

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Ward Loyd at 1:30 p.m. on January 29, 2004 in Room 241-N of the Capitol.

All members were present except:

Representative Terrie Huntington - excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department

Nicoletta Buonasera, Legislative Research Department

Jill Wolters, Revisor of Statutes Office

Connie Burns, Committee Secretary

Conferees appearing before the committee:

Secretary Roger Werholtz, Chairman KS Criminal Justice Coordinating Council

Representative Sue Storm

Rev. H. Sharon Howell, Sr. Pastor First Methodist Church, Lawrence

Mike Farmer, Executive Director KS Catholic Conference

John J. Jurcyk, Jr., Attorney Archdiocese of Kansas City in Kansas

Joe Hendrixson, Executive Director KS Ecumenical Ministries

Others attending:

See Attached List.

Secretary Werholtz appeared before the committee to request bill introduction for the Criminal Justice Coordinating Council to amend KSA 74-9501. (Attachment 1)

Representative Dillmore made a motion that this request should be introduced as a committee bill.

Representative Carlin seconded the motion. The motion carried.

Representative Goering appeared before the committee to request bill introduction. This would amend KSA 60-4305.

Representative Goering made a motion that this request should be introduced as a committee bill.

Representative Swenson seconded the motion. The motion carried.

Chairman Roger Werholtz, Kansas Criminal Justice Coordinating Council appeared before the committee to give a briefing on the Council.

Chairman Werholtz informed the committee that the KCJCC was created in 1994 by the Kansas Legislature. The Council is responsible for overseeing the criminal justice federal funding made available to Kansas through the U.S. Department of Justice, Office of Justice Programs, and Bureau of Justice Assistance.

There are six federal grant programs for which KCJCC is responsible:

1. The Edward Byrne Memorial State and Local Law Enforcement Assistance
2. Local Law Enforcement Block Grant
3. Residential Substance Abuse treatment
4. National Criminal History Information Program
5. National Forensic Sciences Improvement Act
6. Bulletproof Vest Partnership Program

The total amount of grant funds awarded to state and local agencies from these grant programs for state fiscal year 2004, is \$7,792,633. The Governor's Federal Grants Program staff manages the day-to-day functions of the grants. The change in staff was transferred from the Kansas Sentencing Commission in July 2003.

The Kansas Legislature created the Criminal Justice Information System Committee in 2003, formerly

CONTINUATION SHEET

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE at 1:30 p.m. on January 29, 2004 in Room 241-N of the Capitol.

known as the Law Enforcement Telecommunications Committee. The committee's primary duties are to establish, maintain and upgrade the criminal justice information system. More than 8,200 authorized users are accessing this system. The system that is in place is viewed as a model for other states. (Attachment 2)

HB 2575 - Reporting of abuse; ministers

Chairman Loyd opened the hearing on **HB 2575**.

Jerry Ann Donaldson, Legislative Research gave information to the committee on privileges, Black's Law Dictionary definition of privilege. (Attachment 3) In Kansas law there are various statutes that deal with the issue a privilege and were listed in the memo. (Attachment 4)

1. KSA 60-426 Attorney-Client privilege
2. KSA 60-427 Physician-Patient privilege
3. KSA 60-429 Clergy-Penitent privilege

Also listed was marital privilege, KSA 60-428.

Representative Sue Storm appeared before the committee as a proponent for the bill. As a teacher Representative Storm is required to report abuse, while her pastor who has such close contact with parishioners is not. She felt the clergy must be required to report their suspicions of abuse of the people they serve in the name of the Creator. (Attachment 5) An amendment was provided and Representative Storm support the amendment. (Attachment 6)

Rev. H. Sharon Howell, Sr. Pastor of First United Methodist Church, Lawrence, spoke in favor of the bill. She felt that it was time that duly ordained ministers of religion and regular ministers of religion are included in the list of persons required to report matters of suspected injury to a child, resident, or others as a result of physical, mental or emotional abuse or neglect or sexual abuse. (Attachment 7)

Mike Farmer, Executive Director of the Kansas Catholic Conference, appeared in opposition of the bill as it is currently drafted. Mr. Farmer stated the recent actions taken by the Catholic Church to prevent any future situations of child abuse by priests or other church ministers and volunteers. He stated that the bill the committee is currently considering goes well beyond the mandates of the *Charter for the Protection of Children and Young People* adopted on June 12, 2002 by the Bishops of the United States. If the amendments suggested is incorporated into the bill, there would be no objection to its passage. (Attachment 8)

John J. Jurcyk, Jr., General Counsel to The Roman Catholic Archdiocese of Kansas City in Kansas stood in opposition of the bill. He argued several points, on records custodian language, and that the bill imposes on ministers obligation that are not imposed on the other 22 mandatory reporters. Mr. Jurcyk felt that this part of the law singled out ministers as a requirement that is not required for the other mandatory reporters. (Attachment 9)

Rev. Dr. Joe Hendrixson, Executive Director of Kansas Ecumenical Ministries appearing in opposition of the bill. He stated even though he is listed as an opponent of the bill, that the nine member church communions of Kansas Ecumenical Ministries do support any legislation that would protect children or other victims of abusive behavior. He asked for amendment to two specific parts of the bill that were already included in the balloon offered by Representative Storm. (Attachment 10)

Ron Paschal, Chief Attorney Juvenile Division in Wichita offered written testimony in support of the bill. (Attachment 11)

Chairman Loyd closed the hearings on **HB 2575**.

The committee meeting was adjourned at 3:15 PM. The next meeting is February 2, 2004.

K.S.A. 74-9501 is hereby amended to read as follows: 74-9501. (a) There is hereby established the Kansas criminal justice coordinating council.

(b) The council shall consist of the governor or designee, the chief justice of the supreme court or designee, the attorney general or designee, the secretary of corrections, ~~the secretary of social and rehabilitation services~~, the commissioner of juvenile justice, and the director of the Kansas bureau of investigation, *and the superintendent of the highway patrol.*

(c) ~~The director and all existing employees of the Kansas sentencing commission~~ *The governor shall designate* ~~serve as~~ staff to the Kansas criminal justice coordinating council. ~~while continuing to serve at the will of the Kansas sentencing commission pursuant to K.S.A. 74-9103 and amendments thereto in the performance of its duties as outlined in K.S.A. 74-9101, 74-9106 and 21-4525 and amendments thereto.~~ The director *staff* shall attend all meetings of the council, be responsible for keeping a record of council meetings, prepare reports of the council and perform such other duties as directed by the council.

(d) The council shall elect a chairperson and vice-chairperson from among the members of the council.

(e) The council shall:

(1) *Appoint a standing local government advisory group to consult and advise the council concerning local government criminal justice issues and the impact of state criminal justice policy and decisions on local units of government. The advisory group shall consist of a sheriff, chief of police, county or district attorney, city governing body and a county commissioner. Appointees to such advisory group shall serve without compensation or reimbursement for travel and subsistence or any other expenses;*

(2) define and analyze issues and processes in the criminal justice system, identify alternative solutions and make recommendations for improvements;

(3) oversee development and management of a criminal justice database including assuming the designation and functions of the state statistical analysis center currently assigned to the Kansas bureau of investigation pursuant to K.S.A. 75-712a and amendments thereto. All criminal justice agencies as defined in subsection (c) of K.S.A. 22-4701 and amendments thereto and the ~~department of social and rehabilitation services~~ *juvenile justice authority* shall provide any data or information, including juvenile offender information which is requested by the council, in a form and manner established by the council, in order to facilitate the development and management of the criminal justice council database; and

(4) develop and oversee reporting of all criminal justice federal funding available to the state or local units of government including assuming the designation and functions of administering the United States bureau of justice assistance grants ~~currently administered through the law enforcement antidrug abuse program of the department of administration.~~ *On the effective date of this act any bureau of justice assistance antidrug abuse federal fund balances in any account and all unclassified positions authorized for the law enforcement antidrug abuse program of the department of administration shall be transferred to and budgeted with the Kansas sentencing commission;*

~~(f) The council shall appoint a standing local government advisory group to consult and advise the council concerning local government criminal justice issues and the impact of state criminal justice policy and decisions on local units of government.~~

The advisory group shall consist of a sheriff, chief of police, county or district attorney, city governing body and a county commissioner. Appointees to such advisory group shall serve without compensation or reimbursement for travel and subsistence or any other expenses.

~~(g) The council shall form a task force to study the consolidation of probation, parole and community corrections services.~~

(5) ~~When analyzing criminal justice issues and performing criminal justice studies, the council shall form such task groups as necessary and shall appoint individuals who appropriately represent law enforcement, the judiciary, legal profession, state, local, or federal government, the public, or other professions or groups as determined by the council, to represent the various aspects of the issue being analyzed or studied, *when analyzing criminal justice issues and performing criminal justice studies*. Members of the legislature may be appointed ex officio members to such task groups. A member of the council shall serve as the chairperson of each task group appointed by the council. The council may appoint other members of the council to any task group formed by the council; and~~

~~(6) The council review reports submitted by each task group named by the council and shall submit the report with the council's recommendations pertaining thereto to the governor, chief justice of the supreme court, the chief clerk of the house of representatives and the secretary of the senate.~~



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[Home](#) > [Kansas Statutes](#) > Kansas Statute No. 74-9501

74-9501

Chapter 74.--STATE BOARDS, COMMISSIONS AND AUTHORITIES Article 95.--KANSAS CRIMINAL JUSTICE COORDINATING COUNCIL

74-9501. Kansas criminal justice coordinating council; membership; powers and duties; local government advisory group; task forces. (a) There is hereby established the Kansas criminal justice coordinating council.

