Approved: 9/8
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Senator Wint Winter Jr. at

9:30 a.m. on February 21, 1992 in room 514-S of the Capitol.

All members were present except:
Senators Feleciano and Gaines who were excused.

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

Conferees appearing before the committee:
Ed Collister, Lawrence
James Clark, Kansas County and District Attorneys Association
Bob Frey, Kansas Trial Lawyers Association
Connie Busch
Ron Smith, Kansas Bar Association
James Karlan, Southwest Guidance Center
Terry Larson, Kansas Alliance for the Mentally Ill and Kansas Mental Health Coalition

Chairman Winter opened the meeting by resuming the hearings on:

- 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.
- SB 697 - evidence of previous sexual conduct of defendant admissible in certain prosecutions.

Ed Collister, Lawrence, testified in opposition to SB 18. He stated that although the objective of keeping violent sex offenders incarcerated is a good idea, the criminal justice system is already floundering under its present responsibilities. He suggested we recognize the system is not working as smoothly and effectively as it should be because there is not enough funding for the justice system to do an adequate job. He concluded by stating that if there is consideration given to implementing any new requirements of the current justice system, the legislature should ensure sufficient funds to handle it.

James Clark, Kansas County and District Attorneys Association, testified in support of SB 18, SB 19 and SB 20. He emphasized that determinate sentencing might not work for violent sex offenders; there is a greater need for alternative penalties in this category. Mr. Clark expressed KCDAA's support of SB 355 as a technical amendment to current statutes.

Mr. Clark spoke regarding SB 697 creating a special provision for sex offenders. He stated that the question is a policy decision, and it is clear that the legislature and the courts currently treat sex criminals differently. He cited the "rape shield" as an example of the unequal protection problem. He expressed his concerns with the relationship of SB 497 to K.S.A. 60-455.

Bob Frey, Kansas Trial Lawyers Association, testified in support of SB 662 and offered suggestions for technical amendments. (ATTACHMENT 1)

Connie Busch testified in support of SB 662. (ATTACHMENT 2)

Ron Smith, Kansas Bar Association, testified in opposition to SB 355 and SB 18. (ATTACHMENTs 3 and 4)

Chairman Winter noted he had received communication from the Attorney General of the State of Washington regarding legislation dealing with sexual offenses. He shared that correspondence with the Committee. (ATTACHMENT 5)

Jim Karlan, Southwest Guidance Center, spoke in support of the efforts but opposed the legislation as drafted in SB 18, SB 19 and SB 20. He stated his belief that any kind of residential treatment programs should be firmly placed under the Department of Corrections (DOC). He believes development of in-patient/out-patient programs

with DOC and Mental Health Services would have much greater cooperation for a continuum of services and is the only way to address the situation. (ATTACHMENT 6)

Mr. Karlan responded to questions by stating the best predictor of violence is a violent past. The Southwest Guidance Center's program has a very low recidivism rate; however, their program does not treat the extremely violent offender, and their program has only been in operation seven years. (Additional materials were submitted by mail from James Karlan, Southwest Guidance Center, regarding The Incest Offender. (ATTACHMENT 11))

Terry Larson, Kansas Alliance for the Mentally Ill and Kansas Mental Health Coalition, testified in opposition to SB 18, SB 19 and SB 20. (ATTACHMENT 7)

Written testimony was distributed to the Committee from Amy Bixler, National Organization for Women, in support of SB 20 and SB 355 (ATTACHMENT 8); and from Dr. Gordon Risk, American Civil Liberties Union, in opposition to SB 18, SB 19 and SB 20. (ATTACHMENT 9)

Senator Kerr noted that the message to refrain from assigning violent sex offenders to the mental health community for treatment had been received. These persons will not be assigned by legislation to institutions with mixed populations.

This concluded the hearings.

Chairman Winter recognized Senator Bond for the purpose of requesting introduction of legislation.

Senator Bond moved to introduce a bill concerning charitable health care providers. (ATTACHMENT 10) Senator Petty seconded the motion. The motion carried.

The meeting was adjourned at 10:55 a.m.

Date Feb 21, 1992

VISITOR SHEET
Senate Judiciary Committee

(Please sign)

Name/~~Company~~	~~Name~~/Company
(1) Michael Paredes Legal Counsel Kansas Child Abuse Prevention Council, Topeka	
Carol Large SW student WU	
Scott Jackson	Family Life Center
Jim Karlan	S.W. Guidance Center
Karin Jilek	K.U.
Laura Moriarty	KU
Stephanie Mahley	University of Kansas
Charlie Gould	KU
Connie Busch	
J. Kevin Lund	Collister & Kampschroeder
Ed Collister	"
Jim Clark	KCDAA
Chip Wheelen	KS Psychiatric Society
Ron Smith	KBA

KANSAS
TRIAL LAWYERS ASSOCIATION

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

TESTIMONY

of the

KANSAS TRIAL LAWYERS ASSOCIATION

before the

SENATE JUDICIARY COMMITTEE

regarding SB 662

February 20, 1992

The Kansas Trial Lawyers Association supports Senate Bill 662 as a measure which will give the people of the State of Kansas a method for seeking recourse in cases where it is discovered that damage has been done to an individual by reason of sexual abuse done to that individual by another person. The bill limits the right to bring suit against a wrongdoer to only those instances where the abuse was inflicted upon the person as a child. However, by giving a person the right to a cause of action for damages until that person reaches the age of 21, it assures that most cases of abuse can be brought to the attention of the courts and damages can be redressed.

While we do support the extension of the statute of limitations in the case of childhood sexual abuse, we would also suggest that there are substantial reasons why the law ought to be extended for other forms of abuse as well. Many wrongful acts can occur to an incapacitated person that can cause substantial damage. Many of the kinds of injuries that occur are not readily discoverable until the child attains the age of 18 and becomes willing to speak out about the injury that occurred. We suggest that the bill could be amended to expand application of the bill to all forms of abuse, not just those which involve sexual abuse done to a child.

