Approved: March 26, 1996
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael R. O'Neal at 12:30 p.m. on February 26, 1996 in

Room 313-S of the Capitol.

All members were present except:
Representative Britt Nichols - Absent
Representative Dee Yoh - Excused

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

Others attending: See attached list

HB 3035 & HB 3036 - regarding parental rights (Attachments 1-11)

Representative David Adkins explained that the Civil Law Sub Committee recommended that **HB 3035 & 3036** be tabled.

Representative Pauls provided the committee with a balloon amend to **HB 3035** which would strike all language in the bill and state that if there was a cause of action in the federal courts then there could be the same type of action in state court, it would not create a new action. (Attachment 12)

She made a motion to report the balloon amendment for **HB 3035** favorably for passage. Representative Howell seconded the motion.

Representative Grant questioned that if this would not be creating a new cause of action, when would a state court be the appropriate jurisdiction. Representative Pauls requested that staff clarify this issue.

Representative Grant made a substitute motion to table the bill. Representative Standifer seconded the motion. The motion carried.

HB 2791 - repeal of statute concerning standards for correctional institutions and jails

Representative Miller made a motion to report **HB 2791** favorably for passage. Representative Mays seconded the motion. The motion carried.

HB 2991 - criminal procedure; discovery and inspection of records and witnesses, (Attachments 13 & 14)

Chairman O'Neal explained that the Criminal Law Sub Committee recommended an amendment that the "defendant must disclose a list of expert witnesses and their reports".

Representative Grant made a motion to adopt the sub committee report and report **HB 2991** favorably for passage as amended. Representative Ott seconded the motion.

Representative Howell made a substitute motion to amend in that "prosecuting attorneys may request a jury trial in a misdemeanor or traffic case," (Attachment 15). Representative Merritt seconded the motion. The motion failed.

The motion to report **HB 2991** favorably as amended failed.

HB 3022 - release of a notice of intent to perform on a subcontractor's lien, (Attachments 16-18)

Representative Adkins stated that the Civil Law Sub Committee took no action on the bill. He explained that there was an amendment which would include a "Notice of Intent to Perform" form in the statute, (Attachment 19).

Representative Miller made a motion to adopt the amendment. Representative Standifer seconded the motion. The motion carried.

Representative Standifer made a motion to report **HB 3022** favorably for passage as amended. Representative Grant seconded the motion. The motion carried.

The committee meeting adjourned at 1:30 p.m.

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: February 26, 96

NAME	REPRESENTING
Jim McDaniel	KEWNET
Richard E Taber	ACLU
Barbara Tombs	KS Sentencing Comm
Rebecca Woodman	KS Sentencing Comm
Julie Meyer	Ks Sentencing Comm.
Charles Simmons	Dept. of Corrections
Kelly Kultala	KTLA
Kathy Paton	THE KANSAS CITY KANSAN
John Peterson	Ks Governmental Consulting

STATE OF KANSAS

JANICE L. PAULS
REPRESENTATIVE, DISTRICT 102
TOPEKA ADDRESS:
STATE CAPITOL—272-W
TOPEKA, KANSAS 66612-1504
(913) 296-7657
HUTCHINSON ADDRESS:
1634 N. BAKER
HUTCHINSON, KANSAS 67501-5621
(316) 663-8961

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
RANKING MINORITY MEMBER:
BUSINESS, COMMERCE AND LABOR
JOINT SENATE & HOUSE COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS
MEMBER:
JUDICIARY
TRANSPORTATION
WORKERS COMPENSATION FUND OVERSIGHT COMMITTEE

Testimony before the Judiciary Civil Sub - Committee Regarding House Bill 3035 & House Bill 3036 by Representative Janice L. Pauls District 102

Mr. Chairman and members of the committee, thank you for the opportunity to present testimony on these bills to your committee. HB 3035 creates a new act to protect parent's rights to direct the upbringing of their children. The act would allow judicial review of alleged interference with parental rights.

The right of a parent under this act does not apply to any parent who is acting or failing to act in a manner that will result in the death, the serious injury, or sexual abuse of the child.

HB 3036 contains a number of specific changes in existing law to deal with problems that have been testified to in Judiciary Committee in prior years concerning parental rights. Other proponents will detail each of these changes, but basically changes cover sexual abstinence teaching; review of foster care services; video taping of interviews; removing anonymous reporting; hearsay in reports; notice of an investigation of child abuse to the parents 10 days after the commencement of the

House Judiciary
2-26-96
Attachment 1

investigation; modification of the civil immunity of law enforcement offices, social workers, etc; limiting the times a law enforcement officer can take a child into custody to those situations of a life-threatening nature or serious risk of injury to the child; restrictions on entering homes without warrants; placement with a childs' relatives; and defining minimal visitation rights with a child in foster care to at least one hour a week.

HB 3036 is based on laws either in existence or proposed in Oklahoma and California.

I would urge the passage of both of these bills, and will stand for testimony now or following the other proponents' testimony.

In General:

Last year you requested us to look at the legislative option and bring a proposal for legislative remedies rather than Constitutional Amendments. We have done that. We have looked at what many states are doing. We have selected the 12-13 legislative remedies being most sought, in other states, in these bills.

LEGISLATIVE PROVISIONS FOR THE 1996 SESSION

1. Eliminate Anonymous reporting of child abuse/neglect and change to a confidential status with disclosure of the substance of the report to all parties mandatory. Based on Oklahoma Statute sec. 7108 and sec. 7109

2. Establish a felony for anyone knowingly reporting a false child abuse/neglect incident or report. Based on Oklahoma Statute sec. 7103 D., 1., 2., E.

3. Require all governmental personnel to have owner/occupant's written consent whether for a business or a residence, or a search warrant, or a documented life threatening situation in progress to be allowed to enter and search a residence or facility.

4. Define frequent visitation in foster care homes and child visitation to mean at least one time per week.

5. Require all interviews in an alleged child abuse/neglect/parental rights termination investigation be video tape recorded in order for it to be admissible or the basis for the admission of any evidence.

6. Modify the admission of hearsay evidence rule to prohibit it in *dependency/abuse/neglect cases. California SB 86

7. Mandate automatic placement with relatives in termination/abuse/neglect cases. California AB 1350

8. Provide only Qualified Immunity to governmental personnel including social service personnel. California AB 1355

9. Mandate written notification of investigation to all interested parties, including, without limitation, parents, for abuse/neglect/dependency cases.

10. Mandate a right to trial by jury in all parental rights termination/neglect/dependency

House Judiciary
2-26-96
Attachment 2

Content of Abstinence Bill

The abstinence bill, SB 2394, (Senator Newton Russell) passed the Califor-ia State Legislature on August 22, 1988. Traditional Values Coalition, Lou heldon chairman, was the principal sponsor.

The idea for the bill arose from the fact that a very large percentage of teens ad their first sexual intercourse, not because of the pressure of hormones but om the pressure of peers.

In addition, upon reading testimony from Congressional hearings, a student sked the Congress and other adults to give support to the many students who are staining from sexual intercourse. She said, everyone is NOT "doing it."

Also, in researching what is currently being taught in sex education classes raditional Values found that frequently abstinence is dismissed with one or two ntences and the teachers generally assume that most of the students are xually active.

In summary, currently students are "told" in a few words to abstain, but they e not "taught" how to say no. The purpose of this bill is to assist the large rcentage of students who would like to abstain.

The bill, SB 2394, requires that wherever sex education is taught, abstinence ould be emphasized. To implement this several specifics were included in the ll some of which were taken from the California State Board of Education's mily Life Guidelines:

1. Be age appropriate.

2. Serious health hazards for non-abstinence.

3. Abstinence is the only 100% effective contraception.

4. Failure/success rate of condoms.

5. Possible emotional and psychological consequences of adolescent sexual intercourse outside of marriage and the consequences of adolescent pregnancy.

. Stress that pupils should abstain from sexual intercourse until they are ready for marriage.

. Teach honor and respect for monogamous heterosexual marriage.

. Advise that it is unlawful for males to have sexual relations with females under the age of 18 to whom they are not married.

. Advise pupils of the laws regarding their financial responsibility to children born in and out of wedlock.

. Encourage pupils to base their actions on reasoning, self-discipline, sense of responsibility, self-control, and ethical consideration.

. Teach pupils not to make unwanted physical and verbal sexual advances, how to reject sexual advances and encourage pupils to resist negative peer pressure.

MATERIALS AVAILAB ON ABSTINENCE

CURRICULUM

"Sexuality Commitment and Family"
- High School

"Me, My World, My Future"
- Junior High

Teen-Aid (509) 328-2080
1330 N. Calispel
Spokane, WA 99201
(This curriculum is used by the San Marcos School District which has been an example of its astonishing results.)

