

Approved: April 26, 1995
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on March 8, 1995 in Room 313-S-of the Capitol.

All members were present except:

Representative David Adkins - Excused
Representative Clyde Graeber - Excused
Representative Doug Mays - Excused
Representative Candy Ruff - Excused

Committee staff present: Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:

Jim Clark, Kansas County & District Attorneys Association
Terri Roberts, Kansas State Nurses Association
Ben Coates, Acting Commissioner for Youth & Adult Services
Senator Mike Harris
Senator Lana Oleen

Others attending: See attached list

Hearings on **SB 184** - Sexual exploitation of a child, to include computer technology, were opened.

Senator Mike Harris appeared before the committee as the sponsor of the proposed bill. He explained that this bill amends the crime of sexual exploitation of a child to include processing any photocopy, video tape, laser disk, computer hardware, software, floppy disk or any other computer related or generated image in which a child under 16 years of age is shown or heard engaging in sexually explicit conduct.

Attorney General Carla Stovall, The Coalition Against Pornography and Carla Dugger, American Civil Liberties Union did not appear before the committee but requested that their testimony be included in the minutes. (Attachments 1-3)

Hearings on **SB 184** were closed.

Hearings on **SB 128** - Crime of abuse of a child to include shaking, were opened.

Jim Clark, Kansas County & District Attorneys Association, appeared before the committee as a proponent of the bill. He stated that this simply inserts the word "shaking" into the abuse of a child statute and includes causing great bodily harm by shaking a child. (Attachment 4)

Terri Roberts, Kansas State Nurses Association, appeared before the committee in support of the bill. She provided the committee with a history of The Shaken Baby Syndrome which was identified in 1970. (Attachment 5)

Hearings on **SB 128** were closed.

Hearings on **SB 214** - Interlocal agreements for care and support of juvenile offenders, were opened.

Senator Lana Oleen appeared before the committee as the sponsor of the bill. She stated that this bill would simply allow interlocal agreements to fund placements at juvenile detention facilities.

Hearings on **SB 214** were closed.

Hearings on **SB 129** - CINC cases, placement by secretary of SRS subject to review of the court, were opened.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313-S-Statehouse, at 3:30 p.m. on March 8, 1995.

Jim Clark, Kansas County & District Attorneys Association, appeared before the committee as a proponent of the bill. He told the committee that this would amend the statute regarding child-in-need of care cases when custody is placed with the Department of Social and Rehabilitation Services to give the court power to overrule an SRS placement if the court determines the placement is not in the best interest of the child. The court may direct the secretary to make an alternate placement. (Attachment 6)

Ben Coates, Acting Commissioner Youth & Adult Services, appeared before the committee in opposition to the bill. He commented that the current process has served children well for the last 13 years. (Attachment 7)

Hearings on SB 129 were closed.

Hearings on SB 127 - Citations may be written for violation of driving under the influence of alcohol or drugs by commercial motor vehicle driver and disorderly conduct, were opened.

Jim Clark, Kansas County & District Attorneys Association, appeared before the committee as a proponent of the bill. He explained that this bill would simply add driving under the influence and using drugs by commercial motor vehicle drivers to the notice to appear statute. (Attachment 8)

Hearings on SB 127 were closed.

The next meeting is scheduled for March 9, 1995.

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: _____ MARCH 8 _____

NAME	REPRESENTING
R. Lipsey	AP
Amy Howell (Wilson)	Intern
Amy L. _____	KU Law Student
James Clarke	KC DAA
William Deppish	Geary County Sheriff
Vicki Arnett	SRS/HAS
KEITH R. LENOIS	CHRISTIAN SCIENCE Comm ON PUBLICATION FOR KS
Nancy Lindberg	AG
Bettym _____	AG
M. J. Bradshaw	AAIU Asst.
Ferri Roberts	Kansas State Nurses Assn.
Marsha Strahms	CWA
Hope Howell	Intern
Dodie Lacey	KCS
Paul Shelby	OJA
Ben Creed	SRS
Deane Waterworth	Division of the Budget



State of Kansas

Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

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March 8, 1995

Representative Mike O'Neal, Chairperson
House Judiciary Committee
State Capitol, Room 170-W
Topeka, Kansas 66612

RE: Senate Bills 128 and 184

Dear Representative O'Neal:

I urge the committee's consideration of the passage of Senate Bills 128 and 184. These bills pertain to crimes against children.