We also suggest that two changes in the wording of the bill be made. We suggest that the word "nor" on page one, line 15 be changed to "or" and that the word "of" on page one, line 16 be changed to "from". These changes would make it clear that there are two methods of determining when the statute of limitations begins to run on a cause of action. (1) When a person is under 18 years of age and discovers that injury has occurred, and (2) when a person is over 18 years of age and discovers, or reasonably should have discovered that injury did occur.

Senate Judiciary Committee
February 21, 1992
Attachment 1

STATEMENT OF CONNIE L. BUSCH

for

SENATE BILL No. 662

From at least the age of three until the age of thirteen I was sexually molested by my father on a regular basis. For most of my life I managed to suppress this devastating experience, but that suppression was at the expense of leading a completely normal life.

About age thirty I was no longer able to contain the lie that had built around my family and sought professional help. The result of the therapy was that I needed to express my anger against my father in a constructive way which led me to consider legal redress for the actual damage to me (monetary expenses and possible physical damage) and punitive damages for the pain and suffering I endured both as a child and as an adult.

As I lived in New Mexico at the time of this decision, I sought the legal counsel of an attorney in Santa Fe who had experience with incest cases. She accepted the case and notified my father of my intentions. However, the incidents for which I sought redress took place in Kansas, and my father lived in Kansas. Therefore, my father's attorney replied that the Kansas Statute of Limitations for civil actions was an insurmountable obstacle to such a suit. My New Mexico attorney sought advice from another Kansas attorney who told her that the Statute of Limitations in Kansas was very strictly drawn, and he advised not to attempt suit. There my legal redress ended.

Senators, it is asking too much for a child, upon reaching legal majority quickly to seek an attorney and file an action against her father within the prescribed time allowed by the statute. The years of suppression alone prevent that kind of forethought. Furthermore, most people do not reach a true majority before twenty-five to thirty-five years of age. Therefore, some flexibility in the Statute of Limitations should provide for traumatic childhood incidents, such as incest, which involve parents.

I have been damaged by the lack of a flexible Statute of Limitations because I have never been allowed to find justice for what happened to me as a child. It has made me feel that the State of Kansas does not care what happened to me and to other children who were forced to endure unspeakable crimes and to live with it without even the possibility of civil redress or justice. The violation of trust involved in incest is a major one. But the denial of an opportunity to seek justice in the courts of Kansas is likewise a breach of trust that the State of Kansas and society should correct for its children.

Respectfully submitted,

Connie L. Busch

Connie L. Busch

Senate Judiciary Committee
February 21, 1992
Attachment 2 1/10

COPPLER AND ARAGON
A PROFESSIONAL CORPORATION

FRANK R. COPPLER
JOHN A. ARAGON

ATTORNEYS & COUNSELORS AT LAW
1462 ST. FRANCIS DR. (SOUTH)
SANTA FE, NEW MEXICO 87501
(505) 988-5656

May 29, 1985

Mr. GARLAND Hutchinson
219 S. College
Ulysses, Kansas 67880

Dear Mr. Hutchinson

Your daughter, Connie Lea Busch has contacted me about the possibility of suing you for the sexual abuse she suffered as a child. She has incurred substantial expense in therapy trying to recover from the lasting scars your conduct caused her.

You are in a position to help your daughter recover from her trauma. She needs you to acknowledge your conduct and help her financially to pay for her therapy by way of restitution. Connie also believes that you may be in need of therapy for your own benefit.

At this time CONNIE is willing to discuss this in confidence, through me. However, she is seriously considering whether to file a public civil lawsuit against you for her damages. Should we be unable to settle with you I will advise her to proceed with such a lawsuit.

Please contact me or have your attorney contact me within 20 days from the date of this letter.

Very truly yours,

COPPLER AND ARAGON

Catherine Aguilar

Catherine Aguilar

cc: Connie Lea Busch

2-2/10

TELEPHONE 356-3[illegible]
AREA CODE 316

HATHAWAY AND KIMBALL
ATTORNEYS AT LAW

GARY R. HATHAWAY
K. MIKE KIMBALL

DOUGLAS CAMPBELL, Associate

RECEIVED
JUN [illegible]

123 NORTH GLENN
P. O. BOX 527
ULYSSES, KANSAS 67880-0527

June 12, 1985

Ms. Catherine Aguilar
Coppler and Aragon
Attorneys at Law
1462 St. Frances Drive (South)
Santa Fe, New Mexico 87501

Re: Psychological Therapy
and Settlement
Your client: Connie Lea Busch

Dear Ms. Aguilar:

This letter is to confirm our phone conversation this day in which I advised you that I was representing Garland Hutchinson concerning the matters set out in your May 29, 1985, letter. It is my understanding that we are jointly going to explore the possibilities of jointly funding psychological therapy as well as settlement of the matters alleged in your letter.

I, of course, have serious doubts concerning validity of the factual situation and I also have serious doubts as to the legal consequence, if any, of the matters to which you allude. Nevertheless, it is Hutchinson's desire to help their daughter if at all possible.

It is my understanding that in the very near future you are going to send me an outline of your suggestions and demands including specifics regarding the proposed therapy.

I will await your reply.

Sincerely,

HATHAWAY AND KIMBALL

K. Mike Kimball

KMK/mks
cc: Garland Hutchinson

2 - 3/10

COPPLER AND ARAGON
A PROFESSIONAL CORPORATION

FRANK R. COPPLER
JOHN A. ARAGON

ATTORNEYS & COUNSELORS AT LAW
1462 ST. FRANCIS DR. (SOUTH)
SANTA FE, NEW MEXICO 87501
(505) 988-5656

July 9, 1985

K. Mike Kimball, Esq.
Hathaway and Kimball
P. O. Box 527
Ulysses, Kansas 67880-0527

Re: ConnieLea Busch

Dear Mr. Kimball:

Thank you for your letter of June 12, 1985.

