d) Any information relating to the child for whom services are
30 being recommended and received by a multidisciplinary team, or a
31 member thereof, in confidential communications between such team
32 or member and the perpetrator of the abuse or neglect in the course
33 of carrying out the team's or member's functions under this section
34 shall be privileged and the perpetrator has a privilege to: (1) Refuse
35 to disclose any such communication, if the perpetrator is a witness
36 in a criminal proceeding; (2) prevent the team or member from
37 disclosing it in a criminal proceeding; or (3) prevent any other witness
38 from disclosing it if it came to the knowledge of such witness in the
39 course of its transmittal between the perpetrator and the team or
40 team member, in a manner not reasonably to be anticipated by the
41 perpetrator or as a result of disclosure by the team or team member.

42 (e) This section shall be part of and supplemental to the Kansas
43 code for care of children.

(f) The multidisciplinary team may request disclosure of information in regard to a child alleged to be a child in need of care, or a child who has been adjudged to be a child in need of care, by making a written verified application to the district court. Upon a finding by the court there is probable cause to believe the information sought may assist in determining if a child is a child in need of care as defined in K.S.A. 38-1502 and amendments thereto, or in assisting a child who has been adjudicated a child in need of care, then the court may issue a subpoena, subpoena duces tecum or enter an order for the production of the requested documents, reports or information and directing the document, reports or information to be delivered to the applicant at a specified time, date and place. The time and date of delivery shall not be sooner than five days after the service of the subpoena or order, excluding Saturdays, Sundays or holidays. The court issuing the subpoena or order shall keep all applications filed pursuant to this subsection and a copy of the subpoena or order in a special file maintained for such purpose or in the official court file for the child. Upon receiving service of a subpoena, subpoena duces tecum or an order for production pursuant to this subsection, the party served shall give oral or written notice of service to any person known to have a right to assert a privilege or assert a right of confidentiality in regard to the documents, reports or information sought at least three days before the specified date of delivery.

(g) The written verified application shall be in substantially the following form:

Name of Court

In the Interest of _____ Case No. _____

Name(s)

Date of birth: _____

Each a child under 18 years of age.

WRITTEN APPLICATION FOR DISCLOSURE OF INFORMATION

County of _____

ss

State of Kansas

The undersigned applicant being first duly sworn alleges and states as follows:

1. The applicant is _____
2. There is an investigation being made into the report of alleged neglect or abuse in regard to the above-named child or children.

A petition has been filed alleging the above-named child is a child in need of care or the child has been adjudicated to be a child in need of care.

3. The following documents, reports and/or information are requested. (List specifically.)

4. The reasons for the request are:
Further applicant saith not.

Applicant

Subscribed and sworn to before me
this _____ day of _____, 19____

Notary Public

My commission expires: _____

(h) Any parent, child, guardian ad litem, party subpoenaed or subject to an order of production or person who claims a privilege or right of confidentiality may request in writing that the court issuing the subpoena or order for production withdraw the subpoena, subpoena duces tecum or order for production issued pursuant to subsection (f). The request shall automatically stay the operation of the subpoena, subpoena duces tecum or order for production and the documents, reports or information requested shall not be delivered until the issuing court has held a hearing to determine if the documents, reports or information are subject to the claimed privilege or right of confidentiality ~~and~~ ^{and when other} it is in the best interests of the child for the subpoena or order to produce ~~it~~ ^{it} be honored. The request to withdraw shall be filed with the district court issuing the subpoena or order at least 24 hours prior to the specified time and date of delivery, excluding Saturdays, Sundays or holidays; and a copy of the written request must be given to the person subpoenaed or subject to the order for production at least 24 hours prior to the specified time and date of delivery.

