

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

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

12:00 ~~am~~ p.m. on February 24, 1983 in room 519-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~ were: Senators Pomeroy, Feleciano, Mulich and Werts.

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

Conferees appearing before the committee:

Senator Gerald Karr  
Kyle Smith, Assistant Lyon County Attorney  
Jay Vander Velde, Emporia, Attorney  
Jim Clark, Kansas County and District Attorneys Association  
Glenn Cogswell, Kansas Association of Professional Sureties  
Manuel Baraban, Overland Park, Association of Bondsmen  
Dr. G. R. Griffin  
Senator Billy McCray  
Dr. Lorne Phillips, SRS/Alcohol and Drug Abuse Services  
Ron Eisenbarth, Kansas Citizens Committee on Alcohol and other Drug Abuse  
George Heckman, Kansas Association of Alcohol and Drug Program Directors  
Don Pedroja, Kansas Association of Drug Abuse Counselors  
Gene Johnson, Kansas Community Alcohol Safety Action Project Coordinators

Senate Bill 231 - Registration and regulation of bail bondsmen.

Senator Karr, the sponsor of the bill, appeared before the committee to explain his bill.

Kyle Smith appeared in support of the bill. He referred the committee to the copy of the attorney general's letter (See Attachment #1). Mr. Smith discussed with the committee the problems and abuses that occur with the present statute pertaining to bonds, K.S.A. 22-2806.

Jay Vander Velde stated that formerly he was the Lyon County Attorney, and he had problems with the bonding situation there. He stated K.S.A. 22-2806 is not strong enough to enforce the law. He said the judges have no interest in enforcing these bonding laws. Mr. Vander Velde discussed the type of person who is getting the people out on the street. A committee member inquired if there were licensing for bondsmen. Committee discussion with him followed.

Jim Clark testified the association supports the bill. If not a financial incentive, there needs to be some economic leverage, and currently that has not been done.

Glenn Cogswell testified in opposition to the bill. He stated they think it is a local problem, They have no way of knowing on a statewide basis how many bonds are out. They feel this should be handled on a local level. This bill would only affect about 15 or 20 people in the state of Kansas. Mr. Cogswell stated most businessmen in the state that write those bonds are hired by the insurance company, so it is not reaching the problem that is described here. Mr. Cogswell testified another problem with the bill, they don't feel that the attorney general would be the appropriate authority to administer this regulation; this should be in the district court of the counties to supervise and regulate these bonds. He stated the Johnson County Court has court rules that deal with this problem in somewhat the same manner as this statute (See Attachment #2). Mr. Cogswell stated this proposal provides for a \$30 license fee which would bring in some \$450 to \$600

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 519-S, Statehouse, at 12:00 ~~xxx~~/p.m. on February 24, 19 83

Senate Bill 231 continued

in license fees, and they think the administrative costs would be much more than that. Since the vast majority are insurance companies writing these bonds, it seems it is really not hitting the mark to exclude them; everybody should be included. During committee discussion, a committee member inquired what percentage of bonds in Lyon County are appearance bonds. Mr. Smith answered 78% to 80% are on recognizance.

Manuel Baraban testified the Association of the Property Surety Companies opposes the bill. He stated this bill is prejudicial and discriminatory against property sureties. He pointed out an insurance company would not be limited, and the problems they have to face has been with insurance companies. He thinks insurance companies should have to list their total bonds outstanding and total liability the way he does. He said this should be left to the sheriff and district attorney to determine this matter.

Senate Bill 239 - Repealing the prohibition against hypnotic exhibitions.

Dr. G. R. Griffin appeared before the committee to explain his proposed amendment. He explained they are clarifying the statute to limit the practice to professional persons listed who have training in hypnosis.

Senate Bill 232 - Treatment act for drug abusers.

Senator Billy McCray, one of the sponsors of the bill, explained we need a law that will provide that a person can be voluntarily admitted to a treatment facility. He stated this bill is modeled after the existing alcohol commitment statutes in Kansas.

Dr. Lorne Phillips appeared in support of the bill. A copy of his remarks is attached (See Attachment #3). He stated this is the third year in a row that a drug commitment bill has been brought to the legislature. The chairman questioned why have a separate statute for drug treatment? Dr. Phillips explained they tried to amend the alcohol commitment act and ran into problems with people who are dependent upon other drugs, and they are treated the same way as people who have problems with alcohol. He stated drugs are not legal and alcohol is. In reference to the fiscal note, Dr. Phillips said the existing programs could handle it without any problems.