After taking to you, Connie and I discussed at some length the specific nature of her damages and exactly what would serve to make her whole. Connie finds herself in a situation where she is unable to support herself well, she has suffered and continues to suffer from devastating personal disruptions because her fundamental ability to form trusting human relationships has been destroyed. These problems have served to leave Connie, not only with a need for therapy, but also a need for financial security. Connie, understands that money alone cannot make her whole. However, having financial security may give her some of the stability upon which she can achieve a reasonable life.

Her therapy costs $65 per hour. She sees her therapist at least one time per week, frequently two times per week in addition to group therapy. The group therapy costs approximately $30 per session and meets two times per month. Connie's therapist believes that it will take at least three years of therapy to fully resolve some of these issues. Sixty-five dollars times 2, times 52 weeks, times three years equals $20,280.00. If we add $60 per month for group theraphy for three years or $2,160 we have a grand total of $22,440 for her therapy.

I am sure you are aware that the actual costs to Connie are not her only measure of damages. She fees strongly, and I have confidence that a jury would agree, that she has suffered additional damages due to a broken marriage, emotional distress and suffering and the economic repurcussions that follow. It is always difficult to place a dollar value on a ruined life. But in contemplating what she would need to build a life for herself Connie believes that $70,000 in addition to the therapy would give her some of the stability that she has been unable to achieve from her life.

Mr. Hutchinson will, no doubt, think that Connie asks a lot. However, as a child, Connie only asked for repect for her bodily integrity. Mr. Hutchinson must now be willing to accept the consequences of his conduct. Connie does not underestimate the legal obstacles. She has acted promptly upon remembering what happened and believes that she has a good case to bring.

2- 4/10

Please discuss these matters with Mr. Hutchinson. The above offer will remain open only until I have drafted a Complaint and we are ready to proceed to court.

Very truly yours,

COPPLER AND ARAGON

Catherine Aguilar

Catherine Aguilar

cc: ConnieLea Busch

2-5/10

HATHAWAY AND KIMBALL
ATTORNEYS AT LAW

GARY R. HATHAWAY
R. MIKE KIMBALL

DOUGLAS CAMPBELL, Associate

123 NORTH GLENN
P O BOX 527
ULYSSES KANSAS 67880 0527

TELEPHONE [illegible]
AREA CODE 316

July 16, 1985

Catherine Aguilar
Attorney at Law
1462 St. Francis Dr. (South)
Santa Fe, New Mexico 87501

RE: Busch vs. Hutchinson

Dear Ms. Aguilar:

I am in receipt of your July 9, 1985 letter in which you make demand for $92,440.00. We obviously are not going to recommend settlement, nor does Garland Hutchinson want to settle for sums of that magnitude relying only upon your naked allegations of damage. We therefore respectfully request that you furnish us with a report from Connie's present and past therapists, as well as a medical release form so that we may review the records and discuss the problem directly with the therapists. In that way we can make a knowledgable evaluation of the situation and realistically respond and enter into negotiations. Without the information in the reports of the experts, your demand letters amount to little more than coercion and our response would be little more than a response to a black mail threat.

The information that we request and need in order to enter into meaningful settlement negotiations, is no more than any defendant would be entitled to in the event of suit. Hutchinsons desire to help their daughter, if possible, with therapy regardless of the source creating the need for the therapy. The Hutchinsons are not concerned with whether Connie views the aid as a settlement of a claim or a gratuitous gift. Nevertheless, they are not willing to commit to any financial responsibility unless they are fully informed of the facts and have an opportunity to evaluate the experts recommending the therapy.

I of course, as their attorney, am unwilling to recommend or consider any settlement offer which is based on less that full disclosure concerning the alleged damage.

The suit which you threaten has of course more than the

2-6/10

usual problems and less than the usual chance for success. First it is based on novel and untried theory. Second, there are serious statute of limitation problems. Third, unless it is filed in Kansas there will be serious jurisdictional problems. Fourth, and probably most importantly, the chances of collecting any judgment you might obtain are remote. The Hutchinsons are not wealthy by any stretch of the imagination and all of their assets are tied up in property (such as a home) which is exempt under Kansas law.

Nevertheless, we are willing to enter into settlement discussions provided that we are given sufficient information to make intelligent decisions.

Sincerely,

HATHAWAY & KIMBALL

K. Mike Kimball

KMK/dqb

cc: Garland Hutchinson

2-7/10

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FRANK R. COPPLER
JOHN A. ARAGON
CATHERINE AGUILAR

March 3, 1986

K. Mike Kimball
Hathaway and Kimball
Post Office Box 527
Ulipoes, Kansas 67880-0527

Re: Busch vs. Hutchinson

Dear Mr. Kimball:

In response to your letter requesting additional information in support of our request for settlement, I enclose two reports. The first is a report by Elizabeth Dinsmore which Connie had done at her expense. Connie has not seen this report although it has been explained to her. She also understands that I am sending it to you for the purpose of discussing a settlement. I would appreciate your clients discretion with it. I believe the report clearly establishes both the allegations Connie has made and the devastating effect her fathers actions have had on her. The report also expresses the very real danger posed by Mr. Hutchison to other children.

I have also enclosed the report from Terry Dunn, M.D., who found pelvic adhesions. More follow up is required to determine whether they were caused by sexual abuse.

Given the reports and their consistency with Connie's claims there can be very little doubt that her allegations are true and should be dealt with in an honest way by her father.