Senate Bill 128 expands the definition of child abuse to include the intentional shaking of a baby. The primary concern is for children under the age of three. It has been shown that such cruelty can cause blindness, deafness, learning disabilities, paralysis, or even death of young children. I support the language that was added by the Senate Judiciary Committee which is "causing great bodily harm by shaking". Those who inflict this type of harm to a child should be punished.

Senate Bill 184 amends the sexual exploitation of a child statute. It simply brings the law into this day and age of devices which can be used to exploit a child.

I urge the committee to support these bills which will assist in the investigation and prosecution of crimes against children. Thank you for your consideration.

Sincerely,


Carla J. Stovall
Attorney General


House Judiciary
3-08-95
Attachment 1





ALARMING FACTS - ABOUT COMPUTER PORNOGRAPHY


PLEASE read the following **ALARMING FACTS**. Make six copies of this sheet and send it to six women you want to **WAKE UP!**


 "Parents had better get wise to the combination of kids, computers and sex, experts say, because their children may already be involved. From grabbing erotic photos off of phone lines to engaging in 'cybersex' (having sexually explicit conversations with other users), computer-savvy kids are being exposed to things many parents can't conceive of." Women's Day, 8/9/94


 "There are currently over 1,000 computer bulletin board services which offer pornography in the U.S. Robert Thomas, recently convicted of interstate distribution of obscenity through his BBS, had over 25,000 hard-core pornographic images, with 6,000 of those images including young children. The images of children (child pornography) were downloaded in excess of 600,000 times." Deen Kaplan, VP Public Policy, National Coalition Against Pornography


 "There are computer bulletin boards set up specifically for the seduction of children. They lure kids in with games and establish relationships with them on-line. Then they arrange to meet face-to-face." Al Olsen, Police Chief, Warwick Township, PA

 "The No. 1 law enforcement, public safety and national security issue facing us today, is preserving the ability to intercept communications legally, in the face of these technological advances." Louis J. Freeh, the director of the FBI, has told Congress, New York Times Magazine, June 12, 1994

 "The first time children hear about the wonders and the dangers of computer networks should be from parents. Going on-line together is a wonderful opportunity to instill cautious and responsible use in your children with respect to this incredibly powerful medium." M.I.T.'s Sherry Turkle, Women's Day, 8/9/94

 "There are some places you just assume children are safe, but they're not, even at home in their own rooms. Your home computer is like an unlocked door; what should be harmless fun is anything but." Jane Pauley, Co-host of Dateline

 "Relentless. From the mildly erotic to hard-core XXX, 'adult' CD-ROMS are everywhere. Just as sex on videotape helped fuel the growth of the VCR market, sex on CD-ROM is helping to drive a sizable segment of the burgeoning multimedia market. Adult CD-ROMS-- now a multi-million dollar business--- raise a number of important social and cultural issues." CD-ROM Today, June/July 1994

 "Child molesters are using the electronic superhighway to look for victims. They've got to go to other places where kids of the '90's play." Mike Brick, head of the Florida Department of Law Enforcement. Associated Press, 1994