(b) The council shall consist of the governor or designee, the chief justice of the supreme court or designee, the attorney general or designee, the secretary of corrections, the secretary of social and rehabilitation services, the commissioner of juvenile justice and the director of the Kansas bureau of investigation.

(c) The director and all existing employees of the Kansas sentencing commission shall serve as staff to the Kansas criminal justice coordinating council, while continuing to serve at the will of the Kansas sentencing commission pursuant to K.S.A. 74-9103 and amendments thereto in the performance of its duties as outlined in K.S.A. 74-9101, 74-9106 and 21-4725 and amendments thereto. The director shall attend all meetings of the council, be responsible for keeping a record of council meetings, prepare reports of the council and perform such other duties as directed by the council.

(d) The council shall elect a chairperson and vice-chairperson from among the members of the council.

(e) The council shall:

(1) Define and analyze issues and processes in the criminal justice system, identify alternative solutions and make recommendations for improvements;

(2) perform such criminal justice studies or tasks as requested by the governor, the legislature or the chief justice, as deemed appropriate or feasible by the council;

(3) oversee development and management of a criminal justice database including assuming the designation and functions of the state statistical analysis center currently assigned to the Kansas bureau of investigation pursuant to K.S.A. 75-712a and amendments thereto. All criminal justice agencies as defined in subsection (c) of K.S.A. 22-4701 and amendments thereto and the department of social and rehabilitation services shall provide any data or information, including juvenile offender information which is requested by the council, in a form and manner established by the council, in order to facilitate the development and management of the criminal justice council database; and

(4) develop and oversee reporting of all criminal justice federal funding available to the state or local units of government including assuming the designation and functions of administering the United States bureau of justice assistance grants currently administered through the law enforcement antidrug abuse program of the department of administration. On the effective date of this act any bureau of justice assistance antidrug abuse federal fund balances in any account and all unclassified positions authorized for the law enforcement antidrug abuse program of the department of administration shall be transferred to and budgeted with the Kansas sentencing commission.

(f) The council shall appoint a standing local government advisory group to consult and advise the council concerning local government criminal justice issues and the impact of state criminal justice policy and decisions on local units of government. The advisory group shall consist of a sheriff, chief of police, county or district attorney, city governing body and a county commissioner. Appointees to such advisory group shall serve without compensation or reimbursement for travel and subsistence or any other expenses.

(g) The council shall form a task force to study the consolidation of probation, parole and community corrections services.

(h) When analyzing criminal justice issues and performing criminal justice studies, the council shall form such task groups as necessary and shall appoint individuals who appropriately represent law enforcement, the judiciary, legal profession, state, local, or federal government, the public, or other professions or groups as determined by the council, to represent the various aspects of the issue being analyzed or studied. Members of the legislature may be appointed ex officio members to such task groups. A member of the council shall serve as the chairperson of each task group appointed by the council. The council may appoint other members of the council to any task group formed by the council.

(i) The council shall review reports submitted by each task group named by the council and shall submit the report with the council's recommendations pertaining thereto to the governor, chief justice of the supreme court, the chief clerk of the house of representatives and the secretary of the senate.

History: L. 1994, ch. 315, § 1; L. 1996, ch. 229, § 127; L. 1997, ch. 156, § 87; July 1.

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KANSAS

OFFICE OF THE GOVERNOR

KATHLEEN SEBELIUS, GOVERNOR

Testimony of
Roger Werholtz, Chair
Kansas Criminal Justice Coordinating Council
Before the House Corrections & Juvenile Justice Committee
Briefing on the Kansas Criminal Justice Coordinating Council
January 29, 2004

Chairman Loyd and Members of the Committee:

Thank you for the opportunity to update the committee on the activities of the Kansas Criminal Justice Coordinating Council. The 1994 Kansas Legislature created the Kansas Criminal Justice Coordinating Council (KCJCC). The KCJCC is responsible for overseeing the criminal justice federal funding made available to Kansas through the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance. The KCJCC is representative of the governor, chief justice of the supreme court, the attorney general, the secretary of corrections, the secretary of social and rehabilitation services, the commissioner of juvenile justice and the director of the Kansas bureau of investigation. Attached is a list of the current members of the Council. In addition to the oversight of the federal grants, the Council also oversees the development and management of the Kansas Criminal Justice Information System (KCJIS).

There are six federal grant programs which KCJCC is responsible, they are: the Edward Byrne Memorial State and Local Law Enforcement Assistance; Local Law Enforcement Block Grant; Residential Substance Abuse Treatment; National Criminal History Information Program; National Forensic Sciences Improvement Act; and Bulletproof Vest Partnership Program. The total amount of grant funds awarded to state and local agencies from these grant programs for state fiscal year 2004, is \$7,792,633. The Governor's Federal Grants Program staff manages the day-to-day functions of the grants. The change in staff was transferred from the Kansas Sentencing Commission in July 2003.

The Kansas Legislature created the criminal justice information system committee in 2003, formerly known as the law enforcement telecommunications committee. The committee's primary duties are to establish, maintain and upgrade the criminal justice information system. Attached is a chart with the members appointed to the committee. Information developed by the committee is presented to the KCJCC for recommendation and action. It is my understanding the criminal justice information system has developed its core components.

More than 8,200 authorized users are accessing this system. The system we have in place is viewed as a model for other states. The criminal justice information system committee is preparing a strategic long-range plan, which will be completed in March 2004.

The KCJCC would like to ask for a bill introduction to amend K.S.A. 74-9501. This law created the Council and it needs to be updated. The KCJCC requests that the make-up of the Council be amended to include the superintendent of the highway patrol. As you know, this Council reviews and makes recommendations regarding the criminal justice system and the highway patrol should be included in those decisions. In addition to the regular duties of the highway patrol, they are also responsible for a majority of the homeland security grant funds awarded to the state. To assist in the coordination of those funds, as well as the funds administered by the KCJCC, it makes perfect sense to include the superintendent on the council. It is also recommended that the secretary of social and rehabilitation services be removed as a member. It is believed that the secretary was included when the juvenile justice services were overseen by SRS. In addition to the change in Council members, other amendments to the law are requested which are basically clean up of the law to better reflect how the Council functions. Attached is a draft of the changes along with a copy of the current law.

Thank you for the opportunity to brief you today. I would be happy to answer any questions you may have.

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KANSAS CRIMINAL JUSTICE INFORMATION SYSTEM (KCJIS)

Kansas Criminal Justice Coordinating Committee (KCJCC)

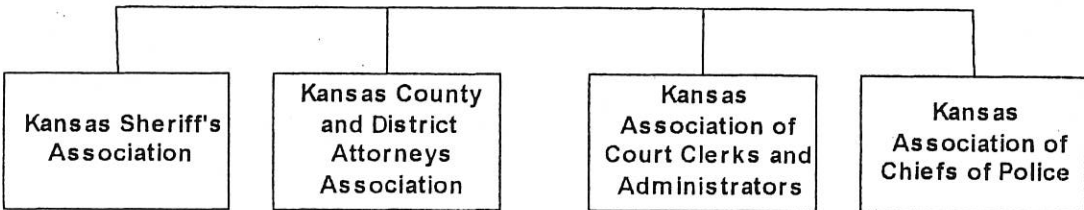
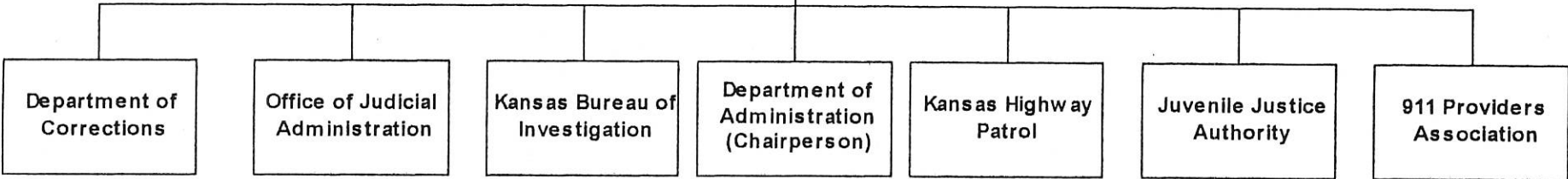


KCJIS Committee

Legislature Joint Committee On Information Technology

Gordon Lansford
Director
KCJIS

Chief Information Technology Officers
Executive Branch
Judicial Branch
Legislative Branch



Privigna /prəvignə/. Lat. In the civil law, a step-daughter.

Privignus /prəvignəs/. Lat. In the civil law, a son of a husband or wife by a former marriage; a stepson.

Privilege. A particular and peculiar benefit or advantage enjoyed by a person, company, or class, beyond the common advantages of other citizens. An exceptional or extraordinary power or exemption. A peculiar right, advantage, exemption, power, franchise, or immunity held by a person or class, not generally possessed by others.

In tort law, the ability to act contrary to another individual's legal right without that individual having legal redress for the consequences of that act; usually raised by the actor as a defense.

An exemption from some burden or attendance, with which certain persons are indulged, from a supposition of law that the stations they fill, or the offices they are engaged in, are such as require all their time and care, and that, therefore, without this indulgence, it would be impracticable to execute such offices to that advantage which the public good requires. That which releases one from the performance of a duty or obligation, or exempts one from a liability which he would otherwise be required to perform, or sustain in common with all other persons. *See also* Exemption; Immunity.

