

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Senator Roy M. Ehrlich at
Chairperson

10:00 a.m./~~p.m.~~ on February 13, 1985 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Conferees appearing before the committee:

Sandy Bosse, Right to Life of Kansas, Inc.
Jesse Bennett, Administrator of Downs Syndrome, International
Helen DeWitt, RN., Hays
Dr. Arthur Cherry, Pediatrician, Topeka
Dr. Robert E. Harder, Secretary, Social and Habilitation Services
Mitch Cooper, Topeka Resource Center for the Handicapped

Others Attending: See attached list.

SB-130 - prohibiting the depriving of nutrition or medical treatment from certain handicapped children

Sandy Bosse testified and submitted written testimony supporting SB-130. Ms. Bosse testified that SB-130 was necessary to set forth the clear public policy of the State of Kansas regarding the denial of medical treatment and/or starvation of newborn infants simply on the basis they lack someone's perception of "quality of life".

Chairman Ehrlich recognized the Kansas Hospital Auxiliary who were visiting today.

Jesse Bennett testified and submitted written testimony supporting SB-130. Ms. Bennett testified that a definite need for the law exists because decisions are made by grieving parents, often on the basis of false information.

Helen DeWitt, RN, testified, submitted written testimony supporting SB-130 and presented a proposed amendment to SB-130. Ms. DeWitt stated the amendment provides that any baby who is born alive following an attempted abortion shall be considered a child in need of care under the Kansas Code for Care of Children.

Dr. Arthur Cherry, practicing pediatrician in Topeka, testified in opposition of SB-130 and will later submit written testimony for the committee. Dr. Cherry expressed concern that this bill might force doctors to preserve any life, regardless of how hopeless the outcome.

Dr. Robert E. Harder, Secretary, SRS, testified and submitted written testimony in opposition of SB-130. Dr. Harder stated the Department of Social and Rehabilitations Services' position was that the legislation is not needed for the state's compliance with the Child Abuse Prevention and Treatment amendment of 1984 (P.L. 98-457). Dr. Harder testified that this is not a new responsibility; the protection of children from abuse and neglect, including medical neglect, has always been a responsibility of the state's designated public child protective service agency. Dr. Harder said his office had been in close touch with the staff in Senator Kassebaums' office working on a Federal level and his testimony is geared to comments made by that person and interwoven with statutes of the state of Kansas. He also stated he has requested an opinion from the Attorney General's office.

SB-131 - Relating to penalties for welfare fraud

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 526-S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 13, 1985

Dr. Robert E. Harder, Secretary, SRS, testified and submitted written testimony supporting SB-131, stating the proposed change would make the penalty more equitable while retaining deterrent aspects of the original legislation.

Mitch Cooper, Topeka Resource Center for the Handicapped testified and submitted written testimony in support of SB-131, stating that currently a person can commit murder, serve a short sentence, be paroled and then assume they've paid their debt to society but current laws require a person to pay forever for Welfare fraud.

Meeting adjourned.

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 2-13-85

(PLEASE PRINT)
NAME AND ADDRESS

Genevieve L Shook Emporia, Ks
Delphine Brantman Olpe Ks
Barbara Younger - Emporia Ks
Barbara Reinert Topeka
Lynelle King
Sandy Basse
Kat Jackson
Nelen DeWitt

ORGANIZATION

Incomplete List

S. Mary Hosp. Emporia
" " " "
" " " "
Planned Parenthood
Ks State Nurses Assn
R.H.K.
"
"

KANSAS SENATE PUBLIC HEALTH & WELFARE COMMITTEE

Testimony of Sandy Bosse Right to Life of Kansas Inc.
February 13, 1985

Mr. Chairman and members of the committee. I am Sandy Bosse. I represent Right to Life of Kansas Inc. Thank you for the opportunity to speak on behalf of Senate Bill No. 130.

This is a needed bill. It implements Public Law 98-457, the 1984 amendment to the Child Abuse Prevention & Treatment Act, passed by Congress last October. There are additional requirements of SRS and individual health care providers that are the responsibilities of those agencies and not within the scope of SB 130. In addition to being mandated by federal legislation, this bill is necessary to set forth the clear public policy of the State of Kansas regarding the denial of medical treatment and/or starvation of newborn infants simply on the basis that they lack someones perception of a "quality of life".

