

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 18, 19 83 in room 514-S of the Capitol.

All members ~~were~~ present ~~except~~ were: Senators Pomeroy, Winter, Feleciano, Gaines, Hein, Mulich, Steineger 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:

Senator Billy McCray
Frances Kastner, Kansas Food Dealers' Association, Inc.
Patti Hackney, Public Assistance Coalition of Kansas
Tom Mulhern, Flinthills Breadbasket
Patrick Marrin, Let's Help
T. A. Lockhart, National Association for the Advancement of Colored People
Senator Norma Daniels
Ginger Clubine, Kansas Association for Retarded Citizens
Joan Strickler, Kansas Advocacy & Protective Services for the Developmentally Disabled, Inc.
Michael Byington, Kansas Association for the Blind and Visually Impaired, Inc.
Pat Terick, United Cerebral Palsy of Kansas
John Frye, Starkey Developmental Center, Wichita
Dorothy J. Okeson, Kansas Planning Council on Developmental Disabilities Services
Onan C. Burnett, Kansas Association of Special Education Administrators and Unified School District 501
Dennis McFall, Kansas Association of School Boards
Dick Hummel, Kansas Health Care Association
Marilyn Bradt, Kansans for the Improvement of Nursing Homes
Dean Edson, Kansas Association of Homes for the Aging, Inc.
Robert Harvey, Kansas Alliance for Special Education, Olathe, Kansas

Senate Bill 28 - Good Samaritan food law.

Senator Billy McCray, the sponsor of the bill, appeared before the committee to explain his bill. A copy of his remarks is attached (See Attachment #1).

Frances Kastner appeared in support of the bill. A copy of her remarks is attached (See Attachment #2).

Patti Hackney testified in support of the bill. A copy of her remarks is attached (See Attachment #3).

Tom Mulhern testified in support of the bill. He stated they don't give food to people, they give food to groups of people. A Flinthills Breadbasket brochure and a copy of an article entitled "Surplus not waste in Manhattan" were handed out to committee members (See Attachments #4, #5).

Patrick Marrin appeared in support of the bill. He stated they have seen a tremendous increase in the need. Last year they helped over 6,000 families, and they served 53,000 meals. He said a local store paid a dumpster \$200 to haul good food off and dump it.

T. A. Lockhart appeared in support of the bill. He stated these particular activities are in constant increase.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

room 514-S, Statehouse, at 10:00 a.m./~~xxx~~ on February 18, 1983

Senate Bill 28 continued

The chairman inquired of Senator McCray if he knew of any instance in Kansas where anybody has been sued or a judgment rendered against them. Senator McCray answered he did not know of anybody; just that there is some fear.

Senate Bill 177 - Special education for exceptional children, due process hearings, appointment of hearing officers.

Senator Norma Daniels, the sponsor of the bill, explained the bill to the committee. She said the bill would raise the quality of hearing officers and address the concern of impartiality. A committee member inquired why the bill is in the Judiciary Committee and not in the Education Committee. The chairman explained, perhaps because it says due process.

Ginger Clubine presented testimony in support of the concept of the bill. A copy of her remarks is attached (See Attachment #6).

Joan Strickler appeared in support of the bill. A copy of her remarks is attached (See Attachment #7).

Michael Byington testified in support of the bill. A copy of his remarks is attached (See Attachment #8).

Pat Terick testified in support of the bill. They feel the school boards should not have the authority to select the hearing officers.

John Frye testified in support of the bill. A copy of his remarks is attached (See Attachment #9).

Dorothy Okeson appeared in support of the bill. A copy of her remarks is attached (See Attachment #10).

Onan Burnett testified in opposition to the bill. He stated his organization feels we have a workable law as it is at the present time. The bill takes away the local control of schools. He stated in his district they have had one hearing officer since the original bill was established. In states where they have had hearing officers appointed, there has been a high number of appeals. Mr. Burnett said he concurred with the conferees who favored training of hearing officers. Their hearing officer is trained. He said if a hearing officer is employed by the state, a fiscal note is attached to it. He feels the current law is child oriented, and the bill is an emotional bill that centers on the parents' feelings.

Dennis McFall testified in opposition to the bill. He stated it is inevitable that cost is connected with this bill. They object to centralization of decisions such as this. He said they feel the person who works day in and day out with the child knows more about the child than a person who comes in from 200 miles away.

The chairman inquired if there was a similar bill in the House. Senator Daniels answered, yes, it was assigned to the Education Committee and has not had a hearing on it.

Robert Harvey appeared in support of the bill.

This ended the hearings on Senate Bill 177.

Senator Gaines moved that the minutes of February 11, 1983, be approved; Senator Werts seconded the motion, and the motion carried.

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

The hearings on Senate Bill 170 were continued from the hearings on February 14 when time for adjournment arrived before all conferees could be heard.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 18, 1983

Senate Bill 170 continued

Dick Hummel appeared in opposition to the bill. He presented the testimony of Jim Klausman because Mr. Klausman could not be present for the hearing this morning. A copy of Mr. Klausman's testimony is attached (See Attachment #11).

Marilyn Bradt testified in support of the bill. She stated they have repeatedly supported the addition of a penalty to the adult abuse reporting bills. A copy of her remarks is attached (See Attachment #12).

Dean Edson testified in support of the bill. A copy of his comments is attached (See Attachment #13).

The meeting adjourned.

2-18-83

GUESTS

SENATE JUDICIARY COMMITTEE

NAME

ADDRESS

ORGANIZATION

Pat Feind 2021 N. Old Manor ^{cerchival policy} UCPK
Wichita

Joan Strubler Ks. Advocacy & Protection Services - Suite 2
513 Leavenworth Manhattan, Ks. 66502

John Inye 144 S. Young Wichita, Ks.

Gerger Cluume 8917 Wauvocket Wichita KARC

Sheelak. Lachant Leavenworth NAACP

Sen. Billy O. McCray
Patrick Murrin Lets Help

Patricia Hackney Public Assistance ^{Coalition} of Ks PO Box 2815 Topeka 66601

Keri Alexander

Marilyn Bratt KINFI Lawrence

Robert P. Haderlee Geosord. Ks. Ado Council
Spec Ed

James E. Marshall Topeka SDE

Martha A. Claphin Topeka FHSU - Special Education

Debra M. Whotton Topeka SDE

Robert Hoover Olathe Ks Alliance for Special Ed.

