

Approved February 15, 1989
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Michael O'Neal at
Chairperson

33:30 ~~a.m.~~ p.m. on February 7, 1989 in room 313-S of the Capitol.

All members were present except:

Representatives Crowell, Peterson and Vancrum

Committee staff present:

Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Willaim Rein, Director, Hospital and Medical Programs, Bureau of Adult and Child Care, Kansas
Department of Health and Environment
Tom Bell, Kansas Hospital Association
Chip Wheelen, Kansas Medical Society
Richard Mason, Executive Director, Kansas Trial Lawyers Association
Richard Morrisey, Director, Bureau of Adult and Child Care, Kansas Department of Health and
Environment

HEARING ON H. B. 2113 - Health Care Risk Management

William Rein testified that 1986 H.B. 2661 required every medical care facility in Kansas to establish an internal risk management program. The Kansas program is based on mandatory reporting, investigation and analysis of what the law defines as "reportable incidents" or those acts of health care providers which either were or might have been below applicable standards of care and had a reasonable probability of causing injury to a patient. Prior to receiving a renewal of its license in 1988, every medical care facility had to receive approval of its risk management plan from the Kansas Department of Health and Environment. Licensed medical care facilities affected by H.B. 2661 in 1986 were hospitals, ambulatory surgical centers and recuperation centers. With the passage of H.B. 2643 in 1988, both private psychiatric hospitals and state institutions were included in those facilities required to meet the provisions of state risk management laws and regulations. In May of 1988 the Kansas Department of Health and Environment began scheduling risk management site reviews of all licensed medical care facilities whose plans had already been approved. During the early stages of the site review process, four hospitals refused agency access to original minutes of risk management committees. It was also indicated in writing by one hospital, that the agency lacked statutory authority to review records of such committees. Subsection (e) of K.S.A. 65-4923 states that if the licensing agency determines that an executive committee is not fulfilling its duties with respect to the investigation of "reportable incidents" the agency, after notice and hearing, may require all reports to be filed directly with it. H.B. 2113 would clarify Kansas Department of Health and Environment's authority to review hospital records in assuring that medical care facilities are implementing the risk management program required by K.S.A. 65-4921, et seq. Clarifying language to this effect appears in new Subsection (c) of K.S.A. 65-4822, or on page one, line 40, of H.B. 2113, as it is currently worded. Subsection (g) of the same statute, appearing on page two of H.B. 2113, line 64, grants specific statutory protection from legal discovery of records reviewed by state agencies during onsite inspections. New subsection (e) of K.S.A. 65-4925, appearing on page three, line 104, further enumerates the types of records which will be subject to review by licensing agencies and provides protection from legal discovery regardless of which agency may have possession of the records.

Mr. Rein stated this legislation is important in further protecting the confidentiality of records obtained by state licensing agencies responsible for overseeing implementation of risk management programs in licensed medical care facilities and private psychiatric hospitals. Unless confidentiality is protected to the greatest possible extent, participation of individual health care providers and medical care facility employees cannot be obtained, see Attachment 1.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 3:30 ~~xxx~~ p.m. on February 7, 1989.

Tom Bell testified H.B. 2113 amends Kansas statutes dealing with mandatory hospital risk management to resolve a question related to confidentiality of certain records. The confidentiality provisions of H.B. 2113 are consistent with previous legislative enactments and represent a continuation of established legislative policy, see Attachment 11.

Chip Wheelen submitted a proposed amendment to (e) page 3 by replacing "state licensing agencies" with the "secretary" on line 104 and by changing line 106 to read "records of executive review committees of medical care facilities designated to investigate...", see Attachment 111.

Richard Mason testified the Kansas Trial Lawyers Association opposes H.B. 2113 in its current form. The intended purpose of the bill is to empower the department to make inspections and investigations to insure that each medical care facility is in compliance with the state's risk management statutes. The new language in Section 1 (c) of the bill is an improvement in the law. He said if Section 1(g) and Section 2 (e), beginning on line 112 were eliminated, the Kansas Trial Lawyers could support H.B. 2113. As an alternative, they would also support the bill if "records and reports" were referenced as being those already described in 65-4925(a), see Attachment IV.

The hearing on H.B. 2113 was closed.

Representative Douville requested the hearing on H.B. 2073 be postponed to the week of February 13-17.