My experience in this area is that pedophiles seldom admit their behavior even after being confronted with the most convincing evidence. Connie's sincere hope is that her father will belie this experience by having the courage and love for his daughter to address this honestly. She needs help both financially and emotionally. Other children to whom Mr. Hutchison has access may be endangered and their parents may not be as considerate of his reputation as Connie has been.

Connie would like a clear cut admission or denial by her father that would permit her to decide what course to take. Obviously an admission, an apology and treatment for her father is the ideal. It would, I believe set the stage for re-building, if not a healthly family relationship, at least a healthy life for Connie.

In addition Connie would like a specific offer of financial assistance to get her on her feet with adequate therapy. I believe we have provided figures both in the report and our previous letter. Mr. and Mrs. Hutchison certainly should do

2-8/10

no less than to offer the greatest amount they can afford toward this end.

Please discuss this with your clients and respond at your earliest convenience.

Very truly yours,

COPPLER, ARAGON & AGUILAR

Catherine Aguilar

Catherine Aguilar

CA:dh

Enclosures

cc: Connie Busch

2-9/10

COPPLER, ARAGON AND AGUILAR
A PROFESSIONAL CORPORATION

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CATHERINE AGUILAR

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(505) 986-5656

June 16, 1986

K. Mike Kimball
Hathaway and Kimball
Post Office Box 527
Ulysses, Kansas 67880-0527

Re: Busch v. Hutchinson

Dear Mr. Kimball:

I have again met with Connie Busch in regard to her request for an offer of settlement from her father, Garland Hutchinson. Connie interprets the silence of her parents to be an indication that they do not consider their relationship with her to be worth talking about. She has sadly concluded that attempting to heal this relationship is fruitless. She asks that her parents make no further efforts to contact her in any way. She feels that it is in her best interest to sever her relationship with her parents so that she can rebuild her life without having to deal with their denial. She is no longer interested in any type of financial assistance.

Connie has decided not to bring a court action. Therefore, I will be closing this case and will no longer be representing her. I will have no contact with her after July.

However, she does feel that it is her responsibility to disclose her experiences to family members and friends with small children to whom Mr. Hutchinson has access. This will permit them to take appropriate action or exercise such caution as they need. She will be sending letters in the near future to these people. They, of course, will then be responsible for protecting their children in what ever way they see fit.

Thank you for your courtesy in this matter.

Very truly yours,

Catherine Aguilar

Catherine Aguilar

CA:jdo
cc: Connie Busch ✓

2-10/10

KANSAS BAR ASSOCIATION

POSITION STATEMENT

TO: Hon. Wint Winter, Chair
Members, Senate Judiciary Committee

FROM: Ron Smith, KBA General Counsel

SUBJ: SB 355

DATE: February 21, 1992

Mr. Chairman, and members of the Senate Judiciary committee.

SB 355 eliminates the spousal defense in sexual battery and aggravated sexual battery cases. This attempts to conform these felonies with previous amendments of the Code, such as rape, where the spousal defense is no longer available.[1] However, KBA opposes that movement.

The problem with the rational is that when sexual battery and aggravated sexual battery crimes were enacted, they were not intended to govern spousal conduct. Rather, they were to impose another form of felony when a non-spouse is the victim, such as children when the perpetrator is not a parent. Existing sexual battery and aggravated sexual battery statutes make it a different severity of crime to lewdly fondle or touch another child.[2] Indecent liberties remained a Class "B" felony, and the legislature made the choice that fondling a child not your own should be a lesser Class "D" felony.

Section 1, read literally, means spouses could use unwanted sexual advances as the basis of a criminal charge during difficult divorce or separation periods. By removing the spousal exemption you set up a situation where, much later, one spouse can raise an issue with the other, perhaps as leverage in a divorce settlement.

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[1]K.S.A. 21-3502.

[2]State v. Ramos, 240 Kan. 485, 731 P.2d 837, 840 (1987).

Senate Judiciary Committee
February 21, 1992

1200 Harrison • P.O. Box 1037 • Topeka, Kansas 66601-1037 • FAX (913) 234-3813 • Telephone (913) 234-5696

Attachment 3

Section 2 discusses when force is involved. While clearly the legislature has recognized that rape can occur whether married or not and society should not tolerate such conduct, we also examined when such charges are usually presented. Clearly, if the persons involved are married, rape or attempted rape are available charges. Clearly, if the parties are not married and there is lack of consent, then rape or attempted rape can be charged.

Defense counsel often see their unmarried clients charged with aggravated sexual battery when a charge of rape or aggravated battery itself could not be proven. **Given the original purpose of the statute was nonmarital crimes involving nonspouses and not between spouses, maintaining the spousal defense is appropriate.** If the only purpose of the change is to allow another lesser included offense so that criminal courts are forced into more instructions, we think that is imprudent.

Finally, SB 358 passed the Senate and made several changes to the sexual battery and aggravated sexual battery statutes. We find it instructive that the Judicial Council's Criminal Law advisory committee, looking at these statutes in light of most recent criminal law theory, KEEP the spousal defense in the sexual battery and ag sexual battery definition. We think you should conform the sexual battery and ag sexual battery statutes with SB 358's version, not the other way around.

Thank you.

KANSAS BAR ASSOCIATION

POSITION STATEMENT

TO: Hon. Wint Winter, Chair
Members, Senate Judiciary Committee

FROM: Ron Smith, KBA General Counsel

SUBJ: SB 18

DATE: February 21, 1992

Mr. Chairman, and members of the Senate Judiciary committee.

KBA opposes this legislation. We understand the frustration of society dealing with those offenders who may repeat sexual offenses. It is not as if KBA is unconcerned. However, we look at this bill from its impact systemically on the legal system. Sadly, what we see is a state which, like others, has called loudly for a war on crime without putting -- in our view -- sufficient resources into the criminal justice system to fight such a war.