Michael J. Byington Topeka Ks. Assn for the Blind and Visually Impaired

Oran C. Burnett Topeka KASBA

Ethel Mary Miller Topeka KARC

Dennis McFall Topeka KASB

Quin Clave Topeka KCOAA

Larry Humes Lawrence Steineger

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Pamara Buckett	Manhattan	KAPS
Ron Pavelka	Manhattan	KAPS
Tom Mulhern	Murrtown	Foothills Bread basket
Paul Johnson	Topeka	PACK
S. Rogan	"	AP
Dean Edson	Topeka	KANA
Deek Hummel	Topeka	KUCA
Norm Daniels	"	State Senator
Mrs. Dorothy Okeson	Weskan, Ks.	KPCDD
Janet Schalansky	Topeka	KPCDA
DAVID CALOVICH	TOPEKA	KIN
Ken Glauz	Topeka	Gov's Office
Nancy Zielke	Topeka	KDOA
Jusan Schroeder	Topeka	Budget
Frances Kastner	Topeka	KFPA Set
Barb Remont	"	K WIP Caucus
M. Hawser	"	C90 - January
Steve Ross	"	KSN TV
Nickie Stein	Topeka	KS St. Nurses' Assn.
Annette Backway	Topeka	Sen. Yaines
Bill Blalock	Hays	
ROT McKesky	Topeka	KIN

2-18-83
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BILLY Q. MCCRAY
SENATOR, TWENTY-NINTH DISTRICT
SEDGWICK COUNTY
1532 NORTH ASH
WICHITA, KANSAS 67214



COMMITTEE ASSIGNMENTS
CHAIRMAN SUB-COMMITTEE ON CREDIT UNION
MEMBER WAYS AND MEANS
EDUCATION
SPECIAL CLAIMS AGAINST THE STATE
COMMERCIAL AND FINANCIAL
INSTITUTIONS
(1202) COMMISSION

TOPEKA

SENATE CHAMBER

February 18, 1983

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE

Thank you for allowing this hearing on S.B. 28, and also for giving me and others an opportunity to express why we support the measure.

The bill is designed to allow a good faith donor of canned or perishable food products to give these products to a charitable or not-for-profit organization for distribution.

Subsection (d) of SB.28 provides that "nothing in this act shall restrict the authority of any appropriate agency to regulate or ban the use of such food for human consumption".

My purpose for having such a bill drafted is an attempt to encourage "good faith" donors, whether they be owners of grocery store chains, warehouse and storage organizations, local food merchants or charitable organizations that assemble and distribute these products; to renew and escalate their donation effort so that those in our society who do not have adequate resources may continue to eat.

In the past there has been some question as to the constitutionality of "Good Samaritan Food Legislation". S.B. 28 is constitutional and, in my judgment, is needed.

Billy Q. McCray, Senator
Twenty-ninth District

BQM:mjh

Atch. 1



Kansas Food Dealers' Association, Inc.

2809 WEST 47th STREET SHAWNEE MISSION, KANSAS 66205

PHONE: (913) 384-3838

SB 28 SENATE JUDICIARY COMMITTEE

2/18/83

OFFICERS

PRESIDENT
ROY FRIESEN
SYRACUSE

VICE-PRESIDENT
JOE WHITE
KINGMAN

TREASURER AND SECRETARY
LEONARD MCKINZIE
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AFFILIATE DIRECTOR

BOB MACE
TOPEKA

**DIRECTOR OF
GOVERNMENTAL AFFAIRS**

FRANCES KASTNER

EXECUTIVE DIRECTOR
JIM SHEEHAN
SHAWNEE MISSION

Thank you Mr. Chairman, and members of the Committee. I am Frances Kastner, Director of Governmental Affairs for the Kansas Food Dealers Association. We represent wholesalers, distributors and retailers of food products throughout the state of Kansas.

As we testified before this committee several years ago, we agree with the concept of donating food products to non-profit and charitable organizations rather than dumping or discarding good food.

Some of our members are currently involved in donating food products to the local agencies they believe are involved in the bona-fide charitable distribution of wholesome food. They verify that those who are in charge of the non profit organization are indeed serving that segment of our society which needs the help rather than setting up a salvage-type operation which could be in direct competition with some of our members.

We endorse SB 28, and leave it to the wisdom of the legislature as to whether there is currently adequate protection under the law for both the donor and the donee.

Thank you for the opportunity to appear before you today, and if you have any questions, I will be happy to answer them.

Atch. 2

PUBLIC ASSISTANCE COALITION OF KANSAS
P.O. Box 2815
Topeka, Kansas 66601
(913) 354-4635

2-18- 3
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TO: Senate Judiciary Committee
FROM: Patti Hackney, Researcher with the Public Assistance
Coalition of Kansas
DATE: February 18, 1983
RE: Senate Bill 28--Good Samaritan Food Act

My name is Patti Hackney and I am representing the Public Assistance Coalition of Kansas, a coalition of churches, civic and labor groups from across the state. Our organization is very much in support of Senate Bill 28, the Good Samaritan Food Bill.

There are three main reasons that our organization supports this bill:

1) First of all, we support this bill because the grocery stores say they need it. Many food banks across the state are salvaging substantial quantities of groceries from participating stores, but that avenue of free food is in jeopardy. Grocery stores want a good samaritan food law on the books which would exempt them from civil or criminal liability in connection with the donated food, unless there was negligence. These grocery stores say they need this law on the books to continue giving food. In Wichita, the food bank has had to take out products liability insurance and sign a "hold harmless agreement" with the grocery store they mainly deal with.

2) The second reason this bill is needed is the increasing demand on food providers. The need for food has escalated into an emergency hunger situation in many areas. Food is the flexible part of an already tight budget and that is where people pare down, resulting in hunger, malnutrition and illness. To illustrate these food demands:

In Topeka, 250 people a day are being fed a hot lunch at Let's Help, and commodities are being distributed as fast as they can get them. Last month, approximately 3,000 people stood outside for five pounds of cheese and one pound of butter in 25 degree temperatures. Last year, \$62,000 worth of salvaged food was given out.

In Wichita, Rev. Martin Holler, head of the Wichita Food Bank, is very supportive of this bill. To illustrate the increasing food needs in that area, he said that in January 1982 they helped 285 families. In December 1982 they assisted 1600 families. Because a large number of unemployment benefits are expected to run out in the next 4-6 weeks, they are expecting February and March's figures to exceed 2,000 families. Every week they receive anywhere from \$1,000 - \$6,000 worth of surplus food. This last week, in two day's time, they received \$3,000 worth of milk, bread, fruit, etc.

