

Approved: 14 June 1991
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Vice-Chairperson Senator Jerry Moran at 10:05 a.m. on April 2, 1991 in room 514-S of the Capitol.

All members were present except: Senators Winter, Yost, Feleciano, Kerr and Oleen who were excused.

Committee staff present:
Mike Heim, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:
Shirley Norris, Topeka
Senator Nancy Parrish, Advisory Commission on Juvenile Offender Programs
Representative Dorothy Flottman, Kansas State Advisory Group
John Poertner, University of Kansas Professor of Social Welfare
Barbara Huff, Keys For Networking, Inc.
Melissa Ness, Kansas Children's Service League
Doug Bowman, Children and Youth Advisory Committee
Carolyn Risley Hill, Kansas Department of Social and Rehabilitation Services

Vice-Chairman Moran brought the meeting to order by opening the hearing for HB 2012.
HB 2012 - advisory commission on juvenile offender programs as state advisory group for purposes of federal juvenile justice and delinquency prevention act.

Shirley Norris, Topeka, testified in support of HB 2012 and requested an amendment to include the Department of Health and Environment as a member. (ATTACHMENT 1)

Senator Nancy Parrish, as Chairperson of the Advisory Commission on Juvenile Offender Programs, testified in support of HB 2012. (ATTACHMENT 2)

Representative Dorothy Flottman, Chairperson of the Kansas State Advisory Group, testified in support of HB 2012. She reiterated the testimony of Senator Parrish and co-authored the prepared testimony. (see ATTACHMENT 2)

As no other conferees appeared, this concluded the hearing for HB 2012.

Senator Moran opened the hearing for SB 353.
SB 353 - local children's authorities pilot studies established.

John Poertner, University of Kansas Professor of Social Welfare, testified in support of SB 353. (ATTACHMENT 3)

Barbara Huff, Executive Director of Keys For Networking, Inc., testified in support of SB 353. (ATTACHMENT 4)

Melissa Ness, Kansas Children's Service League, testified in support of SB 353. (ATTACHMENT 5)

Doug Bowman, Children and Youth Advisory Committee, testified in support of SB 353. (ATTACHMENT 6)

Carolyn Risley Hill, Acting Commission of Youth and Adult Services of the Kansas Department of Social and Rehabilitation Services, testified in opposition to SB 353 without in-depth study first. (ATTACHMENT 7)

This concluded the hearing for SB 353.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:05 a.m. on April 2, 1991.

Written testimony was submitted by James McHenry, Kansas Child Abuse Prevention Council, in support of SB 334. (ATTACHMENT 8)

SB 334 - immunity for multidisciplinary teams assisting determination of child in need of care.

Senator Bond moved to approve the minutes of February 7, 1991. Senator Yost seconded the motion. The motion carried.

The meeting was adjourned.

Testimony on HB 2012
presented to the
Senate Judiciary Committee
April 2, 1991

Shirley A. Norris
131 Greenwood
Topeka, Kansas 66606
Ph. 913-232-3206

My name is Shirley Norris. I am testifying today as a private citizen. However, I am basing my testimony on my professional experience as director of the Child Care Licensing and Registration Section in the Kansas Department of Health and Environment, a position I held for thirty-one years before retiring in November, 1990.

Kansas Statutes 65-501 through 65-526 authorize the **Kansas Department of Health and Environment** to license or register every category of out-of-home child care, including any **detention home for children under 16 years of age provided or maintained by, or receiving aid from any city or county or the state.** [K.S.A. 65-503(a)(4)}

K.S.A.65-504 grants the Department the authority to deny or revoke licenses when regulations are not met, and 65-508 authorizes the Department to **develop and adopt rules and regulations for the operation and maintenance of child care facilities.** Detention Center Regulations were last promulgated by the Department in 1979, and are a top priority to be updated.

Because of its regulatory role in the operation of detention facilities, the Department of Health and Environment has a major role in both determining and enforcing the public policy of the state relative to the detention of children. Therefore, it is hard to understand why this agency was not included on the Advisory Commission on Juvenile Offender Programs, created by this proposed legislation. In the final analysis, it is the Department of Health and Environment, through its promulgation of regulations and the resulting enforcement of them, which implements the programs determined by the Advisory Commission. If this agency is not a mandated member of this commission, it would seem to me that

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it would be much more difficult to translate those programs into the regulatory form necessary to be sure they are carried out.

It is my understanding that members of the House Judiciary Committee responded to this suggestion (made in the KDHE testimony) by stating that if membership by KDHE were mandated, another private citizen would have to be added. However, since the number of non-agency members jumped from four to 14 in an amendment to the original legislation, it would seem that the private sector is well represented, and that one more state agency (bringing the number to five) would not terribly overload the commission. However, if there is some predetermined ratio of state agency to the private sector, then I suggest that KDHE has a far more vital role to play in the detention of juveniles that does the Department of Corrections, which has no legal authority over children under the age of 18 unless they are tried as adults. It is actually SRS and KDHE that are the partners in the detention of youth, and who determine how detention facilities are operated.

