

Approved \_\_\_\_\_ 2-2-88 \_\_\_\_\_  
Date

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. ~~on~~ on January 27, 1988 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Emalene Correll, Legislative Research  
Bill Wolff, Legislative Research  
Norman Furse, Revisor's Office  
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:

Dr. Gary Huelett, Under Secretary, KDHE  
Dr. Richard Parker, Director, Bureau of Epidemiology  
Harold Riehm, Executive Director, Kansas Association Osteopathic  
Medicine  
Dr. Wm. E. Wade, III, President, KS AIDS Network  
Written testimony from Roman Hiszczynskyj, MD, Topeka Blood  
Bank Director

Dr. Gary Huelett, Under Secretary, KDHE, appeared before the committee requesting the introduction of 3 bills as follows: requesting the introduction of 3 bills as follows: 1) An Act concerning the adult care home licensure act; relating to the issuance of correction orders, citations, assessments and prohibition of new admissions; Attachment 1 (2) An Act relating to the Maternity Hospitals or Home and Home for Children; Attachment 2 3) An Act relating to the secretary of health and environment; concerning the program administered thereby for (crippled and chronically ill children) children with special health care needs. Attachment 3

Senator Morris made the motion to accept the 3 bills requested by Dr. Huelett. Senator Dave Kerr seconded the motion and the motion carried.

Dr. Huelett introduced Dr. Richard Parker, Director of the Bureau of Epidemiology. Dr. Parker spoke to the committee concerning SB-445, outlining recommended changes section by section. Some of the changes recommended would deal with the definition of "AIDS" test and "sexually transmitted diseases" and changes in reporting infections. Premarital testing was not recommended nor was testing of persons convicted of certain sex crimes, persons involuntarily confined. Attachment 4

Harold Riehm, Executive Director, Kansas Association Osteopathic Medicine introduced Dr. Wade who is a member of that Association.

Dr. William Wade, III, President of the Kansas AIDS Network, spoke and presented written testimony concerning SB-445. Dr. Wade testified that if enacted, SB-445 would a) misdirect scarce monetary resources towards low yield HIV antibody testing; b) punitive HIV antibody testing in the name of medicine and the public welfare; c) blatantly ignore, on every point, the recommendations of the Governor's Task Force Report of AIDS in Kansas; d) fail to address and provide for the psychosocial costs of indeterminate or erroneous test results; e) provide for selective discrimination ranging from loss of employment or housing, denial of insurance and potentiate the threat of serious physical abuse directed towards individuals

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE,  
room 526-S Statehouse, at 10:00 a.m.~~p.m.~~ on January 27, 1988.

testing HIV antibody positive. Attachment 5

Written testimony of Roman Hiszcynskyj, MD, was presented to the committee. Attachment 6

The meeting adjourned at 11:01 a.m. and will meet January 28, 1988, at 10:00 a.m.

SENATE  
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE January 27, 1988

(PLEASE PRINT)  
NAME AND ADDRESS

ORGANIZATION

(PLEASE PRINT) NAME AND ADDRESS	ORGANIZATION
Laura Epler Topeka	Department Health & Environ.
Gary K. Hulett Topeka	KDHE
B. Mariani Topeka	Dept. of Adm.
Dick Kurtensaest KC	Am Civil Liberties Union
Linda Lubensky Lawrence	KS Assn of Home Healthc. ag.
Dr. Bill Wade Topeka	KAOM; Ks. AIDS Notsk.
Terry Stuenkel Topeka	City of Topeka
Kate Ames-Oliver Topeka	ADAS
Dr. Pat Hays Topeka	KDHE-CABS
Sandy McIdam Topeka	KDHE-
Pat Ross Topeka	KS NASW
Martin Carlson Topeka	WASHBURN Student Social Work Assn
Heather Hols Topeka	Washburn Student-Social Work Assn
Elizabeth G. Taylor "	Ks Assn of Local Health Dept
Terri Roberts Topeka	Kansas State Nurses' Assoc.
Charles Haines Lawrence	University of Kansas
Suzanne Rodina Topeka	KS Dept of Corrections
Brian Welton Topeka	Girl Scouts of KS
Steve Swartz	KMS
Chip Wheelen	KMS
Ken Baker Topeka	Kaiser Permanente

SENATE  
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE January 27, 1988

(PLEASE PRINT)  
NAME AND ADDRESS

ORGANIZATION

(PLEASE PRINT) NAME AND ADDRESS		ORGANIZATION
KEITH R LANDIS	TOPEKA	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Linn McBride	Topeka	observer
Mary Slaybaugh	Topeka	SRS
JAN SWAFFORD	Topeka	TOPEKA BLOOD BANK
Roman Hyszczynski, MD	Topeka	Topeka blood bank, Topeka Pathology group, Coroner
KAREN TAPPAN	TOPEKA	Kansas Dept of Health + ENV.
Robert French	Topeka	Ks Dept Health + Environment
Jan Johnson	Topeka	Budget Division
Kathryn H. Swartz R.N	Topeka	Citizen
Garth Hulse	Topeka	KDHE
Stephen H. Fungie	Topeka	KDHE
Harold Riehm -	TOPEKA	KADM
R. L. PARKER	TOPEKA	KDHE
Patricia J. Schwaninger	Topeka	KDHE

BILL NO. \_\_\_\_\_

BY \_\_\_\_\_

AN ACT concerning the adult care home licensure act; relating to the issuance of correction orders, citations, assessments and prohibition of new admissions; amending K.S.A. 39-945 and 39-946 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 39-945 is hereby amended to read as follows: 39-945. A correction order may be issued by the secretary of health and environment or the secretary's designee to a person licensed to operate an adult care home whenever the state fire marshal or the marshal's representative or a duly authorized representative of the secretary of health and environment inspects or investigates an adult care home and determines that the adult care home is not in compliance with the provisions of article 9 of chapter 39 of the Kansas Statutes Annotated or rules and regulations promulgated thereunder which individually or jointly affects significantly and adversely the health, safety, nutrition or sanitation of the adult care home residents. The correction order shall be served upon the licensee either personally or by certified mail, return receipt requested. The correction order shall be in writing, shall state the deficiency, cite the specific statutory provision or rule and regulation alleged to have been violated, and shall specify the time allowed for correction.