Atch. 3

In Kansas City, Kansas, Lou Finocchario, director of Catholic Social Services in that city supports this bill. He said they get some surplus food through their organization, but not as much as Topeka and Wichita. However, he sees the Good Samaritan Act as opening a door for future food supplies for his organization to distribute.

3) The third reason we support this bill is that it is one way the state can support the private sector in their attempts to help in these hard times. And, in a tight fiscal period, no state dollars would have to be allocated.

We feel many people would be going hungry without surplus food supplies that food providers receive. We need to safeguard that supply of free food.

Thank you for allowing me the opportunity to express our views on this bill.

CONTRIBUTIONS

Volunteer opportunities:

There are many ways you can help the Breadbasket with your time. Help is needed in the following areas:

- Gleaning produce in season
- Picking up donated food
- Sorting and repacking food
- Fundraising
- Publicity and printing
- Volunteer coordination
- Recordkeeping

Equipment needed now:

- Lumber for shelves; existing shelves; office equipment; typewriter; file cabinets; folders; tables; refrigerators; freezers; chairs; furniture.

donations of money

Money is needed to meet operational expenses, liability insurance, utilities, postage and printing costs, telephone, etc. The Flint Hills Breadbasket depends upon voluntary contributions to meet these expenses.

Speakers Bureau

If your organization would like to hear more about the Breadbasket and how you can help, call:

Marcia Schuley
Pawnee Mental Health Services
(913) 776-7178

DON'T THROW AWAY GOOD FOOD!!!

Flinthills Breadbasket
901 Yuma
Manhattan, KS 66502

2-18-83

#4

FLINTHILLS BREADBASKET

THE COMMUNITY FOOD NETWORK



THERE ARE HUNGRY PEOPLE IN RILEY COUNTY
AND YOU CAN HELP!

CALL—537-0730

to contact the
Flint Hills Breadbasket

Atch. 4

NON-PROFIT ORGANIZATION
U.S. POSTAGE PAID
PERMIT NO. 684
MANHATTAN, KANSAS 66502

FLINTHILLS BREADBASKET: the community food network

FLINTHILLS BREADBASKET, The Community Food Network, is an effort to eliminate hunger and prevent waste in Riley County.

We are a not-for-profit group, currently sponsored by the North Central Flint Hills Area Agency on Aging. We are dedicated to providing an efficient link between the Food Industry and Producers and agencies that effectively serve the needy in Riley County. Our your-round food depository, located at the Douglas Center Annex, 901 Yuma Street, Manhattan, is now ready to receive food donations.

with your help, we can:

- meet the continuing needs of the hungry in Riley County.
- cut down the 137 million ton* waste of food that is usable each year in the country.

DONOR BENEFITS

The food company that donates food to the Breadbasket receives a direct benefit.

Under the Tax Reform Act of 1976, the contributor receives tax deductions equal to one-half of the profit they would realize if they had sold the donated items, in addition to the tax deduction for the loss of the base production cost. The 1976 Tax Reform Act should be studied in detail to realize all the benefits.

* USDA 1977 September

WHO WILL RECEIVE DONATED MERCHANDISE?

1. Emergency Assistance Centers/ Not-For-Profit Human Service Organizations.

Existing church pantries attempt to provide a two or three day supply of well-balanced groceries to families in need. Lack of storage, adequate refrigeration, or labor to glean harvest food sometimes handicaps them from accepting available food. The Breadbasket will help solve these problems. Other Agencies often serve people whose health and well-being can benefit from the availability of donated food.

2. Food Meal Preparation Sites.

Crisis intervention group homes, non-profit day care centers, nutrition programs for the elderly, and similar institutions can utilize salvage food immediately. Many of these institutions are trying to survive on limited budgets; the availability of donated food can make the difference in their ability to continue to provide services.

Printed and distributed by:
Manhattan Association of Christian
and Jewish Congregations.

WHAT TO GIVE THE BREADBASKET

Dented cans

(salvageable only--no rim dents)

Damaged cases

Cans with no labels

Fresh produce that is mostly usable

Soap products

Household paper products

Fresh meats

Frozen foods

Bread

Dairy products

Out of date products

In short, the Breadbasket wants food or grocery store items from one item to a semi-truck load.

OPERATION OF BREADBASKET

Donated food will move from the Breadbasket to existing agencies and institutions rather than to individuals. These well-established professional groups are experienced in identifying people who have a real need.

Any local not-for-profit organization which feeds people may request a Breadbasket agreement form. Food will be available on a first come - first serve basis. Organizations will be asked to contribute 5¢ a pound for the food they receive to defray operational expenses.

When donations are received, the amount and weight will be recorded on the donor's account. Detailed donation records will be supplied to the donor on an annual basis, or made available as requested.

Surplus not waste in Manhattan

By RITA SHELLEY
Capital-Journal state staff writer

MANHATTAN — Getting those who need to give together with those who need to receive is the job of the Flint Hills Breadbasket.

The agency estimates that 137 million tons of usable food are thrown away each year in this country because methods of distributing it are lacking. But because of the efforts of volunteer individuals and agencies here, 15,000 fewer pounds of food were thrown away last year in Riley County.

The Breadbasket operates out of a former army barracks in south Manhattan weekday mornings. During those hours the Breadbasket manager, Jean Tyler, is on hand to accept food donations and to help representatives of social agencies go "shopping."

The organization encourages a nickel donation for each pound of food received.

Currently about 20 agencies are taking advantage of what the Breadbasket has to offer, with a benefit being a reduction in their operating costs.

A local grocery company, the American Institute of Baking and several individuals have been among the more active in donating food and household goods here. The Breadbasket so far has operated on grants from two churches and time or money donated by various other groups and individuals.

"So far we've operated basically on nothing," Marcia Schuley, a Breadbasket organizer, said. Seeking a regular source of funding is a possibility, she added.

A \$100 donation raised about a year ago by 100 Marlatt Elementary School sixth graders "really got us started," Schuley said. More recently the students raised \$250 at a hunger bazaar to buy the Breadbasket a freezer, according to Joan Dickerson, one of their teachers.

Tyler's salary is paid by Green Thumb, a U.S. Department of Labor program which employs persons over 55 years old.

Among the more spectacular examples of surplus food the Breadbasket has distributed have been a truckload of turnips and about \$400 worth of dairy products.



JEAN TYLER
...heart of Breadbasket

"I never saw so many turnips in my life," Tyler said. She's not sure she wants to see any again. But while the university professor who grew the turnips unloaded them, Tyler started telephoning every likely recipient she could think of. It took two weeks, but she got rid of them all.