It is also my understanding that members of the House Committee suggested someone from KDHE could be appointed under the designation "those concerned with . . . health services for children" (page 2, line 5). The regulation of detention homes is not a health service in the sense conveyed by this phrase, so that unless a regulatory professional were specifically designated, it is likely that the health services designee would be a physician or nurse, not a representative of the Child Care Licensing Section or of the Bureau of Adult and Child Care.

I respectfully urge you to amend this proposed legislation to include the Kansas Department of Health and Environment as a mandated member of the State Advisory Commission on Juvenile Offender Programs.

Thank you.

TO: Senate Judiciary Committee

RE: H.B. 2012

FROM: Advisory Commission on Juvenile Offender Programs

This bill combines the Advisory Commission, which is charged with oversight of juvenile offender programs generally and the policy of providing alternatives to jails for juveniles, with the Kansas State Advisory Group, which is appointed by the governor to meet the requirements of the federal Juvenile Justice and Delinquency Prevention Act.

The Advisory Commission currently consists of 14 members and the State Advisory Group of 15-33 members, depending upon the pleasure of the governor. Over the past eight (8) years the two groups have been meeting together, and after year-long discussions have proposed they be combined to bring about more efficiency and effectiveness.

The statutory language and regulations of the Juvenile Justice and Delinquency Prevention Act allow the merger of a State Advisory Group and a Supervisory Board such as the Advisory Commission if certain conditions are met: (1) The specific federal membership requirements of the State Advisory Group must be retained so that there is a broad representation of juvenile justice interests; (2) The chair and a majority of the members must be appointed by the governor; and (3) The federal charge must be included in the state statute.

- (1) The membership requirements are met in the sections on page 1, line 42 - p. 2, line 18 of the bill as passed by the House. These include broad representation, an assurance that a majority of the members shall be under 24 at the time of appointment, and that three of the members shall have been or shall currently be under the jurisdiction of the court.
- (2) The requirement that a majority of the membership and chair be private citizens is found on p. 2, lines 13-15, and the requirement that the chair be appointed by the governor is found on p. 4, lines 2-3.
- (3) The federal charge is found on p. 5, lines 28-36.

The Advisory Commission and State Advisory Group believe that H.B. 2012 will assure continued planning, monitoring and oversight of juvenile offender programs, jail alternatives implementation, and the Juvenile Justice and Delinquency Prevention Act, while at the same time eliminating one of two bodies which has had overlapping concurrent advisory authority.

The fiscal impact of this bill may be a minimal reduction in the amount of travel funds expended. This is difficult to predict because the geographic representation on the new body is unknown at this time.

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Children's Services Testimony

John Poertner

The large number of proposals for reform of the Kansas child welfare system attests to the acknowledgment that something must be done. There is agreement on many points including:

- The Kansas child welfare system is inadequately funded. You need to find increased resources for children.
- When the budget battles heat up children do not have a large and effective constituency. You have to provide the leadership for Kansas children.
- Most Kansas resources for children are devoted to expensive out of home placements resulting in a system which lacks creativity and flexibility.
- No state has an "ideal" child welfare system to serve as a model for Kansas. However we do have knowledge and must use what we know.

Given this situation how does the legislature respond. The following case example illustrates the type of system we have and the type we need.

A family adopts a child who needs a family. The family notices almost immediately that the child does things that are difficult to control. The family goes to a variety of local service agencies to obtain assistance in caring for their child and is told that this agency cannot help them. From some agencies they receive services that do not help. Finally the family finds a program 60 miles away that makes a difference. The program is able to help the child during the school day and the parents are able to care for the child during the remained of the time. The program costs \$1,500 per month which is difficult for the family and they use their savings to pay for the service. The family continues to seek help because they know that their savings will not last. They appeal for an adoption subsidy. They are refused. They continue to approach the state for help. They even suggest that they continue to pay half of the costs and the state pay half. They

are met by an inflexible system that say's this is not possible. Finally they relinquish custody of their child to the state. They are no longer involved in decisions about their child and the child is placed in a residential placement costing \$150 per day or \$4,500 per month.

How might it work differently. The same family goes to the single local entity responsible for children in out of home placement and children at risk of out of home placement. This local agency requires all of the professionals involved in the child's case to meet and determine what this child needs to be safely cared for within a family. The local entity uses family and public funds as creatively and flexibly as possible to "wrap " services around the child and maintain the child safely at home. When and if this is not possible the local entity pays for out of home placement out of their residential placement allocation. The personal and fiscal implications are clear to the family, community and state. If the families needs are not met they have administrative, political and legal recourse. It is clear which agency is responsible for the outcome for this child and family.

How do you proceed to create a flexible and accountable system? There are parts of all of the proposals before you which will take Kansas in the desired direction. The essential elements include:

1. You, the legislature defines the outcomes you want for children and families in Kansas.
2. You require a strong state child welfare agency that:
 - maximizing claims on federal funds that are compatible with your defined outcomes for children.
 - holds local communities accountable for funds and your defined outcomes for children and families.

