

Approved: 9/5/92 LRM
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 February 20, 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:
Richard Sealy, Intensive Treatment for Sexual Aggressiveness Center, State of Minnesota (teleconference)
Pat Miller
Cindy Livengood
Peggy Jennings-Basgall
Amy Allen
Dorothy Miller, Kansas Coalition Against Sexual and Domestic Violence
Dr. Tom Locke, Bert Nash Center, Lawrence
Dr. Ray Spring, Professor of Law, Washburn University
Donovan Rutledge, Kansas Department of Social and Rehabilitation Services Youth and Adult Services
Chip Wheelen, Kansas Psychiatric Society

Vice Chairperson Moran brought the meeting to order by opening the hearings for SB 18, SB 19, SB 20, SB 355 and SB 662.

- SB 18 - sexually violent offenders.
- SB 19 - persons likely to commit sexual acts as mentally ill person under treatment act for mentally ill persons.
- SB 20 - required supervision and treatment by mental health professional for sex offenders.
- SB 355 - eliminating spousal defense in certain crimes.
- SB 662 - statute of limitations expanded for civil actions for damages for injury or illness suffered as a result of childhood sexual abuse.

Mike Heim, Kansas Legislative Research Department, reviewed the 1991 considerations by the Committee on SB 18, SB 19 and SB 20. (see 1991 Senate Judiciary Subcommittee on Violent Sex Offenders)

Richard Sealy, Director of the Intensive Treatment for Sexual Aggressiveness Center, State of Minnesota, addressed the Committee via telephone speaker on SB 18, SB 19, and SB 20. Referring to SB 19, he stated that the change in definition of mental illness brings up questions of treatment issues. He outlined how Minnesota addressed the issues and how their determinate sentencing applied to violent sex offenders.

Mr. Sealy addressed the content of SB 20 by stating that these offenders are best treated through mental health facilities, but a major problem arises when those classified "premeditated" are housed with otherwise vulnerable patients. He added that Minnesota's treatment of these persons has been effective; they reverted to sentencing from previous statutes only as an exception. The treatment has resulted in the lowest recidivism rate of any other known treatment program, even when the person did not willingly participate in the treatment.

Mr. Sealy expressed concern with the provision of SB 20 that would use the mental health system to solve a major criminal problem. He responded to questions by stating that "violent sex predators" and their behavior pattern can be identified. Treatment, control and intervention of those behaviors can be successful, especially when the person is willing to work toward that end.

Mr. Sealy concluded his telephone conference by stating that as long as those convicted are retained as part of the correction system and physically segregated from the mental health community, providing treatment for their behavior is much more effective than simply incarcerating/punishing the individual.

Pat Miller testified in support of SB 662. (ATTACHMENT 1) Ms. Miller presented a copy of an article from the October 7, 1991, issue of NEWSWEEK, titled *The Pain of the Last Taboo*.

Written testimony in support of SB 662 was presented to the Committee from Dr. David McConnell, Everett, Washington. (ATTACHMENT 2)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:05 a.m. on February 20, 1992.

Cindy Livengood testified in support of SB 662. (ATTACHMENT 3)

Peggy Jennings-Basgall testified in support of SB 662. (ATTACHMENT 4)

Amy Allen testified in support of SB 662. (ATTACHMENT 5)

Dorthy Miller, Kansas Coalition Against Sexual and Domestic Violence, testified in support of SB 355 and SB 662. (ATTACHMENT 6)

Dr. Tom Locke, Bert Nash Center, Lawrence, testified on SB 18, SB 19 and SB 20. He expressed his agreement that sex offenders are best handled within the legal system but pointed out that funding would be a major factor in providing treatment. He pointed out that the state facility at Lansing is not equipped to treat sexually violent predators without additional appropriations. Without adequate treatment, the perpetrators will only create more victims, so the funding issue must be addressed satisfactorily.

Dr. Locke spoke in regard to SB 662 by stating that although victims of violent sex predators receive all of the publicity, incest victims by comparison far outnumber them. He expressed his support of no limit to statutory recourse for retribution, treatment or sentencing of any of the measures he addressed.

Chairman Winter stated that Larned State Hospital would be contacted about the housing issue contained in SB 18. He further added that since SB 19 contained the most troubling policy question, the Committee would focus on SB 18 and SB 20.

Dr. Ray Spring, Professor of Washburn Law School, testified regarding SB 18, SB 19 and SB 20. (ATTACHMENT 7) Professor Spring spoke in support of SB 662 but questioned whether three years was the appropriate time limit. He suggested three years might be too limiting for this type of traumatic suppression.