Ron Eisenbarth appeared in support of the bill. A copy of his remarks is attached (See Attachment #4). The chairman inquired if they saw any problem with combining the drug treatment program with the alcohol program. He answered, they favor it; have no problems with that.

George Heckman testified in support of the bill. A copy of his remarks is attached (See Attachment #5).

Don Pedroja testified his association met and voted to support legislative activity in the area of drug commitment. A copy of his remarks is attached (See Attachment #6).

Gene Johnson testified his organizations pledge their full support for the bill. A copy of his remarks is attached (See Attachment #7).

A copy of testimony of Glenn Leonardi is attached (See Attachment #8). He was not present to testify.

In answer to a question from the chairman, Dr. Phillips stated the bill last year was doubly referred from Public Health and Welfare Committee to the Senate Judiciary, and they ran out of time.

The meeting adjourned.

GUESTS

SENATE JUDICIARY COMMITTEE

NAME

ADDRESS

ORGANIZATION

Don R. Kelly

Topeka

SRS/ADAS

Myrtle A. Hlyzicki

Topeka

SRS/ADAS

Robert Sack

Manhattan

SRS/ADAS

Jeanette Knight

Topeka

Ibu Fellow

Ron Eisenhardt

Topeka

KCCADA

Denise Kluwe

Topeka

OJA

Don Redwig

Topeka

KMDAC

G. R. Garfield

Topeka

WSU

Gene Johnson

Topeka

KC ASAP

Mark Oly

Topeka

WTBW

Kyle G. Smith

Emporia

Lyon County Attorney's Office

W. W. Vauden Velde

"

N/A

Jim Clark

Topeka

KCPAA

GEORGE HELLMAN

Linn

KAADPO

Monal Barrett

O. P. Kansas

Assn of Bondsmen

Glen D Cogswell

Topeka

Ks. Assn of Prof. Sureties



2-24-83  
K. Smith  
# 1

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751

August 13, 1980

Michael F. McCurdy  
President  
Kansas County and District  
Attorneys Association  
Office of the Crawford County Attorney  
Judicial Center  
4th and Pine Streets  
Pittsburg, Kansas 66762

In re: Justification and Approval of  
Surety Bondsmen, pursuant to  
K.S.A. 22-2806

Dear Mike:

We have received your opinion request of July 18, 1980, wherein you request an opinion from this office concerning an interpretation of the above statute. In your letter you essentially ask three questions. First, is the court required in light of the above statute to require a person or corporation who is regularly in the bonding business to justify the posting of such bond by a detailed affidavit and financial statement? Second you inquire is the court required by K.S.A. 22-2806 to require justification by affidavit and/or financial statement each and every time a defendant is released on bond? Thirdly, you ask if in fact an affidavit and/or financial statement is required, what form should be followed by the district courts and/or district court judges and magistrates? As pursuant to statute, these matters appear to involve judicial discretion and/or general policy determinations as best typified by the third question above. We have opted to respond to your inquiry by letter, as the questions do not lend themselves well to a formal opinion answering questions of law. Prior to discussing the specific questions, some background information may be beneficial.

Atch. 1

# 1

Michael F. McCurdy  
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August 13, 1980

It appears from our initial research that the practice and implementation of K.S.A. 22-2806 is not uniform throughout the state. A study of six counties within the state show six different methods by which the statute is implemented. Johnson County appears to require on January 1st of each year that each bondsman submit an affidavit to the district court clerk and administrative judge for their approval. Subsequent thereto, there is a monthly requirement that a surety submit a statement of his current outstanding bonds as compared to his financial condition. Shawnee County requires a bondsman to post an affidavit in conjunction with each bond made. Sedgwick County requires financial conditions to be reviewed once a year and the county automatically recognizes sureties who are licensed according to a rather all-encompassing city ordinance licensing structure. Wyandotte, Geary and Riley Counties appear to require once-a-year review of the financial condition of all "hip pocket bondsmen." Thus, there is no uniformity throughout the state of Kansas, either through the Unified Court System or through other implemented practices.

