

Approved 3-14-88 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 March 2, 1988 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Bill Wolff, Legislative Research
Norman Furse, Revisors Office
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:

Chairman Ehrlich called the meeting to order and turned the meeting over to subcommittee chairman Bond for a report on SB-686.

Senator Bond stated his appreciation for the assistance of the Department of Health and Environment. He further stated they had basically pulled out items recommended in the Governor's AIDS Task Force report. In addition, SB-686 contains the portion of SB-517 relating to the victims right to know.

Senator Bond moved the adoption of the subcommittee report as it appears in SB-686. Senator Francisco seconded the motion.

Senator Salisbury stated that one point on which there was no agreement between the experts and the subcommittee was the issue of mandatory reporting on the infection. The Senator stated that although some states were not attempting to trace, due to large numbers involved, she felt there could be some merit and help by tracing in Kansas where there were smaller numbers of diagnosed AIDS cases.

Senator Bond stated that this bill did not mandate nor did it prohibit tracing. The Department of Health, by rules and regulations, can substantially do what they feel is best.

Senator Bond, in reply to comments that nothing spoke to the needs of health care professionals nor the area of prisons, stated the new Section 4 does address hospital settings and protects physicians with regard to mandatory testing. The Senator also stated the prisons did not request the right to test and that they are testing those who feel are high risk.

Senator Francisco stated that he would like to see tracking put into the bill. The Senator also stated that the subcommittee report should be accepted, address changes by amendment and vote them up or down.

Senator Bond's motion to accept the subcommittee report carried.

Norman Furse proceeded to go through changes in the balloon bill of SB-686.
Attachment 1

Senator Bond moved adoption of the amendments on page 1 of the balloon bill. Senator Francisco seconded the motion and the motion carried.

Senator Bond moved adoption of clean up language on line 0056. Senator Francisco seconded the motion and the motion carried.

Senator Bond moved to accept renumbering of sections through new Section 7. Senator Francisco seconded the motion and the motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 526-S, Statehouse, at 10:00 a.m.~~p.m.~~ on March 2, 1988, 19 .

Handouts to the committee included Attachment 2 from the Kansas Funeral Directors and Embalmers Association, Inc. Senator Reilly presented committee members with Attachment 3 concerning rights of doctors. A draft of new Section 9, Attachment 4, was also presented to the committee.

The committee will resume work on SB-686 starting with Section 8 on Friday. The meeting adjourned at 11 a.m. and will meet at 10 a.m. Thursday, March 3, 1988, at 10:00 a.m. in Room 526-S.

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE March 2, 1988

(PLEASE PRINT)
NAME AND ADDRESS

ORGANIZATION

MACK Smith

Mortuary Arts Bd

Jim Snyder

KFDA

Dick Hummel

KHCA

Marilyn Bradt

KIWH

Kevin D. McFarland

KAHA

KEITH R LOUIS

CHRISTIAN SCIENCE COMMITTEE
ON PUBLICATION FOR KANSAS

Mary Ann Gabel

BSRB

John Peterson

Ks Assn of Prof Psychologists

Mark Beshears

Med Co. Containment

R L PARKER

KDHE

Richard Morrissey

KDAE

L.K. Hulet

KDHE

Dorinda Schlosser MD

KDHE

Chip Wheelen, Topeka

KMS

ETHEL STANFORD / Topeka

KMS

Ken Baker, Topeka

Ks. Assn of Professional Psychologists

Allyn D. Lockyer

SRS

M. Hauwa

Capital Journal

Mark Intermill

KCOA

Dean Oroke

Leavenworth County
Commission

SENATE BILL No. 686

By Committee on Public Health and Welfare

2-23

0016 AN ACT concerning AIDS; requiring reporting cases of AIDS to
 0017 the secretary of health and environment; granting certain
 0018 powers to and imposing certain duties upon the secretary;
 0019 providing for confidentiality of certain information; declaring
 0020 certain acts unlawful and providing penalties for violations;
 0021 requiring testing of persons convicted of certain crimes and
 0022 providing counseling for certain victims thereof; amending
 0023 K.S.A. 65-128 and repealing the existing section.

requiring notification of death from AIDS to accompany cer-
 tain dead bodies transported for disposition

0024 *Be it enacted by the Legislature of the State of Kansas:*

0025 New Section 1. As used in sections 1 to 6, inclusive, and
 0026 amendments thereto, unless the context clearly requires other-
 0027 wise:

0028 (a) "AIDS" means the disease acquired immune deficiency
 0029 syndrome.