Donovan Rutledge, Kansas Department of Social and Rehabilitation Services Youth and Adult Services, testified in support of SB 662 and offered an amendment. (ATTACHMENT 8)

Chip Wheelen, Kansas Psychiatric Society, presented testimony in support of SB 20, with reservations about SB 18, and in opposition to SB 19. (ATTACHMENT 9)

Juliene Maska, Statewide Victims' Rights Coordinator, presented testimony on behalf of Attorney General Bob Stephan in support of SB 355. (ATTACHMENT 10)

The hearings were continued to February 21, 1992, 9:30 a.m. in Room 514-S. The meeting was adjourned at 11:17 a.m.

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VISITOR SHEET
Senate Judiciary Committee

(Please sign)

Name/Company	Name/Company
Ken Smith	Ks Bar Assoc
Jim Clark	Ks Co Dist Attorney Assoc.
John Petersen	Ks Assoc Prof Psychologists
Terry Larson	Ks Alliance for the Mentally Ill
Stuart Frager	S. R. S.
Deborah Pridgeman	SRS - Youth & Adult Services
Deborah Pridgeman	Ks. Coalition Against Sexual & Domestic Violence
Brooke Seathoff	Safehouse, Inc. Pittsburg, KS
Bridgette Herrin	Safehouse, Inc. Pittsburg, KS
Raymond A. Spring	Washburn Univ
Tom Locke	Best Nash MHC
John Wine	KCAPC
Patricia A. Miller	Incest Victim - Marysville, WA
Amy C. Allen	Incest victim - Hays, KS
Cynthia Brockton Leungood	Incest Victim Hays, KS
Peggy Jennings Farrell	Incest Victim - Bison, KS
Jane Jackson	Family Life Center, Inc. (CMAA)
JIM KARLAN	SOUTHWEST GUIDANCE CTR (LIBERAL)
JUSTIN OLIVESTAD	WASHBURN SENIOR CENTER
Roger Whitsett	KDOC
Joan Strickler	KAPS
Tim Voth	KAPS
Nancy Kending	LWV of KS
Julene Masler	A. G. office
Fran Brunner	OJA
Carment R. Smith	Washburn Univ student

Good Morning! My name is Pat Miller. I am an incest survivor. I was born and raised in the State of Kansas. I left Kansas with my parents when I was 5 years old and moved to the State of Washington, where I now reside. I come to you today to encourage you to support Senate Bill # *662* This bill deals with the extending the statute of limitations of victims of child sexual abuse and the life damaging consequences of that abuse.

As an incest survivor, the only way I have to pass back the responsibility of the abuse I had to endure as a child is by taking my abusers to court. The way the Kansas law reads now, I am unable to make that choice. By extending the statute of limitations to three years from discovery of that abuse and the right to recover damages for the life damaging consequences that it has for me, I need for this bill to become law. Only then will I be able to take my abusers to court and hold them accountable for their actions.

As a child, when I suffered the severe trauma of sexual abuse, I had to store what was going on in my unconscious mind. I would literally leave my body and disappear into objects that I could concentrate on such as the water, the mirror in the room and the blinds in my grandparents living room where I slept at night. As the abuser would commit his crime I would escape into these objects in order to survive the abuse. As a child of 3, 5, 8 or whatever age you cannot survive the abuse if you do not disassociate from what is actually happening to you. I was not able to deal with those memories until I was an adult. Most survivors start to remember when our own children reach ages that were difficult for us. The memories did not surface until I was emotionally capable of dealing with them.

Discovery is a process. It is much like peeling the skin off an onion. You do it one layer (memory) at a time. You remember incest incidents (sometimes three at a time) that have been buried for years. When you have recovered enough and are strong enough another memory comes from the unconscious mind to the conscious mind. It is a very slow process. Once the memories start to come there is no going back. They will come from what feels like your toes to the surface of your mind. It is very painful. You don't want to believe it really happened because it is just too awful to remember. You get triggered by words or phrases, touch, smell, taste, or sight. With a memory you remember it, you feel it bodily, and you feel it emotionally. Sometimes this happens all at once, sometimes at different times, when you are able to feel it. For me, as I tried to retell my memories I would have body memories that would impair me when I tried to speak out. I would choke and cough uncontrollably as

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Attachment 1 *1/4*

revealed the secret. The legacy of what goes on in those four walls stays in those four walls is very hard to break. I would choke on the penis stuck in my throat and cough on the seaman that was in my mouth. I had to literally spit it out. The secret had to be told. I started having repressed memories in November of 1990, eleven months after I had started working on my incest issues. I have had three memories since January 1, 1992. I have had at least a dozen memories since I started remembering. These last three memories have been the most life damaging. It has taken a full year for some of my memories to surface. You remember as you are able to deal with the memory. That is why the three years from discovery is so important. It takes time to heal and to work through all of your memories and to be strong enough for confrontation.