"Sex Respect Curriculum"
Respect Inc.
Box 349
Bradley, Il 60915
(815) 932-8389
(This program was funded by the the U.S. Dept. of Health and is acceptable for public schools)

ABSTINENCE VIDEOS

"Just Wait" 14 minutes
$43.00 inc. shipping

"Be Cool About Sex" 14 minutes
$38.00 inc. shipping
Womanity (415) 943-6424
1700 Oak Park Blvd, Rm C-4
Pleasant Hill, CA 94523

State Department of Education
New film out July 1

"Why Wait" 40 minutes
$69.95 + shipping
Teen-Aid (509) 328-2080
1330 N. Calispel
Spokane, WA 99201

AIDS VIDEOS

"Straight Talk About AIDS"
Teen AIDS (817) 237-0230
P.O. Box 10852
Ft. Worth, Texas 76114

"AIDS Learn & Live" 25 minutes
$69.95 + shipping
Teen-Aid, (509) 328-2080
1330 N. Calispel
Spokane, WA 99201

"Family Life Guidelines"
CA State Dept. of Education
Publication Sales, Calif.
P.O.Box 271
Sacramento, CA 95802-0271
Cost is $4.00 plus sales tax.

ABSTINENCE EDUCATION WORKS

Statist[illegible] schools using Abstinence Education shows that students attitudes and actions are effected, however, promot[illegible] a philosophy of free sex, condoms, abortion, has served to dramatically increase the number of teen pregnancies.

More money per person has been spent on sex education, free contraceptives, and abortion services in California than any other state. Recent statistics from the California Department of Health Services show the following for 15-19 year olds for the years 1970 and 1985:

Pregnancy Rate	— Increased by 32.9%
Birth Rate	— Down significantly
Abortion Rate	— Tripled

However, Abstinence Education is racking up much better statistics. San Marcos Junior High School has implemented a multi-facetted program including the "Teen-Aid Program". Between 1985 and 1987 the following occurred:

TEEN-AID CURRICULUM	84/85	86/87
Students with 4.0 GPA (all A's)	2.2%	4.5%
Students with 3.0 GPA (B average)	34.6%	35.3%
Students in lowest 1/4 of CTBS	16.4%	11.74%
Number of girls reported pregnant at high school	147	20

SEX RESPECT CURRICULUM

After the series of classes student reported:	Before	After	
Do you think sexual urges are controllable?	21%	64%	Yes
Is the sex act alright for unmarried teens as long as no pregnancy results?	37%	89%	No
Once a teen has had sex outside marriage, he/she would benefit by deciding to stop having sex and wait till marriage?	31%	80%	Yes

The RIGHT TO REPRODUCTIVE CHOICES FOR ADOLESCENTS was the legislative agenda for CACSAP, an organization made up of sex educators, county social workers, county and school programs for pregnant teens, etc.

Planned Parenthood indicates that more open and accepting attitudes for teen sex, more easily accessible contraceptive services, more sex education, and a higher priority on reducing teen pregnancy than on eliminating teen sexual activity would lower the rates of teen pregnancy, abortion, and childbearing.

However, Dr. Jacqueline Kasum reports just the opposite. Her research shows that higher rates of pregnancy result where there is more sex education and free contraceptive, and abortion. Where less money is spent with less sex education there are fewer pregnancies.

With more teens having sex more often, there will be more pregnancies because of their irregular and incorrect use of contraceptives, and the failure rate of contraceptives.

Those promoting the "free sex philosophy" do not understand that many teens prefer not to have sex. These teens need us to help them by:

Teaching them "how" to say no.

Change the false perception that "Everyone is doing it"

Have our state paid teacher role models present a legitimate position for abstinence.

Meanwhile, since 1963, studies show teen pregnancies in the 10 to 15 year age bracket have increased 556%; drug abuse 2,800%; teen suicides are off the charts with a 280% increase; and sexually transmitted diseases rage at epidemic proportions with a 400% surge. National television reported on January 3, 1992, that the 19 year olds in America are 72% sexually active and are not adopting "safe sex" teaching. In the words of the anchorman, "Sex education is not working and many experts believe abstinence is the only solution".

THE WALL STRE

VOL. XCVII NO. 21 ★★ SOUTHWEST EDITION TUESDAY, JANUAR

Culture of Faith

For Kansas' Freidlines, Life, Politics, Religion Are Mostly Inseparable

They Campaign for Values That They Find Lacking In the More Secular World

Seeing God in Amelia's Crisis

By DENNIS FARNEY
Staff Reporter of THE WALL STREET JOURNAL

OVERLAND PARK, Kan. — The judgment of God — final, forever — is the first lesson in this classroom today.

"And whosoever was not found written in the book of life was cast into the lake of fire," reads Cheryl Freidline from the Book of Revelation. Then, softly, she asks: "Does God want anyone to go into the lake of fire?"

"No," replies Amelia Freidline, an eight-year-old with a voice that is innocence itself.

"What does God want them to do?"

"Repent."

A Different World

The two, mother and daughter, are sitting on the second floor of the Freidlines' brick cape colonial home here in the western suburbs of Kansas City, Mo. Cheryl and her husband, Blaine, evangelical Christians and Republican conservatives, have chosen to home-school Amelia. In an extra bedroom they have replicated the look and feel of a classroom, down to a teacher's desk for Cheryl, a pupil's desk for Amelia and portraits of George Washington and Abraham Lincoln.

Yet the room has features you would never encounter in a public school. They are clues to a different way of seeing the world, to a different perspective on eternity. They are outward signs that the Freidlines are part of what has been called a "parallel culture" — a culture half-submerged and, until lately, half-ignored by secular society. A culture generically known as the Religious Right.

A time line of history, which covers one wall, has this entry: "1,656 years after Creation, God brought the flood." And on another wall is a plaque whose inscription

What's News—

* * *

Business and Finance

THE DOW JONES INDUSTRIALS closed above 5300 for the first time ever amid optimism that Federal Reserve policy makers, who meet today and tomorrow, will cut short-term interest rates. The Dow rose 33.23 points to 5304.98, its fourth record in six sessions. Bond prices declined, partly on selling by large investment funds, and the dollar was mixed.

(Articles on Pages C1, C21 and C15)

* * *

Companies' health-care costs for employees were steady for the second year in a row, a survey found. However, corporate retiree costs rose almost 10%, which led to an overall 2.1% rise in employer health expenses.

U.S. health care, in particular Medicare, is marked by wide regional variations in cost and services, a report shows, pointing up hurdles facing those who want to change the system.

(Articles on Pages A2 and B6)

* * *

Digital Equipment is withdrawing from the fiercely competitive home computer market and plans to refocus its PC unit on business customers.

(Article on Page A3)

* * *

The NLRB issued a long-awaited decision, seen as a partial victory for organized labor, regarding how far unions must go to inform workers that they can get a break on union dues.

(Article on Page A3)

* * *

Negotiators for oil workers rejected the latest contract offer by Amoco on behalf of the industry, and the 40,000-strong union says it may strike at some refineries this week.

(Article on Page B6)

* * *

New construction contracts fell 6% in December but increased 1% for all of 1995, capping an up-and-down year.

(Article on Page A4)

* * *

World-Wide

SOME IN CONGRESS MOUNTED a last-ditch effort to craft a budget compromise.

Conservative Democrats and moderate Republicans will try to mesh three competing plans produced in Congress over the past few months. While similar bipartisan efforts have come to nothing in the course of the protracted dispute, recent developments have sparked some optimism. There is growing support among Senate Democrats, and Republicans, seeing Clinton's poll gains in the budget fight, are now eager for an accord of some sort. (Article on Page A3)

Administration officials are still lukewarm about some elements of the emerging consensus, but Clinton remains interested in continuing the dialogue.

* * *

RESEARCHERS HAVE FOUND a mix of three drugs very effective against AIDS.

At a weeklong conference in Washington that began yesterday, Abbott Laboratories and Merck will show that each of their protease-blocking drugs, when combined with two existing AIDS medicines, packs an unprecedented antiviral wallop. Researchers say that if test results hold up, the regimen, while not a cure, will be the first big advance in AIDS therapy since AZT was introduced in 1987. (Article on Page B1)

In tests, the three-drug combination eliminated 99% of the AIDS virus detectable in the bloodstream of almost all of 45 patients tested for four to six months.

* * *

A Navy fighter jet crashed shortly after takeoff in Nashville, Tenn., demolishing three houses and killing the two-man crew and three people on the ground. The F-14 had a full fuel load for a flight to San Diego, and witnesses said it exploded in a huge fireball when it hit. Pentagon investigators were sent to determine the cause of the mishap.

* * *

Red Cross officials said Balkan foes were still holding 100 prisoners of war after hundreds were released over the weekend. The[illegible]

KANSAS EDUCATION WATCH NETWORK

KEW 2+2 NET

P.O. Box 483
Wichita, Kansas 67201
316-685-5664 / 316-685-8597 FAX

February 20, 1996

Testimony of
Jim McDavitt
Director
Kansas Education Watch

Proponent of HB 3035

I would like to thank Chairman Adkins and the members of this Judiciary Sub-committee for allowing me to speak to you today.

Most of the current members of this committee remember the tone of the floor debate last year on the subject of parental rights. Those members of the House who had reservations on this subject insisted on inserting the word "unwarranted" in the language of last year's bill to protect the interests of the state in dealing with cases of abuse or neglect of children. It appeared to me that the resulting language caused much confusion.