0030 (b) "HIV" means the human immunodeficiency virus or any
 0031 other identified causative agent of AIDS.

0032 (c) "Secretary" means the secretary of health and environ-
 0033 ment.

0034 (d) "Seropositive" means the presence of antibody to HIV as
 0035 detected by appropriate laboratory tests.

0036 (e) "Physician" means any person licensed to practice medi-
 0037 cine and surgery.

0038 New Sec. 2. (a) Whenever any physician has information
 0039 indicating that a person is suffering from or has died from AIDS,
 0040 such knowledge or information shall be reported immediately to
 0041 the secretary of health and environment, together with the name
 0042 and address of the person who has or is suspected of having
 0043 AIDS, or the name and former address of the deceased individ-
 0044 ual who had or was suspected of having such a disease.

0045 (b) Any physician who reports the information required to be

0046 reported under subsection (a) in good faith and without malice to
 0047 secretary of health and environment shall have immunity
 0048 from any liability, civil or criminal, that might otherwise be
 0049 incurred or imposed in an action resulting from such report. Any
 0050 such physician shall have the same immunity with respect to
 0051 participation in any judicial proceeding resulting from such
 0052 report.

0053 (c) Information required to be reported under subsection (a)
 0054 of this section and information relating to HIV or AIDS obtained
 0055 through laboratory tests conducted by the department of health
 0056 and environment shall be confidential and shall not be disclosed
 0057 or made public, upon subpoena or otherwise, beyond the dis-
 0058 closure necessary under subsection (a) of this section or subsec-
 0059 tion (a) of section 3 and amendments thereto or the usual report-
 0060 ing of laboratory test results to persons specifically designated by
 0061 the secretary of health and environment as authorized to obtain
 0062 such information, except such information may be disclosed:

0063 (1) If no person can be identified in the information to be
 0064 disclosed and the disclosure is for statistical purposes;

0065 (2) if all persons who are identifiable in the information to be
 0066 disclosed consent in writing to its disclosure;

0067 (3) if the disclosure is necessary, and only to the extent
 0068 necessary, as specified by rules and regulations of the secretary,
 0069 to protect the public health;

0070 (4) if a medical emergency exists and the disclosure is to
 0071 medical personnel qualified to treat AIDS, except that any in-
 0072 formation disclosed pursuant to this paragraph shall be disclosed
 0073 only to the extent necessary to protect the health or life of a
 0074 named party; or

0075 (5) if the information to be disclosed is required in a court
 0076 proceeding involving a minor and the information is disclosed in
 0077 camera.

0078 New Sec. 3. The secretary of health and environment shall
 0079 investigate cases of AIDS and maintain a supervision over such
 0080 cases during their continuance. The secretary may adopt and
 0081 enforce rules and regulations for the prevention and control of
 0082 AIDS and for such other matters relating to cases of AIDS as may

1-2
 relating to HIV or AIDS and persons suffering therefrom or
 infected therewith

008 necessary to protect the public health.

008 b) Any information relating to AIDS which is required to be
0085 disclosed or communicated under subsection (a) of this section
0086 shall be confidential and shall not be disclosed or made public
0087 beyond the disclosure necessary under subsection (a) of this
0088 section or subsection (a) of section 2 and amendments thereto to
0089 persons specifically designated by the secretary as authorized to
0090 obtain such information, except as otherwise permitted by sub-
0091 section (c) of section 2 and amendments thereto.

0092 (c) The secretary may enter into agreements with any county
0093 or joint board of health to perform duties required to be per-
0094 formed by the secretary under subsection (a) as specified by such
0095 agreement. The confidentiality requirements of subsection (b)
0096 shall apply to any duties performed pursuant to such an agree-
0097 ment.

0098 New Sec. 4. Notwithstanding any other law to the contrary, a
0099 physician who knows that a patient has or may be infected with
0100 the etiologic agent for acquired immunodeficiency syndrome or
0101 that a patient has tested positive for the presence of the HIV
0102 antigen or seropositive for the presence of the antibody to HIV
0103 may disclose such information to other health care personnel
0104 who because of their involvement with the care of the patient are
0105 subject to risk of exposure to HIV. The information shall be
0106 confidential and shall not be disclosed by such health care
0107 personnel except as may be necessary in providing treatment for
0108 such patient.

