Approved: 2-16-93
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairman, Representative Michael R. O' Neal at 3:30 p.m. on February 16, 1993 in room 313-S of the Statehouse.

All members were present except:

Representative Clyde Graeber - Excused
Representative Elaine Wells - Excused

Committee staff present:

Jerry Donaldson, Legislative Research
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the Committee:

Representative Vince Snowbarger
Representative Gary Haulmark
Kirk Lowry, Kansas Trial Lawyers Association
Ramon Laurie, Russell, Kansas
Christine Bondbank, Overland Park, Kansas
Mark Gratny, Gratny Quarter Horse Ranch ,Leavenworth, Kansas
Larry Childs, Topeka, Kansas
Randy Robb, Manhattan, Kansas
S.W. Longan III, Stillwell, Kansas
Deborah Cox, Assistant Attorney General, Kansas Racing Commission
Representative Denise Everhart
Thomas Alongi, Assistant Geary County Attorney
Kyle Smith, Assistant Attorney General, KBI
Representative Alex Scott
Cathy Leonhart, Kansas Association of Court Service Officers
William Deppish, Sheriff, Geary County

Hearings on HB 2314 were opened regarding limiting the liability of public school teachers.

Representative Vince Snowbarger appeared before the committee as a sponsor of the bill. He explained that the bill would protect a teacher from liability for acts of ordinary negligence. He stated that this bill was not meant to cover the teacher if there is already automobile insurance in place, such as a teacher traveling from one school to another school. Snowbarger suggested adding the immunities and limitations that are available through the Tort Claims Act. (Attachment #1)

Representative Adkins asked how this would change or expand sections in the Tort Claims Act.

Representative Snowbarger stated that the intent of the bill is not to change the Tort Claims Act.

Chairman O'Neal asked how the teacher is defended if a case is filed against them.

Representative Snowbarger stated that most school districts take on that responsibility.

Representative Gary Haulmark appeared before the committee as a proponent of the bill. He stated that teaching is a difficult and challenging job and in order to make it more effective, teachers should be free from liability concerns. (Attachment #2)

Representative Adkins stated that negligence is negligence regardless of what your profession is. He asked why we should single teachers out with this legislation.

Representative Haulmark stated that in most professions you are dealing with adults who can be held accountable for their actions. When dealing with kids they can't be.

Representative Garner questioned why this bill should be allowed to pass and be a substitute for the judgement of a jury.

Representative Haulmark stated that we need to eliminate fears in the minds of teachers about being sued.

Kirk Lowry, Kansas Trial Lawyer Association, appeared before the committee as an opponent of the bill. There doesn't appear to be anything broken that needs to be fixed. The Kansas Tort Claim Act currently covers this, therefore this is an unnecessary piece of legislation. They have two concerns in regard to the bill. The first is a need for clarification in line 13 of the definition of a teacher which states "any teacher in public school", it is unclear as to whether this act would cover private teachers. The second is that this bill is a violation of the Kansas Bill of Rights, dealing with remedy by due course of law, or a violation of the equal protection clause. (Attachment #3)

Chairman O'Neal questioned what the lawyers would lose by eliminating a teacher as a name defendant.

Kirk Lowry stated that there was basically nothing that would be lost unless damages exceeded the $500,000 tort claims limit.

Hearings on HB 2314 were closed.

Hearings on HB 2222 were opened regarding kansas equine activity liability act.

Ramon Laurie, Russell, Kansas, appeared before the committee in support of the bill. He stated that the important factor involving any equine activity is the matter of liability. The cost of liability insurance is about $3,500 per event or through a private insurance company the cost would be $600 a day for 2 day weekend. (Attachment #4)

Christine Bondbank, Overland Park, Kansas, appeared before the committee in support of the bill. She stated that a lawsuit was filed against them and the plaintiff was awarded one million dollars. Their insurance covered only $100,000. She explained the case in the attachment. People should understand that you assume a risk when you are around an animal that big. (Attachment #5)

Mark Gratny, Gratny Quarter Horse Ranch, appeared before the committee as a proponent of the bill. He stated that he and his wife recently went to get auto, home and health insurance and were denied because they have an equine center on the homeplace. He stated that there is an insurance availability problem and where it is furnished there is an affordability problem. 23 other states have liability protections. In Ohio, they had a four day show that brought in between 95 to 100 million dollars. (Attachment #6)

Larry Childs, Topeka, Kansas, appeared before the committee in support of the bill. His cost of liability insurance is $8,000 a year, which has not quite doubled in the last 4 to 5 years, or $400 a day for a show. (Attachment #7)

Randy Robb, Manhattan, Kansas, appeared before the committee as a proponent of the bill. People that have grown up around horses know the risks, but it's those that haven't that usually put the blame elsewhere. Kansas State University have 150 students enrolled each year in the Equine class. Many of these students go to other states that have a better support system. He stated that in Oklahoma City seven shows in 1989 brought in 25 million dollars. This bill is patterned after the Colorado statute.

S.W. Longan's wife appeared before the committee on behalf of her husband. They are in support of the bill. Judges need some guidelines as to what is a risk and what is a liability. She requested several amendments. The first, on page 1, line 41 to add the language "western games, hunting, halter classes and racing." The second, on page 2, line 29 would be to add "...an equine to behave in ways i.e. running, bucking, biting, kicking, shying, stumbling, rearing, falling, stepping on, that my result..." The last proposed amendment would delete subsection (a) and then reletter and renumber the remaining provisions. (Attachment #8)

Deborah Cox, Assistant Attorney General, Kansas Racing Commission, appeared before the committee and stated that the commission does not have objections to the bill as it is currently worded. However, if an amendment to section 5(a) is allowed that would extend the provisions to licensed race tracks, she requested to be able to report to the commission and get their response before the committee adopts the proposed amendment. (Attachment #9)

Kirk Lowry, Kansas Trial Lawyers Association, appeared before the committee in opposition of the bill. He stated that no special interest group should be given immunity for their business. The court case Fredrickson v. Mackey held that negligence is never presumed, that negligence must be proven and shown to be the proximate cause of the injury. (Attachment #10)

Hearings on HB 2222 were closed.

Hearings on HB 2272 were opened dealing with the opening of juvenile records.

Representative Everhart appeared before the committee as a sponsor of the bill. She explained that this would change the existing confidentiality requirements and would open the official file of any juvenile 14 year of age and over who commits any act, that if committed by an adult would constitute a felony. (Attachment #11)

Chairman O'Neal asked if there might be reason to just open records that are person crimes.

Representative Everhart said that she preferred opening all records but that she would be no problem with doing that.

Thomas Alongi, Assistant Geary County Attorney, appeared before the committee in support of the bill. He stated that the victims have the right to know what is going on with juveniles. Alongi is in support of HB 2272 & HB 2331 because they impose little cost, facilitate the prosecution of 16 & 17 year olds offenders who travel from states where the age of majority is already 16 and enlarge the range of alternatives to a judge when sentencing, (Attachment #12)

Representative Carmody questioned how the federal government defines a juvenile.

Alongi stated that the set age is 18, but they say that whatever the state defines as a juvenile they should not be held in adult prisons.

Kyle Smith, Assistance Attorney General, KBI, appeared before the committee on behalf of the Attorney General and Director Robert Davenport, in support of the bill. He stated that children of today are more sophisticated and are involved in criminal activity at a higher rate. Information needs to be available to the public. (Attachment #13)

Hearings on HB 2272 were closed.

Hearings on HB 2331 were opened regarding the prosecuting age 16 years or older as an adult.

Cathy Leonhart, Kansas Association of Court Service Officers, appeared before the committee in opposition of the bill. They are opposed to handling 16 & 17 year old offenders in criminal court. However, there are those juveniles that need to be dealt with as adults. (Attachment #14)

Minutes of the House Committee on Judiciary, Room 313-S, Statehouse, at 3:30 p.m. on February 16, 1993.

Chairman O'Neal asked if they would be in favor of the bill if the decay factor was eliminated from the Sentencing Guidelines.

Leonhart stated that on sexual offenses, sale of drug and A,B felony would be things that would need to be considered under the decay factor.

Representative Alex Scott appeared before the committee in support of the bill. He commented that with violence, gangs and drug distribution need to be controlled, and this is a good start. Attachment #15)

William Deppish, Sheriff, Geary County, appeared before the committee in support of the bill. He commented that at any one time they have between 20 -30 juveniles dealing in drugs. They are opening a juvenile center at a cost of $125 a day. If we could use the adult jails to house the juvenile's it would help the cost.

Hearings on HB 2331 were closed.

Chairman O'Neal told the committee that the bill request, by Joan Hamilton, regarding county attorneys and district attorneys was not necessary. Anywhere county attorney appears in the statute there is also a statute that says this means district attorney. The Chairman stated that unless there is objection the bill request would be withdrawn. No objection was noted.

The Committee adjourned at 5:45 p.m. The next Committee meeting is February 17, 1993 at 3:30 p.m. in room 313-S.