Public debate over this issue began in the early seventies when a Downs Syndrome baby was starved to death at Johns Hopkins University and a documentary was made about the incident. That debate escalated three years ago after a similar incident in Bloomington, Indiana, in April, 1982. What was unusual about the Bloomington incident was not that it happened, but that the Supreme Court of Indiana ruled that what was done to Baby Doe was perfectly legal, that is, that his parents and doctor could legally decide that his life was not worth living. Baby Doe was placed in a corner with a sign on his crib and allowed to starve to death.

We are not mandating by this bill hopeless and costly efforts to uselessly prolong imminent death *LIFE WHEN DEATH IS IMMINENT* or the overriding of doctors and parents rights to make medical decisions. We are simply telling them that they may not make those life and death decisions solely on a quality of life basis.

In Kansas the issue is being debated in legal and medical circles. A lengthy article in the 1983, Volume 31, Kansas Law Review is entitled

"Withholding Treatment From Defective Newborns: Who Decides, & On What Criteria?" We have doctors such as the obstetrician at the University of Kansas Medical Center who testified in court to a direct question that he would have no qualms in killing a child already born -- if it were legal to do so.

Public Law 98-457 - in the words of the federal register - "(requires) State child protective services agencies to establish procedures to prevent the withholding of medically indicated treatment from disabled infants with life-threaten(ing) conditions".

The federal statute seeks to place the responsibility of protection of endangered handicapped newborns with the state agency charged with the protection of neglected and abused children by adding a new category to the term neglected and abused children.

Section 122 of the federal law, a copy of which is attached to this testimony, sets out new basic state grant requirements -- and I would stress new requirements.

The fact that Kansas has an extensive child protection mechanism in place and currently meets all grant requirements has no bearing on the new requirements. If Congress believed the present mechanism provided sufficient protection for handicapped children, there would have been no need for them to enact new legislation. Congress clearly intends that handicapped newborns who are denied treatment should be specifically defined as neglected and abused children. That is what Senate Bill No. 130 does. It is our contention that this language is consistent with the federal requirements.

Section 122 requires that within one year of the date of enactment, which would be October of 1985, the State shall have in place three provisions for the purpose of responding to the reporting of medical neglect and withholding of treatment to handicapped infants. The first two deal with the mechanisms of reporting requirements which we presume to be the responsibility of the agencies involved. The third provision deals with the statutory authority

to initiate legal proceedings necessary to protect these children.

If the legislature fails to act on this before the session adjourns, the deadline for implementation of the federal law will have passed. If this occurs, it may be necessary for us to seek an injunction to stop the grant, which we understand averages \$122,000.

The federal regulations implementing Public Law 98-457 deal only with Hospital Review Committees which are not mandated but are advisory in nature only. These regulations, which may not be finalized for months, have nothing whatsoever to do with Senate Bill No. 130, as SB 130 does not address the issue of Hospital Review Committees.

There is no need for us to be dragging our feet on this. The federal regs have no application and a simple amendment will suffice to clear up any confusion regarding the secretary's power under the Kansas Code for care of children.

It is time that Kansas clearly rejects infanticide as an option in the treatment of handicapped children. We urge the adoption of Senate Bill No. 130. Thank you.

Sandy Bosse

NEW DEFINITION

5102.

SEC. 121. Section 3 of the Act is further amended—

(1) by striking out "this Act the term 'child abuse and neglect'" and inserting in lieu thereof the following: "This Act—
"(1) the term 'child abuse and neglect'";

(2) by striking out the period at the end thereof and inserting in lieu thereof a semicolon and the word "and"; and

(3) by adding after clause (2) (as added by section 102(3) of this Act) the following new clause:

"(3) the term 'withholding of medically indicated treatment' means the failure to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment, (A) the infant is chronically and irreversibly comatose; (B) the provision of such treatment would (i) merely prolong dying, (ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or (iii) otherwise be futile in terms of the survival of the infant; or (C) the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane."

NEW BASIC STATE GRANT REQUIREMENT

SEC. 122. Section 4(b)(2) of the Act (42 U.S.C. 5103(b)(2)) is amended—

(1) by striking out "and" at the end of clause (I);

(2) by striking out the period at the end of clause (J) and inserting in lieu thereof a semicolon and the word "and"; and

(3) by inserting after clause (J) the following new clause:

"(K) within one year after the date of the enactment of the Child Abuse Amendments of 1984, have in place for the purpose of responding to the reporting of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions), procedures or programs, or both (within the State child protective services system), to provide for (i) coordination and consultation with individuals designated by and within appropriate health-care facilities, (ii) prompt notification by individuals designated by and within appropriate health-care facilities of cases of suspected medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions), and (iii) authority, under State law, for the State child protective service system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to

prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions."