According to Tom Cooney, a representative of Dutch Maid Supermarkets which donated the case full of milk, cheese, sour cream and other dairy products which otherwise would have been thrown away, the Breadbasket was a good find.

The dairy products were fine if used within 24 to 48 hours after the store cooler containing them broke down. But the company couldn't sell them to customers who would find themselves with a sour product within a day of their purchase, Cooney said.

"We had a problem. But it worked out real well," Cooney said. "It's very beneficial, the fact that damaged food can be put to good use."

Dutch Maid also realizes some tax benefits for its trouble. Half the value

of the donated items is deductible, according to Schuley.

"It's not like we're putting on our white hats to do this," Cooney said. "It's better than throwing things in the trash and getting nothing out of it."

One of the Breadbasket's earliest decisions was to deal with representatives of social agencies who are experienced at getting help to those who need it, rather than with individuals.

"It's difficult to screen out who gets the food," Schuley said.

The fact that AIB could deal with just one organization to make sure its surplus bread gets where it is needed was appealing, said Donna Mosburg, registry for AIB's School of Baking.

"We train bakers, and in the course of doing that we have production runs of 400 to 500 loaves of bread in an afternoon," Mosburg said. "After the stu-

dents take home what they can use, we still have lots left, but not enough to wholesale."

One of Breadbasket's goals, according to Tom Mulhern, another organizer, is to get more of the town's grocery stores involved. Some seem concerned about liability if anyone were to become ill eating donated food.

"That's the first thing we talked about," Cooney said. "But we feel like we're well covered. The one accepting the risk is the receiver."

The challenge is getting grocery stores to change their procedures, Mulhern said.

"We think the others may become involved as they realize we are an established organization. They're used to doing things (with non-saleable terms) that don't include the food bank," he said.

Helping needy in rural locations special challenge to Breadbasket

MANHATTAN — Getting help to the rural needy presents some challenges that urban providers don't face, according to Jean Tyler, Flint Hills Breadbasket manager.

"I think there's just as much need for food (outside cities), it's just a matter of getting it to them," Tyler said. "But too many just don't want to mess with it and too many are too proud to accept help."

The commonly held belief regarding rural people is that they live on farms, grow gardens and don't go hungry, according to David Raphael, executive director of Rural America Inc., Washington, D.C., and because agencies providing help to the rural needy have been busy trying to protect their own existences, statistics on how many rural people do not have enough to eat probably are not available, Raphael said.

Yet there are two indications that some percentage of rural people cannot supply their own food: A disproportionate number of poor people live in rural

areas and a fairly high percentage live in small towns, not on farms. It cannot be assured they have access to garden space, Raphael said.

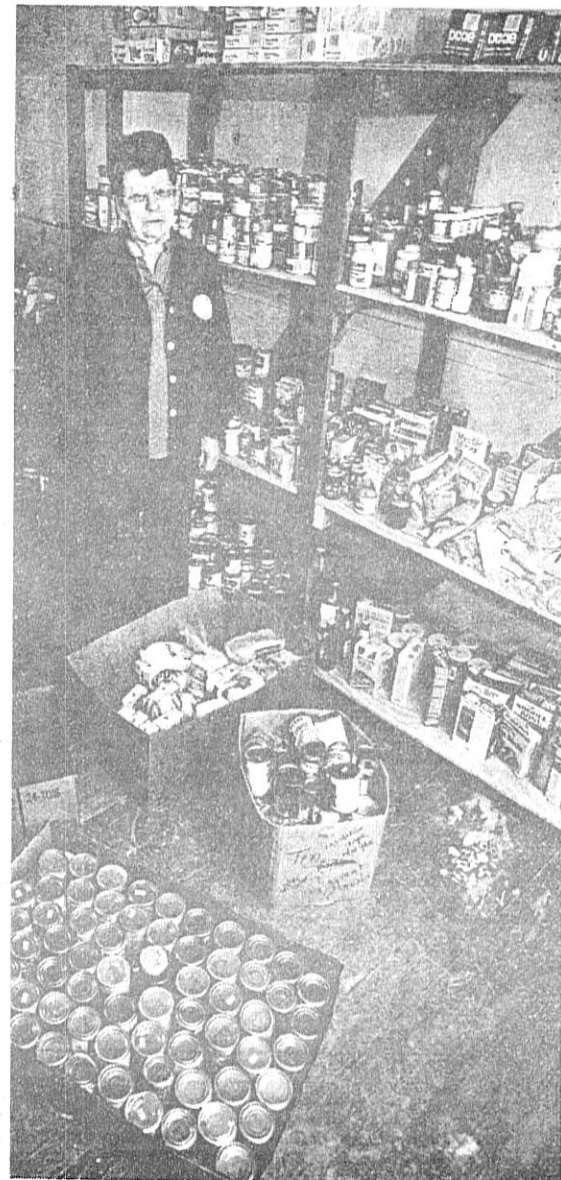
Fred Bentley, Whiting, director of the Kansas Rural Center, a grant- and church-supported agency, doubts the theory that most rural people grow their own food. However, he believes rural people may be more likely to help out a neighbor or relative who doesn't have enough money to buy food.

"I think there is hardship. There has to be with the number of people taken off food stamps that has been, and with the scarcity of jobs," Bentley said. "But you don't hear much complaining. People have a lot of pride."

So far the Breadbasket has set up systems to get surplus food to agencies in three small Riley County towns — Riley, Randolph and, most recently, Leonardville.

"We're real pleased to see this," said Tom Mulhern, a Breadbasket organizer. "If this builds like I think it could, I can see us expanding into other counties."

The key is flexibility. "In rural areas, we see a greater variety of needs, perhaps, among fewer numbers of people," he said.



—Staff/Andy Nelson

Manager Jean Tyler stocked shelves of the Flint Hills Breadbasket, Manhattan, with food for Riley County's needy.

Atch. 5

My name is Ginger Clubine. I am here today representing the Kansas Association for Retarded Citizens offering testimony in support of the concept of Senate Bill 177. As a parent group, ARC actively advocates for the rights of the approximately 13% of the school age children in the state that are in special education. We feel an obligation to advocate in their behalf for Senate Bill 177 that addresses impartial due process hearings.