GUEST LIST

HOUSE JUDICIARY COMMITTEE

DATE FEBRUARY 16, 1993

NAME	ADDRESS	ORGANIZATION
Richard Musser	Topeka	KTLA
Dorothy Taylor	Topeka	PIAK
Mary Lee Bennett	Topeka	K.A.S.A.R.
Gene Johnsen	Topeka	
Donald Johnson	McPherson	Intern
Rick Liby	Topeka	Gehrt & Roberts
William L. Deppish	Geary County	Geary County Sheriff
R. Freese	Topeka	Ks Gov Consulting
Joe Rickabaugh	Topeka	Ks. Livestock Assoc.
Russ FREY	TopeKA	Ks Vet Med Assoc.
Kirk W. Lowry	Topeka	KTLA
Cameron Brewer	"	KTLA
Kitty Pursley	Manhattan	Equine Clothiers
Ann White	Belvue, Ks	NKHA, VVEC
Randel Raub	Manhattan, KS	KTA KQHA
Jo Turner	Meriden KS	NW. Barrel Horse Assn.
Lloyd. Bryson	Meriden, Ks	EQUINE OWNER
Mark Gratny	Leavenworth Ks	Equine Owner
Sandra Longan	Stilwell	Kevin Farms,
Deborah Cox	Topeka	KRC
JERRY HATTAWAY	TOPEKA	KPOA
Cathy Lienhart	Topeka	KACSO

GUEST LIST

HOUSE JUDICIARY COMMITTEE

DATE 2-16-93

NAME	ADDRESS	ORGANIZATION
Claudia Gilchrest	Topeka,	Youth Service
Betty M Glover	Topeka	KU
RAMON LAURIE	ROSSELL KANS	INDIVIDUAL
Bill Curtis	Topeka	Ks Assoc of School Bds
Pat Baker	Topeka	KASB
Chris Bordark	Overland Park	individual
Debi White	Overland Park	White Fox Manor
Linda Pribath	Overland Park	"
Kate Fowler	Topeka	"
Robert Barbe	Fairway KS	White Fox Manor Equine Owner
Nancy Kindling	Topeka	LWV of KS
Bonnie Robles	Topeka	Topeka Round-Up Club
Kathy Childs	Topeka	Topeka Round up Club UKHA KCHA
Ruth Peckham	Topeka	Topeka Round-Up Club Topeka Dressage Society
Joe Peckham	Topeka	Topeka Round up Club Horse Breeder
Jonathan Paretsky	Lawrence	KNEA
Mike Boyer	Topeka	KBI
BLAINE CARTER	TOPEKA	KSC
KEITH R LANDIS	TOPEKA	CHRISTIAN SCIENCE Comm ON PUBLICATION FOR KS
JIM CLARK	TOPEKA	KCDAA
Doug - Bowman	"	Corporation for Change
FRED RAMIREZ	TOPEKA	INDIVIDUAL

Jackie Cortright	Topeka	KSC
Debra Pedigo	Topeka	KSC
Jim Lady	Topeka	BLE
Rick Jennis	Oak City	B.L.E.
Virginia A Bird	Topeka	
Harry Herington	Topeka	League of KS Municipalities

HOUSE OF REPRESENTATIVES
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TOPEKA

VINCENT K. SNOWBARGER
MAJORITY LEADER

COMMITTEE ASSIGNMENTS
CALENDAR AND PRINTING, CHAIRMAN
INTERSTATE COOPERATION
LEGISLATIVE COORDINATING COUNCIL

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE ON

HOUSE BILL 2314

February 16, 1993

H.B. 2314 is a fairly straight forward approach to the issue of a teacher's liability while performing their professional responsibilities. The main provision is found in subsection (b).

Under the provisions of the bill a teacher could not be held liable for "ordinary negligence" in performing their assigned duties. They could be held responsible if their wrongful acts or omissions were willful or wanton or intentional. The bill does not relieve the educational institution from liability. In most instances, the institution would be sued as well as the teacher.

The bill is patterned somewhat after our current statutes dealing with volunteers and directors of charitable organizations. The purpose of that legislation was to encourage people to remain actively involved in the activities of the organization, because we felt those activities were worthwhile.

The public, through the legislature, is requiring more and more from its teachers. Generally, we feel that what we are requiring will benefit the educational process. With those new requirements come a greater

burden in terms of workload, paper work, continuing training, etc. Our attempts to enhance the educational experience of our students come at the same time that teachers suffer the threats of our litigious society.

They must constantly be concerned that someone will second guess some decision they have made. Most often, a suit will be unsuccessful. However, in the meantime the teacher has had the distraction of a lawsuit and has been required to take time away from teaching to attend to the matter.

I would again emphasize that an aggrieved party is not without recourse. If the teachers's actions are willful, wanton or intentional, the teacher can still be held liable. If the teacher has indeed been negligent, the educational institution can still be held responsible under the theory of respondeat superior, in other words, the employer is responsible for the negligence of the employee.

It is not intended by this bill that a teacher cannot be held accountable for failure to do his/her job. The educational institution must still have the ability to deal with the negligence or incompetence of their employee. H.B. 2314 is intended to speak only to a teacher's liability through the court system.

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HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: GOVERNMENTAL ORGANIZATION & ELECTIONS
TRANSPORTATION
ECONOMIC DEVELOPMENT
RULES & JOURNAL
JOINT COMMITTEE ON ECONOMIC DEVELOPMENT

Testimony Before the
House Judiciary Committee
In Support of H.B. 2314

Mr. Chairman and Members of the Committee

Teachers are one of the few professions that are held potentially liable for the actions of people, who, the law considers not responsible for their own behaviors. Students are not held strictly accountable for their behavior as juveniles. Teachers can be held accountable for the actions of children, specifically the actions of children directed toward other children are a concern.

Teachers often have to make choices as to how to supervise students. Often local school board policies do not address specific situations. Policies can also be conflicting. For example: in the case of a teacher stopping a playground fight, the teacher can be asked by board policy to intervene in the fight andsupervise the other students on the playground simultaneously.

Teachers are often asked to make do with equipment that has outlived its usefulness. Teachers often work with worn maps, chairs, tables, etc. that appear older but safe. Teachers are asked to judge the safety of this equipment and held liable for their failure. Not only are teachers not qualified to make equipment judgments they often cannot control the budget of the school enough to effect change.

In closing, teaching children is difficult and challenging. In order to receive more effective teaching, teachers should be free from liability concerns. Teachers making professional choices must be held professionally accountable. But let teachers teach. They do not need to be looking over their shoulders at a civil action because of some event they cannot and should not be expected to predict.

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Attachment #2
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PALMER & LOWRY

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KIRK LOWRY
L.J. LEATHERMAN

*CERTIFIED CIVIL TRIAL ADVOCATE
BY THE
NATIONAL BOARD OF TRIAL ADVOCACY

Testimony
of the
Kansas Trial Lawyers Association
before the
Senate Judiciary Committee
regarding
HB 2314- Teacher's Liability
February 16, 1993

This is an unnecessary piece of legislation. What this attempts to do is avoid teacher liability and impute that liability to the District. It has absolutely no impact in the public sphere.

Pursuant to K.S.A. 75-6103 the governmental entity is already liable for damages caused by the negligence of an employee while acting within the scope of the employment, and pursuant to 75-6104, all of the statutory exceptions to liability are preserved to the employee as well as to the employer.

What that then leaves is a person required to hold a teacher's certificate who is teaching for a private enterprise.

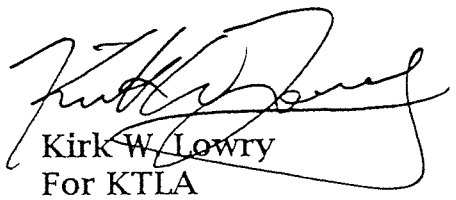
The idea of statutorily immunizing anybody is a bad idea because it absolves people of personal responsibility for the negligent act. The purpose of tort law is two-fold -- one is to compensate the victim, the other is to deter like conduct by holding people responsible for negligence. There is no justification in the private sphere (even if there is arguably one in the public sphere) to immunize individuals.

This most likely is a violation of § 18 of the Kansas Bill of Rights dealing with remedy by due course of law, or a violation of the equal protection clause of the Bill of Rights as it would apply in the private sphere.

As I have previously indicated it has absolutely no impact in the public sphere.

FAX (913) 233-3703

Respectfully submitted,



Kirk W. Lowry
For KTLA

KWL/sd

My name is Ramon Laurie and I reside in Russell, Ks. For the past few years, I have been the county wide 4-H horse project leader. Currently I own seven horses. My own personal riding is limited to leisure type riding and helping area ranchers with their cattle. I do organize and put on 4-H horse shows in the spring and at the fair.

Horses have always been objects of affection and curiosity. If you bring a horse close to a group of people, immediately a large number of the people will be crowding around the horse. Some will be petting it, some will be talking to it, and some will just stand and watch it. This mix of people and horses does not occur without problems. Horses are not pets like dogs or cats, and cannot be treated as such. Any movement of this large animal does not have to be malicious to cause possible injury.

Mere mention of the name Dodge City, anywhere in the United States, brings to mind an image of a cowtown setting in a much romanticized era of our history. Kansas uses this era recognition to promote many events during the year. Many tourism dollars are spent annually attending areas and functions depicting life in that time. Dodge, Wichita, Abilene, Hays, and Fort Larned all capitalize on this theme. But, why only watch the stagecoach, when for a small token of your appreciation, you can actually ride in one? This line of reasoning sells many rides throughout the state.

The national horse breed organizations are all promoting noncompetitive events for their members. Leisure riding tops the list of those events. At a show, there is only one winner of the class. On a trail ride through any of the scenic portions of our state, all are winners. This is the fastest growing form of equine activity at this time. The Gant Larson Ranch, west of Medicine Lodge, played host to approximately 600 riders last May, over a period of three weekends, many from out of state.

The one single important factor affecting all these scenarios is the matter of liability. This is why I am asking that you pass this bill into law. We as horsemen and sponsers, promoters, or organizers are not asking for a blanket to cover all possible situations. If we act irresponsibly, action can be initiated. However, given the nature of horses, we do not feel that we should be held responsible for actions or events that are beyond our control. We can train the horse, instruct the rider, provide a safe place to ride, but we cannot physically control the actions of the horse or rider.

I thank you for allowing me to present my views on this bill. I would be happy to answer any questions you might wish to ask.

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On January 12, 1993, a jury in Buchanan County, Missouri handed down a verdict in the case Yagello V. Bondank in favor of the plantiff, Jeri Lee Yagello, and awarded her one million dollars. The defendant in the case was my husband, John Bondank Jr.

