

Approved February 26, 1990
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 February 8, 1990 in room 514-S of the Capitol.

All members were present except: Senator Rock who was excused

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:

Robert Barnum, Commissioner of Youth Services, Kansas Department of
Social and Rehabilitation Services
Tim Ownes, Kansas Department of Social and Rehabilitation Services

The Chairman opened the meeting by reminding the committee that this day's session would be another working session.

Senator Gaines moved to approve the minutes of January 24, 25, 26, 29 and 30. Senator Morris seconded the motion. The motion carried.

SB 289 - concerning civil liability; relating to the duties and liabilities of roller skating center operators and persons who utilize roller skating centers; providing for the acceptance of certain risks by persons who utilize roller skating centers.

Senator Oleen requested that SB 289 remain in committee until she had an opportunity to discuss with her constituents possible solutions to the problems they described during their testimony in support of the legislation. Senator Morris suggested they look into an association wide insurance program. The Chairman stated that action would be deferred.

SB 252 - concerning confidential information; prohibiting certain acts and providing penalties for violations.

The consensus of the committee was that passing this legislation would make an exception to the open records act for adult care nursing homes and would create an inconsistency in Kansas law regarding the punishment for violations of the open records act. Senator Gaines moved to report SB 252 adversely, Senator Feleciano seconded the motion. The motion carried.

SB 522 - concerning child abuse; information sharing

Copies of a letter and suggested amendments received by Chairman Winter from Robert C. Barnum, Commissioner of Youth Services, Kansas Department of Social and Rehabilitation Services, were distributed to the committee. (ATTACHMENTS I, II and III)

Commissioner Robert Barnum, SRS presented the committee with additional information from SRS regarding SB 522 and reiterated that they do support the intent but some adjustments to the legislation would be required to retain federal funds. (ATTACHMENT IV)

Tim Owens, SRS, suggested that input be sought from liaisons from SRS, education and the courts to study the issue of confidentiality and sharing of information. He added that there are several judges interested in the issue.

The committee requested that the bill be assigned to a subcommittee to allow an indepth study of the issue. The Chairman agreed to assign a subcommittee to SB 522 and include SB 306 since it deals with the same subject. Senators Parrish and Dave Kerr requested to be assigned to the subcommittee.

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

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 8, 1990.

SB 544 - concerning civil procedure; relating to the time limit for commencement of actions; childhood sexual abuse.

The committee discussed the concepts of the change in statute of limitations. The committee's reaction was mixed. The Chairman stated that an example of the type of latent injuries possible in a number of situations are not set to a time limitation. The requested asbestosis bill was cited as an example of the concepts application in other areas of injury. The consensus of the committee was to hold the bill until a later date.

The Chairman informed the committee that a letter had been received from Nancy Hughes, Hagar Institute, in opposition to SB 190 concerning surrogacy motherhood. (ATTACHMENT V) He stated that hearings were not scheduled to be reopened on the bill, but if they were she would be contacted to testify.

The meeting was adjourned.

GUEST LIST

COMM. _EE: _____

SENATE JUDICIARY COMMITTEE

DATE: FEBRUARY 8, 1990

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
David Cram	3835 N 67 th St.	
Carolyn Macera	1908 Oakland	
Megan Uzzell	2433 N. 83 rd Ln	
Jean Close	Topeka	KC DAA
Jan Waide	SRS - Topeka	SRS
JOHN NOLTERISMAYER	1061 Apple Ln #8 Lawrence	INTERN - MORAN
Paul Shelby	Topeka	OJA
RICH CHRISTIE	Topeka	CITY OF TOPEKA
Jeff Rockett	Topeka	Ks Assoc. of Pk C Inc. Co. Artist's Service Committee on Publication for Kansas
KETHY R LANDIS		
Nancy Hughes	RT 1 BOX 157 Lawrence, KS 66049	Hague Associates, Inc

February 8, 1990



STATE OF KANSAS

MIKE HAYDEN, Governor

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Docking State Office Building, Topeka, Kansas 66612-1570

(913) 296-3271

YOUTH SERVICES

**SMITH-WILSON BLDG.
300 SW OAKLEY
TOPEKA, KS 66606
(913) 296-4653
KANS-A-N 561-4653**

February 1, 1990

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.
Kansas Senate
State House, Room 120-S,
Topeka, KS 66612