But what you were telling us about wanting to use language which made it clear that abuse and neglect would not somehow become protected activity was heard loud and clear by us. This has resulted in a national search for model language which would give lawmakers coverage of those angles.

We also heard loud and clear that a statute was a method that many would prefer as the vehicle to be used. So what you see before you in HB 3035 is our compliance with these legitimate concerns.

All of last years testimony about interference with parental authority, and the personal horror stories parents told about intrusion by state and local bureaucracies need not be re-told today. But it is my testimony to you that the incidents of state government abuse of families is continuous. And this legislature has the power to provide proper relief.

Last Friday, I was asked by Rep. Doug Lawrence to investigate a complaint from a family in Iola regarding unacceptable material being shown to their third grader and fifth grader. I followed up by detouring to Iola on my way home.

The material consisted of books and a video which the father had commandeered. The books shown the younger child in class contained nudity and were totally unsuitable for a third grader. The video shown to the fifth grader contained vulgarity, profanity, nudity, sexual content including discussion of services offered by Scandinavian prostitutes and sexual positions and activities. I would call it pornographic. According to the parents the school said these materials met their parameters.

This kind of occurrence is far from rare. We appeal to your sense of fair play in this issue and we believe that this bill is the best for all sides on these matters.

For these and other reasons, I ask that this committee rule favorably on HB 3035.

Thank you for your consideration.

Jim McDavitt
Director
Kansas Education Watch

House Judiciary
2-26-96
Attachment 3

American Civil Liberties Union
of Kansas and Western Missouri
706 West 42nd Street, Suite 108
Kansas City, Missouri 64111
(816) 756-3113

Wendy McFarland, Lobbyist
575-5749

TESTIMONY ON HOUSE BILL 3035
DELIVERED FEBRUARY 20, 1996
TO THE HOUSE JUDICIARY COMMITTEE

THANK YOU FOR THE OPPORTUNITY TO EXPRESS THE VIEWS OF THE ACLU CONCERNING HB 3035. THIS BILL, UNLIKE OTHER PARENTAL RIGHTS BILLS THAT HAVE BEEN PROPOSED IN THE PAST, WOULD CREATE A STATUTORY CAUSE OF ACTION TO ADDRESS THE GRIEVANCES OF PARENTS CONCERNING THEIR CHILDREN.

THE ISSUES THIS BILL SEEKS TO ADDRESS ARE SO OVERLY BROAD THAT THEY MAY IN FACT DILUTE THE INTENT OF THE BILL WHICH IS TO ADDRESS THE PERCEIVED ABSENCE OF PARENTAL RIGHTS.

IF A PARENT WISHES TO INSURE THAT THEIR WISHES WILL ALWAYS PREVAIL IN HEALTH CARE DECISIONS FOR THE CHILD, WOULD IT NOT THEN BE BETTER TO FASHION LEGISLATION ADDRESSING ONLY THAT ISSUE?

IF A PARENT FEELS HE HAS A GRIEVANCE CONCERNING THE EDUCATION OF HIS CHILD, THEN WOULD IT NOT BE MORE EFFECTIVE TO SPECIFICALLY ADDRESS THAT PARTICULAR ISSUE IN THE FORM OF A LEGISLATIVE REMEDY?

IF A PARENT FEELS HE HAS THE RIGHT TO SPANK HIS CHILD AND WISHES TO INSURE THAT THE LAW RECOGNIZES THAT SPANKING AS HIS RIGHT, THEN WOULDN'T MORE SPECIFIC LEGISLATION SERVE THOSE PARENTS BETTER THAN THIS BROADLY WORDED AND FAIRLY AMBIGUOUS BILL THAT LEAVES MANY POTENTIALLY HARMFUL RAMIFICATIONS UNADDRESSED?

THERE MAY BE MANY PROBLEMS WITH THIS BILL AS WRITTEN, BUT OF PARTICULAR CONCERN TO ME IS THE NARROW DEFINITION OFFERED TO ESTABLISH WHAT WOULD CONSTITUTE REASON FOR INTERVENTION BY THE STATE WHEN A CHILD IS THOUGHT TO BE THE VICTIM OF ABUSE BY THE PARENTS.

THIS BILL STIPULATES TO ONLY THREE REASONS TO VIOLATE A PARENTS RIGHT TO PARENT. THEY ARE ANY ACT OR INACTION THAT WOULD 1) CAUSE SERIOUS INJURY 2) CAUSE SEXUAL ABUSE OR 3) CAUSE OR RESULT IN THE DEATH OF THEIR CHILD.

NOT ADDRESSED ARE A MYRIAD OF OTHER TYPES OF ABUSE A PARENT CAN INFLICT UPON A CHILD SUCH AS LOCKING A CHILD IN A CLOSET, FAILING TO FEED A CHILD OR PROPERLY CLOTHE THEM OR A FAILURE TO SEEK MEDICAL TREATMENT WHEN A CHILD REQUIRES IT.

House Judiciary
2-26-96
Attachment 4

THE NARROW DEFINITION OF WHAT CONSTITUTES ABUSE IN THIS BILL COUPLED WITH THE RESTRICTIVE LIMITS IT THEN APPEARS TO PLACE ON GOVERNMENT TO INTERVENE BY REQUIRING WHAT IS SOMETIMES IMPOSSIBLE TO OBTAIN IN A TIMELY MANNER, THAT BEING CLEAR AND CONVINCING EVIDENCE OF ABUSE, MAY IN FACT SERVE TO KEEP THE CHILD IN THE CUSTODY OF PARENTS WHO MAY EVENTUALLY ABUSE THAT CHILD TO DEATH...WHILE THE STATE IS SCRAMBLING TO PRODUCE THE KIND OF CLEAR AND CONVINCING EVIDENCE THAT WILL STAND UP IN A COURT OF LAW.

THIS BILL WILL CAUSE THE STATE TO SHOW GREAT RELUCTANCE IN REMOVING CHILDREN FROM ABUSIVE HOMES IN AN EFFORT TO AVOID BEING SUED UNDER THE TERMS OF THIS PARENTAL RIGHTS BILL.

WE ARE EQUALLY CONCERNED THAT THIS BILL, WHILE SEEKING TO AWARD ATTORNEY FEES TO PARENTS DEEMED TO HAVE MERITORIOUS CAUSES OF ACTION, DOES NOT SEEK TO PROVIDE THE STATE WITH THE SAME PROTECTIONS.

WHEN CASES WITH NO MERIT AT ALL ARE FILED AND THE STATE, REGARDLESS OF EVENTUAL OUTCOME, IS REQUIRED TO DEFEND ITSELF, IS IT NOT FAIR TO HOLD THOSE PARENTS ACCOUNTABLE FINANCIALLY FOR FILING SUITS, UNDER THIS ACT, THAT HAVE NO MERIT?

WE ASK YOU NOT TO SUCCUMB TO THE TEMPTATION TO SEEK JUDICIAL RELIEF FROM OFFENSIVE POLICIES. THE CONTENTS OF THIS BILL ARE RICH IN POTENTIAL FOR BREEDING LITIGATION ABOUT MATTERS THAT SHOULD BE SETTLED BY LEGISLATION OR OTHER PROCESSES OF POLITICAL PERSUASION.

DO YOU REALLY WANT TO TURN EVERY PARENT'S GRIEVANCE INTO GROUNDS FOR SUING?

WRITING INTO LAW LANGUAGE THAT IS CERTAIN TO BREED LITIGATION THAT WILL DRAW COURTS EVEN DEEPER INTO THE DETAILS OF PERSONAL AND SOCIAL LIFE, IS BAD BUSINESS.

WE RESPECTFULLY URGE YOU TO VOTE AGAINST THIS BILL AND FIND OTHER WAYS TO ADDRESS THE CONCERNS OF PARENTS.

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Rochelle Chronister, Secretary

Committee on Judiciary
Testimony on House Bill 3035

February 20, 1996

TITLE
An Act to protect the fundamental right of a parent to direct the upbringing of a child.

Mr. Chairman and Members of the committee, I am Sue McKenna, Attorney for the Department of Social and Rehabilitation Services. Thank you for the opportunity to testify on behalf of Secretary Chronister today concerning House Bill 3035.

PURPOSE

The Department of Social and Rehabilitation Services supports the fundamental right of children to receive care and guidance from their parents without undue interference. The department is also committed to the protection of children whose parents fail or refuse to provide at least minimally adequate care. To that end the department has consistently requested clarification of its responsibilities under the Kansas Code for Care of Children so that parents retain custody of their children unless unable to protect them and children who have been removed from parental custody by a court can be reunited in a timely manner with their parents. For these and other reasons the department is in sympathy with the underlying values stated in HB 3035 though not with the specific content of the bill.

EFFECT OF PASSAGE

Sections 3 through 5 pose the greatest concern to the department as the bill will result in exposing vulnerable children to additional risk of abuse and neglect by impeding the state in exercising its authority while providing caring parents with no protections they do not currently enjoy under existing statute, case law or common law. An attachment to this testimony outlines specific questions and concerns about the bill.