Back in August, 1980, my husband John and I went to Jeri Lee Yagello's riding school. Up to this time, neither John nor I had ridden horses except for the rare trail ride - probably neither of us had ridden more than 4 times in our lives. Jeri Yagello's riding school was called Wind in the Willows and was located about a mile east of KCI airport. We fell in love with the horses and the experience of riding horses. After only three months, John purchased from Jeri Yagello a five year old horse named Trapper. We paid Jeri board to keep the horse for us and we agreed to allow her to use this horse for riding lessons for other students. So John and other students rode the horse in lessons. John took two one hour lessons a week. We paid Jeri Yagello to feed, train, arrange for veterinary and farrier. The horse was totally in her care. This arrangement continued for approximately one and a half years. We really loved this horse. At no time during our ownership of him did he ever display any vicious or agressive behavior.

In early January, 1982, Jeri Yagello was bringing six horses into her barn. John's horse Trapper was one of those horses. Jeri Yagello alleges that after bringing all the horses in except Trapper, she chased him around the paddock, unable to catch him. Finally she coaxed him into his stall through an outside door with a bucket of grain. She says he went into his stall, and she followed him in, turning to latch the door behind her. At this point she was standing directly behind the horse. Jeri says he turned his head and looked at her, then kicked her in the face. She fell and made her way to her house, which was 300 yards away, and managed to call a friend who took her to the hospital. There she underwent extensive facial surgery, and was in the hospital for five days. In the months following she had several more surgeries, and allegedly suffers today from serious side effects of this accident. All her medical bills were paid by her own health insurance. Today she is still operating a riding facility.

A few days after she returned to her farm from the hospital, she tol
John that she would sue him if he did not have Trapper destroyed. Jo
had both been devastated and stunned to hear that Trapper had kil
fact, we did not believe it - we felt sure that Jeri was mis
only witness and it was her word against ours. In order to

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avoid a lawsuit which we knew she was capable of filing, we sold the horse at an auction. Shortly after this, we left Jeri Yagello's riding & boarding facility for good. Five years later, a few days before the statute of limitations was up, Jeri Yagello filed a lawsuit against my husband. We learned through her deposition that she was accusing John of making Trapper vicious by feeding him carrots and apples before riding lessons. She alleged that when she sold the horse to John he was not vicious or aggressive, but that John had made him so. This became the crux of her case and the jury believed it. In awarding Jeri Yagello one million dollars the jury did concede that the manner in which she caught the horse and brought him into the stall was dangerous and careless, so they halved the award, making John liable for $500,000. We were insured for $100,000, which makes us liable for $400,000. We now have a judgement against us for that amount, and we are in economic limbo. We would not be able to qualify for even an automobile loan at this point because of this judgement against John. John's wages could also be subject to garnishment now.

This lawsuit has affected us in so many ways we never dreamed possible. Our personal credibility, our integrity, our reputation has been questioned and scrutinized. John and I now have a very cynical and probably jaded view of our legal system because of the jury's decision in this trial.

How could anyone really believe that feeding treats to a horse makes it vicious? It is incredible to us that this jury was so manipulated, but beyond that, the truth of this whole matter seems to be incidental to the law. The jury is allowed to know only certain facts, and are denied others - they are drowned in medical testimony which can only encourage sympathy - they are not priveledged to know that the plantiff's medical costs are entirely paid by her own insurance; that John and I signed a release which stated we would not sue Jeri Yagello if we were injured riding her horses; that we complied totally with Jeri Yagello and had the horse sold at a killer auction. The list goes on.

This case is being appealed.

It is important that the bill, No. 2222, becomes law. We know dozens of people who love their horses and spend a great deal of time and money caring for them. A lot of these people board their horses - what does Yagello V. Bondank mean for them? Will anyone be safe from litigation - this precedent makes it a risk to board a horse at a riding stable, makes it a risk to take a horse to a trainer, to a vet, a farrier.

The significance of this case is often times people who have no understanding

of horse behavior or of the inherent risk in handling horses are chosen to be jurors. These jurors are asked to decide the liability and/or negligence of people involved in horse accidents, and due to their ignorance and lack of experience in horse related matters, make excessive and exorbitant awards. Guidelines must be set for these juries. This bill would be that guideline.

KANSAS EQUINE ACTIVITY LIABILITY ACT

House Bill No. 2222

I, Mark Gratny, along with my wife, own and operate the Gratny Quarter Horse Ranch, which is located west of Leavenworth. We breed, raise, train and sell Quarter Horses, and have done so for the past 18 years. I have been involved with horses since childhood, and chose, after graduating from Kansas State University with a degree in animal science, to continue in the horse business rather than to focus on the cattle industry.

My main source of income is from training horses and from coaching their owners in techniques of horsemanship and showing. My customers range from the first time horse owner to the advanced showman who attends any of the 60 registered Quarter Horse shows in the state as well as the national level competitions such as the American Junior Quarter Horse World Championship Show and the American Quarter Horse Congress.

Over the years, the increasing problem of liabilty for potential injuries has become a major dilemma. Even though our own farm safety record has been excellent, we along with many other horse owners have found it increasingly difficult to find liability coverage, much less find affordable coverage. Many companies refuse to

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insure farms with horses, even though they routinely cover other types of livestock. Sponsors of events such as horseshows, 4-H clincs, rodeos, trail rides, and cross-country events are being forced to discontinue such meets because of the lack of availability of reasonable liability protection.

The liability issue carries over into our personal lives as well. Just this week we inquired about a personal liability umbrella policy to give us greater coverage on our home and auto. As soon as State Farm realized that our home is on the same premise as our farm , and that there are horses on the premises, they refused to consider the issue any further. This problem has to be addressed. In order for the horse business to survive as an industry and for the recreational rider to have the opportunity to ride horses, the participants must take responsibility for the inherent risk involved because of the nature of horses.

For those of you who have never been around horses, I should explain that horses range in size from the pony weighing 400 pounds to the draft horse weighing a ton. The average Quarter Horse is 1100 pounds. When you combine this mass with the propensity of the horse to react unpredictably to such things as sounds, sudden movements, and unfamiliar objects, the potential for injury exists.

Even though the incidence of serious injury is low, there is an inherent risk in horse related activities that must be accepted by the participants.

You might ask, " Why does this matter? How are horses any concern of the state of Kansas?" The answer is twofold. First, horse-related activities are a tremendously popular recreational activity in the state and the country. In Kansas there are 3200 children enrolled in the 4-H horse project. Most of these families have more than two horses. There are more than fifteen breeds of horses in the state, each represented by breed associations and activities. Team roping, team penning, barrel racing, rodeo, and hunter-jumper competitions are well attended year around in the state. Conservative estimates show that Kansas has more than 200,000 horses.

For our youth, horses are an excellent hobby. They teach children responsibility, coordination, and dedication. The youth learn skills that last a lifetime and enable them to think under pressure and in competition. Many parents have acknowledged to us how thankful they are that their youth are invoved with horses and have managed to stay free of drugs, alcohol, and the problems on the streets.

Secondly, horses are an important industry in

Kansas. Conservative estimates suggest that there are more than 200,000 horses in the state, with a value of more than three hundred million dollars. Directly or indirectly, many businesses are suported by the horse industry.

1. Real Estate - Just drive out of the city limits of Topeka and it's clear that almost every tract of land has one or more horses standing in the backyard.

2. Farming - Horses require grain and hay for feed which is usually purchased at the local farm store. A conservative estimate of feed costs is $ 600 per horse per year. Thus, the horse industry contributes $ 120,000,000 per year to the farming community.

3. Veterinary Medicine - Horses require routine immunizations and deworming, as well as emrgency care for injuries. A very conservative $ 150 per year per horse for routine healthcare contributes $30,000,000 to the Kansas economy.

4. In addition, barn builders, fence suppliers, truck and trailer dealers and western and English clothing and apparel stores all obtain a substantial portion of their income from direct horse-related needs.

5. Shows - State, local and national shows are going on year round somewhere, and facilities are required for these events. Kansas alone has had close to 60 Quarter Horse shows a year. Each of these shows brings significant money into the local economy through the motel and

restaurant visits in addition to the trips to the gas stations! However, many of the smaller clubs are being forced to discontinue sponsoring these events because of the liability issue. Kansas is centrally located and has a number of larger facilities that could draw national shows. For example, what started as a 4 day show in Columbus, Ohio 25 years ago, has grown to be the largest horseshow in the nation and the largest convention in the state of Ohio each year. The governor of Ohio gives a small speech each year at the opening ceremonies and thanks the participants for spending the millions of dollars in Ohio in those 20 days!

In summary, I hope you have some idea of the impact of the horse industry on the economy of Kansas. The liability problem is a major deterrent to the continued growth of the horse business. The Kansas Equine Activity Liability Act would be a major asset in the further development of the horse industry. I strongly urge your support of this bill so that other families may continue to enjoy horses as my family has.

TESTIMONY

ON

HOUSE BILL 2222

"THE KANSAS EQUINE ACTIVITY LIABILITY ACT"

Presented to

THE HOUSE JUDICIARY COMMITTEE

February 16, 1993

by

Larry Childs

HOUSE JUDICIARY
Attachment #7
02-16-93

Mr. Chairman, members of the House Judiciary committee:

Thank you for your time this afternoon to hear from myself and other concerned horsepeople throughout Kansas. My name is Larry Childs. My wife, Kathy and I have a small horse breeding operation here in Topeka. Kathy is a professional riding instructor and trainer and has over 40 students year round and participates in approximately 25 shows per year. We are also members of the Northeast Kansas Hunter Association and the Topeka Round-Up Club, a riding club here in Topeka.

House Bill 2222, the Kansas Equine Activity Liability Act is of great interest to us and the equine industry. Over the years we have seen the negative economic and mental effects that have been associated with the overly excessive liability that the equine industry has assumed.