**COALITION
AGAINST
PORNOGRAPHY
KANSAS CITY**

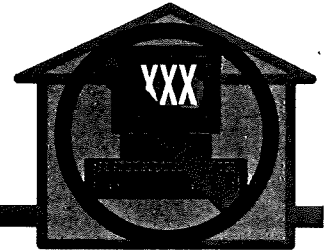


House Judiciary

3-08-95

Attachment 2

HOW TO SAFEGUARD YOUR HOME FROM COMPUTER PORNOGRAPHY AND SEXUAL PREDATORS USING COMPUTER TECHNOLOGY



- ✓ 1. Spend quality time with your children. Fulfilling relationships and activity will help prevent children from depending on computer technology for recreation or to communicate with others for companionship. This will help decrease the likelihood of exposure to pornography and pedophilic activity via personal computers. "Latch-key kids" who are home alone with a computer are prime targets for pornographic BBS operators and pedophiles.
- ✓ 2. Keep the computer in a public area of the house, i.e. den instead of the child's bedroom.
- ✓ 3. Take the time to learn how computers, modems and on-line services work so you can effectively monitor your child's computer use.
- ✓ 4. Watch computer service bills to see how much time your child spends on-line.
- ✓ 5. If you subscribe as a family to an on-line service or BBS, be sure to check whether the service offers pornography of any sort. If they do, complain and consider canceling your subscription.
- ✓ 6. Several of the services, including America On-line and Prodigy, have various types of controls that let parents lock their kids out of portions of the on-line world where trouble is likeliest. Familiarize yourself with these and use them.
- ✓ 7. Don't EVER allow your child to give out personal information on-line. Tell your child NEVER to give out his or her real name, address or phone number.
- ✓ 8. "Important areas to keep kids out of are so-called "chat" or "CB" sections, in which people conduct simultaneous, real-time discussions under the cloak of anonymous "handles." *Wall Street Journal*

Clues that suggest your child might be manipulated by other computer users or may be consuming material from adult computer bulletin board systems:

- If you find diskettes hidden, discuss WHY they are hidden and WHAT is on them with your child.
- If your child receives any mail in a plain envelope, review it and discuss it with your child.
- Watch for computer files that end in -GIF or -JPG. They are picture files. Most computer images, including those which are pornographic, are stored in files ending with these extensions.

GLOSSARY OF COMPUTER TERMS

CD-Roms: A type of large computer disc on which movies or images are stored.

Commercial BBS: Commercial bulletin board system.

Downloading: The term used to describe the transfer of images or information from an on-line service or BBS to your personal computer.

Electronic Mail (E-Mail): Computer mail systems that enable individuals to communicate with others via computers by the ability to send and receive electronic messages.

GIF and JPG Files: Computer files ending with one of these extensions usually indicates the file contains photographic images.

"Internet": A worldwide electronic communications network consisting of a large number of participants, connected machines, software programs, and a massive quantity of information, all spread around the world. The Internet is currently the world's largest computer bulletin board and data bank.

Modem: A device that enables your computer to use your phone to call other computers or BBS's.

On-line: Term used to describe an individual using a personal computer to call a BBS. When the individual connects his computer to the BBS through a modem, he is said to be "on-line."

Pedophile: A person who has a sexual attraction to children.

"Protecting
communities from
pornography."



NFLF BULLETIN

Spring 1994

Danger On the Information Superhighway

The technological advances achieved by our society in the past few decades are nothing short of astounding. We truly live in an information age, with communications advances revolutionizing industries in shorter and shorter time periods.

Unfortunately, the dark side of communications moves forward just as rapidly. The hard-core pornography industry takes advantage of every new technological innovation to find new ways to distribute obscenity and child pornography.

More than a decade ago pornographers were at the forefront of exploiting the home video market, exposing people to the addictive power of pornography in the privacy of their home. Access to hard-core pornography through local "mainstream" video rental stores avoided potential embarrassment to curious voyeurs caused by a public visit to an "adults only" establishment.

Next the pornographers invaded homes through satellite and cable television, and through dial-a-porn telephone lines. Each of these new incursions into the sanctity of the home created additional problems for parents who were trying to protect their children from exposure to pornography.

The latest technological advances in computers may pose the greatest threat yet. Stories are already appearing about children being not only exposed to pornography, but tracked and molested through computer bulletin boards. Recent newspaper articles indicate that a great number of "information superhighway" stops feature pornographic discussions or depictions. The problem is exacerbated by

the increased visual clarity of computer images, which are in some cases as clear as magazine photographs, and which can be transmitted instantaneously anywhere in the United States and around the world.

