

Approved April 25, 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./~~pm~~ on March 1, 1990 in room 514-S of the Capitol.

All members were present except: Senators Feleciano and Morris who were 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:

James Clark, Kansas County and District Attorneys Association
Ron Smith, Kansas Bar Association

The Chairman opened the meeting by recognizing Senator Parrish to present a status report of the Child Abuse Subcommittee.

- SB 306 - concerning records and reports of child abuse or neglect.
- SB 522 - concerning child abuse.
- SB 635 - concerning person who may be mentally ill; procedure.
- SB 640 - concerning guardians and wards; procedure to change treatment.

Senator Parrish stated that the subcommittee had not yet addressed SB 635 and SB 640 and would prefer making a complete report on all of the bills in subcommittee at the same time.

The Chairman recognized Senator Moran to present a report of the Criminal Law and Procedure Subcommittee.

Senator Moran presented the Subcommittee Reports. (ATTACHMENT I)

- SB 618 - concerning children and minors; relating to traffic offenses; notice to parents.

The subcommittee recommendation was to adopt conceptual amendments to limit the scope to violations involving reckless driving, DUIs, and fleeing the scene; and to recommend the bill favorable for passage as amended.

Senator Moran moved to adopt the subcommittee report on SB 618 (to amend as indicated and report the bill favorable for passage). Senator Yost seconded the motion. The motion carried.

- SB 629 - concerning criminal procedure; relating to certain traffic infraction cases; method of trial.

The subcommittee made no recommendations.

James Clark, Kansas County and District Attorneys Association, stood to clarify that jury trials are paid by the counties and are very expensive.

Ron Smith, Kansas Bar Association, stood to state that the situation generally arises with a Magistrate Judge. Administrative Judges may refer the case to a District Judge and the only appeal is to the Court of Appeals.

Senator Moran moved to report SB 629 favorable for passage. Senator Rock seconded the motion. The motion carried.

- SB 687 - concerning crimes and punishment; relating to definition of sodomy.

The subcommittee recommended the adoption of two amendments suggested by the Attorney General and to report the bill favorable as amended.

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 March 1, 19 90

The Chairman distributed copies of a communication received from Mary Murguia, Wyandotte County Assistant District Attorney, which suggests an amendment that is more comprehensive than that presented to the Subcommittee. (ATTACHMENT II)

Senator Moran moved to adopt the subcommittee report on SB 687 and further amend as suggested by the attached balloon, and recommend the bill favorable for passage as amended. Senator Gaines seconded the motion. The motion carried.

SB 688 - concerning criminal procedure; relating to arrest; stopping of suspect.

The subcommittee recommended SB 688 favorable for passage.

Senator Moran moved to recommend SB 688 favorable for passage and be placed on the Consent Calendar. Senator Bond seconded the motion. The motion carried.

SB 711 - concerning crimes and punishment; creating the crime of criminal battery and prescribing a penalty therefor.

The subcommittee recommended referring the subject to the Criminal Code Advisory Committee of the Judicial Council.

Senator Moran moved to recommend SB 711 to the Judicial Council Criminal Law Advisory Committee. Senator Kerr seconded the motion. The motion carried.

Senator Gaines suggested that a copy of the letter to the Judicial Council requested the study be sent to the Riley County Attorney.

SB 715 - concerning crimes and punishment; creating the crime of construction fund fraud; prescribing penalties therefor.

The subcommittee took no action.

SB 713 - concerning crimes and punishment; relating to use of lethal force by law enforcement officer in making an arrest.

The subcommittee recommended the bill favorably.

Senator Moran moved to recommend SB 713 favorable for passage and be placed on the Consent Calendar. Senator Oleen seconded the motion. The motion carried.

This concluded the Criminal Law and Procedure Subcommittee Report.

The Chairman turned the committee's attention to bills before the committee that have been heard and are awaiting action.

SB 710 - concerning alcoholic beverages; relating to transportation in open containers and consumption while operating a motor vehicle.

SB 219 - concerning juvenile offenders; relating to dispositional alternatives for alcohol and drug-related offenses.

SB 631 - concerning certain alcohol and drug-related offenses; relating to the operation or attempted operation of a vehicle by a person under 21 years of age under certain circumstances.

SB 700 - concerning driving under influence of alcohol or drugs; relating to the conduct of driver's license revocation hearings.

SB 701 - concerning driving under the influence; relating to a work release program being part of imprisonment.

Senator Petty moved to conceptually amend SB 219 so that a juvenile aged 16 and 17, on completion of a substance abuse program, could petition the court for restoration of the drivers license on a restricted basis. Senator Parrish seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~xxx~~ on March 1, 19 90

Senator Parrish moved to conceptually amend SB 219 to contain the stronger language and stricter penalties that are contained in the statutes relative to adult offenders. Senator Petty seconded the motion. The motion carried.

Senator Petty moved to recommend SB 219 favorable for passage as amended. Senator Parrish seconded the motion. The motion carried.

Senator Bond moved to recommend SB 700 favorable for passage and be placed on the Consent Calendar. Senator Petty seconded the motion. The motion carried.

The meeting was adjourned at 11:05 a.m.

Written material was distributed to the committee relating to SB 536 from Thomas White, Kansas VOCAL member, and from Elisa Cosgrove, Merriam. (ATTACHMENTS III and IV)

CRIMINAL LAW AND PROCEDURE SUBCOMMITTEE

Senator Jerry Moran, Chairman

SB 618 - written notice to parents of under 18 drivers of traffic offenses

Senator Yost explained the bill. See Attachment I.

Subcommittee recommended adopting the proposed amendments and report the bill favorably as amended.

SB 629 - criminal procedure; relating to certain traffic infraction cases; method of trial

Requested by Douglas County Judges and others.

No Conferees.

Staff explained the bill.

Jack Pearson, Chiefs of Police, in support.

Subcommittee took no action and had no recommendation.

SB 687 - relating to definition of sodomy

Kyle Smith, Assistant Attorney General. See Attachment II.
Mary Murquia, Assistant District Attorney, Wyandotte County

Subcommittee recommended the adoption of the two proposals and to report the bill favorably as amended.

SB 688 - frisking a suspect

Kyle Smith, Assistant attorney General. See Attachments III & IV.

Subcommittee recommended adoption of the proposed amendment.

SB 711 - creating the crime of criminal battery

Bill Kennedy, Riley County Attorney. See Attachment V.

Subcommittee recommended referring the bill to the Criminal Code Advisory Committee at the Judicial Council.

SB 713 - law enforcement officer use of force in making arrest

Kyle Smith, Assistant District Attorney. See Attachments IV & VI.

Subcommittee recommended the bill favorably.

