

Approved: February 28, 1992
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Senator Wint Winter Jr. at
10:05 a.m. on February 5, 1992 in room 514-S of the Capitol.

All members were present except:
Senator Gaines who was excused.

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

Conferees appearing before the committee:
Roberta Sue McKenna, Kansas Department of Social and Rehabilitation Services
Chris Dunn, American Civil Liberties Union

Chairman Winter opened the meeting by stating the purpose of this days' briefing were to have up-to-date information on the Department of Social and Rehabilitation Services efforts to improve children's services and to keep up-to-date on the current litigation brought against SRS by the ACLU.

Robert Sue McKenna, Staff Attorney of the Youth and Adult Services section of the Kansas Department of Social and Rehabilitation Services, gave the Committee a briefing on the SRS Family Agenda for Children and Youth and views on the status of the ACLU lawsuit. (ATTACHMENT 1)

Ms. McKenna responded to the question of why SRS has not made a settlement offer by stating that they would be more than willing to seriously consider a settlement as long as the consideration for availability of resources were part of the settlement. She added that SRS feels they are in substantial compliance with all of the federal and state laws indicated in the lawsuit.

Chris Dunn, American Civil Liberties Union, introduced Dr. Gordon Risk as a member of the National Board of ACLU. He then reviewed the background of the current litigation and expressed his opinion that the cause of the suit concerns systematic problems with SRS's management of resources and priorities, particularly in the child-in-need-of-care programs.

Mr. Dunn stated the ACLU had made a settlement offer but had received no formal response from the Department. They were prepared to go to trial, set for June 15, 1992. Mr. Dunn stated the terms of the settlement offer were to be a legally binding agreement to do several things: correct SRS practices for timeliness, adequacy, availability of services and programs; availability of returning the children to their homes as appropriate; and availability of services to permanent alternate homes when appropriate. The staffing issues of the settlement addressed having sufficient staff to carry out the required programs. Management portions of the settlement offer require adequate information systems and financing support to the programs.

Committee members noted a formal settlement would allow for legislative and executive control and may be preferable to a court judgment against the state. All parties agree improvement is needed in the system. The Committee suggested a planned improvement program would be of greater benefit than to have the court intervene.

The meeting was adjourned at 11:15 a.m.

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Donna Whiteman, Secretary

SENATE JUDICIARY COMMITTEE

FEBRUARY 5, 1992

Testimony in Regard to the SRS Family Agenda for Children
and Youth and the ACLU Lawsuit

Mr. Chairperson and Members of the Committee, I am appearing today at your request regarding the SRS Family Agenda for Children and Youth and the ACLU Lawsuit.

Roberta Sue McKenna
Staff Attorney
Youth and Adult Services
Department of Social and Rehabilitation
Services
(913) 296-3967
February 5, 1992

RSM

*Senate Judiciary Committee
February 5, 1992
Attachment 1*

TESTIMONY

Senate Judiciary Committee

History of the SRS Family Agenda for Children and Youth

SRS, Youth and Adult Services, began intensive work with Michael Petit and his team of staff and consultants from the Child Welfare League of America in March, 1991. The purpose was to complete a program analysis and planning process to address concerns which had been raised about the operation of SRS Youth Service programs. This process began with a thorough review of the findings and recommendations of the Youth Service Program Assurance Unit, the SRS Task Force and the Legislative Post Audit reports on child protective services and the foster care program.

The Department created the Youth Service Program Assurance Unit in 1988 with federal grant funds and special project positions. The unit has been in continuous operation since that time with the completion of three comprehensive studies of area office operations and numerous small projects. These program reviews have been quite detailed and were designed to look beyond federal requirements. Hence, the Unit's reports have not been limited to federal compliance issues. They have also identified program issues which need attention but which do not jeopardize either federal compliance or funding.

The SRS Task Force recommendations regarding Youth Service programs were general in nature for the most part. The planning process included the development of specific strategies to address these concerns.

The Department's Youth Service programs have undergone five Legislative Post Audit studies in the past five years. The Department has appreciated the thorough nature of these studies and the assistance which they have provided. The Department has taken the findings and recommendations very seriously. Responses have been developed and implemented as quickly as resources have allowed. Information regarding these studies and the Department's responses are available for review.

The four-part Legislative Post Audit report on the foster care program was being completed as the Department contracted with the Child Welfare League. The plan developed through this process responds most directly to these Legislative Post Audit reports. However, a decision was made early in this process to comprehensively review and plan for all Youth Service programs in addition to systematically responding to all expressed concerns. Hence, the resulting plan covers all programs, including the Youth Center programs.