See also Doctor-patient privilege; Executive privilege; Husband-wife privilege; Journalist's privilege; Legislative immunity; Marital communications privilege; Newsmen's privilege; Patient-physician privilege; Priest-penitent privilege; Privileged communications; Right; State secrets privilege.

Attorney-client, doctor-patient, etc. privilege. *See* Privileged communications, and *also* specific privileges.

Civil law. A right which the nature of a debt gives to a creditor, and which entitles him to be preferred before other creditors. Civil Code La. art. 3186. It is merely an accessory of the debt which it secures, and falls with the extinguishment of the debt. The civil law privilege became, by adoption of the admiralty courts, the admiralty lien. The *J. E. Rumbell*, 148 U.S. 1, 13 S.Ct. 498, 17 L.Ed. 345.

Communications. *See* Privileged communications.

Deliberative process privilege. This governmental privilege permits government to withhold documents that reflect advisory opinions, recommendations and deliberations comprising part of a process by which government decisions and policies are formulated, and was developed to promote frank and independent discussion among those responsible for making governmental decisions and to protect against premature disclosure of proposed agency policies or decisions. *F.T.C. v. Warner Communications Inc.*, C.A.Cal., 742 F.2d 1156, 1161.

Discovery. When interrogatories, depositions or other forms of discovery seek information which is otherwise privileged, the party from whom it is sought may claim his privilege. Fed.R.Civil P. 26; Fed.R.Crim.P. 16. *See also* Protective order; Work product rule.

Evidence. *See* Privileged communications; Privileged evidence.

Executive privilege. The protection afforded to confidential presidential communications. However, the generalized need for confidentiality of high level communications cannot sustain an absolute unqualified presidential privilege. *U. S. v. Nixon*, 418 U.S. 683, 94 S.Ct. 3090, 41 L.Ed.2d 1039. *See also* Executive privilege.

Journalist's privilege. *See* Journalist's privilege; Newsmen's privilege; Shield laws.

Libel and slander. An exemption from liability for the speaking or publishing of defamatory words concerning another, based on the fact that the statement was made in the performance of a political, judicial, social, or personal duty. Privilege is either *absolute* or *conditional*. The former protects the speaker or publisher without reference to his motives or the truth or falsity of the statement. This may be claimed in respect, for instance, to statements made in legislative debates, in reports of military officers to their superiors in the line of their duty, and statements made by judges, witnesses, and jurors in trials in court. Conditional privilege (called also "qualified privilege") will protect the speaker or publisher unless actual malice and knowledge of the falsity of the statement is shown. This may be claimed where the communication related to a matter of public interest, or where it was necessary to protect one's private interest and was made to a person having an interest in the same matter. *Saroyan v. Burkett*, 57 Cal.2d 706, 21 Cal.Rptr. 557, 558, 371 P.2d 293.

For defense of "constitutional privilege" in libel actions, *see* Libel.

Maritime law. An allowance to the master of a ship of the same general nature with primage, being compensation, or rather a gratuity, customary in certain trades, and which the law assumes to be a fair and equitable allowance, because the contract on both sides is made under the knowledge of such usage by the parties.

Parliamentary law. The right of a particular question, motion, or statement to take precedence over all other business before the house and to be considered immediately, notwithstanding any consequent interference with or setting aside the rules of procedure adopted by the house. The matter may be one of "personal privilege," where it concerns one member of the house in his capacity as a legislator, or of the "privilege of the house," where it concerns the rights, immunities, or dignity of the entire body, or of "constitutional privilege," where it relates to some action to be taken or some order of proceeding expressly enjoined by the constitution.

Privilege from arrest. A privilege extended to certain classes of persons, either by the rules of international law, the policy of the law, or the necessities of justice or of the administration of government, whereby they are exempted from arrest on civil process, and, in some cases, on criminal charges, either permanently, as in the case of a foreign minister and his suite, or temporarily, as in the case of members of the legislature, parties and

witnesses engaged in a particular suit, etc. Art. I, § 6, U.S.Const. See also Immunity.

Privilege tax. A tax on the privilege of carrying on a business or occupation for which a license or franchise is required. *Gulf & Ship Island R. Co. v. Hewes*, 183 U.S. 66, 22 S.Ct. 26, 46 L.Ed. 86.

Torts. Privilege is the general term applied to certain rules of law by which particular circumstances justify conduct which otherwise would be tortious, and thereby defeat the tort liability (or defense) which, in the absence of such circumstances, ordinarily would follow from that conduct. In other words, even if all of the facts necessary to a prima facie case of tort liability can be proved, there are additional facts present sufficient to establish some privilege, and therefore defendant has committed no tort. Privileges thus differ from other defenses, such as contributory negligence, which operate to bar plaintiff's recovery but do not negate the tortious nature of defendant's conduct. Conversely, plaintiff's privilege may defeat a defense which defendant otherwise might have had. The term and concept of privilege apply primarily to the intentional torts, but also appear in other areas, such as defamation. See *Libel and slander, above*.

A privilege may be based upon: (a) the consent of the other affected by the actor's conduct, or (b) the fact that its exercise is necessary for the protection of some interest of the actor or of the public which is of such importance as to justify the harm caused or threatened by its exercise, or (c) the fact that the actor is performing a function for the proper performance of which freedom of action is essential. Restatement, Second, Torts, § 10.

Privileges may be divided into two general categories: (1) consent, and (2) privileges created by law irrespective of consent. In general, the latter arise where there is some important and overriding social value in sanctioning defendant's conduct, despite the fact that it causes plaintiff harm.

Privilege is an affirmative defense which must be pleaded by defendant. Fed.R.Civil P. 8(c).

Writ of privilege. A common law process to enforce or maintain a privilege; particularly to secure the release of a person arrested in a civil suit contrary to his privilege.

Privilege against self-incrimination. The privilege derived from the Fifth Amendment, U.S.Const., and similar provisions in the constitutions of states. It requires the government to prove a criminal case against the defendant without the aid of the defendant as a witness against himself, though it protects only communications, not physical evidence such as handwriting and fingerprints. It is invocable by any witness who is called to the witness stand against his wishes whether the proceeding be a trial or grand jury hearing or a proceeding before an investigating body, but it is waived when the witness voluntarily takes the witness stand. See also Immunity; Link-in-chain.

Privileged. Possessing or enjoying a privilege; exempt from burdens; entitled to priority or precedence.

Privileged communications. Those statements made by certain persons within a protected relationship such as husband-wife, attorney-client, priest-penitent and the like which the law protects from forced disclosure on the witness stand at the option of the witness, client, penitent, spouse. In federal courts, the extent and scope of the specific privilege is to be governed by federal common law or state rules governing evidentiary privileges. Fed.Evid. Rule 501. See also Attorney-client privilege; Communication; Conditionally privileged communication; Journalist's privilege; Privilege.

Privileged copyholds. See Copyhold.

Privileged debts. Those which an executor or administrator, trustee in bankruptcy, and the like, may pay in preference to others; such as funeral expenses, servants' wages, and doctors' bills during last sickness, etc. See also Preferential debts.

Privileged evidence. In addition to privileged communications (*q.v.*), privileged evidence may also include governmental secrets or records, identity of informer, grand jury proceedings, certain types of accident reports, and attorney's work product.

Privileges and immunities clause. There are two Privileges and Immunities Clauses in the federal Constitution and Amendments, the first being found in Art. IV, and the second in the 14th Amendment, § 1, second sentence, clause 1. The provision in Art. IV states that "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States," while the 14th Amendment provides that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

The purpose of these Clauses is to place the citizens of each State upon the same footing with citizens of other states, so far as the advantages resulting from citizenship in those states is concerned; to insure that a citizen of State A who ventures into State B be accorded the same privileges that the citizens of State B enjoy. *Toomer v. Witsell*, 334 U.S. 385, 68 S.Ct. 1156, 92 L.Ed. 1460. Pursuing a common calling, plying a trade, and doing business in another state are examples of "privileges" protected by the privileges and immunities clause of the Federal Constitution. *Powell v. Daily*, Wyo., 712 P.2d 356, 359. See also Full faith and credit clause.

Privilegia quæ re vera sunt in præjudicium reipublicæ, magis tamen habent speciosa frontispicia, et boni publici prætextum, quam bonæ et legales concessionēs; sed prætextu liciti non debet admitti illicitum /priveliyj(iy)ə kwiy riy vira sánt in præjadish(iy)əm riyaypəbləsiy, méyjəs téymən hábənt spiyshiyówəs frəntəspish(iy)ə, èt bównay pəbləsay prətékstəm, kwəm bówniy èt ləgéyliy kənsəshiyówniyz; sèd prətékst(y)uw lisətay nòn débənt ədmítay əlisətəm/. Privileges which are truly in prejudice of public good have, however, a more specious front and pretext of public good than good and legal grants; but, under pretext of legality, that which is illegal ought not to be admitted.

January 27, 2004

To: Committee on Corrections and Juvenile Justice
From: Jerry Ann Donaldson, Principal Analyst
Re: Privilege

Black's Law Dictionary defines privilege as a particular and peculiar benefit of advantage enjoyed by a person, company, or class, beyond the common advantages of other citizens. An exceptional or extraordinary power or exemption. A peculiar right, advantage, exemption, power, franchise or immunity held by a person or class, not generally possessed by others. An exemption from some burden or attendance, with which certain persons are indulged, from a supposition of law that the stations they fill, or the offices they are engaged in, are such as require all their time and care, and that, therefore, without this indulgence, it would be impracticable to execute such offices to that advantage which the public good requires. That which releases one from the performance of a duty or obligation, or exempts one from a liability which he would otherwise be required to perform, or sustain in common with all other persons. Examples of privilege include a doctor-patient privilege, husband-wife privilege, journalist's privilege, attorney-client privilege, priest-penitent privilege, among others.

