

Approved 2-9-88  
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./~~p.m.~~ on February 2, 1988n room 526-S of the Capitol.

All members were present except:

Committee staff present:

Bill Wolff, Legislative Research  
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:

Senator August "Gus" Bogina  
Senator Richard "Dick" Bond  
Dennis Moore, District Attorney, Johnson County  
Senator Edward Reilly  
Tuck Duncan, member of School District 501 School Board  
Senator Alicia Salisbury  
Written testimony by Brandon L. Myers, Staff Attorney, Civil Rights  
Commission  
Written memo by Elizabeth Taylor, Executive Director, Kansas  
Association of Local Health Departments

Chairman Ehrlich presented the minutes of January 26, 27 and 28th to the committee for correction or approval. Senator Hayden made the motion to accept the minutes as presented. Senator Morris seconded the motion and the motion carried.

Senator Bogina appeared before the committee in support of SB-517. The Senator told the committee he requested the bill after receiving correspondence from Dennis Moore, District Attorney, Johnson County. This bill would require mandatory testing for AIDS for those persons convicted of sex crimes. It would also provide for counseling for certain victims when final test results were positive.

Senator Bond spoke to the committee in support of SB-517. The Senator told the committee that he felt one point in the bill should be emphasized and that was the provision for counseling for the victim or victims. Therefore, SB-517 is something more than just an AIDS bill, it is more of a "victim's rights" bill. It was further stated that for many years the rights of the accused, those incarcerated, etc. have been strenuously protected and it is time to protect the victims with "peace of mind" legislation. Senator Bond stated there was little the state can do for the victims after a crime is committed but it could provide this legislation. Senator Bond introduced Dennis Moore, District Attorney, Johnson County to the committee.

Dennis Moore, the District Attorney from Johnson County spoke to the committee in support of SB-517. Mr. Moore stated that HB-2659 is a bill similar to SB-517. Mr. Moore stated there are no specific laws in Kansas which permit blood testing of convicted criminals. Only the issuance of a search warrant permits testing to take place at the present time. This legislation would also apply to children who have been victimized.  
Attachment 1

Senator Reilly told the committee he had obtained a copy of the AIDS educational film being used by School District 501 in the middle schools. The Senator introduced Tuck Duncan, a member of District 501 school board.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE,  
room 526, Statehouse, at 10:00 a.m./~~p.m.~~ on February 2, 1988

Tuck Duncan stated that the School Board of District 501 mandated the development of a curriculum on the AIDS virus. The film viewed by the committee was the one shown to 7th and 8th graders. A curriculum was also developed for students beginning at the 5th grade level due to the documented number of pregnancies in younger children. These pregnancies point to sexual activity in children younger than 7th grade level.

Following the 19 minute film Senator Salisbury reaffirmed the need for SB-517, especially due to the recent discovery of the second strain of HIV virus.

A letter from Brandon Myers, Staff Attorney, The Commission on Civil Rights supporting the appointment of a subcommittee to deal with SB-460 was presented to committee members. Senate Bill 460 has been tabled until February 14. Attachment 2

A memo by Elizabeth Taylor on SB-445 was presented to committee members. This memo was to clarify testimony given January 28, 1988. Attachment 3

The meeting adjourned at 10:42 a.m. and will meet February 3, 1988.

SENATE  
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE February 2, 1988

(PLEASE PRINT)  
NAME AND ADDRESS

ORGANIZATION

(PLEASE PRINT) NAME AND ADDRESS	ORGANIZATION
Harold H. Geer	KDHE
Charles Garcia	KU Law School
Aue Bord Overland Park	
Kathleen Jones Oliver	SRSTADAS
Linda Lubensky	KS Assn of Home Health Ag.
Jim Clark	Ko Co & PA Assoc
Jimmie Moore	D.A. Johnson Co.
Elizabeth C. Taylor	Dept of Local Health Ks Assn of Local Health
KEITH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Ken Babo	Kaiser Permanente
CHARLES KOLLM	KSTA
BOB BRADLEY	KS Assoc of Counties
Chip Wheelen	KS Medical Society
M. Hauser	Trends Cardio
A RIEHM	HAOM
Jack DUNN	USD 1

STATE OF KANSAS  
Tenth Judicial District

OFFICE OF DISTRICT ATTORNEY

DENNIS W. MOORE  
DISTRICT ATTORNEY

JOHNSON COUNTY COURTHOUSE  
P.O. Box 728, 6TH FLOOR TOWER  
OLATHE, KANSAS 66061  
913-782-5000, EXT. 333

February 2, 1988

Dear Senate/House Committee Member:

I appreciate the opportunity to be here today to testify in support of SB 517 and HB 2659.