This law makes some presumptions which, if wrong, impose improper public fiscal policy. First, the bill presumes while in custody these offenders will get treatment. This comes at a time when you are moving towards a systemic determinant corrections system that in Ben Coate's own words is not going to place rehabilitation of offenders in a very high priority. This bill is at a public policy odds with itself.

The gentleman from Minnesota yesterday indicated that some of the treatment of sexual deviants should come in prisons. But our sentencing guidelines, while not precluding treatment while incarcerated, do not encourage treatment, either, and are being sold to the public as retribution, not treatment.

Next, if this legislature, as previous legislatures have done, enacts the program, adds people into run this program, then at a future date when state revenues tighten up, systemically begins across the board budget cuts affecting SRS budgets, Court budgets, prosecution, KBI budgets, Aid to Indigent Defense budgets -- these offenders will not get treatment implied in the bill.

Senate Judiciary Committee
February 21, 1991
Attachment 4

1200 Harrison • P.O. Box 1037 • Topeka, Kansas 66601-1037 • FAX (913) 234-3813 • Telephone (913) 234-5696

Instead of making budget choices that THIS program is more important in SRS's budget than THAT program, if history is a guide you'll try to do both programs. It is easy to create grandiose public policy on this topic because no one likes sexual deviants. It is much harder to follow through with proper funding levels. Yet the gentleman from Minnesota told you yesterday that their program is not a cost-free solution to repeat sexual offenders. In Minnesota, separation of psychotic sexual offenders from others who are mentally ill has been a problem. As a result Minnesota is asking for millions of dollars to build wings onto their psychiatric hospitals.

Last year you recommended an interim study to gather important cost information on SB 18. It was rejected by the legislative leadership. I submit that tells you the level of fiscal support this program will get from your colleagues in future years. If that is their support you are going to have a mediocre program that does little to solve the problem but finds an interesting new means of warehousing sexual offenders.

Last year we learned that there may not be enough licensed sex therapists to adequate handle the numbers of persons in Kansas needing the therapy and treatment. I won't guess as to the constitutional ramifications of a civil commitment of someone who has paid his debt to society if the state then involuntarily commits that person to SRS custody then provides no meaningful treatment of that person's disorder. At the least such a result would raise an Eight Amendment "cruel and unusual punishment" argument.

This is a status offense that is a creature of subjectivity. While a jury can decide whether a crime took place and whether there was credible evidence that the accused committed the crime, there is no objective standard as to when a person is a sexually violent predator. No two psychiatrists will always agree on this topic. The bill itself contemplates the probable cause hearings and trials will be battles of the experts.[1] And in this battle, SB 18 gives the state the authority to hire all the experts it needs but limits authority for the detainee to one expert, and the court need only "assist the person in obtaining an expert or professional."[2]

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[1]New Sections 3 and 4.

[2]Page 3, lines 33-37.

4-2/3

Finally let's discuss costs. The 1990 Interim Committee listed seven recommendations about SB 18. Funding of community mental health centers was listed. "Services," the report said, "should include care needed for sex offenders after they are released from incarceration. ... Separate facilities are needed to house sex offenders." The gentleman from Minnesota said you will need separate facilities to segregate these individuals from the rest of the Larned or Topeka State Hospital mentally ill population. That costs money.

Section 4 and Sec. 6 allow for court-appointed indigent counsel -- both for the hearing stage and release hearings. Further, these are going to have to be specialized counsel. These are not criminal trials; the average public defender does NOT do commitment hearings. That means you'll need to hire private counsel with some expertise. How much we don't know.

Sec. 3 requires SRS evaluations of these persons. Again, that will cost money. How much we don't know because the LCC wouldn't fund a study last summer.

Section 4 allows all parties to hire experts from the psychiatric community who, when lined up end to end will point in all directions. And the unknown cost will be paid by the taxpayer.

Section 5 requires a committed person to go to a "secure facility." That means Dillon unit at Larned, Topeka State Hospital, or some NEW SRS facility. More unknown cost.

New Section 10 makes SRS responsible for paying all costs of these hearings and evaluations. I presume legal costs will also be sent to SRS. Again, all these costs are unknown.

Everywhere I look this year, the legislature wants to cut court services and budgets and that's fine. If that is your priority, this legislation is expensive and I see no commitment from this legislature to adequately fund it. There's an old saying, if you can't do the time don't do the crime. Well, the same is true for fiscal reality: if you aren't going to adequately fund the program, don't put it on the books.

4-3/3

Ken Eikenberry

ATTORNEY GENERAL
OF WASHINGTON

DEPUTIES, DIVISION CHIEFS
AND SENIOR COUNSEL

February 14, 1992

Senator Wint Winter
Room 120 South
Statehouse
Topeka, Kansas 66612

RE: LEGISLATION REGARDING CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS

Dear Senator Winter:

I am pleased to reply to your request for a status report regarding the State of Washington's experiences with our recently enacted (1990) statutes dealing with the civil commitment of sexually violent predators (Revised Code of Washington 71.09.010-120). Our state supreme court is currently considering a wide range of constitutional attacks made upon the statute in a consolidated appeal of two cases. Oral argument was held on December 5, 1991, and we hope to have what we believe will be a favorable ruling in the next few months.

To help implement the statute, my office helped set up an end of sentence review committee to evaluate all cases of state prisoners scheduled for release who had been convicted of sexual assaults against either adults or children. This committee is comprised of representatives of The Department of Corrections, the Department of Social and Health Services (which administers the evaluation and treatment facility created by the statute) and the Indeterminate Sentence Review Board (formerly, the Parole Board).

To date, the committee has reviewed over 400 cases and has referred sixty of them with a recommendation that civil commitment proceedings be commenced. Applying filing standards developed in coordination with county prosecutors, thirteen cases have been filed.