In Kansas law there are various statutes that deal with the issue of privilege.

ATTORNEY-CLIENT PRIVILEGE

One of the oldest concepts in judicial traditions is that of attorney client privilege whereby private communications between an attorney and a client are protected.

K.S.A. 60-426. Lawyer-client privilege. (a) General rule. Subject to K.S.A. 60-437, and except as otherwise provided by subsection (b) of this section communications found by the judge to have been between lawyer and his or her client in the course of that relationship and in professional confidence, are privileged, and a client has a privilege (1) if he or she is the witness to refuse to disclose any such communication, and (2) to prevent his or her lawyer from disclosing it, and (3) to prevent any other witness from disclosing such communication if it came to the knowledge of such witness (i) in the course of its transmittal between the client and the lawyer, or (ii) in a manner not reasonably to be anticipated by the client, or (iii) as a result of a breach of the lawyer-client relationship. The privilege may be claimed by the client in person or by his or her lawyer, or if an incapacitated person, by either his or her guardian or conservator, or if deceased, by his or her personal representative.

(b) Exceptions. Such privileges shall not extend (1) to a communication if the judge finds that sufficient evidence, aside from the communication, has been introduced to warrant a finding that the legal service was sought or obtained in order to enable or aid the commission or planning of a crime or a tort, or (2) to a communication relevant to an issue between parties all of whom claim through the client, regardless of whether the respective claims are by testate or intestate succession or by inter vivos transaction, or (3) to a communication relevant to an issue of breach of duty by the lawyer to his or her client, or by the client to his or her lawyer, or (4) to a communication relevant to an issue concerning an attested document of which the lawyer is an attesting witness, or (5) to a communication relevant to a matter of common interest between two or more clients if made by any of them to a lawyer whom they have retained in common when offered in an action between any of such clients.

(c) Definitions. As used in this section (1) "client" means a person or corporation or other association that, directly or through an authorized representative, consults a lawyer or lawyer's representative for the purpose of retaining the lawyer or securing legal service or advice from the lawyer in his or her professional capacity; and includes an incapacitated person who, or whose guardian on behalf of the incapacitated person so consults the lawyer or the lawyer's representative in behalf of the incapacitated person; (2) "communication" includes advice given by the lawyer in the course of representing the client and includes disclosures of the client to a representative, associate or employee of the lawyer incidental to the professional relationship; (3) "lawyer" means a person authorized, or reasonably believed by the client to be authorized to practice law in any state or nation the law of which recognizes a privilege against disclosure of confidential communications between client and lawyer.

PHYSICIAN-PATIENT PRIVILEGE

This privilege embodies the concept that a physician has the right to refuse to disclose confidential information about a patient without the consent of the patient.

K.S.A. 60-427. Physician-patient privilege. (a) As used in this section:

(1) "Patient" means a person who, for the sole purpose of securing preventive, palliative, or curative treatment, or a diagnosis preliminary to such treatment, of such person's physical or mental condition, consults a physician, or submits to an examination by a physician.

(2) "Physician" means a person licensed or reasonably believed by the patient to be licensed to practice medicine or one of the healing arts as defined in K.S.A. 65-2802 and amendments thereto in the state or jurisdiction in which the consultation or examination takes place.

(3) "Holder of the privilege" means the patient while alive and not under guardianship or conservatorship or the guardian or conservator of the patient, or the personal representative of a deceased patient.

(4) "Confidential communication between physician and patient" means such information transmitted between physician and patient, including information obtained by an examination of the patient, as is transmitted in confidence and by a means which, so far as the patient is aware, discloses the information to no third persons other than those reasonably necessary for the transmission of the information or the accomplishment of the purpose for which it is transmitted.

(b) Except as provided by subsections (c), (d), (e) and (f), a person, whether or not a party, has a privilege in a civil action or in a prosecution for a misdemeanor, other than a prosecution for a violation of K.S.A. 8-1567 and amendments thereto or an ordinance which prohibits the acts prohibited by that statute, to refuse to disclose, and to prevent a witness from disclosing, a communication, if the person claims the privilege and the judge finds that: (1) The communication was a confidential communication between patient and physician; (2) the patient or the physician reasonably believed the communication necessary or helpful to enable the physician to make a diagnosis of the condition of the patient or to prescribe or render treatment therefor; (3) the witness (i) is the holder of the privilege, (ii) at the time of the communication was the physician or a person to whom disclosure was made because reasonably necessary for the transmission of the communication or for the accomplishment of the purpose for which it was transmitted or (iii) is any other person who obtained knowledge or possession of the communication as the result of an intentional breach of the physician's duty of nondisclosure by the physician or the physician's agent or servant; and (4) the claimant is the holder of the privilege or a person authorized to claim the privilege for the holder of the privilege.

(c) There is no privilege under this section as to any relevant communication between the patient and the patient's physician: (1) Upon an issue of the patient's condition in an action to commit the patient or otherwise place the patient under the control of another or others because of alleged incapacity or mental illness, in an action in which the patient seeks to establish the patient's competence or in an action to recover damages on account of conduct of the patient which constitutes a criminal offense other than a misdemeanor; (2) upon an issue as to the validity of a document as a will of the patient; or (3) upon an issue between parties claiming by testate or intestate succession from a deceased patient.

(d) There is no privilege under this section in an action in which the condition of the patient is an element or factor of the claim or defense of the patient or of any party claiming through or under the patient or claiming as a beneficiary of the patient through a contract to which the patient is or was a party.

(e) There is no privilege under this section: (1) As to blood drawn at the request of a law enforcement officer pursuant to K.S.A. 8-1001 and amendments thereto; and (2) as to information which the physician or the patient is required to report to a public official or as to information required to be recorded in a public office, unless the statute requiring the report or record specifically provides that the information shall not be disclosed.

(f) No person has a privilege under this section if the judge finds that sufficient evidence, aside from the communication has been introduced to warrant a finding that the services of the physician were sought or obtained to enable or aid anyone to commit or to

plan to commit a crime or a tort, or to escape detection or apprehension after the commission of a crime or a tort.

(g) A privilege under this section as to a communication is terminated if the judge finds that any person while a holder of the privilege has caused the physician or any agent or servant of the physician to testify in any action to any matter of which the physician or the physician's agent or servant gained knowledge through the communication.

(h) Providing false information to a physician for the purpose of obtaining a prescription-only drug shall not be a confidential communication between physician and patient and no person shall have a privilege in any prosecution for obtaining a prescription-only drug by fraudulent means under K.S.A. 21-4214 and amendments thereto.

CLERGY-PENITENT PRIVILEGE

The clergy penitent privilege is the right of a clergyman to refuse to divulge confidential information received from a person during confession or similar exchanges.

K.S.A. 60-429. Penitential communication privilege. (a) Definitions. As used in this section, (1) the term "duly ordained minister of religion" means a person who has been ordained, in accordance with the ceremonial ritual, or discipline of a church, religious sect, or organization established on the basis of a community of faith and belief, doctrines and practices of a religious character, to preach and to teach the doctrines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship, and who as his or her regular and customary vocation preaches and teaches the principles of religion and administers the ordinances of public worship as embodied in the creed or principles of such church, sect, or organization; (2) the term "regular minister of religion" means one who as his or her customary vocation preaches and teaches the principles of religion of a church, a religious sect, or organization of which he or she is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister; (3) the term "regular or duly ordained minister of religion" does not include a person who irregularly or incidentally preaches and teaches the principles of religion of a church, religious sect, or organization and does not include any person who may have been duly ordained a minister in accordance with the ceremonial, rite, or discipline of a church, religious sect or organization, but who does not regularly, as a vocation, teach and preach the principles of religion and administer the ordinances of public worship as embodied in the creed or principles of his or her church, sect, or organization; (4) "penitent" means a person who recognizes the existence and the authority of God and who seeks or receives from a regular or duly ordained minister of religion advice or assistance in determining or discharging his or her moral obligations, or in obtaining God's mercy or forgiveness for past culpable conduct; (5) "penitential communication" means any communication between a penitent and a regular or duly ordained minister of religion which the penitent intends shall be kept secret and confidential and which pertains to advice or assistance in determining or discharging the penitent's moral obligations, or to obtaining God's mercy or forgiveness for past culpable conduct.

(b) Privilege. A person, whether or not a party, has a privilege to refuse to disclose, and to prevent a witness from disclosing a communication if he or she claims the privilege and the judge finds that (1) the communication was a penitential communication and (2) the witness is the penitent or the minister, and (3) the claimant is the penitent, or the minister making the claim on behalf of an absent penitent.

MARITAL PRIVILEGE

Confidential communications between a husband and wife, during and after marriage, are privileged and not subject to disclosure.

K.S.A. 60-428. Marital privilege, confidential communications. (a) General rule. Subject to K.S.A. 60-437 and except as otherwise provided in subsections (b) and (c) of this section, a spouse who transmitted to the other the information which constitutes the communication, has a privilege during the marital relationship which he or she may claim whether or not a party to the action, to refuse to disclose and to prevent the other from disclosing communications found by the judge to have been had or made in confidence between them while husband and wife. The other spouse or either his or her guardian or conservator may claim the privilege on behalf of the spouse having the privilege.