It is somewhat ironic that this bill, which purports to protect the autonomy of parents in the raising of their children provides only for judicial relief, an action which may lead to more, not less, governmental intrusion into parental affairs. No less an advocate for minimal government intervention in private matters than conservative columnist George Will recently stated in a published article about parental rights legislation: "Do we want to turn every parent's grievance into grounds for suing?" " It is injurious to democracy to write into law language certain to breed litigation that will draw courts even deeper into the unjudicial business of rearranging the details of social life."

The department shares Mr. Will's apprehension about the prospect of laying groundwork for increasingly confrontational relationships with the families we serve. The department has made and will continue to make many changes to promote partnerships with families and reduce distrust and conflict. We receive reports of suspected abuse on nearly 31, 000 children a year and substantiate only eleven (11) percent. Of the eleven percent, many receive services voluntarily. We are in the process of expanding services to such families through private sector contracts to make voluntary services available to all who want and need services to prevent removal of a child from the care of their parents. Only a small percentage require intrusive measures but when they do, it is an acknowledgment the children are at great risk.

The department is concerned that by passing this or similar legislation, parents who otherwise would not be in conflict with the department may be pre-disposed to be less cooperative by the existence of a statute that implies, wrongly, a widespread conspiracy to deny parents their rights to guide and direct their children.

If proponents of this bill have concerns about the rights of parents in investigations of alleged child abuse and neglect, the department will be more than happy to work with them to find a solution which does not jeopardize children. Proponents of this bill may also want to review SB 630 requested by the department to improve protection of children and assist the courts in avoiding unnecessary removal of children and assist the department with timely and safe return of children placed in the custody of the department.

RECOMMENDATION
In the best interests of Kansas families and children, House Bill 3035 should not be recommended for passage.

Roberta Sue McKenna, Staff Attorney
Children and Family services Commission
((913)296-3967

For: Rochelle Chronister
Secretary
Department of Social and
Rehabilitation Services

ANALYSIS OF HB 3035

Preamble: In addition to making unsupported allegations that government intrusion into parental decisions is extensive, the preamble to this bill cites several U.S. Supreme Court cases. Far from establishing the need for the proposed bill, the citations provide ample evidence that the courts all the way to the Supreme court have consistently held for the rights of parents except where there is a compelling government interest. In the area of family relationships, save those deemed destructive to order and democracy, the time honored American value is not to introduce careless and sweeping legislative changes which open the door to greater problems than the ones it purports to fix.

Section 2. (c) (1) (C) As corporal punishment (spanking, presumably) is nowhere mentioned in current statutes or administrative regulations pertaining to parents, it seems completely unnecessary to insert it into this proposed legislation. If this subsection becomes law, what is now an uncontested issue will no doubt become an issue of contention and possible litigation over what constitutes "reasonable" corporal punishment. The use of the term "corporal discipline" confuses the matter even further by including in statute the popular but erroneous belief that corporal punishment and discipline are equivalent terms. While discipline may include punishment as a means of "training that is expected to produce a specific character or pattern of behavior" [The American Heritage Dictionary of the English Language], both discipline and punishment may be administered without bodily discomfort. If parental discipline is to truly remain, as it is now, within the province of parental discretion, the department recommends the child in need of care statutes remain mute on the question of whether and how a parent may discipline a child, corporal or otherwise.

Subsection 2(c)(2) regarding parental rights to make health care decisions raises more questions than it answers. Is it intended that the subsection fails to exclude unnecessary or unreasonable pain and suffering? Does "danger to the life" include withholding treatment without which life expectancy will be shortened? Do the proponents intend to prohibit only withholding treatment resulting in physical injury and not mental (cognitive) or emotional injury? Is it intended that parents may decide a child may suffer physical injury if the injury is not "serious?" Is it intended a parent who lacks the ability to pay for medical care cannot refuse such care?

Subsection 2(c)(3) regarding the right of a parent to direct the upbringing of a child. Is it intended that it is the right of a parent to cause or allow a child to suffer a physical injury if the injury is not "serious?"

Sections 3, 4 and 5: What is meant by "interfere" or "usurp?" Is an investigation of alleged or suspected child abuse reported according to the Kansas Code for Care of Children considered "interference" or "usurpation?" Who decides what is meant? Will this become a matter of lawsuit anytime a parent is angered or upset over an investigation? It appears under Section 5 a parent could use this act as a "claim" their rights were interfered with upon any investigation to which the parent took exception. "Defense" to what? If a petition was filed alleging a child to be in need of care could the parent "defend" that a child was not in need of care under Section 5?

Section 6 regarding domestic disputes. Disputes among parents are excluded unless brought under the Kansas Code for Care of Children. Therefore if, in a custody battle between parents, an action was brought pursuant to the code, a parent could claim parental interference whether the child in need of care action was meritorious or not.

HB 3035 -- PARENTS RIGHTS AND RESPONSIBILITIES ACT

Matt Grogger, February 20, 1996

Mr. Chairman and members of the house, I first want to thank you for the opportunity to discuss this very important issue with you.

I appear before you today representing three organizations

- I am an veteran member of the Board of Education of Blue Valley Schools in southeast Johnson County which has an enrollment of over 13,000 students
- I am a member of the Board of Directors of the MAINstream Coalition of Johnson County, a recently formed nonpartisan citizen information and education organization with over 1400 members, and
- I speak for the Jewish Community Relations Bureau/American Jewish Committee. JCRD/AJC is the social action arm of the Jewish Federation and represents the vast majority of the 20,000 Jews in Kansas.

I am here to voice our strong opposition to HB 3035 - "the Parental Rights and Responsibilities Act of 1996." This legislation poses severe risks for the well-being of our state's children and should be defeated.

This legislation stems directly from the 9th article of the *Christian Coalition's Contract with the American Family* and its fundamentalist provisions would nullify many state laws and regulations which have been carefully crafted to strike a delicate balance between the rights of parents and the needs of children. The bill will create serious implications in the areas of children's health, education, discipline, and safety. I would like to discuss each of these areas.

1. The bill will create perilous health risks for children. It will make it extraordinarily difficult for the government to assist children in situations in which their health is endangered because of their parents' actions or inaction. It prohibits a government official or agency from becoming involved in health care decisions, no matter how injurious the parent's actions may be to the child, unless the very strict "compelling government interest" test is met. The bill specifically permits government intervention only when it can prove that the parents actions "will result in danger to the life of the child or in serious physical injury to the child." This provision specifically precludes intervention when the parents' health care decision will definitively result in serious emotional or mental injury to the child.

Moreover, Kansas has laws specifically permitting minors to consent to treatment for health care related to substance abuse, mental health, sexually transmitted diseases, and even outpatient mental health services. If these laws are construed as "interfering" with parents' rights under this legislation, they may be invalidated.

House Judiciary
2-26-96
Attachment 6

2. This bill would make it impossible for education professionals to design and implement public school curricula.

This legislation permits any parent of a public school student to file a lawsuit challenging almost any aspect of the schools curriculum or extracurricular activities. Teachers and administrators could be forced to defend every curriculum choice by attempting to show that it is "essential to accomplish a compelling government interest." Every book assigned, every test given, every social studies unit, every school assembly would be subject to challenge as an interference with "the right of a parent to direct the upbringing of the child." In addition, truancy laws could be invalidated on the grounds of interference with "the right of a parent to direct or provide for the education of the child."

3. This bill will reduce protections for children who are physically disciplined by their parents.

Currently, when children are inappropriately subject to excessive physical discipline by their parents, school officials are required by law to report the case to child welfare authorities. Under this proposal, a school nurse or administrator who contacts a child welfare agency on behalf of such a child could be subject to a damages action, based on the claim of the parent that he or she "interfered with the parent's right to discipline his or her child" (including the right to use "reasonable corporal discipline").

4. This bill could put children who are victims or potential victims of child abuse and neglect at great risk.

As in the case of public school officials, social workers could also be subject to a damages action when they try to remove a child from an abusive home environment, unless they can prove, "by clear and convincing evidence, that the interference or usurpation is essential to accomplish a compelling governmental interest and is narrowly drawn or applied in a manner that is the least restrictive means of accomplishing the compelling interest." By the time some tribunal makes that type of determination, the child's well- being (or even it's life) has been destroyed.

In conclusion, the arguments used by the proponents of this legislation should not outweigh concern that many of its provisions will result in harm to children. While recognizing and applauding the primary and central role that parents do and should play in the raising of their children, we believe that this bill will invalidate long-standing legislation designed to protect the safety and welfare of vulnerable children, and creates unnecessary barriers to government efforts to protect them.

House Committee on Judiciary February 20, 1996
Testimony by Dr. Ronald E. Holland, Pastor, First United Methodist Church, Topeka, Kansas

House Bill 3035 is a project of the Christian Coalition, from the book Contract with the American Family, published by Moorings in Nashville, Tennessee. In fact, lines 34 to 39 on page 2 of HB3035 are direct quotations from pages 42 and 43 of the book. Chapter 4 of this book is titled "Protecting Parental Rights." I am here to beg the House of Representatives of the State of Kansas to protect the children of the state of Kansas from the cruel hoax of this bill.