Of the thirteen filed cases, eight have gone to trial. All of these offenders were either found by a jury to be a sexually

Senate Judiciary Committee
February 21, 1992
Attachment 5

1/2

violent predator and committed (six) or stipulated to evidence sufficient for the trial court to make such a finding and commitment (two). Of the remaining five cases, two are pending trial, two were dismissed on the State's motion after an appropriate alternative disposition was agreed upon, and one was dismissed by the State after the 45 day evaluation concluded he did not sufficiently meet the statutory definition of a sexually violent predator.

As these figures reflect, the statute has been very narrowly applied, consistent with the legislative intent, to only those sexually violent offenders deemed to be the most dangerous. The statute is a very important part of a societal response to the problem presented by such offenders - this importance was reflected in the unanimous support this legislation received from the 1990 Washington legislature. This type of legislation is not a complete solution to the issues posed by sexually violent offenders, but it is a positive step toward dealing with an extremely destructive and complex problem.

I hope my comments are of assistance to you and your legislative colleagues in resolving debate over your proposed statute. Please contact me at (206) 464-6430 if you need any additional information.

Very truly yours,

Gregory P. Canova

GREGORY P. CANOVA
Senior Assistant Attorney General
Chief, Criminal Division

5-3/2

SOUTHWEST GUIDANCE CENTER
333 West 15th, Box 2945 Liberal, KS 67905-2945
624-8171

Jim Karlan, Executive Director
Joe Bridenburg, President of the Board

March 5, 1992

Judy Crapser
Senate Judiciary Committee
Docking State Office Building
Topeka, Ks. 66612

Dear Judy,

This letter will serve as written testimony to supplement my oral testimony before the Senate Judiciary Committee on Friday, February 21, 1992.

That a more formal, concerted effort is being made at the State level to evaluate and treat sex offenders is most gratifying. I support this initiative completely. However, based upon seven years of treating sex offenders in the outpatient Sex Offender Treatment Program at the Southwest Guidance in Liberal, Kansas, I am concerned about certain provisions of Senate Bills 18, 19, and 20.

Senate Bill 18 does not seem to distinguish among the different sex offender populations. The psychological and behavioral characteristics of an incest offender are markedly different from those of a fixated pedophile. The dynamics of both of these populations differ from a power or anger rapist (to use Dr. Nicholas Groth's terminology), who in turn differ from a sadistic rapist. Of these three categories of rapists, only the sadistic rapist erotizes the violence he commits against his victims. A successful outcome depends on evaluation which accurately identifies and assigns the individual to the appropriate population. A treatment program must then be used which has been found to be effective with members of that specific population.

A major issue which a sex offender must deal with throughout treatment is the issue of denial. The offender deals with his/her denial at different levels throughout treatment. He must both intellectually and emotionally accept that he has committed a crime which has and will have significant emotional/psychological effects upon his victim's life; that he is responsible for these acts perpetrated against his victim(s); and that he must be responsible to actively participate in his own recovery. If sex offenses are

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decriminalized and placed under the authority of the mental health system, the offender's tendency toward denial will be exacerbated. In addition, treatment on an outpatient basis will be made more difficult if the only consequence for nonperformance would be a transfer to an inpatient mental health facility, not an inpatient correctional facility. Seven years of outpatient experience with sex offenders has convinced me that the primary motivation for an offender's working in the program is the fear of incarceration in a maximum security correctional facility. Decriminalizing sex offenses would eliminate this important motivating factor.

In ending, let me say that I fully endorse the contents of Senate bills 355, 662 and 697. These important legislative changes are long overdue.

Thank you for this opportunity to give you input regarding these issues. If I can be of further assistance in this area in the future, please feel free to contact me.

Very truly yours,

Jim Karlan, RMLP, CMHA

Jim Karlan, RMLP, CMHA
Executive Director

JK/ca

6-2/2

KANSAS MENTAL HEALTH COALITION

TESTIMONY
Senate Bills 18, 19, and 20
February 20, 1992

Thank you for the opportunity to speak before this committee. I am Terry Larson, Executive Director of the Kansas Alliance for the Mentally Ill. I also represent the Kansas Mental Health Coalition which includes the Mental Health Association in Kansas.

I am speaking in opposition to Senate Bills 18, 19, and 20.

Sexual abuse is a hideous crime that permanently scars its victims, and we applaud the intent of these bills. We believe in treatment for sex offenders. I personally believe in it as I was the victim of sexual abuse at ages 7 and 8. I know that I never got to be a child again.

However, our concerns about these bills are that they lump sex offenders in with persons suffering from severe and persistent mental illnesses. We are just beginning to become enlightened about mental illnesses. We know that they are diseases of the brain, much like diabetes is a disease of the pancreas. Mental illness is neither preventable nor curable, but it is treatable. It is no one's fault - not the victim's fault, not his family's fault. Nor is mental illness caused by spiritual deficiencies or "bad" thoughts. Mental illness is the cause of disordered thinking, not the result.

Those of us with mentally ill loved ones or who are mentally ill ourselves struggle against the myths and stigma associated with mental illnesses. Again, mental illness is a disease of the brain which we strive to treat. To include sex offenders with those who suffer from severe and persistent mental illnesses would represent a crippling step backwards. We must respect the difference in disorders of the sex offenders and those of persons with biologically based brain diseases if the mentally ill are to ever receive appropriate and humane treatment.

With this in mind, it follows that committing a sex offender to the custody of SRS and requiring SRS to be responsible for all costs is a terrible imposition on an already over-burdened system. Unless the state is willing to commit additional dollars to accomodate sex offenders within the mental health system, resources will be diverted away from the population that 1990's Mental Health Reform Act was designed to help.

We are also gravely concerned that without separate facilities, persons who are mentally ill would be in danger of being victimized by sex offenders. It is ironic that as we seek to protect ourselves and our children from sex abuse, we would put another extremely vulnerable population at risk. It should be noted that in Washington, which has a law such as this, our sources have indicated that treatment has become a point in plea bargaining. When the alleged sex offender is not found guilty of a sex offense, that person enters treatment with the general psychiatric population.

