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ATTORNEY GENERAL OPINION NO. 92- 48

Bill McCormick
Director of Federal and State Affairs
Governor's Office
2nd Floor, State Capitol
Topeka, Kansas 66612

Re: Minors--Kansas Code for Care of Children; Matters
Prior to Filing Petition-- Reporting of Certain
Abuse or Neglect of Child; Pregnancy

Synopsis: Whether a particular minor in a particular case has been injured as a result of sexual intercourse and a resulting pregnancy must be determined on a case-by-case basis. While the pregnancy itself is not an injury, it certainly puts one on notice that sexual abuse (as statutorily defined) probably has occurred, and requires those persons listed in K.S.A. 1991 Supp. 38-1522(a) to investigate further whether the child has suffered injury, either physical or emotional. If there is reason to suspect that the child has been injured, that person is then required to report such suspicions and the reasons therefore. Cited herein: K.S.A. 1991 Supp. 21-3503; K.S.A. 38-1501; K.S.A. 1991 Supp. 38-1502; K.S.A. 38-1521; K.S.A. 1991 Supp. 38-1522; 38-1523; K.S.A. 38-1525; 38-1526; K.S.A. 1991 Supp. 38-1583; 40-3103; 44-508; K.S.A. 1980 Supp. 38-717; 38-718; 38-721; 38-721c; 38-721d; L. 1975, ch.231, § 1.

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Dear Mr. McCormick:

As counsel for Governor Finney, you request our opinion regarding the child abuse reporting requirement of K.S.A. 1991 Supp. 38-1522(a). Specifically your question is this:

"Since child abuse includes by definition the felony crime of indecent liberties, does this mean that all cases of pregnancy of unmarried children under sixteen years of age involve suspected injury or abuse as used in the statute and therefore must be reported?"

K.S.A. 1991 Supp. 38-1522 provides in part:

"(a) When any of the following persons has reason to suspect that a child has been injured as a result of physical, mental or emotional abuse or neglect or sexual abuse, the person shall report the matter promptly as provided in subsection (c) or (e): . . . Every written report shall contain, if known, . . . the nature and extent of the child's injury (including any evidence of previous injuries) and any other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the persons responsible for the injuries.

. . . .

"(d) Any person required by this section to report an injury to a child and who has reasonable cause to suspect that a child died from injuries resulting from physical, mental or emotional abuse or neglect or sexual abuse shall notify the coroner or appropriate law enforcement agency of that suspicion.

. . . .

"(f) Willful and knowing failure to make a report required by this section is a

class B misdemeanor. . . ." (Emphasis added).

The term "sexual abuse" is defined in K.S.A. 1991 Supp. 38-1502(c) as "any act committed with a child which is described in article 35, chapter 21 of the Kansas Statutes Annotated. . . ." Article 35, chapter 21 of the Kansas Statutes Annotated defines "indecent liberties with a child" to include sexual intercourse with a child who is under 16 years of age when that child is not married to the accused. K.S.A. 1991 Supp. 21-3503(1)(a). Clearly, when an unmarried child under 16 years of age is pregnant, sexual abuse (as statutorily defined) has occurred, absent artificial insemination. However, K.S.A. 1991 Supp. 38-1522(a), a penal statute which must be strictly construed against the state, does not require reporting of all suspected child abuse; it requires reporting in situations where there is "reason to suspect the child has been injured" as a result of abuse. (Emphasis added). The question, therefore, is whether the mere fact of pregnancy of an unmarried minor is sufficient reason to suspect that the child has been injured.

The term "injured" is not defined in the code for care of children, K.S.A. 38-1501 et seq., although it is used in several sections of the code. K.S.A. 1991 Supp. 38-1502(b) defines "physical, mental or emotional abuse or neglect" as "the infliction of physical, mental or emotional injury or the causing of a deterioration of a child and may include, but shall not be limited to, failure to maintain reasonable care and treatment, negligent treatment or maltreatment or exploiting a child to the extent that the child's health or emotional well-being is endangered. . . ." This definition recognizes that not all injuries are physical wounds. K.S.A. 38-1521 establishes the policy of the state to provide for the protection of children by encouraging the reporting of suspected child abuse. That statute requires the secretary of the department of social and rehabilitation services (SRS), when funds are available for such purpose, to conduct educational programs for persons required to report, which programs "shall include courses which encourage the reporting of cases of children suspected of having been injured as a result of physical, mental or emotional abuse or neglect or sexual abuse [and] an analysis of . . . the methods of diagnosing injuries inflicted as a result of abuse. . . ." We are informed that past programs have covered the gamut of potential injuries, but have not established pregnancy as a per se injury. K.S.A. 1991 Supp. 38-1523(b) requires joint investigations by SRS and law enforcement "[w]hen a report

of child abuse or neglect indicates (1) that there is serious physical injury to or serious deterioration or sexual abuse of the child and (2) that action may be required to protect the child. . . ." This statute infers a distinction between physical injury and sexual abuse; sexual abuse can occur without physical "injury." K.S.A. 38-1525 provides protection for employees who report "injury inflicted upon a child which was suspected by the employee of having resulted from the physical, mental or emotional abuse or neglect or sexual abuse of the child." Substantially the same language is used in K.S.A. 38-1526 providing certain immunity to persons making reports. Again, it is the injury which must be reported, not merely suspicions of abuse. Finally, among the items listed for courts to consider when determining whether to terminate parental rights is any "unexplained injury or death of a sibling. . . ." K.S.A. 1991 Supp. 38-1583(b)(6). None of these statutes are determinative of whether pregnancy of an unmarried minor necessarily constitutes an injury.