In 1981 the United States Centers for Disease Control (CDC) recognized Acquired Immune Deficiency Syndrome (AIDS) as a disease. The CDC reports that as of February, 1987 there were approximately 30,000 cases of persons with AIDS in this country and that as many as 1.5 million persons are carriers of the AIDS virus, although they have not developed the disease. We are told by the CDC that AIDS can only be spread by blood transfusions (contaminated blood), intimate sexual contact and sharing needles for intravenous drug injections. The public's awareness and concern about the AIDS epidemic has spread almost as rapidly as the number of cases. There is much information and misinformation in the public domain. While we must not respond in a hysterical manner to concerns about AIDS, we have a right to use reasonable and legitimate means to protect and provide information to persons who are innocent victims of the criminal acts of others who may be infected with AIDS.

I was contacted several weeks ago by a young woman who was the victim of a brutal rape. She awoke in the middle of the night to find a man in her bed with a knife at her throat. He proceeded to have vaginal sex with her and attempted anal intercourse. He forced her to perform oral sex on him.

Through the investigation that followed, the young woman's assailant was identified, charged and the defendant entered a plea of guilty to rape and aggravated criminal sodomy. The woman contacted me and asked if we might test the defendant's blood to determine if he was a carrier of the AIDS virus. She was concerned that she might have been exposed to AIDS.

The woman's inquiry presented two legal questions: (1) is there legal authority to conduct a test for the AIDS virus on the blood of a person charged or convicted who does not consent to the test? and (2) is there legal authority to disclose the

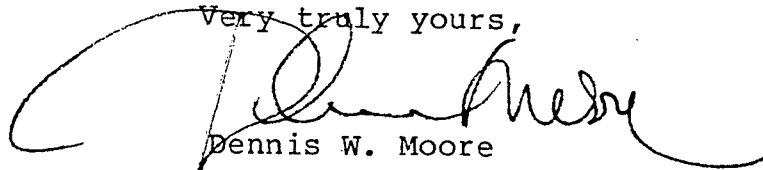
results of that test to the crime victim? My legal research indicated that the answer to both questions is "No".

It is common for prosecutors in a sexual assault case to obtain a search warrant to obtain known samples of body evidence from a person charged with a crime for comparison with evidence found at the scene of the crime. The tests are used to establish identification of the person charged with the crime. However, even though it is legal with a search warrant to draw blood from a defendant for purposes of evidence comparison, there is no specific legal authority in Kansas that permits prosecutors to use that blood to test for AIDS or any other disease. And even assuming that there was authority for such testing, there are substantial personal and constitutional privacy considerations as to whether, absent consent by the defendant, results of such a test could be provided to anyone, including the victim of a forced sexual attack. I advised the victim in this rape case of my findings. She was disappointed.

In drafting a proposed statute, I considered whether there might be circumstances where it would be appropriate to test a person charged with a sex crime, prior to conviction. But under our system of laws, a person is entitled to a presumption of innocence until the State proves his guilt beyond a reasonable doubt. In my opinion, a statute which permits testing the blood of a defendant convicted of a sex crime has a much greater chance of being upheld on appeal. What is involved, of course, is a balancing of the privacy rights of a person convicted of a sex crime against the right to know for the innocent victim of a sexual assault. While a person accused of a crime has important constitutional rights which must be protected, once that person has been convicted then perhaps the balance should shift in favor of the victim's right to know. I believe there is a strong societal interest in providing some measure of peace of mind (hopefully by a negative test result) if a victim asks if she has been exposed to the AIDS virus by a forced sexual assault.

I urge your support of SB 517 and HB 2659.

Very truly yours,



Dennis W. Moore

DWM:JH

P.S. Enclosed is a letter from the victim in the rape case I mentioned.

Dear Dennis,

1/4/88

Thank you again for your help. I appreciate the efficient and sensitive way my case was handled. It was such a relief not to have to go to trial. Enclosed is the letter you requested. If I can be of further assistance, please let me know.

Sincerely,

M. J. ...

December 30, 1987

To the Kansas State Legislature:

I am writing this letter to plead for mandatory AIDS testing. This summer, I was the victim of a sexual assault. A man broke into my house on August 2, 1987 at two o'clock in the morning and raped me. As a medical student my first concern was for my health and the possibility of contracting AIDS. The disease process of AIDS is such that it may not manifest itself for a significant amount of time such as months to even years. I could potentially be a carrier and unknowingly infect others, such as loved ones.