What can we do about this? As always, misinformation abounds. In a recent letter to Ann Landers, a writer described her concern about her 12-year-old younger sister who was receiving sexually explicit electronic mail from a male college student. Landers responded that according to a Chicago attorney, "there is no federal statute that prohibits sending pornogra-

(Continued from front page.)

phers from one state to another via computer can be prosecuted under federal obscenity laws.

State laws also may apply. State obscenity statutes have no requirement that material cross state lines; any distribution of obscene material via computer potentially falls under a state's obscenity laws. The only limitations would be in those states where only commercial distribution of obscenity is prohibited; there, someone sending an obscene image without receiving compensation could not be prosecuted.

Although obscenity and child pornography laws apply, many law enforcement officials are as unaware of that fact as Ann Landers. Our role, then, is to inform law enforcement officials and encourage them to confront this latest threat to our children and our society.

(1) Contact your local and state prosecutors and encourage them to enforce child pornography and obscenity laws against pedophiles and

pornographers who transmit their illegal material through computers. Encourage them to undertake an investigation of local computer bulletin boards for illegal activity.

That is simply not the case. First, federal law specifically prohibits child pornography from being distributed by computer transmission. But federal obscenity laws also apply; 18 U.S.C. § 1462 prohibits the use of common carriers to distribute obscene material. Because computers use telephone lines to transmit their material, this section prohibits distributing obscenity by computers. Also, 18 U.S.C. § 1465 prohibits interstate distribution of obscenity, so material that is sent

Continued on reverse.

(2) Contact your United States Attorney's office and ask them to investigate and prosecute illegal computer transmissions of obscenity and child pornography.

(3) Become computer literate, and monitor your child's access to sexually explicit material.

Constant vigilance is required to protect the innocence of our children in this modern world. Providing children with a computer and modem may supplement their education, but please don't leave them unattended. Thanks to the consistent greed and sullyng presence of pornographers, we can no more let our children cruise the information superhighway alone than we can leave them without supervision in New York's Times Square. ■



Protecting Communities from Pornography

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NFLF is a non-profit educational organization exempt from taxation under I.R.C. § 501(c)(3). Contributions to NFLF are tax deductible.

Testimony
in Opposition to Senate Bill No. 184
March 8, 1995
House Judiciary Committee
Hon. Michael O'Neal, Chair

Mr. Chairman and members of the Committee, I appreciate this opportunity to express our concerns in writing regarding Senate Bill 184.

My name is Carla Dugger, and I am the Associate Director of the American Civil Liberties Union of Kansas and Western Missouri. We are a private, not-for-profit membership organization which supports and defends civil liberties.

ACLU's opposition to expanding the censorship of the possession of materials relating to the sexual exploitation of a child in no way expresses support for the exploitation itself. We make a distinction between the act of producing visual or audio material, which may indeed constitute illegal conduct, and the mere possession of the material.

In this case, the "sexually explicit conduct with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender, the child or another" is criminal conduct. ACLU has not and will not challenge this point.

Our policy on censorship and pornography reads, "Government quite properly has the means to protect the interests of children in these situations by the use of criminal prosecution of those persons who ... cause such harm to children."

However, ACLU believes the First Amendment protects the dissemination of all forms of communication, no matter how abhorrent the content. Pornography is speech, it is not conduct.

We object to SB 184 on First Amendment grounds, and urge the Committee to reject this bill.

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EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

Testimony in Support of

SENATE BILL NO. 128

This bill was requested by the Kansas County and District Attorneys Association, which is, not surprisingly, in support of the bill. The purpose of the bill is to insert the word "shaking" into the abuse of a child statute.

The bill covers a deficiency in the abuse of a child statute that has only recently been noticed with the advent of the discovery of the shaken baby syndrome, or whiplash shaken infant syndrome. The action of shaking a baby causes a whiplash effect, and since the infant brain is small in comparison to the skull, serious injury and death results. Since the injury occurs only in infants, the crime prohibiting such injuries should also appear in the crime aimed at the protection of children. More realistically, it is impossible to fit the act into any other of the more general criminal statutes. And, since criminal statutes are strictly construed against the state, without the inclusion of the specific language of shaking, there are no criminal remedies for the conduct. The Senate amendments, borrowed from the aggravated battery statute, are clearly acceptable, and would avoid concerns over shaking as a form of discipline of older children, where there is no danger of severe injury.