The legislative history of the code for care of children in general, and K.S.A. 1991 Supp. 38-1522(a) in particular, does not offer much assistance in determining the legislature's intended meaning for the term "injured," or whether pregnancy of an unmarried minor would be considered an "injury." The pertinent provisions of K.S.A. 1991 Supp. 38-1522, quoted above, have not been amended since enactment of the code in 1982. The code for care of children is essentially part of a recodification of the juvenile code, separating the sections dealing with criminal offenses from those dealing with status offenses. See Kansas Report on Legislative Interim Studies, Proposal No. 17, December, 1981. The recodification was accomplished through the efforts of the juvenile code advisory committee of the Kansas judicial council. See Minutes, Senate Committee on Judiciary, Jan. 25, 1982; Minutes, House Committee on Judiciary, March 16, 1982. Originally, the recommendation of the judicial council advisory committee omitted the term "sexual abuse," and its definition, from what is now K.S.A. 1991 Supp. 38-1502 and 38-1522. Judicial Council Bulletin, June 1981. The comment to section 1502 read, "it is the opinion of the Committee that sexual abuse is included in 'physical, mental or emotional abuse.'" Id. These items were amended into the proposed legislation during a subsequent meeting of the committee without comment. Minutes, Judicial Council Juvenile Code Advisory Committee, p. 4, July 14, 15, 16, 1981. At that same meeting, the committee altered section 1522 [now 38-1522(d)] to the current language "injuries resulting from." Previously the language used was "injuries inflicted as a result." Id. at 6. The comments

to sections 1522, 1521, 1523, 1524 (now K.S.A. 38-1525) and 1525 (now K.S.A. 38-1526) indicate that the language for these sections was derived from K.S.A. 1980 Supp. 38-717, 38-721c, 38-721, 38-721d and 38-718 respectively. See also, Minutes, House Committee on Judiciary, attachment B, pp. 5,6 (March 16, 1982). The only significant amendment to these statutes occurred in 1975 when K.S.A. 38-717 was amended to delete the adjective "serious" from the description of injuries required to be reported. L. 1975, ch. 231, § 1. The reason given for the 1975 amendments was that they were "needed to meet federal regulations for Title IV-A and IV-B monies." Minutes, Senate Committee on Public Health and Welfare, March 18, 1975. This is believed to have been part of the movement toward recognizing that minor injuries can be indications of abuse situations, and that the state should not wait until the injuries become serious before determining the necessity for intervention.

While the code and its history do not shed much light on whether the term "injured" encompasses the condition of being pregnant, it does require liberal construction "to the end that each child within its provisions shall receive the care, custody, guidance, control and discipline, . . . as will best serve the child's welfare and the best interests of the state." K.S.A. 38-1501. Other Kansas statutes define "injury" narrowly to include only physical ailments. K.S.A. 1991 Supp. 40-3103(i); 44-508(e). The rule of construction cited above and the usage of the term throughout the code, however, dictate a broader reading in this case. "Injure" is commonly defined as "[t]o cause harm or damage to; hurt." The American Heritage Dictionary 676 (College Ed. 1975). See also In re Norwood, 234 N.W.2d 601, 603 (Neb. 1975) (neglect held to constitute an injury to child's welfare and rights); St. Clair v. Douvas, 158 N.E.2d 642, 646 (Ill. 1959) (term "injury" as used in workers' compensation act broader than objective physical break or wound to the body; includes also the consequences therefrom such as mental ailments or nervous conditions). Thus, in our opinion, reportable injuries include emotional as well as physical harm. A pregnant, unmarried minor may very likely display signs of emotional, physical or mental injuries which should be reported. However, we do not believe that pregnancy of an unmarried minor necessarily constitutes injury even when that term is understood in its broadest sense. It has been held that pregnancy is not itself an injury but a natural condition. Carter v. Howard, 86 P.2d 451, 455 (Or. 1939). This is consistent with Kansas case law which refuses to recognize at least a compensable injury for the birth of a

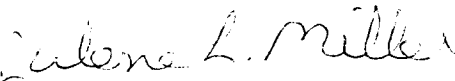
normal, healthy child. Byrd v. Wesley MedicalCenter, 237 Kan. 215 (1985); Johnson v. Elkins, 241 Kan. 407, 411 (1987).

Whether a particular minor in a particular case has been injured as a result of sexual intercourse and a resulting pregnancy must be determined on a case-by-case basis. The fact of pregnancy certainly puts one on notice that sexual abuse (as statutorily defined) has probably occurred, and requires persons listed in K.S.A. 1991 Supp. 38-1522(a) to investigate further whether the child has suffered injury, physical or emotional, as a result of such activity. If there is reason to suspect that the child has been injured, that person is then required to report such suspicions and the reasons therefore.

Very truly yours,



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Julene L. Miller
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RTS:JLM:jm