

JUDICIARY SUBCOMMITTEE ON CIVIL PROCEDURE

Senator Richard Rock, Chairman

March 5/6, 1991
10:00 a.m.
Room 514-S

SB 287 - unlawful acts of individuals infected with human immunodeficiency virus.

Unlawful for those who know they are infected with AIDS to engage in activities which would transmit HIV to others, without first informing their partner about their HIV status.

PROPONENTS

Deborah Taylor, Bureau of Disease Control (ATTACHMENT 1)

OPPONENTS

Juanita Carlson, American Civil Liberties Union of (ATTACHMENT 2)

Jack Markham, Positive Action Coalition of Kansas (ATTACHMENT 3)

Jay Johnson, Topeka AIDS Project (ATTACHMENT 4)

Carla Dugger, American Civil Liberties Union of Kansas
(ATTACHMENT 5)

Subcommittee recommendation: to recommend favorable for passage.

SB 269 - taking abused, exploited adults into protective custody. Adults in the custody of a guardian may be taken into protective custody by the state if there are grounds to believe that this adult is being abused or exploited.

PROPONENTS

Robert Clark, Columbus, CLASS, Ltd. (ATTACHMENT 6)

OPPONENTS

Marlene Finner, SRS (ATTACHMENT 7)

Subcommittee recommendation: to not recommend favorable for passage.

SB 327 - spousal abuse as evidence in child custody cases. Spousal abuse could be used as evidence in child custody cases.

PROPONENTS

Julienne Maska, Victim Rights Coordinator, Attorney General's Ofc.
(ATTACHMENT 8)

Dorothy Miller, Safehouse, Inc. (ATTACHMENT 9)

Trisha Bannon, Service for Victims of Domestic Abuse, Emporia
(ATTACHMENT 10)

Gina Wright, Independence (ATTACHMENT 11)

written testimony from Sexual Assault/Domestic Violence Center
(ATTACHMENT 12)

OPPONENTS

none appeared

Subcommittee recommendation: to recommend favorable for passage.

SB 334 - Immunity for teams determining child care need.

PROPONENTS

James McHenry, Kansas Child Abuse Prevention Council
(ATTACHMENT 13)

Jan Waide, SRS (ATTACHMENT 14)

OPPONENTS

Bob Frey, Kansas Trial Lawyers Association (ATTACHMENT 15)

Subcommittee recommendation: no action taken.

Testimony

Senate Judiciary Sub-Committee on Civil Procedure

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

Senate Bill 287

Senate Bill 287 makes it unlawful for individuals who know they are infected with the human immunodeficiency virus to engage in activities that could transmit HIV to others without first informing the partner of their HIV status. It also prohibits persons who know they are HIV infected from donating blood, blood products, semen, tissue, organs, or other bodily fluids.

The thrust of the bill came from the requirements set in the Ryan White Comprehensive AIDS Resources Emergency ACT of 1990. The act passed by the United State Congress requires that all states applying for the Ryan White Federal funding have criminal laws adequate to prosecute any HIV infected individual who intentionally and knowingly engages in activities that can transmit HIV to others unless they first inform their partner.

Kansas, nor any other state, will receive federal funding to provide HIV counseling and testing, diagnostic testing, home health care, AZT and drug reimbursement, and insurance premium reimbursement programs unless they have laws in place that meet the described requirements.

Ryan White Federal funds will provide 50% or more of the funding for AIDS/HIV programs in Kansas for the next several years, and it replaces existing AIDS cooperative agreements Kansas has previously received from the Centers for Disease Control. Hundreds of HIV infected persons will depend upon Ryan White funded programs and services in Kansas.

The bill was drafted to meet, not exceed, the requirements of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 using the guidelines that were recommended by the grant management organization, which is the Health Resources and Services Administration.

If a state is unable to certify compliance with this requirement, the state must provide assurances that by no later than October 1, 1992 the state has in place or will establish the prohibitions described above or grants will not be awarded.

Testimony presented by Deborah Taylor
Acting Director
Division of Health/Bureau of Disease Control
March 6, 1991

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Attachment 1

SENATE BILL 287
1991

My name is Juanita Carlson. I am appearing today on behalf of the American Civil Liberties Union. The ACLU is the only organization whose sole purpose is to uphold the Constitution and the Bill of Rights of the United States. The ACLU wishes to state its opposition to Senate Bill 287, primarily the first section concerning criminal sanctions for non-informing of a sexual partner of presence of HIV, on the ground that it violates the constitutional right to privacy. We have no opinion on the other two sections.

This bill clearly intrudes into the most private domain of social behavior, namely the sexual behavior of consenting adults. In order to justify such a governmental presence within the bedroom relationships of ordinary citizens, the proponents of this bill must show four things:

- First, that there is an overwhelming need for state action;
- Second, that the proposed action will accomplish its intended goals;
- Third, that the beneficial results of the proposed action will greatly outweigh any harmful side-effects;
- Fourth, that there exist no less intrusive means for accomplishing the same goals.

This bill decisively fails each of these four tests.

First, with regard to efficacy, this bill will not change the actual behavior of many persons who are aware they are infected with HIV. Those who are honorable will inform their partners, with or without this bill. Those who are dishonorable will conceal the truth, with or without this bill. While the bill does create some added incentives for telling the truth, these incentives are greatly weakened by the difficulties of prosecution in such a case. Since signs of HIV infection do not appear for many months or years after infection, and since HIV is in fact very rarely transmitted by any single act of intercourse, the vast majority of violations of this bill would never come to anyone's attention.

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Second, with regard to side-effects, this bill is likely to frighten people away from testing to confirm suspected HIV, a result that would appear on its face to be directly contrary to what the bill seeks. Moreover, this bill may create an easy way for spurned lovers to bring false accusations in retaliation; there would also be questions concerning who to believe if one accuses the other of having known he is HIV positive and the other person denies it. Do the authors of this bill intend that any person may be compelled to undergo an HIV test on mere suspicion?

Third and fourth, with regard to both need and alternatives, there are existing tort remedies which have been held in other jurisdictions to offer the alleged victim in a couples situation a recourse that don't involve criminal penalties.

Thank you for the opportunity to express our views today.