In discussing your first question, it would obviously appear the better practice, prior to the acceptance of any hip pocket bondsmen as a qualified surety, would be for the court to require a detailed audited or unaudited financial statement, showing the net assets of the bondsman and his ability to make good on outstanding obligations. Unfortunately, the statute is vague in such a manner as to only require that a bondsman justify by affidavit his ability to make good on his bonds. The statute relates that the bondsman may be required to describe in the affidavit the property by which he proposes to justify any encumbrances thereon, the number and amounts of other bonds and undertakings for bail entered into by him and remaining undischarged, and all his other liabilities, as the court must assure itself that a proper bond is being made, whether such bond is being made by a relative of a defendant on a "one time only" basis, or the bond is being made by a professional surety.

It would appear in the situation of a relative or friend making a one time only bond that such justification by affidavit may be appropriate. On the other hand, if a professional surety is involved, the total financial picture should be obtained. The responsibility appears to lie with the judge who is approving the bond to make a judicial determination of the sureties qualified. It would additionally appear the better practice is to attach an affidavit by the professional bondsman on all bonds showing his exact financial condition at the time the bond is made. Yearly review of assets would not appear to present a true and accurate picture of a bondsman's current condition.



Michael F. McCurdy  
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Concerning the second question you raise above, the statute is silent as to whether or not a surety must present a continual financial picture by affidavit each time a bond is made. This procedure is currently used in the federal district courts, and a review of bonds indicate each surety has an exact description of property owned, its value, and any mortgage indebtedness, net asset value followed by statement of obligations and the total amount of bonds outstanding. This appears to be the better practice by which the court may satisfy its statutory duty to make a judicial determination that the surety is qualified.

In your third question, you request guidance as to the form to be used for the financial statement. I would suggest that any statement must specifically describe assets owned with particularity and the value assigned to each. The same must be true with all liabilities, so as the court may determine the net assets of a bondsman not subject to other indebtedness.

Former statutes G.S. 1949, 62-1211 and 1212 required that sureties be worth the amount of the bond, over and above the amount exempt from execution and outstanding debts and liabilities. As you are, of course, aware these statutes were replaced by existing law. I might add a personal note that I am not sure the change was for the better. The statute simply relates now that no bond shall be approved unless the surety thereon appears to be qualified. Again, the qualifications are left entirely to the court's discretion, without statutory guidelines.

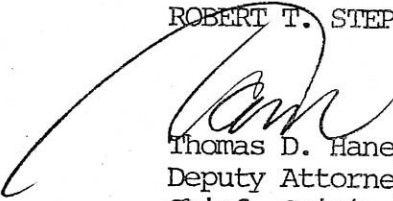
It would appear that as we have a unified court system, that a uniform procedure for all courts in Kansas should be implemented regarding the qualifications of surety bondsmen. This may be done in several ways. First, a comprehensive act may be passed regarding licensing requirements for bondsmen. The City of Wichita has a scheme, whereby the city licenses all non-insurance surety bonding companies. I refer you to Chapter 3.68 of the Wichita City Ordinances. Such a procedure would, of course, establish additional beaucracy and rules and regulations within an existing or new state agency. It appears the Office of the Insurance Commissioner would be the appropriate body to handle such licensing procedures. It may be that this may be accomplished without a significant amount of red tape. Secondly, K.S.A. 22-2806 may be amended or supplemented to make clear the duties and responsibilities of the court in obtaining assurances as to the qualifications of a bondsman. I would personally prefer the second approach and would be willing to assist the Kansas County and District Attorneys Association in sponsoring such legislation. I hope after you and the other recipients of this letter have had an opportunity to review it, that the association would consider making this proposed

Michael F. McCurdy  
Page Four  
August 13, 1980

change a part of their 1981 legislative packet. If I may answer any questions in regard this letter, or be of any additional assistance, please do not hesitate to contact me. I might add as a personal note that Mr. Gary Sanders, a third-year law student at Washburn University, was instrumental in preparing the research for this letter, and I sincerely thank him.