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In closing, it is imperative that you understand that we do indeed believe that sex offender treatment should be provided. A separate program may be warranted. But please, not within the mental health system that seeks to serve the most vulnerable of all our citizens.

KANSAS

NATIONAL ORGANIZATION FOR WOMEN

To: Senate Judiciary Committee

From: Amy C. Bixler
National Organization
for Women

Re: In Support of Senate Bills
Nos. 20 and 355

Date: February 21, 1992

The National Organization for Women (N.O.W.), as a supporter and spokesperson for victimized and abused women, supports Senate Bills Nos. 20 and 355.

Senate Bill 20 would encompass into sentencing considerations mental health treatment for sex offenders. N.O.W. applauds the Committee for appreciating the severity of sex offenses and their traumatic impact on the victims. Mandating mental health treatment for these offenders is a responsible course of action. Sentencing these offenders to years in prison only serves to postpone the commission of future crimes; counseling and supervising them addresses the problem directly and ultimately benefits all members of society.

Senate Bill 355 nullifies the spousal defense in sexual battery and aggravated sexual battery offenses. Such crimes between husband and wife have too long been ignored and overlooked. The Bill personifies "wife" and further destroys the ability to subjugate women in this State.

Therefore, for the reasons set forth above and those as may be further delineated in hearings on this matter, the National Organization for Women encourages and supports the passage of Senate Bills Nos. 20 and 355.

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ACLU on SB's 18, 19, 20

I'm Gordon Risk representing the ACLU of Kansas. This testimony also makes use of my training as a psychiatrist.

SB 18 creates a new diagnostic entity unknown to descriptive psychiatry, the "sexually violent predator", which has as much relation to scientifically observable psychopathology as the unicorn has to the animal kingdom. The entity is an ill-defined diagnostic joke, which could be used to incarcerate people for years. Since the entity has no factual basis, the evidence used to substantiate such a finding would thus be based on the paranoid fears and racial prejudice of the judge or jury hearing the case. Due process would almost certainly be seriously violated. This is a bad bill, which should be defeated.

Current law defines a mentally ill person as someone who is suffering from a severe mental disorder to the extent that such a person is in need of treatment, lacks capacity to make an informed decision concerning treatment, and is likely to cause harm to self or others. It is a reasonably crisp and clear standard, which, I think, has served us well. SB 19 would add as a group those deemed to be a sexual "menace to the health and safety of others." Defining what a menace is and whether someone is a menace seems to me to be an impossible task that will depend mostly on subjective judgements rather than objective facts and unnecessarily expose individuals to violations of due process of law. This bill should also be rejected.

I would object to those sections of SB 20 that attempt to predict what treatment an individual will need months or years from the date of sentencing. Any such prediction must of necessity be arbitrary, imprecise, and violative of due process. An individual's need for involuntary treatment should be assessed at the time treatment is to be undertaken and reassessed at appropriate intervals.

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Charitable Health Care Provider Bill

1 RS 1811

Major Points

- Allows Medicaid recipients to be part of population served by Charitable Health Care Providers.

- Expands liability coverage to include Charitable Health Care Providers giving care to medically indigent in any local health department or not for profit indigent health care clinic.

- Expands liability coverage to include Charitable Health Care Providers at any local health department or not for profit indigent health care clinic who receive remuneration for their services.

- Provides liability coverage to Charitable Health Care Providers whether or not the local health department or not for profit indigent health care clinic charges a fee based on federal poverty guidelines.

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Attachment 10

8 The Incest Offender

A. Nicholas Groth

Incest refers to overt sexual activity between persons whose kinship pattern prohibits marriage. Such illegal sexual contact may be cross-generational, involving an adult and a child, or it may occur between agemates. There are many types of sexual combinations among relatives that may occur, but this chapter will address the most prominent pattern of pathological intrafamilial sexuality: parent-child incest.

The type of incest which most commonly comes to the attention of clinicians, social service workers, and law-enforcement officers involves a sexual relationship between a parent and a child. In most identified cases the offending parent is a male adult and the victim is a female child. For this reason the emphasis in this chapter will be on father-daughter sexual involvements. Such incestuous offenses are not confined to sexual activity between a biological father and daughter, but encompass any sexual relationship in which the male adult occupies a parental authority role in relation to the child. Incest, then, also includes sexual activity between an adoptive parent, or a stepparent, or a common-law parent, or a foster parent and his ward.

Those persons who commit incest cannot be distinguished from those who do not—at least in regard to any major demographic characteristics. Such offenders do not differ significantly from the rest of the population in regard to level of education, occupation, race, religion, intelligence, mental status, or the like. They are found within all socioeconomic classes. However, they do differ from nonoffenders obviously in that, when faced with life-demands they cannot cope with, they seek relief from the resulting stress through sexual activity with children.

Fixated Offenders

Sexual offenders against children may be divided into two basic types with regard to their primary sexual orientation and level of sociosexual development.

A. Nicholas Groth, Ph.D., is director of the Sex Offender Program, Department of Correction, Connecticut Correctional Institution, Somers, Connecticut. Dr. Groth, a clinical psychologist, received the Ph.D. from Boston University. He has specialized in working with offenders and victims of sexual assault both in institutional and community settings. He has held teaching appointments at Wheelock College, Simmons College, and Northeastern University, and is currently the codirector of the Saint Joseph College Institute for the Treatment and Control of Child Sexual Abuse in West Hartford, Connecticut. Dr. Groth is author of *Men Who Rape: The Psychology of the Offender* and coauthor of *Sexual Assault of Children and Adolescents* (Lexington Books, 1978).