On many occasions, Kathy, a certified instructor with 15 years of teaching experience, and I have had late night discussions of the detrimental effects her teaching could have on our financial future. For example, if a rider has been hurt because of a horse stumbling or shying during a lesson, that liability, which is beyond our control, is one that we could possibly face. We find it difficult to understand why the courts, increasingly, over the years, have found that the inherent risk of a horse should be assumed by a horse professional. Kathy's basic objective is to instruct riders on the safety and proper handling of the horse and the responsibility for such is seriously taken.

Fortunately, through all the years of teaching and training of horses, we have yet to encounter a lawsuit.

As a spokesman for the Northeast Kansas Hunter Association, a 250 member organization of horsepeople participating in over 15 shows on the circuit annually in Northeast Kansas, I express to you the association's great concern and uneasiness about the excessive liability issues facing them as horse show sponsors and owners.

The same holds true for the Topeka Round-Up Club, a 100 member organization that has a 300 acre facility complete with trails, indoor and outdoor arenas and stabling facilities. Because of the diverse horse activities, such as trail riding, horse shows, clinics, and ropings at the Club, the Board of Directors has a great concern for the liability issues it faces. Although these concerns are part of being a responsible provider of a horse facility, the inherent risks of equine activities as defined in the bill are beyond the control of what the Board can provide as safe and responsible facilities.

Our situation is typical of thousands of other equine owners, associations, clubs and professionals throughout Kansas. HB 2222 will give the Kansas equine industry a chance to concentrate on giving our customers, clients, and members, safe, good quality products and services without the unnecessary need of worrying about sure financial ruin arising from a lawsuit that is based on inherent risks of the equine. This does not, however, mean that we are asking for the burden of liability, for our activities, to be lifted from our shoulders. We only ask that, people who participate in equine activities, through statute, understand the "inherent risks" of the equine.

As stated in the November-December, 1992 issue of the Equine Law & Business Letter, when summarizing similar legislation already enacted in Colorado, Virginia, Washington, West Virginia, Wisconsin and Massachusetts, the author states, "In general, the statutes seek to make horse businesses and other equine activities more profitable and insurable by eliminating the risk of lawsuits for injuries arising out of the inherent dangers of the sport of horseback riding. Many of the statutes preserve the defense of assumption of the risk as applied to horseback riding, protecting the doctrine from the whims of appellate courts which have watered it down in past years. The new laws strive to ensure that sponsors of equine activities and horse professionals will not have to defend lawsuits over matters they cannot control".

In closing, we ask that HB 2222, the "Equine Activity Liability Act" be favorably enacted upon in this committee.

Again, I thank you for your time. I will stand for any questions.

Testimony of S.W. Longan, attorney at law, regarding

House Bill #2222

February 16, 1993

Judiciary Committee

I am in favor of House Bill 2222, the Kansas Equine Acitivity Liability Act.

This act benefits tens of thousands of Kansans. It has economic benefit. It has moral benefit.

This act DEFINES the liability of those citizens that own, work with or associate with horses. It is needed to instruct people about their liability uniquely involved with equines. All citizens, including lawyers and judges need this guideline. It codifies the common law and restatement of torts. I feel this is an important benefit of this act.

Under the law horses and mules are "domestic animals", presumed not to be dangerous. The only time an owner or possesor of a horse is liable for injury is when the horse has a dangerous propensity, abnormal to it's class, about which the owner knows or has reason to know. This is to be distinguished from the owners liability for his negligence. These two have separate and distinct premises. One is based on the acts of a horse and the other on the fault of the owner or possesor of the horse. Sometimes they overlap, but generally horses do things because the are horses. People make their liability by their fault.

We have to understand and accept the reality there is a natural risk when dealing with a domestic animal such as a horse. Horses are big, heavy and strong. Their natural instinctive acts can hurt people. There is physical risk inherent in associating with horses. Those who desire to be in the proximity of horses must accept those risks, take the responsibility for them, and be prohibited from bringing suit on those grounds.

HOUSE JUDICIARY
Attachment #8
02-16-93

When this act was first drafted, it was based on several which have recently been enacted throughout the United States. It closely follows the Colorado Statute.

After the act was introduced and studied by Kansas horsemen and lawyers, we have several suggested amendments which would clarify and enhance the act's provisions. We ask the following amendments:

I. Page 1 Section 3.c.1 line 41
....western games, hunting, halter classes and racing.

II Page 2 Section 3.f.1 line 29
....an equine to behave in ways i.e. running, bucking, biting, kicking, shying, stumbeling, rearing, falling, stepping on, that may result....

III Page 3 Section 5
delete (a) then reletter and renumber the remaining provisions.

Presentation to the
House Judiciary Committee
February 16, 1993
Hearing on HB 2222
Room 313 South
3:30 p.m.

Deborah D. Cox, Assistant Attorney General
Kansas Racing Commission

Written Testimony

Due to the fact that this is my first opportunity to speak before you, I will introduce myself. I am Debbie Cox, Assistant Attorney General, serving as General Counsel for the Kansas Racing Commission. I am appearing before you to speak on behalf of the commission, in regard to HB 2222. The commission does not have any objection to the bill as it is currently worded. As we understand the current wording, under section 5(a), the bill does not apply to any present or future horse racing facilities.

However, if any amendments are suggested for section 5(a), I would request that I be allowed to report back to the commission and get their response before this committee adopts any proposed amendments. Our commission does want to be kept alerted as to any amendments to the bill, but has no objection to the current wording.

One last informational point I would like to make. This year the commission will request to be removed from jurisdiction over any non-parimutuel horse racing. Therefore, depending on how HB 2222 is interpreted, the bill may apply to county fair horse racing if no parimutuel activities were involved.

I have no further comments at this time. Thank you for the opportunity to speak before you today on behalf of the Kansas Racing Commission.

93DDC2-nw

HOUSE JUDICIARY
Attachment #9
02-16-93

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REPLY TO:
☐ KANSAS OFFICE
☐ MISSOURI OFFICE

February 16, 1993

Ms. Cameron Brewer
Kansas Trial Lawyers Association
Jayhawk Tower
700 S.W. Jackson, Suite 706
Topeka, Kansas 66603

SENT VIA TELECOPIER
(913) 232-7730

Re: HB 2222

Dear Ms. Brewer:

After reviewing House Bill 2222, I strongly recommend that KTLA oppose this legislation.

Currently the state of negligence law in Kansas provides that a person engaged in any business or occupation must use reasonable precautions to prevent that business or occupation from causing injury to others, and what constitutes reasonable precautions will vary with the character of the business and the place in which it is conducted. If a business or occupation is a particularly hazardous one, it will require increased care; the greater the risk the more imperative the obligation.

The standard of care in Kansas is ordinary care, which is that degree of care that the ordinarily prudent person would exercise under similar circumstances. If circumstances were such that a person of ordinary common sense would recognize that by not using ordinary care in his own conduct with regard to those circumstances, his act or acts would place another in danger, the duty arises to use ordinary care to avoid the danger.

I do not have any figures at my immediate disposal, but common sense tells me that the economic benefit to the State of Kansas is miniscule in comparison to the harm that could result to its citizens from passage of this bill. Principally, the bill as proposed would encourage negligence on the part of "equine activities sponsors". By changing the standard of care from ordinary care as it exists today, to willful and wanton disregard, the "sponsors" would benefit from not knowing and not using that degree of care that should be exercised by someone in their position of greater knowledge. As an example, it means that the stable owner is better off not looking at his horse's feet before he sends it out on a trail ride with an inexperienced rider; not seeing that a shoe is missing, and therefore, not knowing that as

a result the horse could stumble, unseat its rider, and even fall, perhaps falling on the rider and causing grave bodily injury or death. Whereas, if the stable owner continues to be responsible for the exercise of reasonable care, he will inspect the horse's feet, see there is a shoe missing, and choose another mount for the rider.

The language in this bill means that a "sponsor" could fail to exercise ordinary care, and only be liable for willful and wanton disregard for the safety of others. "Wantonness" as defined by Kansas Case Law is an act that must indicate a realization of the imminence of danger and a reckless disregard and complete indifference and unconcern for probable consequences of the wrongful act; "willfulness" is action indicating a design, purpose or intent on the part of a person to do wrong or to cause an injury to another. This standard of care would not benefit the citizens of this state.

I have ridden and shown horses for my entire life, and as a horseperson, believe our sport would benefit from a higher standard of care from its participants, not carte blanc to do harm to unknowing and innocent citizens who only want to take a Sunday ride.

Very sincerely,

ROBERT A. KEMIN, P.C.

Kristen G. Stroehmann

KGS/dls

No. 44,401

CARLA LYNN FREDRICKSON, a Minor, By CARL A. FREDRICKSON, JR., Her Father and Next Friend, *Appellee*, v. JOE MACKEY, Doing Business as SOMERSET STABLES, *Appellant*.

(413 P. 2d 86)

SYLLABUS BY THE COURT

1. NEGLIGENCE—*Negligence Never Presumed.* Negligence is never presumed but must be proven and shown to be the proximate cause of the injury complained of.
2. ANIMALS—*Furnishing Riding Horses—Duty.* The duty of one who is in the business of furnishing horses to others is to use reasonable care to furnish horses which are fit and suitable for the purpose for which they are to be used.
3. SAME—*Furnishing Horseback Riding Lessons—Not an Insurer—Care Required.* One undertaking to furnish horseback riding lessons to another does not thereby become an insurer against all possibility of injury or accident or against the results of all unforeseen untoward acts of the rider even though the rider be relatively young and inexperienced. He is bound only to use reasonable care commensurate with the circumstances.
4. SAME—*Bailment of Animals—Fall from Horse—No Act of Negligence Shown.* In a damage action for personal injuries sustained by a minor plaintiff in a fall from a horse, the record of trial is examined and held to contain insufficient evidence to support a judgment for plaintiff.

Appeal from Johnson district court, division No. 1; CLAYTON BRENNER, judge. Opinion filed April 9, 1966. Judgment reversed.

Robert P. Anderson, of Olathe, argued the cause, and *Howard E. Payne*, *W. C. Jones*, *Keith Martin*, and *H. Thomas Payne*, all of Olathe, were with him on the brief for the appellant.