- provides training and technical assistance to local communities to accomplish your mandate.
- reports annually to you on outcomes for children and families in Kansas.
- develops structures, policies and funding mechanisms that maximize creativity and flexibility in meeting the needs of Kansas families.

3. You create strong community entities that:

- are responsible for the outcomes you define for all children in out of home placement or at risk of out of home placement.
- are responsible for all funds currently expended on these children.
- establishes a single point where all professionals involved in each of these child's situation meet to decide on how to meet the child's needs within the most family like environment possible.

The Local Children,s Authority has all of these required elements. It is my belief that this is the best way to create the type of child welfare system we want for Kansas. Through careful pilot testing we can answer critical questions about implementation and build a community based child welfare system in Kansas.

A Child Welfare Outcome System for Kansas

The Department of Social and Rehabilitation Services will report annually to the legislature on the outcomes of all children's programs including but not limited to:

- achievement of permanent placements
- reunification with original caretaker
- adoptions
- adoption disruptions
- child abuse or neglect recidivism
- child abuse or neglect after case is closed
- abuse or neglect while active protective service case
- school attendance and academic performance of children in the care and custody of the secretary

Keys For Networking, Inc.

700 S.W. Jackson
Jayhawk Tower Suite 100-A
Topeka, Ks. 66603

April 2, 1991

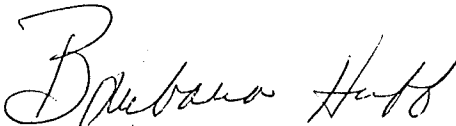
Senator Wint Winter
State Capitol Building
Topeka, Kansas 66603

Dear Senator Winter,

Keys For Networking, Inc. supports Senate Bill 353 on the need for flexible funds in order for families to have access to programs and services that will allow them to keep their children at home and in their communities.

Thank you for your continued support in the area of children and youth services.

Sincerely,



Barbara Huff
Executive Director

Senate Judiciary Committee

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Attachment 4

Keys For Networking, Inc.

700 S.W. Jackson
Jayhawk Tower Suite 100-A
Topeka, Ks. 66603

Since 1985, families in Kansas have been involved in identifying their needs and defining the services they need to keep their children in their homes and communities. Through the Family Input Project and the subsequent follow up to the Families As Allies meetings, families have consistently stated what they have needed and have articulated the services and family supports which would enable them to keep their children and adolescents at home. This has been reiterated by parents involved in the Kansas CASSP Advisory Board, the formation and implementation of Keys for Networking, and the numerous support networks now available to family members in Kansas.

It has been estimated that there are approximately 10,000 children and adolescents in Kansas who have a severe emotional disturbance. Another 60,000 children and adolescents are reported to be in need of mental health services and are at risk of developing a severe emotional disturbance.

There is broad agreement among Kansas families and families across the country that a comprehensive, coordinated system of care must be developed and funded for children and adolescents with emotional disturbances. Such a system should include a wide array of services and family supports in order to meet the multiple needs of these children and their families. The concept of a system of care represents more than individual service components. Rather, it embodies a philosophy about the way in which services and family supports should be delivered to children and their families. Two core values and ten principles have been developed by the National Institute of Mental Health's Children and Adolescent Service System Program (CASSP), to provide this philosophical framework for the system of care. Families in Kansas support these values and principles in their entirety.

The two core values are:

1. The system must be driven by the needs of the child and his or her family, and must be child and family centered.
2. The system of care should be community based.

The ten principles are:

1. Children and adolescents with serious emotional disturbances and their families should have access to a comprehensive array of services and supports that address the child's and family's physical, emotional, social, and educational needs.
2. Children and adolescents with serious emotional disturbances and their families should receive individualized services and supports in accordance with the unique needs and strengths of each child and family.
3. Children and adolescents with serious emotional disturbances and their families should receive services and supports within the most normative environments.
4. Families of children and adolescents with emotional disturbances should be full participants in all aspects of planning and delivery of services and supports.
5. Children and adolescents with emotional disturbances and their families should receive services and supports that are integrated, with linkages between child-care serving agencies and programs and mechanisms for planning, developing and coordinating services and supports.

over

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6. Children and adolescents with serious emotional disturbances and their families should be provided with case management to ensure that the multiple services and supports are delivered in a coordinated manner, and that they can move through the system of services and supports in accordance with their changing needs.
7. Early identification and intervention for children with serious emotional disturbances should be promoted by the system of care in order to enhance the likelihood of positive outcomes.
8. Adolescents with serious emotional disturbances and their families should be ensured smooth transitions to the adult service system as the adolescent reaches maturity.
9. The rights of children and adolescents with serious emotional disturbances and their families should be protected, and effective advocacy efforts should be promoted.
10. Children and adolescents with serious emotional disturbances and their families should receive services and supports without regard to race, religion, national origin, sex, physical disability or other characteristics; and services and supports should be sensitive and responsive to cultural differences and special needs.