Very truly yours,

OFFICE OF THE ATTORNEY GENERAL  
ROBERT T. STEPHAN



Thomas D. Haney  
Deputy Attorney General  
Chief, Criminal Division

TDH:may

cc: Mr. Max Moses, Executive Director  
Kansas Coutny & District Attorneys Assn.  
827 Topeka Avenue  
Second Floor  
Topeka, Kansas 66612

Mr. Jay Vander Velde  
Lyon County Attorney  
County Courthouse  
Emporia, Kansas 66801

Mr. Gene M. Olander  
Shawnee County District Attorney  
Chairman, Committee on Legislation  
for the K.C.D.A.A.  
Shawnee County Courthouse  
Topeka, Kansas 66603

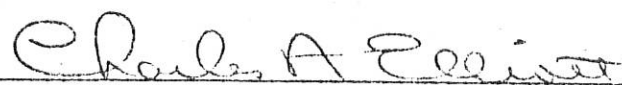
2-24-83  
noon  
#2


THE RULES OF PRACTICE OF THE MAGISTRATE COURT  
OF JOHNSON COUNTY, KANSAS

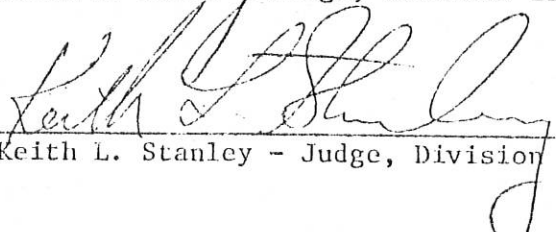
RULES RELATING TO SURETIES

THE FOLLOWING RULES SHALL BE IN ADDITION TO  
AND NOT IN PLACE OF STATUTES OF THIS STATE,  
RULES OF THE KANSAS SUPREME COURT, AND PRE-  
VIOUS RULES ADOPTED BY THIS COURT. WHERE  
ANY CONFLICT SHOULD EXIST, THE FOLLOWING  
RULES SHALL BE SUBORDINATE. THE FOLLOWING  
RULES ARE MADE PURSUANT TO RULE 119 OF THE  
KANSAS SUPREME COURT AND SUCH OTHER AUTHORITIES  
AS APPLICABLE. THE FOLLOWING RULES ARE ADOPTED  
AND EFFECTIVE AS OF JUNE 1, 1974.

APPROVED:

  
Charles A. Elliott - Judge, Division I

  
Earle D. Jones - Judge, Division II

  
Keith L. Stanley - Judge, Division III

Atch. 2



# ( -

RULE 1

AUTHORIZATION TO WRITE BONDS

No professional bondsman or bonding company engaged in the business of writing bonds for profit shall be authorized to act as sureties in this Court until having fully complied with the rules of the Court relating to bonds. Individual citizens of the community may act as sureties in this Court on a per case basis without complying with rules 2, 3, 4, and 11 if no fee is charged and a judge of this Court approves.

# 2

RULE 2

AMOUNT OF BONDS OUTSTANDING

No professional bondsman or bonding company shall at any time have a total of outstanding liabilities and potential liabilities on bonds exceeding an amount equal to 100% of the net assets shown on their current affidavit of assets. The basis for determining outstanding liabilities and potential liabilities shall include all bonds in all courts for which the bondsman or bonding company is currently acting as surety. Outstanding liabilities shall be defined as bonds which have been ordered forfeited and not set aside. Potential liabilities shall be defined as bonds outstanding.

# 1  
RULE 3

AFFIDAVIT OF ASSETS

Each bondsman or bonding company shall file an Affidavit of Assets setting out assets declared for bonding purposes and total liabilities on or before the 31st day of January and the 30th day of June of each year. Failure to have current Affidavits of Assets on file on those dates shall result in automatic and exparte suspension of authorization to write bonds until current affidavits are on file in the clerk's office. Further, if said assets should decrease in value by more than \$5,000 or 20% (whichever is greater), during any reporting period, an Affidavit of Assets showing such decrease shall be filed immediately.

# ( )  
RULE 4

AFFIDAVIT OF OUTSTANDING LIABILITIES

Each bondsman or bonding company shall file with the Clerk of the Court no later than the fifth court day in the months of April, July, October and December an affidavit setting out the total amount of bond liabilities or potential liabilities they had in all courts as of noon on the last day of the preceding month. This affidavit shall contain a per court breakdown of liabilities. Failure to file this affidavit as prescribed shall result in an automatic and ex parte suspension of authorization to write bonds in this court for a period of thirty days and until a current affidavit is filed.