Dear Senator Winter:

I have attached a copy of S.B. 522 with the changes which we feel will be necessary to ensure that Kansas' eligibility for Federal child abuse and neglect grants will not be jeopardized. Those changes delete (a)(2)(H,I,J) and 9(c). It will not be possible to obtain an official opinion in time for this legislative session. The regional representative in Region VII of the Department of Health and Human Services did consult with the National Center on Child Abuse and Neglect and it was their considered opinion that the language recommended for deletion would render the state ineligible.

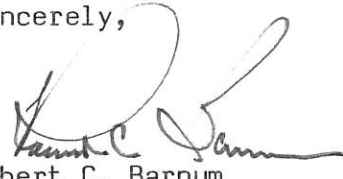
The basis for this opinion centers on the federal rules contained in 45 CFR 1340.14 (1) (2) (i) through (xi) which lists the following agencies or organizations as those with which information can be disclosed:

A court; a grand jury; a properly constituted authority (including its designated multidisciplinary case consultation team) investigating a report... or providing services to a child or family which is the subject of a report; a physician; a person legally authorized to place a child in protective custody...; an agency authorized to diagnose, care for, treat, or supervise a child...; a person about whom a report has been made, with protection for the identity of any person reporting...; a child named in the report...; an appropriate State or local official responsible for the administration of the child protective service or for oversight of the enabling or appropriating legislation...; and a person, agency, or organization engaged in a bonafide research or evaluation project, but without (identifying) information...

The Honorable Wint Winter Jr.
February 1, 1990
Page 2

Schools are not mentioned nor would they qualify under any of the existing categories except for the participation of a school-related person on a multidisciplinary team. It is our view that the multidisciplinary team, which provides for disclosure for limited purposes, is sufficient to meet the needs of a child and is the preferred vehicle for sharing information related to a neglect or abuse allegation.

Sincerely,



Robert C. Barnum
Commissioner

RCB:DR:aml
Enclosures
Bcc: Jim Trast
Allyn Lockner
Tim Owens
Sue McKenna
Jan Waide

State modifies its definition of "child abuse and neglect" to provide that the phrase "person responsible for a child's welfare" includes an employee of a residential facility or a staff person providing out of home care no later than the close of the first general legislative session of the State legislature which convenes following the effective date of these regulations;

(3) The funds are to be used to improve and expand child abuse or neglect prevention or treatment programs; and

(4) The State is otherwise in compliance with these regulations.

(b) At the time of an award under this subpart, the amount of funds not obligated from an award made eighteen or more months previously shall be subtracted from the amount of funds under the award, unless the Secretary determines that extraordinary reasons justify the failure to so obligate.

(c) Except for any requirement under section 4(b)(2)(K) of the Act and § 1340.15 of this part pertaining to medical neglect, a State which, on October 9, 1984, did not meet the eligibility requirements of section 4(b)(2) of the Act and this part and thus did not receive a State grant in FY 1984 may apply for a waiver of any requirement. In order to apply for a waiver, the Governor of the State must submit documentation of the specific measures the State has taken and will be taking to meet the as yet unmet eligibility requirement(s).

(1) State's whose legislatures meet annually may be granted a one-year waiver if OHDS finds that the State is making a good faith effort to comply with such requirement(s). This waiver is renewable for a second year if, based on additional documentation, the Secretary finds the State is making substantial progress to achieve compliance.

(2) States whose legislatures meet biennially may be granted a waiver for a non-renewable period of not more than two years if OHDS finds, based on documentation, the State is making a good faith effort to comply with any such requirement(s).

[48 FR 3702, Jan. 26, 1983, as amended at 52 FR 3995, Feb. 6, 1987]

§ 1340.14 Eligibility requirements.

In order for a State to qualify for an award under this subpart, the State must meet the requirements of § 1340.15 and satisfy each of the following requirements:

(a) The State must satisfy each of the requirements provided in Section 4(b)(2) of the Act.