Sec. 2. K.S.A. 39-946 is hereby amended to read as follows: 39-946. (a) If upon reinspection by the state fire marshal or the marshal's representative or a duly authorized representative of the secretary of health and environment it is found that the licensee of the adult care home which was issued a correction order has not corrected the deficiency or deficiencies specified in the order, the secretary of health and environment ~~or the secretary's designee shall issue a citation listing the uncorrected deficiency or deficiencies. The citation shall be served upon the licensee of the adult care home either personally or by certified mail; return receipt requested. The citation shall also specify whether the uncorrected deficiencies have an endangering relationship to the health, safety or sanitation of the adult care home residents.~~

(b) ~~The secretary of health and environment~~ may assess a civil penalty in an amount not to exceed ~~one~~ five hundred dollars ~~(\$100)~~ (\$500) per day per deficiency against the licensee of an adult care home for each day subsequent to the day following the issuance of a citation time allowed for correction of the deficiency as specified in the correction order ~~pursuant to this section~~ that the adult care home has not corrected the deficiency or deficiencies listed in the citation correction order, but the maximum assessment shall not exceed two thousand five hundred dollars ~~(\$500)~~ (\$2,500). A written notice of assessment shall be served upon the licensee of an adult care home either personally or by certified mail, return receipt requested.

(b) If the secretary of health and environment finds that some or all deficiencies cited in the correction order have also been cited against the adult care home as a result of any inspection or investigation which occurred within eighteen (18) months prior to the inspection or investigation which resulted in such correction order, the secretary of health and environment is empowered to double the civil penalty assessed against the licensee of the adult care home, the maximum not to exceed five thousand dollars (\$5,000).

(c) All civil penalties assessed shall be due and payable within ten (10) days after written notice of assessment is served on the licensee, unless a longer period of time is granted by the secretary. If a civil penalty is not paid within the applicable time period, the secretary of health and environment may file a certified copy of the notice of assessment with the clerk of the district court in the county where the adult care home is located. The notice of assessment shall be enforced in the same manner as judgment of the district court.

New Sec. 3. At any time the secretary of health and environment initiates any action concerning an adult care home in which it is alleged: there has been a substantial failure to comply with the requirements, standards or rules and regulations established under the adult care home act; that conditions exist in the adult care home that are life threatening or endangering to the residents of the adult care home; the adult care home is insolvent; an order revoking the license of the adult care home has been issued; or that the adult care home has deficiencies which significantly and adversely affect the health, safety, nutrition or sanitation of the adult care home residents, the secretary may issue an order, pursuant to the emergency proceedings provided for under the Kansas Administrative Procedure Act, prohibiting any new admissions into the adult care home until further determination by the secretary. This remedy granted to the secretary is in addition to any other statutory authority the secretary has relating to the licensure and operation of adult care homes and

is not to be construed to limit any of the powers and duties of the secretary under the adult care home licensure act.

Sec. 4. K.S.A. 39-945 and 39-946 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

BILL NO. \_\_\_\_\_

BY \_\_\_\_\_

AN ACT relating to the Maternity Hospitals or Home and Home for Children; amending K.S.A. 65-504 and K.S.A. 1986 Supp. 65-519, and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 65-504 is hereby amended to read as follows: 65-504.

(a) The secretary of health and environment shall have the power to grant a license to a person, firm, corporation or association to maintain a maternity hospital or home, or a boarding home for children under 16 years of age. The license shall state the name of the licensee, describe the particular premises in or at which the business shall be carried on, whether it shall receive and care for women or children, and the number of women or children that may be treated, maintained, boarded or cared for at any one time. No greater number of women or children than is authorized in the license shall be kept in those premises and the business shall not be carried on in a building or place not designated in the license. The license shall be kept posted in a conspicuous place in the hospital or house in which the business is conducted. No license shall be granted for a term exceeding one year. The secretary of health and environment shall grant no license in any case until careful inspection of the maternity hospital or home, or home for children shall have been made according to the terms of this act and until such maternity hospital or home, or home for children has complied with all the requirements of this act. No license shall be granted without the approval of the secretary of social and rehabilitation services, except that the secretary of health and environment may issue, without the approval of the secretary of social and rehabilitation services, a temporary permit to operate for a period not to exceed 90 days upon receipt of an initial application for license. The secretary of health and environment shall refuse to grant a license for a period not to exceed one year after a person, firm, corporation, or association has had a license revoked or application denied.

(b) In all cases where the secretary of social and rehabilitation services deems it necessary, an investigation of the home shall be made under



the supervision of the secretary of social and rehabilitation services or other designated qualified agents. For that purpose and for any subsequent investigations they shall have the right of entry and access to the premises of the home and to any information deemed necessary to the completion of the investigation. In all cases where an investigation is made, a report of the investigation of such home shall be filed with the secretary of health and environment. In cases where neither approval or disapproval can be given within a period of 30 days following formal request for such a study, the secretary of health and environment may issue a temporary license without fee pending final approval or disapproval of the home or facility.

(c) Whenever the secretary of health and environment refuses to grant a license to an applicant, the secretary shall issue an order to that effect stating the reasons for such denial and within five days after the issuance of such order shall notify the applicant of the refusal. Upon application not more than 20 days after the date of its issuance a hearing on the order shall be held in accordance with the provisions of the Kansas administrative procedure act.

(d) When the secretary of health and environment finds upon investigation or is advised by the secretary of social and rehabilitation services that any of the provisions of this act are being violated, or such maternity hospital or home, or home for children is maintained without due regard to the health, comfort or morality of the residents, the secretary of health and environment shall after giving notice and conducting a hearing in accordance with the provisions of the Kansas administrative procedure act, issue an order revoking such license and such order shall clearly state the reason for such revocation.

(e) Any applicant or licensee aggrieved by a final order of the secretary of health and environment denying or revoking a license under this act may appeal the order in accordance with the act for judicial review and civil enforcement of agency actions.

Sec. 2. K.S.A. 1986 Supp. 65-519 is hereby amended to read as follows: 65-519. (a) The secretary shall issue a certificate of registration to any person who applies for registration on forms furnished by the secretary, who attests to the safety of the family day care home for the care of children, who submits a fee of \$5.00 payable to the secretary of health and environment, and who certifies that no person described in paragraphs (1), (2), (3), (4), (5) or (6) of subsection (a) of K.S.A. 65-516 and amendments thereto resides, works or volunteers in the family day care home.

