

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Elwaine F. Pomeroy at  
Chairperson

10:00 a.m./~~p.m.~~ on February 14, 1983 in room 514-S of the Capitol.

All members ~~were present except~~ were: Senators Winter, Burke, Feleciano, Gaar, Hein,  
and Werts.

Committee staff present: Mary Torrence, Revisor of Statutes  
Mike Heim, Legislative Research Department  
Mark Burghart, Legislative Research Department

Conferees appearing before the committee:

Marjorie Van Buren, Office of Judicial Administrator  
Alan Alderson, Department of Revenue  
Senator Jan Meyers  
Sylvia Houglund, Department on Aging  
Charlie Mullikan, retired citizen  
Al Bramble, Kansas Coalition on Aging  
Hattie Norman, Kansas Department on Aging

Senate Bills 154 and 187 - Preparation of Jury lists from driver's license records.

Marjorie Van Buren appeared in support of the bill. A copy of her statement is attached (See Attachment #1). She testified of the qualified voters, 69% are registered. If they used the driver's license list, it would raise the percentage for persons qualified for jury duty. She stated all they have is a list that is getting older and older. If this bill is passed, the driver's license list will be the sole source for jurors. A committee member inquired about the people who do not wish to register to vote because they don't want to be qualified for jury duty. She stated this is the recommendation of the National Jury Experts. A committee member inquired how often the driver's license list would be updated for each county. She answered, annually. The committee member inquired if she is assuming this will happen, that there is no direction in the bill; it will cost the revenue department to have a computer run on these. A committee member inquired if he could make a case to overturn a jury verdict, if county A uses the voter registration lists and county B uses the driver's license lists, and county A excludes certain groups; while county B doesn't. Have they been denied equal protection because of how the jury is selected. Marjorie Van Buren answered, she did hope it is going to be more uniform than what we have right now. She would think it wouldn't make a suit more likely. The committee member suggested using the language, they shall use the driver's license list and any other lists that are available. She said at this point in time, it is going to take some time to work that in; it would be a problem in some districts. The committee member suggested the wording "they shall use" be phased in so that in one year everybody would have the same requirement. The committee member asked her to talk to some people and find out if it can be done.

Alan Alderson testified his purpose is not to provide testimony with respect to the priority of the use of driver's license lists. He stated there is case law which has upheld the use of driver's license lists as the proper method of selection of juries. His purpose is to discuss and advise the committee that there will be another bill introduced in the Transportation and Utilities Committee which will be broader. He said K.S.A. 74-2012 has more problems. In lines 65 and 66, another class of people are added who are entitled to keep these public records. Their bill would broaden those classes even more and provide that information is available to governmental agencies and law enforcement agencies and define

## CONTINUATION SHEET

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what records are public and are not. He stated they feel this bill cannot restrict access as to what you have already designated as public. They have two judicial districts who have requested this information already because of their uncertainty to provide it under 2012. He said an attorney general's opinion was requested and the opinion was never issued. The attorney general felt that because of the Harder case, this information must be provided. The conflict is what the court says and what the statute provides. It is important to them to get the bill passed because the courts are at odds as to what the legislature set out. Mr. Alderson reported it will cost \$700 to \$800 to provide full information on driver's license records; the district is not interested in bearing that cost. He stated there is a cost to running the program to county sites; it is possible to do it. Committee discussion with him followed. In answer to a question, Mr. Alderson stated they have no problem with section (1) of Senate Bill 154; Senate Bill 187 doesn't authorize them to give the information. A committee member inquired if there is any reason to charge a different fee to the public than to a governmental entity, than the judicial district, for information. Mr. Alderson replied, not in his opinion; their interest is not in setting a fee that tends to make people not to ask for something. It is just to cover the cost. A committee member suggested the fee be picked up for the judicial district or for the county but not for compiling the mailing list of drivers. Mr. Alderson replied, they wouldn't be opposed to that; they take the position the charge should be the same when asking for it. The committee member inquired if there were any capital costs. Mr. Alderson answered he didn't believe they figured that in. The vice-chairman requested Mr. Alderson to compile an example of cost in providing this information. A committee member said he would like to see consideration of capital costs.

Senate Bill 170 - Penalties established for failure of persons to report abuse or neglect of residents of certain institutions.

Senator Jan Meyers, the sponsor of the bill, explained this bill pertains to everyone in or out of nursing homes; it is a mandatory reporting bill. This bill is similar to the child abuse and neglect act. Committee discussion with her followed.

Sylvia Hougland appeared in support of the bill. A copy of her testimony is attached (See Attachment #2). Following her remarks, a committee member stated this is an excellent approach to the problem in the state, but doesn't feel this bill goes far enough. He inquired why nurses aides are not included in the bill. Senator Meyers said she would like to include them but it is a sensitive area, and it is controversial. She said she will try one element and then get back to it; she is trying to get the bill all the way through. She said she is not against it. Discussion was had with Secretary Hougland concerning the wording "knowingly and wilfully"; she said she did not object to striking this wording.

Charlie Mullikan appeared in support of the bill. He stated it probably doesn't go far enough. If it is compulsory then it will do some good. He thinks it is a good bill.

Al Bramble testified in support of the bill. He said he was speaking as an older citizen who is concerned about the quality of life for the elderly. If a child needs protection, why doesn't he need it when he becomes old. They have earned the right to a life of dignity.