HEARING ON H.B. 2120 - Penalties for violation of provisions of article 5 of chapter 65 of K.S.A. regulating children's homes

Richard Morrissey testified H.B. 2120 would change the wording in K.S.A. 65-514 so that the misdemeanor penalty provisions in the statute would apply to unregistered child care providers as well as to unlicensed providers, see Attachment V.

The hearing was closed on H.B. 2120.

BILL REQUESTS:

The Chairman announced that Judge Leonard A. Mastroni has requested the Committee introduce legislation that would expand the use of "House Arrest", see Attachment VI.

Representative Jenkins moved to introduced the legislation requested by Judge Mastroni as a Committee bill. Representative Sebelius seconded the motion. The motion passed.

The Chairman also announced the Kansas Bar Association has requested the Committee introduce legislation concerning the use of fictitious names pleading and legislation to allow the use of discovery depositions in criminal matters if the defendant first waves the right to a preliminary hearing, see Attachment VII.

Representative Shriver moved to introduce the legislation requested by the Kansas Bar Association as Committee bills. Representative Jenkins seconded the motion. The motion passed.

The Committee meeting was adjourned at 5:00 p.m. The next meeting will be Wednesday, February 8, 1989 at 3:30 p.m. in room 313-S.

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
HOUSE JUDICIARY COMMITTEE

by

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

House Bill 2113

I. Background

A. Passage of House Bill 2661 in 1986 and House Bill 2643 in 1988

With the passage of House Bill 2661 in 1986 (now KSA 65-4921, et seq), every medical care facility in Kansas was required to establish an internal risk management program. The Kansas program is based upon mandatory reporting, investigation, and analysis of what the law defines as "reportable incidents" or those acts of health care providers which either were or might have been below applicable standards of care and had a reasonable probability of causing injury to a patient.

All health care providers and employees of medical care facilities must report any "reportable incident" of which they have knowledge to the risk manager, chief of the medical staff, or hospital administrator. Once reported, these incidents must be investigated by designated executive committees to determine whether or not services provided by a health care provider were below the applicable standards of care. Moreover, if the investigating committee determines that care did not meet applicable standards expected in the facility, a report specific to individual health care providers must be filed with the licensing agency responsible for licensing, registering, or certifying the involved providers.

On October 1, 1987, the Bureau of Adult and Child Care, Kansas Department of Health and Environment (KDHE), began reviewing written risk management plans which had been submitted by approximately 160 medical care facilities affected by risk management laws. Prior to receiving a renewal of its license in 1988, every medical care facility had to receive approval of its risk management plan from KDHE. Licensed medical care facilities affected by original House Bill 2661 in 1986 were: hospitals, ambulatory surgical centers, and recuperation centers.

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Attachment I

With passage of House Bill 2643 in 1988, both private psychiatric hospitals and state institutions were included in those facilities required to meet the provisions of state risk management laws and regulations.

B. Initiation of KDHE Onsite Reviews

On January 18, 1988, two master's level nurses were employed by KDHE as risk management specialists. These nurses were employed following passage of legislation in 1987 (1987 Session Laws, Chapter 22) for the specific purpose of reviewing records:

. . . of licensed medical care facilities [and analyzing the] quality of health care services provided to assist in correcting substandard services and to reduce the incidents of liability resulting from the rendering of health care services.

In May of 1988, KDHE began scheduling risk management site reviews of all licensed medical care facilities whose plans had already been approved. The site review process was necessary in order to better assure that the requirements of risk management laws and regulations were actually being implemented and also in specific response to the 1987 legislation mentioned earlier. The difference between simply reviewing a written plan and walking through the process of implementation with individual staff at each facility is significant.

All licensed medical care facilities have had their written risk management plans approved by KDHE. Of the facilities made subject to state risk management laws in 1988, only two private psychiatric hospitals are still working on their plans.

There are now 167 medical care facilities subject to state risk management laws. As of February 1, 1989, 133 onsite surveys of risk management programs had been conducted.

C. Need for Current Legislation

As stated earlier, the purpose of conducting onsite reviews was to reasonably assure that medical care facilities were complying with state risk management laws and regulations. In conducting site reviews, the two registered nurse risk management specialists interviewed appropriate facility staff and reviewed risk management systems created under KSA 65-4921. Specifically, agency specialists reviewed employee incident reports, the minutes of each facility's risk management committee, medical staff executive committee minutes, and the minutes and records of any other executive committee responsible for determining whether or not the facility or individual health care providers acted below acceptable standards of care as set forth in KSA 65-4923.