ADDITIONAL STATE GRANTS AND ASSISTANCE FOR TRAINING, TECHNICAL ASSISTANCE, AND CLEARINGHOUSE ACTIVITIES

SEC. 123. (a) Section 4 of the Act is further amended by—

(1) redesignating subsection (c) as subsection (d), subsection (d) as subsection (e), and subsection (e) as subsection (f); and

(2) inserting after subsection (b) the following new subsection:

"(c)(1) The Secretary is authorized to make additional grants to the States for the purpose of developing, establishing, and operating or implementing—

"(A) the procedures or programs required under clause (K) of subsection (b)(2) of this section;

"(B) information and education programs or training programs for the purpose of improving the provision of services to disabled infants with life-threatening conditions for (i) professional and paraprofessional personnel concerned with the welfare of disabled infants with life-threatening conditions, including personnel employed in child protective services programs and health-care facilities, and (ii) the parents of such infants; and

"(C) programs to help in obtaining or coordinating necessary services, including existing social and health services and financial assistance for families with disabled infants with life-threatening conditions, and those services necessary to facilitate adoptive placement of such infants who have been relinquished for adoption.

"(2)(A) The Secretary shall provide, directly or through grants or contracts with public or private nonprofit organizations, for (i) training and technical assistance programs to assist States in developing, establishing, and operating or implementing programs and procedures meeting the requirements of clause (K) of subsection (b)(2) of this section; and (ii) the establishment and operation of national and regional information and resource clearinghouses for the purpose of providing the most current and complete information regarding medical treatment procedures and resources and community resources for the provision of services and treatment for disabled infants with life-threatening conditions (including compiling, maintaining, updating, and disseminating regional directories of community services and resources (including the names and phone numbers of State and local medical organizations) to assist parents, families, and physicians and seeking to coordinate the availability of appropriate regional education resources for health-care personnel).

"(B) Not more than \$1,000,000 of the funds appropriated for any fiscal year under section 5 of this Act may be used to carry out this paragraph.

"(C) Not later than 210 days after the date of the enactment of the Child Abuse Amendments of 1984, the Secretary shall have the capability of providing and begin to provide the training and technical assistance described in subparagraph (A) of this paragraph."

(b) Section 4 of the Act is further amended by adding after paragraph (3) the following new paragraph:

"(4) Programs or projects related to child abuse and neglect assisted under part B of title IV of the Social Security Act shall

42 USC 5103

Public information

Ante, p. 175

Contracts with U.S.

42 USC 5104.

Ante, p. 1749.

42 USC 5103.

42 USC 620.

Thank you for allowing me to testify on behalf of Senate Bill 130.

My name is Jessie Bennett and I am the Administrator of Down's Syndrome International. I have counseled many parents of Down's Syndrome babies and children and was formerly an instructor in Clinical Process at the University of Kansas Medical School. I authored the Dicta column on the March 2, 1984 issue of the Virginia Law Weekly, a copy of which is attached. I am also the mother of a young man with Down's Syndrome.

There is a definite need for this law in Kansas. These are not rare, isolated cases that happen somewhere else. Medical students have told me details about babies who have been denied surgery and allowed to starve to death at K. U. Medical Center.

Many doctors still have outdated views and negative ideas about handicaps. New parents are still often told that their Down's Syndrome baby will never recognize them as its parents, and will ruin their lives. Understandably then, if the baby needs surgery in order to survive, it seems easier to get out of the situation by letting the child die. Decisions are made by parents who are grieving, and too often, on the basis of false information. But it seems that if the parents agonize enough over the decision that makes it right.

I am told that the medical criteria is that the child should not suffer by having treatment withheld. In the

Bloomington Baby Doe case, one of the pediatricians described to another doctor what he saw: "Baby Doe's shrunken, thin little body, with dry, cyanotic skin, extremely dehydrated, breathing shallowly and irregularly, lay passively on fresh hospital linens. Blood was running from a mouth to dry to close." (A. Bannon, The Case of the Bloomington Baby, 8 Human Life Rev. 63, 68 -1982) That child never had even a taste of water!