No child or youth treatment center of the state of Kansas needs any kind of corporal discipline to accomplish its purpose. Why is it necessary in the family? What is "reasonable" corporal punishment? My own church has a day care, a Sunday School, and a youth ministry. We never use corporal discipline, "reasonable" or otherwise. Why is it necessary in the family? My wife taught children for 25 years in a wide variety of settings, including seven years in the central city of Kansas City, Kansas. She never used corporal discipline, "reasonable" or otherwise. Why is it necessary in the family? My brother is the executive director of Alternative Homes for Youth in Denver, Colorado. Virtually all the kids in that program are court referrals. No form of corporal discipline is ever used, "reasonable" or otherwise. Why is it necessary in the family? When does discipline become punishment? When does spanking become a beating?

According to this bill (Page 2, lines 32,33) the "*Right of a parent to direct the upbringing of a child" includes, but is not limited to, a right of a parent regarding* ... (Page 2, lines 37,38) *disciplining the child, including reasonable corporal discipline, except as provided in paragraph (3)*... I ask the sponsors of this bill: **What is reasonable corporal discipline?** I submit that there is no such thing! There is no such thing because paragraph (3) of this bill says the following: (Page 3 lines 1,2,3) *"Right of a parent..." shall not include the parents acting or failing to act in a manner that will result in the death, the serious injury, or the sexual abuse of the child.* **Serious** injury. **What then is not a serious injury** and thereby allowable as corporal discipline? Is a cigarette burn a serious injury? How big must a bruise be to be a serious injury, or is a bruise of any size a serious injury? What about a hot water burn? A broken arm? A lump on the head? What about a broken or loosened tooth, a split lip or a bloody nose? What is **not** a serious injury? What about a loss of hearing from a slap on the side of the head? Would that not also be legal corporal discipline under this bill? How much blood must a child or youth lose from caning or from other injuries before it is considered a "*serious injury?*" This bill says that injury is ok, so long as it is not a "serious" injury. You tell me how many acts of child abuse become legal under the provisions of this bill.

This bill is a license for child abuse, pure and simple. The provisions for (Page 2, line 39) *(D) directing...the religious teaching of the child* leaves wide open the claim that corporal punishment is a religious right and cannot be abridged. Claims to bizarre "religious rights" abound in Topeka and the state of Kansas. Sisters and brothers of the Kansas House of Representatives, sometimes even Christian families must be protected from their own propensities for violence. Since this bill comes directly from "the religious right," doing business as The Christian Coalition, I speak to these Christians on the issues of this bill. Read your Bible! Jesus in Matthew 19: 13-15; Mark 10:13; and Luke 18:15-17 did indeed "lay his hands on the children." Jesus' hands are laid on in blessing, however, not in discipline. Where in Jesus' words or actions do you find the injunction to spank, let alone injure your children so long as it isn't a serious injury? "Let the little children come to me, do not hinder them; for it is to such as these that the kingdom of heaven belongs." Jesus, in Matthew 19:14.

KANSAS ASSOCIATION OF SCHOOL BOARDS

1420 S.W. Arrowhead Rd, Topeka, Kansas 66604
913-273-3600

TO: House Judiciary Subcommittee on Civil Law
FROM: Patricia Baker, General Counsel, KASB
DATE: February 20, 1996

RE: Written Comments on H.B. 3035

Mr. Chairman, Members of the Committee:

Thank you for the opportunity to submit written comments summarizing the concerns of the members of the Kansas Association of School Boards on the above referenced bill.

H.B. 3035 purports to protect the fundamental right of a parent to direct the upbringing of a child. While we are not aware of court decisions which have treated rights of parents as a "nonfundamental right," we recognize the desires of the drafters of the bill to insure that all governmental bodies recognize that parents are the primary caregivers and the first teachers of their children.

On behalf of Kansas Unified School Districts we wish to express our concerns regarding the practical implications of H.B. 3035. Is each school and each teacher required to design an educational program for each student based upon parental wishes? Is the compulsory attendance law itself challenged? Does this law assure the right to home school a child with no state oversight or standards? Do local educational officials have any say in "the direction" of a child's education?

The constitution adequately protects the rights of parents in the upbringing of their children. This legislation would simply foster litigation against schools and divert funds from education to covering legal costs of defending lawsuits.

We urge you to not recommend H.B. 3035 favorably.

Thank you for your consideration.

House Judiciary
2-26-96
Attachment 8

KANSAS ASSOCIATION OF SCHOOL BOARDS

1420 S.W. Arrowhead Rd, Topeka, Kansas 66604
913-273-3600

TO: House Judiciary Subcommittee on Civil Law
FROM: Patricia Baker, General Counsel, KASB
DATE: February 20, 1996

RE: Written Comments on H.B. 3036

Mr. Chairman, Members of the Committee:

Thank you for the opportunity to submit written comments summarizing the concerns of the members of the Kansas Association of School Boards on the above referenced bill.

H.B. 3036 initially would mandate that all school districts that teach health education classes teach the importance of sexual abstinence, and requires boards of education to establish guidelines for the implementation. The members of the Kansas Association of School Boards have long held a position in opposition to mandated curriculum. School districts in the state already stress abstinence; a state mandate is not required. School boards are responsible for establishing the curriculum in all public schools, and are the elected officials who are closest to and most responsive to community needs. They are the officials who should determine the curricular needs of the district.

Further H.B. 3036 provides for the mandatory videotaping of certain interviews with children. Since many of those interviews may occur at the child's school, who bears the burden of videotaping? School officials are forbidden under current law from notifying a parent who is a potential abuser of his or her child of the fact that the interview has occurred, yet this bill would require such notification or videotaping.

Current law is designed to protect the rights of children, and to protect children from being subjected to further abuse while allegations of abuse are being investigated.

We believe that current law protects the interests which are most deserving of being protected and we urge you to not recommend H.B. 3036 favorably.

Thank you for your consideration.

House Judiciary
2-26-96
Attachment 9

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Rochelle Chronister, Secretary

Committee on Judiciary
Testimony on House Bill 3036

February 20, 1996

TITLE
An Act concerning children and minors; amending K.S.A. 38-1507, 38-1508, 38-1523 and 38-1526 and K.S.A. 1995 Supp. 38-1527, 38-1563 and 38-1584 and repealing the existing sections; also repealing K.S.A. 38-1507a.

Mr. Chairman, and Members of the committee, I am Sue McKenna, Attorney for the Department of Social and Rehabilitation Services. Thank you for the opportunity to testify on behalf of Secretary Chronister today concerning House Bill 3036.

BACKGROUND

The Department of Social and Rehabilitation Services supports the fundamental right of children to receive care and guidance from their parents without undue interference. The department is also committed to the protection of children whose parents fail or refuse to provide at least minimally adequate care. To that end the department has consistently requested clarification of its responsibilities under the Kansas Code for Care of Children such that parents retain custody of their children unless unable to protect them and children who have been removed from parental custody by a court can be reunited in a timely manner with their parents. For these and other reasons the department is in sympathy with many of the issues HB 3036 attempts to address. Unfortunately, the bill will result in exposing vulnerable children to additional risk of abuse and neglect while providing caring, adequate parents with no additional protections they do not currently enjoy under existing statute, case law or common law.

EFFECT OF PASSAGE

A more detailed discussion of the deficits of HB 3036 are provided in the attachment to this testimony. I encourage the committee to give it careful consideration as it outlines numerous unintended consequences which are not in the best interest of either parents or their children.

Of particular concern are barriers placed in the way of legitimate authorities to even inquire into the condition of children who have been alleged to have been abused or neglected. The framers of the bill may have had an innocent and falsely accused person in mind as they drafted the bill. Let us consider, however, the steps that could have been required in any of 3264 cases where abuse or neglect was confirmed by the department in FY 1995. As drafted, if an SRS social worker is refused entry to a residence preventing the worker from carrying out the statutory mandate to conduct an investigation, a law enforcement officer would be called in which case the following would have been required:

- First,. The officer would have been required to get consent from an owner or occupant. Note that this does not necessarily mean a parent. Any occupant or even a landlord could refuse to let the officer see the child.

- The parent (even if an alleged perpetrator) would then have the right to be present during the interview with the child or the interview videotaped (the basis for excluding a parent who is suspected as a perpetrator is clouded by this provision). Remember we are here talking about one or more parents who were actually the perpetrator of the abuse or neglect. The likelihood that the child would refuse to tell what happened or fabricate a story to protect the parent or avoid additional abuse is extremely high. Many of these abuse

cases will go undiscovered and some children will suffer as a result.

- If the parent is not present, the interview would have to be videotaped. This means before attempting to contact the child, a camcorder and operator would have to either accompany the social worker or officer in order to be present if the parent is not, or an officer would in some cases have to take the child into protective custody to even interview the child away from a suspected perpetrator. The camcorder and operator will possibly introduce another distraction into the interview. In order to use the video recorded information K.S.A. 38-1557 requires the interview be transcribed and a copy given to the parties.