(b) *Definition of Child Abuse and Neglect.* Wherever the requirements below use the term "Child Abuse and Neglect" the State must define that term in accordance with § 1340.2. However, it is not necessary to adopt language identical to that used in § 1340.2, as long as the definition used in the State is the same in substance.

(c) *Reporting.* The State must provide by statute that specified persons must report and by statute or administrative procedure that all other persons are permitted to report known and suspected instances of child abuse and neglect to a child protective agency or other properly constituted authority.

(d) *Investigations.* The State must provide for the prompt initiation of an appropriate investigation by a child protective agency or other properly constituted authority to substantiate the accuracy of all reports of known or suspected child abuse or neglect. This investigation may include the use of reporting hotlines, contact with central registers, field investigations and interviews, home visits, consultation with other agencies, medical examinations, psychological and social evaluations, and reviews by multidisciplinary teams.

(e) *Institutional child abuse and neglect.* The State must have a statute or administrative procedure requiring that when a report of known or suspected child abuse or neglect involves the acts or omissions of the agency, institution, or facility to which the report would ordinarily be made, a different properly constituted authority must receive and investigate the report and take appropriate protective and corrective action.

(f) *Emergency services.* If an investigation of a report reveals that the reported child or any other child under the same care is in need of immediate

protection, the State must provide emergency services to protect the child's health and welfare. These services may include emergency caretaker or homemaker services; emergency shelter care or medical services; review by a multidisciplinary team; and, if appropriate, criminal or civil court action to protect the child, to help the parents or guardians in their responsibilities and, if necessary, to remove the child from a dangerous situation.

(g) *Guardian ad litem.* In every case involving an abused or neglected child which results in a judicial proceeding, the State must insure the appointment of a guardian ad litem or other individual whom the State recognizes as fulfilling the same functions as a guardian ad litem, to represent and protect the rights and best interests of the child. This requirement may be satisfied: (1) By a statute mandating the appointments; (2) by a statute permitting the appointments, accompanied by a statement from the Governor that the appointments are made in every case; (3) in the absence of a specific statute, by a formal opinion of the Attorney General that the appointments are permitted, accompanied by a Governor's statement that the appointments are made in every case; or (4) by the State's Uniform Court Rule mandating appointments in every case. However, the guardian ad litem shall not be the attorney responsible for presenting the evidence alleging child abuse or neglect.

(h) *Prevention and treatment services.* The State must demonstrate that it has throughout the State procedures and services deal with child abuse and neglect cases. These procedures and services include the determination of social service and medical needs and the provision of needed social and medical services.

(i) *Confidentiality.* (1) The State must provide by statute that all records concerning reports and reports of child abuse and neglect are confidential and that their unauthorized disclosure is a criminal offense.

(2) If a State chooses to, it may authorize by statute disclosure to any or all of the following persons and agencies, under limitations and procedures the State determines:

(i) The agency (agencies) or organizations (including its designated multidisciplinary case consultation team) legally mandated by any Federal or State law to receive and investigate reports of known and suspected child abuse and neglect;

(ii) A court, under terms identified in State statute;

(iii) A grand jury;

(iv) A properly constituted authority (including its designated multidisciplinary case consultation team) investigating a report of known or suspected child abuse or neglect or providing services to a child or family which is the subject of a report;

(v) A physician who has before him or her a child whom the physician reasonably suspects may be abused or neglected;

(vi) A person legally authorized to place a child in protective custody when the person has before him or her a child whom he or she reasonably suspects may be abused or neglected and the person requires the information in the report or record in order to determine whether to place the child in protective custody;

(vii) 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;

(viii) A person about whom a report has been made, with protection for the identity of any person reporting known or suspected child abuse or neglect and any other person where the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of such person;

(ix) A child named in the report or record alleged to have been abused or neglected or (as his/her representative) his/her guardian or guardian ad litem;

(x) An appropriate State or local official responsible for administration of the child protective service or for oversight of the enabling or appropriating legislation, carrying out his or her official functions; and

(xi) A person, agency, or organization engaged in a bonafide research or evaluation project, but without infor-

§ 1340.15

mation identifying individuals named in a report or record, unless having that information open for review is essential to the research or evaluation, the appropriate State official gives prior written approval, and the child, through his/her representative as cited in paragraph (i) of this section, gives permission to release the information.