To the Senate Judiciary Committee
RE: Opposition to Senate Bill 287

By: Jack Markham, President, Positive Action Coalition of Kansas (PACK)
Board member, National Association of Person's With AIDS (NAPWA)
Board member, Topeka AIDS Project, Inc. (TAP)

Bill No. 287 has the appearance of a good bill that would provide protection for the public against the spread of the Human Immuno-deficiency Virus, unfortunately, this is not the case. This bill would be the first law in the state of Kanas that would punish individuals for having a positive test result for HIV.

This bill would:

- discourage testing**
- encourage high-risk behavior**
- discourage medical attention**
- further isolate infected individuals**

This bill does not contain any language as to criminal intent. A bill that would make it a crime to *knowingly infect* another person may be supportable.

Since this bill only applies to those who are knowingly HIV infected, this bill would in fact discourage at-risk individuals from being tested. It is only through testing that individuals may take the appropriate action to reduce the spread of HIV. Since early medical intervention is a requirement for possible survival and those in HIV risk reduction education are stressing testing, this bill sends a contradictory message.

Section 1 (a) (1) is based on the inaccurate belief that most individuals are aware of their HIV status. The general public would believe that they may engage in high-risk behavior because if a positive HIV status was not disclosed the assumption would be that the person was HIV negative. This would encourage high-risk behavior that would **increase** the spread of HIV, not reduce it.

Section 1 (1) and (3) does not address the Centers for Disease Control's risk-reduction practices. It should include the phrases (1) To engage in *unprotected* sexual intercourse or (3) to share with another individual an *unsanitary* hypodermic needle.

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Section 1 (a) (2) is the only section of this bill that is supportable.

It is the belief of PACK, NAPWA and TAP that every individual is responsible for their own behavior and protection. This bill attempts to place that responsibility solely on the shoulders of those that are knowingly HIV infected.

Jack Markham
2718 S. Kansas
Topeka, Ks. 66611
(913) 232-3796

Topeka AIDS Project, Inc.
1615 W. 8th
P.O. Box 4726
Topeka, Ks. 66604
(913) 232-3100

March 6, 1991

Dear Senator Winter and other members of the Senate Judiciary Committee,

The Topeka AIDS Project, Inc. is a community based program committed to working with persons with HIV infection and their significant loved ones in sixteen counties of Northeast Kansas including Topeka, Manhattan, Junction City and Emporia. The Topeka AIDS Project provides direct client services and networks closely with other community based agencies and service providers to assist in meeting the client's social, legal and medical needs.

In an effort to reduce the spread of HIV infection the Topeka AIDS Project provides the community with appropriate educational services to increase understanding, reduce fears and gain knowledge of risk-reduction practices.

I assume the intent of this legislation is to keep knowingly infected individuals from spreading their HIV infection. I do not believe that Senate Bill 287 will actually accomplish that ends.

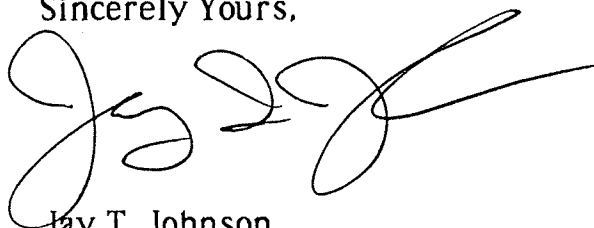
A significant part of the mission of my organization, and of the work I do, is an effort to provide education to our community about HIV infection and AIDS. There is currently no vaccine against or cure for HIV infection. The only method we have to keep HIV from spreading is through education. I believe that one of the undesired effects of this legislation would be to give the general public a false sense of security. I believe that many in our state will see this legislation as a protection from HIV infection. This legislation could not protect individuals from contracting HIV infection, and it could not stop HIV infected individuals from spreading the virus.

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The Topeka AIDS Project could support legislation that would make it illegal for a knowingly HIV infected individual from willfully attempting to infect another. I believe that legislation with this or similar wording could offer the legal avenue of protection without giving a false sense of security.

Thank you for time and attention.

Sincerely Yours,

A handwritten signature in black ink, appearing to read 'Jay T. Johnson', with a long horizontal flourish extending to the right.

Jay T. Johnson
Clinical Director

ACLU

201 Wyandotte, Suite 209
Kansas City, MO 64105
Phone: (816) 421-4449
Fax: (816) 421-4860
(call first)

Sandy Krigel
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Jim Lawing
PRESIDENT - KB

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GENERAL COUNSEL

Dick Kurtenbach
EXECUTIVE DIRECTOR

Carla Dugger
ASSOCIATE DIRECTOR

February 7, 1991

Senator Wint Winter, Jr.
Chair, Senate Judiciary Committee
Senator Richard R. Rock
Chair, Judiciary Subcommittee on Civil Procedure

Dear Senator Winter and Senator Rock:

I am writing in response to some concerns which arose yesterday at the hearing on SB 287 regarding AIDS.

Apparently, there is concern among some legislators that Kansas must pass legislation immediately which complies with portions of the "Ryan White Care Act" or lose significant federal funding for certain AIDS programs.

However, there are several reasons this is not so. Please refer to the attached pages, which describe the "criminalization" portions of the Ryan White Care Act.

First, the section of the Ryan White Care Act which requires state compliance is not yet in effect because funds have not yet been appropriated for it. Appropriation may come in six months or so.

Second, as you can see on page "10" of the attached documentation, states are not required to pass new legislation criminalizing the willful transmission of HIV. All that is needed is the Governor's certification that current criminal laws are adequate to prosecute the willful transmission of HIV to cause harm or death.

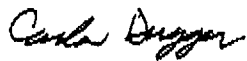
ACLU's position is that current criminal law does cover such actions, and that SB 287 is not needed.

Furthermore, SB 287 goes far beyond the requirements of the Care Act.

On behalf of the American Civil Liberties Union of Kansas, I urge you to oppose SB 287.

Thank you very much.

Sincerely,



Carla Dugger
Associate Director

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notification. Comm. on Energy and Commerce,
101st Cong., 2d Sess. 40 (1990). Thus, the
requires a State to have some kind of notification
place, the Act leaves the decision as to what
kind of notification program to the State to decide.
The Act also notes that the partner notification provision
should not be construed as requiring a State to mandate that
entities other than the public health officer of a State must
notify individuals who may have been exposed to HIV disease.
CARE Act § 2646(c)(2).