For the past two-and one-half years I have been recovering from the effects of child sexual abuse. As I know it now, my abuse started when I was three and ended when I was 19. Every time I have a memory of the abuse I had as a child I have to go through the steps of realizing that (1) I did not make it up, (2) believing that it really happened to me and (3) realizing that it wasn't my fault. I didn't make it happen, I wasn't responsible. I have to work through the shame and guilt feelings that I have every time I recall what happened.

In July of 1990 I confronted my four brothers about the sexual abuse they imposed upon me as a child. They have all admitted to their share of the abuse. They have even apologized for their abuse.

My parents, however, did not acknowledge my brothers abuse nor their own abuse of me. For them to admit to what my brothers did they would have to admit to their part of the abuse. This they cannot do. I have confronted my parents four times in the past year. They refuse to acknowledge or apologize for their actions.

I have held on to the secret for all of these years. When I was small and tried to tell about my abuse I would be re-abused and threatened. I was threatened with a beating by my Grandfather, he said he would beat me and Grandma with a belt. I believed him. I was made to memorize this poem, The wise old owl sat in the oak, the more he saw, the less he spoke, the less he spoke, the more he heard, why can't you be like that wise old bird. I remapped that poem with my own version. An abused little child sat in the oak, the more she remembered, the more she spoke, the more she spoke, the better they understood, I'm really glad I was that abused little child.

My father tried to drown me. My father told me that I would not come between him and my mom, that he would kill me first. Therefore there would be no choice if I told. So of course I did not tell. When I told on one of my brothers, he was punished and ran away from home. I was held responsible for him running away. If I hadn't told then he wouldn't have run away. Therefore, I took on the responsibility of all my abuse. I truly believed that it was all my fault. It has only been recently that I have been able to admit it was not my fault that I was not responsible.

My parents say today that I have split up the family by telling. It is again all my fault. I am here today to tell you, I did not ask for the abuse, I could not stop it and it was not my fault.

It only takes one occurrence of child sexual abuse to have life damaging consequences. For a person that has years of abuse, it can be far worse. I choose not to be a victim any longer. I choose to heal from this abuse. I choose to hold my abusers accountable and responsible for their actions.

For me, I developed coping mechanisms to help me through those difficult years. They were: denial, rationalizing, creating chaos, fantasizing, perfectionism, compulsive eating, creating new personalities, leaving my body, staying in control, minimizing, staying busy at all times, alcoholism, workaholicism, taking care of others, sleeping excessively, not sleeping at other times, running away, compulsive sex, spacing out, staying super-alert. Trust is an issue that is most difficult for survivors. We will trust the most untrustworthy individual and then not trust the one we should. I have a particularly hard time trusting myself. This has been a very learning experience for me. These coping techniques served me well as a child but are no longer useful as an adult. I have had to change so many things in my life that it also had consequences for me. I am currently going through a divorce because my husband says I am not the woman he married. He is right, I am not that same woman. I no longer take care of others at my own cost, I take care of me first. I no longer minimize what happened to me. I no longer am a door mat just waiting for someone to step all over me and clean their dirty lives all over me. I have survived the ordeal of child abuse and I have managed to change areas of my life that were damaging me.

Unfortunately some of these coping skills have rubbed off onto my own children. My kids are having to learn to deal with emotions, working things out instead of just trying to figure them out in their heads. My daughter has the same eating disorder. You feel any emotion you stuff it with food. This is a battle she will have to work through for herself as I have to work through on my own. I have had to learn how to parent properly. What I experienced as a child was not proper parenting skills. They were the only ones I knew. This also created a problem for my marriage, because when I wasn't recovering my husband and I agreed on parenting techniques. As I healed, I changed those techniques, he did not. It became a battleground of disagreement. He says that I used to see it the way he did. This created a lot of strain in our relationship. He chose not to change.

Until I started dealing with my abuse I had no self love, self esteem or self respect. Today I can say that I think enough of myself to come here and fight for my self respect. I believe that I am good enough to come before you and say that these people should be held accountable for their actions. What was done to me as a child was not right and should be righted.

Every survivor has the right to choose if they want to take their abuser to court and hold them accountable for their actions. The way the law reads to day, we cannot do that. This law will make this possible. I cannot change my past, I can only deal with the present and the future. I do not intend to pass on the legacy of child abuse to ^{the next} ~~my~~ generation. The abuse must be stopped now. This law is a step in that direction. Please pass Senate Bill 662 and make it law.