0109 New Sec. 5. Any person violating; refusing or neglecting to
0110 obey any provision of sections 1 to 4, inclusive, of this act or of
0111 the rules and regulations adopted by the secretary of health and
0112 environment for the prevention and control of AIDS shall be
0113 guilty of a class C misdemeanor.

0114 New Sec. 6. (a) The secretary shall prepare for distribution
0115 to the district courts of the state educational material explaining
0116 the nature, causes and effects of AIDS and other information
0117 relating to AIDS as may be appropriate. The clerks of the district
0118 courts or judges thereof, when applied to for a marriage license,
(all provide copies of such educational material to the parties to

120 the proposed marriage.

121 [The secretary shall establish and maintain test sites
122 throughout the state where the anonymous testing for HIV may
123 be undertaken.

New Sec. 7.

124 New Sec. [7]. (a) As used in this section:

8

125 (1) "AIDS test" means a test approved by the secretary of
126 health and environment to detect antibodies to the probable
127 causative agent for the disease acquired immune deficiency
128 syndrome.

129 (2) "A positive reaction" means a positive AIDS test with a
130 positive confirmatory test as specified by the secretary.

131 (b) Upon conviction of a person for rape under K.S.A. 21-3502
132 and amendments thereto, indecent liberties with a child under
133 K.S.A. 21-3503 and amendments thereto, aggravated indecent
134 liberties with a child under K.S.A. 21-3504 and amendments
135 thereto, criminal sodomy under K.S.A. 21-3505 and amendments
136 thereto, aggravated criminal sodomy under K.S.A. 21-3506 and
137 amendments thereto, sexual battery under K.S.A. 1987 Supp.
138 21-3517 and amendments thereto, aggravated sexual battery
139 under K.S.A. 1987 Supp. 21-3518 and amendments thereto, in-
140 cest under K.S.A. 21-3602 and amendments thereto or aggravated
141 incest under K.S.A. 21-3603 and amendments thereto, the court
142 upon motion of the victim or county or district attorney may
143 order the convicted person to submit to an AIDS test. If the test
144 results in a positive reaction, the court shall order the convicted
145 person to submit to a secondary, corroborative AIDS test. If the
146 test results in a negative reaction, the court shall order the
147 convicted person to submit to another AIDS test six months after
148 the first test was administered.

149 (c) The results of any AIDS test ordered under this section
150 shall be disclosed to the convicted person and to the victim or
151 victims of the crimes for which the person was convicted. If a
152 victim is a minor, the test results shall be disclosed to the parent
153 or legal guardian of the minor. If a secondary, corroborative
154 AIDS test ordered under this section results in a positive reac-
155 tion, the results shall be reported to the secretary of health and
156 environment and such counseling as directed by the secretary of

157) and environment shall be provided to the victim or
158 victims.

159 (d) The costs of any test ordered under this section and the
160 cost of any counseling provided under this section shall be paid
161 from amounts appropriated for such purposes upon warrants of
162 the director of accounts and reports issued pursuant to vouchers
163 approved by the secretary of health and environment or a person
164 designated by the secretary. Restitution to the state for payment
165 of such costs shall be included by the court in any order requir-
166 ing the convicted person to pay restitution.

167 (e) When a court orders a convicted person to submit to an
168 AIDS test under this section, the withdrawal of the blood may be
169 performed only by: (1) A person licensed to practice medicine
170 and surgery or a person acting under the supervision of any such
171 licensed person; (2) a registered professional nurse or a licensed
172 practical nurse; or (3) a qualified medical technician. No person
173 authorized by this subsection to withdraw blood, no person
174 assisting in the performance of the AIDS test nor any medical
175 care facility where blood is withdrawn or tested that has been
176 ordered by the court to withdraw or test blood shall be liable in
177 any civil or criminal action when the act is performed in a
178 reasonable manner according to generally accepted medical
179 practices in the community where performed.

180 (f) The results of tests and reports to the secretary of health
181 and environment required under this section, and information
182 contained therein, shall be confidential and shall not be di-
183 vulged to or open to inspection by any person other than the
184 person or persons conducting a test of the blood, the secretary of
185 health and environment or the secretary's authorized represent-
186 atives, the convicted person, the victim or victims of the crime
187 and such persons as otherwise authorized by state or federal law.
188 Any person who divulges or opens to inspection such results or
189 reports, or information therein, to any person not authorized by
190 this section to receive the same is guilty of a class A misde-
191 meanor.