(3) If a State chooses, it may authorize by statute disclosure to additional persons and agencies, as determined by the State, for the purpose of carrying out background and/or employment-related screening of individuals who are or may be engaged in specified categories of child related activities or employment. Any information disclosed for this purpose is subject to the confidentiality requirements in paragraph (i)(1) and may be subject to additional safeguards as determined by the State.

(4) Nothing in this section shall be interpreted to prevent the properly constituted authority from summarizing the outcome of an investigation to the person or official who reported the known or suspected instances of child abuse or neglect or to affect a State's laws or procedures concerning the confidentiality of its criminal court or its criminal justice system.

(5) HHS and the Comptroller General of the United States or any of their representatives shall have access to records, as required under 45 CFR 74.24.

[48 FR 3702, Jan. 26, 1983, as amended at 50 FR 14887, April 15, 1985; 52 FR 3995, Feb. 6, 1987]

§ 1340.15 Services and treatment for disabled infants.

(a) Purpose. The regulations in this section implement certain provisions of the Child Abuse Amendments of 1984, including section 4(b)(2)(K) of the Child Abuse Prevention and Treatment Act governing the protection and care of disabled infants with life-threatening conditions.

(b) Definitions. (1) The term "medical neglect" means the failure to provide adequate medical care in the context of the definitions of "child abuse and neglect" in section 3 of the Act and § 1340.2(d) of this part. The term

45 CFR Ch. XIII (10-1-87 Edition)

"medical neglect" includes, but is not limited to, the withholding of medically indicated treatment from a disabled infant with a life-threatening condition.

(2) The term "withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's (or physicians') reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's (or physicians') reasonable medical judgment any of the following circumstances apply:

(i) The infant is chronically and irreversibly comatose;

(ii) The provision of such treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant; or

(iii) The provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

(3) Following are definitions of terms used in paragraph (b)(2) of this section:

(i) The term "infant" means an infant less than one year of age. The reference to less than one year of age shall not be construed to imply that treatment should be changed or discontinued when an infant reaches one year of age, or to affect or limit any existing protections available under State laws regarding medical neglect of children over one year of age. In addition to their applicability to infants less than one year of age, the standards set forth in paragraph (b)(2) of this section should be consulted thoroughly in the evaluation of any issue of medical neglect involving an infant older than one year of age who has been continuously hospitalized since birth, who was born extremely prema-

Office of Human Development Services, HHS

§ 1340.15

turely, or who has a long-term disability.

(ii) The term "reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(c) Eligibility Requirements. (1) In addition to the other eligibility requirements set forth in this Part, to qualify for a grant under this section, a State must have programs, procedures, or both, in place within the State's child protective service system for the purpose of responding to the reporting of medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions.

(2) These programs and/or procedures must provide for:

(i) Coordination and consultation with individuals designated by and within appropriate health care facilities;

(ii) Prompt notification by individuals designated by and within appropriate health care facilities of cases of suspected medical neglect (including instances of the withholding of medically indicated treatment from disabled infants with life-threatening conditions); and

(iii) The authority, under State law, for the State child protective service system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions.

(3) The programs and/or procedures must specify that the child protective services system will promptly contact each health care facility to obtain the name, title, and telephone number of the individual(s) designated by such facility for the purpose of the coordination, consultation, and notification activities identified in paragraph (c)(2) of this section, and will at least annually recontact each health care facility to obtain any changes in the designations.

(4) These programs and/or procedures must be in writing and must conform with the requirements of section 4(b)(2) of the Act and § 1340.14 of this part. In connection with the requirement of conformity with the requirements of section 4(b)(2) of the Act and § 1340.14 of this part, the programs and/or procedures must specify the procedures the child protective services system will follow to obtain, in a manner consistent with State law:

(i) Access to medical records and/or other pertinent information when such access is necessary to assure an appropriate investigation of a report of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life threatening conditions); and

(ii) A court order for an independent medical examination of the infant, or otherwise effect such an examination in accordance with processes established under State law, when necessary to assure an appropriate resolution of a report of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life threatening conditions).

(5) The eligibility requirements contained in this section shall be effective October 9, 1985.