Bernis G. Terry, of Olathe, argued the cause, and *Roy S. Lowe*, *George A. Lowe*, *and Roy G. Lowe*, all of Olathe, were with him on the brief for the appellee.

The opinion of the court was delivered by

HARMAN, C.: This action was by a minor for damages for personal injury resulting from a fall from a horse. Trial to the court resulted in a judgment for plaintiff from which defendant appeals.

In her petition plaintiff alleged in substance that on September 19, 1961, she was taking a riding lesson on a horse called Leather Britches owned by defendant and on his premises and under his supervision and control, and that while in a pasture the horse suddenly ran away, throwing plaintiff to the ground breaking her arm. Defendant was charged with negligence in allowing plaintiff to

ride a horse which was unmanageable by her outside the riding ring and in failing to give plaintiff proper instructions in the handling of the horse.

In his answer defendant denied negligence and alleged that the injury was caused in the following manner:

"The plaintiff Carla Lynn Fredrickson in company with other young people of her comparable age was taken with the group under the supervision of . . . Margo Thornhill out of the training ring for a ride in the open pasture of this defendant's premises; that the plaintiff rode her horse near a tree where she, the plaintiff, then broke off a small tree branch; whereupon she leaned forward from her normal mounted position and attempted to feed the leaves on the branch to her horse; that the horse did not shy but did start to trot and the plaintiff thereupon lost her balance and fell from the horse; that the horse she was riding, Leather Britches, is a horse normally and commonly ridden by children and is considered gentle and a proper horse for children, although the plaintiff by reason of her length of training as aforesaid had developed her ability to the point that she could have ridden horses of a less gentler nature and had it not been for her own negligence and improper conduct in attempting to feed her mount as aforesaid and thereby failing to keep her own balance and her mount under control her fall would not have occurred, and whatever injuries the plaintiff suffered . . . were the direct result of the plaintiff's lack of due care. . . ."

The evidence reveals that commencing in the spring of 1961 plaintiff, a girl aged ten years, along with other children of comparable age, had been taking riding lessons at defendant's stables on horses furnished by him for which a fee was paid. An older person who was an "associate" of the Mission Valley Pony Club acted as the instructor. Prior to the occasion in question, plaintiff had taken eight lessons at the stables, all of which had taken place inside a training ring near the barn, with plaintiff's mother as an observer. Her only other riding experience consisted of riding ponies elsewhere in a circle around a ring on two occasions. On September 19, 1961, plaintiff along with her mother and eight-year-old brother came to the stables for another riding lesson for the children. Five children, including plaintiff and her brother, rode out into a pasture adjacent to the training ring under the supervision of a Margo Thornhill, aged nineteen years, who had previously acted as instructor. The mother remained near the barn watching the children. Plaintiff was mounted on a horse called Leather Britches which she had previously ridden three or four times. Miss Thornhill took the children to a point in the pasture where there was a shallow creek bed. She demonstrated a crossing and then told plaintiff to ride across the creek after her and to stand

her horse and wait for the others. Plaintiff did this. While so waiting and still mounted plaintiff pulled a branch from a tree above her and leaned forward to put it under the nose of her horse for him to eat it, at which time the horse ran and plaintiff fell off breaking her arm.

The evidence offered by plaintiff to show the disposition of the horse consisted of the following testimony by plaintiff's mother:

"Q. Have they handled them pretty well, in your judgment, in the ring? A. They would have difficulty getting the horse to do what it was supposed to do even in walking or turning, or things like that. They had trouble.

"Q. And they couldn't get the horse to walk or they couldn't get it to stop, or what? A. Well, or to get it to turn or follow command. I don't just think that Carla could handle hers that well.

"Q. You felt Chris might be better able to do it than Carla? A. I think he was better on the horse than Carla was, yes. But not—

"Q. Well—excuse me. Go ahead and finish. A. —a whole lot better. But I felt he was doing some better.

"Q. It would be sometime they were taught to rein, weren't they? A. Yes.

"Q. This would be the time they would lay the rein over on the horse's neck and the horse wouldn't turn; is that correct? A. Yes, or wouldn't stop when they would try to get it to stop. . . ."

and of the testimony of the plaintiff:

"Q. . . . And what else did you learn to do in the ring besides make the horse go? A. Make it stop, and turn whichever way you wanted it to.

"Q. Did they teach you how to rein the horse on the neck to make him turn? A. Yes.

"Q. Would the horses that you rode do this? A. All except 'Leather Breeches'. I had quite a bit of trouble with him in the ring trying to make him turn.

"Q. He wouldn't want to turn? A. No.

"Q. And he took more pressure, did he, on the reins than the other horse? A. Yes.

"Q. But you were able to do it, weren't you, finally? A. Well, if Miss Thornhill helped me. Sometimes I had a lot of trouble with him, and then on other times he would do it with a little help from her.

"Q. And did you learn to trot? A. Yes, a little; not very much, though."

Plaintiff's evidence also showed the children had not been told not to feed the horses while mounted although they had occasionally in the past pulled grass while unmounted and fed it to the horses after finishing the riding lesson. While we are not particularly concerned with defendant's evidence or its weight, it did indicate that Leather Britches was a gentle seven year old horse of a good disposition which had been used two years by defendant as a

"lesson" horse for children and by a former owner as a riding horse for his nine and twelve year old children and that no accidents had ever occurred.

Defendant claims the evidence shows no acts of negligence which will support the judgment.

Although the relationship here arises contractually, the action is one for negligence and the ordinary rules of negligence apply, that is to say, negligence is never presumed but must be proven and shown to be the proximate cause of plaintiff's injuries.

The duty of one who is in the business of furnishing horses to others is to use reasonable care to furnish horses which are fit and suitable for the purpose for which they are to be used (4 Am. Jur. 2d, Animals, § 68, p. 315; 3 C. J. S., Animals, § 13a., p. 1098) and he is liable for a breach of that duty.

Applying this principle to the case at bar, we are unable to see any breach of this duty in the evidence, viewing it as we must in the light most favorable to plaintiff. We have detailed the only evidence pertaining to unsuitability, except some rebuttal testimony offered by plaintiff tending to impeach one of defendant's witnesses by showing a prior inconsistent statement. There was nothing indicating any bad or dangerous disposition or that the horse had misbehaved in any way. At most it does not indicate that the horse was unsuitable for a child of plaintiff's years and riding experience or to be ridden in the pasture with the instructor and the other children. Plaintiff had ridden the horse several times before. Her mother was present upon these occasions. Nothing unusual happened except plaintiff and her mother thought he needed stronger rein pressure than some of the other horses. This trait would hardly rise to the requisite level of unfitness nor is it made to appear how it contributed in any way to plaintiff's misfortune. The mother was present at all times and certainly was in a position to appraise the situation as to Leather Britches' suitability and her daughter's ability to control him outside the ring. Her action, or rather inaction, in doing nothing to interrupt plaintiff's ride on Leather Britches on the occasion in question might well be considered her assessment that the horse was in fact not unsuitable for the purpose intended. At best we cannot regard the evidence as sufficient to show either that Leather Britches was unsuitable or that defendant or any of those supervising the riding had or should have had knowledge of any trait or propensity in the horse

which might lead to the injury complained of. For all we can see from the evidence Leather Britches was a perfectly normal horse who responded in perfectly normal equine fashion to the intrusion of a branch thrust toward his head, and this was the cause of plaintiff's unfortunate accident.

In support of the judgment plaintiff relies further on the fact she received no instruction not to pull branches from a tree and attempt to feed them to the horse while mounted. Under the evidence we are not aware of any duty or standard of care violated. Certain hazards inhere in riding horses. Defendant in undertaking to furnish riding lessons would not become an insurer against all possibility of injury or accident or against the results of all unforeseen untoward acts of the rider even though the rider be ten years of age. He is bound only to use reasonable care commensurate with the circumstances.

In view of all that has been said we agree with defendant's contention that the record contains no evidence upon which the judgment for plaintiff can be supported. For similar conclusions in other cases in this type of situation, see those cited in the annotation in 15 A. L. R. 2d 1314, *et seq.*

The judgment is reversed.

APPROVED BY THE COURT.

No. 44,408

LESLIE G. ALSEIKE, *Plaintiff* and *Appellee*, v. EDITH M. MILLER, *Defendant* and *Third Party Plaintiff, Appellant*, v. VERNON L. LADD, an individual; JAMES MCINTOSH and HUGH SHEA, co-partners, d/b/a CYCLE ESCORT SERVICE, *Third Party Defendants* and *Appellees.*

(412 P. 2d 1007)

SYLLABUS BY THE COURT

1. CIVIL PROCEDURE—*Impleading Third Party Procedural.* K. S. A. 60-214 (*a*) permitting a defendant to implead a third party pertains to procedure only and does not create any substantive rights.
2. SAME—*Third Party Practice—Permissive Procedural Device.* Third-party practice is simply a permissive procedural device whereby a party to an action may bring in an additional party and claim against such party because of a claim that is being asserted against the original party.
3. SAME—*Purpose of Third Party Practice.* Although it is the purpose of K. S. A. 60-214 (*a*) to permit the entire controversy in a single proceeding to be determined, it is only the liability of the third-party defendant to the original defendant for the original defendant's liability to the plaintiff that is to be determined.
4. TORT-FEASORS—*Contribution Between Joint Tort-feasors.* Kansas adheres to the common law rule that there is no right of contribution between joint tort-feasors.
5. SAME—*No Right to Contribution Between Joint Tort-feasors—No Right to Bring in Third Party.* Where no right of contribution exists as between joint tort-feasors, a defendant has no right to bring in under the provisions of K. S. A. 60-214 (*a*) a joint tort-feasor who was not made a party by the plaintiff.
6. CIVIL PROCEDURE—*Discovery and Production of Documents—Showing Good Cause.* A showing of good cause therefor must be made before production of documents will be ordered pursuant to K. S. A. 60-234.
7. SAME—*Discovery and Production of Documents—What Constitutes Good Cause.* The requisite showing of good cause for materials sought pursuant to K. S. A. 60-234 must be something more than a mere showing that they are relevant to the subject matter involved in the action.
8. SAME—*Discovery and Production of Documents—Good Cause Judicial Discretion.* A trial court has a wide discretion in determining what constitutes good cause for the production of documents, depending upon the particular facts of each case.
9. SAME—*Discovery and Production of Documents—Writings of an Attorney No Judicial Discretion.* A trial court has no discretion to require the production of any writing prepared by, or under the supervision of, an attorney in preparation for trial.
10. SAME—*Statements Taken by Claim Adjuster—Not Under Supervision of Attorney—Adjusters Statements Not Privileged by Work Product Rule.* Statements taken by a claims adjuster on behalf of the insurance carrier

STATE OF KANSAS

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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE-CHAIR: JUDICIARY
MEMBER: LABOR AND INDUSTRY
TRANSPORTATION

JOINT COMMITTEE ON SPECIAL CLAIMS
AGAINST THE STATE

Thank you Mr. Chairman, and members of the House Judiciary Committee for this opportunity to appear before you today in support of HB 2272.