By violating and abusing my rights the rapist is relinquishing his own rights. Coping with the whole ordeal of being violated and putting your life back together is difficult enough without having to also live with the fear of AIDS.

Requiring AIDS testing of the rapist will put my mind at ease as well as enable me to put the whole event in the past. I was fortunate in that the man who raped me consented to be tested for AIDS. But, even at this it took several months before this arrangement was made.

Most rape victims are not as fortunate and must live with the anxiety of whether or not they were exposed to the AIDS virus. If we can insist on our soldiers being tested how can you turn your back on the rights of the innocent victim and let them live with not only the permanent scars of an assault, but also the fear that they may have AIDS.

Sincerely,

A Victim

**Executive Board**

Sergeant Craig Hill, President  
Detective, Investigations Division  
Leawood Police Department

Sergeant Richard King, Exec VP  
Gladstone Dept Public Safety

Detective Mike Smitley, Sec  
Lee's Summit Police Department

Officer Brenda Haupt, Treas  
Kansas City Police Department

Sergeant Steve Jensen, VP  
Kansas Highway Patrol

Sergeant Curt Mathews, VP  
Missouri State Highway Patrol

Don Cahail  
Applause Video

Theresa Donaldson  
Children's Mercy Hospital

Larry Moore  
KMBC-TV

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Joanna Engel, Admin Coordinator  
Steve Hayes, Art Director

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Laura Allen  
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Jim Engel  
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Dale Harris  
Lamar Hunt, Jr.  
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Nick Lowrey  
James Mallow  
Linda Mallow  
Harry McLearn  
Stan Rose  
Tricia Scott  
David Stallings  
Robert T. Stephan  
John Walsh  
William L. Webster  
George Weyrauch II  
Phil Witt  
Lisa Valenti

December 29, 1987

87 DEC 30  
RECEIVED  
JOHNSON COUNTY  
DISTRICT ATTORNEY

RE: AIDS Task Force

Dear :

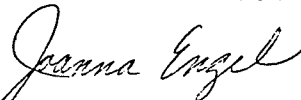
Working in the field of missing and sexually abused children, I was confused and concerned after reading the attached article wherein the Task Force declined to recommend mandatory testing for AIDS on sex offenders.

I would appreciate receiving an explanation regarding the "high cost". I would also like to receive a copy of the Task Force's recommendations.

I am attaching two other articles, one titled "Aids calls double" and the other "Specter of AIDS looms in sexual abuse of children". Also, please see 1985 F.B.I. Crime Clock and supporting documentation which covers "reported" rape of female adults only.

I strongly support District Attorney Moore's position that all rape victims (and their families) have a right to know if they have been exposed to the deadly AIDS disease.

THE LOST CHILD NETWORK  
...in partnership  
to protect  
our children



Joanna Engel, Admin. Coordinator

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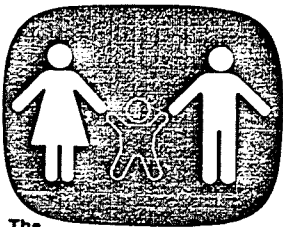
Attachments



bcc: District Attorney Dennis Moore  
Representative Gene Amos  
Governor Mike Hayden  
Attorney General Bob Stephan

bps: This letter sent to AIDS Task Force members per attached list.

Education, Awareness, Recovery



The Lost Child Network.

• 8900 STATELINE ROAD • SUITE 351 • LEAWOOD, KANSAS 66206 • 913 649-6723

MIKE HAYDEN, GOVERNOR  
STATE OF KANSAS

B. A. VILLARREAL, CHAIRPERSON  
OVERLAND PARK

CORBIN BENHAM  
WICHITA

JAMES BUTLER  
MANHATTAN

ANITA FAVORS  
KANSAS CITY

GEORGE M. LATTIMORE  
WICHITA

LOU ANN THOMS  
TOPEKA



COMMISSION ON CIVIL RIGHTS

LONDON STATE OFFICE BLDG.—8TH FLOOR  
900 S.W. JACKSON ST.—SUITE 851 S.  
TOPEKA, KANSAS 66612-1258  
(913) 296-3206

January 28, 1988

JOANNE E. HURST  
EXECUTIVE DIRECTOR

ROBERT G. LAY  
ASSISTANT DIRECTOR

ROGER W. LOVETT  
CHIEF LEGAL COUNSEL

BRANDON L. MYERS  
STAFF ATTORNEY

ARTHUR R. BRUCE  
SUPERVISOR OF COMPLIANCE

WILLIAM V. MINNER  
FIELD SUPERVISOR

LINDA AUWARTER  
OFFICE MANAGER

Honorable Senator Roy Ehrlich  
State Capitol Building  
Room 138-N  
Topeka, Kansas 66612

RE: S. B. 460

Dear Senator:

At the recent committee hearings regarding the above, Ray Petty of the Topeka Resource Center for the Handicapped suggested that a subcommittee be appointed to address the several points raised regarding certain sections of this bill. On behalf of the Kansas Commission on Civil Rights (KCCR), I would support Mr. Petty's suggestion.