BEGIN HERE RE: SB 287

~~*~~ F. Criminalization

Section 2647 of the CARE Act prohibits a State from
receiving a grant unless the chief executive officer of that
State "determines that the criminal laws of the State are
adequate to prosecute any HIV infected individual" who
intentionally transmits HIV to others. CARE Act at § 2647. Such
intentional transmission includes any of the following activities
on the part of an individual who knows that he or she is infected
with HIV: 1) making a donation of blood, semen, or breast milk
with the intention to expose another to HIV; 2) engaging in
sexual activity with the intention to expose an individual to
HIV; or 3) using and then sharing a hypodermic needle with the
intention to expose another to HIV. CARE Act at § 2647(a)(1), (2)
& (3). A state law would not have to apply to these three
activities in circumstances where the individual involved in the

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activity knows that the person is infected with HIV and provides
prior informed consent to the activity. CARE Act at § 2647(b).

The Act also explicitly states that the existence of a "criminal law of general application," which can be applied to the conduct described, is "sufficient for compliance" with this provision. CARE Act at § 2647(c). The Conferees to the Act recognized that "many, if not all, States have specific or general statutes, regulations or common law that meet the requirements of this Section [2647]." See H.R. Conf. Rep. No. 652, 101st Cong., 2d Sess. 83 (1990). As the Conference Report clearly explains, the Secretary may not require States to enact a new criminal law that is HIV specific. *Id.* Rather, the chief executive officer of a State simply has to certify to the Secretary that the State has a general criminal law which can be applied to the intentional transmission of HIV. *Id.*, CARE Act at § 2647(c).⁹

⁹In addition to enacting Section 2647 in 1990, Congress passed an amendment to the Crime Control Act of 1990 which requires States to mandate HIV testing of convicted sex offenders. The amendment revises Section 3756 of the Drug Control and Systems Improvement Grant Program of the Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3756 (1988 & Supp.). According to the amendment, the Secretary may distribute 10 percent of the allocated funds for drug enforcement programs under Section 3756 only if a State has in effect, and is enforcing, a law that requires the State, at the request of the victim of a sex act, to administer an HIV test to a defendant convicted of such sexual act. 136 Cong. Rec. S18319 (Nov. 1, 1990). The amendment also requires the State to disclose the HIV test results to both the defendant and the victim and to provide counseling to the victim regarding HIV disease. The amendment becomes effective in two years.

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S.269

Testimony Before the Senate Judiciary Sub-Committee
on Civil Procedure
March 6, 1991

Robert L. Clark, President
CLASS LTD
PO BOX 266
Columbus KS 66725
(316) 429-1212

OUTLINE OF REMARKS:

1. CLASS LTD is a State-licensed, nationally accredited comprehensive Community-based Mental Retardation/Developmental Disabilities Center serving Cherokee, Crawford, Labette and Montgomery Counties in Southeast Kansas.
2. We have requested the introduction of S.269, through our State Association (Kansas Association of Rehabilitation Facilities), in response to a recent experience with the present language of K.S.A.39-1437 and its inadequacy to address the type of emergency situation we encountered in December, 1989.
3. The precipitating incident:
 - On December 15, 1989, one of our Vocational Instructors found evidence that one of our clients had been assaulted. (Reports attached)
 - The home in which the alleged assault took place was that of this client's guardian, although the guardian had previously been placed in a nursing home facility.

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- Prudence called for immediate action (on December 15) to avoid returning this client to a physically abusive situation.

- Yet, K.S.A.39-1437, does not provide for an emergency protective custody procedure when there is evidence of abuse in the home of a legal guardian.

- Because CLASS LTD and the SRS Social Worker reacted humanely, by removing this client to a safe environment, CLASS LTD spent several months and nearly \$2,000 defending this client from attempts, against his will, to return him to the abusive home environment.

4. We respectfully ask the Sub-Committee's favorable action on S.269 to respond to the recent experience, related to you today, and to further protect the dependent adults for whom the State of Kansas has a statutory responsibility.

Thank you for your consideration. If time permits questions, I would be pleased to try to respond.

CLASS LIMITED

INCIDENT REPORT

NAME OF CLIENT GARY [REDACTED] DATE OF INCIDENT 9/1/89

NAME OF STAFF MAKING REPORT DAVID DIXON TIME OF INCIDENT 6:00 PM

DEPARTMENT/PROGRAM/SERVICE PROGRAMS IN INDUSTRY

TYPE OF INCIDENT (check one or more):

MEDICAL

SOCIAL/LEGAL

OTHER

- Injury of client
- Injury of staff
- Contagious disease
- Medical emergency room or hospitalization
- Medication problem
- Legal problem (client victim)
- Police involvement (client suspected offender)
- Client missing
- Severe behavior problem
- Suspected or known neglect or abuse
- Excessive absenteeism
- Unanticipated client move
- Possible violation of client rights
- Other _____

DESCRIBE THE INCIDENT (what happened, how, where, how was situation handled, including who was notified of the incident)

Friday evening (9/1) I learned from Gary that he had been hit in the right eye either Thursday morning (8/31), or Wed. (8/30), by his foster-brother Bill [REDACTED]. The action was said to be in response to Gary not feeding the dog correctly. Gary had a dark circle visible under his eye. He said it happened at his (Gary's) house & that his mom knew about it. I called Gary's caseworker, Mary McWilliam, and reported the incident to her.