The intent of the bill is to upgrade the quality of hearing officers in due process proceedings. Section 2 of the bill states that the state board shall establish, in consultation with the state advisory council for special education, standards and criteria for qualification of persons as hearing officers and shall compile and maintain a list of hearing officers qualified in accordance with such standards and criteria. It is hoped that in standardizing the criteria and qualifications there will be more consistency in hearing decisions throughout the state.

The bill also addresses ARC's concern that at the present time hearing officers in due process proceedings are selected by the local board. Senate Bill 177 reads as follows:

- (1) When the agency providing for the hearing is a board or the secretary of social and rehabilitation services, the agency shall immediately notify the state board that a hearing is to be conducted and shall request the state board to provide a list of the names and qualifications of five prospective hearing officers. The agency and the lawful

custodian of the involved child may each remove two names from the list. The agency shall inform the state board of the name or names remaining on the list and the state board shall appoint a hearing officer therefrom.

Special education should be a partnership between the school system, the child and the parent. The partnership should be active throughout the education of the child. The selection of hearing officers, as outlined in the bill, makes it possible for the balance of power in this partnership to be equitable.

Due process should be the last step in challenging the identification, evaluation, or placement of a child. ARC feels parents may believe they will not be afforded an impartial hearing when their local board is the one selecting the person who will hear the case and will render the decision on the matter.

ARC is aware it is impossible to legislate impartiality. The concept within Senate Bill 177 takes us a step closer to insuring impartiality.

Kansas Advocacy & Protective Services for the Developmentally Disabled, Inc.

2-18-83
1



Suite 2, the Denholm Bldg.
513 Leavenworth
Manhattan, KS 66502
(913) 776-1541

Chairperson

*R. C. (Pete) Loux
Wichita*

TO: The Senate Judiciary Committee
Senator Elwaine Pomeroy, Chairman

Vice Chairperson

*James McNish
Kansas City*

FROM: Kansas Advocacy and Protective Services
for the Developmentally Disabled, Inc.
R. C. Loux, Chairman

Secretary

*Marion Vernon
Topeka*

DATE: February 18, 1983

Treasurer

*Neil Benson
El Dorado*

RE: Senate Bill 177, Concerning Special
Education Due Process

*Robert Anderson
Ottawa*

KAPS is devoted to seeking ways to ensure the protection of the rights of persons with developmental disabilities. As is provided for in the Developmental Disabilities Act, KAPS is one of 54 such agencies serving our states and territories.

*Sen. Norma Daniels
Valley Center*

*Sen. Ross O. Doyen
Concordia*

We get involved in several ways.

*Mary Hohman
Topeka*

- We receive complaints of alleged violations of rights which we investigate, and then assist people in resolving their problems.

*Harold James
Hugoton*

- Upon request, we provide information to assist agencies and service providers.

*Rep. Ruth Luzzati
Wichita*

*James Magg
Topeka*

- We provide information to assist developmentally disabled persons and their families in self-advocacy.

*W. H. Weber
Topeka*

Liaison to the Governor

Robert Epps

Executive Director

Joan Strickler

In terms of workload, special education issues have demanded a considerable amount of our staff time and resources. We have worked with parents and students from throughout the state in negotiating differences with the schools, and have worked with and provided information and support to many professional educators and attorneys in Kansas. Through this experience, we have become aware of what, we feel, are serious problems in our state.

Atch. 7

At the present time local education boards appoint their own hearing officers. The local education agency is required to maintain a list of persons and their qualifications. No such list is maintained at the state level. There are no standards or criteria set for qualification of persons to serve as hearing officers. There are no training requirements. The vast majority of persons selected to serve as hearing officers are professionals in the field of education who may or may not have received training in procedural due process.

This leads to confusion and mixed quality in hearing officers' decisions. In a number of instances the hearing is completed at the local level only to find, upon appeal, that procedural due process was not afforded. There is also some concern at the state level that not all hearings are reported to the state as required.

Concern about special education due process procedures has been growing for some time. The Report on Interim Studies to the 1982 Legislature contained recommendations to change the law to allow for appointment of hearing officers by the State Board.

The Special Education Section of the Kansas Department of Education recently completed a study of the total number of due process hearings reported to the State Advisory Council for Special Education. In a summary of local hearings from 1977 through December of 1982, the Department found a total of 83 hearings reported. On the first page of its report the Department specifically notes that, "If there are more hearings than listed it is because school districts/cooperatives did not report." According to the KSDE, of the 83 hearings reported, 57 decisions at the local hearing level were found clearly in favor of the local school board. Some 8 decisions were found clearly in favor of the parent. The report indicates 13 decisions involved some type of compromise of the positions of the local school board and the parents. There were 4 instances in which the decisions were either missing or unclear. In one situation the hearing was described as dismissed, or withdrawn.

Of the 83 total due process hearings reported some 32 decisions were appealed to the State.

While some might see the low number of appeals as indicating satisfaction with the hearing officer's decision, our agency's contact with parents would indicate the opposite. Many parents indicate frustration at a system they view as stacked against them. Also, until the action taken in the 1982 Legislature, the appeal consisted only of a "review" by a reviewing officer who did not deal with the substance of the hearing officer's decision, but only with whether or not due process was afforded. I reference KSDE's description in its report of Hearing Number 9: "The parents appealed to the State Board of Education, but subsequently dropped their appeal upon advice of legal counsel when it was discovered that the State Board appeal would review due process only and the introduction of new evidence would not be allowed."

Of the 32 decisions appealed to the State, the hearing officer assigned by the State Board found that due process was not afforded in 11 situations but was afforded in 15. The 6 remaining appeals were, for some reason, withdrawn.

In other words, in Kansas, if you are party to a special education due process hearing, you may well find the hearing invalid because procedural due process was not afforded. This is totally aside from any consideration of the merits of the substantive decision. We see this as a very sad situation for all parties involved. It is time Kansas did something to improve that system.

Senate Bill 177 would amend the due process provisions of the Special Education for Exceptional Children Act by providing that the State Board establish, in consultation with the State Advisory Council for Special Education, standards and criteria for qualification of persons as hearing officers qualified in accordance with those standards and criteria.

When providing for a hearing the local board would notify the State Board of Education. The State Board would provide a list of the names and

The Senate Judiciary Committee
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Page Four

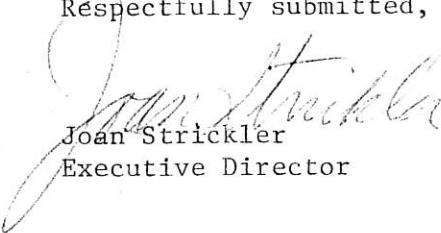
qualifications of five prospective hearing officers. The local education agency and the parent would each have the opportunity to remove two names from the list. The State Board would appoint the hearing officer from the names remaining.