(d) Documenting eligibility. (1) In addition to the information and documentation required by and pursuant to § 1340.12(b) and (c), each State must submit with its application for a grant sufficient information and documentation to permit the Commissioner to find that the State is in compliance with the eligibility requirements set forth in paragraph (c) of this section.

(2) This information and documentation shall include:

(i) A copy of the written programs and/or procedures established by, and followed within, the State for the purpose of responding to the reporting of medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions;

(ii) Documentation that the State has authority, under State law, for the State child protective service system to pursue any legal remedies, includ-

SENATE BILL No. 522

By Committee on Judiciary

1-19

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

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

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

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

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

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

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

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

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

42 (E) a police or other law enforcement agency investigating a
43 report of known or suspected child abuse or neglect;

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

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

10 ~~(H) a person who is a member of a multidisciplinary team des-~~
11 ~~ignated for a particular child;~~

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

20 ~~(J) law enforcement officers.~~

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

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

32 Sec. 2. K.S.A. 38-1514 is hereby amended to read as follows:
33 38-1514. (a) *Of child.* (1) *Psychological or emotional.* During pro-
34 ceedings under this code, the court, on its own motion or the motion
35 of the guardian *ad litem* for the child, may order an evaluation and
36 written report of the psychological or emotional development or
37 needs of a child who is the subject of the proceedings. The court
38 may refer the child to a state institution for the evaluation if the
39 secretary advises the court that the facility is a suitable place to care
40 for, treat or evaluate the child and that space is available. The
41 expenses of transportation to and from the state facility may be paid
42 as a part of the expenses of temporary care and custody. The child
43 may be referred to a mental health center or qualified professional

1 for evaluation and the expenses of the evaluation may be considered
 2 as expenses of the proceedings and assessed as provided in this code.
 3 If the court orders an evaluation as provided in this section, a parent
 4 of the child shall have the right to obtain an independent evaluation
 5 at the expense of the parent.

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

11 (3) *Educational.* The court may request the chief administrative
 12 officer of the school which the child attends or attended to provide
 13 to the court information that is readily available which the school
 14 officials believe would properly indicate the educational needs of the
 15 child. If the resources of the school permit, the school may conduct
 16 an educational needs assessment of the child and send a report of
 17 the assessment to the court. The educational needs assessment may
 18 include a meeting involving any of the following: The child's parents,
 19 the child's teachers, the school psychologist, a school special services
 20 representative and other persons that the chief administrative
 21 officer of the school, or the officer's designee, considers ap-
 22 propriate, a representative of the secretary, the juvenile offender's
 23 C.A.S.A., the juvenile offender's foster parents or legal guardian,
 24 and other persons that the chief administrative officer of the school
 25 or the officer's designee considers appropriate.

26 (b) *Of parent or custodian.* (1) *Physical, psychological or emo-*
 27 *tional.* During proceedings under this code, the court may order an
 28 examination, evaluation and report of the physical, mental or emo-
 29 tional status or needs of a parent or any other relative being con-
 30 sidered as one to whom the court may grant custody. Written reports
 31 and other materials relating to the examination and evaluation may
 32 be considered by the court but, if requested by any interested party
 33 in attendance, the court shall require the person preparing the report
 34 or other material to appear and testify.

35 (2) *Parenting skills.* At any dispositional hearing, the court may
 36 receive and consider written reports from any physician or qualified
 37 person concerning the parenting skills or ability to provide for the
 38 physical, mental or emotional needs and future development of a
 39 child by a parent or other relative being considered for custody. If
 40 requested by any interested party in attendance at the dispositional
 41 hearing, the court shall require the person preparing the report to
 42 appear and testify.

43 (c) *Confidentiality of reports.* (1) *Reports of court ordered ex-*

1 *amination or evaluation.* No confidential relationship of physician
2 and patient, psychologist and client or social worker and client shall
3 arise from an examination or evaluation ordered by the court.