The 14th amendment of the Constitution guarantees equal protection of the law to all persons. It is not bona fide medical judgement to withhold treatment because of the race or sex of the patient. Does the newborn with a handicap have no civil rights? Parents do not have the power of life or death over their normal children. Yet they can condemn their unperfect child to death and be immune from the law. All children do not have equal abilities but all children should have the same right to develop the abilities they do have.

The lives of the handicapped are not all joy and sunshine but they are not all shadows and pain either. Many have jobs and are productive members of society, and tax-payers!

Far from ruining our lives, our son has enriched ours immeasurably. He has given us a dimension we would never have known. He has done all the things we were told he would never do. He can read anything he wants to and has been studying history and archeology. He loves Shakespeare. He has studied Spanish and French, among other things. He is tuned in to people, he always seems to have the right word

page 3 (Bennett)

or the right touch. In the last 5 years, rare orthopedic problems have left him unable to walk independently. But he has refused to become a "cripple". He swims, bowls, goes to dances and parties. He writes and receives letters, uses the phone, and has many friends. He has had the courage to fight back from complete disability.

He is brighter and quicker and more fun than anyone else I've ever known. I couldn't manage without him. He has put more love and sunshine into the world in 20 years than most of us do in a long lifetime.

Yet the fact that a Down's Syndrome baby is disposable at birth diminishes his life as well. Is his life not as valuable in the eyes of the law as mine? Or yours?

Thank you.

Jessie M. Bennett
11 North 73rd Terrace
Kansas City, Kansas 66111



36th Year of Publication

Play Ball!

VIRGINIA LAW WEEKLY

Vol. 36, No. 17

Charlottesville, Virginia, Friday, March 2, 1984

Seventy-Five Cents

DICTA: *Is Life With Down's Syndrome Worse Than Death?*

Jessie M. Bennett is the mother of a 19 year old son with Down's Syndrome and is Administrator of Down's Syndrome International of Kansas City, Missouri. Mrs. Bennett counsels parents of Down's Syndrome children and was previously an instructor in Clinical Process at the University of Kansas Medical School.

"Being dead is truly better than being handicapped."

This is what is implied in any decision to withhold treatment from a handicapped infant. And, this ever-growing belief that death is better than life has served to diminish the life and value of every person who has a mental or physical handicap.

But who among us can really judge how meaningful these handicapped infants' lives will be? After all, some children will fully develop what few talents they have while other, more gifted children may thoroughly squander theirs.

Most people are mercifully spared having to make life or death decisions on the treatment of an infant with Down's Syndrome. But parents who are confronted with these choices are routinely told that their child will never recognize them as its parents, that it will never walk or talk, that it will only be a burden and will ruin their lives. As a mother of a Down's Syndrome child, I know that such early, blanket prognoses are not true.

It is understandable that parents, given this kind of information, might think that having their child die would be preferable to allowing it to live. Friends of mine were told when their son was born with spina bifida that the child would neither walk nor talk, would not live

long, and would be in constant pain. This boy now attends school, walks with the aid of braces, and, like other "normal" 12 year olds, argues with his parents. The child is not in perfect health, but nonetheless leads a full, meaningful life. In fact, Baby Jane Doe, the infant with spina bifida who is currently in the news because her parents do not want her to have surgery that would prolong her life, was given a similarly dismal prognosis. Unfortunately, Baby Jane may not live long enough to refute her physician's prediction.

This disparity between doctors' original prognoses and the actual outcomes shows that doctors are not gods. One person cannot possibly know everything about every condition or disease. The least the physician should do is refer any handicapped infant to a specialist or clinic that deals specifically with that birth defect.

Certainly these decisions are not easily made. It must be difficult for parents to have public intrusion on their private pain, but there is a very precious life at stake, the baby who cannot speak for itself. Parents do not have the power of life or death over their "normal" children: if an otherwise normal baby is born with duodenal atresia, surgery is routinely performed. If there is a religious objection, the surgery is nonetheless performed. Why should parents of *multiple-handicapped* infants be permitted to treat their children like chattel?

Often, the rationale for withholding treatment is avoidance of pain: the infant should not suffer by having treatment withheld. But, does anyone truly believe that a baby with duodenal atresia who is given no food or water and slowly starves to death does not suffer?

Although myths abound about the abilities of Down's Syndrome

children, with infant programs and early education development is often only slightly delayed. Very few Down's Syndrome children are severely retarded. They learn to care for their own needs and learn to read and write. Their ability does not peak at any predictable age. Some do have health problems, but most are quite healthy. Although the infant mortality rate is somewhat higher among Down's Syndrome children, they do not usually die young.