HB 2272 would change the existing confidentiality requirements and would open the official file of any juvenile 14 and over who commits any act that if committed by an adult would constitute a felony.

Opponents to this bill would argue that confidentiality is necessary in order to safeguard the youth from the stigma of being labeled a "criminal." And that such safeguards allow the youth to repent, and thus not be thrown into a cycle whereby the young offender once labeled "bad" perpetuates a self-fulfilling prophecy.

I would argue, however, that such a theory is outdated and simply wrong when it concerns the particularly violent offender that we more often see today.

I believe this bill is necessary for the following reasons:

1. The practice of keeping juvenile records confidential has not kept pace with the vast changes in the juvenile justice system and the rapid expansion of serious juvenile crime.

2. In Kansas, since 1983 the number of Juvenile Offender filings statewide has grown from 6,628 to 12,663.

3. The present system instills within the youth a lack of accountability, and thus truly sets them on the path to becoming habitual offenders. Our present system, set up to respond to the "child's needs" rather than to their "deeds" offers little in the way of developing a sense of responsibility. Confidentiality by its very nature flys in the face of deterrence. Confidential juvenile court proceedings mislead juveniles and their parents into underestimating the seriousness of the illegal acts. Disclosure of the identity of the juvenile and his acts would have the sobering effect of teaching that one of the consequences of illegal conduct is social deprivation.

HOUSE JUDICIARY
Attachment #11
02-16-93

4. Prior to rethinking the sanctions now imposed, we first must have adequate information as to the extent, nature, and frequency of juvenile crime. By opening these records, we will be able to better assess juvenile offenders in order to make changes to the juvenile code when warranted.

5. The present system of confidentiality has hindered the process of sharing information between appropriate agencies which is vital, when evaluating the offender. Our present system of restrictions is cumbersome and ineffective.

6. School officials, parents within the community, and the public at large have the right to know what crimes have been committed and by whom.

For the committee's information, I have attached an article that I sincerely hope you all will read which highlights some of the problems created by confidentiality.

In closing, I would argue that protecting the public from juvenile crime and impressing upon juveniles a sense of responsibility for their own conduct are important goals and I believe HB 2272 takes us a step closer to obtaining those goals.

JUVENILE OFFENDER FILINGS
STATEWIDE FIGURES

FY 1983	6,628
FY 1984	4,502
FY 1985	8,264
FY 1986	9,306
FY 1987	9,941
FY 1988	10,668
FY 1989	10,883
FY 1990	11,088
FY 1991	11,936
FY 1992	12,663

Why Confidentiality in Juvenile Justice?

By Eugene H. Czajkoski

The dogma of confidentiality in juvenile justice has remained virtually unassailable, especially under the doctrine of rehabilitative treatment for juvenile offenders. Indeed, until very recently, the only issues surrounding confidentiality in the juvenile justice system had been those directed at ways to preserve it. Preserving confidentiality in juvenile justice has currently become a hot issue as a result of the rapidly increasing capacity of computerized information systems. The potential for metastasizing juvenile offender data through interfacing computers causes a shudder among the exponents of the traditional *parens patriae* model of juvenile justice.[1] Rather extreme measures of confidentiality have lain within the heart of this traditional model. Confidentiality and terminological manipulation have been among the key instruments for trying to protect the child in the juvenile justice system. Terminological manipulation means an endless (and futile) chain of terms designed to ameliorate the effect of such words as crime, criminal, convicted, punishment, prison, etc., through substitution of such terms as juvenile, delinquency, child in need of supervision, training school, treatment, adjustment, etc. The heresy of lifting the confidentiality in juvenile justice proceedings is herein proposed because of two major arguments:

1. confidentiality has not had the intended benign effect on the juvenile offender and
2. confidentiality has disastrously undermined the control of serious crimes committed by young offenders.

Euphemisms in Juvenile Justice

Without attempting to trace the matter to too fine a point, one can generally observe that confidentiality and terminological obfuscation are logical components of a juvenile justice system dedicated to the welfare of the child. The monkeying with terms is easily illustrated. Prisons, when housing youth, have successively been named reformatories, training schools, treatment centers and group homes. Youths do not commit crimes, they commit delinquent acts. They then become not criminals but juvenile delinquents, youthful offenders, wayward youth, persons in need of supervision, clients, patients and residents. The agencies which deal with offending youth are youth and family service departments, welfare departments, human services bureaus, community service divisions, etc. The persons in charge of the young who have violated the law are juvenile aid bureau officers (instead of policemen), aftercare counselors (instead of parole officers) and correctional treatment officers (in-

stead of prison guards). Prisons are painted white instead of gray and the custodians put on white coats or nurse-like uniforms. If the concept of "treatment" underlies what goes on in juvenile justice, then heavy borrowing from the trappings of the medical practitioner is to be expected. So-called classification centers in corrections have long since given way to diagnostic centers and to a remarkable degree the taxonomy and procedures used in juvenile justice are given a medical sound (diagnosis, prognosis, therapy, aftercare, treatment plan and all the psychiatric/social work jargon).

Clearly, the goal of this terminological hopscotch is to spare the youthful offender from debilitating stigma and self-fulfilling labels. The best evidence we have that stigma cannot be avoided by simply changing titles is that we seem to have to change them so often. In time, the reformatory graduate carries much the same stigma as the prison gradutae and we desperately move on to training schools and treatment centers with no end in sight. Just as the poor have had to carry the same social burden through almshouses, settlement houses, welfare departments and human service centers, our youthful offenders have carried the same markings through all the artful labels placed upon them by the juvenile justice system.

Confidentiality basically seeks the same goal as terminological manipulation — namely the sparing of stigma — but the very fact that confidentiality is needed in addition to the protection of terminological devices further suggests the inefficacy of the latter. However, it will have to be conceded that protection afforded by confidentiality is not only tighter than the protection of terminological devices, it also goes somewhat further than mere protection against social stigma. It also protects against incremental legal punishment. By maintaining the confidentiality of juvenile court records, the juvenile offender, graduated into the adult court, enjoys a virginal status as far as criminal history goes. Being a first offender is undoubtedly a favored status in criminal court, which usually results in reduced charges, reduced penalties or outright deferral of prosecution. Confidentiality of juvenile justice records tends to perpetuate first offender status beyond what many consider reasonable.

In a nutshell, confidentiality would seem to be designed to secure the youthful offender against adverse consequences of social stigma and against incremental penalties for successive offenses as a so-called adult. Actually, incremental punishment or increased penetration into the system of justice means an increase in stigmatization so it might be fair to conclude that confidentiality should be mainly analyzed as an anti-stigma mechanism rather than as an exemption from advanced punishment.

If one considers that the juvenile justice system was erected, at least in part, to protect children from the stigma of being in the so-called criminal justice system, then it is ironic that juvenile justice confidentiality today seeks to protect the child from the stigma of having been in the juvenile justice system itself. As argued earlier, the attempt to remove stigma through euphemisms and the hiding of facts is as futile as running on a treadmill. Education and social understanding represent the answer to stigmatization, not masking devices. Eventually, each mask becomes laden with its own opprobrium.

Social Cost of Confidentiality

The confidentiality or anti-stigma apparatus has many facets including "sealing the record," "withholding adjudication," "setting aside the verdict" and, in the extreme, "expungement." The facets evolved through certain statutory enablements and dubious judicial development.[2] Whatever the history, and whatever the form, confidentiality or saving from stigma has been at the core of the juvenile justice system for a long time. Apart from any intuitive understanding or justification of confidentiality, there have been supporting arguments for it seemingly derived from scientific theory. Labeling theory, which has had wide circulation in criminology recently, makes plain the phenomenon of the self-fulfilling prophecy and secondary deviance.[3] The "Pygmalion Effect" has been empirically demonstrated in child education.[4] Elaborate theoretical workings have com-

bined with common-sense estimates to support the simple conclusion that if you label someone as a criminal not only will that person's audience be likely to continue to define the person's behavior as criminal but the person himself assumes a criminal identity.

Assuming that there is good to be obtained from the overall effort of the juvenile justice system to depress stigmatization, it is argued here that confidentiality and euphemisms represent a bankrupt approach to that end. Not only has confidentiality failed to bring real benefit to the child in terms of the labeling perspective and stigma avoidance, it has indirectly distorted the child's self-concept in the area of accountability and has directly sapped the criminal justice system effort toward deterrence.