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

14 Sec. 3. K.S.A. 1989 Supp. 38-1523 is hereby amended to read
15 as follows: 38-1523. (a) *Investigation for child abuse or neglect.* The
16 state department of social and rehabilitation services *and law en-*
17 *forcement officers* shall have the ~~primary~~ duty to receive and in-
18 vestigate reports of child abuse or neglect for the purpose of
19 determining whether the report is valid and whether action is re-
20 quired to protect the child from further abuse or neglect. If the
21 department ~~determines~~ *and such officers determine* that no action
22 is necessary to protect the child but that a criminal prosecution
23 should be considered, the department *and such law enforcement*
24 *officers* shall make a report of the case to the appropriate law en-
25 *forcement agency.*

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

36 (c) *Investigation of certain cases.* Suspected child abuse or ne-
37 glect which occurs in an institution operated by the secretary shall
38 be investigated by an agent under the direction of the attorney
41 general. Any other suspected child abuse or neglect by persons
42 employed by or of children of persons employed by the state de-
43 partment 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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

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 after the service of the subpoena or order, excluding Saturdays, Sundays and 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 that purpose. Upon receiving service of a subpoena, subpoena duces tecum or an

1 order for production pursuant to this subsection, the party served
2 shall give oral or written notice of service to any person known to
3 have a right to assert a privilege or assert a right of confidentiality
4 in regard to the documents, reports or information sought at least
5 three days before the date of delivery.

6 (i) The written verified application shall be in substantially the
7 following form:

8 *Name of Court*
9 In the Interest of _____ *Case No.*
10 *Name(s)*
11 *Date of birth:* _____

12 Each a child under 18 years of age.

13 WRITTEN APPLICATION FOR DISCLOSURE OF INFORMATION

14 County of _____

15 ss

16 State of Kansas

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

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

25 _____
26 Applicant

27 Subscribed and sworn to before me

28 this _____ day of _____, 19____

29 _____
30 Notary Public

31 My commission expires:
32 _____

33 (j) Any parent, child, guardian ad litem, party subpoenaed or
34 subject to an order of production or person who claims a privilege
35 or right of confidentiality may request in writing that the court
36 issuing the subpoena or order of production withdraw the subpoena,
37 subpoena duces tecum or order for production issued pursuant to
38 subsection (i). The request shall automatically stay the operation of
41 the subpoena, subpoena duces tecum or order for production and
42 the documents, reports or information requested shall not be deliv-
43 ered until the issuing court has held a hearing to determine if the
documents, reports or information are subject to the claimed priv-
ilege or right of confidentiality or it is in the best interests of the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

child for the subpoena or order to produce shall 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. 4. K.S.A. 1989 Supp. 38-1523a is hereby amended to read as follows: 38-1523a. (a) Upon recommendation of the state department of social and rehabilitation services or the county or district attorney, the court may appoint a multidisciplinary team to assist in gathering information regarding a child alleged to be a child in need of care by reason of physical, mental or emotional abuse or neglect or sexual abuse.

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

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

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

(e) This section shall be part of and supplemental to the Kansas 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*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
41
42
43

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 or it is in the best interests of the child for the subpoena or order to produce shall 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 the juvenile under court order;
- (4) law enforcement officers or county or district attorneys or their staff when necessary for the discharge of their official duties; and
- (5) any other person when authorized by a court order, subject

1 to any conditions imposed by the order.

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

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

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. 6. K.S.A. 38-1608 is hereby amended to read as follows:
28 38-1608. (a) All records of law enforcement officers and agencies and
29 municipal courts concerning a public offense committed or alleged
30 to have been committed by a juvenile under 16 years of age shall
31 be kept readily distinguishable from criminal and other records and
32 shall not be disclosed to anyone except:

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

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

36 (3) the department of social and rehabilitation services or the
37 officers of public institutions or agencies to whom the juvenile is
38 committed;

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

ments thereto; and

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

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

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

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

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

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

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

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

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

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

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

or
(5) when requested orally or in writing by any attorney representing the juvenile offender, but the records shall not be further disclosed by the attorney unless approved by the court or presented 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

1 *available to the department of corrections upon request and a show-*
2 *ing that the former juvenile has been convicted of a crime and placed*
3 *in the custody of the secretary of the department of corrections.*

4 Sec. 8. K.S.A. 38-1661 is hereby amended to read as follows:
5 38-1661. (a) Prior to a dispositional hearing, the court shall request
6 an investigation and report by a court services officer unless the
7 court finds that adequate and current information is available from
8 a previous investigation, report or other sources. Upon request of
9 the prosecuting attorney or the attorney for the respondent, the
10 court shall make available to the attorney the report of the inves-
11 tigation and shall allow the attorney a reasonable time to review the
12 report before ordering the disposition of the respondent.