Sec. 5. K.S.A. 1989 Supp. 38-1607 is hereby amended to read as follows: 38-1607. (a) Official file. The official file of proceedings pursuant to this code shall consist of the complaint, process, service of process, orders, writs and journal entries reflecting hearings held and judgments and decrees entered by the court. The official file shall be kept separate from other records of the court. The official file shall be open for public inspection as to any juvenile 16 or more years of age at the time any act is alleged to have been committed. The official file shall be privileged as to any juvenile less than 16 years of age at the time any act is alleged to have been committed and shall not be disclosed directly or indirectly to anyone except:

- (1) A judge of the district court and members of the staff of the court designated by the judge;
- (2) parties to the proceedings and their attorneys;
- (3) a public or private agency or institution having custody of

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1 the juvenile under court order;
2 (4) law enforcement officers or county or district attorneys or
3 their staff when necessary for the discharge of their official duties;
4 and

5 (5) any other person when authorized by a court order, subject
6 to any conditions imposed by the order.

7 (b) *Social file.* Reports and information received by the court
8 other than the official file shall be privileged and open to inspection
9 only by attorneys for the parties or upon order of a judge of the
10 district court or an appellate court. The reports shall not be further
11 disclosed by the attorney without approval of the court or by being
12 presented as admissible evidence.

13 (c) *Preservation of records.* The Kansas state historical society
14 shall be allowed to take possession for preservation in the state
15 archives of any court records related to proceedings under the Kansas
16 juvenile offenders code whenever such records otherwise would be
17 destroyed. The Kansas state historical society shall make available
18 for public inspection any unexpunged docket entry or official file in
19 its custody concerning any juvenile 16 or more years of age at the
20 time an offense is alleged to have been committed by the juvenile.
21 No other such records in the custody of the Kansas state historical
22 society shall be disclosed directly or indirectly to anyone for 100
23 years after creation of the records, except as provided in subsections
24 (a) and (b). Pursuant to subsections (a)(5) and (b), a judge of the
25 district court may allow inspection for research purposes of any court
26 records in the custody of the Kansas state historical society related
27 to proceedings under the Kansas juvenile offenders code.

28 (d) *Relevant information, reports and records shall be made*
29 *available to the department of corrections upon request and a show-*
30 *ing that the former juvenile has been convicted of a crime and placed*
31 *in the custody of the secretary of the department of corrections.*

32 Sec. 6. K.S.A. 38-1608 is hereby amended to read as follows:
33 38-1608. (a) All records of law enforcement officers and agencies and
34 municipal courts concerning a public offense committed or alleged
35 to have been committed by a juvenile under 16 years of age shall
36 be kept readily distinguishable from criminal and other records and
37 shall not be disclosed to anyone except:

38 (1) The judge and members of the court staff designated by the
39 judge of a court having the juvenile before it in any proceedings;

40 (2) parties to the proceedings and their attorneys;

41 (3) the department of social and rehabilitation services or the
42 officers of public institutions or agencies to whom the juvenile is
43 committed;

1 (4) law enforcement officers or county or district attorneys or
2 their staff when necessary for the discharge of their official duties;

3 (5) the central repository, as defined by K.S.A. 22-4701 and
4 amendments thereto, for use only as a part of the juvenile offender
5 information system established under K.S.A. 38-1618 and amend-
6 ments thereto; and

7 (6) any other person when authorized by a court order, subject
8 to any conditions imposed by the order.

9 (b) The provisions of this section shall not apply to records
10 concerning:

11 (1) A violation, by a person 14 or more years of age, of any
12 provision of chapter 8 of the Kansas Statutes Annotated or of any
13 city ordinance or county resolution which relates to the regulation
14 of traffic on the roads, highways or streets or the operation of self-
15 propelled or nonself-propelled vehicles of any kind;

16 (2) a violation, by a person 16 or more years of age, of any
17 provision of chapter 32 of the Kansas Statutes Annotated; or

18 (3) an offense for which the juvenile is prosecuted as an adult.