(b) The secretary shall furnish each applicant for registration a family day care home safety evaluation form to be completed by the applicant and submitted with the registration application.

(c) The certificate of registration shall be renewed annually in the same manner provided for in this section, except that the secretary of health and environment shall refuse to grant a certificate of registration for a period not to exceed one year after a person maintaining a family day care home has had a certificate of registration revoked or application denied.

(d) The secretary of health and environment shall remit all moneys received by the secretary from fees under the provisions of this act to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury, and such amount shall be credited to the state general fund.

Sec. 3. K.S.A. 65-504 and K.S.A. 1986 Supp. 65-519 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

\_\_\_\_\_ BILL NO. \_\_\_\_\_

BY \_\_\_\_\_

AN ACT relating to the secretary of health and environment; concerning the program administered thereby for ~~crippled--and--chronically--ill--children~~ children with special health care needs; amending K.S.A. 65-5a01, 65-5a05, 65-5a08, 65-5a10, 65-5a11, 65-5a12, 65-5a13, 65-5a14, and 65-5a16 and K.S.A. 75-5643 and 75-5644 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 65-5a01 is hereby amended to read as follows: 65-5a01. As used in this act: (a) ~~"Crippled--or--chronically--ill--child"~~ "A child with special health care needs" means a person under 21 years of age who has an organic disease, defect or condition which may hinder the achievement of normal physical growth and development.

(b) ~~"Crippled--and--chronically--ill--children's--program"~~ "Services for children with special health care needs" means the program administered by the secretary of health and environment pursuant to article 5a of chapter 65 of Kansas Statutes Annotated and act amendatory thereof or supplemental thereto.

(c) "Physician" means any person licensed by the state board of healing arts to practice medicine and surgery.

(d) "Special health services" means services for children with special health care needs.

Sec. 2. K.S.A. 65-5a05 is hereby amended to read as follows: 65-5a05. Each of the hospitals or health facilities designated by the secretary of health and environment to provide medical and surgical services for ~~crippled and--chronically--ill--children~~ children with special health care needs may collect a basic fee, not to exceed the reasonable costs of such services as approved by the secretary, for each patient provided with services. Physicians and other specialists may collect for services rendered to any such patient such fees as may be approved by the secretary of health and environment.

Sec. 3. 65-5a08 is hereby amended to read as follows: 65-5a08. The secretary of health and environment is hereby authorized to:

(a) Designate, at the secretary's discretion, hospitals and other medical facilities in which the various types of medical and surgical services and procedures contemplated by this act for ~~crippled-and--chronicallly-itt-children~~ children with special health care needs may be provided;

(b) determine the eligibility of children to receive services, prosthetic devices, equipment and supplies under the provisions of this act and to pay all or any portion of the cost thereof;

(c) approve or disapprove charges for authorized procedures, treatments, operations and hospital and laboratory services;

(d) approve or disapprove all services and prosthetic devices, equipment, appliances and supplies to be provided children under the provisions of this act and the persons, organizations and corporations supplying or selling the same;

(f) subject to the provisions of K.S.A. 75-5644, and amendments thereto, receive and expend moneys appropriated or granted by the state or federal government or private persons or organizations for purposes authorized under the provisions of this act;

(g) provide or approve the necessary blanks or forms for use in the administration of this act;

(h) adopt rules and regulations necessary for the administration and enforcement of this act; and

(i) maintain surveillance and supervision over the services provided ~~crippled-and-chronicallly-itt-children~~ children with special health care needs under the ~~crippled-and-chronicallly-itt-children's-program~~ services for children with special health care needs to assure high quality of service and to cause a record to be kept showing the condition and improvement of the children.

Sec. 4. K.S.A. 65-5a10 is hereby amended to read as follows: 65-5a10.

(a) In accordance with title V of the federal social security act and rules and regulations adopted pursuant thereto, the secretary of health and environment is hereby authorized and empowered to organize and conduct, in such places in the state as the secretary shall from time to time determine, diagnostic clinics for ~~crippled-and-chronicallly-itt-children~~ children with special health care needs.

(b) Within the limits of available funds, the department of health and environment and designated agents of the secretary of health and environment shall accept for diagnosis, pursuant to rules and regulations adopted by the secretary, a child believed to have a severely handicapping condition, irrespective of whether the child actually has an eligible condition specified in K.S.A. 65-5a01 and 65-5a14, and amendments to such sections.

Sec. 5. K.S.A. 65-5a11 is hereby amended to read as follows: 65-5a11. The secretary of health and environment shall cooperate with any and all other departments and boards of the state now or hereafter created, endeavor to coordinate the efforts of all persons and agencies interested in prevention, discovery, care and education of the ~~crippled--and--chronically--i++-children~~ children with special health care needs of the state, and present proposals to the legislature from time to time which the secretary believes will improve, if adopted, the administration of this act and promote the interests of ~~crippled and-chronically-i++-children~~ children with special health care needs to the end that the ~~they physically-handicapped;-chronically-i++;-and-crippled-children-of the-state-may~~, as far as possible, be made self-supporting and independent.

Sec. 6. K.S.A. 65-5a12 is hereby amended to read as follows: 65-5a12. An application for the care, treatment or assistance of any child by the secretary of health and environment under the provisions of this act may be filed by any person with the secretary or a designated agent of the secretary who shall determine the financial eligibility of the family according to standards established by the secretary. The secretary or agent of the secretary shall also determine if the parents, guardian or child is a resident of Kansas and if the child is a ~~crippled-and-chronically-i++-child~~ child with special health care needs.

The secretary shall establish uniform standards of financial eligibility for treatment services under the ~~crippled--and--chronically--i++-children's program~~ services for children with special health care needs, including a uniform formula for shared expenses or for repayment of services. All repayment shall be used in support of the ~~crippled--and--chronically--i++-children's-program~~ services for children with special health care needs.