There are some males who at the onset of their sexual maturation develop a primary or exclusive attraction to children. Children become the preferred subjects of their sexual interests, and although these men may also engage in sexual encounters with agemates and may, in some cases, even marry, such relationships are usually initiated by the other partner and result from social pressures or constitute a means of access to children. Psychologically their sexual preference remains predominently cross-generational; their sexual orientation is fixed on children. Men who show such an arrest in their psychosexual development are technically described as pedophiles if they are sexually attracted to preadolescent children or as hebephiles if they are sexually attracted to young teenage or adolescent children.

Regressed Offenders

There are other men who do not display an early sexual predisposition toward children, but who exhibit a more conventional, peer-oriented sociosexual development. Their sexual interest and activities focus primarily on agemates. As they enter adulthood, however, these adult relationships become conflictual. Increasing responsibilities and demands (marital, vocational, financial, parental, and the like) are sometimes compounded by unanticipated misfortunes (for example, illness, infidelity, loss of income). The sum of these responsibilities, demands, and misfortunes prove more than these men can cope with, and they find themselves becoming sexually attracted to children. Such sexual interest in children appears to be a departure from their more customary and conventional sexual orientation toward agemates activated by some precipitating stress or combination of stresses.

The sexual attraction to a child, then, may constitute a fixation on the part of the adult offender: a sexual orientation toward children as the result of arrested sociosexual development. Or it may constitute a regression, the result of progressive or sudden deterioration of emotionally meaningful or gratifying adult relationships. In general, fixated child molesters are drawn to children sexually in that they identify with the child and appear in some ways to want to remain children themselves. They tend to adapt their behavior and interests to the level of the child in an effort to have the child accept them as an equal. As one such offender observed, "When I'm with a child, I act more like a child." On the other hand the regressed child molesters are drawn to children sexually in an attempt to replace their adult relationships which have become unfulfilling or conflictual. Such offenders select a child as a substitute and tend to relate to the child as if the child were their peer or agemate. In reference to his sexual involvement with his 14-year-old stepdaughter, one such offender said, "She told me that she loved me and said she should be my wife. I told her whatever she wants I'll do. My daughter was a great deal more a wife to

11-24

Table 8–1
Typology of Pedophilia

Fixated	*Regressed*
1. Primary sexual orientation is to children	1. Primary sexual orientation is to agemates
2. Pedophilic interests begin at adolescence	2. Pedophilic interests emerge in adulthood
3. No precipitating stress/no subjective distress	3. Precipitating stress usually evident
4. Persistent interest—compulsive behavior	4. Involvements may be more episodic
5. Pre-planned, premeditated offense	5. Initial offense may be impulsive, not premeditated
6. Identification: offender identifies closely with the victim and equalizes his behavior to the level of the child; and/or may adopt a pseudo-parental role to the victim	6. Substitution: offender replaces conflictual adult relationship with involvement with the child; victim is a pseudoadult substitute and in incest situations the offender abandons his parental role
7. Male victims are primary targets	7. Female victims are primary targets
8. Little or no sexual contact with agemates; offender is usually single or in a marriage of "convenience"	8. Sexual contact with child co-exists with sexual contact with agemates; offender is usually married/common-law
9. Usually no history of alcohol or drug abuse	9. In more cases the offense may be alcohol related
10. Characterological immaturity/poor sociosexual peer relationships	10. More traditional lifestyle but underdeveloped peer relationships
11. Offense—maladaptive resolution of life issues	11. Offense—maladaptive attempt to cope with specific life stresses.

me than my wife was. She was with me all the time." Both relate to the child as a peer. Psychologically the fixated offender becomes like the child, whereas the regressed offender experiences the child as a pseudoadult. When an incest offender is referred for assessment, it is important to differentiate whether he is a fixated or regressed offender, since this will have important implications with regard to the meaning of his offense, what risk he represents to the community, the treatment of choice, and prognosis for recovery or rehabilitation. In cases of incest involving a fixated offender, the dynamics of the individual offender are of paramount importance and the family dynamics, relatively speaking, are nonessential or extraneous. You are dealing with a person who happens to be married and who therefore has easy and constant sexual access to his own children but who is in fact sexually oriented to youngsters, and this attraction is not confined to his own children nor is it activated by his marital relationship. It is a product of his development and a characteristic of his psychological makeup. It has been our observation that fixated child offenders are more likely to target boys as their victims and regressed child offenders are more likely to select girl victims.[1] This is not always or exclusively the case, but it does appear to be a significant and prominent trend. In the face of this trend, in cases of father-son incest, there may be a greater probability that the offender is a fixated pedophile.

11-3/4

In cases of incest involving a regressed offender the family dynamics play a key role. The interrelationships among all members of the nuclear family, the structure of the family network, the dynamics of the participants, the environmental context and the situational events affecting the family all have more relevance. In our clinical experience we have found that in fact the majority—an estimated 90 percent—of incest offenders fall into this category. For the most part they tend to be regressed child offenders who have not exhibited any chronic or persistent sexual interests in children prior to their incestuous activity and whose sexual involvement with their own child has occurred in the context of a deteriorating marital relationship or a traumatizing event or life crisis. Most incest appears to be, in part, the result of family dysfunction. We have yet to encounter a case in which the incestuous activity was an exception to what otherwise was a stable, harmonious, well-functioning family. Instead the incest always constituted only one issue in a multiproblem family. However, although it is important to recognize and address the dynamics of family dysfunction in such cases, it is even more important to avoid being distracted from the responsibility that the offender must bear for creating and contributing to the family dysfunction. Attention to family dysfunction should not permit the pathology of the incestuous offender to be masked or minimized. Although the family dynamics may have contributed to the activation of his incestuous behavior, they did not create his predisposition to react to stress in this fashion nor does overall family dysfunction, however severe, detract from the seriousness of the incest offense.

11-4/4