# 2

RULE 5

RESPONSIBILITIES TO THE COURT

Each Bondsman or bonding company shall be responsible for their client's appearance in the proper court at the proper time. Court personnel shall not be responsible for informing sureties of appearance dates and dispositions, as this information is generally available in open court at the time of hearing.



# 2

RULE 6

SURRENDERS

At any time a bondsman or bonding company finds it necessary to surrender a person it has on bond, it shall, within the next court day after surrender, inform the judge of the division in which the case is pending of the reasons for the surrender. As officers of the court, it is mandatory that the judge be advised of your actions in this regard.

# 2

RULE 7

COURT FACILITIES

No professional bondsman or bonding company representatives shall be allowed behind the counter in the Clerk's office at any time.

# 2

RULE 8

COURT RECORDS

Professional bondsmen or bonding companies shall have the same right of access to court records as do members of the general public. Should they wish to examine public records of this Court, they shall request the personnel of this Court to secure said files for their examination.

# 2

RULE 9

LEGAL ADVICE AND REFERRALS

No bondsman or bonding company shall in any way give legal advice, either substantive or procedural, to their clients.

# 2

RULE 10

GENERAL CONDUCT

Professional bondsmen and bonding company representatives are officers of this Court and must conduct themselves accordingly. This includes regular and acceptable moral and legal responsibilities of citizenship. Therefore, they shall be subject to review for fitness to be an officer of this Court.



#2

RULE 11

PENALTIES

Any professional bondsman or bonding company in violation of the foregoing rules shall be subject to suspension of the privilege of writing bonds in this Court. Unless specifically stated otherwise herein, such suspension shall be made upon the finding by two or more judges of this Court sitting en banc that a violation has occurred. Such finding can be made only after a hearing at which time the bondsman or bonding company shall have an opportunity to be heard. The bondsman or bonding company shall also be entitled to a minimum of five days notice in writing prior to said hearing and shall have the right to be represented by counsel. The period of suspension shall be determined by the Court at the time of hearing.

# 3

To: Senate Committee on Judiciary

From: Dr. Lorne A. Phillips, Commissioner  
SRS/Alcohol and Drug Abuse Services

Date: February 24, 1983

RE: SB 232

Senate Bill 232 will provide judges, law enforcement officials and persons who care about the welfare of a drug abuser, a mechanism to assure that these drug abusing persons will receive treatment for their problems. This bill protects the rights of the proposed patient while assuring that persons truly in need of treatment are afforded such treatment. This bill does not establish a diversion program, so if a proposed patient is charged with a crime, that person may be arrested and otherwise dealt with under the law in the same manner as other persons who are arrested.

This bill is modeled after the existing alcohol commitment statutes in Kansas. Since the procedures are the same for both substances, it will not create a new system for the courts and treatment programs to deal with.

I envision not more than 100 persons per year being committed by the provisions of this bill. These persons could be absorbed into the existing treatment system in Kansas as long as no cuts take place these in programs .

I feel that this legislation will be a valuable tool in providing necessary drug evaluation and treatment services to the citizens of Kansas and I support your efforts in enacting this legislation.

Atch. 3

Kansas  
Citizens  
Advisory

Committee on Alcohol and other Drug Abuse

P.O. BOX 4052 TOPEKA, KANSAS 66604

2-24-83 R

# 4

February 24, 1983

TO: Senate Judiciary Committee

FROM: Ron Eisenbarth, Chairperson, Kansas Citizens Committee on  
Alcohol and other Drug Abuse

SUBJECT: Senate Bill 232

I appear before you today on behalf of the Kansas Citizens Committee on Alcohol and other Drug Abuse to convey our committee's support of Senate Bill 232.

The Kansas Citizens Committee on Alcohol and other Drug Abuse is a twenty-five (25) member citizens committee with representation from the entire State of Kansas. This committee is designated by law to be advisory to the Commissioner of Alcohol and Drug Abuse Services on behalf of the Secretary of Social and Rehabilitation Services with regard to alcohol and other drug abuse programing in the State of Kansas.