192) The secretary of health and environment shall adopt such
193 s and regulations as necessary to implement the provisions of

this section.

Sec. 8. K.S.A. 65-128 is hereby amended to read as follows:

1New Sec. 9. See attached.

0196 65-128. (a) For the protection of the public health and for the
0197 control of infectious or contagious diseases, the secretary of
0198 health and environment by rules and regulations shall designate
0199 such diseases as are infectious or contagious in their nature, and
0200 the secretary of health and environment is authorized to adopt
0201 rules and regulations for the isolation and quarantine of such
0202 diseases and persons afflicted with or exposed to such diseases
0203 as may be necessary to prevent the spread and dissemination of
0204 diseases dangerous to the public health.

10

0205 (b) As used in K.S.A. 65-118, 65-119, 65-122, 65-123, 65-126
0206 and 65-129, and any amendments thereto, "infectious or con-
0207 tagious disease" means any disease designated by the secretary
0208 of health and environment as an infectious or contagious disease
0209 in accordance with subsection (a) of this section *but shall not*
0210 *include the disease acquired immune deficiency syndrome or*
0211 *human immunodeficiency virus or any other causative agent of*
0212 *acquired immune deficiency syndrome.*

11

0213 Sec. 9. K.S.A. 65-128 is hereby repealed.

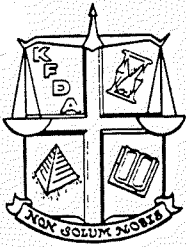
0214 Sec. 10. This act shall take effect and be in force from and
0215 after its publication in the statute book.

12

9-6

New Sec. 9. (a) When a person who has been diagnosed as having AIDS dies, the attending physician or, if there is no attending physician, a family member or person making arrangements for the disposition of the dead body who knows of such diagnoses shall prepare a written notification to accompany the body when it is transported for disposition.

(b) Any person who transports a dead body for disposition and who has been notified that the person had been diagnosed as having AIDS at the time of death pursuant to the provisions of subsection (a) shall present notification thereof accompanying the dead body to any embalmer, funeral director or other person taking possession of the dead body.



THE KANSAS FUNERAL DIRECTORS AND EMBALMERS ASSOCIATION, INC.

EXECUTIVE OFFICE — 1200 KANSAS AVENUE, P.O. BOX 1904

TOPEKA, KANSAS 66601

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March 2, 1988

Senator Richard Bond
SubCommittee Chairman, SB 686
Statehouse
Topeka, KS

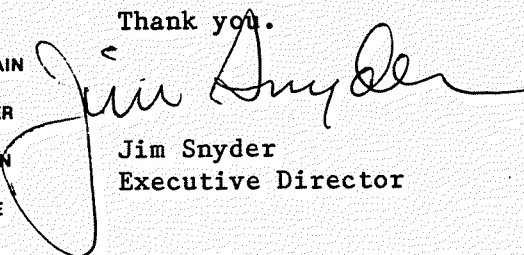
Dear Senator Bond:

The Kansas Funeral Directors Association appreciates your help in preparing an amendment to SB 686 which would provide for notification to persons handling dead human bodies if the deceased has been diagnosed and died of AIDS. Copies of the proposed amendment are available to the committee.

Our licensees are the final people to work while the virus is active. They take precautions all the time, but add extra precautions when it is known the person died of a contagious disease--let alone AIDS.

I shall be happy to answer any questions.

Thank you.


Jim Snyder
Executive Director

Doctors should have rights, too

SAN FRANCISCO — These days, Dr. Lorraine Day goes into her operating room in full protective gear. Two pairs of gloves, goggles, a face mask, double sleeves, double shoe covers, boots up to her knees. The chief of orthopedics at San Francisco General Hospital is trying to practice safe surgery. But she is scared anyway, and not a little angry.

"Yesterday, I did five operations," says Dr. Day. "Thirty percent of my patients are at high risk for AIDS. One of my patients recently needed 250 units of blood. It was pouring into him and all over us. They tell us to be careful. But as a surgeon you cut yourself many times. Would you tell a carpenter, don't cut yourself for the rest of your life?"

