



29TH JUDICIAL DISTRICT OF KANSAS

May 15, 2017

The Honorable John Barker, Chairperson
House Committee on Federal and State Affairs

Hearing Date: May 16, 2017

**TESTIMONY OF WYANDOTTE COUNTY DISTRICT ATTORNEY MARK A. DUPREE,
SR. REGARDING THE ADRIAN'S ACT HB 2425**

Chairman Barker and Members of the Committee:

I am the duly elected and serving Wyandotte County District Attorney. Prior to this position, I worked in private practice in a firm with my wife, Shanelle Dupree. My primary practice area was criminal defense, and my wife has worked extensively as a Guardian ad Litem and/or as counsel for parents in Child in Need of Care proceedings. The majority of my work has been in the Kansas City Metropolitan area, and a significant portion of that has been on the Kansas side.

As such, I have seen my fair share of the current process of oversight with respect to mandatory reporting, the Department of Children and Families processing of reports of physical/mental/emotional/sexual abuse allegations, the CINC proceedings following those allegations, the foster care system, and the efforts made throughout the State of Kansas to ensure and protect vulnerable children. I have observed first-hand the problems with this system that, at times, appears to be broken. Due to these issues, any shortfalls directly affect the children we endeavor to protect. Working with individuals in my former private practice, and now in my tenure as Wyandotte County District Attorney, I wish to convey my thoughts on the proposed legislation in Adrian's Act, and to propose a focused, reasoned look at the current processes in place.

CURRENT PROPOSED LANGUAGE FOR HB 2425

The current language of HB 2425 simply adds an additional requirement to K.S.A. 38-2223, which covers mandatory reporting requirements. It is worth noting, here, that the current statute imputes criminal liability onto professionals; not laypersons. The proposed language would simply impute liability onto any adult who resides in a home where a child is being harmed. While the intention and hope of adding protection to children in those situations is evident, I believe the current language is problematic, as (1) it does not take into account the potentially abusive situations the adults in the home may be facing, and (2) it does not adequately prevent or address the dangerous situation Adrian Jones, and many children like him, endure.

- (1) Adults "who reside in the same home"
 - a. Often, when children are being abused in the home, it is by one or both parents.
When only parent is committing the abuse, the non-offending parent or guardian is

often a victim themselves of emotional, physical, and/or sexual abuse by the offender in the home. Alternatively to that, “adult” children of the offending and/or non-offending parents or guardians who have reached adulthood may still reside in the home, and may also have previously been subjected to such abuse. Imputing criminal liability on these individuals would further victimize and marginalize those people. It could also have the opposite effect in those circumstances, and actually discourage an individual from reporting.

(2) Inadequate prevention and protection of children

- a. The proposed language zeroes in on family or other closely associated people involved in a child’s life. Those individuals are often afraid, not just for their own safety, but of the ramifications of reporting abuse. Afraid for retaliation from the abuser or other family members for reaching out. Afraid that the child will ultimately suffer harsher abuse at the hands of the abuser if attention is brought to the situation and does not result in the child being removed from the abuser’s care.
I would respectfully suggest zooming out, into a wider-lens look at where the gaps in oversight or contact with Adrian and his siblings occurred, and that seems to clearly draw attention to the fact that Adrian and his siblings were home-schooled, which I will address further in a moment.
- b. The individuals who are mandated reporters pursuant to the current statutory provisions of K.S.A. 38-2223 are professionals; teachers, counselors, doctors, psychologists, emergency personnel, the list goes on. Those individuals encounter children like Adrian on a professional level. This is what the statute’s intent is focused on, not simply encouraging, but requiring that professionals who come into contact with children be observant of those children’s needs, and report instances where those children are being abused.

HOME SCHOOL OVERSIGHT (or lack thereof)

Non-accredited private schools, colloquially referred to as “home schools” are governed by K.S.A. 73-53,100; 72-53,101; and 72-53,102. In total, those bills are just over three hundred words. They fall into the “miscellaneous” provisions of School statutes, which in itself are 69 articles in length. K.S.A. 72-53,100 provides definitions of home schools, 72-53,101 the qualifications for such schools are listed for registration as a private school with the Board of Education, and 73-52,102 simply explains that the importance of registering the school is to allow the next school a child attends to receive records of the previously non-accredited school attendance.

Other than to keep a record of listed home schools, there is no oversight. That essentially means that the children in the home school system are not being encountered nearly as often by the professionals that K.S.A. 38-2223 currently requires mandatory reporting from. They are not interacting daily with non-familial members, and thus, are not being protected as strongly as those who attend accredited public or private institutions.

The real problem is that these children often only encounter their abusers, or other individuals in the home who are likely being abused or neglected as well. The current statutory provisions for home school do not employ the same prohibitions on individuals who have substantiated abused claims through the Department of Children and Families. Those individuals are prohibited from working in a daycare or public school under the Kansas Department of Health and Environment rules, but are without oversight as to being the only educator of their own children.

Let me be clear, home schooling in itself does not harm children. A system that allows parents, without any regulation or oversight, to secret children away from professionals who might be able to observe a child in distress is harmful to children.

SOLUTIONS

I would be remiss in my commentary if I merely pointed out the issues I believe exist in the system that are apparent in looking at cases like Adrian Jones, if I did not also point out what I believe can be done to prevent circumstances like this from arising in our state in the future.

(1) Oversight of Home Schooling:

- a. This would require individuals who wish to home school their children to do more than simply register their school for future academic purpose for their children. Even if it is to ensure the curriculum taught is actually providing the children with age-appropriate education.
- b. It would also bring attention to the children in those families, and oversight of their education would ensure their physical and mental well-being, as well as ensure they are receiving adequate education in a non-traditional environment.

(2) Changes to DCF requirements

- a. One specific change that could have an immediate impact on the lives of children in these situations is to require in-person contact between a DCF worker and the child. When a situation is assigned to be investigated by DCF, “reasonable efforts” are required to ensure the child is being cared for. That often results in attempts at contact with the child and the parents, individually or together. If an adjustment was made in the protocol to require that a worker physical make contact with a child to assess their safety and well-being, prevention of this kind of tragic circumstance could occur.
- b. Additionally, ensuring that any report of physical, sexual, or emotional abuse that appears to arise to the level of criminal conduct needs to be followed up on not only by the Department of Children and Families, but also by law enforcement. Both entities function in these cases for many of the same purposes, but ultimately the needs and consequences of actions for each entity is decidedly different, in the quest to protect abused and neglected children.

CONCLUSION

In conclusion, while HB2425 strives to add another layer of protection to children in abusive environments, the potential for further harm to those children or non-offending adults in their lives is great. It addresses a small subset of circumstances, when the much larger arena of home schooling oversight could have a more direct and substantial impact on children like Adrian Jones. I believe oversight of non-accredited private schools, coupled with specific changes to DCF policy requirements would provide better tools for our state in combating abuse and neglect of the vulnerable children we long to protect.

Sincerely submitted,

Mark A. Dupree, Sr.