Hattie Norman testified in support of the bill. She stated the bill will provide more incentive for persons who observe signs of abuse to report it. She expressed her concern for her friends who are in nursing homes in Topeka.

CONTINUATION SHEET

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Senate Bill 170 continued

The vice-chairman apologized to the other conferees who couldn't testify because time had arrived for adjournment. He explained they would be given a chance to testify at a later time.

Senator Werts moved that the minutes of February 9, 1983, be approved; Senator Gaar seconded the motion, and the motion carried.

The meeting adjourned.

## GUESTS

## SENATE JUDICIARY COMMITTEE

| NAME                | ADDRESS  | ORGANIZATION     |
|---------------------|----------|------------------|
| Larry Hines         | Lawrence | Steiniger        |
| Dean Eason          | Topeka   | KANA             |
| Jim Klausman        | Topeka   | KHCA             |
| Lynne Bachman Brown | Topeka   | KNCA             |
| Lauren Harrod       | Topeka   | S. R. S.         |
| Al Bramble          | Lawrence | KCOA, KCAA       |
| Nadine Bunch        | Topeka   | KCOA             |
| Marilyn Bratt       | Lawrence | WINH             |
| Hattie Norman       | Topeka   | KDOA             |
| Fred Allen          | "        | KAC              |
| Jim Clark           | Topeka   | KCDAA            |
| Marjorie Kubner     | Topeka   | OJA              |
| Alma Teleman        | Wichita  |                  |
| Judy Sturgeon       | Topeka   | KDOA             |
| John Josseland      | Topeka   | Sec of State     |
| M. Hawver           | "        | Capital Journal  |
| Richard Stanford    |          | KDPA             |
| Barbara Jett        |          | KDHS             |
| Glenn D. Cogswell   | Topeka   | R. L. Peck & Co. |
| B. Nappin           | "        | AP               |
| Paul Vann           | Wichita  | Self             |
| Charles Meehan      |          | Retired          |
| Jan Meyers          |          |                  |

TESTIMONY ON

SENATE BILL 154

Marjorie Van Buren  
Office of Judicial Administration  
Unified Court System

This bill amends K.S.A. 43-162 and K.S.A. 74-2012 to allow the use of driver's license lists as sole source lists in the preparation of jury lists.

Many counties in the state no longer conduct a population census; therefore, these counties have only outdated census records and voter registration records available for use in jury list preparation. The use of the driver's license lists as a sole source or in combination with the voter registration records and the census records will provide a broader and more accurate list of potential jurors than is now obtainable in most counties.

Section 1 amends K.S.A. 43-162 to provide statutory language for the use of driver's license lists, and jury commissioner access to the records of the division of vehicles pertaining to licensed drivers.

Section 2 amends the vehicle records confidentiality statute to allow copies of the lists to be provided for jury source list purposes.

Atch. 1

2-14-83  
# 2

TESTIMONY ON SB-170  
TO SENATE JUDICIARY COMMITTEE  
By Kansas Department on Aging  
Feb. 14, 1983

Bill Brief:

SB-170 provides for a Class B misdemeanor for failure to report abuse and neglect of nursing home residents by mandatory reporters.

Summary Provisions:

1. Mandatory reporting is included in K.S.A. 39-1402:
  - Anyone licensed by Board of Healing Arts;
  - Adult Care Home Administrators;
  - Licensed Social Workers;
  - Licensed Professional Nurses; and
  - Licensed Practical Nurses.
2. The proposed new sanction applies only to those who knowingly and willingly fail to report.
3. Class B misdemeanor same as penalty in child abuse statute (up to \$500 or one year in prison).
4. Not subject to civil liability for reporting continues under K.S.A. 39-1403.

Testimony:

SB-170, by including a penalty for willingly and knowingly failing to report nursing home resident abuse and neglect by professionals, is an essential addition to current abuse and neglect statutes.

Current statute, K.S.A. 39-1402, lists those licensed by the Board of Healing Arts, adult care home administrators, licensed social workers, licensed professional nurses, and licensed practical nurses as mandatory reporters. SB-170 provides the same penalty for professionals who fail to report elderly abuse as for professionals involved with child abuse. Both groups are vulnerable, often victimized, with a similar need for protection.

People, even professionals, may be reluctant and hesitate to report. When it's a matter of law and the penalty is clear, those hesitations are removed, providing greater protection for the vulnerable elderly. Including this penalty makes legislative intent clear - that elderly abuse and neglect must be reported the same as child abuse.

Atch. 2

Fears of the effects of penalties were expressed when a penalty provision was being enacted into the Child Abuse Statute (K.S.A. 38-720). However, those concerns have proved to be unfounded. Professionals are protected by having the law made clear.

The Long Term Care Ombudsman has indicated that mandatory reporters are often not aware of the need to report. For calendar year 1982, the Ombudsman indicated 71 complaints of abuse and neglect were received by the Ombudsman and passed on to SRS. SRS indicated in their final report for FY-82, 384 incidents of adult abuse were reported.

In fiscal year 1982, the Nursing Home Ombudsman had 431 complaints, of which abuse and neglect comprised 71 (4th). There are about 22,000 in adult care homes in Kansas. It is generally estimated that many of them have one from the outside who contacts them.

Most people who need nursing home care are inherently vulnerable. Either they are no longer capable of voicing their concerns or may fear retaliation. They must rely on professionals and concerned friends who observe their condition to report abuse.

KDOA hopes that the legislature will clearly indicate its intent that abuse and neglect be reported by the named professional care givers by passing this bill.