During the early stages of the site review process, four hospitals refused agency access to original minutes of risk management committees.

Moreover, one of those hospitals refusing original access also indicated, in writing, that the agency lacked statutory authority to review records of such committees. A written response indicating the agency's statutory authority to review such records was made to each of the four hospitals refusing that access. Only one hospital refused agency access when the names of individual health care providers and/or patients were deleted from the records.

As an overview, it was pointed out to facilities that KDHE is vested with broad responsibility and authority for assuring that licensed medical care facilities maintain compliance with licensure laws and regulations. KSA 65-4925 authorizes the agency to make such inspections and investigations as it deems necessary to prove compliance with such laws and regulations. In addition to general licensing authority, it was noted that KSA 65-4922 requires the Secretary of Health and Environment to approve all risk management plans. Subsection (b) of that same statute requires the hospital not only to write a plan but to implement a program. Moreover, Subsection (e) of KSA 65-4923 states that if the licensing agency determines that an executive committee is not fulfilling its duties with respect to the investigation of "reportable incidents," the agency, after notice and hearing, may require all reports to be filed directly with it.

Although KDHE believed that it had statutory authority to review the risk management records of licensed medical care facilities, one hospital refused to acknowledge that authority. As a result, a lawsuit was filed in the Shawnee County District Court on July 12, 1988, seeking declaratory relief on the issue of whether KDHE had authority to access original records under risk management laws. This lawsuit was subsequently dismissed when the parties and various health care organizations, such as the Kansas Hospital Association and the Kansas Medical Society, agreed to seek joint legislation which would clearly authorize agency access to original risk management records. None of the parties had objections to agency inspection of records but were concerned with the possibility of the discovery of those records in a lawsuit filed against the facility or individual health care providers whose actions had been subject to review by executive committees operating pursuant to state risk management laws. Passage of this legislation will implement the agreement of interested parties to seek additional statutory safeguards against legal discovery of records obtained by state licensing agencies in response to their risk management oversight responsibilities.

Specifically, House Bill 2113 would clarify KDHE's authority to review hospital records in assuring that medical care facilities are implementing the risk management program required by KSA 65-4921, et seq. Clarifying language to this effect appears in new Subsection (c) of KSA 65-4922, or page one, line 40, of House Bill 2113 as it is currently worded. Subsection (g) of the same statute, appearing on page two at line 64, grants specific statutory protection from legal discovery of records reviewed by state agencies during onsite inspections. Finally, new Subsection (e) of KSA 65-4925, appearing on page three at line 104, further enumerates the types of records which will be subject to review

by licensing agencies and provides protection from legal discovery regardless of which agency may have possession of the records.

Recommendations

KDHE strongly supports passage of House Bill 2113. This legislation is important in further protecting the confidentiality of records obtained by state licensing agencies responsible for overseeing implementation of risk management programs in licensed medical care facilities and private psychiatric hospitals. Unless confidentiality is protected to the greatest possible extent, participation of individual health care providers and medical care facility employees cannot be fully attained.

Presented by: William C. Rein, Director of Hospital
and Medical Programs
Bureau of Adult and Child Care
Kansas Department of Health and Environment
February 7, 1989



Donald A. Wilson
President

February 7, 1989

TO: House Judiciary Committee
FROM: Thomas L. Bell, Vice President
SUBJECT: H.B. 2113

The Kansas Hospital Association appreciates the opportunity to comment regarding H.B. 2113. This bill amends Kansas statutes dealing with mandatory hospital risk management to resolve a question related to confidentiality of certain records.

In 1986, the Kansas Legislature enacted a series of laws pertaining to medical malpractice lawsuits. These laws included limits on awards in such cases and requirements for paying certain damages in the form of an annuity. Because of a 1988 Kansas Supreme Court ruling, there is essentially only one portion of that package remaining today. This enactment directed all hospitals in the state to develop a "risk management program." Such programs were to be based on an elaborate reporting system requiring that all hospital employers directly involved in the delivery of health care services must report "reportable incidents" to certain hospital management. These incidents were then to be investigated by an internal hospital committee and reported to the state licensing agency if a variance from the standard of care was found.