SB 715 - creating the crime of construction fund fraud

Proponents

Alan Alderson, Mid-America Lumbermen's Association.

See Attachment VII.

Ben Swank, Mid-America Lumbermen's Association.

See Attachment VIII.

James F. Mahoney, Mission Lumber Company, Olathe, Kansas.

See Attachment IX.

Harold Baalman, Mid-America Lumbermen's Ass'n, Wichita, Kansas

See Attachment X.

Art Brown, Mid-America Lumbermen's Association, Kansas City, Missouri

Opponents

Tom Slattery, Associated Contractors of Kansas

Karen France, Kansas Association of Realtors

See Attachment XI.

ATTACHMENTS of this Subcommittee Report are filed with Subcommittee Reports and Supplemental Information filed separately.

Senate Judiciary Committee
3-1-90 a.m.
Attachment I page 1 of 1

Sen. Winter,

Senate Bill No. 687 was passed out of the Criminal Law Judiciary Sub-committee this morning. Upon further review of the bill a more comprehensive purpose might be served by further amending the bill to include:

contact or penetration of the female genitalia by any object or body part.

Judy:

Please copy this for members & put in file for the Thursday Hearings.
Went

I sincerely appreciate the efforts you've made in introducing this bill and your continued efforts to get it passed.

If there is anything I can do to assist you in this matter please do not hesitate to contact me.

Thank you,

Mary Murguia

Office of The
DISTRICT ATTORNEY

Of The 29th Judicial District of Kansas

Wyandotte County Court House
Kansas City, Kansas 66101



MARY MURGUIA
ASSISTANT DISTRICT ATTORNEY

(913) 573-2851

Senate Judiciary Committee
3-1-90 a.m.
Attachment II page 1 of 2

SENATE BILL No. 687

By Committee on Judiciary

2-19

9 AN ACT concerning crimes and punishment; relating to definition
10 of sodomy; amending K.S.A. 21-3501 and repealing the existing
11 section.
12

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

14 Section 1. K.S.A. 21-3501 is hereby amended to read as follows:
15 21-3501. The following definitions apply in this article unless a dif-
16 ferent meaning is plainly required:

17 (1) "Sexual intercourse" means any penetration of the female sex
18 organ by a finger, the male sex organ or any object. Any penetration,
19 however slight, is sufficient to constitute sexual intercourse. "Sexual
20 intercourse" does not include penetration of the female sex organ
21 by a finger or object in the course of the performance of:

- 22 (a) Generally recognized health care practices; or
- 23 (b) a body cavity search conducted in accordance with K.S.A.
24 22-2520 through 22-2524, and amendments thereto.

25 (2) "Sodomy" means ~~oral or anal copulation, including contact or~~
26 ~~penetration of the female sex organ by the tongue of a male;~~ oral
27 or anal copulation or sexual intercourse between a person and an
28 animal; or any penetration of the anal opening by any body part or
29 object. Any penetration, however slight, is sufficient to constitute
30 sodomy. "Sodomy" does not include penetration of the anal opening
31 by a finger or object in the course of the performance of:

- 32 (a) Generally recognized health care practices; or
- 33 (b) a body cavity search conducted in accordance with K.S.A.
34 22-2520 through 22-2524, and amendments thereto.

35 (3) "Spouse" means a lawful husband or wife, unless the couple
36 is living apart in separate residences or either spouse has filed an
37 action for annulment, separate maintenance or divorce or for relief
38 under the protection from abuse act.

39 (4) "Unlawful sexual act" means any rape, indecent liberties with
40 a child, aggravated indecent liberties with a child, criminal sodomy,
41 aggravated criminal sodomy, lewd and lascivious behavior, sexual
42 battery or aggravated sexual battery, as defined in this code.

43 Sec. 2. K.S.A. 21-3501 is hereby repealed.

genitalia by any object or body part

II 2/2

Testimony to Senate Committee on Judiciary Re: S.B. No. 536

Mr. Chairman:

I thank you for this opportunity to testify concerning this bill, which provides for the termination of parental rights on the basis of unfitness as established by a preponderance of the evidence, rather than by clear and convincing evidence. I represent my own family which was irreparably harmed by false allegations of child abuse despite complete exoneration in the courts, as well as hundreds of members of Kansas VOCAL (Victims of Child Abuse Laws), and thousands of hapless and helpless parents and children ensnared in the Kansas child protective services system.

S.B. 536 is indicative of an alarming trend current in the Kansas legislature: H.B. 2315 encourages courts to sever parental rights of children in need of care: S.B. 305 would impose severe incapacities upon both parents of a child in need of care even though only one were found culpable. S.B. 434 would require disclosure of all social information to the prospective foster parent irrespective of its necessity in the placement plan or its embarrassment to the foster child and the natural parents and family: H.B. 2895 proposes to eliminate the important right of parents to a de novo hearing on appeal to a district court judge of a magistrate's rulings in child in need of care proceedings: H.B. 2878 exempts social workers from professional accountability in social assessments ordered by a court.

These citations comprise compelling evidence that the legislature is methodically cancelling the civil rights and constitutional guarantees of due process of an entire class of Kansas citizens, composed of persons and especially natural parents who are named in child abuse/neglect allegations but who have not yet had their day in court. Over 23,000 reports of allegations of child abuse/neglect are made in Kansas yearly. Of these, only about 10% are "confirmed" by SRS standards, and many of these findings are reversed upon fair hearing, appeal, and judicial proceedings. Even with the Code as it now exists, thousands of families yearly lose jobs, earnings, homes, social status, and emotional health in defending themselves against these allegations, which are false, and sometimes maliciously false, in up to 90% of such cases. Expenses to defendants of judicial review cases average about \$10,000 per case. Families just well enough off to be disqualified for court appointed legal representation often cannot afford such legal costs without severely impairing family functioning, and yet they also cannot afford not to obtain adequate representation, on pain of losing their children to the state.

Senate Judiciary Committee
3-1-90 a.m.
Attachment III page 1 of 2

I submit to you that an entire class of people, numbering in the thousands of families yearly, is the object of a child abuse neglect hysteria which can be compared only to the Salem witch hunt of Colonial America or to the Communist witch hunt of the early 'fifties. The result of this is that at this time and place the Kansas legislature seems to want to deprive parents and families of even the feeble defense now afforded by the Kansas code for the care of children. I further submit to you that the recent spate of legislation against parental rights and the integrity of the family amounts to the trial and sentencing of a class of Kansas citizens by the legislature of their own state, rather than allowing each member of that class a day in court on which rules of evidence and due process are properly observed.