The department is also concerned that the bill provides for removing the already limited confidentiality extended the reporter of child abuse. A report only initiates an investigation. Information about the reporter is not relevant to a child in need of care petition unless the reporter is needed as a witness. Even if the reporter appears as witness, the relevant information is what the reporter observed, not whether they made the report. The safety of a child or an adjudication will be based on the evidence, not on the identity of the reporter. The major result from disclosing the maker of a child abuse report is to expose that person to retaliation or intimidation by an angered alleged perpetrator without added benefit for a parent or child. Even the possibility of such harassment or danger will be enough to dissuade persons from making valid reports of abuse. A recent Gallup poll indicates that incidents of child abuse and neglect continue to be under-reported. The scientific poll results are based on interviews with parents describing their maltreatment of their own children.

From this it should be clear that passage of HB 3036 will have the unfortunate effect of severely impeding the ability of the state to protect children from parents who are abusing and neglecting them.

If proponents of this bill have concerns about the rights of parents in investigations of alleged child abuse and neglect, the department will be more than happy to work with them to find a solution which does not jeopardize children. Proponents of this bill may also want to review SB 630 requested by the department to improve protection of children and assist the courts in avoiding unnecessary removal of children and assist the department with timely and safe return of children placed in the custody of the department.

RECOMMENDATION
In the best interests of Kansas families, House Bill 3036 should not be recommended for passage.

Roberta Sue McKenna, Staff Attorney
Children and Family Services Commission
(913)296-3967

For: Rochelle Chronister
Secretary
Department of Social and
Rehabilitation Services

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

ANALYSIS OF HOUSE BILL 3036

New section 3. Interviews with children concerning alleged child abuse and neglect must be videotaped if the interview is conducted without a parent present. In fiscal year 1995 the department confirmed 3264 persons as having committed an act of child abuse or neglect. Of these, 2676 (82%) were parents. Every child protection worker and law enforcement officer knows if a parent who is also an abuser is present when a child is interviewed, the child is very likely to be reluctant to make a statement or even to deny or fabricate a story to please the parent or to avoid further abuse.

Videotaping each interview is impractical not only for economic reasons but because such taping itself may affect the way the child responds. Videotaping has been found to be useful in selected cases when the probability of abuse has already been established and there is a need to make a record of the child's statements to avoid multiple interviews. Courts have consistently taken a cautious view of the use of videotape. Several high profile criminal cases in national news recently have illustrated that videotape does not always make an objective and reliable witness to events. While appropriate use of videotape could be encouraged it should hardly be required.

Protecting the identity of a person who reports child abuse and neglect has always been a concern for persons about whom a report is made. Parents who are alleged to have abused or maltreated their children are understandably concerned about who made the report whether they are guilty or innocent of the allegations. The central issue whether the report is true or not does not rest on who made the report but whether the evidence supports the allegation.

On the other hand, there are many situations in which making the identity of a reporter known to the perpetrator exposes the reporter to retaliation ranging from harassment of witnesses to threats to real violence. The mere possibility of this is enough to dissuade some potential reporters of valid concerns from speaking out in behalf of a child. Section 4 and 5 contain several provisions which if not designed to reveal the identity of the reporter would have that effect. All other information in child in need of care records can now be obtained by parents or their attorneys under current law. The proposed requirement for extensive and cumbersome disclosure procedures would hamper timely response by the protection agency while adding no additional protections for parents.

Section 4. The provision relating to providing reports and names of witnesses to parties to the action or attorneys of record should be limited to adjudication hearings. As it is drawn the bill would require such notice to all hearings including hearings to determine if an emergency order of protective custody should be continued, review hearings, and dispositional hearings. Requiring 10 days notice in protective custody hearings could not be conducted within the current statutory limit of 48 hours and would not serve the best interest of a child determined to be in immediate danger. When a child has been adjudicated a child in need of care, the disclosure of investigation reports and calling of witnesses is a settled matter and adequate due process protections are provided in subsequent hearings of the court.

Section 6. This section provides for notice of an investigation within 10 days to a parent even if the parent is a subject of the investigation or if such disclosure would expose the child to further harm. It would be unthinkable for a law enforcement officer to be required to prematurely disclose a criminal investigation to a suspect yet this is what is proposed in a law designed to protect vulnerable children. The same proposed section also requires notice to "all interested parties." At the stage of investigation the term interested party is ambiguous at best and does not have the same meaning as after a petition alleging a child in need of care has been filed.

Section 7. This section would be likely be exploited by persons angry with the department, law enforcement agency or member of a multidisciplinary team in order to retaliate for an investigation by harassing such persons with lawsuits (even if no basis existed for the suit). In exchange, a person with a legitimate concern would gain nothing not now available to them in existing law. In addition, persons who now believe they are aggrieved by the department have access to the Kansas Administrative Procedures Act culminating in District Court if there concerns are not addressed.

Section 8. This section prevents a law enforcement officer or court services officer from entering a residence in which the child is located unless written consent or a valid search warrant is obtained or unless (as proposed) the officer believes the child's life is endangered or there is a serious risk of injury. The major fault with this provision is an officer would have no way of forming an opinion about the risk to the child without first having access to the child. The greater peril in which a child might be found, the greater likelihood that access to the child would be denied. In addition, there are other valid reasons an officer might require access to a property other than possible death or serious risk of injury. Parents may, and have, attempted to conceal their child, threatened them not to tell the truth, or destroyed physical evidence.

Section 9. This section does not, but should, include a provision for the court to determine the suitability of a relative for placement of a child.

The provision of Section 9 regarding parental visits (K.S.A. 38-1563(f)) requires child parent visits at least one hour per week with a provision the court can determine otherwise. Such discretion is already permitted the court. Nor should a court have to overcome an arbitrary provision of statute in each case before it in order to enter an order based upon knowledgeable testimony concerning the best interests of a specific child.

Christian Science Committee on Publication For Kansas

820 Quincy Suite K
Topeka, Kansas 66612

Office Phone
913/233-7483

To: House Committee on Judiciary

Re: HB 3035

I am concerned with the language of this bill on page 2, lines 5-8 and lines 39-43, which might have an effect on the interpretation of K.S.A. 38-1513 (a)(2), quoted below:

> (2) When the health or condition of a child who is a ward of the court requires it, the court may consent to the performing and furnishing of hospital, medical, surgical or dental treatment or procedures, including the release and inspection of medical or dental records. A child, or parent of any child, who is opposed to certain medical procedures authorized by this subsection may request an opportunity for a hearing thereon before the court. Subsequent to the hearing, the court may limit the performance of matters provided for in this subsection or may authorize the performance of those matters subject to terms and conditions the court considers proper.

The statute quoted above was carefully crafted to balance state and family interest in the child's welfare. Altering this balance would have a serious impact on the lives of Christian Scientists and the practice of their religious teachings on which some of those families have relied for four or five generations for their own care and the care of their children

Your continued consideration of our views will be appreciated. Thank you.

Keith R. Landis
Committee on Publication
for Kansas

House Judiciary
2-26-96
Attachment 11

Representative Pauls
February 26, 1996

House Judiciary
2-26-96
Attachment 12

Session of 1996

HOUSE BILL No. 3035

By Committee on Judiciary

2-14

AN ACT to protect the ~~fundamental~~ right of a parent to direct the upbringing of a child.

~~WHEREAS,~~ The United States supreme court has regarded the right of parents to direct the upbringing of their children as a fundamental right implicit in the concept of ordered liberty within the 14th amendment to the constitution, as specified in Meyer v. Nebraska, 262 U.S. 390 (1923) and Pierce v. Society of Sisters, 268 U.S. 510 (1925); ~~and~~

~~WHEREAS, The role of parents in the raising and rearing of their~~ children is of inestimable value and deserving of both praise and protection by all levels of government; and

WHEREAS, The tradition of western civilization recognizes that parents have the responsibility to love, nurture, train and protect their children; and

WHEREAS, Some decisions of federal and state courts have treated the right of parents not as a fundamental right but as a nonfundamental right, resulting in an improper standard of judicial review being applied to government conduct that adversely affects parental rights and prerogatives; and

WHEREAS, Parents face increasing intrusions into their legitimate decisions and prerogatives by government agencies in situations that do not involve traditional understandings of abuse or neglect but simply are a conflict of parenting philosophies; and

WHEREAS, Governments should not interfere in the decisions and actions of parents without compelling justifications; and

WHEREAS, The traditional 4-step process used by courts to evaluate cases concerning the right of parents appropriately balances the interests of parents, children and government; and

WHEREAS, The purposes of this act are:

(a) To protect the right of parents to direct the upbringing of their children as a fundamental right;

(b) to protect children from abuse and neglect as the terms have been traditionally defined and applied in state law, such protection being a compelling government interest;

~~(c) while protecting the rights of parents, to acknowledge that the~~

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a)

~~rights involve responsibilities and specifically that~~ parents have the responsibility to see that their children are educated, for the purposes of literacy and self-sufficiency ~~as specified by the supreme court in Wisconsin v. Yoder, 406 U.S. 205 (1972)~~;

(b) As specified by the supreme court in Wisconsin v. Yoder, 406 U.S. 205 (1972),

~~(d) to preserve the common law tradition that allows parental choices~~ to prevail in a health care decision for a child unless, by neglect or refusal, the parental decision will result in danger to the life of the child or result in serious physical injury to the child;

(e) to fix a standard of judicial review for parental rights, leaving to the courts the application of the rights in particular cases based on the facts of the cases and law as applied to the facts; and

(f) to reestablish a 4-step process to evaluate cases concerning the right of parents that:

(1) Requires a parent to initially demonstrate that:

(A) The action in question arises from the right of the parent to direct the upbringing of a child; and

(B) a government has interfered with or usurped the right; and

(2) shifts the burdens of production and persuasion to the government to demonstrate that:

(A) The interference or usurpation is essential to accomplish a compelling governmental interest; and

(B) the method of intervention or usurpation used by the government is the least restrictive means of accomplishing the compelling interest.