(b) Exceptions. Neither spouse may claim such privilege (1) in an action by one spouse against the other spouse, or (2) in an action for damages for the alienation of the affections of the other, or for criminal conversation with the other, or (3) in a criminal action in which one of them is charged with a crime against the person or property of the other or of a child of either, or a crime against the person or property of a third person committed in the course of committing a crime against the other, or bigamy or adultery, or desertion of the other or of a child of either, or (4) in a criminal action in which the accused offers evidence of a communication between him or her and his or her spouse, or (5) if the judge finds that sufficient evidence, aside from the communication, has been introduced to warrant a finding that the communication was made, in whole or in part, to enable or aid anyone to commit or to plan to commit a crime or a tort.

(c) Termination. A spouse who would otherwise have a privilege under this section has no such privilege if the judge finds that such spouse while the holder of the privilege testified or caused another to testify in any action to any communication between the spouses upon the same subject matter.



TOPEKA

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January 29, 2004

**Testimony Before the Corrections and Juvenile Justice Committee
House Bill 2575**

Thank you, Mr. Chairman, for scheduling a hearing for this bill which may in the future protect the safety and well-being of many of our most vulnerable citizens, children, our elders, and the disabled. HB 2575 simply adds the clergy to the list of those who are required to report.

I am going to be brief because there are other conferees who will be more impacted by this proposed legislation than I. I am simply a bystander who has always wondered why I as a teacher am required to report abuse, when my pastor who has such close contact with our parishioners is not.

Over a period of years, legislation has mandated various individuals to report to SRS or to law enforcement the abuse or suspected abuse of children, elders, and the disabled. Those who are required to report are in professional positions which allow them to observe abuse or its symptoms or to have instances of abuse reported to them. Included among mandated reporters are teachers, social workers, therapists, fire fighters, law enforcement officers, and health care workers. The clergy has been conspicuously absent from the list of those who must report abuse. Undoubtedly, part of the reasoning, which has exempted the clergy from reporting, is the unusual situation or the sanctity of the penitential confession. HB 2575 exempts the "confession" from the mandated report. It is my contention that most of the knowledge of abuse that ministers possess did not come from the confession, but from reports of others or observations of their own.

The issue of confidentiality is important, of course, but some of the other required reporters have confidential relationships with patients or clients. However, if the client or patient has, is currently, or plans to harm another person or him/herself, that professional is required to report. Should the clergy have another standard, outside the confessional?

As of January 2003, Kansas is among 18 states, which do not require the clergy to report abuse. Twenty states require them to report, with an exemption for "clergy penitent" conversations; in six states clergy must always report. Finally, in six states "all persons" are required to report, but the status of the clergy is unclear.

Other conferees with more legal expertise than I will offer some amendments to HB 2575 which I believe have merit and are worthy of your discussion. But it is time to begin. The clergy must be required to report their suspicions of abuse of the people they serve in the name of the Creator.

Rep. Sue Storm
Proposed amendments
January 29, 2004

HOUSE BILL No. 2575

By Representatives Storm, Bethell, Boyer, Carlin, Craft, Crow, Flaherty,
Gilbert, Gordon, Horst, Kuetner, Loganbill, Jim Morrison, Neighbor,
Reborn and Toelkes

1-22

AN ACT relating to abuse of persons; concerning mandatory reporting
thereof; privileges and immunities; amending K.S.A. 2003 Supp. 38-
1522, 39-1402 and 39-1431 and repealing the existing sections.

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

Section 1. K.S.A. 2003 Supp. 38-1522 is hereby amended to read as
follows: 38-1522. (a) When any of the following persons has reason to
suspect that a child has been injured as a result of physical, mental or
emotional abuse or neglect or sexual abuse, the person shall report the
matter promptly as provided in subsection (c) or (e): Persons licensed to
practice the healing arts or dentistry; persons licensed to practice optom-
etry; persons engaged in postgraduate training programs approved by the
state board of healing arts; licensed psychologists; licensed masters level
psychologists; licensed clinical psychotherapists; licensed professional or
practical nurses examining, attending or treating a child under the age of
18; teachers, school administrators or other employees of a school which
the child is attending; chief administrative officers of medical care facil-
ities; licensed marriage and family therapists; licensed clinical marriage
and family therapists; licensed professional counselors; licensed clinical
professional counselors; registered alcohol and drug abuse counselors;
persons licensed by the secretary of health and environment to provide
child care services or the employees of persons so licensed at the place
where the child care services are being provided to the child; licensed
social workers; *a duly ordained minister of religion and a regular minister
of religion as defined in K.S.A. 60-429, and amendments thereto* ~~and any
custodian of records for such minister~~ pursuant to subsection (h) ~~of this
section~~; firefighters; emergency medical services personnel; mediators ap-
pointed under K.S.A. 23-602 and amendments thereto; juvenile intake
and assessment workers and law enforcement officers. The report may
be made orally and shall be followed by a written report if requested.
When the suspicion is the result of medical examination or treatment of
a child by a member of the staff of a medical care facility or similar
institution, that staff member shall immediately notify the superinten-

dent, manager or other person in charge of the institution who shall make a written report forthwith. Every written report shall contain, if known, the names and addresses of the child and the child's parents or other persons responsible for the child's care, the child's age, the nature and extent of the child's injury (including any evidence of previous injuries) and any other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the persons responsible for the injuries.

(b) Any other person who has reason to suspect that a child has been injured as a result of physical, mental or emotional abuse or neglect or sexual abuse may report the matter as provided in subsection (c) or (e).

(c) Except as provided by subsection (e), reports made pursuant to this section shall be made to the state department of social and rehabilitation services. When the department is not open for business, the reports shall be made to the appropriate law enforcement agency. On the next day that the state department of social and rehabilitation services is open for business, the law enforcement agency shall report to the department any report received and any investigation initiated pursuant to subsection (a) of K.S.A. 38-1524 and amendments thereto. The reports may be made orally or, on request of the department, in writing.

(d) Any person who is required by this section to report an injury to a child and who knows of the death of a child shall notify immediately the coroner as provided by K.S.A. 22a-242, and amendments thereto.

(e) Reports of child abuse or neglect occurring in an institution operated by the secretary of social and rehabilitation services or the commissioner of juvenile justice shall be made to the attorney general. All other reports of child abuse or neglect by persons employed by or of children of persons employed by the state department of social and rehabilitation services or the juvenile justice authority shall be made to the appropriate law enforcement agency.

(f) Willful and knowing failure to make a report required by this section is a class B misdemeanor.

(g) Preventing or interfering with, with the intent to prevent, the making of a report required by this section is a class B misdemeanor.

~~(h) ⁽¹⁾ A minister of religion as defined in paragraphs (1) and (2) of subsection (a) of K.S.A. 60-129, and amendments thereto, and any custodian of records for such minister, who obtains knowledge of or has reason to suspect that a child has been subjected to physical, mental, or emotional abuse or neglect or sexual abuse and such knowledge or suspicion arises in the performance of such person's professional capacity other than during a penitential communication as defined in K.S.A. 60-429, and amendments thereto, or when acting in some other capacity within the scope of such person's employment that would otherwise make~~ duly ordained
and a regular minister of religion

6-3

1 such minister ~~[or custodian]~~ a mandated reporter, such minister ~~[or~~
 2 ~~custodian]~~ shall report such physical, mental or emotional abuse or neglect or
 3 sexual abuse promptly as provided in subsections (c) or (c').

4 ~~[(2) This subsection shall apply even if the victim of the known or~~
 5 ~~suspected physical, mental or emotional or neglect or sexual abuse has~~
 6 ~~reached the age of majority by the time the required report is made.~~

7 ~~(3) The local law enforcement agency shall have jurisdiction to investi-~~
 8 ~~gate any report of known or suspected physical, mental or emotional~~
 9 ~~abuse or neglect or sexual abuse made pursuant to this subsection if the~~
 10 ~~report is made after the victim has reached the age of majority.]~~

11 Sec. 2. K.S.A. 2003 Supp. 39-1402 is hereby amended to read as
 12 follows: 39-1402. (a) Any person who is licensed to practice any branch
 13 of the healing arts, a licensed psychologist, a licensed master level psy-
 14 chologist, a licensed clinical psychotherapist, a chief administrative officer
 15 of a medical care facility, an adult care home administrator or operator,
 16 a licensed social worker, a licensed professional nurse, a licensed practical
 17 nurse, a licensed marriage and family therapist, a licensed clinical mar-
 18 riage and family therapist, licensed professional counselor, licensed clinical
 19 professional counselor, registered alcohol and drug abuse counselor,
 20 a teacher, a bank trust officer and any other officers of financial institu-
 21 tions, a legal representative, a duly ordained minister of religion and a
 22 regular minister of religion as defined in K.S.A. 60-429, and amendments
 23 thereto, ~~and any custodian of records for such minister,~~ pursuant to sub-
 24 section if ~~[of this section]~~ or a governmental assistance provider who has
 25 reasonable cause to believe that a resident is being or has been abused,
 26 neglected or exploited, or is in a condition which is the result of such
 27 abuse, neglect or exploitation or is in need of protective services, shall
 28 report immediately such information or cause a report of such informa-
 29 tion to be made in any reasonable manner to the department on aging
 30 with respect to residents defined under subsection (a)(1) of K.S.A. 39-
 31 1401 and amendments thereto, to the department of health and environ-
 32 ment with respect to residents defined under subsection (a)(2) of K.S.A.
 33 39-1401, and amendments thereto, and to the department of social and
 34 rehabilitation services and appropriate law enforcement agencies with
 35 respect to all other residents. Reports made to one department which are
 36 required by this subsection to be made to the other department shall be
 37 referred by the department to which the report is made to the appropriate
 38 department for that report, and any such report shall constitute compli-
 39 ance with this subsection. Reports shall be made during the normal work-
 40 ing week days and hours of operation of such departments. Reports shall
 41 be made to law enforcement agencies during the time the departments
 42 are not open for business. Law enforcement agencies shall submit the
 43 report and appropriate information to the appropriate department on the

1 first working day that such department is open for business. A report
2 made pursuant to K.S.A. 65-4923 or 65-4924 and amendments thereto
3 shall be deemed a report under this section.