HAS THIS PARTICULAR INCIDENT OCCURED WITH THIS CLIENT PREVIOUSLY? none reported

WHAT ARE YOUR FOLLOW-UP PLANS, SUGGESTIONS? remove client from the home

HAS STAFF PERSON SHARED THE CONTENTS OF THIS REPORT WITH CLIENT? Yes No

SIGNATURE David Dixon DATE OF REPORT 9/2/89

NAME (initial when reviewed)

UNIT FILE
SECONDARY SITE FILE
PRIMARY SITE FILE

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CLASS LIMITED

INCIDENT REPORT

NAME OF CLIENT GARY [REDACTED] DATE OF INCIDENT 12/14/89

NAME OF STAFF MAKING REPORT DAVID DIXON TIME OF INCIDENT 4:30

DEPARTMENT/PROGRAM/SERVICE PROGRAMS IN INDUSTRY

TYPE OF INCIDENT (check one or more):

MEDICAL

SOCIAL/LEGAL

OTHER

- Injury of client
- Injury of staff
- Contagious disease
- Medical emergency room or hospitalization
- Medication problem
- Legal problem (client victim)
- Police involvement (client suspected offender)
- Client missing
- Severe behavior problem
- Suspected or known neglect or abuse
- Excessive absenteeism
- Unanticipated client move
- Possible violation of client rights
- Other _____

DESCRIBE THE INCIDENT (what happened, how, where, how was situation handled, including who was notified of the incident)

Gary was dropped off at home for a break around 4:30 on 12/14. At 5:30 when I stopped to pick him up for evening work his mom came out and said that her had come home with a real bad headache, and that she had given him some aspirin and he was asleep. I went on. As we were working the next day - 12/15 - I asked Gary if his headache was gone, and he replied that he had been hit by his mom when he got home. He showed me a wound on the left side of his head that he said was made when his mom hit him with a "pipe" she was to hold the door shut at night. Later inspection revealed some blood from the wound had dripped on his coat.

HAS THIS PARTICULAR INCIDENT OCCURED WITH THIS CLIENT PREVIOUSLY? YES: STRUCK BY FOSTER BROTHER, SUMMER 1988

WHAT ARE YOUR FOLLOW-UP PLANS, SUGGESTIONS? REMOVE FROM FOSTER HOME, HAVE NEW GUARDIAN APPOINTED

HAS STAFF PERSON SHARED THE CONTENTS OF THIS REPORT WITH CLIENT? Yes No

SIGNATURE David Dixon DATE OF REPORT 12/18/89

NAME (initial when reviewed)

_____ UNIT FILE
 _____ SECONDARY SITE FILE
 _____ PRIMARY SITE FILE

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CONTACT NOTE

DATE 12/14/89

Client Name Gary [REDACTED]

COMMENTS:

7:00 p.m. (approximately), talked to Keith Billingsly, SRS, regarding the
status of Gary for his immediate residential placement need (due to incident
earlier with foster mother accused of hitting him in the head with a pipe).
Keith said we could have Gary stay temporarily in one of our residential
facilities until he (Keith) could get with the SRS attorney and file for a
replacement of Legal Guardian. It was agreed that Keith would transport Gary
to Independence Group Home after Gary finished making his report to the police
and County Attorney. It was agreed that Mary McWilliams or some other staff
person would take Gary his clothes tomorrow. Keith transported Gary to the
Independence Group Home on 12/15/89. I phoned Mrs. [REDACTED] and asked her to
have Gary's clothing packed and that our staff would be by to pick it up.
Dan DeMersseman went to the residence and picked up one sack (garbage bag) of
Gary's belongings.

12/18/89 - Sidney [REDACTED], phoned asking about Gary and what had
happended. I told him Gary's complaint and asked Sidney to call the County
Attorney for information.

SIGNATURE Jan East

6-4/6

CLASS LTD



P.O. Box 266, Columbus, Kansas 66725, 316-429-1212

January 5, 1990

Sidney [REDACTED]
[REDACTED] Care Home
[REDACTED]
Parsons, KS 67357

Dear Mr. [REDACTED]:

On December 14, 1989, Gary [REDACTED] reported to a CLASS LTD. employee that your wife Rebecca struck him on the head with a pipe and stated that he didn't want to return to her home. This incident was reported to the employee's supervisor who contacted SRS.

The SRS Staff instructed our staff on the procedure to follow which included having Gary stay in one of our residential facilities until the incident could be thoroughly investigated.

At this time, and until the incident is investigated, Gary is staying in our group home at 200 South 4th, Independence, Kansas. Our room and board charge at that facility is \$320 per month or \$10.52 per day. We will bill you shortly for the days in December that Gary stayed at the house and will bill you for additional days on a monthly basis.

If you have any questions regarding Gary or his case, please contact me.

Sincerely yours,


Jan Root
Interim President

JR:ciz

6-5/6

CONTACT NOTE

DATE 1/19/90

CLIENT NAME Gary [REDACTED]

COMMENTS:

I called Social Security Admin. and informed Charlotte Trimble of Gary [REDACTED] living status, and requested that his S.S. and S.S.D. be placed in suspension as such time as a payee could be established. Charlotte said the Feb. check could not be stopped but would start the procedure. I gave them Tim Emerts name as a possible payee.

Mary Temple

SIGNATURE

6-46

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Testimony before

The Senate Judiciary Committee

Regarding

Senate Bill 269

on

March 6, 1991
10:05 a.m.
Room 514 South
Capitol Building

Rosilyn James-Martin, Program Administrator
Adult Abuse, Neglect and Exploitation
Telephone: (913) 296-2575

Presented by:
Marlene Finney
Administrator
Department of Social &
Rehabilitation Services
Telephone: (913) 296-2004

Carolyn Risley Hill
Acting Commissioner
Youth & Adult Services
Department of Social &
Rehabilitation Services

Robert C. Harder
Acting Secretary
Department of Social &
Rehabilitation Services

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TESTIMONY FOR SENATE BILL 269

AN ACT concerning the reporting of abuse, neglect or exploitation of certain adults; authorizing taking into protective custody and protective services for certain adults; amending KSA 1990 Supp. 39-1437 and repealing the existing section.

Thank you for allowing me the opportunity to speak to you today.

The Department of Social and Rehabilitation Services (SRS) does not support the amended revisions of Senate Bill 269.

This amendment states that SRS or law enforcement "may" provide actual custody to an abused adult. SRS would be expected to provide a living arrangement to retain an alleged abused adult for up to 48 hours, not including weekends or holidays. Therefore, SRS could face legal action if it failed to act, or acted improperly, and harm resulted to one of these individuals.