I want further to note that the legislature seems to have all but adopted the stance that the best interests of children somehow involve a necessary corollary that the interests of parents and particularly of those accused of child abuse or neglect are somehow inherently opposed to those of their children. Such a position is both cruel and unsupported by the facts. In fact, children of falsely accused parents are victims of the child protective system along with their parents and families: And, even those children who have been found to suffer some degree of abuse or neglect in their own homes are in all but the most severe cases at less risk in their own homes, particularly with appropriate family preservation services, than are the thousands of Kansas children now in the disgracefully failed SRS foster care program.

In conclusion, any legislative measure which would make it easier for a child to be adjudicated as a child in need of care, or any statute which provides for the severance of parental rights in the absence of clear and convincing evidence of parental unfitness promises to do violence to both family and children's rights and best interests, and should be viewed with extreme caution. I respectfully and prayerfully urge this Committee to consider S.B. 536 and related proposals in light of this testimony and these facts.

Thank you for your kind attention to these remarks.

Respectfully submitted,

Thomas S. White, M.S.W., Ph.D.
Kansas Licensed Social Worker
Kansas VOCAL Member

III 2/2

Do You Know What the State Can Do to Your Child?



One thing a physician can do which no one else can do is we actually use the child's body, and I do that because I'm a female physician, and I feel comfortable doing that. I actually put my finger in a little girl's vagina and asked her, "Is this what they did to you, and do you think it went in that far, and did it bleed?"

Does that statement sound like the scenario from a child pornography film? It was made on a segment of *Nightline* broadcast on October 25, 1984 — not by someone accused of child abuse but by a pediatrician hired by the state to investigate charges of child abuse. It is just one example of the incredible power that the state now has over your children. Over the past year, child abuse became a media-certified epidemic. Now that the shouting has died down we are now beginning to see what the epidemic was all about. In Jordan, Minnesota, charges against 24 parents who allegedly ran a sex ring involving their own children collapsed when the only adult witness in the case admitted that he lied to get off with a lighter sentence.

Now that the real story is coming out, *Fidelity* takes a look behind the headlines to understand the plight of parents who have been falsely accused, the effects of these accusations on their lives, the motivation of the "caring" professionals, and the role of the therapeutic state in pursuing its version of the ideal family. It's all in the Abuse Abuse issue of *Fidelity*, a magazine that takes the family seriously.

Who's hurting our children, a system in need of change, or all parents?

Is kidnapping legal? Is covering up or blacking out of records legal?

Protective custody: Are our children really being protected???? Is this America? Is America still based on the family unit? Are things getting out of hand? What has happened to innocent until proven guilty??

.....THE NEXT CRY FOR HELP COULD BE YOURS.....

Do you know investigators can talk to neighbors, school authorities, Doctor Relatives, Ministers, and many others? While conducting their investigation of you. Even if your case is unfounded (not guilty), your good reputation is still left in question....Your child can be stripped naked and examined by the investigator, they can even photograph your child. They can pick your child up at school....They can remove your child from your home, and put them in to so called...." PROTECTIVE CUSTODY "....Without your consent....Under some laws, Investigators are immune from any liability(civil or criminal). The good faith of the reporter or investigator....SHALL BE PRESUMED....PARENTS ARE GUILTY UNTIL PROVEN INNOCENT....Accused parents have to prove their innocence to the government investigator, and these investigators will judge you "indicated" or "unfounded"....No trial....No jury....No judge.... Just the opinion of the investigator!

Senate Judiciary Committee
3-1-90 a.m.

Attachment IV page 1 of 11

Lawmakers question SRS' cost-cutting plans

By Steve Kraske
Topeka Correspondent

TOPEKA — Frustrated with Kansas' inability to control soaring nursing home costs, two lawmakers Wednesday lashed out at state officials for failing to find answers to the problem.

The lawmakers, both members of a House Appropriations subcommittee examining the Department of Social and Rehabilitation Services, said several cost-cutting options SRS proposed were virtually worthless.

"This is the biggest bunch of bull ... I've ever seen in my life," said Rep. Jack Shriver, an Arkansas City Democrat.

Committee chairman Rep. Duane Goossen, a Goessel Republican, questioned whether SRS' recommendations actually would reduce expenses or whether the agency simply was altering numbers to fit the budget.

"I don't think we're very confident at this point," he said.

Long-term care, which provides nursing home and mental health services for those who can't afford care, is projected to cost \$220 million next year. Gov. Mike Hayden recommended \$190 million, up from the \$151 million originally recommended this year.

The soaring numbers threaten to swallow the entire SRS budget, Goossen said.

The agency's recommendations included:

- Reduce the projected inflation rate from 6 percent to 3.5 percent.

Kansas Legislature

- Remove incentive payments to nursing home operators for reducing costs.

- Refuse to fully reimburse nursing home operators for the federal minimum wage increase.

- Reduce by 20 the number of clients in a head-injury program.

After reviewing the department's recommendations, Goossen calculated that only three of the 10 proposals would reduce costs. He urged the agency to devise a better plan.

SRS Commissioner Jan Allen, who oversees long-term care, acknowledged some of the agency's proposals were "really questionable" but said the options were the best SRS could develop.

"There's no guarantees on anything we can give you," she said. "I don't know what else to offer."

But Shriver said the state must find a better way to control nursing home expenses.

He said the current system was inadequate because the state was forced to reimburse homes for any expenses they said they incurred.

Other programs have been cut to cover nursing home costs, he complained.

Those programs, such as Medi-Kan and Aid to Families with Dependent Children, provide funds for children, he said.

"I am sick and tired of the kids of

Kansas paying the nursing home bill," Shriver said. "I'm not going to do that this year."

At one point, Shriver proposed eliminating all nursing home payments to force providers to contract with the state. The contract would stipulate payments and rates the state would pay.

SRS officials, however, said the federal government probably would disallow the arrangement.

After the hearing, Shriver suggested that \$190 million for long-term care was not enough. After reviewing the entire SRS budget, he suggested that the agency needs \$102 million more next year to adequately provide its services.

"Maybe they (SRS) should come back and say, 'We can't do it for \$190 million.' Maybe that's what I want to hear. Don't bring junk back," Shriver said.

SRS Secretary Winston Barton said the \$190 million budget could be achieved if nursing home providers reduced costs.

The budget, he noted, would provide operators with a 15 percent increase over current costs that should be adequate.

But John Grace, president of the Kansas Association of Homes for the Aging, said he was tired of people blaming budget problems on nursing home operators.

Senators make move toward candidacies

From the Topeka Bureau

TOPEKA — Two state senators from Wichita will form committees next week as they begin to explore the possibility of seeking statewide offices.

Sen. Eric Yost, who is a Republican and Senate vice president, has scheduled press conferences on Monday in Wichita, Topeka and Overland Park to announce his plan to examine the possibility of running for the GOP nomination for governor. The Overland Park press conference will be at 3 p.m. at the Doubletree Hotel.