Those persons required to participate in this reporting system include physicians, optometrists, podiatrists, pharmacists, registered nurse anesthetists, dentists, chiropractors, physical therapists, dental hygienists, registered nurses, licensed practical nurses, mental health technicians, occupational therapists, occupational therapy assistants, respiratory therapists, and any other hospital employee directly involved in the delivery of health care services. Each hospital must be prepared to make a report to each appropriate licensing agency. In addition, each hospital must report quarterly to the Kansas Department of Health and Environment the number of "reportable incidents" it has. Clearly, Kansas now has one of the most strict and detailed risk management laws in the country. Despite this,

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Kansas health care providers have worked hard to give effect to these laws. Much time, money and effort has been put into understanding this legislation and trying to make it work.

The Department of Health and Environment is the agency charged with overseeing the implementation of hospital risk management programs. In performing this duty, the Department first reviewed all risk management plans. The Department then began a series of "site visits" to monitor hospital plans.

During those site visits, a question arose regarding the confidentiality of risk management records once they have been reviewed by the Department. The Department filed a lawsuit against Wesley Medical Center, claiming it was being denied access to hospital records. The lawsuit was later dismissed. H.B. 2113 is an attempt to resolve those confidentiality issues.

One of the most integral parts of the entire risk management scheme adopted by the Kansas Legislature is the idea that records pertaining to this process are to be confidential and privileged. The Legislature recognized the necessity for this from the very beginning. Indeed, lawmakers have codified this concept in both the risk management and peer review statutes. Most other states and the federal government have also adopted this method of encouraging peer review and risk management activities. The confidentiality provisions of H.B. 2113, therefore, are consistent with previous legislative enactments and represent a continuation of established legislative policy.

facility risk manager, any committee, the board of directors, administrative officer or any consultant.

Such reports and records shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity and shall not be admissible in any civil or administrative action other than a disciplinary proceeding by the appropriate state licensing agency.

(b) No person in attendance at any meeting of an executive or review committee of a medical care facility or of a professional society or organization while such committee is engaged in the duties imposed by K.S.A. 1986 1988 Supp. 65-4923, and amendments thereto, shall be compelled to testify in any civil, criminal or administrative action, other than a disciplinary proceeding by the appropriate licensing agency, as to any committee discussions or proceedings.

(c) No person in attendance at any meeting of an impaired provider committee shall be required to testify, nor shall the testimony of such person be admitted into evidence, in any civil, criminal or administrative action, other than a disciplinary proceeding by the appropriate state licensing agency, as to any committee discussions or proceedings.

(d) Any person or committee performing any duty pursuant to this act shall be designated a peer review committee or officer pursuant to K.S.A. 65-4915 and amendments thereto.

(e) ~~Nothing in this section shall limit the authority of state licensing agencies to review and copy when necessary the reports and records of executive review committees~~ designated to investigate reportable incidents under this act, and all such reports and records shall be confidential and privileged and not subject to discovery, subpoena or legal compulsion for their release to any person or entity nor shall they be admissible in any civil or administrative action other than a disciplinary proceeding by the appropriate state licensing agency. In the event that a disciplinary action by a state licensing agency is initiated, reports and records obtained by the agency will not be subject to discovery, subpoena or legal compulsion for their release to any person or entity except as they may be needed by the agency or affected licensee of the agency. For purposes of this act, reports and records subject to the privilege shall include, the secretary of medical care facilities

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1988-89 EXECUTIVE COMMITTEE
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 TOPEKA
 ATLA DELEGATE



KANSAS TRIAL LAWYERS ASSOCIATION

Jayhawk Tower, 700 S.W. Jackson, Suite 706, Topeka, Kansas 66603
 (913) 232-7756

February 7, 1989

Rep. Mike O'Neal, Chairman
 House Judiciary Committee
 State Capitol
 Topeka, KS 66612

Re: HB 2113 - Risk Management

Dear Mike:

The Kansas Trial Lawyers Association opposes HB 2113 in its current form.

As we read the bill, its intended purpose is to empower the department to make inspections and investigations to insure that each medical care facility is in compliance with the state's risk management statutes. This is a change we endorse, and to that extent the new language in Section 1 (c) of the bill is seen by us as an improvement in the law.

However, Section 1 (g) and Section 2 (e) add new language that we feel is unjustified and unnecessary.