The lives of handicapped children are not perfect but they are not without joy either. Even those children with limited mobility enjoy music, parties, dances, and sports. Many handicapped children grow up to hold jobs and to be taxpayers. All of them have personalities and their lives have value. Very few of them would rather be dead.

Is the so-called normal child necessarily of more value to society than the retarded boy who, playing the innkeeper in the Christmas pageant, called out, "Mary! Joseph! You can have my bed!" or the girl in the Special Olympics who was winning her race but saw another girl fall and turned back to help her? How frightening life would be if we were all alike — if we all had to meet the standards of some master race.

Far from ruining our lives, our son has enriched ours immeasurably. More than anyone else, my son impresses me with his brightness, alertness, and stamina. His accomplishments are legion. He has put more love, joy and compassion into the world than many strong and gifted people do in a long lifetime.

It frightens me to think that in the eyes of the law my son's life may not be as valuable as mine.

KANSAS SENATE PUBLIC HEALTH & WELFARE COMMITTEE
Sen. Roy Ehrlich, Chairman

Testimony of Helen DeWitt, RN
February 13, 1985

Mr. Chairman and members of this committee, I am Helen DeWitt. I am a registered nurse living in Mays and I am here to represent the Right to Life of Kansas Inc. in support of Senate Bill No. 130. We have a proposed amendment to offer the committee which addresses a related and timely issue.

This amendment simply states that any baby who is born alive following an attempted abortion shall be considered a child in need of care under the Kansas Code for care of children. We are not addressing abortion here but rather we are talking about a living newborn baby.

Babies surviving attempted abortion occur with such frequency that medical personnel involved in the abortion industry have called the occurrence of such live births, the dreaded complication. Those babies who survive an abortion have already overcome tremendous odds and are in need of protection. Failure to assist them in their struggle to live constitutes a terrible injustice and must be corrected.

We have for the committee an investigative report exposing this tragedy and the widespread abuse of these babies who are aborted alive, neglected and left to die. Because of the nature of abortion, newborn babies who initially survive an attempted abortion are in the same position and category as newborn handicapped infants who risk being denied treatment. Both are deemed unwanted and unworthy of their Constitutional right to Life.

In Pennsylvania, a doctor was recently charged with homicide in the death of a 32-week-old child who was born alive, moving and gasping for breath following an abortion attempt. Thirty-two weeks gestation is eight months into the pregnancy. According to an orderly and others in attendance, the doctor refused to allow the child to be assisted and ordered him sent to the morgue. The homicide charge was eventually dropped because of the inability to prove a live birth had occurred.

The abortion industry in Kansas specializes in late abortion, increasing the chances for the so called dreaded complication to occur. Women come to abortionists in Kansas from other states where abortionists there refuse to risk the complications involved in late abortions, live births being one of them.

Just as the homicide laws did not save the child's life in Pennsylvania, the homicide laws in Kansas will not save a child's life should such a live birth occur in Kansas. If such a law as New Sec. 4 had been in place in Pennsylvania, the orderly and others in the operating room would have been mandated by law to report immediately that a live birth had occurred - perhaps in time to save the child's life.

New Sec. 4 of SB 130 is designed to protect such a child in Kansas before a homicide occurs. By placing such a child in the category of neglected and abused children, the Secretary shall be charged with the duty of setting forth specific procedures to insure protection of that child, should a live birth occur following an attempted abortion.

When the language of SB 130 was originally presented to the committee, there was a presumption that the Kansas Code for care of children empowered the Secretary to initiate legal proceedings on behalf of neglected and abused children. New Sec. 5 specifically empowers the Secretary to initiate such proceedings and eliminates the need to wait for the Attorney General to act.

Mr. Chairman, we urge you and the members of this committee to adopt SB 130 with the proposed amendment. Thank you.

Helen DeWitt, RN

Helen DeWitt, RN

PROPOSED AMENDMENT TO SENATE BILL NO. 139

Section 1.

(f) "Secretary" means the Secretary of Social and Rehabilitation Services.

New Sec. 4.

(a) A child born as a result of an attempted abortion who exhibits any sign of a live birth as defined in K.S.A. 65-2401 shall be considered a child in need of care under the Kansas Code for care of children.

(b) The Secretary shall adopt rules and regulations to carry out the provisions of this section.