Sec. 7. K.S.A. 65-5a13 is hereby amended to read as follows: 65-5a13. If the secretary of health and environment or a designated agent of the secretary finds that a child or a parent or guardian of a child is a resident of the state of Kansas and the secretary of health and environment or the designated agent verifies that the child is a ~~crippled-and-chronically-i++-child~~ child with special health care needs and that the parent or parents, guardian or other person legally chargeable with the support of the ~~crippled and-chronically-i++-child~~ child with special health care needs is financially unable to pay, in whole or in part, the expenses of the care, treatment or assistance necessary for such child, the secretary of health and environment or designated agency of the secretary shall make a record of the facts and certify the child eligible for care, treatment and assistance by the secretary.

At the time of the determination, the parents, guardian or other persons and the secretary shall enter into an agreement which shall specify that portion, if any, of the costs for care, treatment or assistance to be paid by the parents, guardian or other persons and that portion of the costs, within the limits of funds appropriated therefor, to be paid by the secretary. The terms of the agreement shall be reviewed whenever a change in financial or medical circumstances occurs, but in any event shall be reviewed at least annually.

Sec. 8. K.S.A. 65-5a14 is hereby amended to read as follows: 65-5a14. The secretary of health and environment shall adopt rules and regulations establishing a system of priorities for providing services, devices, equipment and supplies to children the provisions of this act which will give consideration to the medical needs of the patient and the financial ability of the patient to pay the cost thereof and will insure that available funds will be used where the need is greatest. Such system of priorities shall provide care and treatment only for children having a condition that can reasonably be expected to be aided or improved by treatment and shall include but shall not be limited to:

- (a) Congenital malformations requiring major surgical repair;
- (b) catastrophic and chronic diseases of children (such as hydronephrosis, and chronic nephritis);
- (c) mental retardation or mental disability with associated serious physical defects;
- (d) orthopedic conditions (not including relaxed flat feet or treatment of supportive devices therefor);
- (e) burns requiring plastic surgery;
- (f) cardiovascular (congenital and acquired heart disease or anomalies of the major blood vessels); and
- (g) malignant disease (such as leukemia, Wilm's tumor, osteogenic sarcoma, etc., but not to include terminal care).

In adopting the rules and regulations, the secretary of health and environment shall consult with and give consideration to the recommendations of representatives of the Kansas medical society designated or selected by the society for such purpose.

~~A crippled-and-chronically-ill-child~~ child with special health care needs shall not be denied services because the child is mentally retarded.

Sec. 9. K.S.A. 65-5a16 is hereby amended to read as follows: 65-5a16. Nothing in this act shall be construed as limiting the power of the parent, guardian, conservator or person in loco parentis with respect to a ~~crippled-and-chronically-ill-child~~ child with special health care needs.

Nothing in this act shall be construed to authorize any treatment services for children under 18 years of age without the written consent of a parent or guardian, except that a person under the age of 18 years who has had conferred by court order the rights of majority may authorize treatment services without the written consent of a parent or guardian.

Sec. 10. K.S.A. 75-5643 is hereby amended to read as follows: 75-5643. There is hereby created an advisory commission for ~~crippled-and-chronically-ill-children~~ children with special health care needs, which shall consist of five members and which shall be within the department of health and environment as a part thereof. Persons serving as members of the advisory commission for ~~crippled-and--chronically-ill--children~~ children with special health care needs immediately prior to the effective date of this act shall become members of the advisory commission for ~~crippled--and-chronically-ill-children~~ children with special health care needs immediately prior to the effective date of this act shall become members of the advisory commission for ~~crippled-and-chronically-ill-children~~ children with special health care needs and shall serve until the expiration of the terms for which they were appointed as members of the advisory commission for ~~crippled-and--chronically--ill--children~~ children with special health care needs. On the expiration of any member's term of office, the governor shall appoint a successor who shall serve for a term of four years, and until a successor has been appointed and qualified. Any vacancy on the advisory commission for ~~crippled-an-chronically-ill--children~~ children with special health care needs shall be filled by the governor for the unexpired term.

Members of the advisory commission for ~~crippled--and--chronically-ill-children~~ children with special health care needs attending meetings of such commission, or attending a subcommittee meeting thereof authorized by such commission, shall be paid amounts provided in subsection (e) of K.S.A. 75-3223, and amendments thereto.

Sec. 11. K.S.A. 75-5644 is hereby amended to read as follows: 75-5644. The advisory commission for ~~crippled-and-chronically-ill-children~~ children with special health care needs shall consult with and advise the secretary of health and environment on matters relating to ~~crippled-and-chronically-ill-children~~ children with special health care needs. All expenditures by the secretary of

health and environment from the special bequest fund shall be subject to the approval of the advisory commission for ~~crippled-and--chronically-ill-children~~ children with special health care needs. The advisory commission for ~~crippled and-chronically-ill-children~~ children with special health care needs shall meet at least once each year or upon the call of the secretary of health and environment. The secretary of health and environment shall provide to the advisory commission for ~~crippled--and-chronically-ill-children~~ children with special health care needs all necessary clerical services.

New Sec. 12. Whenever the Crippled and Chronically Ill Children's Program is referred to or designated by statute, contract or other document, such reference or designation shall be deemed to apply to Services for Children with Special Health Care Needs.

New Sec. 13. Whenever the Advisory Commission for Crippled and Chronically Ill Children is referred to or designated by statute, contract or other document, such reference or designation shall be deemed to apply to the Advisory Commission for Children with Special Health Care Needs.

Sec. 14. K.S.A. 65-5a01, 65-5a05, 65-5a08, 65-5a10, 65-5a11, 65-5a12, 65-5a13, 65-5a14, and 65-5a16 and K.S.A. 75-5643 and 75-5644 are hereby repealed.

Sec. 15. This act shall take effect and be in force from and after its publication in the statute book.



STATE OF KANSAS



DEPARTMENT OF HEALTH AND ENVIRONMENT

Forbes Field

Topeka, Kansas 66620-0001

Phone (913) 296-1500

Mike Hayden, Governor

Stanley C. Grant, Ph.D., Secretary

Gary K. Hulett, Ph.D., Under Secretary

Testimony Presented to

Senate Public Health and Welfare Committee

by

The Kansas Department of Health and Environment

Senate Bill 445

The twenty-seven sections of this bill can be divided into 7 groups of related issues. Discussion of these groups and recommendations follow.