19 (c) All records of law enforcement officers and agencies and mu-
20 nicipal courts concerning a public offense committed or alleged to
21 have been committed by a juvenile 16 or 17 years of age shall be
22 subject to the same disclosure restrictions as the records of adults.

23 (d) *Relevant information, reports and records shall be made*
24 *available to the department of corrections upon request and a show-*
25 *ing that the former juvenile has been convicted of a crime and placed*
26 *in the custody of the secretary of the department of corrections.*

27 Sec. 7. K.S.A. 38-1609 is hereby amended to read as follows:
28 38-1609. (a) The diagnostic, treatment or medical records of any
29 juvenile offender shall be privileged and shall not be disclosed except:

30 (1) Upon the written consent of the former juvenile or, if the
31 juvenile offender is under 18 years of age, by the parent of the
32 juvenile;

33 (2) upon a determination by the head of the treatment facility,
34 who has the records, that disclosure is necessary for the further
35 treatment of the juvenile offender;

36 (3) when any court having jurisdiction of the juvenile offender
37 orders disclosure;

38 (4) when authorized by K.S.A. 38-1614 *and amendments thereto*;
39 or

40 (5) when requested orally or in writing by any attorney repre-
41 senting the juvenile offender, but the records shall not be further
42 disclosed by the attorney unless approved by the court or presented
43 as admissible evidence.

(b) Willful violation of this section is a class C misdemeanor.

(c) Nothing in this section shall operate to extinguish any right of a juvenile offender established by attorney-client, physician-patient, psychologist-client or social worker-client privileges.

(d) *Relevant information, reports and records shall be made available to the department of corrections upon request and a showing that the former juvenile has been convicted of a crime and placed in the custody of the secretary of the department of corrections.*

Sec. 8. K.S.A. 38-1661 is hereby amended to read as follows: 38-1661. (a) Prior to a dispositional hearing, the court shall request an investigation and report by a court services officer unless the court finds that adequate and current information is available from a previous investigation, report or other sources. Upon request of the prosecuting attorney or the attorney for the respondent, the court shall make available to the attorney the report of the investigation and shall allow the attorney a reasonable time to review the report before ordering the disposition of the respondent.

(b) The court may direct that the investigation include the circumstances of the offense; the attitude of the complainant, victim or the victim's family; and the record of juvenile offenses, the social history and the present condition of the respondent. Except where specifically prohibited by law, all local governmental *public and private educational institutions* and state agencies shall furnish to the officer conducting the predispositional investigation the records the officer requests. If ordered by the court, the predispositional investigation shall include a physical examination and mental examination of the respondent *if sufficient reports are not already available to the investigating officer*. Predispositional investigations shall contain other information prescribed by the court.

(c) At any time after the respondent has been adjudicated to be a juvenile offender and prior to disposition, the judge shall, at the request of an interested party, shall hear additional evidence as to proposals for reasonable and appropriate disposition of the case.

Sec. 9. K.S.A. 38-1662 is hereby amended to read as follows: 38-1662. (a) *Psychological or emotional*. Following an adjudication under this code the court may order an evaluation and written report of the psychological or emotional development or needs of the juvenile offender. The court may refer the juvenile offender to a state institution for the evaluation if the secretary advises the court that the facility is a suitable place to care for, treat or evaluate the juvenile offender and that space is available. The expenses of transportation to and from the state facility may be paid as a part of the expenses of the proceedings. The juvenile offender may be referred to a mental

health center or a qualified professional for the evaluation, and the expenses of the evaluation may be considered as expenses of the proceedings and assessed as provided in this code. If the court orders an evaluation as provided in this section, a parent of the juvenile offender shall have the right to obtain an independent evaluation at the expense of the parent.

(b) *Medical*. Following an adjudication under this code, the court may order an examination and report of the medical condition and needs of the juvenile offender who is the subject of the proceedings. The court may also order a report from any physician who has been attending the juvenile offender stating the diagnosis, condition and treatment afforded the juvenile offender.