February 17, 1992

Senator Wint Winter, Jr.
State Capital, Room 120-S
Topeka, Kansas 66612-1594

Dear Senator Winter:

I am writing in order to support the proposed Bill before the Kansas State Legislature to extend the statute of limitations to three year for child victims of sexual abuse.

I became aware of this Bill through my patient, Pat Miller, who will be speaking to the Legislature in support of this Bill. As a physician in a practice of psychiatry for ten years, I am acutely aware of the devastation that childhood sexual abuse can cause to its victims. The emotional damage that results from such abuse can affect all aspects of the victims' lives, resulting in such problems as chronic depression, substance abuse, low self-esteem and frequent re-victimization as adults. Often victims of childhood abuse come to my office with few or no memories of their childhood and only with time, courage and hard work do their memories begin revealing themselves. Often the truth is so disturbing and heartbreaking that the victim is simply unable emotionally to confront or take any action against the abuser. This is why the extension of the statute of limitations to three years is so essential, since it allows the victim to adequately recover emotionally from the truth of their childhood abuse, and, if they so choose, take the difficult step of filing civil action against the abuser.

Again, I wish to voice my strongest support for this Bill, and I applaud your action in bringing this matter to the State Legislature.

Sincerely,



David L. McConnell, M.D.

DLM/sw

Senate Judiciary Committee
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Attachment 2

The Effects of Sexual Abuse on My Life
by Cindy Livengood

My father sexually abused me from the time I was nine years old until I was nearly 18 years old. During those years he used psychological terrorism to keep me conforming to his demands. He also used methods of control that included such tactics as brainwashing. During the next few years after I moved out I was unable to make decisions on my own. When I reached my mid 20's I began to have more frequent nightmares about my father. The dreams were what sent me to the psychiatrist. After several months of counseling I was able to understand that it was not my fault that my father abused me. I did not really believe it until I was nearly 30 years old.

It took my father many years to create the mental conditions I carried inside myself for a long time. It has taken almost as long to correct some of the problems he has caused in my life.

It is unfair to expect someone to bring to court the perpetrator of a crime when the victim does not yet understand what the crime is and where the responsibility lies for that crime. Under the current laws I am not able to access justice or retribution for the crimes committed against me as a child. I will not ever be able to resolve this horrible burden until the laws are changed to protect the victims of crimes rather than the perpetrator of crimes. It takes longer than three years to get to a point where the victim is able to face the trama of the court room and face their abuser and possibly the wrath of his anger.

It is now just over 17 years since the last PHYSICAL attack delivered to me by my father. Along with those attacks came threats of death and harm to myself and to those whom I care about. It is this threat that has kept me silent in the court rooms until now. I no longer fear death, although I do not wish to die. My father is a very powerful man and has the ability to take my life if he so chooses. My presence here today is a very real risk for me.

My father owns a business that requires licensing and allows him to enter thousands of homes each year. All children present are potentially at risk. He has been determined to be dangerous by my psychiatrist after examination and it is likely that he will never be cured.

The costs go beyond the inability to resolve this in my heart and mind. It also has cost me a great deal monetarily and socially. I have lost approximately \$390,000 in lost wages and expenses related to getting an education. I have spend thousands of dollars on mental health care. Physically, my condition seems to deteriorate slowly. I have developed arthritis, allergies, severe and frequent migraine and sinus headaches, anxiety attacks, heart palpitations and the list goes on and on. People who do not know me well enough think that I am the most organized person they ever met and also the healthiest. I have learned to hide things well, just as I had to learn to hide what my father was doing to me. I had to work many years to shed the reputation of being a liar and later had to work hard to avoid the many pitfalls women like me suffer. I slipped a little into promiscuity, but was able

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to stay away from drugs and alcohol during a time (1970's) when they were the thing to do. I am one of the lucky ones. Most of them turn to illegal substances, alcohol, and/or prostitution.

I trust no one. Not the school bus driver who takes my children to school nor the men in my church. Finding suitable day-care for my children has been the source of much anxiety. I do not trust anyone who has a male in the house while I am not there, even if the male is only a teenage boy. My oldest boy did not get to go into a public men's room until he was eight years old unless his father was there to take him in. I realize now that was damaging to my son, but I was more frightened by the thought of what some man could do to him in there before I could do anything about it. It can happen so fast its sickening.

I was abused by my father and by an older cousin. I learned early in life that the people you are supposed to trust you can not, so there is no one that can be trusted. Now at the age of 34 I have found a man whom can be trusted. He also was abused in many ways. But I still don't leave my four year old daughter with him unless my own 12 year old son is there to monitor the situation and I don't even fully trust him. I do trust him, but I don't because the thought that it COULD happen is always in the back of my mind.