- A. Background statements and definitions sections 1 and 2. The definition of "AIDS Test" (2-C) is technically inexact (there is no laboratory test for AIDS; there is, however, a test which detects the presence of antibody against the HIV in blood and is therefore presumptive of the presence of infection but not of disease). A similar problem exists with the definition of sexually transmitted diseases (2-J). This bill focuses on testing for antibody to the AIDS virus, with appropriate followup of positive test results to protect public health and diminish transmission of the virus. Accordingly we recommend that references to sexually transmitted diseases other than AIDS, and of serologic tests for diseases other than AIDS, be deleted from the bill.

Support of these sections is recommended with the above changes.

- B. Blood and tissue sections 3 through 9. Blood is now tested in accordance with professional standards and for legal protection, but state law requiring such testing would do no harm and might be useful in some cases.

Tissue cannot be directly tested. However, blood from a prospective tissue donor could and should be tested.

Coroners or funeral directors should be advised to take "blood and body fluid" precautions when dealing with all bodies. This would provide protection against HIV as well as viral hepatitis, syphilis, malaria and various other agents.

This group of sections is supported with the changes noted.

- C. Reporting of AIDS, ARC and HIV infection section 10 through 12. The voluntary disclosure of sexual contacts of infected persons, and the Secretary's obligation to locate and advise such contacts of their risk. Strict confidentiality, with penalties, is required. These sections would require financial support but would generally help check the spread of HIV infection and thus of AIDS.

There is no reason for releasing names to research organizations for statistical purposes, hence (2) under section 12 should be deleted.

This group of sections is supported with the changes noted.

- D. Premarital testing sections 13 through 21. Syphilis testing has not been found to be a useful public health measure, and many states (including Kansas) have dropped such requirements. Others have never had premarital testing for syphilis. Marriage applicants are not generally from high risk populations for either syphilis or HIV infections and are therefore not an appropriate target population for testing. Mandatory premarital testing has virtually no potential to interfere with the spread of the HIV.

Premarital testing for antibody to the HIV virus has not been recommended by leading public health or medical groups, most have recommended against such testing. Groups recommending against such testing include the Centers for Disease Control, the American Medical Association, The Kansas Medical Society, the Association of State and Territorial Health Officers, the Council of State and Territorial Epidemiologists, the American Public Health Association, the Surgeon General of the U.S. Public Health Service and the Kansas Governor's Task Force on AIDS.

Mandatory premarital testing is not supported.

An alternative to mandatory premarital testing would be to require the provision of educational material to marriage license applicants. These materials should provide the following information:

1. The basic facts of AIDS and its spread.
2. The risk of transmission to unborn children.
3. Voluntary testing and counseling are readily available at over 40 public sites across the State at a nominal cost.
4. That persons with concerns may wish to join their proposed marriage partners in being counseled and tested.

AIDS is spread by specific identifiable risk activities. Recognition of these activities and the associated risks provides greater potential for interrupting the spread of the virus than does mandatory testing.

- E. Testing persons convicted of certain sex crimes section 22. We do not support this section because tests on the perpetrator are not useful in determining if transmission has occurred. Not all sex acts committed by an infected person will transmit the HIV virus all of the time. Because perpetrator might become infected after committing the crime, and because some period of time might elapse before conviction the information obtained would be of minimum value to the victim. The numbers would not be great (approximately 144 convictions per year) and the public health impact would be minimal.

The fundamental question is has the victim been infected, therefore counseling, and if requested, testing of victims is encouraged as an alternative.

- F. HIV-antibody testing of persons involuntarily confined section 23. The public health benefit of this is questionable. The Kansas Governor's Task Force on AIDS "carefully considered testing the entire Department of Corrections inmate population and decided that it is not necessary or appropriate at this time and would be impossible to justify on either ethical or practical grounds. Those at risk for carrying the virus would be tested under the recommendations proposed".

We concur with the Governor's Task Force on AIDS and do not support this section.

- G. Person knowingly exposing another to HIV infection section 24. This section has little potential to infer the spread of disease.

This requirement would interfere with eliciting names of contacts, and thus tracing, as is called for in Sections 10-12, because of the potential of self incrimination.

This section is not supported.

MEDICAL OPPOSITION TO SENATE BILL 445

Dr. William E. Wade

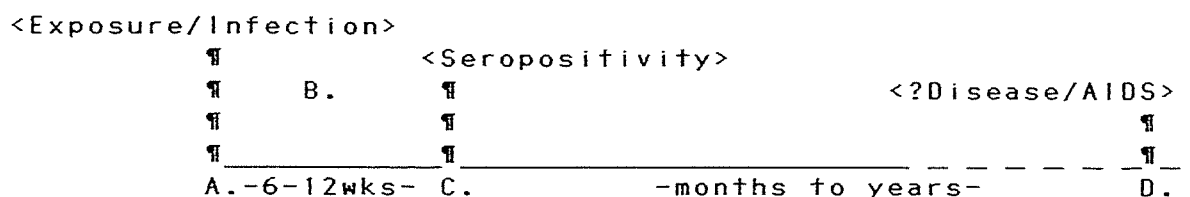
Acquired Immunodeficiency Syndrome has gripped this country and the entire globe in an infectious pandemic. AIDS has stretched our medical, ethical, and social tolerance to the breaking point. S.B. 445 represents a valid attempt at AIDS legislation for Kansas. Unfortunately, if enacted, the noble intent of Senator Steineger will be overshadowed by the cascading catastrophic ramifications cryptically emboweled within this bill. The health and welfare of hundreds and thousands of Kansans will be threatened.

Human Immunodeficiency Virus Disease

The Human Immunodeficiency Virus (HIV) has been determined to be the causative agent for AIDS. Unlike many viruses, HIV is NOT transmitted through casual personal contact. HIV is transmitted primarily through sexual intercourse (68%); also through blood and blood products by sharing needles during recreational intravenous drug use (25%) infected blood transfusions (3%), or through needlestick injuries to healthcare personnel (0.35% of percutaneous exposures); and from an infected pregnant woman to her unborn baby 50% of the time, (1%).