4 (b) The report made pursuant to subsection (a) shall contain the
5 name and address of the person making the report and of the caretaker
6 caring for the resident, the name and address of the involved resident,
7 information regarding the nature and extent of the abuse, neglect or ex-
8 ploitation, the name of the next of kin of the resident, if known, and any
9 other information which the person making the report believes might be
10 helpful in an investigation of the case and the protection of the resident.

11 (c) Any other person, not listed in subsection (a), having reasonable
12 cause to suspect or believe that a resident is being or has been abused,
13 neglected or exploited, or is in a condition which is the result of such
14 abuse, neglect or exploitation or is in need of protective services may
15 report such information to the department on aging with respect to res-
16 idents defined under subsection (a)(1) of K.S.A. 39-1401 and amend-
17 ments thereto, to the department of health and environment with respect
18 to residents defined under subsection (a)(2) of K.S.A. 39-1401, and
19 amendments thereto, and to the department of social and rehabilitation
20 services with respect to all other residents. Reports made to one depart-
21 ment which are to be made to the other department under this section
22 shall be referred by the department to which the report is made to the
23 appropriate department for that report.

24 (d) Notice of the requirements of this act and the department to
25 which a report is to be made under this act shall be posted in a conspic-
26 uous public place in every adult care home and medical care facility in
27 this state.

28 (e) Any person required to report information or cause a report of
29 information to be made under subsection (a) who knowingly fails to make
30 such report or cause such report to be made shall be guilty of a class B
31 misdemeanor.

32 ~~(f) A minister of religion as defined in paragraphs (1) and (2) of sub-~~
33 ~~section (a) of K.S.A. 60-429, and amendments thereto, and any custodian~~
34 ~~of records for such minister who has reasonable cause to believe that a~~
35 ~~resident is being or has been abused, neglected or exploited, or is in need~~
36 ~~of protective services and such belief arises in the performance of such~~
37 ~~minister's professional capacity other than during a penitential commu-~~
38 ~~nication as defined in K.S.A. 60-429, and amendments thereto, or when~~
39 ~~acting in some other capacity within the scope of such minister's~~
40 ~~employment that would otherwise make such minister~~
41 ~~a mandated reporter, such minister shall report such~~
42 ~~belief of abuse, neglect or exploitation or need of protection services as~~
43 ~~provided in subsection (a).~~

duly ordained

and a regular minister of religion

1 Sec. 3. K.S.A. 2003 Supp. 39-1431 is hereby amended to read as
2 follows: 39-1431. (a) Any person who is licensed to practice any branch
3 of the healing arts, a licensed psychologist, a licensed master level psy-
4 chologist, a licensed clinical psychotherapist, the chief administrative of-
5 ficer of a medical care facility, a teacher, a licensed social worker, a li-
6 censed professional nurse, a licensed practical nurse, a licensed dentist,
7 a licensed marriage and family therapist, a licensed clinical marriage and
8 family therapist, licensed professional counselor, licensed clinical profes-
9 sional counselor, registered alcohol and drug abuse counselor, a law en-
10 forcement officer, a case manager, a rehabilitation counselor, a bank trust
11 officer or any other officers of financial institutions, a legal representative,
12 a governmental assistance provider, *a duly ordained minister of religion*
13 *and a regular minister of religion as defined in K.S.A. 60-129, and amend-*
14 *ments thereto, ~~and any custodian of records for such minister~~* pursuant
15 *to subsection (g) ~~of this section~~*, an owner or operator of a residential care
16 facility, an independent living counselor and the chief administrative of-
17 ficer of a licensed home health agency, the chief administrative officer of
18 an adult family home and the chief administrative officer of a provider of
19 community services and affiliates thereof operated or funded by the de-
20 partment of social and rehabilitation services or licensed under K.S.A. 75-
21 3307b and amendments thereto who has reasonable cause to believe that
22 an adult is being or has been abused, neglected or exploited or is in need
23 of protective services shall report, immediately from receipt of the infor-
24 mation, such information or cause a report of such information to be made
25 in any reasonable manner. An employee of a domestic violence center
26 shall not be required to report information or cause a report of infor-
27 mation to be made under this subsection. Other state agencies receiving
28 reports that are to be referred to the department of social and rehabili-
29 tation services and the appropriate law enforcement agency, shall submit
30 the report to the department and agency within six hours, during normal
31 work days, of receiving the information. Reports shall be made to the
32 department of social and rehabilitation services during the normal work-
33 ing week days and hours of operation. Reports shall be made to law en-
34 forcement agencies during the time social and rehabilitation services are
35 not in operation. Law enforcement shall submit the report and appro-
36 priate information to the department of social and rehabilitation services
37 on the first working day that social and rehabilitation services is in op-
38 eration after receipt of such information.

39 (b) The report made pursuant to subsection (a) shall contain the
40 name and address of the person making the report and of the caretaker
41 caring for the involved adult, the name and address of the involved adult,
42 information regarding the nature and extent of the abuse, neglect or ex-
43 ploitation, the name of the next of kin of the involved adult, if known,

1 and any other information which the person making the report believes
2 might be helpful in the investigation of the case and the protection of the
3 involved adult.

4 (c) Any other person, not listed in subsection (a), having reasonable
5 cause to suspect or believe that an adult is being or has been abused,
6 neglected or exploited or is in need of protective services may report such
7 information to the department of social and rehabilitation services. Re-
8 ports shall be made to law enforcement agencies during the time social
9 and rehabilitation services are not in operation.

10 (d) A person making a report under subsection (a) shall not be re-
11 quired to make a report under K.S.A. 39-1401 to 39-1410, inclusive, and
12 amendments thereto.

13 (e) Any person required to report information or cause a report of
14 information to be made under subsection (a) who knowingly fails to make
15 such report or cause such report not to be made shall be guilty of a class
16 B misdemeanor.

17 (f) Notice of the requirements of this act and the department to
18 which a report is to be made under this act shall be posted in a conspic-
19 uous public place in every adult family home as defined in K.S.A. 39-
20 1501 and amendments thereto and every provider of community services
21 and affiliates thereof operated or funded by the department of social and
22 rehabilitation services or other facility licensed under K.S.A. 75-3307b
23 and amendments thereto, and other institutions included in subsection
24 (a).

25 (g) ~~A minister of religion (as defined in paragraphs (1) and (2) of~~
26 ~~subsection (a) of K.S.A. 60-429, and amendments thereto, and any cus-~~
27 ~~todian of records for such minister) who has reasonable cause to believe~~
28 ~~an adult is being abused, neglected or exploited or in need of protective~~
29 ~~services and such belief arises in the performance of such minister's pro-~~
30 ~~fessional capacity other than during a penitential communication as de-~~
31 ~~finied in K.S.A. 60-429, and amendments thereto, or when acting in some~~
32 ~~other capacity within the scope of such minister's [custodian's] employ-~~
33 ~~ment that would otherwise make such minister [custodian] a mandated~~
34 ~~reporter, such minister [or custodian] shall report such belief of abuse,~~
35 ~~neglect or exploitation or need of protective services as provided in sub-~~
36 ~~section (a).~~

duly ordained

and a regular minister of religion

37 Sec. 4. K.S.A. 2003 Supp. 38-1522, 39-1402 and 39-1431 are hereby
38 repealed.

39 Sec. 5. This act shall take effect and be in force from and after its
40 publication in the statute book.

From: Renae Jefferies
To: Becky Hutley
Date: 1/26/04 4:43PM
Subject: Fwd: Balloon Amendment to HB 2575

>>> "Mike Farmer" <mpfarmer@cox.net> 01/26/04 10:48AM >>>
Renae,

Here are the changes to HB 2575 that we need in a balloon amendment (at the request of Rep. Sue Storm):

Page 1, lines 35 & 36, delete: "and any custodian of records for such minister"

Page 2, lines 36 & 37, delete: "and any custodian of records for such minister"

Page 3, lines 1 & 2, delete: "or custodian"

Page 3, lines 4-10, delete all of (2) and (3)

Page 3, line 23, delete: "and any custodian of records for such minister"

Page 4, lines 33 & 34, delete: "and any custodian of records for such minister"

Page 4, lines 39-41, delete: all three occurrences of "or custodian('s)"

Page 5, line 14, delete: "and any custodian of records for such minister"

Page 6, lines 26 & 27, delete: "and any custodian of records for such minister"

Page 6, lines 32-34, delete: all three occurrences of "or custodian('s)"

If you have any questions you can contact me on my cell phone at:
316-209-3958.

Thank you Renae,

Mike

Michael P. Farmer
Executive Director
Kansas Catholic Conference

Statement on Kansas House Bill No. 2575
January 28, 2004

Kansas House of Representatives members,
I am Rev. H. Sharon Howell, Senior Pastor of First United Methodist Church, Lawrence, Kansas. I am in my thirty-first year of full time ministry in the Kansas East Conference of the United Methodist Church. During that time I have had the privilege of serving small member churches, leading conference youth ministry programs, overseeing the mission and ministry of the districts and conference in the eastern third of Kansas, as well as, working on the staff of Saint Paul School of Theology.