Presently, SRS administers three (3) community-based living arrangement programs for adults. These are: 1) adult family homes, 2) congregate living homes, and 3) domestic violence shelters. The adult family and congregate living homes provide supervision and assistance in personal care needs to ambulatory adults. The domestic violence shelters provide services to persons of spousal abuse. The services provided by shelters focus on marital and interpersonal relationships in violent situations. Conceivably, one might consider all three of the above mentioned community-based facilities to be appropriate living arrangements for abused adults who have been adjudicated to lack the ability to consent and indeed all three of the living arrangements are available to provide a safe environment for elderly and adults who are mentally retarded or mentally ill. However, these facilities do not have the resources to effectively provide the services that are needed by abused individuals who have found disabled and in need of a guardian or conservator. Generally, the services needed might include medical care, crisis intervention assistance,

counseling, and/or notifying family members, landlords, other social service agencies about the relocation of the abused adult. Another concern is whether vacancies would be available in the existing facilities.

This amendment will significantly increase the work load and responsibilities of Adult Protective Service Workers. SRS workers could conceivably be expected to remove all abused adults from their place of residency. This will reinforce the community's expectation that SRS will "do something" about the situation. Upon removal of the abused elderly, the Adult Protective Service Worker will have to prepare written information and documentation to the court regarding the caregiver's refusal to provide the necessary protective services. If the caregiver is the guardian, the worker will have to petition the court for a change in guardian.

Our last concern is that the Adult Protective Service Worker will not readily know whether or not the abused adult has a guardian or conservator. Therefore, the response time to enact this section of the legislation will be delayed until the worker can obtain information from the court of jurisdiction.

In summary, the Department of Social and Rehabilitation Services does not support Senate Bill 269 because:

1. The existing community-based facilities are not adequate to meet the service needs of individuals who have been abused and forcibly removed from their home or reason to believe that they would accept them; and, even if they do, vacancies may not always be available for placement; and

2. It does not seem to be prudent at a time that the agency is receiving criticism for not fulfilling their current functions to add additional responsibilities. The community expectations always seem to extend beyond what the law indicates; and
3. Staff is not trained to do these tasks and handle potentially combative situations and would significantly increase the work load and responsibilities that would have to be assumed by the SRS worker; and
4. The response time will be delayed until the worker can verify that the adult has been adjudicated to lack capacity to consent and has a guardian or conservator.

The Department of Social and Rehabilitation Services supports the need to protect adults. However, without established community resources and with limited staff in SRS, it will be difficult to implement the requirements of this amendment.

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



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
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Testimony of
Juliene A. Maska
Statewide Victims' Rights Coordinator
Before the Senate Judiciary Sub-Committee on Civil Law
RE: Senate Bill 327
March 6, 1991

Attorney General Bob Stephan has asked that I speak to you today about Senate Bill 327.

In February 1988, Attorney General Stephan formed a 50-member Victims' Rights Task Force. The purpose of the task force was and still is to insure that the rights and needs of Kansas crime victims are not neglected. The Victims' Rights Task Force continues to address the issues concerning crime victims. The task force asked that Senate Bill 327 be introduced and seeks your support.

Senate Bill 327 would allow evidence of spousal abuse to be given when considering child custody. This bill stems from Congressional Resolution 172 passed by the U.S. House of Representatives with unanimous consent given by the U.S. Senate.

This U.S. resolution is not binding on the states and, therefore, this legislation is needed. The U.S. resolution addresses the following areas, which I believe apply to this bill as well. They are:

State courts have often failed to recognize the detrimental effects of having as a custodial parent an individual who physically abuses his

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or her spouse, insofar as the courts do not hear or weigh evidence of domestic violence in child custody litigation;

There is an alarming bias against battered spouses in contemporary child custody trends such as joint custody and mandatory mediation;

Joint custody guarantees the batterer continued access and control over the battered spouse's life through their children;

Joint custody forced upon hostile parents can create a dangerous psychological environment for a child;

A batterer's violence toward an estranged spouse often escalates during or after a divorce, placing both the abused spouse and children at risk through shared custody arrangements and unsupervised visitation;

Physical abuse of a spouse is relevant to child abuse in child custody disputes;

The effects of physical abuse of a spouse on children include actual and potential emotional and physical harm, the negative effects of exposure to an inappropriate role model, and the potential for future harm where contact with the batterer continues;

Children are emotionally traumatized by witnessing physical abuse of a parent;

Children often become targets of physical abuse themselves or are injured when they attempt to intervene on behalf of a parent;

Even children who do not directly witness spousal abuse are affected by the climate of violence in their homes and experience shock, fear, guilt, long lasting impairment of self-esteem, and impairment of developmental and socialization skills;

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Research into the intergenerational aspects of domestic violence reveals that violent tendencies may be passed on from one generation to the next;

Witnessing an aggressive parent as a role model may communicate to children that violence is an acceptable tool for resolving marital conflict; and

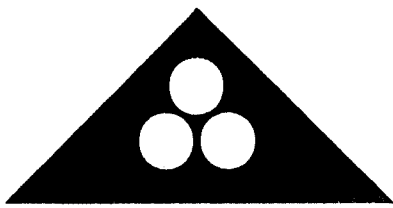
Few states have recognized the interrelated nature of child custody and battering and have enacted legislation that allows or requires courts to consider evidence of physical abuse of a spouse in child custody cases.

For purposes of determining child custody, credible evidence of physical abuse of a spouse should create a statutory presumption that it is detrimental to the child to be placed in the custody of the abusive spouse.

The U.S. resolution was not intended to encourage states to prohibit supervised visitation.

Keeping these issues in mind, the Attorney General and his Victims' Rights Task Force ask for your support of Senate Bill 327.

8-³/₃



"Helping People Help Themselves"

SAFEHOUSE, Inc. Est. 1979

NATIONAL BANK BUILDING • 101E. 4TH, SUITE 214 • PITTSBURG, KANSAS 66762-4851

Executive Director
DORTHY MILLER

Counselor/Advocate
BROOKE SAATHOFF

Vol. Coord./Counselor
PATRICIA CARUTHERS

Child Adv./R-Van Coord.
SHARON MOREY

Shelter Manager
CHRISTINE ALLGOOD

Testimony before the Senate Judiciary
Civil Subcommittee
March 7, 1991

Re: SB 327

SAFEHOUSE wishes to express appreciation for the protection of victims of domestic violence and their children encompassed in SB 327. While working with victims of domestic violence in the 12-county area of S.E. Ks., we often are faced with assisting victims through the divorce process with judges that refuse to consider spouse abuse when determining custody of the children. As is written in Charlotte Fedder's book Shattered Dreams, "Mental health professionals who are knowledgeable about the dynamics of family violence know that physical abuse is accompanied by psychological control and that when the victim takes action to end the violence, the assailant often turns to the court system to regain control and continue the harassment."