Sen. Paul Feleciano, a Democrat, said he would announce his exploratory committee next Tuesday. He is thinking about running for the Democratic nomination for insurance commissioner.

IV
2/11

Elisa Marie Caspore
5805 Slater Place
Merriam KS 66202
(913) 362-2109
2-27-90

Honorable Chairperson Marvin S. Tuttlejohn

With deepest regrets I am writing this letter late Tuesday night, with great concern to H.B. 2878. I am wholeheartedly against any such bill to grant immunity to S.R.S. case workers. Many of these workers are addicted to power. Our children become their co-dependants.

I challenge S.R.S. case workers to examine their own power drives and their possible addiction to power. As alcoholics manipulate their world to hide their drinking addiction. SRS case workers disguise their own drives for power. They do so by proclaiming a desire for service, responsibility, and the right to use their expertise...

Most professionals including doctors and lawyers function according to defined and established rules and procedures which they apply to specific cases. S.R.S. case workers, however may define their own rules and procedures. This is absolute power!

Our children are placed into the manipulative hands of "Heartless Monsters" as Dr. B.D. Kaman terms it. Res Hitler is dead, but Hitlerism is alive and well in Kansas its "SRS."

S.R.S. has and is given the ultimate power. They may keep our children in foster care the rest of their childhood. Needless to say it is in SRS'S Best Interest to keep as many children as they can!!!

IV 3/11

Their methods often go unchecked and unquestioned. Many of the S.R.S. case workers go into a case with the preconceived notion that the child has in fact been abused and then seem only interested in substantiating the claim.

This bill truly should show the State of Kansas just whose best interest SRS is thinking about. If they were doing a good job they would not have to worry about such a thing as immunity.

I am ever so grateful to know Senator Roy Ehrlich wants to get to the bottom of SRS and the problems our children in the state of Kansas have to face every day. Who is hurting all these little children who need of caring Kansas. A system in need of change, or all parents?

This bill would only promote "more state child abuse" if we could save just one child from this form of abuse it would be worth it.

I pray the State of Kansas tells SRS, it's not OK to not act professional and ethical. Together an answer or should I say answers can be found to protect our children... Abused and NOT!!!

If I have to move heaven and earth for my children and others like them I will, I am not sure how but I know I will, I must and I can find justice for them because "Six Years in Foster Care is

Unjust, Unexcusable and Inhumane!"

P.S. I am in high hopes SB 735 will become law this year a year in a child's life is a life time!!!

Sincerely
A Mother

Guardian's suit says state puts children in jeopardy

By Lynn Byczynski
Topeka Correspondent

TOPEKA — Child protective services in Kansas are so inadequate that the lives and safety of abused and troubled children are frequently endangered, says a Topeka lawyer who represents children in juvenile court cases.

The lawyer, Rene Netherton, filed a petition Monday in Shawnee County District Court alleging that conditions within the Kansas Department of Social and Rehabilitation Services violate the constitu-

tional rights of the children the agency is supposed to protect.

"I just began to feel that everyone was taking the attitude, 'That's the system; we all know it's messed up, but there's nothing we can do about it,'" Netherton said in an interview Tuesday. "Then I realized it didn't have to be that way."

She asks the court to order the state to hire more social workers, build a center for runaways, pay for counseling and find care for children who should not be left at

See SUIT, A-12, Col. 4

Suit says state imperils children

Continued from Page A-1

home.

Ann Rollins, spokesman for the Department of Social and Rehabilitation Services, said the agency had not received the petition, and usually did not comment on litigation.

Netherton is a court-appointed attorney who represents the interests of children in a juvenile-court case. She is paid \$10 an hour for the work, which involves evaluating each child's situation and making a recommendation to the judge.

Because only five attorneys are appointed to handle all juvenile-court cases in Shawnee County, she represents 467 children, she said. She has asked that the petition be made a class-action suit, on behalf of all Kansas children who are in custody of the social service agency.

Her suit was filed Monday, the day *The Kansas City Times* reported that two children died last year while in the care of the social services department, which is responsible for protecting abused children. Both deaths are being investigated as child-abuse homicides.

Charlie Walker, 3, of Topeka, died on Nov. 9, 1988, of blood loss from a ruptured liver. Jeremy Parker, 3, of Girard in Crawford County, died June 27, 1988, of head

injuries. Abuse is suspected in both deaths.

Netherton was not involved in either case, though she does represent Charlie Walker's 5-year-old brother, who was removed from the home after Charlie's death.

Since October, she said, foster homes, group homes and emergency shelters usually have been full.

"We (the judge and court-appointed attorney) were making a determination that these children could not be returned home safely, and yet they were being returned home because there was no place to put them," she said.

Often the judge's orders about where to put an abused or troubled child aren't followed for several days, she said, because Social and Rehabilitation Services social workers stopped attending the weekly juvenile court hearings five months ago.

She also said that social workers were so overloaded that they couldn't keep track of their cases and frequently failed to make reports required by the court.

In one case, Netherton said, a year-old child who had been scalded was sent home and a social worker was assigned to keep close watch on the family. After six months, a new social worker took over the case and visited the family.

"The child had racoon eyes from a fracture of the skull, and two old fractures of the tibia (leg)," she said. "This child had continued to be abused over six months. The social worker apparently just called once a week to ask how the family was doing, because he didn't have time to visit."

In another case, a teen-ager ran away from the home where she had been placed in Topeka, but her parents were never notified. After two months, she called her parents from Kansas City.

"Very few of these workers are totally uncaring people," Netherton said. "They just can't do all this."

Winston Barton, secretary of the Department of Social and Rehabilitation Services, last week agreed that caseloads are too large for many social workers. He requested additional workers in his C-level budget, an agency's "wish list."

Fifty social worker positions are vacant, he said.

Gov. Mike Hayden's budget announced Monday does not recommend money for additional social workers. It does, however, recommend \$3.7 million to pay for an increase in the number of children in foster care this year. No increase in financing is recommended for next year.

The McMartin Case: Indict the Children, Jail the Parents

Ray Buckey is a man whose life has already been effectively destroyed. The first charge of child abuse against this teacher at the McMartin day-care school in Manhattan Beach, Calif., was laid against him in the summer of 1983. The allegations against him had been extorted from her two-year-old by a mother—now dead—with a history of mental illness who also claimed that an AWOL Marine had sodomized her dog.

It was not long before Ray Buckey had direct experience of the operations of the justice system. The Manhattan Beach Police Department sent a letter to 200 fami-

Viewpoint

By Alexander Cockburn

lies whose children attended McMartin that read in part, "Any information from your child regarding ever having observed Ray Buckey to leave a classroom alone with a child during a nap period, or if they have ever observed Ray Buckey tie up a child, is important."