The services and family supports Kansas families of children and adolescents with serious emotional disturbances have identified include, but are not limited to, the following:

SERVICES

- Central point of entry
- Early identification and intervention
- Assessment and diagnosis
- Case management
- Education/mental health liaison
- Outpatient treatment
- Name-based family services
- Family-based crisis services and other emergency services
- Day treatment
- Short-term inpatient care
- Therapeutic foster care
- Therapeutic group homes that are community-based
- Vocational assessment and training

Services to enable adolescents to transition into adult services and/or to transition into independent living:

FAMILY SUPPORT SERVICES

FORMAL SUPPORTS

- Respite care
- After-school programs
- Summer programs
- Recreational activities
- Home aide

INFORMAL SUPPORTS

- Information
- Support networks and groups
- Training (advocacy and parent education)
- Volunteer programs
- Transportation
- Any other supports necessary for the family to maintain the child in their home



... to protect
and promote the
well-being of children
... to strengthen
the quality of
family life
— since 1893

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Services for Families
& Children

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE

RE: SB 353 ESTABLISHING LOCAL CHILDREN'S AUTHORITIES
PILOT STUDIES

BY: MELISSA NESS J.D., M.S.W.

Kansas Children's Service League is a statewide not for profit child welfare agency. Our mission is to promote the well-being of children and to strengthen the quality of family life.

The Kansas Association of Licensed Private Child Care Agencies serving children and families in the custody of SRS and ensuring appropriate quality child welfare services are available.

As such, one of our organization's top recommendations for 1991 is that Kansas define a statewide policy for children and families. The combination of broad based state policy for children and families and quality service delivery are at the heart of the proposal before this committee.

WHY CONSIDER THIS PROPOSAL?

>Our human service delivery system is problem driven and crisis oriented.
>Our system has outlived its ability to respond in the way it once could.
>Our system does not allow the opportunities needed by our children and families to stay together, to become self-sufficient or independent of our governmental support systems
>Consequently, priorities for human services are based on resource availability and not clear policy choices.

TWO KEY QUESTIONS

In order to gain adequate support for this proposal two key questions must be answered:

1. Will this proposal move us from a resource driven to policy driven system?
2. Will this proposal assist in making services developmental, preventive and child centered in nature versus problem and crisis centered?

We believe this proposal does meet that threshold test. Policy makers, the SRS task force and other citizen participants are to be commended on their effort to date.

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The bigger question therefore is not do we change our response but rather how and in what manner?

Before a proposal of this nature is implemented, the intent behind and the outcomes hoped for must be more clearly defined. In addition, the following questions must be asked and answered in the affirmative:

1. Are comprehensive policies included in this proposal or does it support the development of them? Are these policies supported through legislative and legal action?
2. Are there competent organizational structures to deliver services or does this proposal create the opportunity for this to happen?
3. Are there adequate financial resources which can ensure sufficient service amount and quality, including competent staffing for the particular proposal?
4. Is there a provision for or is there in fact effective community linkages to ensure coordination and prevent fragmentation of effort?
5. Is there effective service or program evaluation models included in this proposal which identify the outcomes desired by this proposal?

RECOMMENDATIONS:

This proposal is one of several aimed at redesigning the way we deliver services to children and families. Other proposals we believe address similar issues include:

>HB 2010 Establishing the Kansas children's services planning commission and its companion SB 227 Establishing in each judicial district a children's community services planning group.

>HB 2542 Establishing a Governor's commission and local commissions on children youth and families

We therefore recommend this body:

- >Establish a special or interim committee which will further refine a proposal. We are not asking for further study.
- >Combine the concepts and proposals specifically in HB 2542 and HB 2555. HB 2542 begins with a policy and planning concept and works down
- >Establish a policy framework that outlines obligations, commitments and outcomes relevant to children and families. Until we have a well defined policy, for families and children we, are going to be unable to develop responsive systems and programs.

>Identify other state entities particularly other state commissions which attempt to set state policy as it relates to children and families. This will be critical in our ability to coordinate policy and set clear planning parameters for the state and local communities.

In the alternative: Consideration should be given to the passage of HB 2010 and its companion SB 227 which has passed this committee. These could give us the foundation needed to further develop state policy and programs for children and families. Additionally, we believe flexibility exists within the Department of SRS to pilot a program similar in nature to the one proposed in SB 353, through one of the area offices. This avenue should be aggressively pursued by the Commissioner of Youth Services.

SUMMARY

We believe the search for the perfect model is over. In these proposals, you have the basis for positive change in the child services delivery system. The danger now is devoting too little time or inadequate resources to truly refine a solid proposal.

We ask the committee to give serious consideration to these proposals.