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

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

29 Sec. 9. K.S.A. 38-1662 is hereby amended to read as follows:
30 38-1662. (a) *Psychological or emotional*. Following an adjudication
31 under this code the court may order an evaluation and written report
32 of the psychological or emotional development or needs of the ju-
33 venile offender. The court may refer the juvenile offender to a state
34 institution for the evaluation if the secretary advises the court that
35 the facility is a suitable place to care for, treat or evaluate the juvenile
36 offender and that space is available. The expenses of transportation
37 to and from the state facility may be paid as a part of the expenses
38 of the proceedings. The juvenile offender may be referred to a mental
39 health center or a qualified professional for the evaluation, and the
40 expenses of the evaluation may be considered as expenses of the
41 proceedings and assessed as provided in this code. If the court orders
42 an evaluation as provided in this section, a parent of the juvenile
43 offender shall have the right to obtain an independent evaluation at

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

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 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. If the resources of the school permit, the school may 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.

Department of Social and Rehabilitation Services

Testimony before

The Special Committee for

Judiciary

Regarding

S.B. 522

on

February 8, 1990

presented on behalf of:

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

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

I support the intent of this amendment but have determined that the amended language in 38-1507 (a) (2) (I) and (J) will affect this agency's eligibility to receive federal grant funds from the National Center on Child Abuse and Neglect. Therefore I urge that you strike (H), (I) and (J). I further suggest that (G) be amended to read: "a person who is a member of a multi-disciplinary team," and that (H) be eliminated since (G) adequately covers multi-disciplinary teams. Federal rule permits the flow of information regarding investigation and treatment of child abuse and neglect among multi-disciplinary team members. School and law enforcements personnel are appropriate members of such teams. We are recommending amendments to KSA 38-1523a that would encourage and simplify the development of multi-disciplinary teams by authorizing the appointment of standing teams.

This bill also permits the sharing of juvenile offender information with the Department of Corrections on individuals who are committed to the Secretary of Corrections. This change would provide much needed information from one state agency to another to facilitate the work of the state.

In summary, I support the intent of this bill but recommend that the above noted changes be made to preserve our continued eligibility for grant funds. I

also note that a technical amendment is needed to remove the term "juvenile offender" from KSA 38-1514 (a) (3) because this section addresses only children in need of care.

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

SENATE BILL No. 522

By Committee on Judiciary

1-19

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

12
13 *Be it enacted by the Legislature of the State of Kansas:*

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

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

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

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

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

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

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

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

~~(H) a person who is a member of a multidisciplinary team designated for a particular child;~~

~~(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~~

~~(J) 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 by persons described in paragraphs (a)(2)(A) and (I) 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 request 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. 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 C.A.S.A., the juvenile offender's foster parents or legal guardian, 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 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 ex-*

amination 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 after the service of the subpoena or order, excluding Saturdays, Sundays and 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 that purpose. 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 date of delivery.

(i) 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 _____
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 abuse or neglect in regard to the above-named child or children.
- 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:

(j) 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 of production withdraw the subpoena, subpoena duces tecum or order for production issued pursuant to subsection (i). The request shall automatically stay the operation of a 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 or it is in the best interests of the

child for the subpoena or order to produce shall 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. 4. K.S.A. 1989 Supp. 38-1523a is hereby amended to read as follows: 38-1523a. (a) Upon recommendation of the state department of social and rehabilitation services or the county or district attorney, the court may appoint a multidisciplinary team to assist in gathering information regarding a child alleged to be a child in need of care by reason of physical, mental or emotional abuse or neglect or sexual abuse.

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

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

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

(e) This section shall be part of and supplemental to the Kansas 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 or it is in the best interests of the child for the subpoena or order to produce shall 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 the juvenile under court order;
- (4) law enforcement officers or county or district attorneys or their staff when necessary for the discharge of their official duties; and
- (5) any other person when authorized by a court order, subject

to any conditions imposed by the order.