(c) *Educational*. The court may ~~request~~ ^{order} the chief administrative officer of the school which the juvenile offender attends or attended to provide to the court information that is readily available which the school officials feel would properly indicate the educational needs of the juvenile offender. ^{The order may direct that,} If the resources of the school permit, the school ~~may~~ ^{shall} conduct an educational needs assessment of the juvenile offender and send a report thereof to the court. The educational needs assessment may include a meeting involving any of the following: (1) The juvenile offender's parents, (2) the juvenile offender's teacher or teachers, (3) the school psychologist, (4) a school special services representative, ~~and~~ (5) *a representative of the secretary*, (6) *the juvenile offender's C.A.S.A.*, (7) *the juvenile offender's foster parents or legal guardian* and (8) other persons that the chief administrative officer of the school, or the officer's designee, deems appropriate.

Sec. 10. K.S.A. 38-1514, 38-1608, 38-1609, 38-1661 and 38-1662 and K.S.A. 1989 Supp. 38-1507, 38-1523, 38-1523a and 38-1607 are hereby repealed.

Sec. 11. This act shall take effect and be in force from and after its publication in the statute book.

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Department of Social and Rehabilitation Services

Testimony before

The House Committee for

Judiciary

Regarding

Senate Bill 522

on

March 26, 1990

presented on behalf of:

Robert C. Barnum
Commissioner of Youth Services
Kansas Department of Social and Rehabilitation Services
(913) 296-3284

*3/26/90
H. Jud. Com.*

Attachment VI

Department of Social and Rehabilitation Services
Winston Barton, Secretary

Testimony in Support of S.B. 522
AN ACT CONCERNING CHILD ABUSE

(Mr. Chairman), Members of the Committee, I appear today to offer my general support to S.B. 522 as amended by the Senate.

The amendments made to 38-1507 keep Kansas in compliance with the Federal statutes and thus eligible for the benefits that derive from that compliance. The amendment to 38-1507 (a) (2) (F) encompasses changes the Department was seeking through S.B. 306, that was introduced in the 1989 session. This allows the department to share information regarding child abuse and neglect with agencies, other than state agencies, charged with the responsibility for investigation and treatment of child abuse and neglect such as military and Indian authorities on federal reservations.

I support the changes in Section 2. K.S.A. 38-1514 (a) (3), however note that a technical amendment is needed to remove the term "juvenile offender" from line 26, page 3 because Section 38 addresses only children in need of care.

Two other technical amendments are needed. The first appears at line 32 on page 2 where reference is made to (I) of paragraph (a) (2) in K.S.A. 38-1507. Paragraph (I) is marked for deletion.

In summary, I generally support the provisions of this bill with the amendments as noted. The passage of this bill together with a companion measure in H.B. 2834 which would encourage and simplify the development of multidisciplinary

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teams, will go a long way to improve the ability of this agency to share information, with appropriate protections, with other agencies. Ultimately these changes will provide better protection for children.

I appreciate your consideration of these comments.

Robert C. Barnum
Commissioner
Youth Services
Department of Social and
Rehabilitation Services
(913) 296-3284

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H. Jud Com
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Testimony by Susan E. White, El Dorado
SB 522 in its present form and
the way it will be if amended as
proposed contains some provisions
which I believe violates the privacy
rights of children and families.

If you have read the letter which
I sent to the Chairman and the
members of the committee, you
already know what my concerns
are.

SRS officials and lobbyists are
seemingly unaware of the massive
and numerous violations of their
own procedural guidelines.

Children are removed from
innocent parents all too frequently.

A child can be declared a child
"in need of care" on the basis of a
social workers opinion - that is
the worker finds by a "preponderance
of evidence" that abuse or neglect
has occurred. This preponderance
is a 51% surety that the alleged
abuse or neglect has occurred.

Totally ignored is the 49% chance
that abuse or neglect has not
occurred or is so minor as
to be negligible.