New Sec. 5. The Secretary is hereby empowered to initiate legal proceedings to enforce the provisions of this act.

Re-number Sec. 4 as Sec. 6.

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Testimony in Opposition of S.B. 130

I am appearing today in opposition of S.B. 130 which prohibits the deprivation of nutrition or medical treatment from certain handicapped children.

It is the Department of Social and Rehabilitation Services' position that this legislation is not needed for the state's compliance with the Child Abuse Prevention and Treatment Amendments of 1984 (P.L. 98-457). The Child Abuse Amendments require states to have in place procedures and/or programs within the state child protective system for the purpose of responding to the reporting of medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions. This is not a new responsibility; the protection of children from abuse and neglect, including medical neglect, has always been a responsibility of the state's designated public child protective service agency. There is already a mechanism for reporting and dealing with medical neglect under the Kansas Code for Care of Children. Under K.S.A. 1985 Supp. 38-1502(b), it is abuse or neglect to cause the "deterioration of a child," which includes "failing to maintain reasonable care and treatment or negligent treatment . . . to the extent that the child's health or well-being is endangered." Further, K.S.A. 1984 Supp. 38-1521 et seq., sets out the mechanism for reporting and investigating suspected cases of abuse or neglect.

Senate Bill 130 makes no reference to a reporting mechanism. Further, it contains no definition of many key terms, such as "life-threatening medical condition" and many of the definitions used in Senate Bill 130 are not taken from the federal Child Abuse Amendments. For example, the federal legislation and regulations defines an "infant" to mean infants less than one year of age although it may include older infants who have been continuously hospitalized since birth, who were born extremely prematurely or who have long term disabilities. Senate Bill 130 does not address infants but incorporates the definition of a "handicapped child" as meaning a person under 18 years of age who has a physical or mental disability or impairment which requires the provision of multiple services during an extended period of time.

Moreover, in Section 2 of Senate Bill 130, it is stated that no health professional "shall deprive a handicapped child of nutrition which is necessary to sustain life, or deprive a handicapped child of medical treatment which is to remedy or ameliorate a life threatening condition . . ." However, the federal legislation defines the "withholding of medical treatment" as the failure to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration or medication) to an infant when, in the

treating physician's or physicians' reasonable medical judgment, (1) the infant is chronically and irreversibly comatose; (2) the provision of such treatment would (a) merely prolong dying, (b) not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or (c) otherwise be futile in terms of the survival of the infant; (3) the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane. Under the federal definition, if a disabled infant suffers from more than one life-threatening condition and, in the treating physician's or physicians' reasonable medical judgment, there is no effective treatment for one of those conditions then that infant is not covered by terms of the federal amendments (except with respect to appropriate nutrition, hydration, and medication) concerning the withholding of medically indicated treatment.

The proposed regulations to implement the Child Abuse Amendments were published in the Federal Register on December 10, 1984. Social and Rehabilitation Services believes that current Kansas Code for Care of Children statute is broad enough to implement the provisions of the regulations. However, an Attorney General's Opinion has been requested to determine if that Office concurs that (1) the definition of neglect as it appears in the Kansas Code for Care of Children includes disabled infants with life-threatening conditions, and (2) if we have the authority to initiate legal proceedings to prevent the withholding of medically indicated treatment to disabled infants.

In summary, the Kansas Department of Social and Rehabilitation Services opposes Senate Bill 130 because it is not in conformity with the Child Abuse Amendments of 1984 (P.L. 98-457) or in compliance with the proposed regulations. If the Attorney General's office decides that state statute changes are required to bring the state into compliance with the federal requirements by October 9, 1985 we will request a bill to be introduced which meets the federal mandates.

Robert C. Harder, Secretary

Office of the Secretary

296-3271

February 13, 1985

4634E

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Statement Regarding S.B. 131

Title

AN ACT concerning social welfare; penalties for welfare fraud amending K.S.A. 1984 supp. 39-709 and repealing the existing section.

Purpose

The administrative penalty for persons convicted of welfare fraud is severe and should be amended for first time offenses.

Background

Persons convicted of welfare fraud pursuant to K.S.A. 39-720 become forever ineligible for general assistance. This is a harsh penalty; especially, if the conviction is the person's first.

People served by programs administered through the Department are often in times of great stress and hardship. Additionally, the persons served by these programs frequently have physical, mental, emotional, or educational handicaps which at times may limit their ability to make appropriate choices or decisions. The permanent restriction under these circumstances is too harsh when there may well be no alternate income source available.