The reference to "any reports and records" in line 64 is simply too broad. That same reference occurs in Section 2 of the bill, where an apparently new definition of reports and records is further spelled out. That definition will now mean, for the first time, that facility incident reports, patient records and any other reports dealing with improving the quality of health care would become privileged, confidential documents. We are unaware of any legitimate reason to expand the scope of information that is not subject to discovery.

KTLA would support HB 2113 if Section 1 (g) and Section 2 (e), beginning on line 112, were eliminated. As an alternative, we would also support the bill if "records and reports" were referenced as being those already described in 65-4925 (a).

Thank you for the opportunity to comment on this proposal.

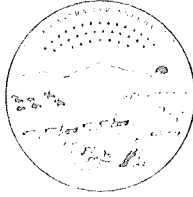
Sincerely,

Richard H. Mason
 Executive Director

cc: Members of the House Judiciary Committee
 sjs

*House Judiciary
 2/7/89
 Attachment IV*

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

House Public Health and Welfare Committee

by

The Kansas Department of Health and Environment

House Bill 2120

Background

The original child care licensing statutes, 65-501 through 65-515, were passed in 1919. They required the licensing of child care facilities caring for one or more children unrelated by blood or marriage, and were referred to in several of the separate statutes as "this act."

One of the statutes, 65-514, contained the penalty provisions for providing unlicensed care, which applied to anyone violating the provisions of "this act."

In 1980 additional statutes were added, i.e. 65-516 setting forth persons prohibited from residing, working or volunteering in a licensed or registered home, and 65-517 through 65-521, authorizing the registration of family day care homes caring for 6 or fewer children. However, there were no amendments to include these statutes in the child care "act." Therefore, the penalty provisions in 65-514 did not apply to registered homes.

Issues

The purpose of this proposed amendment is to change the wording in KS.A> 65-514 so that the penalty provisions in the statute apply to unregistered child care providers as well as to unlicensed providers.

This proposed amendment would strengthen the enforcement of the statutes which require homes caring for six or fewer children to be registered by changing the wording from "this act" to "Article V" in 65-514.

Recommendation

The Department of Health and Environment recommends passage of this bill.

Presented by: Richard J. Morrissey, Director
Bureau of Adult and Child Care
Kansas Department of Health and Environment
February 7, 1989

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Attachment V

Leonard A. Mastroni
Judge of the District Court

District Court of Kansas

24th Judicial District

Phone 913-222-3417
Box 387

Rush County Courthouse — La Crosse, Kansas 67548

January 31, 1989

State Capitol Building
House of Representatives
Honorable Michael O'Neil
State Representative
104th District
Topeka, Kansas

Dear Representative O'Neil;

I would like to thank you for the opportunity to visit with you last week in regards to the new "House Arrest" law that was past in the 1988 Legislative Session. The District Court of Rush County implemented a "House Arrest" program that has been in existence since April of 1987. The court has used the program for a wide range of offenders, including: misdemeanor crimes, misdemeanor traffic offenders, juvenile offenders and intense probation supervision. During this time the Rush County House Arrest Program has been modified to conform with the present house arrest law. Also, during this time the court has experienced other ways to use house arrest even though its use in these areas are not explicit in the statutes. Because of this experience I would like to present several ideas to clarify and expand the use of house arrest in different statutes.

In K.S.A. 8-1567. (Driving under the Influence or Alcohol) it is clear that there is mandatory jail sentences that require the imprisonment of the offender for the second and third time conviction. It is also clear that house arrest can be implemented to satisfy the mandatory sentencing requirements. However, what seems to be somewhat confusing is the talk on the Federal level that they would like to see the second and third time offender serve the first 48 hours behind bars before being placed on "House Arrest". This talk seems to be conflicting with what the U.S. Supreme Court and the Kansas Supreme Court says in the State v. Babcock, 226 Ks. 356 and State v. Meredith, 236 Ks. 866. Some type of clarification would be beneficial to the courts addressing "House Arrest" in this particular statute.

A second use for electronic monitoring could be beneficial in K.S.A. 22-2802 (Release Prior to Trial). The statute presently addresses placing different kinds of conditions on the bond the defendant must comply with for his release. A condition that the defendant be monitored electronically would be beneficial, not only to the working defendant, but also to the overcrowding facility that has a abundance of pretrial detainees. This type of procedure is not a new one for the states that utilize electronic monitoring. Several of the states have massive pretrial release programs to keep their jail facility open to the more violent offender. Several examples that I'm aware of at this time is the State of Maryland, New Jersey, New York, Virginia, Indiana and I believe Utah.