STATE OF KANSAS

CHILDREN AND YOUTH ADVISORY COMMITTEE

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300 S.W. OAKLEY
TOPEKA, KANSAS 66606-1898

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KANS-A-N 561-2017

TESTIMONY BEFORE SENATE JUDICIARY COMMITTEE
Senator Wint Winter, Jr. - Chairperson
SB #353 - April 2, 1991

Mr. Chairperson and members of the committee, thank you for the opportunity to testify today. My name is Doug Bowman, and I represent the Children and Youth Advisory Committee.

The proposed creation of local children's authority pilot studies is one which generates much interest and many questions. I've heard the comment that this might be another reincarnation of the county welfare system. Undoubtedly, this proposal would give these local entities broad powers that may impinge upon current government responsibilities. We feel certain fundamental state obligations should be excluded from the proposed bidding process. For example, the state should not delegate duties in the areas of child protective services and juvenile justice matters. Additional questions arise over the feasibility of decategorizing federal funds. We are unaware of any jurisdiction that has successfully done so. Additionally, we would recommend legislative participation in the state children's authority.

There are features of this bill we find attractive. The emphasis upon local participation in policy decisions is long overdue. The creation of flexible funds that can be used to creatively address the needs of families currently falling into the gaps in our system is also laudable. The use of outcomes-based criteria insures that we get our money's worth. This proposal seems to be calling for a delivery system more focused on the needs of the families being served, with a critical emphasis on prevention strategies.

At a time of fiscal crisis, when many children's programs are underfunded, we must proceed cautiously. In general, pilot projects make a lot of sense. In our efforts to design a state-level oversight body, we should not overlook the possibility of "re-tooling" the existing machinery. The Children and Youth Advisory Committee and the Advisory Commission on Juvenile Offender Programs could serve in this capacity.

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DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Robert C. Harder, Acting Secretary

Testimony on Senate Bill 353

AN ACT ESTABLISHING LOCAL CHILDREN'S AUTHORITIES PILOT STUDIES FOR PROVIDING CHILDREN'S SERVICES; GRANTING CERTAIN POWERS TO AND IMPOSING CERTAIN DUTIES UPON THE SECRETARY OF SOCIAL AND REHABILITATION SERVICES; ESTABLISHING THE CHILD WELFARE FUND; PROVIDING FOR CONTRACTING WITH LOCAL CHILDREN'S AUTHORITIES; ESTABLISHING THE STATE CHILDREN'S AUTHORITY AND PROVIDING FOR THE POWERS, DUTIES AND FUNCTIONS THEREOF.

Mr. Chairman, Members of the Committee, I appear before you today regarding Senate Bill 353.

This bill proposes the development of pilot studies on local children's authorities in two judicial districts and the establishment of a state children's authority. The state and local children's authorities proposed in this bill and in House Bill 2555 have elements in common with the children's planning commissions proposed in House Bill 2010 and Senate Bill 227 and the commissions on children, youth and families proposed in House Bill 2542.

We are supportive of the development of more effective collaborative efforts at both the state and local levels and believe that this bill and the bills mentioned above should be studied together for possible consolidation. Of the bills under discussion, House Bill 2010 and Senate Bill 227 on children's planning commissions appear to be the most feasible without further study. In addition, we believe that many of the aims of this bill can be achieved without the drastic overhaul of the child welfare system which is envisioned. In recent discussions with Representative Henry Helgerson and John Poertner, University of Kansas, SRS agreed to undertake a pilot project to serve children and families in a more flexible way in one community without this legislation.

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Testimony on Senate Bill 353

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Leadership should be provided at the state level for the development of integrated state policy on children and families. Priority should be placed on strategies which enable families to carry out their responsibilities to their children and to function independently. Expectations should be tied to the resources allocated with emphasis placed on outcomes to be achieved. Consumer involvement in planning should be ensured. State level agencies should model the kind of collaboration necessary to achieve the outcomes sought.

No matter what strategy is ultimately selected for implementation in local communities, a thorough review of recent studies should be completed to determine their applicability to the local situation. Recent examples include the Department of Education's study of at-risk students, the Children and Youth Advisory Committee's Ten Year Plan, the Juvenile Offender Policy Conference, the University of Kansas Analysis of the System of Care for Severely Emotionally Disturbed Children, Legislative Performance Audit Reports, and Governor Hayden's Task Force on Children and Families. Some communities also have needs assessments and priority studies which would be helpful in this effort.

Communities should be encouraged to build on the considerable collaborative efforts which already exist. Communities are in the best position to develop strategies and design programs which meet the unique needs of their children,

families and communities. Examples of existing efforts include the Court/Education/SRS liaison committees, foster care review boards, mental health planning coalitions, child protective service multi-disciplinary teams, and early childhood coordinating councils.