In situations where the State Board is a party to the hearing, it would make its list of hearing officers available and the parent could select a hearing officer from the list.

This procedure is designed to upgrade the quality and consistency of hearing officer decisions throughout the state. It would also address parent concerns that one party to the hearing (the local board of education) has full authority to select the hearing officer, raising the question of impartiality.

We do not anticipate any fiscal impact to the state to accomplish the provisions of Senate Bill 177. Passage of this bill can make an affirmative difference that will benefit parents, schools and children. We believe the issues it addresses, and the remedies suggested, deserve your serious consideration and support.

Respectfully submitted,



Joan Strickler
Executive Director

2-18-83
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Kansas Association for the Blind and Visually Impaired, Inc.

February 18, 1983

TO: Education, Kansas Senate

FROM: Kansas Association for the Blind and Visually Impaired Inc.
Education Committee, Esther V. Taylor, Chairperson; and Legislative
Committee, Mary Adams, Chairperson, and Michael J. Byington, Lobby

RE: Senate Bill 177

The Kansas Association for the Blind and Visually Impaired Inc., an advocacy organization active in Kansas for over 60 years, stands in complete support of Senate Bill 177.

The right of a child to the most appropriate educational setting and programming is not something which should vary from county to county or district to district. Such a right is assured through federal law, and implemented through state provisions. Therefore, if a disagreement should occur as to what is the best setting and/or programming for a particular child, the due process leading to resolution should be fair and uniform throughout the state. Adoption of Senate Bill 177 would certainly be a step in this direction.

This Bill would direct the State Board of Education, in consultation with the State Advisory Council for Special Education, to establish qualifications necessary for educational due process hearing officers, and would further direct the State Board of Education to maintain a list of available persons qualified as hearing officers. Currently no standards for qualifications exist, and hearing officers can be appointed locally from neighboring areas. This situation allows for a most undesirable potential for variation of quality of appointed hearing officers in different parts of our state.

Placing the State Board of Education in charge of the qualifications and assignment of hearing officers also has the advantage of making the State Department of Education aware that a disagreement exists much earlier in the process. This early notice may, in some cases, give the State Department of Education an opportunity to assist in resolving cases without the necessity of a hearing, or to assist in assuring that all parties involved with the hearing feel its results are productive and constructive.

For the above reasons, we ask that the Bill be reported favorably. We thank you for the opportunity to be heard.

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STATEMENT

by

John Frye

RELATING TO APPOINTMENT OF
HEARING OFFICERS IN SPECIAL EDUCATION CASES

My name is John Frye, I am Executive Director of the Starkey Developmental Center in Wichita. Starkey Developmental Center, Inc., is a private nonprofit multi-purpose facility which provides educational/training, supportive and residential services to preschool, school and adult age mentally retarded individuals. The agency has been in existence since 1930 and is the oldest community based facility in Kansas serving the mentally retarded. Starkey is accredited by the State Department of Education as a special purpose school, and by the State Department of Social and Rehabilitation Services as a community based work activity program serving the mentally handicapped. Starkey is also accredited by the State Department of Education as an early childhood education center and is accredited by the Commission on the Accreditation of Rehabilitation Facilities and International Association of Rehabilitation Facilities. No individual is excluded from admittance to Starkey on the basis of race, color, creed, socio-economic status or religious affiliation.

I served for ten years as a Board member on the Wichita Board of Education, seven years as a member of the State Special Education Advisory Council and have served as a Hearing Officer since

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Statement by John Frye
Relating to Appointment of
Hearing Officer in Special
Education Cases

the beginning of Due Process for numerous school districts throughout the state.

I have received the training provided by the Department of Education as well as having served as a Presenter at Hearing Officer Training Sessions sponsored by the Department of Education.

I am convinced, based upon my experience, that a revision in the law is in the best interest of those who may find it necessary to initiate a Due Process Hearing.

Planning educational programs for exceptional children and youth requires both effort and commitment from parents, professionals, and boards of education responsible for the education of children in the state of Kansas.

In the process of meeting this commitment, each party must recognize the right of each to agree or disagree as to how means should be arranged to reach desirable ends. If after all alternative program arrangements have been explored, and parents and district personnel do not agree as to what is best for the exceptional child, procedural Due Process in the form of an impartial hearing may be used to resolve differences relevant to planning an educational program. Due Process ensures that decisions are reached according to known rules and principles which guarantee fair consideration of divergent views. Procedural due process

Statement by John Frye
Relating to Appointment of
Hearing Officer in Special
Education Cases

may include a hearing, which is associated with the concept of fairness, allowing participation in decisions or actions by those who will be affected by them. The right to a Due Process Hearing includes the opportunity to protect decisions or actions before, during, or after they are implemented.

Either the parent or school system may initiate a hearing on referral or placement of the student. The hearing must be conducted by the public agency directly responsible for the education of the student.

A hearing may not be conducted by any person who is an employee of the public agency which is involved in the education or care of the student, or by any person having a personal or professional interest which would conflict with his or her objectivity in the hearing. (BEING PAID BY THE SCHOOL SYSTEM TO CONDUCT THE HEARING DOES NOT MEAN THE HEARING OFFICER IS AN EMPLOYEE.)

I believe it is extremely difficult to insure that a local education agency can always select an individual who is impartial. It is a rather easy thing to prove partiality if the hearing officer is an employee of the agency. It is quite another, to prove it if the party believes that the hearing officer has conflicting personal or professional interests. And it is still another matter to attempt to avoid having a case heard by a hearing officer whose record of decisions indicates that he or she is pro-LEA or pro-student.

Finally, it is not completely clear in the regulations, when it

Statement by John Frye
Relating to Appointment of
Hearing Officer in Special
Education Cases

requires a local education agency to keep a list of hearing officers, including their qualifications, on file, as to whether they are "QUALIFIED TO SERVE".

I know of some hearing officers in the state who have received no formal training or they have been trained by the local education agency that utilizes their services to conduct a hearing.

I believe it is essential that we bring some degree of order and uniformity to the training and selection process of hearing officers. I believe this bill will do that. Training, selection and impartiality are key concepts to be considered. The state should be the responsible party for implementing these concepts.

The commitment of the State of Kansas to the educational welfare of exceptional children is long standing since 1949 when a special education division was created by the Department of Education; steady progress has been made in extending special educational services to both handicapped and gifted children.

