



29TH JUDICIAL DISTRICT OF KANSAS

March 19, 2019

The Honorable Jan Pauls, Chairperson
House Committee on Federal and State Affairs

Hearing Date: Thursday, March 21st at 9 a.m.
Letter FOR HB 2392

**TESTIMONY OF WYANDOTTE COUNTY DISTRICT ATTORNEY MARK A. DUPREE,
SR. REGARDING THE ADRIAN'S ACT HB 2392**

Chairman Pauls 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. My primary practice area was criminal defense, however I worked as a Guardian ad Litem and/or as counsel for parents in Child in Need of Care proceedings as well. The majority of my legal practice has been in the Kansas City Metropolitan area, and a significant portion of that was on the Kansas side.

My experience with mandatory reporting more than two years since being elected to serve Wyandotte County has provided mixed results. Many individuals who fall under the current statute appear or claim to be unaware of their obligations as a mandated reporter. In an institutional setting, there are often protocols drawn up by supervisors that muddy the waters for those who are mandated reporters. Often, the thought is that if it is reported up their chain of command, the obligation has been fulfilled. It has taken quite a bit of work in my office to visit with business and educational entities, as well as law enforcement agencies and leaders within the Department of Children and Families to ensure that mandated reporters in Wyandotte County live up to the expectations in this statute. It is with this backdrop in mind that I speak about the proposed legislation in HB 2392.

CURRENT PROPOSED LANGUAGE FOR HB 2425

The current language of HB 2392 adds one additional requirement to K.S.A. 38-2223, which covers mandatory reporting requirements. The present mandatory reporting statute deals with individuals who interact with children on a professional level, not a personal "in home" setting. The proposed language places liability onto any adult who resides in a home where a child is being harmed. While I believe that requiring adults who interact with a child on consistent basis in their home to report abuse when they observe it, the proposed language has some pitfalls. If this bill is to pass, I believe it should include an exemption for adults in the home who have suffered abuse from the same perpetrator. Further, I believe more can be done to protect children in circumstances like Adrian's.

- (1) Immunity from liability for abused adults
 - a. A non-offending parent or caregiver in the home can often be subject to abuse at the hands of the same perpetrator this statute would require them to report on. Additionally, children of the perpetrator who have reached adulthood may still reside in the home after turning 18. For those vulnerable adults, a penalty for failing to report abuse of a child in the home, if they were also subject to abuse, shifts blame to a victim. We should strive to enact legislation that has a trauma-informed approach.
- (2) Further protections for children in need of care
 - a. The proposed language pinpoints a specific portion of individuals who may interact with children in abusive environments. What this type of reform lacks, in terms of protecting these children, is additional support for the Department of Children and Families to adequately investigate allegations of abuse when they arise. If we step back and assess cases like the Adrian Jones case, we see that investigations by a child protective services entity often begin months or years before the time of death.
 - b. What we learn from this type of case is that families in these circumstances often have numerous contacts with child protective agencies. One "hotline" report often leads to multiple reports, and reports require investigation. However, that investigation does not necessarily require a worker to physically see and/or interact with a child to close an investigation.
 - c. Additionally, this case falls into a category where professionals were not in regular contact with the children. K.S.A. 38-2223 currently imputes liability on a host of professionals, many of whom interact with children in an educational institution, and these children did not have the benefit of regular interaction with mandated reporters due to being homeschooled.

SOLUTIONS

Though the currently proposed amendment to K.S.A. 38-2223 has some pitfalls, I believe there are viable solutions. I believe that addressing the following areas could improve our response to the vulnerable population of children desperately in need of our resources and attention.

- (1) Further amendment to K.S.A. 38-2223:
 - a. If language were added to the "immunity from liability" provision of the mandatory reporting statute that exempted abused persons in the home from liability of failing to report, the proposed language would be far less problematic.
 - b. Adding a provision with language like: "Any adult who, pursuant to subsection (F), is mandated to report abuse is immune from liability under this section if there are reasonable grounds to believe that the failure to report was due to that adult, or their children, having been subjected to abuse by the same suspect."
- (2) Changes to Department of Children and Families investigation requirements:
 - a. One 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 rises to the level of criminal conduct needs to be followed up on not only by the DCF, but also by law enforcement could have a strong positive impact on investigations of abuse.

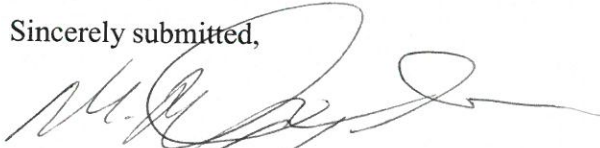
(3) Oversight of Home Schooling:

- a. Other than to keep a record of listed home schools, there is no oversight of children whose parents choose to educate their children outside of an accredited school. Oversight should require individuals who wish to home school their children to do more than simply register their school for future academic purposes for their children.
- b. This oversight would bring attention to the children in those families; better ensuring their physical and mental well-being, as well as ensuring they are receiving adequate education in a non-traditional environment.
- c. This oversight should not be a means to discourage home schooling, nor should it imply that home schooling harms children. Instead, the oversight serves to protect children whose parents are misusing the allowance to home school their children as a means to hide their children from the outside world. This oversight helps children have opportunities to be seen and heard, to be safe and secure.

CONCLUSION

In conclusion, HB 2392 strives to add another layer of protection to children in abusive environments. However, the potential for further harm to those children or to non-offending adults in their lives is strong, without additional language protecting abused adults in the home. It addresses a smaller subset of circumstances, when the much larger arenas regarding DCF investigations and oversight into home schooling could have a more direct and substantial impact on children like Adrian Jones. I believe targeted changes to DCF investigations and oversight of non-accredited private schools would provide better tools for our state in combating abuse and neglect of the vulnerable children we strive to protect with these statutes.

Sincerely submitted,



Mark A. Dupree, Sr.
Be Blessed.