By spring 1984, Mr. Buckey, his mother, grandmother, sister and three fellow teachers had been arrested, and the police now claimed no less than 1,200 alleged victims of abuse. Briefly released, Mr. Buckey was rearrested and jailed for five years. On Jan. 18 of this year, after a trial that lasted more than two years and cost \$15 million (making it the most expensive criminal trial in U.S. history), a jury acquitted Mr. Buckey and his mother on 52 counts of molestation. On 13 remaining counts of molestation and conspiracy against Mr. Buckey the jury was deadlocked (though it seems a majority was convinced of his innocence) and a mistrial on these counts declared.

Any sane society would have granted the Buckeys peace to recover as best they

could from this horrible ordeal. But on Jan. 31, Los Angeles County District Attorney Ira Reiner announced that Ray Buckey would be retried on at least some of the 13 counts. The decision came after a period of grotesque agitation by the parents of the supposedly abused McMartin children. They appeared on talk shows, and terrorized the Los Angeles Board of County Supervisors into voting 4 to 1 to urge the district attorney to a new trial. (If he did not, they wanted the board to call upon the state attorney general to take the decision out of Mr. Reiner's hands.)

Mr. Reiner, who is running for the office of state attorney general this year, has in the recent past lost well-publicized cases. The McMartin verdict was another blow, and he obviously felt he had to put Mr. Buckey back in court or face taunts for being soft on child abusers. Mr. Reiner was also presumably under great pressure from Attorney General John Van de Kamp to retry Mr. Buckey, since Mr. Van de Kamp is running for governor and public sentiment is strongly against the jury's verdict of Jan. 18. So here are two men with tremendous incentives to put Mr. Buckey back in the dock—in an atmosphere so polluted with hysteria it must be doubtful whether any jury could be assembled to assure Mr. Buckey a fair trial.

The psychological squalor is even more disturbing. The McMartin case was but one in nearly 40 episodes across the country between 1983 and 1987 in which prosecutions against teachers or supervisors in day-care centers were prompted by children's accusations.

Many of these accusations, taken seriously by parents, social workers and the justice system, were of the most fantastic nature. McMartin children said they had been marched to cemeteries to dig up bodies. One child said he had seen his teacher fly. In 1985 children in Pennsylvania said teachers had forced them to have oral sex with a goat. In 1986 children in a preschool

in Sequim, Wash., said they had been made to watch animal sacrifice in a graveyard. In Chicago, the kids said they had watched a baby being boiled.

Terrible injustices were done in this extraordinary replay of the 17th-century Salem witch trials. People were tossed into prison for years, on the say-so of infants. In all 50 states children as young as two or three can testify to abuse, without corroboration from adults and without physical evidence. In many states they can make charges without having to endure cross-examination, being bounced up and down on a judge's knee in private chambers. In some states the charges can merely be repeated as hearsay by adults.

What was the reason for this wave of self-evidently preposterous stories about a satanic network terrorizing infant schools, and other tales of ritual abuse?

Society seems to have a periodic need for witch trials. At the onset of the Reagan era there weren't really any Communists around to persecute, so the hunt went back to the traditional exorcism of Satan, whose horns and cloven feet assumed the form of the local day-care teacher.

The 1980s also brought the great onslaught against Freud, arguing against Oedipal fantasy and in favor of the reality of physical abuse. These days many people like to claim they were "abused" as a child. It's a way of absolving yourself for screwing up by shifting the blame to your infancy, when you can't be blamed for anything. From these gymnastics, by which "therapists" make their money, the adult emerges guilt-free.

Also, the charges were quintessentially Reaganite, in that they took child abuse out of the family, which is where 99% of it occurs, and put it into day-care centers, which in the Schlaflyite scheme of things are abodes of Satan. Again, some parents probably feel a fair amount of guilt for dumping their children in day-care centers anyway, and are obviously ready by

way of compensation to support passionately whatever their children may claim. Of course, any considerate parent, social worker or sane therapist (as opposed to the hysterical self-promoters who mostly feature in these cases) would realize that months and years of interrogation and court procedures are the very last things a child needs after a genuine case of abuse. The public investigation and litigation merely magnify the hurt.

The trouble is that these parents now have a huge emotional investment in "the case," whether it be McMartin or similar episodes. Indeed, in some of these court trials the parents also have a strong material interest, in the form of very substantial awards by insurance companies that cover day-care centers.

So now the McMartin parents can triumphantly torture poor Ray Buckey again, abetted by the cowards and opportunists in the justice system. But if people can be prosecuted on the words of children, then children should take full responsibility for what they are saying. If a child says he saw Ray Buckey kill a horse with a baseball bat (which one did claim) and if this charge is disproved (which it was), then the child should be indicted for perjury, with present prohibition against such infant indictment removed.

If a parent abetted the child in this false accusation, then this parent should be indicted for perjury, too. If the court then establishes that parent and child were lying, at least the parent should suffer the consequences. A few well-publicized sentences of imprisonment of parents (along with "therapists" and social workers, it goes without saying) and we would see a speedy end to these disgusting miscarriages of justice.

Mr. Cockburn is a columnist for *The Nation* and the *Anderson Valley (Calif.) Advertiser*.

11/6 IV

Abuse in the Name of Protecting Children

Don't touch that child. Don't work with children. Never be alone with a child. You have to look at every child who comes through the door as a potential threat.

WORDS SUCH as these come from victims of current child abuse laws in the U.S. — parents, foster parents, teachers, physicians, members of the clergy, and others who have been falsely accused of mistreating children.

Many Americans applauded when laws were enacted to protect children from physical, emotional, and sexual abuse. I was one of them, having worked with emotionally disturbed children, many of whom had been victims of such abuse. Clearly, the intent of these laws was good.

Just as clearly, however, the consequences have been disastrous. The laws and the enforcement procedures related to child abuse too often deny human and constitutional rights to both the accused and the alleged victim. Indeed, observers have likened the climate created by these laws to that of Salem during the witch hunts, to that of Nazi Germany in 1939, or to that of the McCarthy era in the 1950s.

In the U.S. in 1985, reported cases of suspected child abuse totaled 1.7 million.¹ Of the reports involving sexual abuse, 80% were later determined to have been unfounded — up from 40% just five years earlier.² Half of the substantiated cases of child abuse involved neglect, not other types of abuse; only 7% of the substantiated cases involved

The laws and the enforcement procedures related to child abuse too often deny human and constitutional rights to both the accused and the alleged victim, says Mr. Emans. Our child protection system needs close public scrutiny.