The child custody battle is often productive for the abuser. Many women go back to an abusive husband when faced with the horrible reality that, if they don't go back, their children will be in that dangerous situation without their maternal protection. Others never leave due to such fear. And others are legally forced to submit their children to a dangerous situation every other weekend, holidays, and an extended time in the summer. Still others have to cope with the reality that the abuser has somehow convinced the court that he is the better placement for the child's physical custody.

A major study of more than 900 children at battered women's shelters found that nearly 70% of the children were themselves victims of physical abuse or neglect. Nearly half of the children had been physically or sexually abused. And those are the ones we know about. Many states have already passed legislation recognizing that domestic violence should affect child custody decisions. I have enclosed a copy of the federal resolution which was passed last year in reference to this issue.

We are pleased to see that SB 327 is being considered. Thank you for your consideration of this critical topic.

Dorthy Miller, LBSW
Executive Director
SAFEHOUSE, Inc.

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Child Custody Resolution

On July 20, 1989, **House Congressional Resolution 172** was introduced by Representative Connie Morella (R-MD), to express the adverse effects of domestic violence on children and the need to incorporate evidence of domestic violence in child custody litigation.

Although Congress does not have jurisdiction to legislate how state judicial systems decide child custody cases, Congressional resolution can serve as an important tool for education at the state and local level. This resolution is currently awaiting a report to the Judiciary Committee.

101st Congress, 1st Session H. Con. Res. 172

Expressing the sense of the Congress that, for purposes of determining child custody, evidence of spousal abuse should create a statutory presumption that it is detrimental to the child to be placed in the custody of the abusive parent.

IN THE HOUSE OF THE REPRESENTATIVES

July 20, 1989

Mrs. Morella (For herself and Mr. Miller in California) submitted the following concurrent resolution; which was referred to the Committee on Judiciary

CONCURRENT RESOLUTION

Expressing the sense of the Congress that, for purposes of determining child custody, evidence of spousal abuse should create a statutory presumption that it is detrimental to the child to be placed in the custody of an abusive parent.

Whereas State courts have thus far not recognized the detrimental effects of the batterer as a custodial parent due to their failure to hear or weigh evidence of domestic violence in child custody litigation;

Whereas joint custody guarantees the battered spouse's life through their children;

Whereas joint custody forced upon hostile parents can create a dangerous psychological environment for a child;

Whereas a batterer's violence toward an estranged spouse often escalates during or after a divorce, placing both the abused spouse and children at risk through shared custody arrangements and unsupervised visitation;

Whereas spouse abuse is relevant to child abuse in child custody disputes;

Whereas the effects of spouse abuse on children include actual and potential emotional and physical harm, the negative effects of exposure to an inappropriate role model, and the potential for future harm where contact with the batterer continues;

Whereas children are emotionally traumatized by witnessing physical abuse of a parent;

Whereas children often become targets of physical abuse themselves or are injured when they attempt to intervene on behalf of a parent;

Whereas even children who do not directly witness spousal abuse are affected by the climate of violence in their homes and experience shock, fear, guilt, long lasting impairment of self-esteem, and impairment of developmental and socialization skills;

Whereas research into the intergenerational aspects of domestic violence reveals that violent tendencies may be passed on from one generation to the next;

Whereas witnessing an aggressive parent as a role model may communicate to the children that violence is an acceptable tool for resolving marital conflict; and

Whereas few States have recognized the interrelated nature of child custody and battering and have enacted legislation that allows or requires courts to consider evidence of spouse abuse in child custody cases: Now therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that, for purposes of determining child custody, evidence of spousal abuse should create a statutory presumption that it is detrimental to the child to be placed in the custody of the abusive parent.

S.O.S.

inc.

Services for Victims of Sexual & Domestic Violence

SENATE JUDICIARY CIVIL SUBCOMMITTEE

TESTIMONY of Trisha Bannon

P.O. Box 1191

Emporia, KS 66801

After doing extensive research for her book The Battered Woman, Lenore Walker concluded that "Whether or not they (the children) are physically abused by either parent is less important than the psychological scars they bear from watching their fathers beat their mothers". This finding is the core from which I speak here today.

For two (2) and one half (1/2) years I have had the agony of comforting children who are either anticipating a visit with their father or who have just returned from a visit. Children having to endure unending questions such as where are you staying, what is Mom doing, who is Mom seeing, this is all Mom's fault and even this is all your fault because you told.

The victimization these children are expected to withstand due to our societal socialization, our laws and our denial is ludicrous. It is hard to conceptualize that at this point our society is still more concerned with protecting parental rights than in protecting our states most precious resource - the children.

Violence is a generational cycle that can only be broken through intervention and treatment. However, treatment one hour per week at a shelter or mental health center cannot be effective if the child must return to the psychological and physical maltreatment that the abuser inflicts on a routine basis.

Social modeling is a cornerstone in the teaching of behavior to children.

We cannot expect our children to learn appropriate behavior when they are living with a parent who does not have appropriate coping skills. And I must ask - in forcing a child to return to an abusive home, what are we as the state of Kansas modeling, that abuse is okay?

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Support Groups • Shelter • 24hr. Hot Line • Information & Referral • Preventive Education

316-342-1870

P.O. Box 1191 Emporia, Kansas 66801

1-800-825-1295



We are really talking today about terror, the terror a child feels when they are placed in the custody of an abusive parent. One seven (7) year old boy went screaming, literally screaming through the shelter, out the backdoor into the backyard burying his face in the fence pleading that he not be made to see his father. This child's crisis was precipitated by a mere visit. To the best of our knowledge and his mother's knowledge this child has never been physically abused. It would be comforting to rationalize this child's behavior as rare and extreme. Unfortunately, this is a fairly typical response. A fifteen (15) year old girl who refuses to have any contact with her father stated "I had known ideal what it was like to live in a "normal" home, but now that I know I will never go back to my family.