I live in constant fear of what might happen if my father shows up unexpectedly at my door as he has in the past. I fear that if I don't let him in he will beat me up, but if I do let him in he'll rape me once again. He has not committed a new crime so I can't even justify any legal action against him. I don't invite him to my home, but sometimes he is waiting for me, but less frequently than it used to be. He always makes it clear that he still "admires" my body in such sly ways that people who don't know what he's doing can't catch him doing it.

If I could take him to court for this hideous crime, I would be able to recover enough money to pay for my therapy and make a happier life for myself and feel that in some small way justice was done. I know that I need to get back into therapy, but I have no health insurance and as a single mother of three going to college, I can't afford to pay the expenses of a good psychiatrist.

The most painful part of the whole ordeal is that because I can't file charges against him he is out there still doing these things to other children and getting away with it. People are letting him into their homes willingly, not knowing the wolf that has entered their home to devour their children. If I could press charges his license would be revoked because there would be no other verdict but guilty. To work within the law has gotten this society nowhere. I am also aware that there are members of this legislation that know my father very well and think he is a really nice guy. He likes to make what he considers large campaign donations to Republican Party members. He has had his picture taken with some of you and he does business with several of you. Every election year he gets invitations to the inaugural ball of the president or the governor (except this last election for obvious reasons). Gentlemen, you have a snake in your bed and you don't even know it!

Conditioned Silence in Respect to Current Law

By Peggy Jennings-Basgall

My father began physically abusing me at the age of five and sexual abusing me by the time I was eight years old. My silence was kept through threats, beatings, and his pleading with me not to destroy the family. He even implied that he would hurt my brother and mother. Additionally I was brainwashed into believing that it was all my fault that he did these things to me and if anyone found out I would be punished by society. I grew up feeling unclean and had to live two separate lives: one life was a constant battle to survive the abuse; the other was to present the image of a normal child within a happy family. No one could know the truth.

By the time I was fifteen and a half my father's "threats" no longer mattered. I could no longer deal with the abnormal situation I found myself in. I had to make a choice. I could kill myself, run away, or stop him. Like a cornered animal, I confronted him and that ended the nightmare - or at least I thought it had. I was wrong.

Within a year I learned (at school assembly) that those who were abused were often put in mental hospitals such as Larned State. The speaker was an incest victim herself and was subjected to such treatment. Victims in the audience came away with a very clear message: We were the ones who were at fault, and if we spoke up, we would be put away. In my mind I thought that the consequences my father had warned me about were actual fact. His brainwashing had been re-enforced by an outside source. Therefore I remained silent.

As I grew older, flashbacks of my ordeal began to fill in my memory of some incidents that were blocked. Little, insignificant events would trigger these episodes and they would interfere with my "normal" life. Furthermore, I had very low self-esteem. Therefore, when a boyfriend or other loved one would threaten me with physical abuse, I tended to believe I deserved it. Because of the total control my father had over my life when I was growing up, I had a great deal of difficulty making decisions. Years of my life were wasted because of my inferiority complex caused by incest.

I was in my early 30's before I felt worthwhile enough to invest in my future. I was able to go to college and pursue my goals instead of knuckling under to other people's orders concerning my life. Unfortunately, trusting others remains almost impossible. I have been betrayed by the one person a child should be able to trust completely, my own father. Therefore, I rarely let others see the "real" me in order to protect myself from further hurt.

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Attachment 4 *1/2*

It has taken me until now, at the age of 38, to come forward in public and break the silence. I am not unusual in my reticence to speak about this crime. Few victims are able to reach this point within the time frame allowed by law. They must have time to deal with the trauma and they must feel that they will not be stigmatized by society for something they had no control over.

Unlike many other victims, I have been fortunate in the fact that my father deserted his family six months after I confronted him and has not tried to establish a relationship with me since. However, through the years I have discovered that prior to abusing me, he had sexually abused other relatives who were not in his immediate family. This man has never had to atone for what he did to me or them, and he has been free for the past 23 years to do it to other children.

Why is this man free? Because I am a victim of incest and incest victims are almost always conditioned to remain silent. This conditioning takes time to overcome and presently the law does not give many of those who have been through this ordeal the time they need to gain the strength to speak out. While it is too late for me to seek justice, it is not too late for you to make the necessary legal changes to help other victims of this crime obtain some measure of justice.

When I was 12 years old, I was adopted by my step-father and given his name, legally.

From the time I was 15 until the time I was 17, he told me he had a problem and I had to fix it. His problem was a desire to sexually abuse. He had me believe that I was the cause of his problem. I know now that I was not the cause.

I was sexually molested not once every two weeks or once every two months. I was sexually molested everyday for two years. EVERYDAY.