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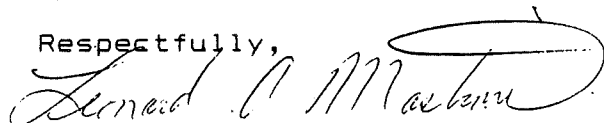
A third possibility is to use "House Arrest" under K.S.A. 8-2117 for the juvenile traffic offender that commits a misdemeanor or felony traffic offense. The present statutes currently authorizes the court to sentence the offender to not more than ten days in a juvenile detention facility. By using house arrest the offender could be sentenced to the same term of sentence and similar sanctions as the adult offender as currently provided for in the "House Arrest" law.

Another possibility is to use "House Arrest" in the Juvenile Offender Code as a "Dispositional Alternative", under K.S.A. 38-1663. The statute is broad enough where I feel the court can order it as a condition of probation. The Rush County District Court is presently using the system for juvenile offenders that may be bordering placement with the S.R.S. This system becomes particularly useful with the offender that roams the street late at night looking for something to do and does not have a strong enough structural setting at home to keep him there.

In closing I would like to bring up an idea for paying the costs of "House Arrest" as a condition of probation for the juvenile. The last legislative session H.B. 2666 was enacted that allowed the county to implement a resolution to charge inmates up to ten dollars a day to defray the costs of their expense. I propose something similar for the juvenile offender that would also allow the county to implement a resolution, based on a sliding financial scale, that would require the parents to pay for any "House Arrest" costs. With Rush Counties present juvenile offender the court has ordered this as costs and based it on a sliding financial scale used for adult offenders.

In closing I look forward to visiting with you in the near future and hope these ideas may become beneficial to develop the "House Arrest" law into even a more useful tool for the courts.

Respectfully,



Handwritten signature of Leonard A. Mastroni in cursive script, enclosed in a large, stylized oval flourish.

Judge Leonard A. Mastroni

c.c. Senator Jerry Moran
Representative Robert D. Miller
Judge J. Russell Jennings-Leg. Chair. KDMJA
Judge C. Fred Lorentz-Leg. Chair. KDJA



**KANSAS BAR
ASSOCIATION**

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A.J. "Jack" Focht, President-elect
Robert W. Wise, Vice President
Linda D. Elrod, Secretary-Treasurer
Christel Marquardt, Past President

Marcia Poell, Executive Director
Ginger Brinker, Director of Administration
Dru Sampson, Continuing Legal Education Director
Patti Slider, Public Information Director
Ronald Smith, Legislative Counsel
Art Thompson, Legal Services Coordinator

January 29, 1989

The Honorable Michael R. O'Neal
State Representative
State Capitol Building, Room #426S
Topeka, KS 66612

re: KBA bill introductions

Dear Chairman O'Neal,

Per our discussions, this letter is to request the following bill introductions as committee bills:

1. The reintroduction of legislation concerning the use of fictitious names pleading. This was 1987 HB 2475, and includes the amendments made by the House Judiciary Committee. This legislation passed the House but did not move beyond the Senate Judiciary committee last year. We think it legislation that is worthwhile again.

2. You have several bills in your committee that are concerned with hearsay evidence at preliminary hearings in criminal matters. This appears to be a piecemeal effort at doing what I know Jim Clark of the KCDAA has considered before on a wholesale effort, that is, allowing the use of hearsay evidence in preliminary hearings. Some judges think the preliminary hearings can be streamlined even further, and that is to allow the use of discovery depositions in criminal matters if the defendant first waives the right to a preliminary hearing. That is found in New Section 2 of 1985 Substitute for HB 2454. By carbon of this letter, I'll alert Jim of our interest in this area; he may want to address the hearsay issue himself.

Sincerely,

Ron Smith,
Legislative Counsel

cc: Jim Clark

1200 Harrison • P.O. Box 1037 • Topeka, Kansas 66601 • (913) 234-5696

BOARD OF GOVERNORS: Thomas A. Hamill, John E. Vreth, David E. Wasse, District 1 • Hon. Fred N. Six, District 2 • Tim Price, District 3 • Warren D. Andreas, District 4
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House Judiciary
2/2/89

Attachment VII