In line with the various theories of developmental psychology, especially the moral development notions of Piaget, there is general recognition that most youths subjected to the juvenile justice system already have the capacity for legal and ethical reasoning.[5] What they learn from their juvenile justice experience is critical to their behavior as adults. The lesson often taught by the juvenile court, which espouses treatment instead of punishment, is that there is no sure sanction for unlawful behavior. The child's reasonable expectation that unpleasant consequences follow wrong behavior is thwarted. Moreover, under the non-punishment or treatment rhetoric usually offered by the juvenile justice system, whenever sanctions are applied to the child, and if they are perceived as unpleasant, the child resentfully sees the court as cynically meting out punishment under the guise of rehabilitative treatment.

The highly erratic nature of juvenile dispositions is compounded by both the confidentiality factor and vague doctrine of responding to the child's needs rather than to his deeds. One is left to gloomily speculate as to how a youth's developing sense of responsibility is enhanced by a justice system confused as to sanctions and accountability. With the confidentiality of juvenile justice proceedings and the attendant suppression of publicity, how are potential young offenders to be influenced by the juvenile justice system? Where is the general deterrence?[6]

Perhaps the heaviest price for juvenile justice confidentiality is paid in the adult justice system. Research has rather consistently shown that adult courts primarily rely on current offense characteristics and criminal history in determining sentence.[7] Because of the confidentiality of juvenile records (but also because of the separation of juvenile justice from the criminal justice system) the adult courts have difficulty in getting the true picture of criminal history. A chief sentencing criterion thus becomes muddled and long-time juvenile offenders are usually, out of ignorance, treated leniently if they arrive in the adult system.

Criminal career studies demonstrate that it is the frequency of offenses rather than the seriousness of any one offense which is significant in predicting the chronic offender. Typically, chronic offenders begin their careers earlier in life, hit their peak in their 20s, and then subside.[8] Thus, our punishment response, as it filters through a bifurcated system of justice, juvenile and adult, is illogically intensified in the later years of an offender's life, when offense behavior is in decline, instead of in the younger years when offense behavior is on the rise. Correctly aiming the punishment response or, if you will, the accountability response depends on accurately assessing the frequency pattern. That pattern, at the very least, is blurred by confidentiality constraints and the lack of articulation between juvenile justice and the rest of the criminal justice system.

Budding Reform

Regardless of where the weight of the confidentiality/non-confidentiality arguments fall in any absolute sense, there can be little doubt that there is nationally a strong push for juvenile justice reform which retreats from confidentiality.

In August 1981, the task force on violent offenses, appointed by President Reagan and headed by former U.S. Attorney General Griffin Bell, made proposals that information, fingerprints and photographs regarding violent juvenile offenders be fed into the FBI

information bank to be retrieved by prosecutors throughout the nation for use in prosecuting adult criminal cases. The task force report was influenced by the outcome, the previous July, of the first juvenile recidivist conference ever held in the United States. Among the unanimous agreements in that conference were, according to an article in *The New York Times*, ". . . juvenile repeaters should be treated as career criminals, that violent juveniles accused of serious crimes should be prosecuted in adult courts according to a uniform standard and that juvenile records should be made available to prosecutor and judge at the time the juvenile commits his first adult crime."[9] The article goes on to quote a conference participant as having stated, "Some of the members of this conference, some of the judges, are the type that you would have expected would have been up in arms at the proposed changes in juvenile procedures - but they were not."[10]

A recent study conducted by the Rand Corp. for the National Institute of Justice was motivated by the question of whether legal authorities know of an offender's delinquency as a juvenile.[11] Rand found that half the prosecutors surveyed had little or no information on even the most serious young offenders. This resulted in lighter punishment for youth offenders even though many had already well embarked on criminal careers as juveniles. The logic of applying significant punishment to those whose offense frequency is on the rise was thus subverted.

The findings of the Rand research suggest that a dual system of justice, adult and juvenile, is problematic insofar as the sharing of vital information. For additional reasons, relating to due process and elementary standards of justice or fairness, a strong move is likely to develop for an integrated justice system. Chief impetus for the move comes from the dysfunctions of the confidentiality constraint but there are other important factors. For example, the guiding principle of a juvenile court adjusting dispositions to the needs of the child, as determined by a variety of diagnostic procedures, has for some time been challenged on grounds of the woeful uncertainty of the diagnostic procedures available as well as on philosophical grounds relating to what is often called psychiatric justice.[12] Another challenge to the juvenile justice process centers on the arbitrary criterion of age as a differentiating factor. A more reasonable differentiating factor would be individual circumstances of maturity and accountability which rarely fit into fixed age categories.

In summary, juvenile justice systems have been dragged, often-times kicking and screaming, into a period of reform which promises to obliterate the distinctive features of the system. Confidentiality currently appears to be the most vulnerable aspect of juvenile justice and since confidentiality presents a barrier to goals of justice and crime deterrence, while at the same time failing to accomplish its fundamental purpose of protecting against the effects of stigmatization, there appears little reason to try to sustain it.

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Notes

[1]Regarding the proliferation of computerized information systems in juvenile justice, there are many profound concerns beyond the issue of confidentiality. Some of these additional concerns have to do with principles of individualization, promoting dehumanized efficiency goals and dysfunctions of information overload.

E.H. Czajkoski, "Computer Backfire on the Ethical Mission of Juvenile Justice, *Juvenile Justice* February (1974).

[2]As of 1977, all but five states maintain confidentiality of juvenile court records and 28 states also hold police records of juveniles confidential. Two states provide for mandatory expungement of juvenile records and 31 states allow expungement on a discretionary basis.

J. Austin, R. Levi, and P.J. Cook, "A Summary of State Legal Codes Governing Juvenile Delinquency Proceedings," mimeographed (Duke University: Center for the Study of Criminal Justice Policy, 1977).

[3]The labeling perspective may have run its course among criminologists, leaving an uncertain and somewhat stagnant residue.

P. Manning, "On Deviance," *Contemporary Sociology* March (1973).

C. Wellford, "Labeling Theory in Criminology: An Assessment," *Social Problems* February (1975).

[4]What is referred to as the "Pygmalion Effect" or the "Rosenthal" effect is the phenomenon of expectations determining the outcome of performance measures.

R. Rosenthal and L. Jacobsen, *Pygmalion in the Classroom: Teacher Expectations and Pupils' Intellectual Development* (New York: Holt, Rinehart & Winston, 1968).

[5]H.J. Flavell, *The Developmental Psychology of Jean Piaget* (Princeton: Van Nostrand, 1963).

[6]In the concept of general deterrence (as opposed to specific deterrence), potential offenders are inhibited by the example of a punished offender. Many believe that the impact of punishment on the apprehended offender is not nearly as important to the social order as the impact on the general population. Obviously, drawing a veil of confidentiality over juvenile justice proceedings has a negative effect on general deterrence.

[7]R.M. Carter, "The Pre-Sentence Report and the Decision-Making Process," *Journal of Research in Crime and Delinquency* July (1967).

[8]In addition to countless autobiographical reports, there are many statistical surveys which seek to trace criminal career patterns. Longitudinal studies are the most persuasive and a classic of that sort is:

M.E. Wolfgang, R.M. Figlio, and T. Sellin, *Delinquency in a Birth Cohort* (Chicago: University of Chicago Press, 1972).

[9]*New York Times Sunday Magazine,* Sept. 20 (1981): 118.

[10]Ibid.

[11]The Rand study, entitled "Age, Crime and Sanctions: The Transition from Juvenile to Adult Court," is summarized in the August 1981 issue of *Justice Assistance News,* published by the U.S. Department of Justice.

[12]The psychiatrist Thomas Szasz has written numerous books and articles on the efficacy, process and ethics of the state resorting to psychiatric grounds when seeking the custody of someone charged with criminal behavior. See particularly:

T. Szasz, *Psychiatric Justice* (New York: MacMillan, 1965).

Testimony re: **HOUSE BILL No. 2331** (an act concerning persons 16 or more years of age) and **HOUSE BILL No. 2272** (an act concerning juvenile offenders; relating to records)

I support enactment of House Bills 2331 and 2272 because they will (1) impose little additional cost, (2) facilitate the prosecution of sixteen and seventeen year-old offenders who travel from states where the age of majority is already sixteen, (3) enlarge the range of dispositional alternatives to a judge when sentencing such an offender, (4) free limited resources within the embattled juvenile justice system for those younger minors who may still benefit from its strictly rehabilitative emphasis, and (5) accord greater respect toward the rights of victims, educators and the public concerning their right to know of and prepare for juvenile delinquency.

Opponents of lowering the age of majority often cite economic factors. For example, some point to the overflowing adult prison population, and therefore question the wisdom of adding an additional class of individuals to the pool of potential candidates for incarceration. This arguments relies on the faulty assumption that the criminal prosecution of a sixteen or seventeen year-old will necessarily result in committal to a state penitentiary. There are a variety of intermediate possibilities inherent in the sentence of an adult (assuming the fact of conviction) including probation supervised by a local court services officer, assignment to community corrections, or placement at a facility such as the Labette County Conservation Camp. Most of these alternatives are already available to the juvenile court when choosing a disposition under K.S.A. 1992 Supp. 38-1663. Thus, the cost does not change. Probation, whether assigned to court services or community corrections, is simply granted under the guise of a different label (i.e. "sentence" vs. "disposition"). Also, commitment to an S.R.S. group home (complete with state-funded schooling, therapy and testing) for a year or more must cost at least as much as a six-month tour at Labette.

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Finally, even if prosecution of a sixteen or seventeen year-old does result in conviction and sentence to a penitentiary, the state is not necessarily incurring an additional expense. Presumably, the sentencing judge would so commit only one whose attitude, background and seriousness of offense were so abhorrent that little choice remained. If so, then it is likely under our current law that this offender would either be (1) certified as an adult pursuant to K.S.A. 1992 Supp. 38-1636 and face the same jeopardy anyway, or (2) committed to a state youth center (at equivalent or even greater expense) until released by S.R.S. or turning twenty-one (21) years old. The same rationale applies to pretrial detention. Local jurisdictions must either house the sixteen or seventeen year-old minor in a certified juvenile detention facility, or incarcerate the sixteen or seventeen year-old adult in the county jail. If anything, county jails cost less to manage than juvenile facilities because of the relatively more lenient regulations governing their operation.