My step-father worked at a prison. When he got arrested he had to undergo psychological profiles to see if he had a problem. He did. He was sentenced 2 to 5 years on only 3 counts of aggravated incest. Sentences to run concurrently. He only served 6 months and was released for prison over crowding.

When he got out of prison, he was told he had to pay for my visits to the mental health clinic, so I could get help. He also was to have a job. He had and did nothing. I feel I am owed something.

He is now dead. When he got killed, victims of violent crimes paid \$25,000 for his hospital bills. Why can't they help me? Isn't incest or rape a violent enough crime?

I am now 20 years old and for the past two years, I have tried to get financial assistance for school. I have not been successful.

This man adopted me as his child, raised me for almost six years, the most influential years of my life, sexually abused me, and took away my childhood, but he is not my father. This is what I was told. He was a veteran and I asked for veterans assistance, but was denied because he was not my father.

I was also denied the rights of my birth father. I am part Indian and should be able to get funds because of my father's background. I cannot get this assistance because I was adopted. Who is my father?

I was also told since I was an adult I could not recover from him or the Veterans Administration my losses.

I cannot get insurance at a reasonable cost because I have a label of a mental health patient on my record.

Why do I have to suffer for the rest of my life for something I did not do?

His death was not my recovery, it goes on, but with help from the government, other victims and I will be more able to adapt with the environment our predecessors put us in.

Amy C. Allen
Senate Judiciary Committee
February 20, 1992
Attachment 5

KCSDV

KANSAS COALITION AGAINST
SEXUAL & DOMESTIC VIOLENCE

P.O. BOX 1341

PITTSBURG, KS 66762

316 232 2757

Testimony Before the Senate Judiciary Committee
February 20, 1992

RE: Senate Bill #355, and Senate Bill #662

On behalf of the Kansas Coalition Against Sexual and Domestic Violence and the more than 9,000 victims our programs served in 1991, I wish to thank you for your consideration of these bills. KCSDV supports Senate Bill #355 and Senate Bill #662, as they would both be useful instruments for the victims we serve.

Senate Bill #355 receives our support because Sexual Battery and Aggravated Sexual Battery are common in homes where domestic violence occurs. As the Executive Director of Safehouse, Inc., I was alarmed when our 1990 statistics showed that victims reported rape in only 5% of our domestic violence cases, but reported some form of sexual abuse in 33%. Under the current law, many of these victims are unable to charge their abuser with a crime simply because they are married. More important than the actual number of charges and/or convictions which might occur, this legislation has the potential of sending a clear message to both victims and perpetrators: it is WRONG to sexually abuse your spouse in any way. KCSDV applauds our Legislators for deleting the marital exclusion from the Rape Statutes. We are now seeing an impact from that legislation: more women are realizing that if their husband rapes them, it is a crime. This knowledge empowers victims and validates their feelings, which is helpful in their healing process. It is anticipated that the passage of Senate Bill #355 would have the same positive effects for a greater number of victims.

Our support for Senate Bill #662 is based on three things: 1) Many victims of childhood sexual abuse repress all memory of the abuse for long periods of time. Some will recall the abuse when another traumatic incident occurs, such as domestic violence. Others recall only after they have achieved living in a safe environment. It is therefore very common for these victims to first become aware of childhood abuse while receiving our services. 2) Other victims who do have some knowledge of childhood sexual abuse often do not disclose that immediately because they have been given messages that it must be kept secret. Consequently, it, too, is only addressed after another traumatic incident or safe environment breaks down some of the defense barriers. 3) It is necessary in both scenarios that the victims be given a reasonable amount of time to seek action for recovery of damages. Such action is often essential to assist these victims financially. Furthermore, the empowerment received from taking action can help the healing process.

We therefore urge you to pass Senate Bills #355 and #662.
Dorothy Miller, President

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Attachment C

Serving Victims Throughout Kansas

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SUMMARY OF COMMENTS
S.B. 19, 20
February 20, 1992

Raymond L. Spring

S.B. 19

Senate Bill 19 would create a separate class of committees within the treatment act. The new provision would require neither a recent overt act, threat or attempt, as is required in other committments, since it does not require a finding of "likely to cause harm"; it would be a committment based on prediction alone. It also leaves out the requirement that the individual lack the capacity to make an informed decision regarding treatment, which is required in other cases.

Both of the forgoing provisions in the treatment act are important to making the Kansas Treatment act a good act; it would be better to leave it alone. In reality, if a person engages in conduct which would be likely to draw attention or justify committment under the proposed amendment, that will normally be a criminal act, which would trigger the provisions of S.B. 18.