BY ROBERT L. EMANS

sexual abuse.³ Accusations of child abuse bring suffering and distress to everyone involved. It has been estimated, for example, that as many as 80% of those who are falsely accused of child abuse lose their jobs or suffer other employment problems.⁴ Hundreds of people have had to undergo traumatic investigations to establish their innocence; others have had to take part in corrective activities for things they did not do. Individuals falsely accused of child abuse have been psychologically scarred, and their reputations have been severely tarnished. Whole families have been destroyed.

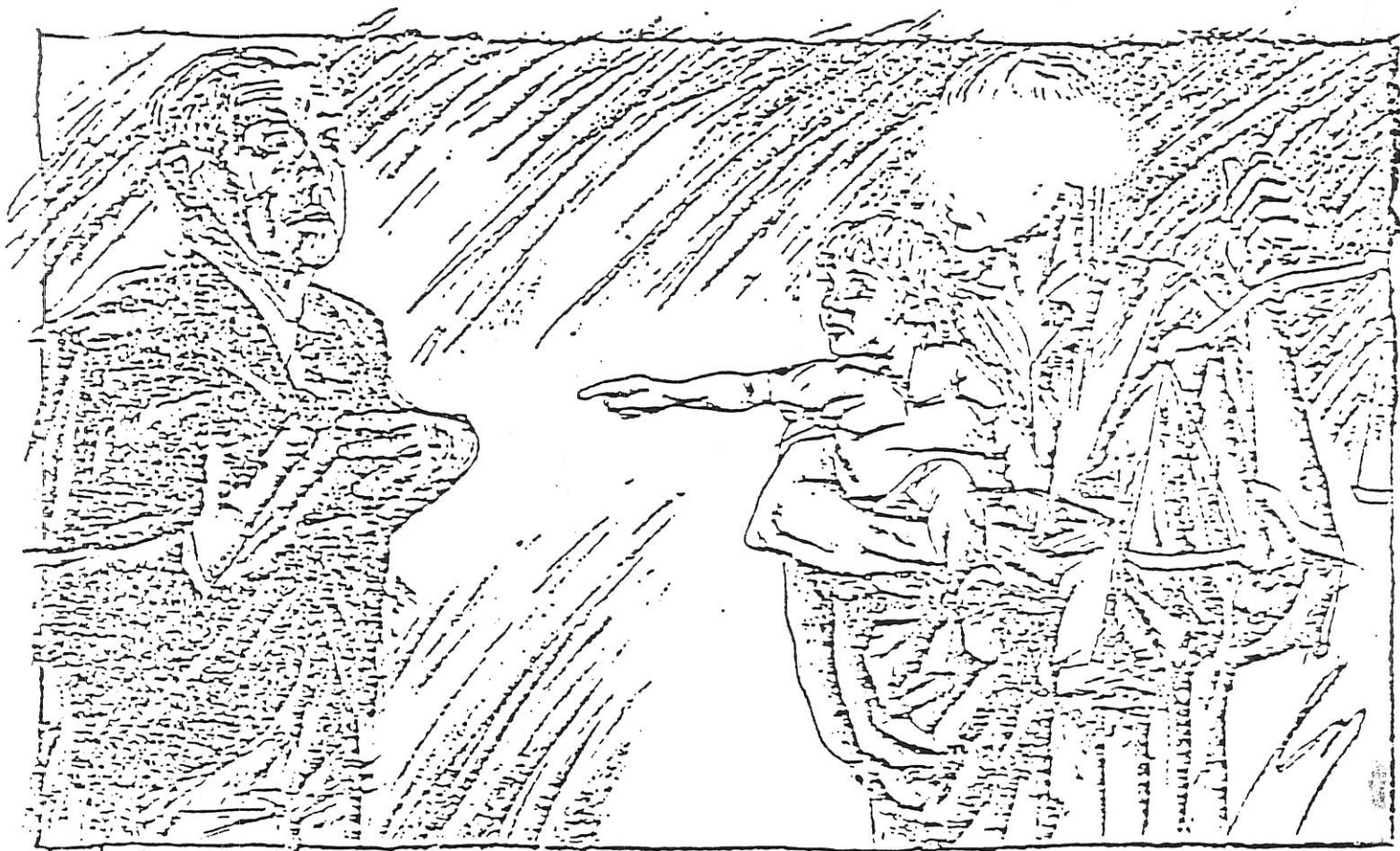
Even when cleared of such charges, parents may lose custody of their offspring, and individuals who work with children may be permanently listed in police records as possible child abusers. Meanwhile, the alleged victims themselves may be stripped, searched, or otherwise subjected to intensive physical and psychological examinations. During an interview on the television news program, "Nightline," for example, a pediatrician employed by a county protection service said, "I actually put my finger in a little girl's vagina, and I asked her, 'Is this what they did to you, and do you think it went in that far, and did it bleed?'"⁵

The problem is that laws governing due process are too often misunderstood or ignored. Accusers enjoy complete anonymity and full legal protection. Standard rules of evidence are frequently disregarded. Often, individuals accused of child abuse are presumed to be guilty until they can establish their innocence. Many officials would argue, however, that saving just one child from abuse justifies the wholesale denial of human and civil rights to those who are accused.

Anyone — even someone who is emotionally disturbed — can accuse another individual of child abuse at any time. Indeed, it can be a crime *not* to report a suspected case of child abuse, and social workers and law enforcement officers can be sued for failing to investigate such reports.

Consequently, people have been accused of child abuse as a result of reporting a missing child; hugging or kissing a child; having a child who is reluctant to participate in sports; speaking out in defense of a neighbor or a relative falsely accused of child abuse; complaining about a social worker; declining to submit to counseling; changing a diaper; or having a child who knows the names of bodily parts. Similarly, a drama director who failed to cast a certain child in a particular play, a teacher who gave low

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grades, a father who photographed his child in the shower, and physicians and dentists who provided normal examinations and treatments have faced such accusations.

The officials who investigate cases of suspected child abuse often have limited knowledge of children. Moreover, the procedures these officials use frequently lack reliability or validity.

The use of anatomically correct dolls to investigate cases involving the sexual abuse of children is a case in point. No study has ever demonstrated that such dolls produce reliable and valid evidence. Indeed, conducting such a study would be virtually impossible, since the subjects would have to include children who had never been sexually abused — and subjecting children to such research may itself constitute sexual abuse.⁶ Moreover, the use of anatomically correct dolls as investigatory tools has never been shown to meet the basic procedural requirements established by psychological science.⁷ Dr. Ronald Gabriel, a professor of psychiatry at the University of Saskatchewan and a practicing child psychiatrist, has noted:

Many persons working in the child protection field . . . do not know about the projection-evoking properties of

toys. The result has been that material produced . . . can appear to confirm suspicions of sexual abuse when it may actually be no more than a normal reaction of a child to the dolls and the situation. . . . [T]he suspect will almost always be found "guilty."⁸

DO CHILDREN LIE?