It is necessary to understand the progression of HIV disease from exposure to "full-blown" AIDS in order to draft meaningful legislation aimed at curbing the spread of this disease. Following exposure to HIV, infection may or may not occur. If infection occurs (Fig. 1 "A"), we are unable to detect evidence of infection for six to twelve weeks after exposure (Fig. 1 "C"). During this period of time (Fig. 1 "B"), known as the "window" period, the infected individual is unaware of his/her infection, is indeed contagious, presents an inadvertent infection risk to his/her sexual partner, may transmit HIV through his/her blood and body fluids, and if pregnancy were to occur, has a fifty percent chance of giving birth to a baby with AIDS.

Figure 1. HIV DISEASE PROGRESSION



The development of clinically demonstrable abnormalities, infections, or AIDS may take two to ten years from the time of exposure and infection. The current medical data suggests within five years after exposure and infection, fifty per cent of the individuals will develop some clinical evidence

of damage to their immune system (Fig. 1 "D"). Some will progress on to the end stage HIV disease: AIDS.

Senate Bill 445

Sections 3-9 are unnecessary as far as state legislation is concerned. The FDA guidelines, which are already in place nationwide, require more stringent safeguards to protect the nation's blood supply than these sections. Furthermore, the the blood banking and storage industry could not economically bear the multimillion dollar additional expense unnecessarily mandated by Section 3,(a),(1).

Section 10 mandates physician reporting not only of individuals diagnosed with end stage HIV disease: AIDS (which is currently required by the Centers for Disease Control, Federal Reporting Regulations, and Kansas Department of Health and Environment), but also of any person determined to be infected with HIV. If the intent is for epidemiologic surveillance (as stated in Sen. Steineger's introductory remarks), the Kansas Department of Health and Environment (KDH&E) would already have those statistics gleaned from their alternate test sites. Physicians could report migrational case incidents to KDH&E for epidemiologic purposes without divulging patient identification.

Sections 11 - 12 mandate contact tracing of sexual partners, totally ignore intravenous drug user contacts, and furtively attempt to legislate confidentiality. Because HIV infection may occur many years prior to clinical disease, chasing down individuals named by infected individuals presents an extremely costly and low-yield method of disease prevention. Whenever one encounters contact tracing, the possibility exists for the infected persons to single out public figures, previous acquaintances, and enemies as contacts. Even senators and judges could be named as a sexual contact! What a waste of time and resources to investigate all named contacts. It has been realized that contact tracing requires sensitive, trained investigators, and a fair investment of time; it is ill-suited for use on a large scale. Further, the only "treatment" available to those who are traced is counseling - which is already available to those who realize they are at risk. As recommended by the Governor's AIDS Task Force, widespread public education aimed towards increased risk awareness, coupled with the widespread availability of confidential, anonymous HIV testing sites, would achieve the same purpose at a lower cost. Individual identities, personal dignity, and assured confidentiality could be preserved by following the Task Force recommendations.

Sections 13 - 21 address mandatory testing for marriage license applicants. The institution of marriage is frequently both a religious sacrament and a legal contract. Individuals contemplating marriage should be encouraged to seek HIV antibody testing confidentially, and in the privacy of their relationship at easily accessible testing sites or at their physician's office. Individuals who have never engaged in any behavior which places them at risk for HIV infection need not be tested. It is naive to believe mandatory premarital testing could either prevent premarital sexual activity or pregnancy, and would therefore be a costly, ineffective method of uncovering HIV disease. Widespread educational efforts and confidential, anonymous testing would make HIV testing available to individuals who have previously engaged in behaviors which may have exposed them to HIV infection. Should individuals nevertheless decide to marry, regardless of their HIV status, Section 24 of S.B. 445 would create a felonious condition should the couple choose to engage in sexual intercourse!

Section 22 mandates HIV testing for individuals convicted of sexual crimes. Individuals who have been subjected to involuntary sexual assault must have free counseling and testing made available to them. **Medically**, it makes little sense to test the perpetrator of these offenses. Whether or not the perpetrator tests positive, they could still be infected



and must be assumed to be so. We do not test the perpetrators of sexual offenses for fertility, but rather we always counsel the female rape survivors about the chance of pregnancy, and provide testing for it. Likewise, the ONLY way to offer peace-of-mind to the victim of involuntary sexual assaults is to provide counseling and free, confidential testing for them twelve weeks after the incident (see Fig. 1). If the perpetrator tested positive or negative, the status of infection of the victim can only be assessed by testing the victim, not the perpetrator. **Punitively**, if HIV testing is to be made part of the sentencing, that is a different story. S.B. 445 makes no provisions as to the responsibility of the victim or the victim's family with the information of the perpetrator's HIV status. Conceivably, the irate victim or family could spread the perpetrator's HIV test results to the media, employers, and other "interested" parties with blatant disregard to the rights of the perpetrator. Would this be a just punishment for the perpetrators of such crimes? I think not. Mandatory testing of convicted sex offenders has no medical or ethical purpose.

Section 23 provides for mandatory HIV testing of individuals held, with or without conviction, in any involuntary detention facility. HIV infection is not transmitted casually. The August 21, 1987 Morbidity and Mortality Weekly Report (MMWR) published by the Centers for Disease Control in

Atlanta, Georgia, recommends Universal Body Fluid and Blood Precautions. The report stresses the importance of assuming ALL people are infected with HIV and suggests the necessary precautions to prevent infection. An HIV antibody test on incarcerated individuals would yield NO USEFUL INFORMATION in either preventing or precipitating HIV infection. Further, the arbitrary time period of 72 hours could conceivably force many individuals to undergo HIV testing for arbitrary and capricious reasons with no regard for the destruction to their family, employment, and mental health. This provision could be imposed on individuals detained for any reason. There exists no medical reason for such invasion of individual privacy.

Section 24 provides for mandatory charges of felonious behavior for anyone knowingly exposing another person to HIV infection through sexual behavior. Practically, there is no provision for consenting sexual activity between adults, there is no clear way to know definitively whether a sexual partner is infected or not (see Fig. 1), and this would provide a direct contradiction to the issuance of a marriage license to someone who was infected (Sec. 17). Widespread educational efforts focusing on behaviors which place a person at risk for acquiring HIV infection must be aggressively pursued. Sexual responsibility is a mutual concern. Nevertheless, malicious exposure of others to infected body

fluids may indeed present an area which should be addressed by the courts. Provision for consensual sexual activity must be made, and is ignored by S.B. 445.