This bill will also greatly facilitate the prosecution of these offenders from states where the age of majority is already sixteen. A local example of which I am painfully familiar concerns the "drug pipeline" from Detroit, Michigan to Junction City, Kansas. It is no secret among drug dealers in Michigan that our age of majority here differs from theirs. They regularly entice older juveniles with a share of their profits, and send them to our community with prearranged instructions concerning the sale of the contraband.

For such a youth, the result of weighing risks and benefits of such a venture is no contest. If he succeeds, he will make more money in a single, three-day trip than he could hope to earn in a month at any lawful employment available to someone his age. If he fails, he need only contend with an embattled juvenile justice system poorly designed for such a circumstance. He *might* be detained if his mother or father cannot be located to sign his bond, and if the prosecutor is

fortunate enough to learn enough about the minor from his home jurisdiction within twenty-four hours to request incarceration.

Otherwise, the boy is returned home on the mumbled, gaze-averted (and seldom kept) promise that he will return when ordered to stand "trial" for his delinquency. Even if the state procures his adjudication as a juvenile offender as charged and proceeds to disposition, few sensible judges will order anything but probation, because they do not want to clutter our juvenile homes and youth centers with Michigan "children." Current S.R.S. plans to actually *reduce* bed-space at the youth centers in the name of local rehabilitation will do little to mitigate this woeful situation.

Third, this bill will enable a sentencing judge to enforce a probationary condition in ways currently unavailable to a juvenile court. Rules concerning incarceration of juveniles in jail clearly forbid the same except under the limited situation where one charged as a juvenile offender has since turned eighteen and stills awaits his trial (see K.S.A. 38-1624(e)). Moreover, the juvenile court generally cannot send a first-time offender to the youth center, irrespective of how many times the youth may have violated probation with complete impunity (see K.S.A. 1992 Supp. 38-1663(a)(6)). But there is no reason why a perfectly employable sixteen or seventeen year-old offender should not face stiffer sanctions (e.g. incarceration in the county jail) if he continues to disregard simple probationary requirements, such as reporting to his court services officer and paying restitution to a victim. Such an alternative is rightfully illegal under the juvenile offenders code, but lowering the age of majority to sixteen years will afford the judge an opportunity to use a stick when necessary without depriving him of the carrot so widely preferred in the juvenile system.

In conclusion, enactment of these bills will provide a better focus to the juvenile system by concentrating its resources on younger children who are probably more amenable to rehabilitative efforts. It will reflect a growing perception

among the general public, and particularly victims of crime, that today's increasingly sophisticated sixteen and seventeen year-olds generally do, in fact, possess the knowledge, maturity and understanding between right and wrong normally attributed to adults charged in the criminal code. Enactment of these bills is a recognition that it is almost impossible for a juvenile court to force a sixteen or seventeen year-old to attend school against his wishes, and in fact may be detrimental to others in class who could do without the minor's disruptive behavior. It is a recognition that a juvenile officer's advice to a sixteen or seventeen year-old not to continually run away, or to abide by parental rules, usually falls on deaf ears. It is not so much a question of society "giving up" on our youth, as it is a realization of our limitations under the juvenile code.

Finally, by accepting these proposals, you make available to the public information which is important and can, in some instances, even assist local efforts to improve the quality of juvenile justice. By opening the court files of fourteen and fifteen year-old felony juvenile offenders to public inspection, you enable many more victims of crime (whose rights have recently been elevated to constitutional status) to learn about and understand the pendency of proceedings involving their cases. You increase their faith in the system, and the hope that progress can be made in repairing any harm done under something reasonably less than a cloak of total secrecy. School officials can also review these documents and use them to assist in treating those suffering from a behavioral disorder or the like.

I implore you to seriously consider passage of this bill in its current form. If you have any questions or comments about my testimony, please do not hesitate to contact me at your convenience.

Respectfully submitted this 16th day of February, 1993.

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KANSAS BUREAU OF INVESTIGATION

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ATTORNEY GENERAL

TESTIMONY
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
BEFORE THE HOUSE JUDICIARY COMMITTEE
REGARDING HOUSE BILL 2272
FEBRUARY 16, 1993

Mr. Chairman and Members of the Committee:

I appear today on behalf of Attorney General Robert Stephan and Director Robert Davenport in support of HB 2272.

I spent six years prosecuting juvenile cases in Lyon County, Kansas, and believe the current restrictions as to public information regarding felonies committed by fourteen and fifteen year olds is an anachronistic legal fiction that does more harm than good. As we have all seen in the newspapers and statistics, the age of violent criminals has all too frenquently had an alarmingly youthful face. I believe there are public safety concerns where members of the public are not made aware of the danger that a juvenile in their neighborhood may present. Schools are not aware of potential problems and the juvenile offender receives the wrong message that there is little consequence to the criminal action when the matter appears to be hushed up. I believe the children of today are frequently more sophisticated and all too frequently involved in criminal activity that would have been unbelievable twenty years ago.

To continue to deprive the public of the information it needs regarding these criminals and to continue to tell these children that their actions are not matters of public concern, but merely a private mistake, is not good public policy. I would urge passage of HB 2272.

HOUSE JUDICIARY
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KANSAS ASSOCIATION OF COURT SERVICES OFFICERS

TESTIMONY

TO: House Judiciary

FROM: Cathy Leonhart - Legislative Chair
Kansas Association of Court Services Officers

RE: HB 2331

DATE: February 16, 1993

We appear today in opposition to HB 2331. I'm not sure if this bill goes too far or not far enough. We are particularly opposed to changing the age limit on Children in Need of Care to sixteen. I find no reference to 38-101 being amended to change the age of minority. Therefore, if a 16 or 17 year old was being abused, they could not legally leave home on their own nor could they be protected under the Child in Need of Care statutes. Parents still have to consent to surgery until age 18 and minors cannot enter into contracts. These are very mixed messages.

We are opposed to handling all sixteen and seventeen year old offenders in criminal court. There are certainly those who should be dealt with as adults because of the nature of their crime or repetivive criminal behavior. We believe this has been adequately addressed through certification and waiver procedures. The even younger offender (14 and 15) has also been addressed through the juvenile felon category. If the intent is to impact serious crime committed by 16 and 17 year olds, we are not convinced this is the answer. Under Sentencing Guidelines, youth who are currently put in out of home placement under the Juvenile Offender Code, could receive presumptive probation. You also lose the ability to order parents into treatment, mediation, and other alternatives. This would not occur in criminal court. The family remains an important part of this young persons ability to succeed on probation and in the community. The Guidelines have anticipated the need for using the record of juvenile adjudications. They are used on the grid until an offender is twenty-five.

We urge you not to pass this bill. It does a serious diservice to the youth of this state. It would not apply just to those serious and repetitive offenders but all sixteen and seventeen years olds and Children in Need of Care who need to be protected. Address the problem through appropriate staffing and programs available through probation and at SRS. Support the continuing study of Family Court but don't jump the gun by passing legislation that changes the whole scope of the problems being studied.

HOUSE JUDICIARY
Attachment #14
02-16-93

STATE OF KANSAS

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HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: ELECTIONS
JUDICIARY
PUBLIC HEALTH AND WELFARE

Testimony on H.B. 2331

by Alex Scott, M. D.

February 16, 1993

I appear in favor of H.B. 2331. This bill has considerable community support from law enforcement, the prosecuting attorney and his staff, and from the citizens of Junction City and Geary County. They should be on hand to testify if the weather permits.

About 25 years ago the age of adult responsibility was raised from 16 to 18 years of age. This was due to a coincidence of political and socio-medical events emerging at that time. I would believe that the State of Kansas was in a bind for adult prison beds--something that sounds reminiscent, doesn't it? -- and rather than lay out funds for construction of an adult facility, the Boy's Industrial School at Hutchinson metamorphosed into the Hutchinson Correctional Institution. This was the impetus for raising the juvenile age to 18.

At approximately the same time there appeared in our state and the nation a belief in the omnipotence of psychiatry. The contrast between the World War II combat veterans and World War I Veterans in terms of "shell-shock" was attributed to early psychiatric intervention. The results of the Korean and Vietnam veterans has not been as successful.

Out of this time and through the 1960's it became fashionable to place the blame on society and on environment. In fact the term psychopath was changed to sociopath indicating the pathology was not of the sick psyche but of the sick society.

At first there were only a relatively small number of offenders among juveniles; but, as it became apparent there was no meaningful deterrence the number of juvenile criminals and the seriousness of their crimes increased. Society had also undergone an attitudal change regarding drugs. Timothy O'Leary legitimized or at least preached acceptance of drug experimentation and many people accepted this intellectualization of drug use. Although the generation of the 60's eventually left drugs behind them just as the Roaring 20's generation modified their use of Prohibition alcohol, they had perhaps left an experimental attitude toward drugs with their children.

Illicit drug trading spread rapidly because of the ubiquitous distribution of marijuana. Opiates, especially heroin were produced cheaply but real commercialization came with the alteration of cocaine to crack cocaine. Youths still protected by juvenile status became the distributors at street level because of their essential immunity. It naturally followed that trade territories would be contested. These confrontations erupted into violence because drug profits brought guns. Now the guns have gone to school. Another disruption is the practice of sentencing juvenile offenders back to school.

Last year the fiscal note on this bill was nine million dollars. I believe this law when enforced will actually cost much less than that with the costs dropping after the first year and decreasing over several more years. There is a considerable cost to the operation of the regional juvenile centers which others will verify. Some people question the regional juvenile centers as efforts that have arrived "too little and too late."

The combination of violence, gang crime rings, and drug distribution must be controlled. I believe H.B. 2331 is a significant contribution to this control. I again urge your support of this bill.

I solicit your questions.