In 1952, only nineteen classes for the mentally retarded were in operation throughout the entire state in the public schools. The year 1981-82, shows in excess of 3,900 classes for all areas of exceptionality.

Each time, you as law makers are faced with a proposed new law in education, you must ask yourself the questions - Is this proposed new law going to improve the quality of education in Kansas?

Is this law going to be good for kids?

Statement by John Frye
Relating to Appointment of
Hearing Officer in Special
Education Cases

My professional priorities have always been "THE CHILD COMES FIRST",
The parent second, and the system third. I believe enactment of
this bill will keep these priorities in their proper prospective.

Thank you for the opportunity to speak to you today!



KANSAS PLANNING COUNCIL

2-18-83
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JOHN CARLIN
Governor
RICHARD MORRISSEY
Chairperson
JANET SCHALANSKY
Executive Secretary

on | DEVELOPMENTAL DISABILITIES SERVICES

Fifth Floor North
State Office Building
Topeka, Kansas 66612
Ph. (913) 296-2608

TESTIMONY SENATE JUDICIARY COMMITTEE

On behalf of The Kansas Planning Council on Developmental Disabilities, we appreciate the opportunity to address some of our concerns related to S.B. 177, relating to the appointment of Hearing Officers for the conduct of Due Process Hearings.

The Kansas Planning Council on Developmental Disabilities was created by K.S.A. 74-5501-06 in response to Federal Legislation. The Council's Mission is to improve the quality of life, maximize the developmental potential, and assure the participation of the Developmentally Disabled citizens in the privileges and freedoms available to all Kansans.

The Council is composed of 15 members, one-half of whom are either Developmentally Disabled themselves or are parents or guardians of the Developmentally Disabled.

The Council has reviewed the provision of S.B. 177, and would like to express our support to several aspects of the Bill:

1. New Section 2. This Section allows for the establishment of standards or criteria for qualification of persons as Hearing Officers; and secondly, we support the maintenance of a list of Hearing Officers at the State level--rather than having it done at the local level.

Both of these items will improve the quality and consistency of the Due Process Hearings. These new provisions will do much to relieve the concerns of parents

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about decisions affecting their handicapped child's education, as they can be assured that Hearing Officers will be trained and impartial.

Thank you for your consideration of this matter, and the opportunity to share our thoughts with you.

Member
Kansas Planning Council on
Developmental Disabilities
DOROTHY J. OKESON
Presenting.

- - -

JS:jmr

Topeka, Kansas
February 18, 1983

TESTIMONY BEFORE THE
SENATE JUDICIARY COMMITTEE

February 14, 1983

SENATE BILL NO. 170

"AN ACT concerning the reporting of abuse of certain persons; prescribing penalties for failure of certain persons to report; amending K.S.A. 39-1402 and repealing the existing sections."

Mr. Chairman and Committee Members:

My name is Jim Klausman, owner-administrator of the Topeka Convalescent Center in Topeka, and a Past-President of the Kansas Health Care Association.

I am appearing here today on behalf of the Association, a voluntary not-for-profit organization which represents over 200 licensed adult care homes in Kansas, collectively accounting for more than 17,000 nursing home beds.

S.B. 170 adds a penalty clause to the abuse reporting Act of 1980. Currently persons listed in section one of the bill are required under law to report the suspected abuse or neglect of a resident of a nursing home or state or federally operated hospital.

The bill before you proposes to add the sanction of a Class B misdemeanor for the failure to file a report by those persons in section one.

We are opposed to this bill and question its necessity as documented by facts in the record. But first, the penalty idea is not new. When the legislature considered the original abuse reporting bill in 1980 the penalty provision was a part of it. It was removed as unnecessary then, and we maintain it is

"We Care"

unnecessary now as the abuse system is indeed functional.

Reports of alleged abuse or neglect are reported to the Department of Social and Rehabilitation Services. Exhibit One is a summary of the reports received by the Department for FY 82. Note that 384 reports were received and that 50% of them were from medical personnel. It is also interesting to note that 51% of the reports received were unconfirmed upon investigative findings.

Exhibit Two reflects the report information for the period July - November, 1982. Forty-nine percent of the reports were from medical personnel.

Proponents of the bill will perhaps argue that the "hammer" of a Class B misdemeanor is indeed needed to force and intimidate more reporting, and summarily disregard and refute the statistics given above as not indicative of the wide-spread abuse actually occurring.

We maintain this is heresy, ask that you consider the facts, and not be swayed by the emotionalism of this issue. If the figures are not high enough, in the opinion of the bill's proponents we ask, what "quota" is satisfactory to them? Might it be argued on the other hand that if the figures are too low they are indicative of the good care being given?

We would now like to take a moment to remind the committee of other, various and many bodies involved with the protective oversight of nursing home residents:

LONG-TERM CARE OMBUDSMAN: Within the Department on Aging is responsible for the expeditious resolution of nursing home complaints. In federal FY 82, 431 complaints were received from 210 individuals; 71 involved alleged abuse for referral to SRS.

DEPARTMENT OF HEALTH AND ENVIRONMENT: Responsible for the licensure and inspection of nursing homes. Within the Bureau of Nursing Homes is a person responsible for the receiving and handling of complaints.

COUNTY HEALTH DEPARTMENTS: Many local, county health departments now conduct monthly "visitation and consultation" visits to nursing homes under an agreement with the State Health Department. Reports of any, suspected wrong-doings are reported to the state agency.

CONCLUSION

In summary, we believe SB 170 is not needed based upon the evidence presented. Not only is the abuse reporting system working, but also other complaint handling processes are in place and functional.

Your unfavorable reporting of SB 170 is respectfully urged.

Thank you for this opportunity.