The 15 year old may stand a chance in court system because of her age, they may hear her plea - but it's up to you- individually and as a committee to act upon the behalf of those who aren't eloquent in their speech, who aren't old enough yet to verbalize the terror they feel. These are the children who have been taught to lie to themselves and others about the abuse, they have lived in secrecy all of their lives. We must not let our children be forced into custody or visitation with a person who has little or no nurturing skills, anger control problems and the belief that physical abuse should be used to gain compliance. And still we cannot expect these children to verbalize their fears and their trauma before we can protect them. We as adults must be dedicated to the innocent, we must take it upon ourselves to rise above the denial of these horrors and become educated on the effects of spousal abuse on our children. We as the state of Kansas must protect our future, our children. They are our future, they will be the ones modeling the social skills we expect, and yet without our help they never stand a chance of learning about or modeling nonviolence.

Whitney Houston said it best in her song The Greatest Love of All.

**I believe the children are our future;
Teach them well and let them lead the way.
Show them all the beauty they possess inside.
Give them a sense of pride,
To make it easier;
Let the children's laughter
remind us how we used to be.**

10-7/3

LITTLE COTY CAN FORGET NOW.

The little boy of ten lies in his bed. While daddy's promises run through his head. The promises he's heard so many times before. Remembering the times he's shuddered behind his bedroom door.

But just today daddy promised and he remembers his embrace. So, he closes his eyes and theres a smile on his little face.

But then the screams of mommy awake him once again. Oh God, he prays let this horror come to an end! He stumbles out of bed and peeks through his door. And there once again mommy lies on the floor.

He cries and remember he's heard mommy scream that she can't leave. Cause she can't give up the house little Coty needs.

He remembers daddy screaming he'll never ever go. Cause he's the only daddy little Coty will know.

He'd snuck the gun out of daddy's dresser drawer. Cause he's heard daddy threaten to kill mommy many times before. So with trembling little hands and tears in his big blue eyes. Little Coty gets the gun from under his bed and writes his good-byes.

Dear Mommy and Daddy
I love you both so
But I can see its time
for me to go. And if I go now
and leave today. You both can
go your own way

I love you both
Coty

P.S Plees give Spotty to Timmy
my best friend

10-3/3

TO THE SENATE JUDICIARY CIVIL SUBCOMMITTEE
Senate Bill #327
March 7, 1991

Dear Committee Members:

Thank you for taking the time to consider my concerns and remarks. I am here today in reference to Senate Bill #327. I am a victim of domestic violence x 2. I was married to an abuser, and grew up with a father that was a wife abuser. My father physically, sexually, and emotionally abused my mother.

Back then, we didn't know up to 80% of abusers also abuse their children. As a child, I had 23 fractures at one time. For this, my father received a dishonorable discharge from the air force. He started sexually abusing me at age 6. My mother didn't leave my father until I was 17 years old. My father went to mental institutions three times, each time for 3 months for the abuse he did to me. He was given visitation rights, even though I didn't want to see him during his stays at the hospitals. He remarried and sexually, and physically abused his wife and stepdaughter.

I didn't know that up to 60% of the women who are abused by husbands are also abused as children; I was at high-risk of marrying an abuser. My exhusband was a violent man. He would beat me, throw me, and threaten me. He had a quick temper. My children were 4 and 6 years of age when I left him. Many times I would put myself between him and the children. I was afraid to leave them with him. My husband's Neurologist explained to me that part of my husband's type of seizure condition was explosive anger before he had a petit mal seizure. The doctor witnessed one of his explosive episodes toward me in his office. My husband would either drink with his medication or not take his medication. I had a police report stating from his own sister that my husband had an explosive temper, and that no one in the family could control it.

Because of my experiences as a child, and by not being helped, I didn't think I could do anything about his temper, and beatings. Or how he would sleep with other women, and then bring home pictures of them to show and tell me about. Or sleeping in the car with the kids all night because I was afraid to go into the house. Or how I was afraid to leave the children alone with him. Or how as babies if they cried in the night and woke him up, he would become enraged and break furniture.

I know first-hand what the effects of child abuse are. When ever I remember the things that happened to me as a child, the pain of the memory is so intense I cry for long periods of time. It's taken 4 years of Safehouse counseling and work for me to be able to look a person in the eyes and talk to them. I'm just now stopping saying I'm sorry all the time. I still wake up terrified at night, fearing someone is going to come and hurt me. I am the only non-alcoholic child of 5 children from my original

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family. The others bury their pain of abuse in alcohol, but I just cry. I am just now learning not to go into a panic if I don't please someone.

I knew if I left my husband, he would really go after me. He was continually telling me what he would do if I ever left. He would threaten to take off with the kids and never come back. Or he'd say, "If you think it's bad now, just try to leave me." I explained his violent behavior to our judge in the divorce, stating my fears for my children when being in an auto alone with him: that he could pass out due to his abuse of medications, or drinking, as well as fearing his angry mood swings. The judge stated to me that my testimony and the police report about domestic violence along with a statement from his own sister would not be considered in determining child custody. My husband's physician would not release his medical record without my husband's consent. Nine months later, due to my husband's abusive behavior, my son was in intensive care for 5 days with multiple fractures of the skull. The Doctor said his skull cracked just like an eggshell, and if he had taken the blow all to one spot, he would have died. I have written documentation at the hospital of this incident. Nothing was done. He was simply told by the court to have an evaluation done, which he did not comply with. However, he still has joint custody and exercises unsupervised visitation rights.

For four years my ex-husband has used his child custody rights as a means to harass me: using it as an excuse to come to my home for any reason, threaten me, and be late in returning the children by 3 to 5 hours, knowing full well that I was terrified he had run off with them. I still live in fear for my children. My ex-husband can have them up to 3 days per week and every other holiday. I fear whether they will be able to live through his next anger attack. I fear his mental abuse will hurt them. I fear for my daughter: will he do to her what he did to me? I want so to protect them, but have found no legal way. So I pray to God. And I urge you to change the law, so others won't have to go through what I and my children have gone through.

Thank you for hearing my testimony in consideration of Senate Bill #327.