S.B. 20

The requirement for a period of counselling following release from confinement under sentence would seem, on the surface, a reasonable requirement. Two concerns do arise, however. The first is availability of resources. Whether there are professionals available with this specific expertise in sufficient numbers is problematic; if treatment resources are not available, this could lead to a five year extension of confinement of an individual who is otherwise ready for release. The second concern relates to necessity. Is such a period of counselling going to be needed, or even useful in every case; this may be a particularly relevant question is professional resources are in short supply. Perhaps this is a matter better left to a decision related only to conditions of parole.

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February 20, 1992
Attachment 7*

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Donna Whiteman, Secretary

Committee on the Judiciary
Wint Winter, Jr., Chairperson

Testimony in Regard to S.B. 662
February 20, 1992

AN ACT concerning civil procedures; relating to the time limit for commencement of actions; childhood sexual abuse; amending K.S.A. 60-515 and repealing the existing section.

Mr. Chairperson, Members of the Committee, I am appearing today in support of S.B. 662 which provides that persons who are the victims of child sexual abuse may recover civil damages from the perpetrator of that abuse. The bill provides further that in cases where the victim does not discover the injury or illness until a period of time after the abuse, they are not barred from instituting proceedings against the alleged perpetrator subject to a three year period from the person's 18th birthday or three years following discovery, whichever occurs later.

The literature concerning child sexual abuse and the files of therapists who treat victims are replete with incidents in which both men and women, but usually women, have been sexually misused and violated as children with lifelong repercussions. The abuse may have been a single incident or a pattern which endured for months or even years. Often the victim's only recourse to survive what they could not physically escape was the denial or repression of what happened to them. The consequences are not so easily repressed as the memory, however. Symptoms such as inability to trust or form lasting relationships, sexual dysfunctions, eating disorders, multiple personalities, entering and remaining in violent relationships, and becoming abusers themselves may be linked to childhood maltreatment but without memory or awareness of the events or the linkages. Such persons may spontaneously remember events years afterward or may be assisted in remembering or making connections with the assistance of counseling or therapy.

Without this bill, such persons are without recourse to hold those who caused their pain accountable for their actions. In some situations the victim is unable to afford the treatment they require but which the perpetrator could supply if the law provided a remedy.

The Department will not be directly affected by this bill. We will need no additional staff and we will not implement the provisions of the bill. Our social workers are concerned, however, about the clients we serve and the impact of childhood sexual abuse on their lives. They are concerned also about the financial impact on a society which bears the cost of the impaired lives this problem leaves in its wake. They would like to be able to say to the scores of people who contact the Department each year wanting to know what they can do about severe problems in their lives which they have discovered are linked to childhood sexual abuse that there is a legal remedy. The social workers would like to know that the sometimes ineffective and sometimes dangerous parents they serve have a means of dealing with their own painful childhood which affects them as parents now.

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There is one suggestion we would make concerning the language of the bill. The last sentence of Section 1. paragraph (c) reads: "The person need not establish which act in a series of continuing sexual abuse incidences caused the injury or illness complained of, but may compute the date of discovery from the date of discovery of the last act by the same perpetrator which is part of a common scheme or plan of sexual abuse." We propose that the sentence read "...., but may compute the date of discovery from the date of ~~discovery of the last~~ any act by the same perpetrator...". The reason is that a victim may remember one or more acts but not necessarily the "last act" and needs to be able to date discovery from the last remembered act including, but not limited to, the last one.

This is an important bill for those who are still children and for those who are now adults on the outside but who are wounded children within. We urge you to recommend S.B. 662 for passage.

Carolyn Risley Hill
Acting Commissioner
Youth and Adult Services
Department of Social and
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CRH:dr



February 20, 1992

Kansas Psychiatric Society

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TO: Senate Judiciary Committee

FROM: Kansas Psychiatric Society *Chip Wheelen*

SUBJECT: Senate Bills 18, 19, and 20

Attached is a copy of our testimony last year on SBs 18, 19 and 20. This is provided as a reminder that: (1) We support the emphasis on treatment which is the focus of SB 20. (2) We do not object to SB 18 but have reservations about certain features. (3) We are very much opposed to SB 19 because it re-defines "mentally ill person" in a clinically incorrect fashion.

Thank you for considering our positions.

CW/cb

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January 23, 1991

Kansas Psychiatric Society

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TO: Senate Judiciary Committee

FROM: Kansas Psychiatric Society

SUBJECT: Senate Bills 18, 19, and 20

Chip A. Steulen

The Kansas Psychiatric Society appreciates this opportunity to offer comments regarding the three bills that are a product of 1990 Interim Proposal 42. We recognize the emotionality surrounding this public policy question, and commend the Legislature for proceeding cautiously in its deliberations.