Drug abuse and drug dependence affects the involved person to such a degree that the person often becomes incapable of making rational decisions regarding their own well being. The symptoms and progression of drug abuse and dependence are quite similar to the disease of alcoholism. Kansas has had an alcoholism commitment statute for several years, but we have not had an effective means to provide treatment for persons abusing or incapacitated by drug abuse.

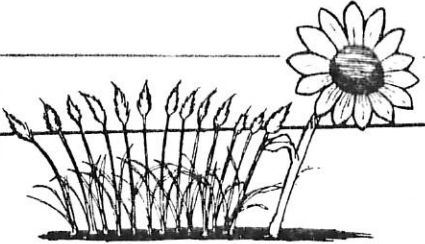
Senate Bill 232 provides this mechanism in the area of drug abuse and follows similar procedures as outlined in the current alcoholism commitment statute.

The Kansas Citizens Committee on Alcohol and other Drug Abuse respectfully requests your consideration and support of Senate Bill 232.

Atch. f

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PM

# 5



# Kansas Association of Alcohol and Drug Program Directors

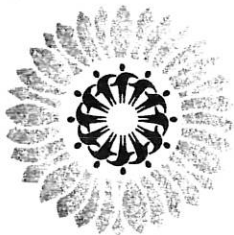
February 24, 1983

TO: Elwaine Pomeroy, Chairman, Senate Judiciary Committee  
FROM: George Heckman, Chairman, KAADPD Legislative Committee  
RE: SB 232

Our Association strongly supports SB 232. As you are well aware, Kansas presently has a committment procedure for both alcoholism and mental health. SB 232 closely follows the mechanism of the existing committment procedures in these two areas and provides similar intervention for drug abusers.

Our Association has supported drug abuse committment for several years. Our member agencies periodically have requests from concerned parents, families and law enforcement officials about how to help a drug abuser who is harmful to him or herself or others. Our Association feels that action on this measure is long overdue.

Atch. 5



# Kansas Association of Drug Abuse Counselors

2-24-83

# 6

February 24, 1983

Senate Judiciary Committee  
Senate Bill 232  
State House, Room 519S

Chairperson:

The Kansas Association of Drug Abuse Counselors wishes to thank the committee for hearing our testimony. In February the Association met and voted to support legislative activity in the area of drug committment. It is our feeling that those individuals who are addicted to chemicals, other than alcohol, have a need to be treated. At this time it is virtually impossible to get a person addicted to drugs into a treatment center if he/she does not see the need for it, yet those around him/her can definitely see the person is being harmful to him/her self or others. It is our contention these individuals will best be served by being committed to treatment, rather than the usual alternative which seems to be incarceration.

It is for these reasons we come before you to testify in favor of SB 232. I would be happy to entertain any questions at this time.

Atch. 6



2-24-83 PM

# 7

TESTIMONY ON S.B. 232

Gene Johnson

Mr. Chairman and members of the committee, my name is Gene Johnson. I am the legislative liaison person for the Kansas Community Alcohol Safety Action Project Coordinators. We are a statewide association of 23 ASAP and court referral programs located throughout the State. Also I am representing the Sunflower Alcohol Safety Action Project located in Topeka, Kansas and the National Council on Alcoholism - Topeka Division.

Our organizations at this time pledge our full support for S.B. 232. It is long overdue and is much needed for the citizens of the state of Kansas. Thank you.

Atch. 7



**Kansas  
Alcoholism  
Counselors  
Association**

2-24-83 7:27

# 8

(913) 234-3448

1318 Fillmore, Topeka, KS 66604

February 24, 1983

TO: Senate Judiciary Committee

FROM: Glenn Leonardi, President, Kansas Alcoholism  
Counselors Association *g.l.*

SUBJECT: Senate Bill No. 232

I appear before you today on behalf of the Kansas Alcoholism Counselors Association (K.A.C.A.) to voice our association's support of Senate Bill No. 232.

Alcoholism and chemical dependency are illnesses which follow similar progressions. It follows that the circumstances and channels that result in the alcoholic receiving desperately needed health services also apply to the chemically dependent person. Senate Bill No. 232 is a derivative of the Alcoholism Commitment statutes that have been tried and proven to be extremely successful.

K.A.C.A respectfully requests your consideration and ultimate passage of Senate Bill No. 232.

*Atch. 8*