Further, the effects of the penalty may be delayed for several years since it does not apply to federally funded programs. For example, a young mother receiving Aid for Dependent Children is convicted of fraudulently receiving \$200 in welfare benefits. She is required to repay the assistance. Twenty years later, after her children are grown, she is hurt on the job and applies for general assistance while she recovers enough to work again. At that time, under current law, the penalty for the one conviction 20 years earlier would be applied and she would be permanently disqualified from receiving general assistance.

Alternatives which can be considered include: 1) Amend K.S.A. 39-709(d) as proposed, so that an initial conviction will make a person ineligible for a period of one year; the lifetime prohibition would not come into play until the second conviction. 2) Amend K.S.A. 39-709(d) to delete the lifetime prohibition clause. 3) Maintain the status quo which applies a lifetime penalty to anyone convicted of welfare fraud.

SRS Recommendations

Amend K.S.A. 39-709(d) so that an initial conviction will make a person ineligible for a period of one year; the lifetime prohibition would not come into play until the second conviction.

Effect of Passage

Passage of this bill will allow the Department of Social and Rehabilitation Services to apply a one year General Assistance disqualification penalty for a conviction of first time welfare fraud, while maintaining the lifetime disqualification provision for repeat offenders.

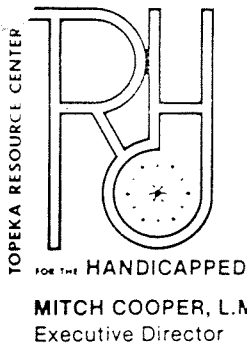
The proposed change would make the penalty more equitable while retaining the deterrent aspects of the original legislation.

Fiscal Impact

Necessary data to project the exact fiscal impact of this change is not available; however, information collected from local offices regarding denials resulting from this penalty indicates the impact would be minimal. Many people do not reapply after conviction or reapply and qualify for other federally funded programs.

Robert C. Harder
Office of the Secretary
Social and Rehabilitation Services
296-3271

February 13, 1985



TOPEKA RESOURCE CENTER FOR THE HANDICAPPED

West Tenth Professional Building
1119 West Tenth, Suite 2
Topeka, Kansas 66604-1105

Telephone
913-233-6323

Senate Committee on Public Health and Welfare

Re: Senate Bill 131

Presenter: Mitch Cooper, Executive Director of the Topeka Resource Center
for the Handicapped

A number of cases have been brought to my attention over the years where individuals with whom we work are going hungry, living on the streets and lacking essential medical care. The reason for this continued pain and suffering experienced by this select group of persons is that they cannot obtain General Assistance as the direct result of one count of welfare fraud that occurred many years ago. Currently, a person can commit murder, serve a relatively short time in prison and several more years on parole, and then assume that they have paid their debt to society. In the case of welfare fraud, however, current laws require the person to pay forever. They can never get welfare again no matter how needy they may have become.

The direct service staff at our Center could supply you with a number of relevant examples, but I am offering only one case which illustrates the point rather vividly. We have been working with a black male in his late 30's who lost an arm in an auto accident a few years ago. In his early adult years, this individual used to be a Topeka community leader in food and services drives for the needy. Quite a number of years ago, however, the man became involved with drugs and alcohol. During that time, he forged a medical prescription to get narcotics, and paid for the drugs with his Medicaid card. He was caught and convicted of welfare fraud as well as some other drug related crimes.

He went to prison and served over two years time. When he was released, he went almost immediately to a hospital where he underwent massive abdominal surgery. Considering his past chemical dependency, the prescription pain killers he was administered caused him addictive related problems to recur. Not desiring to re-enter the drug scene, he entered an addictive treatment program. At that point he was turned back out to face the community. He was a one armed, ex-con, ex-addict who had no marketable job skills and considerable chronic medical problems.

He looked for a job, however, there were not many jobs available to someone with his qualifications. He applied to the Social Security Administration, but was unable to qualify for benefits. There were no resources available to him. No welfare because of a fraud conviction over which he had already served prison time. He is still living on the streets today. He still has nothing, no benefits of any kind. He has not begun to use drugs again, but he has had to use all of his productive energies attempting to survive. He has nearly died on at least one occasion since the initiation of his reintegration into the community. This is the kind of person the current law is keeping from being entitled to welfare benefits.

Thank you for your consideration and your time.