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Julle McKenna, County Attorney

On February 4, 1994, Karissa Tatro, a five month infant was seen at Asbury Regional Medical Center. She was transported to Wesley Medical Center where she subsequently died from injuries she has sustained. An autopsy performed by Dr. Jill Gould, showed Karissa died from traumatic injuries to the head, and retinal hemorrhages were also observed. It was Dr. Gould's opinion that the baby had been shaken and that was the cause of the injuries. A prior injury was also noted but was not a contributing factor in the child's death. The mother was charged with felony murder with child abuse as the underlying felony. At the conclusion of the preliminary, the Judge hearing the case, discharged the mother stating that there was no evidence that the injuries sustained by the baby had been intentionally inflicted and that the degree of force used during the shaking had not been established as excessive.

FOR MORE INFORMATION CONTACT:
Terri Roberts JD, RN
Executive Director
700 SW Jackson, Suite 601
Topeka, KS 66603-3731
(913) 233-8638
March 8, 1995

**SB 128 AMENDS CRIME OF ABUSE TO INCLUDE
CAUSING GREAT BODILY HARM BY SHAKING**

Chairperson O'Neal and members of the House Judiciary Committee, my name is Terri Roberts JD, RN, and I'm the Executive Director of the Kansas State Nurses Association.

On behalf of registered nurses in the state, we support the amendments to the crime statutes that would add the following language to the crime statutes relating to abuse of a child: "causing great bodily harm by shaking."

The Shaken Baby Syndrome was first described in the early 1970's by Dr. John Caffey. The syndrome involved vigorous manual shaking of infants by their extremities or shoulders but with no signs of external head injury. The syndrome is now known by a briefer name, the Shaken Baby Syndrome, and the medical community has come to realize that the violent shaking of infants and young toddlers causes blindness, brain damage, and even death. Presenting signs of Shaken Baby Syndrome include failure to thrive, hypothermia, lethargy, listlessness, vomiting, seizures and coma. Most at risk are babies less than a year old, who are easy to pick and have floppier heads than toddlers. The muscles that hold the infants head are very weak and in addition there is poor control of these muscles.

Patricia Schloesser, John Pierpont, and John Poertner studied child deaths in Kansas in recent years. Years included in the study were 1975 through 1978 and 1983 through 1988. Dr. Schloesser and her colleagues studied 105 abuse related fatalities of infants and children ages birth to 4 years. The study consisted of a retrospective record review of birth certificates and death certificates as well as following leads in newspaper accounts. Some of the deaths studied also involved correlating the above results with information the state child abuse and neglect registry.

Kansas State Nurses Association Constituent of The American

700 SW Jackson, Suite 601 * Topeka, Kansas 66603-3731 * (913) 233-8
Carolyn Middendorf, M.N., R.N. -- President * Terri Roberts, J.D., R.N.

House Judiciary
3-08-95
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SB 128 Testimony--Terri Roberts
March 8, 1995
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With regard to the cause of death, the data showed that 60 out of the 104 (or 57.7%) died as a result of head injuries. Five percent of the children who died were under age 2 and more than 65% were under age 1. In nearly 90% of the cases the cause of death was discovered or confirmed by autopsy and the perpetrator was a male in 57% of the cases representing fathers, step-fathers and live-in boyfriends. When the perpetrator was a male, the death was more likely to be from head or abdominal injuries.

In the past two years, we have mailed the brochures published by the Department of Health and Environment in conjunction with SRS to registered nurses throughout the state and carried informational columns in our monthly publication regarding the Shaken Baby Syndrome and what nurses can do to educate new mothers as well as recognizing signs of Shaken Baby Syndrome when babies are brought in for check-ups.