As you consider House Bill No. 2575, I want to encourage you to enact it. It is time that duly ordained ministers of religion and regular ministers of religion are included in the list of persons required to report matters of suspected injury to a child, resident, or others as a result of physical, mental or emotional abuse or neglect or sexual abuse.

I have made the call to the Kansas Crisis Hotline. I would make that call again. I want every religious minister to make the call if they need to. I do not want any religious minister to participate in the conspiracy of silence. When one of us remains silent we become co-conspirators with those who abuse or neglect.

I have sat with children and youth and their parents as they recounted for me the abuse they experienced from adults whom they trusted. The pain and agony could be seen in the face of each parent as they endured each torturous description. Fear became the heartbeat of each victim. Self-worth was eroded. Self-esteem was shredded. Boundaries were exploded.

I have been taught by Marie M. Forture, founder and executive director of the Center for the Prevention of Sexual and Domestic Violence (Seattle, Washington) that child abuse requires an immediate response and a recognition of a larger context. The goals of any effective response should follow in this order:

1. Protect the child from further abuse.
2. Stop the abuser's violence.
3. Heal the victim's brokenness and, if possible, restore the family relationships.

I understand that giving the victim a voice is a high and holy calling. I believe that giving the victim a voice means that religious ministers should be required to report suspected abuse. A religious minister cannot participate in the conspiracy of silence by hiding behind a state law that does not specifically name them. I want you to call us out of the hiding places. Add our names to the list of those required to report. Add us to the list of those who will be vigilant against abuse.

The first report of sexual abuse I encountered as a pastor made me vomit. The teenager shook as she spoke through tears about her fear during the abuse and the terror she carried with her afterward. It paralyzed her for weeks while she wasted away from lack of sleep and food. When she physically collapsed and some pieces of the story began to emerge, then the adults who loved her asked for help. It wasn't enough to be their spiritual touchstone, it required reporting. Taking the step to report should not be optional. Making the report should be seen as a natural pastoral response. For us religious ministers who offer prayer for the injured, make us report the injuries.

I don't have any ambivalence about reporting. I have, and I will again if I need to. I believe that religious ministers are under the same obligation and responsibility to protect children and others who cannot protect themselves. We are to give voice to those who have lost theirs through injury, neglect or abuse.

I do not speak for the church I serve or the United Methodist Church. I speak as a Kansas resident, a duly ordained religious minister who supports House Bill No. 2575.

Rev. H. Sharon Howell
First United Methodist Church
946 Vermont
Lawrence, KS 66044
785-841-7500

Testimony – January 29, 2004

House Corrections and Juvenile
Justice Committee



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Testimony in Opposition to H.B. 2575

Chairman Loyd and members of the committee:

Thank you for the opportunity to testify this afternoon in opposition to H.B. 2575 as it is currently drafted. My name is Mike Farmer and I am the Executive Director of the Kansas Catholic Conference, the public policy office of the Catholic Church in the State of Kansas.

HB 2575 would add ministers, as defined in current law, to the list of mandated reporters within three separate areas of the statutes. It does provide for the exclusion of any information gathered within the penitential communication as defined in K.S.A. 60-429. I appreciate the willingness of Rep. Sue Storm, the primary sponsor of this bill, to work with us regarding changes that, if accepted by this committee, would remove our primary opposition to the bill. Mr. John Jurcyk will be addressing these suggested amendments specifically in his testimony and a balloon has been prepared reflecting these changes.

I would like to take a few minutes here to try and clarify for this committee the differences between this bill, which would add ministers to the list of persons required to report to the proper authorities any suspected physical, mental, emotional or sexual abuse or neglect of children or adults, and the recent actions taken by the Catholic Church to prevent any future situations of child abuse by priests or other church ministers and volunteers.

On June 12, 2002 the Bishops of the United States took decisive action by adopting a *Charter for the Protection of Children and Young People*. The *Charter* mandated that every diocese in the United States put into place certain structures and procedures to assure the safety of children and young people in the future. Some of the provisions of the *Charter* include reporting any allegation of sexual abuse of a person who is a minor to public authorities, criminal background checks on all church personnel who regularly minister to children, the establishment of a diocesan Victim Assistance Coordinator, diocesan seminars or workshops on the nature of child sexual abuse and its prevention, the formation of a lay review board to assist the Bishop when allegations arise, the implementation of age-appropriate educational programs for children to prevent future victimization, the establishment of a national Office

MOST REVEREND GEORGE K. FITZSIMONS, D.D.
DIOCESE OF SALINA

MOST REVEREND JAMES P. KELEHER, S.T.D.
Chairman of Board
ARCHDIOCESE OF KANSAS CITY IN KANSAS

MOST REVEREND THOMAS J. OLMSTED, J.C.D., D.D.
DIOCESE OF WICHITA

MOST REVEREND RONALD M. GILMORE, S.T.L., D.D.
DIOCESE OF DODGE CITY

MOST REVEREND EUGENE J. GERBER, S.T.L., D.D.
RETIRED

MOST REVEREND MARION F. FORST, D.D.
RETIRED

MICHAEL P. FARMER
Executive Director

MOST REVEREND IGNATIUS J. STRECKER, S.T.D.
RETIRED

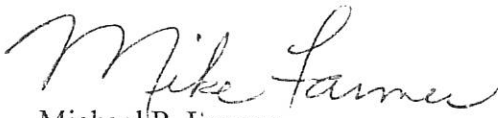
House Corrections and Juvenile
Justice Committee

of Child and Youth Protection, and the permanent removal of any priest or deacon who is proven guilty of child sexual abuse.

Recently an official audit was conducted to determine the compliance of each diocese with the mandates of the *Charter*. A national, independent, auditing firm that employs former F.B.I. agents and other professionals who have been involved in law enforcement conducted this audit. The auditing firm conducted onsite visits of every diocese in the country. The results were released to the media earlier this month. All four dioceses in Kansas were found to be in full compliance with the dictates of the *Charter*. The official results of the audit for each diocese can be found on the United States Bishops website at www.usccb.org. I am very proud of the steps that my Church has taken in this regard.

The bill you are currently considering goes well beyond the mandates of the *Charter*. If however the amendments we are suggesting are incorporated into this bill, and this committee, legislature and governor all believe that there is a legitimate requirement for the addition of ministers as mandated reporters in each of the three areas specified in the bill, then we will not object to its passage.

Thank you,



Michael P. Farmer
Executive Director

STATEMENT OF JOHN J. JURCYK, JR., ATTORNEY
FOR THE ROMAN CATHOLIC ARCHDIOCESE OF
KANSAS CITY IN KANSAS, A NON-PROFIT CORPORATION, A
KANSAS CORPORATION

9

January 29, 2004

Re: H.B. 2575

Chairman Loyd and Members of the Committee:

My name is John J. Jurcyk, Jr. I am with a law firm in Kansas City, Kansas called McAnany, Van Cleave & Phillips, P.A. I am general counsel for The Roman Catholic Archdiocese of Kansas City in Kansas. The Archdiocese comprises 21 counties in northeast Kansas. In Kansas, there are three other Catholic Diocese, namely, Dodge City, Wichita and Salina. I represent the Archdiocese of Kansas City in Kansas.

At the outset the committee should be aware that there could be serious constitutional issues requiring ministers to report information under H.B. 2575 which could be in conflict with religious autonomy under the constitution. The legislature for over 22 years saw fit not to include ministers as mandatory reporters. In the year 2004, what is the compelling reason for the change? In visiting with some ministers, they have suggested to me that making them mandatory reporters will interfere with their pastoral and religious ministries and the ministers suggest to me that making them mandatory reporters where the victim is now an adult is especially troublesome.

It should be noted that H.B. 2575 makes ministers mandatory reporters not only in the area of child sexual abuse but also in the area of physical, mental or emotional abuse or neglect. And H.B. 2575 not only deals with children but adults in nursing homes and adult care centers as well as adults generally.

The law of unintended consequence may come into play. Because the Bill deals with all types of abuse involving children as well as adults, there are some situations that may arise that should be considered. For example, a minister in an inner city church may have in the congregation a number of undocumented aliens who do not have insurance. The children do not receive medical care. Is that child neglect? Does the ministers have to report all parents who do not have health insurance? The foregoing is just one example.

The recent Charter adopted by the United States Catholic Conference of Bishops provides that the church officials will report all allegations involving sexual abuse of persons who are children at the time the abuse is reported. However, it does not go beyond that.

If there is a compelling need and a reason for the amendments, then we are not opposed to H.B. 2575 provided certain parts of the Bill are deleted. Current Kansas law makes 22 occupations mandatory reporters - doctors, dentists, optometrists, psychologists, nurses, school teachers, and administrators, staff of offices of medical care facilities, family therapists, licensed child care workers, firefighters, emergency medical personnel, mediators, juvenile intake and assessment persons and law enforcement officials. These persons are to make mandatory reports when they have reason to suspect that a child, adult or nursing home resident has been injured as a result of physical,

mental or emotional abuse or neglect or sexual abuse.

H.B. 2575 proposes to add ordained ministers to the list of mandatory reporters when the minister has reason to suspect someone who is a child or resident of a nursing home or an adult has been abused in a number of ways. H.B. 2575 incorporates the definition of ministers found in K.S.A. 60-429.