This means that for every
"confirmed" case of child abuse
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H. Jud Com

or neglect, there is up to a 49% chance that the confirmation is wrong - yet all of the children and families caught in this net are routinely denied due process of law, are denigrated, stigmatized and ostracized as a result.

A national consensus is beginning to emerge which calls for a narrowing of the definition of what constitutes child abuse or neglect - most of us believe that our law recognize abuse when we see it or its aftermath.

I am not speaking, here, of actual, real, and terrible cases of child abuse or neglect. We are all against that - I am speaking of a sweeping social movement which is out of control. I am speaking of growing and corrupt bureaucracies, and I am speaking of a system which has failed to do the job it was mandated to do. State abuse of children and families has become as great a problem as parental child abuse. ^{Tom's} Speech

I would like to quote from the NASW News, Feb. 1990 issue.

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Will law enforcement officers and SRS investigate every report. If done by law enforcement officers - the Miranda rights must be read to parent before the investigation begins. We believe that SRS workers should also read a statement similar to the Miranda rights.

HB 2315 calls for a report by a foster parent to be read only by the parent & the child's guardian ad litem - this is wrong - it denies due process for parent. An article in the Kansas City Star yesterday morning has Mr. Vandenberg stating that parental rights are protected at every step of an investigation and if the parent has no attorney present, his or her right are not protected.

In SB 522 - under parenting child section, I believe that a foster parent being considered for custody of child should be subject to the same evaluation as may be required of parent or relatives who are being considered for custody.

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Every law passed over the last
5 years has been but a another
nail in the coffin of family privacy &
family right and I ~~urge~~ urge
that our legislature give special
attention in the future to laws
which protect both children & families.

Respectfully
Sam E White

3/26/90
W. J. White

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Kansas Psychiatric Society

1259 Pembroke Lane
Topeka, KS 66604
Telephone: (913) 232-5985
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Public Affairs Contact
Telephone: (913) 235-3619

March 26, 1990

TO: House Judiciary Committee
FROM: Kansas Psychiatric Society *Chip Wheelen*
SUBJECT: Senate Bill 536; Termination of Parental Rights

Thank you for this opportunity to express our support for the provisions of SB 536. This bill was introduced at the request of the Kansas Psychiatric Society.

You will note that SB 536 was amended by the Senate Committee to eliminate the first issue involved. The Senate Committee decided that if we were to reduce the burden of proof from that of "clear and convincing evidence" to "a preponderance of the evidence" the bill would likely be held unconstitutional.

The second and remaining issue in SB 536 is one which we believe is extremely important. Currently, a judge may consider any information that he or she deems applicable in the case. In addition, there are eight criteria that are statutorily prescribed, if applicable. We respectfully recommend that a ninth criterion be added which would prescribe that the court consider a statement from a person licensed to practice medicine and surgery that the needs of the child would be better served if parental rights are terminated.

As you are probably aware, there are instances when a child reveals information to a primary care physician or psychiatrist which is extremely revealing as to the circumstances of the home environment. This information is, however, privileged and were it not confidential, would probably result in an inhibited therapeutic relationship between the child/patient and the physician. If the child were to believe that the physician had a duty to reveal such information, the child would never disclose that information in the first place. This is because oftentimes the information has to do with situations which result in feelings of shame experienced by the child. Other situations might involve evidence as to the lifestyle of one or both parents which would not be conducive to a child's development. In some instances, the child may actually be at risk of harm. Of course, if there exists evidence of abuse, the physician has a duty to report.

We believe that such information should remain privileged, but that the Legislature should express confidence in the ability of physicians to exercise good judgement in determining when a child would be better served by terminating the rights of that child's parents. This would be only one of the various considerations taken into account by the court.

It is for these reasons that we respectfully request that you recommend SB 536 for passage. Thank you for your consideration.

CW:lg

*3/26/90
H. Jud Comm.*

Attachment VIII