Gina Wright, R.N.
218 W. Maple
Independence, Ks. 67301

Sexual Assault/Domestic Violence Center
formerly Reno County Rape Center, Inc. & Reno County Victims of Abuse Network, Inc.
1 East Ninth, Hutchinson, KS 67501
316-665-3630 - Office

Committee on Judiciary
Re: Senate Bill # 327

Dear Chairperson and Committee Members,

Simply stated, we as advocates for victims of domestic violence ask for your support of Senate Bill # 327 with some considerations.

Senate Bill # 327 reflects the seriousness of the affect an abusive home life has on children and the need for this to be an issue in custody decisions. We would strongly encourage you so suggest in the Bill a preference of Sole custody be given to the abused parent. This would enable them to have more control over the visitation schedule. Child visitation is the means by which most abusers continue their control and harassment of the abused parent after the divorce. This provision would help eliminate children being used by either parent as a pawn by providing specific guidelines.

Respectfully,

Janet A. Messing

Janet A. Messing
Program/Volunteer Coordinator

Annetta Hembree

Annetta Hembree
Shelter Manager

Lucki Boyd

Lucki Boyd
Executive Director

Subcommittee - Senate Judiciary

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CRISIS HOTLINE - 316-663-2522

Temporary Emergency Shelter Available - Call Hotline For Information





**Kansas
Child Abuse
Prevention Council**

715 West 10th Street
Topeka, Kansas 66612
(913) 354-7738

428 S. Broadway, Suite 204
Wichita, Kansas 67202
(316) 262-8434

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EXECUTIVE DIRECTOR
James McHenry, Ph.D.

**Testimony in support of SB 334
Senate Committee on Judiciary
March 6, 1991**

KCAPC appreciates the opportunity to support SB 334, and we thank the Senate Judiciary Committee for approving the bill's introduction.

We have requested this bill because of experience gained while helping form multidisciplinary child protection teams, as envisioned by the legislature when it passed SB 522 last session. Some prospective team members have expressed reservations about serving in the absence of a specific provision in the law granting immunity from civil or criminal liability.

While the present law speaks to immunity for civil liability for those who are appointed but decline to serve, individuals who do accept appointments are not specifically addressed. Because this issue has arisen in our work with prospective teams in three different communities, we think it important that it be resolved.

Taking this action would in no way make Kansas unique. Most states make similar provision for those who agree to lend their time and expertise to serve on multidisciplinary child protection teams. We are confident this provision will assist us as we seek to follow through on the clear legislative intent, which is to encourage the formation of such teams and to support their efforts to assist children and families in their respective communities.

**Testimony submitted by James McHenry, Ph.D.
KCAPC Executive Director**

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Department of Social and Rehabilitation Services
Robert C. Harder, Acting Secretary

Testimony in support of S.B. 334

AN ACT CONCERNING THE KANSAS CODE FOR CARE OF CHILDREN;
RELATING TO CHILDREN IN NEED OF CARE DETERMINATION;
IMMUNITY FOR MULTIDISCIPLINARY TEAMS;
AMENDING K.S.A. 38-1523A AND REPEALING THE EXISTING SECTION

3/6/91

(Mr. Chairman), Members of the Committee, I appear today in support of Senate Bill 334.

The use of multidisciplinary teams in the investigation and management of reports of child abuse and neglect was authorized by the legislature in 1988. Currently, the Department of Social and Rehabilitation Services is making a concerted effort to initiate these teams across the state.

The importance of such teams cannot be overstated. They bring to bear the collective knowledge of many specialized disciplines in dealing with a highly volatile and complex problem. They facilitate efficiency and cooperation among community agencies, thus increasing protection to maltreated children. They assist communities to make a community response to a problem which is beyond the capacity of a single governmental agency to solve.

K.S.A 38-1526, 1989 Supp. 38-1526 grants immunity from prosecution to persons who report child abuse and neglect and to those who participate in investigations and judicial proceedings which result from such reports. Persons who are appointed to multidisciplinary teams may have other roles (such as advising the team on treatment alternatives or interpretation of

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evidence gathered in an investigation) which are not specifically mentioned among those immune from prosecution.

Because members of multidisciplinary teams are not clearly immune from liability for their participation, some potentially important team members may be unwilling to participate.

Passage of this bill will encourage such participation and thus the development of child abuse and neglect multidisciplinary teams by affording protection from unreasonable liability to those who participate.

I urge favorable consideration of this bill.

*Jane Waide,
on behalf of:*

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



KANSAS TRIAL LAWYERS ASSOCIATION

Jayhawk Tower, 700 S.W. Jackson, Suite 706, Topeka, Kansas 66603
(913) 232-7756 FAX (913) 232-7730

TESTIMONY
BEFORE THE
SENATE JUDICIARY SUB-COMMITTEE
ON CIVIL PROCEDURE

SENATE BILL 334

MARCH 6, 1991

Mr. Chairman and committee members, the Kansas Trial Lawyers Association appears today in opposition to Senate Bill 334 for a very narrow but important reason. The bill would grant immunity from both civil and criminal liability to all persons who are appointed by a judge to serve as members of a multi-disciplinary team which gathers information and makes recommendations to the judge in matters involving allegations of physical, mental or emotional abuse or neglect or sexual abuse. This immunity would be total and complete for all actions or omissions of the persons appointed arising out of or in the course of such appointment.

We, as a matter of principal, must oppose this kind of legislation for obvious reasons. There is always the possibility that the system itself can be abusive in these kinds of cases. The one main check that is in place which serves as an incentive to protect other people's rights is the civil justice system. If the immunity granted in this bill were allowed to become law, there would be very little recourse left for persons who were unduly or negligently harmed by the improper acts of aggressive members of a multi-disciplinary team.

The Kansas tort claims act will apply in these situations. There is no need to offer complete immunity to team members when they already enjoy the extensive protection that the tort claims act offers to those people. The fact that damage can be done to innocent citizens cannot be ignored and the protection of children is not a sufficient end to justify the possible means of unchecked civil rights violations on the part of an overly aggressive or misguided public servant.

The Kansas Trial Lawyers Association urges the committee to recommend this bill unfavorably. It is not needed and, we believe, it will do more harm than good. Thank you.

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