The Bill exempts from reporting any knowledge or information that the minister receives in a penitent-minister communication. Such communications are now privileged under K.S.A. 60-249. And the Bill provides all K.S.A. 60-249 communications are privileged and exempt from mandatory reporting. We are in agreement with the provisions exempting minister-penitent communications.

H.B. 2575 also spells out that ministers who act in a non-ministerial capacity, for example, a principal of a school, are mandatory reporters even though they happen to be ministers. That has always been my interpretation of the existing law. Today a person who is a minister and not currently a mandatory reporter, but is in as a mandatory reporter position or job (principal), must report. A minister occupying a position such as a school principal or teacher, is not exempt him reporting. I have no objection to the provision in the law that spells that out. I think the current law is clear and I do not think the amendment is needed. But I do not object.

The Archdiocese has some suggested deletions which would meet our objection to parts of the Bill. One objection deals with the language making custodians of records for such ministers mandatory reporters. None of the records custodians of other 22 mandatory reporters have this

requirement. I am not sure why records custodians are included. The records custodian language could be burdensome and troubling. The Bill has no definition of a record custodian. The Bill's language could well require anyone who files and has custody of a record for a minister to review and read a record to determine if there is anything in the record about abuse. Again, I mention that this custodian language does not apply to any other mandatory reporters, e.g., school teachers, nurses, doctors, psychologists - all who generally keep more records than ministers. I do not know of any reason why records custodians of ministers are singled out.

The other troubling portion of the H.B. 2575 is contained in subparagraph (h) - subparagraphs (2) and (3) on page 3. Again, the Bill and paragraphs (2) and (3) impose on ministers obligations not imposed on the other 22 mandatory reporters. Paragraph 2 of subsection (h) requires the minister, but not any other mandatory reporters, to report abuse cases even though the victim has reached the age of majority at the time the minister learns of the alleged abuse. First of all, we do not see the reason for this requirement. If it is needed, why is it not needed for the other mandatory reporters. I have a problem with paragraphs (2) and (3) on page 3 in that again, this requirement is not made of any other mandatory reporters.

I have visited with ministers as well as priests and they inform me reporting such allegations when the person is an adult would have a chilling effect on their ministry.

Hypothetically, there could be cases where a person is 65 years old and the person may inform his minister that he was abused 50 years ago by his parents and further asked that it be kept confidential. Reports of 50 year old matters to law enforcement officials who are already

overburdened with work does not appear to me not to serve any useful purpose. Again, this requirement is not made of other mandatory reporters and I recommend that section (h), paragraphs 2 and 3 be deleted.

On behalf of the Archdiocese, if there are compelling reasons for making ministers mandatory reporters, then I have no objection to making ministers mandatory reporters provided that they are treated like all other mandatory reporters.

I am also authorized to state that William Trenkle, Jr., attorney for the Diocese of Dodge City, Kansas, has read the foregoing statement and is in agreement. Mr. Trenkle's father died recently and the funeral is being held today.

Respectfully submitted,



John J. Jurcyk, Jr.
McAnany, Van Cleave & Phillips, P.A.
4th Floor, 707 Minnesota Avenue
P.O. Box 171300
Kansas City, Kansas 66117

JJJJ:kv

Testimony

Before the House Committee on Corrections and Juvenile Justice

Date: January 29, 2004

Introduction

Mr. Chairman, thank you for the opportunity to speak to the Committee today. I am Rev. Dr. Joe Hendrixson, Executive Director of Kansas Ecumenical Ministries. Known colloquially as the state council of churches, Kansas Ecumenical Ministries' membership includes twelve church bodies from nine denominations with congregations in our state. Together, these churches include over 1,700 local congregations and 400,000 church members in Kansas. I appreciate the opportunity to share with you and the members of the Committee the perspective of the churches on this important issue.

The fact that I am listed as an opponent of HB2575 in no way reflects reluctance to support the substance of the bill on the part of the nine member church communions of Kansas Ecumenical Ministries. At the very least, we support any legislation that would protect children or other victims of abusive behavior. We do believe, in fact, that clergy should be mandatory reporters of abuse, within the scope of most of the provisions of the bill before you.

We find ourselves in an awkward, but necessary, position. We only stand in opposition in order to join other speakers today who ask for amendments to two specific parts of this bill. The first is our belief that references to "any custodian of records for such minister" should be deleted. (That language appears on Page 1, lines 35 and 36; Page 2, lines 36 and 37; Page 3, lines 1, 2, and 23; Page 4, lines 33-34 and 39-41; Page 5, line 14; and Page 6, lines 26-27 and 32-24.) Many – I think it is safe to say most – "custodians" of records (where they exist at all) are untrained volunteers who may not be in a position to evaluate the specific situations encountered by clergypersons. We ask that responsibility be placed squarely on the person in the local congregation who is trained and determinative – the ordained or regular clergy.

Second, we ask that §1(h)(2) and (3) be deleted. These two paragraphs single out clergy for special reporting requirements that are not expected of other mandatory reporters. We feel that the definitions, applications, and jurisdictional authority should be consistent throughout the bill for all mandatory reporters. Abuse is abuse, and a victim is a victim.

With these amendments, the member church communions of Kansas Ecumenical Ministries fully support the passage of HB2575. We appreciate the inclusion of the time-honored tradition for the confidentiality of confessions and privileged communications with clergy. While we understand the concern of victim advocates that such provisions weaken the law, we believe that the clause helps clarify the role and function of clergy in a healthy society. The result is a clearer and more functional law for mandatory reporting by clergy.

It is a shame that we must codify into law the religious community's historic place in standing with the voiceless and victims, but the time has come. Our aim "is not to inflict pain, but to relieve it; not to condemn, but to exhort; not to frighten, but to inspire" (P. E. Quinn).

Dr. Joe M. Hendrixson, Executive Director
Kansas Ecumenical Ministries
5833 SW 29th Street
Topeka, KS 66614-2499
(785) 272-9531

About Kansas Ecumenical Ministries

Kansas Ecumenical Ministries is commonly known as the state council of churches. It traces its roots through several Kansas ecumenical organizations dating back to 1865. It includes the Kansas congregations of the American Baptist Churches, the Christian Church (Disciples of Christ), the Church of the Brethren, the Episcopal Church, the Evangelical Lutheran Church in America, the Mennonite Church USA, the Presbyterian Church U.S.A., the United Church of Christ, and the United Methodist Church.

Representatives of these communions, including the Executive Minister or Bishop, serve on the Governing Board of Kansas Ecumenical Ministries and guide its work. The church communions covenant to work together on Christian unity and spirituality, justice, and advocacy.

Kansas Interfaith Impact is the advocacy organization of Kansas Ecumenical Ministries and its member Church communions. Public policy positions taken by Kansas Ecumenical Ministries/Kansas Interfaith Impact are approved by the Governing Board and grounded in study of the Scriptures, theology, and the historic writings of the Church. It bases its involvement in specific issues on social statements of the member communions and the mutual concern of Kansas church leaders.



Office of the District Attorney
Juvenile Division
Eighteenth Judicial District of Kansas

District Attorney Nola Tedesco Foulston
Chief Deputy Kim T. Parker

Testimony In Support of
HB 2575
January 29, 2004

Honorable Members of the Committee:

The following testimony is offered in support of House Bill 2575 which proposes amendments to K.S.A. 2003 Supp. 38-1522, 39-1402 and 39-1431 typically referred to as the mandatory reporting statutes.

The bill essentially amends the above referenced statutes to include clergy as defined in K.S.A. 60-429 to the list of individuals designated as mandatory reporters in situations involving the suspected abuse or neglect of children, adult care residents and other vulnerable adults as set forth in the statutes. This class of citizens within our State is often unable to report the abuse or neglect they are being subjected to out of fear of retribution, abandonment, or simple inability to communicate. Frequently, it is the observation of a mandatory reporter that provides the information necessary to law enforcement to initiate an investigation. This assistance is critical in terminating the continued abuse or neglect of children and vulnerable adults. Furthermore, the simple fact a report is made can frequently prevent future incidents of abuse and neglect on other victims as well.

Many states include clergy within the definition of mandated reporters in cases of suspected abuse and neglect. Our office encourages the State of Kansas to join with the other states that include members of clergy to the list of mandatory reporters. Connecticut, Texas and West Virginia are all among the states that specifically require members of the clergy to report incidents of suspected child abuse notwithstanding the fact the communication may otherwise be privileged. For reference, please see *Connecticut Annotated Statutes Ch. 319a Title 17a-101, Texas Family Code Title 5, Ch.*

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House Corr & JJ
Attachment 11

1-29-04

261.101 and West Virginia Code Annotated Ch. 49 -6A-2. House Bill 2575 currently exempts clergy from reporting incidents of suspected abuse or neglect learned during a penitential communication. Our office would respectfully request that information of suspected abuse or neglect learned during such a communication be reported to the authorities while protecting the confidentiality of any other information learned during the penitential communication. Our office fully recognizes the importance of the sanctity of the penitential communication and does not desire to infringe upon that any further than necessary to make the report of the suspected abuse or neglect.

The language set forth in House Bill 2575 is clear and concise. Passage of this bill will certainly be a benefit to all of the citizens of our state. The Office of the District Attorney for the Eighteenth Judicial District respectfully urges the passage of this important bill with the suggested language that abuse or neglect learned during the penitential communication be reported.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read 'R W Paschal', written in dark ink.

Ron W. Paschal
Chief Attorney
Juvenile Division

For: Nola Tedesco Foulston
District Attorney For the Eighteenth Judicial District