We have the following specific concerns about Senate Bill 353:

1. Section 3(c) provides for the funding to flow from the state children's authority to the local children's authority. It is not clear from this bill where the state authority will reside administratively within state government. SRS has been designated by the federal government as the Title IVB and IVE agency. If the state authority is a body independent of SRS administratively, the impact this would have on current federal requirements would likely be significant and needs to be examined.
2. In like manner, the Kansas Code for Care of Children and Kansas Code for Juvenile Offenders assign numerous specific responsibilities to the Secretary of SRS. The state authority as described appears to be in a position to circumvent these provisions. Section 3(b) appears to provide for the state authority to authorize local authorities to administer basic child welfare programs (i.e., see line 17-21 in

Section 2). The administration of many aspects of these programs have been assigned specifically to SRS in numerous other statutes.

3. If the legislature prefers this type of local discretion, Section 3(c) is confusing in that it provides that two different entities (SRS and the state authority) can develop plans to deal with such an eventuality.
4. We envision that some local authorities will wish to exercise their discretion in choosing not to be responsive to the entire array of services needed. Minimum expectations would need to be clear.
5. Who assumes the legal liability for actions taken by the local authorities? SRS is concerned about having responsibility for the outcomes achieved without having the authority to carry out the programs.
6. Discussions regarding local children's authorities have centered on replicating funding decategorization studies in Iowa with the belief that federal funds were being decategorized. In checking with Iowa, we learned that they are only decategorizing state funds. Federal staff at the regional Health and Human Service Office also indicated that

they are not aware of any state attempting to decategorize federal funds.

7. We believe that considerable latitude already exists with both state and federal funds to accomplish many of the outcomes sought in this bill. Our recent expansion of the use of Medicaid funding for alternatives to hospitalization has enhanced our ability to serve eligible children without families losing custody. We believe Medicaid funding can be further enhanced by matching child welfare funds. We are initiating planning in this area, as well as expanded eligibility under SSI. If new funds generated by these efforts remain available to SRS to serve children and families, we can meet many of the expectations of this bill.

8. Undertaking any new approach to the way we deliver services requires that we have the flexibility to try new and innovative approaches. We believe that the flexibility that the Senate granted us for the use of one million dollars of the state portion of our foster care funds to alleviate stress in the foster care system is one example.

We support the development of more effective collaborative efforts at the state and local levels. We believe that the emphasis needs to be on prevention and early intervention as well as more effective and less restrictive services to children and youth who have already come to the attention of SRS and the Courts. These are particularly critical issues if we are to support families in carrying out their responsibilities to their children and to slow the rate of foster care growth.

We do not support any plan which leaves the responsibility for the outcomes achieved with SRS, but grants the authority to carry out the program to other entities such as the local children's authorities.

I appreciate this opportunity to appear before you today.

Carolyn Risley Hill
Acting Commissioner
Youth and Adult Services
Department of Social and
Rehabilitation Services
(913) 296-3284

7-6/6



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Child Abuse
Prevention Council**

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- Stephen Lyrene
Topeka
- Carol F. Marshall
Emporia
- Marlene Merrill, Ph.D.
Wichita
- Sharlene Mueldeiner
Topeka
- Wanda Parks
Russell
- Karen T. Poulton, Ph.D.
Topeka
- Donald B. Reynolds, Jr.
Great Bend
- David K. Rolph
Wichita
- Myron E. Scafe
Overland Park
- Peter E. Schloesser, M.D.
Topeka
- Marilynn Stephan
Topeka
- Carla J. Stovall, J.D.
Topeka
- Dorothy Werner
Great Bend

EXECUTIVE DIRECTOR
James McHenry, Ph.D.

Testimony before the Senate
Judiciary Committee regarding SB 334
April 2, 1991

KCAPC appreciates the opportunity to visit with the committee again regarding our interest in granting immunity to citizens who voluntarily agree to serve on multidisciplinary child protection teams.

During testimony on this bill earlier in the session, it was observed that Kansas Tort Claims law probably extends to citizens serving on such teams. While this may indeed be the case, we believe the public interest would be well served by granting a more adequate shield to those who are appointed.

We agree that acts of willful negligence should not be granted immunity, and we would support language that imposes those limitations. I am attaching a copy of the statute that might serve as an appropriate vehicle. It was designed to protect citizens serving on appointed boards of municipalities, and we think an amendment specifying multidisciplinary child protection teams duly appointed by local judges would be appropriate.

I'm also attaching to my testimony a letter I received from Captain F. Dean Forster of the Topeka Police Department. Captain Forster summarizes concerns we've had placed before us both in Topeka and in other communities across the state.

KCAPC believes the legislature acted wisely in passing SB 522 last session, and we believe the action envisioned by SB 334 is consistent with a public policy encouraging the formation of local multidisciplinary child protection teams.

Testimony submitted by James McHenry, Ph.D.

Senate Judiciary Committee
4-2-91
Attachment 8

ments of actions pursuant to the Kansas tort claims act.

(g) Nothing in this section or in the Kansas tort claims act shall be construed as a waiver by the state of Kansas of immunity from suit under the 11th amendment to the constitution of the United States.

(h) For the purposes of this section only, a health care provider, as defined by K.S.A. 75-6115 and amendments thereto, who provides professional services at a state correctional institution shall be considered an employee for the purposes of this section, even if such services were rendered pursuant to contract as an independent contractor.