Thank you for permitting me to testify on behalf of this bill.

b:leg95/yellow/sb128/1a

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EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

Testimony in Support of

SENATE BILL NO. 129

The Kansas County and District Attorneys Association requested SB 129, and appears in its support. The bill amends K.S.A. 38-1563(e), where a child in need of care is placed in the custody of the secretary of SRS, by striking language allowing the court in a child in need of care case to simply recommend placement; and inserting language allowing the court to determine if the SRS placement is in the best interests of the child, and if not, to direct an alternate placement.

The purpose of the bill is not to give juvenile court judges unlimited control over the SRS budget. Rather, the bill merely follows through with the best interests of the child philosophy by allowing the judge (who has had much more familiarity with the child over the past several months, if not years) the authority to tell a large bureaucracy with responsibility for thousands of cases, that in this case, with this particular child, the placement is wrong, and that one more suitable to the child's best interests should be made.

WILLIAM E. KENNEDY III
RILEY COUNTY ATTORNEY

BARRY R. WILKERSON
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Assistant Riley County Attorneys

KATHIE "KATE" SCHLEGEL
Diversion Officer



Carnegie Building, Second Floor
105 Courthouse Plaza
Manhattan, KS 66502

Victim Assistance Program
Check Collections Department
913/537-6390
FAX # 913/537-6334

March 8, 1995

TESTIMONY OF WILLIAM E. KENNEDY III,
RILEY COUNTY ATTORNEY,
CONCERNING SENATE BILL 129

I have been the Riley County Attorney since 1985. Although I have three other attorneys on my staff, I feel that the child in need of care cases and juvenile offender cases are the most important cases that we work with, and I am the primary attorney in this office for handling children in need of care cases.

For the last several years, the current statutory scheme has permitted the Secretary of Social and Rehabilitation Services to make decisions which may be fiscally responsible, but are not necessarily in the best interest of the child. We have had several cases here in Riley County where as we follow the typical child in need of care case, and most typically truancy cases which we are mandated to file, we arrive at a point where it is clear that a child needs a psychological evaluation. These evaluations are normally done at Pawnee Mental Health Services, and they are obtained to assist the Court to determine the needs and the best interest of the child.

An extremely serious problem arises when the psychological evaluation as performed by a Masters or Ph.D. level psychologist, and often including physical and psychiatric evaluation, indicates that a given child strongly needs inpatient psychological or psychiatric treatment. As a rule, these evaluations are submitted to the court and to the parties, and the desired plan is to place the child in the custody of SRS so that the proscribed care will be 1) overseen by competent people; and 2) has financial backing. The problem occurs when SRS relying on K.S.A. 38-1563(e)(1), does not carry through with the specific placement as recommended by the appropriate professional, but instead relies on such programs as family preservation.

I have no problems per se with the family preservation program. I understand that the design is that one social worker should work with no more than four families. I am aware that it is not being handled in this way. I am also extremely concerned that the family preservation program is specifically designed to last only between 90 and 120 days, and that following this program the family is removed from the family preservation program and placed with yet

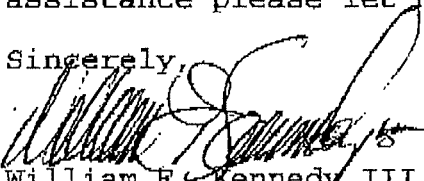
William E. Kennedy III
Page 2 - Testimony
Senate Bill 129

another arm of Social and Rehabilitation Services. I could show testimony where the family preservation unit has only met with clients once a week. I could also show programs where it was discovered in the middle of a given hearing where family preservation program was being touted that the family was already involved in family preservation and had only 40 or 60 days left in the program. This program is being used in place of the needed hospitalization or inpatient treatment because of financial reasons, and not for the best interest of the child. There is no way that such a program can possibly equal or begin to rival the kind of help that a child could receive in a lengthy inpatient program.