The result of this review and planning process is a three-year plan, the SRS Family Agenda for Children and Youth.

Highlights from the SRS Family Agenda for Children and Youth

The analysis of SRS programs and the various reports on SRS operations revealed a number of concerns which are addressed in the introduction of the Family Agenda. Several of these are worthy of special attention:

- *Child abuse and neglect reports rose from 17,522 in 1980 to 23,416 in 1990.
- *Children and youth in SRS custody rose 18 percent from 1980 to 1991.
- *From 1985 to 1991, the children in SRS custody rose 28 percent.
- *Children of color in SRS custody have risen dramatically from 1980 to 1991:

- *The number of Black children rose 74 percent.
- *The number of Hispanic children rose 88 percent.
- *The number of Native American children rose 41 percent.
- *The number of Asian American children rose 26 percent.

- *The number of white children in custody rose only four percent.
- *The number of social service field staff decreased by 24 percent from 1980 to 1991.

These figures demonstrate the gap which exists between community expectations and the resources the Department has to respond to identified needs.

The introduction also highlights Kansas' dependence on out-of-home care and institutionalization rather than family and community based alternatives. Foster care is budgeted at \$48 million dollars in FY 1992 while family services are budgeted at \$3 million dollars. Kansas is 8th in the country for incarcerating juveniles. Just a few years ago, Kansas spent a higher percentage of mental health dollars on institutional care for children than any other state.

The Family Agenda envisions a major shift on the part of all child-serving systems in Kansas. This is a shift from seeing removal of children and youth from their families and communities as the solution of choice to a commitment to supporting, strengthening, and preserving families. It envisions an array of services designed around the unique needs of the families being served and in the least restrictive setting possible. It envisions collaboration among state agencies, communities and families. It envisions timely and effective services for children, youth and families, wherever they are served. These are not new ideals or goals but continued implementation and progress will require a shift in perception by courts, schools, communities and a commonly shared definition of terms.

The enhancement of services to families cannot result in the deterioration of foster care or Youth Center programs. The Department believes that foster care providers and Youth Center staff are key to the successful rehabilitation of families. Hence, the Family Agenda addresses all facets of the Department's programs.

The SRS Family Agenda for Children and Youth contains 29 initiatives divided into five clusters. Each initiative includes administrative, legislative and budgetary strategies. Efforts have been made to incorporate and coordinate the development of the Family Agenda with other initiatives currently underway in the Department and the state. Examples include mental health reform and the Special Committee on Children's Initiatives.

The plan is divided into the following clusters. The Executive Summary and the full Family Agenda include the detailed initiatives.

- Cluster 1 Helping Families to Safely Care for their Children
- Cluster 2 Improving Out-of-home Care for Children when Placement is Necessary
- Cluster 3 Working with Juvenile Offenders: Help for Troubled Kids and Their Families while Providing for Public Safety
- Cluster 4 Involving Communities and other Systems in the Care and Protection of Kansas Children
- Cluster 5 Strengthening the Department's Capacity to Better Serve Children and Families

1-4/8

Distribution and Input on Family Agenda

The Executive Summary of the draft Family Agenda was broadly distributed to SRS staff and other interested persons in early October, 1991 to solicit input. Interest in review and comment on the full agenda was so great that the deadline for input has been extended twice.

Both verbal and written comments have been received from a cross-section of the citizens of Kansas. These comments have been thoroughly reviewed and decisions are now being made on what changes will be made before the final document is released. Examples include:

Offers of assistance and requests for more specific strategies to address the overrepresentation of children of color in SRS custody.

The need for greater and more detailed attention to substance abuse problems of children, youth and parents;

Specific strategies to address gang involvement and gang violence; and

The need for more attention to the safety of SRS employees and other providers as services are delivered in an increasingly violent environment.

The first year strategies in the Family Agenda formed the basis for the agency's FY 1993 budget request for children and families. Changes made in the Family Agenda as a result of input will be included in the agency's budget requests for FY 1994 and FY 1995.

Governor's Budget Recommendation and the SRS Family Agenda

The Department is extremely pleased with the Governor's support of the Family Agenda. The Governor's Budget Recommendation includes full or partial funding of a number of the first year strategies included in the plan. Examples by cluster include:

Cluster 1 Helping Families to Safely Care for their Children

- *Fully funds four intake/assessment teams with 32 staff
- *Funds 25 percent increase in the family support worker program
- *Fully funds request for 23 family preservation staff and \$750,000 for the purchase of family preservation services
- *Fully funds two additional projects to serve women with substance abuse problems and their children together (in ADAS budget).