State of Kansas
 Department of Social and Rehabilitation Services
 Adult Services

ADULT ABUSE/NEGLECT/EXPLOITATION REPORTING AND INVESTIGATION
FISCAL YEAR 1983 (July, 1982 through June, 1983)

MEDICAL

REPORTS RECEIVED		Nov., 1982		Year to Date				Nov., 1982		Year to Date	
Total		34		144		PERPETRATORS		#	%	#	%
Age Range		21-95		19-99		Abuse:		20		73	
Average Age		61		60		Self		0	0	1	1
		#	%	#	%	Spouse		2	10	2	3
Male		11	32	52	36	Family/Relatives		0	0	2	3
Female		23	67	92	64	Guardian/Conservator		0	0	0	0
60 years and older		22	65	90	63	Other		18	90	68	93
						Neglect:		17		73	
INVESTIGATIVE FINDINGS						Self		2	12	7	10
Total Reports		34		144		Family/Relatives		0	0	5	7
Confirmed		18	53	67	47	Guardian/Conservator		0	0	0	0
Potential Risk		1	3	17	12	Other		15	88	61	84
Unconfirmed		15	40	60	42	Exploitation:		0		9	
						Self		0	0	0	0
ABUSE *						Family/Relatives		0	0	4	44
Total Reports		20		73		Guardian/Conservator		0	0	1	11
Investigative Findings	Confirmed	10	50	36	49	Other		0	0	4	44
	Pot.Risk	0	0	9	6	REPORTERS					
Spouse Abuse Reports		2		2		Self		0	0	9	6
Investigative Findings	Confirmed	1	50	1	50	Family		6	18	24	17
	Pot.Risk	0	0	0	0	Neighbor/Friend		3	9	14	10
						Guardian/Conservator		0	0	0	0
NEGLECT *						Community Agencies		0	0	2	1
Total Reports		17		73		SRS Staff		4	12	12	8
Investigative Findings	Confirmed	8	47	31	42	Medical Personnel (N.H.-M.D.-Health Dept. Hospital Staff)		14	41	70	49
	Pot.Risk	1	6	9	12	Police		0	0	1	1
						Lawyer/Court Services		0	0	0	0
EXPLOITATION *						Anonymous		7	21	12	8
Total Reports		0		9		Other		0	0	0	0
Investigative Findings	Confirmed	0	0	2	22						
	Pot.Risk	0	0	1	11						

* Some cases are reported in more than one category (abuse, neglect, exploitation)

State of Kansas
 Department of Social and Rehabilitation Services
 Division of Children, Youth, and Adults

ADULT ABUSE/NEGLECT/EXPLOITATION REPORTING AND INVESTIGATION
FISCAL YEAR 1982 (July, 1981 through June, 1982)

MEDICAL FACILITIES

REPORTS RECEIVED		June, 1982		Year to Date		PERPETRATORS		June, 1982		Year to Date	
		#	%	#	%			#	%	#	%
Total		24		384		Abuse:		13		200	
Age Range		18-91		17-98		Self		1	8	6	3
Average Age		43		55		Spouse		-	-	-	-
Male		13	54	133	35	Family/Relatives		2	15	7	4
Female		11	46	251	65	Guardian/Conservator		-	-	-	-
60 years and older		9	38	209	54	Other/Staff		10	77	187	93
						Neglect:		11		171	
INVESTIGATIVE FINDINGS						Self		1	9	10	6
Total Reports		24		384		Family/Relatives		1	9	4	2
Confirmed		5	21	126	33	Guardian/Conservator		-	-	-	-
Potential Risk		7	29	63	16	Other/Staff		9	82	157	92
Unconfirmed		12	50	195	51	Exploitation:		0		38	
ABUSE *						Self		-	-	-	-
Total Reports		13		200		Family/Relatives		-	-	14	37
Investigative Findings	Confirmed	3	23	78	39	Guardian/Conservator		-	-	2	5
	Pot. Risk	4	31	37	19	Other / Staff		-	-	22	58
Spouse Abuse Reports		0		0		REPORTERS					
Investigative Findings	Confirmed	-	-	-	-	Self		-	-	9	2
	Pot. Risk	-	-	-	-	Family		3	13	93	24
						Neighbor/Friend		2	8	22	6
						Guardian/Conservator		-	-	1	-
NEGLECT *						Community Agencies		4	17	10	3
Total Reports		11		171		SRS Staff		1	4	11	3
Investigative Findings	Confirmed	2	18	45	26	Medical Personnel (N.H.-M.D.-Health Dept. Hospital Staff)		12	50	192	50
	Pot. Risk	3	27	21	12	Police		-	-	4	1
EXPLOITATION *						Lawyer/Court Services		-	-	4	1
Total Reports		0		38		Anonymous		2	8	17	4
Investigative Findings	Confirmed	-	-	14	37	Other		-	-	21	5
	Pot. Risk	-	-	15	39						

* Some cases are reported in more than one category (abuse, neglect, exploitation)

EXHIBIT NO. ONE



Kansans for Improvement of Nursing Homes, Inc.

927 1/2 MASSACHUSETTS ST. #1

LAWRENCE, KANSAS 66044

842-3088 — Area Code 913

February 14, 1983

TESTIMONY SUBMITTED TO SENATE JUDICIARY COMMITTEE
CONCERNING SENATE BILL 170

Kansans, for Improvement of Nursing Homes has supported the inclusion of a penalty provision for failure to report suspected adult abuse or neglect since the Adult Abuse Act was first considered. We continue to believe that such a penalty is an important tool without which the Act is largely unenforceable. KINH is in full support of SB 170.

For the State to say, in effect, that certain persons must report suspected abuse or neglect of persons in nursing homes, but that no serious consequences will follow if they do not do so, implies that there is little concern in Kansas to look critically at the way we care for the vulnerable elderly. We believe there is concern and a desire to take strong, positive steps to deal with this real and present problem.

We were heartened by the beginning steps taken by the Adult Abuse Act to recognize the problem and to encourage that incidents of abuse or neglect be reported. SB 170 would add needed emphasis to those efforts to put a stop to adult abuse by identifying the perpetrators. We urge your support for this measure.

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KANSAS ASSOCIATION OF HOMES FOR THE AGING, INC.

7220 ASBURY DR.
TOPEKA, KANSAS 66614
PHONE 913 478-9313



SENATE BILL 170

Comments of

KANSAS ASSOCIATION OF HOMES FOR THE AGING

February 14, 1983

Mr. Chairman and Members of the Committee -

I am Dean Edson, Executive Director of the Kansas Association of Homes for the Aging, an association representing over 4000 beds of the not-for-profit retirement communities throughout Kansas.

We thank you for the opportunity to present our comments regarding Senate Bill 170 today.

My comments will be short. KAHA has no objection to this bill and infact supports its intent. We firmly believe that anyone who has knowledge of abuse and/or neglect to the elderly of Kansas should have a required obligation as well as a moral obligation to report the abuse or neglect to the proper authorities. Further, we believe that to fail to report such abuse and neglect should definately be cause for punishment beyond the present requirements of the law.

We would, however, respectfully recommend the bill be amended to be more inclusive, that is, include anyone providing care for the elderly of Kansas whether it be a one bed operation or a 1000 bed operation.

Thank you again for the opportunity of presenting these comments today.

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