For generations, children were thought to be incapable of reporting what really happened to them. But the current view is that, since normal children are sexually inexperienced, every sexual experience they report must actually have taken place. This argument ignores the realities of child growth and development, however.

The work of Jean Piaget suggests that children do not discriminate between thoughts and the things thought of, between episodes of play and real-world events. They do not remember the origins of their knowledge, and they often mistake memories of dreams for memories of actual events. Children are not able to fully differentiate between internal thoughts and external happenings until about age 11.

People who maintain that children never fabricate with regard to sexual experiences are deluding themselves. Vengeful or disturbed adults can manipu-

late children into believing that they have been sexually abused when that has not been the case. Questioning by adults whom they fear and wish to please can induce children to lie, having done so, the children come to believe what they have said. After prolonged questioning by investigators, children often confuse fact and fantasy. When adults already (and often too willingly) believe that sexual abuse has occurred, they often deal with the alleged victims in ways that heighten the suggestibility of these children.⁹

The situation has been further confused by what has come to be known as the "child sexual abuse accommodation syndrome."¹⁰ Derived from cases of incest in intact families, the syndrome includes such behaviors on the part of the victim as secretiveness and helplessness. But children who have not been sexually abused often display these same behaviors, and the syndrome has never been scientifically validated.¹¹ Yet investigators continue to use the syndrome to corroborate children's statements about having been sexually abused.

Even the polygraph (or lie detector) is biased against innocent suspects who tell the truth. An innocent suspect who distrusts the polygraph test is likely to fail it. Studies have shown that failed poly-

graph tests are less accurate than polygraph tests that are passed. Yet juries are more likely to accept the results of a polygraph test if the suspect fails it than if the suspect passes it. After 30 years of studying the polygraph, David Lykken, a scientist with no vested interest in the instrument, has concluded that "the assumptions of the polygraph test are implausible and the evidence for its validity is weak."¹³

THE CHILD ABUSE INDUSTRY

Accusations involving child abuse used to be handled responsibly by established legal and family support agencies. Today the government has established a quasi-independent investigatory system for such cases that functions at taxpayers' expense. Not uncommonly today, child protection workers are women who consider themselves to be — or to have been — victims of abuse.¹⁴ LeRoy Schultz studied child protection workers recently and concluded that they tend to be self-righteous, unwilling to admit mistakes, reckless in ethics, naive about children, willing to use hearsay evidence, likely to conduct unethical investigations, and blind to contradictory evidence.¹⁵ Eileen Anderson found therapists to be addicted to power and often involved in a conflict of interest between their books and their professional responsibilities.¹⁶ Writing for the Boston Globe in 1985, Eli Newberger also had some disturbing

views on child protection workers. He said that "many of these individuals seem to take pleasure in inflicting pain on children, to derive personal excitement and titillation from the stories of their suffering, and to relish the lively interest of opposing counsel, jurors, and their peers."¹⁶

Large national organizations, though they mean well, sometimes contribute to the injustices. For example, in a 1985 statistical report on child abuse and neglect, the American Humane Association stated, "While some 'unsubstantiated' reports are in fact false, an 'unsubstantiated' case does not necessarily mean that the child was not abused or neglected or that someone was falsely accused of abuse or neglect." The report fails to point out, however, that a "substantiated" case may also be false. These officials forgive their own mistakes. They also ignore the fact that "unsubstantiated" cases involving innocent individuals can have disastrous effects on those individuals' lives.

Dr. Domeena Renshaw, a professor of psychiatry and director of the Sexual Dysfunction Clinic at Loyola University of Chicago, believes that far fewer children have actually been sexually abused than the number of reported cases suggests.¹⁷ Douglas Besharov, the former director of the National Center on Child Abuse and Neglect, concurs.¹⁸ Richard Wexler maintains that child protection workers are often determined to find evidence of wrongdoing in order to make themselves look good.¹⁹ For example, promotions are sometimes given to police officers who have a good record of convictions.²⁰ Meanwhile, the Berean League has pointed out that social workers "must find (or conjure) enough evidence to support their action" in cases of child abuse.²¹ Predictably, when observers question the astonishing number of reported cases of child abuse, child protection workers commonly respond with pleas for more funds, more staff, better reporting campaigns, and greater authority over families and child-care workers, including teachers.

Even with increased funding, however, investigations of child abuse would be woefully inadequate. Investigators are often insufficiently regulated, and they tend to lack knowledge of child development and training in the procedures of conducting psychological evaluations. They often inject into reports their own personal opinions. Yet they often have enough

influence to convince a judge to issue a warrant for an individual's arrest — thereby causing that person's name to be placed on police records as a suspected child abuser.

Investigators will excuse themselves for inadequate investigations, because supervisors are supposed to review their work. But the reviews by supervisors are seldom thorough, thanks to heavy workloads and the desire of supervisors to support the actions of their subordinates.

Going to court is a costly and distressing process. Yet this is often the only way for individuals accused of child abuse to prove their innocence. For the falsely accused, however, going to court has many risks. Attorneys and judges assume that the accused is guilty much more frequently in cases involving child abuse than in other kinds of criminal cases, including those involving murder. Since getting a fair trial is very difficult, individuals falsely accused of child abuse are often advised to plead guilty and to accept counseling or other remediation offered by members of the same child protection industry that has falsely accused them.

WHAT CAN BE DONE?

School administrators, teachers, parents, and other potential victims of child abuse laws can take a number of steps to protect themselves. First, they must squarely face the possibility of a false accusation. Should such an event occur, the accused — though innocent — should consider himself or herself in serious trouble, hire an attorney immediately, and make no statement to anyone unless the attorney is present.

The accused should document everything and should not be fooled into thinking that the child protection workers are merely attempting to solicit his or her professional help as part of a preliminary investigation. Those workers are trying to build a case. By the same token, the accused should not offend the child protection workers, because they have the upper hand. Meanwhile, colleagues and acquaintances of the accused should operate on the assumption that the accused person is innocent until proven guilty.

Happily, an increasing number of people are familiar with the problems I have pointed out here, and they are attempting to change the system. Therefore, an individual who is accused of child abuse should immediately report to an appropriate official in the child protection system



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"I must have an intelligence leak."

any investigator whose attitude seems unreasonable or whose procedure seems questionable.