At the time of the Committee's hearings the KCCR had not had an opportunity to meet and consider the specific provisions of S. B. 460. The Commission has now done that.

As a general matter the KCCR supports revision of the Kansas Act Against Discrimination (KAAD) with regard to "physical handicap" discrimination. Based upon the Kansas appellate court's restrictive interpretation of the current definition of "physical handicap" contained at K.S.A. 44-1002 (j), it is our view that many potential situations which we believe to have been covered by the Act cannot now be redressed through the KAAD as administered by the KCCR. Therefore, the KCCR supports S. B. 460's proposed definitional change of K.S.A. 44-1002 (j). We would be open to certain amendments to that portion of the bill, so long as the end result would be to eliminate the current threshold requirement of showing that the person's physical condition upon which an adverse decision was based was a "substantial disability."



Honorable Senator Roy Ehrlich  
Page 2  
January 28, 1988

However, the bill currently excludes alcoholism, drug addiction and substance abuse from the definition of "physical handicap." The KCCR supports specific inclusion thereof within the definition. We suggest at line 0089 that "does not include" be stricken, and be replaced with "includes." Obviously, if a person for instance is using a substance which impairs his/her ability to perform a job, an employer may have a valid business motive in taking an adverse employment action based thereon. The KCCR, however, consistent with comparable Federal Rehabilitation Act provisions, wishes the statute to protect people who have a record of having or are regarded as having such a condition from being stereotypically discriminated out of a job for which they are actually qualified.

Dr. Parker of KDHE suggested to the Committee that the word "disease" be added at, I believe, line 0084 of the bill. We support that addition. We believed that "disease" would have been encompassed by the bill in its present form. However, we would defer to Dr. Parker's expertise that this is a necessary clarification consistent with our original intent in supporting this bill.

At line 0091 and at 0073-0180 there are references to "physician." The Kansas Medical Society suggested to the committee that the bill should instead refer at those points to "health care provider." We would support those changes.

Lines 0108 - 0113 apparently are somewhat controversial, according to the testimony presented to the committee. As a general matter under the KAAD, an employer or place of public accommodation may take an adverse action toward a person due to their physical condition if justified by a valid business motive. The section of the bill at 0108 - 0113 could be said to attempt to set out a certain type of potentially valid business motive. It is therefore arguably duplicitous and unnecessary, especially since the Act does not and cannot possibly, set out or illustrate every possible type of valid business motive. We would accept having lines 0103 - 0113 stricken from the bill.

The KCCR fully supports adding "reasonable accommodation" provisions to this bill. Mr. Petty provided specific suggestions as to how to modify the bill in this regard. We fully support his suggestions.

Again, we believe a subcommittee can deal with these issues most efficiently and suggest one be appointed.

Honorable Senator Roy Ehrlich  
Page 3  
January 28, 1988

We hereby request notification as to any meetings regarding this bill. Your cooperation on this matter is greatly appreciated.

Sincerely,



Brandon L. Myers

BLM/kp  
cc: Joanne E. Hurst  
Roger W. Lovett



KANSAS ASSOCIATION OF LOCAL HEALTH DEPARTMENTS

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"... Public Health in Action"

February 1, 1988

TO: Senator Roy Ehrlich, Chairman - Senate Public Health & Welfare  
Senate Public Health & Welfare Committee Members

FR: Elizabeth E. Taylor, KALHD Executive Director

RE: Reporting of AIDS positive tests to local health departments

In my testimony last Thursday, Senator Salisbury asked about the reporting of AIDS cases to the local health departments. I think there may have been some confusion concerning the discussion that followed.

I have checked with the Kansas Department of Health & Environment and they have confirmed that those diagnosed as having AIDS are reported under current reporting of diseases statutes. However, those who are tested positive as AIDS carriers who are not yet diagnosed as having the disease are not reported because the statutes only require reporting for diseases and not infections as termed by the KDHE.

Please let me know if I can be of further assistance to the committee on this or any other public health issues.