This is an extremely serious problem. Last week we tried a young man in Riley County as a juvenile felon. In a child in need of care case filed a year before, he went through psychological and psychiatric evaluation and was found to have deep seated mental problems, not amounting to insanity, and in need of at least six (6) months of hospitalization. Instead, the family went through the family preservation program. At the end of that program, I filed juvenile charges of burglary and theft against the young man for a crime committed immediately following the completion of the family preservation program. I firmly believe that if the young man had had the treatment requested by professionals at Pawnee Mental Health Services, that this would not have been necessary.

I'm very regretful that I could not be there in person today. I am beginning an Aggravated Sodomy jury trial in the morning, and feel I must stay here to finish up the small details of that trial. Thank you for your consideration. If I can be of further assistance please let me know.

Sincerely,



William E. Kennedy III
Riley County Attorney

lsr

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Janet Schalansky, Acting Secretary

House Judiciary Committee
Testimony on Senate Bill 129

March 8, 1995

TITLE

An Act concerning the Kansas code for care of children; relating to authorized dispositions; custody to secretary of social and rehabilitation services; court review of placement; amending K.S.A. 38-1563 and repealing the existing section.

Mr. Chairman, on behalf of the Secretary of SRS, I am pleased to provide you with this testimony in opposition to Senate Bill 129.

PURPOSE

Current provisions of statute provide the court may recommend to the Secretary where a child should be placed but may not direct a specific placement. Senate Bill 129 rescinds the prohibition against a court-directed placement. The bill also provides that after that after placement by the Secretary and upon notification to the court by the Secretary, the court may determine whether the placement is in the best interest of the child and direct the Secretary to make an alternate placement.

BACKGROUND

The language rescinding the prohibition against court-directed placements of children in SRS custody [page 2, line 12] was made a part of the original Code for Care of Children upon its adoption in 1982. The subsection was inserted by the Legislature as they determined the Secretary would have a more comprehensive knowledge of the child, the family and available resources thus would be more suitable to make placement decisions for children in the Secretary's custody. The process has served children well for 13 years and continues to this day to serve children well.

The department employs licensed social workers to conduct assessments of the children and families we serve. Selected department units have received specialized training in intensive family services called "family preservation services." The department has other resources available including family support workers and consultants from the fields of law, medicine and mental health. Volunteer and unpaid foster families, many with years of experience with traumatized and difficult children, assist the department in evaluating the needs of the children. The department has close working relationships with private residential programs for children at various locations across the state. Social workers at the local level are equipped to make the critical decisions about child placement based on knowledge of the child, an SRS

assessment of the family and knowledge of resources available locally and statewide. It is this system of services, developed over many years and reaffirmed by many legislatures, which makes the department best able to assess the placement needs of a child and to match the child with the best available resource.

The issue this bill seeks to address is not a common problem. On any given day, the department has 5,500 children in various types of placement ranging from the child's own home to residential or institutional. This bill reportedly has its origins in a solitary disagreement with a court which could not be resolved and which reached judicial appeal. This proposed remedy seems out of proportion to the problem. The department does not claim it invariably makes the best decision or that the ideal option is available when decisions must be made. If and when disagreement about a placement arises, the department always stands ready to receive information from interested parties and officers of the courts in re-evaluating placement decisions. Moreover, if disagreements do occur, procedures already exist for a court to express its concern and to take an action to remedy that concern.

Under existing law the court may, on its own initiative or upon the request of a party to the proceedings, hold a hearing to determine the best interests of a child under the court's jurisdiction. If, in such proceedings or in informal discussion with the court the department becomes aware of the court's concerns over placement, the department gives careful attention to the court's view and gives considerable weight to the court's reasons. In almost all cases, the department and the court can reach an agreement without the unwarranted step of having the court direct another placement be made. In the rare event the court and the department do not reach mutual agreement, the court currently has the authority to remove custody from the Secretary and award custody of the child to another person or entity acceptable to the court.

By contrast, if this bill becomes law, the department will have no recourse if a court directs a change of placement or directs a specific placement which the department determines is not in the best interests of the child.