Cluster 2 Improving Out-of-home Care for Children when Placement is Necessary

- *Funds 24 clerical support staff to be added Youth Service units in the field. The draft agenda included 12 clerical staff which were increased during the budget process.
- *Funds 12 attorneys to improve legal representation for children and staff
- *Includes approximately \$225,000 to assist contracting agencies in adopting a family treatment approach and in qualifying for Medicaid

Cluster 3 Working with Juvenile Offenders: Help for Troubled Youth and their Families while Providing for the Public Safety

- *Funds enhanced radio systems for the youth centers

Cluster 4 Involving Communities and Other Systems in the Care and Protection of Children

The Governor did not recommend funding in this cluster. However, it contains only four initiatives; two of these involve projected costs the first year.

Cluster 5 Strengthening State Government's Capacity to Better Serve Children and Families

- *Funds two staff positions to begin the design and development of a comprehensive automated social service information system.

We believe that these initiatives are an excellent beginning in our efforts to address our own concerns and the concerns of others about the operation of our Youth Service programs.

1-6/8

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Sheila A. v. Finney

Kansas' version of the ACLU's welfare class action suit. To date, only two of these suits have gone to trial, the Louisiana suit and the District of Columbia suit. The ACLU prevailed in D.C. and lost in Louisiana. The Kansas case will be tried in June of 1992.

The central issue is the Department's compliance with federal law in the area of foster care, adoption, etc. We have vigorously defended the suit because of our understanding of the federal law and belief that our programs comply with federal law. We have always passed federal audits and have never been threatened with any reduction of funds because of non-compliance.

The Department is using two nationally recognized individuals to assist with preparation of the case for trial. Robert McKeagney, who worked extensively on the class action litigation in Louisiana, is studying our social work practices. Mr. McKeagney's study is based upon a random sample of cases from across the state.

Dr. Mary Ann Shaening is conducting a study of our staffing and training. Dr. Shaening, who is also working on the New Mexico class action, will be developing various survey instruments regarding case loads and social work training.

The purpose of both Mr. McKeagney and Dr. Shaening's work is to give the Court a true picture of the work performed by the field. As part of the defense, Dr. Shaening supervised a case reading in July, August and September. Mr. McKeagney is presently winding up his part of the case reading. His case analysis deals with a more detailed look at specific case files selected as a part of a subsample from the overall case reading. The data collected during these case readings will be analyzed and presented to the Court in June, 1992,

We see no reason to settle at this point. If we received a reasonable settlement offer, we would consider it. In other litigation reviewed across the country we have seen no reasonable settlements.

In some states consent decrees provided the child welfare agency with a persuasive argument for additional resources. However, the consent decrees continued to require adherence to standards in excess of either federal or state law long after their prolonged existence resulted in additional resources. These agencies are struggling to meet additional management costs, pay all expenses of ongoing litigation and serve the children depending on them. Based on the experience of Missouri, New Mexico, Kentucky, Connecticut, and others, KDSRS has determined that we can not negotiate a settlement if resources are not a consideration. If the issue is solely management and not resources, then negotiations should take place within the confines of legislative allocations. If we agree, as other states have done, to exceed statutory requirements, then substantial and not absolute compliance should be the test. Settlement should not commit a state to decades of litigation.

Alabama: Their consent decree gives the state seven years to develop a system of child protective services and foster care programs that will serve the children in need. At this point, the system is still being defined, so the full cost cannot yet be determined. The costs identified thus far are:

FY 1992: \$3.5 million for additional FTE, legal fees for both parties, consultants who are working on the agency's reorganization plan, and assessments of children who are members of the class. Of the \$3.5 million, about \$2 million will be ongoing costs.

FY 1993: \$6.5 million (in addition to the above-mentioned \$2 million) for 26 additional staff, increased staff training, increased therapeutic foster care, etc.

Connecticut: The cost for complying with the consent decree will be about \$107 million over five years. The vast majority of this estimate is added staff to reduce caseloads: 486 new field staff (350 social workers, 58 clericals, 58 supervisors, 20 unit supervisors) at an annual cost of about \$20 million in salaries and wages. They had 636 field staff prior to the consent decree. The other major compliance cost is development of a computerized management information system, estimated implementation in Kansas at \$20 million. There was no available data on other costs.

Louisiana: Their state child welfare agency submitted a four point plan to provide comprehensive staff and parent training, reorganize their agency, revamp the child abuse and neglect and child welfare systems, and provide additional family services. These enhancements cost:

1988-89: \$828,648 and 2 FTE.

1989-90: \$8,399,783 and 96 FTE.

1990-91: \$5,526,933 and 231 FTE.

1991-92: \$7,309,391 and no new positions.