Conclusion

In conclusion, the provisions of S.B. 445, if enacted, will

- a) misdirect scarce monetary resources towards low yield HIV antibody testing
- b) disguise punitive HIV antibody testing in the name of medicine and public welfare
- c) blatantly ignore, on every point, the recommendations of the Governor's Task Force Report of AIDS in Kansas.
- d) fail to address and provide for the psychosocial costs of indeterminate or erroneous test results
- e) provide for selective discrimination ranging from loss of employment or housing, denial of insurance, and potentiate the threat of serious physical abuse directed towards individuals testing HIV antibody positive.

As a physician treating people with AIDS and HIV infection, a researcher of several experimental new AIDS treatments, and as president of the Kansas AIDS Network, Inc., I must urge this committee to realize the serious consequences of enacting inferior legislation regarding the Acquired Immunodeficiency Syndrome. Regarding AIDS, we must be quick to avoid poor legislative proposals and slow to enact legislation until we understand quite clearly the long-term

ramifications of our actions.

AIDS is an infectious disease caused by a virus. It can take a productive, vibrant individual and reduce them to a withered, emaciated shell of human frailty. Likewise, disregard for human life, misdirected public policy, and poorly formulated zealous legislation can also infect, emaciate, and kill. Be Careful not to allow yourselves to be misled. It is not good enough to merely consider the "greater good for the greater number"; AIDS is a disease of people, a disease of faces. Be absolutely certain your endorsements reflect the overall good for ALL people.

STATISTICAL INFORMATION PROVIDED WEEKLY  
 COURTESY OF  
 KANSAS AIDS NETWORK, INC.  
 KAN AIDS HOTLINE 1-800-247-4101 EXT. 333  
 IN TOPEKA, CALL 357-7499 (T.D.D. AVAILABLE)

AIDS WEEKLY SURVEILLANCE REPORT(1) - UNITED STATES  
 AIDS PROGRAM  
 CENTER FOR INFECTIOUS DISEASES  
 CENTERS FOR DISEASE CONTROL  
 JANUARY 25, 1988

1. PRIMARY DISEASE REPORTED(2)	CASES	PERCENT OF TOTAL	DEATHS	PERCENT DEAD
Pneumocystis carinii Pneumonia	32639	62.9	18410	56.4
Other Opportunistic Diseases	13573	26.1	7903	58.2
Kaposi's Sarcoma	5704	11.0	2652	46.5
TOTAL	51916	100.0	28965	55.8

2. AGE	CASES	PERCENT OF TOTAL
Under 5	671	1.3
05 - 13	110	0.2
13 - 19	217	0.4
20 - 29	10775	20.8
30 - 39	24057	46.3
40 - 49	10822	20.8
Over 49	5264	10.1
Unknown	0	0.0
Total	51916	100.0

3. RACE/ETHNICITY	CASES	PERCENT OF TOTAL
White, not Hispanic	31286	60.3
Black, not Hispanic	13069	25.2
Hispanic	7077	13.6
Other	358	0.7
Unknown	126	0.2
TOTAL	51916	100.0

4. TRANSMISSION CATEGORIES(3)	MALES		FEMALES		TOTAL	
	CASES	PERCENT OF MALES	CASES	PERCENT OF FEMALES	CASES	PERCENT OF TOTAL
Homosexual/Bisexual Men	33190	69.4	0	0.0	33190	63.9
Intravenous (IV) Drug User	6889	14.4	1902	46.2	8791	16.9
Homosexual (IV) Drug User	3836	8.0	0	0.0	3836	7.4
Hemophilia/Coag Disorder	498	1.0	20	0.5	518	1.0
Heterosexual Cases(4)	943	2.0	1102	26.7	2045	3.9
Transfusion	783	1.6	408	9.9	1191	2.3
Undetermined(5)	1234	2.6	330	8.0	1564	3.0
PEDIATRIC:(6)						
Hemophiliac	39	0.1	3	0.1	42	0.1
Parent at Risk(7)	303	0.6	294	7.1	597	1.1
Transfusion	63	0.1	44	1.1	107	0.2
Undetermined(5)	18	0.0	17	0.4	35	0.1
Total	47796	100.0	4120	100.0	51916	100.0

- (1) These data are provisional.
- (2) Disease categories are ordered hierarchically. Cases with more than one disease are tabulated only in the disease category listed first. Kaposi's sarcoma has been reported in 165 cases since January 1 and in 9353 cases cumulatively.
- (3) Cases with more than one risk factor other than the combinations listed in the tables or footnotes are tabulated only in the category listed first.
- (4) Includes 1166 persons (260 men, 906 women) who have had heterosexual contact with a person with AIDS or at risk for AIDS and 879 persons (683 men, 196 women) without other identified risks who were born in countries in which heterosexual transmission is believed to play a major role although precise means of transmission have not yet been fully defined.
- (5) Includes patients on whom risk information is incomplete (due to death, refusal to be interviewed or loss to follow-up), patients still under investigation, men reported only to have had heterosexual contact with prostitute, and interviewed patients for whom no specific risk was identified.
- (6) Includes all patients under 13 years of age at time of diagnosis.
- (7) Epidemiologic data suggest transmission from an infected mother to her fetus or infant during the perinatal period.

5. Reported Cases of AIDS and Case-Fatality Rates by Half-Year Of Diagnosis, 1979 - JANUARY 25, 1988

	NUMBER OF CASES	NUMBER OF DEATHS	CASE-FATALITY RATE
	-----	-----	-----
1979 July-Dec	9	9	100%
1980 Jan-June	20	16	80%
July-Dec	34	31	91%
1981 Jan-June	88	82	93%
July-Dec	183	166	91%
1982 Jan-June	365	321	88%
July-Dec	649	566	87%
1983 Jan-June	1229	1093	89%
July-Dec	1600	1372	86%
1984 Jan-June	2478	2017	81%
July-Dec	3233	2613	81%
1985 Jan-June	4454	3453	78%
July-Dec	5695	4119	72%
1986 Jan-June	7054	4425	63%
July-Dec	8207	3918	48%
1987 Jan-June	9386	3289	35%
July-Dec	7206	1467	20%
1988 Jan 1- January 25	11	0	0%
Total*	----- 51916	----- 28965	----- 56%

\*Table totals include 15 cases diagnosed prior to 1979, and 0 cases with unknown date of diagnosis. Of these 15 cases, 8 are known to have died.