History: L. 1979, ch. 186, § 16; L. 1983, ch. 299, § 2; L. 1985, ch. 293, § 1; L. 1987, ch. 353, § 8; L. 1989, ch. 279, § 1; July 1.

Law Review and Bar Journal References:

"A Practitioner's Guide to the Kansas Tort Claims Act," Jerry R. Palmer, 48 J.B.A.K. 299, 309 (1979).

"Constitutional Law: Governmental Immunity Statute Violates Equal Protection as Applied to Kansas Turnpike Authority," Robert G. Martin, 19 W.L.J. 581 (1980).

"The Kansas Tort Claims Act and School Districts," Susan C. Jacobson, 28 K.L.R. 610, 623, 625, 626 (1980).

Attorney General's Opinions:

Payment of defense costs of public officers and employees in civil rights cases. 80-203.

Cities' power of home rule; payment of attorney fees incurred by city official in defending a criminal action. 85-42.

Defense of governmental entity or employee; requests to provide defense. 85-140.

Payment of liability and defense costs of employee in civil cases; punitive damages. 89-15.

CASE ANNOTATIONS

1. Requirement state pay judgment against employee liable for violation of civil rights laws not barred by 11th Amendment. *Barger v. State of Kan.*, 620 F.Supp. 1432, 1438 (1985).

2. Provisions of tort claims act for payment against defendants in personal capacities do not implicate 11th Amendment. *Barger v. State of Kan.*, 630 F.Supp. 88, 89 (1985).

3. Cited; absence of 11th Amendment protection extending to personal capacity suits reaffirmed. *Urban v. Henley*, 654 F.Supp. 870, 873 (1987).

4. Section 1983 action against administrator of security at state medical center in individual capacity not barred by 11th Amendment. *Beck v. Calvillo*, 371 F.Supp. 1555, 1560 (1987).

75-6117. Tort claims fund for payment of claims and defense expenses. (a) There is hereby established in the state treasury the tort claims fund which shall be administered by the attorney general. All expenditures from such fund shall be made upon warrants of the director of accounts and reports pursuant to vouchers approved by the attorney general or by a designee of the attorney general.

(b) Moneys in the tort claims fund shall be used only for the purpose of paying (1) compromises, settlements and final judgments arising from claims against the state or an employee of the state under the Kansas tort claims act or under the civil rights laws of the United States or of the state of Kansas and (2) costs of defending the state or an employee of the state in any actions or proceedings on those claims. To the extent that payment cannot be made from insurance coverage obtained therefor, payment of a compromise or settlement shall be made from the fund if the compromise or settlement has been approved by the state finance council as provided in K.S.A. 75-6106 and amendments thereto. To the extent that payment cannot be made from insurance coverage obtained therefor, payment of a final judgment shall be made from the fund if there has been a determination of any appeal taken from the judgment or, if no appeal is taken, if the time for appeal has expired.

(c) Upon certification by the attorney general to the director of accounts and reports that the unencumbered balance in the tort claims fund is insufficient to pay an amount for which the fund is liable, the director of accounts and reports shall transfer an amount equal to the insufficiency from the state general fund to the tort claims fund.

(d) This section shall be part of and supplemental to the Kansas tort claims act.

History: L. 1981, ch. 360, § 2; L. 1983, ch. 299, § 3; April 28.

Attorney General's Opinions:

Act applies to conservation district personnel. 87-31.

75-6118. Settlement of claims under other statutes. Nothing in the Kansas tort claims act shall be construed to preclude settlement and payment of a claim pursuant to K.S.A. 46-920 or 46-922, and amendments thereto.

History: L. 1981, ch. 360, § 4; July 1.

CASE ANNOTATIONS

1. Enactment of act not evidence state waived immunity from suit under 11th Amendment. *Barger v. State of Kan.*, 620 F.Supp. 1432, 1434 (1985).

75-6119. Exception from liability for members of governing body, appointive board, commission, committee or council of a municipality. (a) A member of a governing body of a municipality who is acting within the scope of such member's office and without actual fraud or actual malice shall not be liable for damages caused by the negligent or wrong-

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ful act or omission of such member or governing body.

(b) A member of any appointive board, commission, committee or council of a municipality who is acting within the scope of such member's office and without actual fraud or actual malice shall not be liable for damages caused by the negligent or wrongful act or omission of such member or board, commission, committee or council.

(c) Nothing in this section shall be construed to affect the liability of a municipality for damages caused by the negligent or wrongful act or omission of the governing body, or any appointive board, commission, committee or council, of the municipality, or any member thereof, and the negligence or wrongful act or omission of any member of such a governing body, board, commission, committee or council, when acting as such, shall be imputed to the municipality for the purpose of apportioning liability for damages to a third party pursuant to K.S.A. 60-258a and amendments thereto.

(d) This section shall be part of and supplemental to the Kansas tort claims act.

History: L. 1987, ch. 353, § 2; July 1.