Be it enacted by the Legislature of the State of Kansas:

Section 1. This act shall be known and may be cited as the parental ~~rights and responsibilities act of 1996~~.

~~Section 2.~~ (c) As used in this act:

~~(a)~~ (1) "Child" means a person under 18 years of age.

~~(b)~~ (2) "Parent" means and includes a natural parent, an adoptive parent, a stepparent or a guardian or conservator of a child who is liable by law to maintain, care for or support the child.

~~(c) (1) "Right of a parent to direct the upbringing of a child" in~~cludes, but is not limited to, a right of a parent regarding:

(A) Directing or providing for the education of the child;

(B) making a health care decision for the child, except as provided in paragraph (2);

(C) disciplining the child, including reasonable corporal discipline, except as provided in paragraph (3); and

(D) directing or providing for the religious teaching of the child.

(2) "Right of a parent to direct the upbringing of a child" shall not include a right of a parent to make a decision on health care for the child that, by neglect or refusal, will result in danger to the life of the child or ~~in serious physical injury to the child~~.

12-2

~~(3) "Right of a parent to direct the upbringing of a child" shall not~~ include the parents acting or failing to act in a manner that will result in the death, the serious injury, or the sexual abuse of the child.

Sec. 3. No federal, state, or local government, or any official of such a government acting under color of law, shall interfere with or usurp the right of a parent to direct the upbringing of the child of the parent.

Sec. 4. No exception to section 3 shall be permitted, unless the government or official is able to demonstrate, by clear and convincing evidence, that the interference or usurpation is essential to accomplish a compelling governmental interest and is narrowly drawn or applied in a manner that is the least restrictive means of accomplishing the compelling interest.

~~Sec. 5.~~ Any parent may ~~raise a violation of this act in an~~ action in a federal or state court, or before an administrative tribunal, of appropriate jurisdiction ~~as a claim or a defense.~~

Sec. 6. This act shall not apply to:

(1) Domestic relations cases concerning the appointment of parental rights between parents in custody disputes unless the action is brought pursuant to the Kansas code for care of children, K.S.A. 38-1501, *et seq.*, and amendments thereto; or

~~(2) any other dispute between parents.~~

~~Sec. 7.~~ Upon the finding by the court of a substantial basis for claim, the court shall award attorney fees to the parent.

~~Sec. 8.~~ This act shall take effect and be in force from and after its publication in the statute book.

(d)

maintain a cause of

for claims arising under 42 U.S.C. 1983 and any damages resulting therefrom or arising under the principles established in the United States supreme court cases listed in subsections (a) and (b) and the Board of Education v. Barnette, 319 U.S. 624 (1943).

(e)

2

12-3

State of Kansas
Office of the Attorney General
301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
FAX: 296-6296

TESTIMONY
DAVID DEBENHAM, DEPUTY ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL
BEFORE THE HOUSE JUDICIARY COMMITTEE
IN SUPPORT OF HOUSE BILL 2991
FEBRUARY 19, 1996

Chairman O'Neal and Members of the Committee:

I am David Debenham, Deputy Attorney General in charge of the Criminal Litigation Division of the Attorney General's Office. I appear today in behalf of Attorney General Stovall in support of HB 2991.

The provisions of HB 2991 are important steps in protecting precious criminal justice resources, especially court time as well as providing fairness and openness in the conduct of criminal trials. In essence the bill does two things: first, K.S.A. 22-3212 would be amended to no longer make the defense come forward with a request for discovery of reports and information regarding a criminal prosection; second, it requires the defense to furnish a list of witnesses intended to be called at trial, which has always been the law for the prosecution. While this is not truly reciprocal discovery as statements and reports collected by the defense are not required to be released, it is a good first step in moving towards openness and equity and away from trial by surprise.

Such a requirement will save judicial time in avoiding unnecessary continuances and may indeed promote justice if the authorities are advised of all the witnesses in advance so if the wrong person has been charged the case can be dismissed and the state's resources redirected. Statutes such as this have worked well in other states including our neighboring Missouri.

On behalf of Attorney General Stovall we would urge approval of HB 2991.

Kansas County & District Attorneys Association

827 S. Topeka Blvd., 2nd Floor • Topeka, Kansas 66612
(913) 357-6351 • FAX (913) 357-6352
EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

Testimony in Support
of

HOUSE BILL NO. 2991

The Kansas County and District Attorney Association requested HB 2991 from this committee because of a serious defect in the discovery statutes of the code of criminal procedure. The purpose of the bill is to level the playing field by requiring a defendant to list the names of witnesses he or she intends to call at trial, and their statements or reports.

1. **State Duty to Disclose**. The State is already required to supply a list of witnesses at the time the case is filed, K.S.A. 22-3201(g). Further, the State is required to disclose any exculpatory evidence to defendant under Brady v. Maryland, 373 U.S. 83, 10 L.Ed.2d 215. And in a recent opinion, the Kansas Supreme Court has stated that even an open file policy does not meet the prosecutor's duty to disclose such evidence. State v. Adam, 257 Kan. 693.

2. **Defendant Has No Duty to Disclose**. Under current law in Kansas, a defendant has no such obligation under Kansas statutes, nor does the State have the right to compel such information, State v. Sandstrom, 225 Kan. 717 (1979).

3. **Defendant's Constitutional Rights**. The Kansas Supreme Court in Sandstrom specifically found that, although requiring such information by defendant violates Kansas statutes, it does not violate a defendant's constitutional rights as decided by U.S. v. Nobles, 422 U.S. 225, 45 L.Ed.2d 141 (1975). In a more recent case, the U.S. Supreme Court has even held that where a defendant defies a state discovery statute, there is no constitutional violation for the court to preclude a previously undisclosed defense witness from testifying, Taylor v. Illinois, 484 U.S. 400, 98 L.Ed.2d 798 (1988).

4. **Expert and Scientific Evidence**. Requiring a defendant to disclose witnesses and their reports is particularly critical due to the increasing reliance on scientific evidence and expert witnesses. The availability of DNA evidence, the increase in child abuse cases and their utilization of expert witnesses, as well as the general expectation and availability of such experts makes it increasingly important that the State be able to learn of such witnesses in advance of trial. This is particularly true given the growth of "junk science" after the Daubert v. Marion Merrill Dow decision, 113 S.Ct. 2786, 53 CrL 2313 (1993).

5. **Reciprocal Discovery is not New**. Many states and the federal government (Rule 16, Federal Rules of Criminal Procedure) have adopted reciprocal discovery in criminal cases, including Montana, Colorado, Oregon, Illinois, Missouri and California. The ABA recommends it in Standards Relating to Discovery and Procedure Before Trial, Sec. 3.2(a)1, as do the NCCUL Uniform Rules of Criminal Procedure, at Sec. 423a.

House Judiciary
2-26-96
Attachment 14

Sec. **KSA** 22-3404 is hereby amended to read as follows:

(1) The trial of misdemeanor and traffic offense cases shall be to the court unless a jury trial is requested in writing by the defendant or the prosecuting attorney not later than seven days after first notice of trial assignment is given to the defendant , ~~or~~ such defendant's counsel or the prosecuting attorney. The time requirement provided in this subsection regarding when a jury trial shall be requested may be waived in the discretion of the court upon a finding that imposing such time requirement would cause undue hardship or prejudice to the defendant.

(2) A jury in a misdemeanor or traffic offense case shall consist of six members.

(3) Trials in the municipal court of a city shall be to the court.

(4) Except as otherwise provided by law, the rules and procedures applicable to jury trials in felony cases shall apply to jury trials in misdemeanor and traffic offense cases.

(5) The trial of traffic infraction cases shall be to the court.

TESTIMONY TO HOUSE JUDICIARY CIVIL LAW SUBCOMMITTEE

RE: HOUSE BILL 3022

DATE: FEBRUARY 20, 1996

FROM: ROY H. WORTHINGTON, CHAIRMAN
KANSAS LAND TITLE ASSOCIATION LEGISLATIVE COMMITTEE

DEAR REPRESENTATIVES:

K.S.A. 60-1103b provides subcontractors the right to file a Notice of Intent to Perform in order to preserve their subcontractor lien rights after the passage of title to new residential property to a good faith purchaser for value.

The law became effective January 1, 1987 and was passed to protect the rights of good faith purchasers for value of new residential property and the rights of subcontractors who furnish material and labor for such construction.

Unfortunately, the 1987 law did not obligate the subcontractor to release the Notice of Intent to Perform when payment was paid for the work performed, nor did it provide for any expiration of the Notice of Intent to Perform.