Individuals who are falsely accused of child abuse — as well as their colleagues and friends — should be willing to go to court. The time has come to hold child protection workers legally and financially responsible for their actions. Of late, the courts have been finding more child protection workers liable for conducting substandard investigations and ignoring the rights of the accused. As Schultz has noted, the threat of a lawsuit, a charge of malpractice, or revocation of a child protection worker's license to practice may be our last resort.²³

Meanwhile, school personnel should actively endeavor to improve the child protection system, not only for the benefit of abused children but also for the benefit of adults who have been falsely accused of such wrongdoing. The laws related to child abuse and neglect should be rewritten to define "abuse" more clearly, to guarantee due process for accused individuals, to establish rules of evidence that better protect the innocent, to hold those who falsely accuse others legally accountable, and to establish legal processes that would enable accused individuals to afford a reasonable defense. Publicity campaigns should emphasize what *should* be reported as potential child abuse — and also what should *not*. The motives of accusers should be evaluated carefully.

Inadequately trained child protection workers must be stripped of their power through stricter professional standards. The personal opinions of child protection workers should be expunged from oral or written reports. Unless a worker has formal training in the area, he or she should not be allowed to make any statement that implies expertise in psychology or psychiatry.

Child protection workers should be required to turn in well-documented reports. Hearsay evidence should not be permitted, and all interviews should be videotaped to insure that the information was not obtained through improper interviewing techniques. Child protection workers should be held accountable for their actions, and they should be meticulously supervised by individuals who are knowledgeable regarding child development.

The repeated use of certain "experts," who have developed reputations for getting convictions, should be discontinued.

As things now stand, it is easy to be against child abuse but very difficult to defend those who are accused of this crime.

Child protection workers rely too much on the testimony of such individuals, instead of conducting thorough investigations on their own.

Processes should be developed for correcting or removing information from an individual's record when that information cannot be established as fact. Statistical reports should be accurate and honest. If child protection teams have been established, their membership and their procedures should be open to public scrutiny. Leaders in a variety of arenas — political, educational, governmental, medical, religious, legal, and so on — must assume responsibility for dealing with the problems that have been created by the current laws on child abuse.

As things now stand, it is easy to be against child abuse but very difficult to defend those who are accused of this crime. Unless something is done to correct this situation, our entire system for protecting children from abuse will falter and our child-care institutions — and the people working in them — will remain in jeopardy. The child protection system must come under close public scrutiny. The goal is to keep the system honest, to resist media-generated hysteria, and to protect the innocent — both children and adults.*

*For more information, contact the VOCAL National Office, P.O. Box 11335, Minneapolis, MN 55411. Ph. 612/521-9714.

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Lawmakers wrestle with foster-care issues

By MARTIN HAWVER
Capital-Journal legislative writer

It is emotional dynamite every time it happens.

Parents and grandparents in the past two weeks have appeared before the Senate Public Health and Welfare Committee, testifying that their children and grandchildren have been seized by the state, put into foster care where their relatives can't find or contact them.

The issue they raise is one that is as important as it is unpleasant. It is parents' losing custody of their children. They lose custody of their children, have them removed from their homes by the state's social service

agency, when there is reason to believe that the children have suffered and will continue to suffer abuse.

A public health subcommittee this week will sketch an outline of a plan to investigate the state's role in removing children from their homes, placing them in foster care for their own protection.

"The issue is a big one, an important one, and we are going to get to the bottom of it," says committee Chairman Roy Ehrlich, R-Hoisington. "We have (the state Department of Social and Rehabilitation Services) taking away children, and we need to know whether they are making the right decisions.

"They remove a child from a

Legislature

- This week, p. 8-C
- Lobbyists, p. 9-C

home, and sometimes the child never gets back, even if the parents haven't done anything. We're going to get to the bottom of it.

"And there are cases probably 90 percent of the time or more, when they save a child's life by removing it from an abusive home. There is that percentage in the middle, those cases, that we need to deal with."

The issue is murky because state

law prevents open discussion of SRS actions involving children.

A few paces from the committee room where parents have alleged that SRS "snatches" their children is another committee room where in recent weeks, lawyers have asserted to the Senate Judiciary Committee that SRS doesn't move quickly enough to remove children from homes where they are abused, even murdered.

Those lawyers cite recent cases, including the conviction of Mark A. Hupp of first-degree murder in the death of his 3-month-old stepson, Michael A. Cloud, as an indication that SRS is not protecting children from abuse. The Cloud infant was re-

moved from his home to foster care and later returned by court order.

Robert Barnum, SRS commissioner of youth services, acknowledges that his division is taking fire from both sides and also admits that there is little SRS can do under legal requirements of confidentiality to defend the actions of its workers.

"There are a lot of cases," Barnum says. "The state has about 6,000 children in foster care; more under supervision in their homes, where we work intensively with the entire family to make sure that the children are protected.

"Each year, about 50 percent of

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Continued from page 1-A

those children are released back to their families, after their safety is assured. Last year, we closed 1,968 cases in which the state took custody of children.

"That is a lot of children."

SRS stands by the decisions of its social workers. "And remember that we don't remove children from their homes without a judge hearing the evidence and giving us the OK," Barnum says. "Even in emergency situations, we don't do it; we have law enforcement officers accompany us. This is a system built on the

principle of protecting children."

And SRS' best chance of demonstrating that it acts fairly and in the best interest of children in removing them from abusive homes will come at the hands of the committee that ostensibly is seeking to review and potentially circumscribe the authority of SRS to act quickly and decisively to protect children.

Sen. Audrey Langworthy, R-Prairie Village, chairs the public health subcommittee that is crafting a request for the Division of Legislative Post Audit to investigate SRS policies, actions and cases in which children are removed from their natural parents.

For Barnum, "that is the best way for SRS to tell its story," he said.

"We can't stand up in front of committees and tell on individual cases why we made our decisions," he said. "We aren't permitted to do that."

"They have always been a very professional organization, and we welcome them reviewing cases, whatever they need, to be able to report to the Legislature on the job we are doing."

Sen. B.D. Kanan, D-Kansas Citv.

has become a magnet for parents who believe they have been aggrieved by SRS.

Kanan says, "I get these stories. I meet and talk to the people, and I tell you, it is heartbreaking.

"You can hear the stories of these people, their children taken away from them and kept, put in foster care when the parents didn't do anything wrong.

"I am sure that there are cases where SRS did take children that needed to be taken. There are lots of those, but there is a percentage. I don't know what it is, when SRS takes children out of their homes and makes mistakes and then doesn't let the children return."

Langworthy, Ehrlich and Kanan agree that an investigation of SRS isn't going to be quick.

Ehrlich says, "I am hoping that we get the post audit study approved and that we spend the summer this year investigating, taking testimony, getting to the bottom of all of this.

"It is an issue that there won't be quick solutions to, but it is an issue that we are going to go through line by line, until we find out for sure what is best for the children."

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