Article 62.—SETOFF AGAINST DEBTORS OF THE STATE

Source or prior law:

L. 1980, ch. 125, §§ 4 to 19; L. 1980, ch. 260, § 1.

Cross References to Related Sections:

Setoff of fines, fees and penalties owed educational institutions under the state board of regents, see 76-741.

Law Review and Bar Journal References:

"Kansas Enacts New Provisions for Child Support Enforcement—Mandatory Wage Withholding," Yvonne C. Anderson, Richard A. Forster, 25 W.L.J. 91, 105 (1985).

75-6201. Statement of policy. The purpose of this act is to establish as policy that state agencies shall cooperate in identifying debtors who owe money to the state and that procedures be established for setting off against debtors the sum of any debt owed to the state.

History: L. 1981, ch. 342, § 1; July 1.

CASE ANNOTATIONS

1. Act considered in action to recover certain KPERS contributions; contract for payment of compensation plus KPERS benefits as fringe benefits valid under 74-4919. *Donner v. Kansas Dept. of Human Resources*, 236 K. 371, 373, 377, 691 P.2d 21 (1984).

2. Setoff act specifies priorities to multiple claims by state agency; it does not address priority of secured creditor's claim. *Bank of Kansas v. Hutchinson Health Services, Inc.*, 13 K.A.2d 421, 423, _____ P.2d _____ (1989).

75-6202. Definitions. As used in this act:

(a) "Debtor" means any person who:

(1) Owes a debt to the state of Kansas or any state agency; or

(2) owes support to an individual, or an agency of another state, who is receiving assistance in collecting that support under K.S.A. 39-756 and amendments thereto or under part D of title IV of the federal social security act (42 U.S.C. § 651 *et seq.*), as amended.

(b) "Debt" means:

(1) Any liquidated sum due and owing to the state of Kansas or any state agency which has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum; or

(2) any amount of support due and owing an individual, or an agency of another state, who is receiving assistance in collecting that support under K.S.A. 39-756 and amendments thereto or under part D of title IV of the federal social security act (42 U.S.C. § 651 *et seq.*), as amended, which amount shall be considered a debt due and owing the department of social and rehabilitation services for the purposes of this act.

(c) "Refund" means any amount of Kansas income tax refund due to any person as a result of an overpayment of tax, and for this purpose, a refund due to a husband and wife resulting from a joint return shall be considered to be separately owned by each individual in the proportion of each such spouse's contribution to income, as the term "contribution to income" is defined by rules and regulations of the secretary of revenue.

(d) "Net proceeds collected" means gross proceeds collected through final setoff against a debtor's earnings, refund or other payment due from the state or any state agency minus any collection assistance fee charged by the director of accounts and reports of the department of administration.

(e) "State agency" means any state office, officer, department, board, commission, institution, bureau, agency or authority or any division or unit thereof.

(f) "Person" means an individual, proprietorship, partnership, limited partnership, association, trust, estate, business trust, corporation, other entity or a governmental agency, unit or subdivision.

(g) "Director" means the director of accounts and reports of the department of administration.

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FORSTER
6635 SW
TOPEKA, KANSAS 66614

March 18, 1991

Jim McHenry
Kansas Child Abuse Prevention Council
715 W. 10th Street
Topeka, Kansas 66612

Dear Jim,

As a follow up to the conversation we had at the March 13, 1991 meeting, I am writing to express my concerns over the status of Senate Bill No. 334 relating to the Kansas code for the care of children and the immunity of members of the multi-disciplinary teams. You reported that the Kansas Trial Lawyers Association had apparently successfully gotten the bill tabled because they were able to convince the members of the Committee, hearing the bill, that the Tort Claims Act (K.S.A. 75-6101 et.seq.) would serve the same purpose and would make the State of Kansas responsible for any judgements that may be successfully brought against a member of the team.

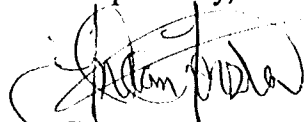
I am very concerned over what is either a misunderstanding on my part as to the difference between immunity from such actions as stated in SB 334 and simply having the state pay any judgements against a member as in K.S.A. 75-6101.

Immunity is a total protection against civil actions such as is enjoyed by Judges and District Attorney's, and allows for no cause of action against such persons. The Tort Claims Act is only a defense and may be a successful defense; or if not a successful defense than at least a vehicle by which the State, rather than the individual member, pays the judgement. These may sound the same on their face but one must still consider the financial burden placed on the individual member if "punitive damages" are awarded and the inconvenience and humiliation suffered by the member over the action regardless of the success or failure of the suit in collecting any reward.

I can foresee that it will be very difficult to get any professional persons to become active members of the team without the guarantee of immunity from civil action unless the actions, or lack of action, by the member could be proven to be willful, wanton and reckless.

I feel that we should actively pursue the resurrection and attempt to pass SB 334 with any modifications necessary to achieve that end.

Respectfully,



Capt. Dean Forster