Senate Bill 18 appears to be the best measure among the three for purposes of dealing with the "sexually violent predator." It incorporates a number of due-process procedures to assure the rights of a person accused of predatory sexual acts. It is extremely important to assure the constitutional rights of an accused person when the outcome of the trial could be the functional equivalency of a life sentence to a facility operated by the Department of Social and Rehabilitation Services.

Senate Bill 18 does, however, leave a couple of questions unanswered. For example, new section three says that evaluations shall be conducted by persons deemed to be professionally qualified. This qualification would be pursuant to administrative rules and regulations adopted by the Department of SRS. Yet, it is the person so defined by those regulations who will be placed in a position of great power because of the presumed qualification to judge whether a "sexually violent predator" is likely to engage in future acts of sexual violence. This is the first definition found at new section one, and it is extremely important to the entire bill. Yet, this crucial determination is left to the bureaucratic exercise of administrative rules and regulations. Furthermore, regardless of whom may be determined qualified by rules and regulations to exercise such judgement, from a clinical perspective, it would be very difficult if not impossible to determine whether a person is likely or not likely to engage in future acts of sexual violence. This would thus incorporate a predisposed bias for a clinician to opine that a person is more likely than not to engage in such behavior. *Available research indicates that such behavior is not reliably predictable.*

Senate Bill 20 also appears meritorious in that it would provide for the continued treatment of persons who could become repeat sexual offenders. Perhaps there exist provisions in current law which allow the court to require such treatment during one's sentence, but if not, we would respectfully suggest that this would be the first step and that the provisions of SB 20 would then follow.

While SBs 18 and 20 appear to be meaningful legislation, SB 19 does not. As you might expect, whenever the Legislature considers amendments to the Treatment Act for the Mentally Ill, the Kansas Psychiatric Society becomes somewhat apprehensive. Senate Bill 19 would certainly warrant such apprehension. It would allow a "qualified mental health professional" to determine whether a person who has been diagnosed as mentally ill is likely to commit a criminal sexual act. The key to this particular language is the definition of qualified mental health professional, which is relatively new to the Kansas Statutes. Last year, during the Legislature's deliberations regarding mental health reform, the phrase "qualified mental health professional" was developed to define who may serve as a so-called gatekeeper for purposes of implementing the community-based mental health system throughout Kansas. We do not believe that the Legislature envisioned the role of the "qualified mental health professional" as one involving such serious decisions as are prescribed by SB 19.

Senate Bill 19, if enacted, would hypothetically present an opportunity for a person who happens to be the victim of a treatable, manageable mental disorder to receive a life sentence to a state psychiatric hospital. While this would represent the worst of all scenarios, it is a distinct possibility. Furthermore, that person could never have engaged in any kind of criminal sexual behavior other than in his or her fantasies, or perhaps even the imagination of a "qualified mental health professional." It is for these reasons that we respectfully recommend that SB 19 be reported not recommended for passage. If in your judgement SB 19 should be pursued, we would suggest that the phrase "qualified mental health professional" at line 20 of page 2, be replaced with the phrase "persons licensed to practice medicine and surgery or a licensed psychologist."

Thank you for considering our comments and concerns.

/cb



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Testimony of
Juliene A. Maska
Statewide Victims' Rights Coordinator
Before the Senate Judiciary Committee
RE: Senate Bill 355
February 20, 1992

On behalf of Attorney General Bob Stephan I ask you to support Senate Bill 355.

The Attorney General's Victims' Rights Task Force continues to address the issues concerning crime victims. We support Senate Bill 355. This bill would further enhance the rights of crime victims.

Senate Bill 355 would allow the spouse of the victim to be charged with sexual battery or aggravated sexual battery.

Many people do not define attacks of sexual assaults as a crime unless the offender is a stranger. Even victims who are married to the person who sexually assaulted them do not refer to the assault as a crime, yet the acts committed against them are crimes.

There are a number of assumptions that the impact on a victim who is married to the offender is less traumatic. This is not true. In a study done by the Department of Psychiatry

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and Behavioral Sciences at the Medical University of South Carolina, it revealed that in sexual assault cases where the husband was the offender, the victims were likely to be injured or thought they would be killed. The study also stated that women assaulted by their spouses were just as likely to be depressed, fearful, and sexually dysfunctional years after the assault. This shows that the physical and psychological impact is no different for a spouse.

Sexual battery is a violent crime causing physical or psychological injury to its victims. Kansas needs a statute which would allow offenders who are married to the victim to be charged with sexual battery.

The Attorney General and his Victims' Rights Task Force ask for your support of Senate Bill 355.