6. AIDS Cases Per Million Population (from the 1980 Census),  
by Standard Metropolitan Statistical Area (SMSA) of Residence,  
Reported from JUNE 1, 1981 to JANUARY 25, 1988 - United States

SMSA of Residence	Cases	Percentage of Total	Cases per Million Population
San Francisco, CA	4782	9.2	1471.1
New York, NY	12084	23.3	1324.9
Jersey City, NJ	617	1.2	1107.8
Miami, FL	1387	2.7	853.1
W Palm-Boca, FL	433	0.8	750.6
Elsewhere (irrespective of SMSA)	32613	62.8	151.7
<b>Total - United States</b>	<b>51916</b>	<b>100.0</b>	<b>225.6</b>

7. RESIDENCE	CASES	PERCENT OF TOTAL
New York	13349	25.7
California	11589	22.3
Florida	3704	7.1
Texas	3675	7.1
New Jersey	3345	6.4
Illinois	1438	2.8
Pennsylvania	1299	2.5
Georgia	1107	2.1
Massachusetts	1095	2.1
District of Columbia	985	1.9
Maryland	882	1.7
Washington	700	1.3
Louisiana	697	1.3
Ohio	615	1.2
Connecticut	600	1.2
Virginia	567	1.1
Michigan	527	1.0
Colorado	522	1.0
Puerto Rico	519	1.0
<b>Missouri</b>	<b>437</b>	<b>0.8</b>
Arizona	422	0.8
North Carolina	407	0.8
Minnesota	302	0.6
Oregon	299	0.6
Indiana	248	0.5
Alabama	230	0.4
Tennessee	210	0.4
Oklahoma	199	0.4
South Carolina	198	0.4
Hawaii	190	0.4
Wisconsin	186	0.4
Nevada	160	0.3
Rhode Island	124	0.2
<b>Kansas</b>	<b>112</b>	<b>0.2</b>

Kentucky	109	0.2
Utah	102	0.2
Mississippi	100	0.2
New Mexico	94	0.2
Arkansas	90	0.2
Delaware	77	0.1
Iowa	65	0.1
Maine	61	0.1
New Hampshire	58	0.1
Nebraska	52	0.1
West Virginia	44	0.1
Alaska	38	0.1
Vermont	24	0.0
Idaho	16	0.0
Montana	15	0.0
Other States ( 6 )	32	0.1
-----	-----	-----
Total - USA	51916	100.0

KANSAS AIDS NETWORK, INC. REMAINS THE ONLY STATE-WIDE ORGANIZATION WITH AIDS EDUCATION AS OUR PRIMARY GOAL. IF WE CAN PROVIDE YOUR ORGANIZATION WITH ADDITIONAL INFORMATION, SPEAKERS, OR CONDOMS, PLEASE DO NOT HESITATE TO CONTACT US AT THE ENCLOSED ADDRESS.

TOGETHER WE KAN  
STOP THE SPREAD OF AIDS IN KANSAS

AIDS ACTIVITY, CID, CDC, ATLANTA, GA.,  
SPONSORED BY  
THE KANSAS AIDS NETWORK, INC.  
P.O. BOX 2728  
TOPEKA, KANSAS 66601  
TOLL-FREE HOTLINE 1-800-247-4101, EXT. 333



January 27, 1988

Testimony of Roman Hiszczynskyj, M.D.

Topeka Blood Bank Medical Director

Senate Public Health and Welfare Committee

SB 445

In reviewing Senate Bill No. 445 by Senator Steineger I think it is important that potential discrepancies between proposed state law and federal law as it applies to HIV testing in blood banking be reviewed.

Section 2 (g) of Senator Steineger's bill defines a positive reaction as, "a positive AIDS test with a positive confirmation test as specified by the secretary". Since April, 1985, blood banks throughout the United States have been testing for AIDS using FDA licensed HIV tests and Western Blot testing as a confirmatory test. The normal procedure is as follows: If the sample initially reacts for HIV it is repeated in duplicate. If in duplicate testing, another reactive result is obtained then the sample is considered repeatably reactive. The unit of blood and all products are destroyed when the test is repeatably reactive and the sample is sent on for a Western Blot (confirmatory) test. Donors who are HIV repeatably reactive and Western Blot positive are permanently ineligible to donate. Those donors who are repeatably reactive and Western Blot negative must be retested in six month using the FDA licensed Western Blot test and the FDA recommended retesting protocol and found negative before consideration is given to re-entering their future donations into the blood supply.

The previously mentioned testing procedure is the current industry standard and is more stringent than that proposed by Senator Steineger. In addition, the procedure complies with the Standards as set forth by the American Association of Blood Banks for inspection and accreditation of blood banks, the American Red Cross Blood Service Directives and the recently

published Code of Federal Regulations (Parts 606, 610, 640) as published in the Federal Register, Vol. 53, No. 2, Tuesday, January 5, 1988.

I am opposed to the definition presented by Senator Steineger because (1) it implies that blood donations not currently being used for transfusion (ie: HIV repeatably reactive Western Blot negative) should be considered safe and suitable for transfusion and (2) confirmatory testing on all units that are initially reactive for HIV but not repeatably reactive will create an unnecessary financial burden for the state blood providers.

Current experience with donors followed by Topeka Blood Bank shows cases where donors were HIV repeatably reactive and Western Blot negative, but eventually became Western Blot positive in less than a two year period. I submit that patients in the state of Kansas would not have wanted transfusions from these donors even though early HIV reactive donations would not confirm with a second test. The attitude of the public has always been to demand a zero risk blood supply.

I urge you to oppose Senate Bill No. 445 especially as it applies to blood donations and encourage the blood providers of the state to continue following the high standards already set forth by the American Association of Blood Banks, American Red Cross, and Food and Drug Administration. To enact legislation that would be pre-empted by blood banking accrediting organizations and the Food and Drug Administration would not cause the state of Kansas to be regarded as a leader in this area.