How frightened is this experienced surgeon about getting AIDS from a patient? "Honestly?" she asks and answers, "I have to decide whether I want to continue in medicine."

What angers Dr. Day and many of her quieter colleagues is that she has no right to know which of her patients carry the deadly virus. What bothers her further is that she has no right to refuse to operate, even minor elective surgery, on a patient with the virus.

It is not surprising that these concerns — like the virus itself — have hit first and hardest in San Francisco. But they are spreading as widely as the disease. Are doctors, nurses, expected to place themselves at risk every day without information? Are they legally or morally obligated to give AIDS patients the exact same treatment they would give others?

So far, it is believed that only a dozen health workers — including a technician here at San Francisco General — have been infected on the job. Statistically, Hepatitis B, which killed 100 health workers last year, seems a much greater risk. But risks are not spread equally through the medical population. Nor are the feelings of risk. Dr. Day believes fervently, "It's only a matter of 'when,' not a matter of 'if.'"

At large

**ELLEN
GOODMAN**



In another corner of this hospital, Dr. Molly Cooke, an internist, is familiar with this anxiety. The mother of three small children and wife of Dr. Paul Volberding, who cares for AIDS patients, went through "absolutely excruciating anxiety, almost intolerable" when she realized the nature of the disease to which she and her family had been exposed. But as an internist she tends to think of the reassuring statistics, while the surgeons tend to think case by bloody case.

Still Dr. Cooke, like virtually every other doctor I spoke with here, is uncomfortable not knowing which of her patients carry the virus. Even Dr. Mervyn Silverman, president of the American Foundation for Aids Research, says, "In the best of all possible worlds, physicians should know." He opposes mandatory testing for hospital patients because "this knowledge has side effects that are disastrous." Among those side effects may be the refusal of medical treatment.

Should medical people be allowed to withhold care? The easy answer is a blanket "no." It is unethical for a doctor to turn away someone who is sick. "When you get your medical degree," says Dr. Silverman, "it doesn't come with a limited warran-

ty, only good for non-risky situations."

But there are times when the benefit to an infected patient may not warrant the risk to a physician. Should a doctor have to operate on a broken ankle rather than set it in a cast? asks the orthopedic surgeon. Should you have to perform a bunionectomy rather than prescribe a therapeutic shoe?

"If we lost a doctor for each AIDS patient," says internist Dr. Cooke, "society might decide this is not how we want to spend our doctors. But the risk is lower. At some point we accept the loss of doctors to take care of hundreds of thousands of sick." But at what point and for what goals?

This horrific epidemic is still relatively young. Our statistics are raw. We are just beginning to deal with the real medical and ethical dilemmas.

If we are going to trust the health-care profession to treat the sick, part of that trust is to give them privileged information, the tools of their job. In an emergency, there is no time for an AIDS test. But when possible, a doctor should know whether a patient is infected. Some may abuse that information; some may indeed refuse care. We'll have to depend on their professional ethics and pressure to minimize such breaches.

We must also reframe the arguments about treatment. It can't be cast simply as the patient's right to all care versus the doctor's right to any refusal. We need to assess more fully the benefit to a patient against the risk to health-care workers.

We are in this AIDS epidemic for the long haul. Those in the hospitals are taking risks; we expect them to. Tomorrow, Dr. Lorraine Day will operate on five more patients. If we want her and her colleagues to go on, we have to devise strategies that offer the profession what they offer patients: Better care and better protection.

Washington Post Writers Group

New Sec. 9. (a) When a person who has been diagnosed as having AIDS dies, the attending physician or, if there is no attending physician, a family member ^{OR} ~~OF~~ person making arrangements for the disposition of the dead body who knows of such diagnosis, shall indicate, on a form promulgated by the secretary, that the deceased person had AIDS. The completed form shall accompany the body when it is transported for disposition.

(b) Any person who transports a dead body for disposition and who has been notified that the deceased person had been diagnosed as having AIDS pursuant to the provisions of subsection (a) shall present notification thereof accompanying the dead body to any embalmer, funeral director or other person taking possession of the dead body.

(c) Any person who completes the form required in subsection (a) in good faith and without malice shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed in an action resulting from such report.

(d) Any information relating to AIDS which is required to be disclosed or communicated under subsection (a) and (b) of this section shall be confidential and shall not be disclosed or made public beyond the disclosure necessary under subsection (a) and (b) of this section.