EFFECTS OF PASSAGE

Impact on the Department

A major impact of this bill results because an order of the court directing or changing placement may have the effect of committing department resources (staff time and travel and cost of out-of-home care) without accountability for management of those resources. The department already faces the difficult task of managing within allocations while having little impact on the number of children coming into custody. In 1993 the department released a study showing for 62% of children in need of care coming into the custody of the Secretary, the department was not afforded the SRS

opportunity to provide services to prevent such custody. In nearly one-fourth of the cases, the department did not even have notice of the hearing in which we received custody. Senate Bill 129 compounds the problem by effectively placing the court ultimately in control of placements of children in SRS custody.

The department believes necessity for the bill has not been demonstrated and regrets its provisions may unnecessarily set the stage for a conflictual relationship with the courts. The courts and the department have the same goals in protecting children. The courts and the department each respect the expertise and professionalism of the other. If the decisions of the department are called into question, there are both formal and informal mechanisms for resolving the issues without one entity invading the area of responsibility of the other.

Impact on the Child

The bill provides the court may only act to change a placement once made by the Secretary. This means that the child will be subject to another disruption in his or her life in the midst of the turmoil already caused by circumstances which led to the placement and by the separation from family and familiar surroundings in making the initial placement. Child welfare literature consistently holds that changes of placement are traumatic to children. The efforts of the department and the Legislature over many years have been to minimize the number of placements and disruptions for children in need of out-of-home care.

Proximity of a child to the child's parents and siblings has a direct influence upon the department's ability to support the reunification of a child with the child's family. For this reason, the department attempts to select placements which have the greatest potential for the expeditious return of the child. If a court should demand an alternative placement for whatever reason, the alternative placement may not support the reunification of the child and family.

RECOMMENDATION

The department believes the bill is not in the best interest of the courts, the department or the children and requests the committee not pass Senate Bill 129.

Ben Coates, Acting Commissioner
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Department of Social and Rehabilitation Services

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Testimony in Support of

SENATE BILL NO. 127

Senate Bill 127 was introduced at the request of the Montgomery County Attorney, who discovered that while a notice to appear (ticket) was allowed in nearly every traffic or misdemeanor offense, it was not allowed in violations of the disorderly conduct statute, K.S.A. 21-4101, a class C misdemeanor; or in violations of the commercial driver DUI statute, K.S.A. 8-2,144, which involves driving with .04 blood alcohol level.

The policy decision to include minor crimes or traffic offenses in the notice to appear statute is long-standing, and the history of the statute shows additions made nearly every year. This bill merely adds two other such offenses, as a matter of convenience to both offenders, prosecutors and the courts.

I'm sorry I was unable to appear personally today in support of this bill: I was unable to get away.

K.S.A. 8-2106 contains a "laundry list" of traffic infractions, traffic-related misdemeanors and numerous other misdemeanor offenses that can come before State courts on a citation.

In State court, if a crime can't proceed with a citation issued by the officer as the complaint, a "long form" complaint must be drawn up and filed by the prosecutor. This is a more costly and time-consuming procedure.

The commercial D.U.I. statute was enacted after the last amendment of 8-2105 and is not included in the list. This is an oversight, I discovered when I tried to proceed to a jury trial on a citation issued by a trooper for commercial D.U.I. I had to file a long-form complaint. The oversight should be corrected by adding K.S.A. 8-2,128 et seq. to the list in subsection (2) of 8-2106.

I believe that Disorderly Conduct is a misdemeanor offense that should also be included in subsection (2).

Disorderly Conduct (K.S.A. 21-4101) is a class C misdemeanor which is most often charged by law enforcement officers when a person is being obnoxious and verbally abusive or obscene. It would be a great convenience to state law enforcement officers and prosecutors if a citation could be issued for it. Arrest is optional (except for certain traffic offenses) but the complaint is done and court date set when the citation is issued.

K.S.A. 8-2106 now contains numerous misdemeanors with higher classifications and longer possible sentences than Disorderly Conduct.

It will do no harm and could be more convenient, less time-consuming and less costly if this misdemeanor were added to the list in 8-2106.

THANK YOU,


ANN L. SMITH