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

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

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

- (1) The judge and members of the court staff designated by the judge of a court having the juvenile before it in any proceedings;
- (2) parties to the proceedings and their attorneys;
- (3) the department of social and rehabilitation services or the officers of public institutions or agencies to whom the juvenile is committed;
- (4) law enforcement officers or county or district attorneys or their staff when necessary for the discharge of their official duties;
- (5) the central repository, as defined by K.S.A. 22-4701 and amendments thereto, for use only as a part of the juvenile offender information system established under K.S.A. 38-1618 and amend-

ments thereto; and

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

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

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

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

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

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

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

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

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

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

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

or

(5) when requested orally or in writing by any attorney representing the juvenile offender, but the records shall not be further disclosed by the attorney unless approved by the court or presented 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*

2 available to the department of corrections upon request and a showing
3 that the former juvenile has been convicted of a crime and placed
4 in the custody of the secretary of the department of corrections

5 Sec. 8. K.S.A. 38-1661 is hereby amended to read as follows:
6 38-1661. (a) Prior to a dispositional hearing, the court shall request
7 an investigation and report by a court services officer unless the
8 court finds that adequate and current information is available from
9 a previous investigation, report or other sources. Upon request of
10 the prosecuting attorney or the attorney for the respondent, the
11 court shall make available to the attorney the report of the investigation
12 and shall allow the attorney a reasonable time to review the
13 report before ordering the disposition of the respondent.

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

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

30 Sec. 9. K.S.A. 38-1662 is hereby amended to read as follows:
31 38-1662. (a) Psychological or emotional. Following an adjudication
32 under this code the court may order an evaluation and written report
33 of the psychological or emotional development or needs of the juvenile
34 offender. The court may refer the juvenile offender to a state
35 institution for the evaluation if the secretary advises the court that
36 the facility is a suitable place to care for, treat or evaluate the juvenile
37 offender and that space is available. The expenses of transportation
38 to and from the state facility may be paid as a part of the expenses
39 of the proceedings. The juvenile offender may be referred to a mental
40 health center or a qualified professional for the evaluation, and the
41 expenses of the evaluation may be considered as expenses of the
42 proceedings and assessed as provided in this code. If the court orders
43 an evaluation as provided in this section, a parent of the juvenile
offender shall have the right to obtain an independent evaluation at

Hagar Associates, Incorporated
A Licensed Child Placing Agency
3601 SW 29th Topeka, KS 66614
913-271-6045

Thursday 8 February 1990

Senate Judiciary Committee
Statehouse
Topeka, KS 66604

RE: OPPOSITION TO SB 190

Dear Senator: *Winter*:

We were not notified of the Tuesday, 6 February, hearing on SB 190, or we would have appeared before you to state our opposition to this bill. We have requested that Senator Winter reopen discussion so that we may present to you our seven years of direct, daily, experience with surrogacy.

At the October 31st Interim Judiciary Committee hearings on the bill, we spoke in opposition and presented testimony from five surrogate mothers and an adoptive couple. That testimony revealed how well surrogacy can work for all participants if the arrangements are handled professionally.

We believe that **SB 190 does not protect women and children**. Instead, it deprives participants in surrogacy of the supportive professional services that help assure a positive outcome.

Tuesday, you heard the unhappy story of one Kansas woman who was a surrogate mother for a family member. Please understand that her experience is not typical. Through Hagar Institute and Hagar Associates, over 50 births to surrogate mothers have concluded happily. Three of those births have occurred in Kansas within in the last six weeks. No Hagar arrangement has ended in contest.

You also heard from a west coast lawyer who is opposed to surrogacy. Much of the testimony we heard her deliver in October was opinion, not fact, and inaccurate, given the policies and procedures to which we have adhered.

We urge you to either **table this bill** before it can harm citizens of Kansas, **or, amend it**. We suggest amendments similar to those adopted by the Interim Committee: 1) that contracts be voidable, 2) that contests be settled through existing custody laws, 3) that those people assisting in surrogate arrangements be licensed, just as they are required to be in adoption.

Thank you for your consideration.

Nancy Hughes

Nancy Hughes PhD, LSCSW; President, Hagar Associates, Inc.