The result is that many counties, especially Johnson County, have hundreds of unreleased and unexpired Notices of Intent to Perform filed against real estate which create clouds on the titles.

In some instances the real estate subject to the Notice of Intent to Perform has been sold to a good faith purchaser for value and in some cases the property is still owned by the original owner-contractor. In most cases the claimants have been paid, but there is no authority to require the claimants to release the Notices.

The result is that these unreleased and unexpired Notices continue to be found during title searches raising at least a concern that a mechanic's lien might be filed in the future.

The provisions of House Bill 3022 will require claimants who are paid to release the Notices of Intent to Perform and absent the filing of the release or a subsequent mechanic's lien, will provide that the Notice will be of no further force or effect after the expiration of 18 months from the date of filing.

As a practical matter, real estate title companies end up determining if claimants are paid and obtaining releases. The provisions of House Bill 3022 will assist title companies in clearing title encumbrances created by the unreleased and unexpired Notices.

Respectfully submitted,

Roy H. Worthington

House Judiciary
2-26-96
Attachment 16

Security Land Title Company

6300 WEST 95th STREET • OVERLAND PARK, KANSAS 66212
(913) 381-8282 FAX (913) 381-1849

February 16, 1996

House Committee on Judiciary
Michael O'neal, Chairman

Re: House Bill No. 3022

Representative O'Neal and Members of the Committee:

Please accept this letter as my testimony in favor of passage of the above referenced Bill amending KSA 60-1103b. This section became effective January 1, 1987 and created the requirement of filing Notice of Intent to Perform as a means of preserving a subcontractor's lien rights on newly constructed residential real estate. To my knowledge it has worked successfully in that regard. Subcontractors have a means of preserving their right to file a lien against the property if they are not paid by the general contractor and purchasers of newly constructed property have the ability to insure that there are no unpaid bills which might become a lien against their property at the time they close.

One consequence of this provision which was surely not intended was that once filed, a Notice of Intent if not released, can continue to create a potential cloud on a property for many years. Unlike a mechanic's lien upon which action to enforce it must be commenced within one year from its filing, there is no provision providing for expiration of a Notice of Intent. Further there is no obligation on the part of a subcontractor filing a Notice of Intent to file a release once he has been paid.

Many subcontractors file Notices of Intent as a matter of course on all jobs which they begin so that their lien rights are adequately preserved in all cases. Although this is no doubt a good business practice, they are much more diligent about the filing of the Notice than they are about its release. In the great majority of cases the subcontractors are paid in the normal course of business. However, they frequently forget to file a release of the Notice of Intent. Since there is no requirement that the Notice of Intent be sent to anyone other than the Clerk of the District Court, a contractor will not generally know it has been filed and make its release a condition of payment. These Notices are usually not discovered until the time of recording the conveyance to the buyer from the contractor and frequently delay the recording until it can be verified that the subcontractor filing the Notice has indeed been paid. Again, the timing of the discovery of these Notices does not realistically allow the recording to be held up until the subcontractor releases the Notice.

The result in many cases is that the Notice never gets released and later comes up when the buyer refinances or sells his property. By the time this happens, the subcontractor may not be available or cooperative. The title company generally must rely on an affidavit from the

homeowner stating that they have not contracted with the particular subcontractor for services or materials during their ownership. Although, this may permit the buyer to close his sale or refinance, it does not eliminate the Notice, which continues of record until the next sale or refinance and the process begins all over again.

In some instances a subcontractor is not timely in the filing of a Notice of Intent before the recording of the conveyance to the buyer and fails to preserve his lien rights. However, once filed, whether effective to preserve the subcontractor's lien rights or not, the Notice becomes a problem for the buyer in the future. In this case the subcontractor may not have gotten paid by the contractor, perhaps for good reason, perhaps not. Nevertheless, the statute was designed to protect the buyer from unknown and unexpected claims. As described above, the existence of the Notice continues to create a cloud on the buyer's title long after it was intended to by the original statute.

The Notice of Intent form was designed to be simple and easy to complete and file. Unfortunately, in its simplicity, it does not contain enough information to determine when the work which may give rise to a lien was or is being performed or how much the amount claimed might be. Therefore, a prospective purchaser, lender or their title companies must assume that it could be a still valid Notice for work performed or services provided recently enough to create the risk of a valid lien.

The current Bill contains two provisions which will help eliminate the situations described above. First, it requires a subcontractor to release a filed Notice of Intent once they have been paid for their work on the property. It also provides for a filed Notice to expire if not released, eighteen months after its filing. This is still a relatively long period, but it will help eliminate many of those Notices which seem to have perpetual life.

Thank you for the opportunity to comment on this Bill.

Sincerely,

M. W. Perry, III
Vice President and General Counsel

800 WESTPORT ROAD • KANSAS CITY, MISSOURI 64111-31
816/931-2102 FAX 816/931-4
MID-AMERICA LUMBERMENS ASSOCIATION

TESTIMONY FOR THE HOUSE JUDICIARY COMMITTEE

February 20, 1996 House Bill # 3022

Mr. Chairman, members of the House Judiciary Committee. My name is Art Brown and I represent the retail lumber and building material dealers in the State of Kansas through the Mid-America Lumbermens Association.

We don't have a real position on this bill, rather we would prefer to address this committee on some administrative procedures we would like to see implemented should this bill become law.

The main proponents of this bill were gracious enough to seek us out to work on constructive language that would be beneficial to all parties impacted by any change in this statute. Due to the nature of our business, we have several dealers who do file Intents to Perform as part of their business activity.

As we understand this bill, this would allow for a legal release of these Intents that are currently not covered by Statute. As such, and with the cooperation of the proponents, we asked that we would not have to physically go to the Clerk of the District Court to obtain these releases, and we can see by the language of this bill, that request has been honored, and we are most grateful for this

LUMBER GROWS ON TREES

House Judiciary
2-26-96
Attachment 17

consideration.

My testimony focuses on the administration of the language of this bill, and a recommondation that we feel would best serve all parties.

We would like to see a document, attached to the original Intent- - by perferation for example- - that could be obtained at the same time as the Intent to Perform. We could pay the fee for both at that time. We would also hope the fee for this would not exceed the current filing fee for the Intent to Perform. At the time the Intent is filed with the Clerk of the District Court, the legal description is written on both the Intent and the release of the Intent. At the time the Clerk notifies us that a release is needed on that property, we could mail the release to the Clerk in that County Courthouse. In that way, no more fees would have to be collected and the administrative procedure in providing the initial information regarding the property in question would all be handled in one visit.

I am not an attorney, so while this solution looks to be a basic solution to this concern, I am confident I will be enlightened as to why this may not work. Until such time, I would ask the Committee to consider this concept. It is one we would heartily endorse.

Again, we have no real position on the bill, but if there are any questions I could answer or comments I could address, I would be glad to do so at this time.

KANSAS
BUILDING INDUSTRY
ASSOCIATION, INC.

HOUSE JUDICIARY
CIVIL LAW SUB COMMITTEE

February 20, 1996
HB 3022

MR. CHAIRMAN AND MEMBERS OF THE SUB COMMITTEE:

My name is Janet Stubbs, representing the Kansas Building Industry Association, and asking your consideration of a provision in this process to release an Intent to Perform.

The KBIA Board of Directors has expressed no opposition to the requirement of clearing the title after payment is received. However, I believe it will encourage and increase compliance if the subs are able to mail in the release. Thus achieving the goal of the bill proponents.

I represent many small, independent contractors who operate without office staff. The current procedure requires that they obtain the legal description of the property to type on the form which is signed, notarized, and filed with the Clerk of the Court. This makes 2 trips to the Court House. The incentive for these 2 trips is the collection of the money for the work done. To require a third trip will, I believe, be met with unfavorable results.

Your favorable consideration of this amendment would be greatly appreciated.

816 Tyler, Suite 300 A • Topeka, Ks, 66612 • (913) 233

Mike —
FYI
— David Adkins

Dear John:

Proposed amendment to House Bill 3022: proposed changes are **highlighted.**

Page 1, Line 28: (c) The notice of intent to perform **and release thereof** provided for in this section, to be effective, shall contain substantially the following statement:

NOTICE OF INTENT TO PERFORM

I _____ (name of supplier, subcontractor or contractor) of _____ (address of supplier, subcontractor or contractor) do hereby give public notice that I am a supplier, subcontractor or contractor or other person providing materials or labor on property owned by _____ (name of property owner) and having the legal description as follows:

_____

_____

RELEASE OF NOTICE OF INTENT TO PERFORM NO. _____
AND WAIVER OF LIEN

I _____ (name of supplier, subcontractor or contractor) of _____ (address of supplier, subcontractor or contractor) do hereby acknowledge that I filed Notice of Intent to Perform No. _____ covering property owned by _____ (name of property owner) and having the legal description as follows: _____

_____

_____

In consideration of the sum of $_____, the receipt of which is hereby acknowledged, I hereby direct the Clerk of the District Court of _____, Kansas to release the subject Notice of Intent to Perform and do hereby waive and relinquish any statutory right to a lien for the furnishing of labor, equipment, materials or supplies to the above described real estate under the statutes of the State of Kansas.