Approved March 15, 1990
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

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

3:30 ~~a.m.~~/p.m. on February 28, 1990 in room 313-S of the Capitol.

All members were present except:

Representatives Adam and Peterson, who were excused

Committee staff present:

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

Conferees appearing before the committee:

Representative Wanda Fuller
Jack Pearson, Chiefs of Police Association
Representative Joan Wagnon
Dr. Stuart W. Tremlow, Psychiatrist
Patsy L. Johnson, R.N. Kansas State Board of Nursing
Dr. Judy DeFelice, representing the Kansas Psychological Association
Richard D. Gannon, Executive Director, State Board of Healing Arts
Chip Wheelen, Kansas Psychiatric Society
Joseph Kroll, Department of Health and Environment
Ron Hein, Kansas Association for Marriage and Family Therapy
Elizabeth Taylor, Kansas Federation of Licensed Practical Nurses, Inc.
Tamara Hawk, Licensed Specialist Clinical Social Worker, Manhattan
Kay Gareis, M.S.W., Manhattan
Representative Sheila Hochhauser
Virginia Olson-Chaput, Ch.D. Student-in-Training in Marriage and Family Therapy
Kyle Smith, Assistant Attorney General
Representative George Dean
John Polson, Wichita
Representative George Gomez
James C. Brent, Assistant County Attorney, Harvey County, representing Kansas County and District Attorneys Association

HEARING ON HB 3007 Creating the crime of allowing a minor access to a loaded firearm.

Representative Wanda Fuller explained HB 3007 to the Committee. She said allowing a minor access to a loaded firearm is furnishing a firearm to a minor. Allowing a minor access to a loaded firearm is a class D felony. She distributed copies of an article about gun laws and facts about kids and handguns, see Attachment I.

Jack Pearson, Kansas Association Chiefs of Police, testified in support of HB 3007. He stated nationwide there are more incidents of minors accidently shooting themselves, friends and relatives. HB 3007 places the burden of responsible actions on the adult, see Attachment II.

There being no other conferees, the hearing on HB 3007 was closed.

HEARING ON HB 2837 Reporting of sexual exploitation of patients by mental health service

Representative Joan Wagnon introduced Dr. Stuart W. Tremlow.

Dr. Stuart W. Tremlow, Psychiatrist, testified the bill provides a specific category for sexual exploitation, and a specific protection for those who report such offenses. He said he strongly supports HB 2837, see Attachment III.

Patsy L. Johnson, R.N., M.N., Acting Executive Administrator, Kansas State Board of Nursing, testified that presently the Kansas State Board of Nursing is using unprofessional conduct as the standard for revocation, suspension, or limitation of nursing licensure. The Board of Nursing agrees there is a need to strengthen the ability to take action against a nurse's license for sexual abuse, misconduct or exploitation of patients or former patients. They also support such action with regard to other disciplines who deal with patients who become emotionally dependent. They recommend if HB 2837 is approved, then the licensed mental health technicians be included as mental health

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

providers and changes be made in K.S.A. 65-4209, see Attachment IV.

Dr. Judy DeFelice, representing the Kansas Psychological Association, testified in support of increasing the protection of consumers of mental health services from unethical practitioners. She was concerned that HB 2837 may inadvertently remove protection afforded patients or clients by removing from privileged communication information pertaining to previous sexual contact by a former therapist. She proposed an amendment addressing releasing information. She also proposed that privileged communication should be retained. She recommended adding Registered Masters Level Psychologist to the bill, see Attachment V.

Richard G. Gannon, Executive Director, State Board of Healing Arts, testified in support of HB 2837. He recommended comprehensive statutory reform to authorize the reporting of sexual abuse, misconduct or exploitation by all individuals engaged in the practice of medicine or in providing health care, see Attachment VI.

Chip Wheelen, Kansas Psychiatric Society, stated the Kansas Psychiatric Society's support of HB 2837 is reserved because it would constitute a breach in the confidential physician/patient relationship. He offered several amendments. The definition of "patient" should be changed to "client" and clarified to include patients of physicians; the term "knowledge" should be defined to mean "acquired information which is clearly not the product of delusional thinking or the imagination of a patient"; require the reporting provider to follow-up in person and submit to questioning; and clarify that physician means a person licensed to practice medicine and surgery and refers specifically to the statute which defines the scope of practice for a physician, see Attachment VII. He also recommended that "emotional dependency" should be defined.

Jospeh Kroll, State Department of Health and Environment testifed it is appropriate to allow reporting of sexual abuse, misconduct and exploitation. He said this bill will have a very limited impact on the issue of sexual exploitation. He recommended including requiring regulated and unregulated mental health services providers to distribute educational materials about ethics to patients prior to treatment; establishing a regulatory body to review complaints and discipline unethical nonregulated mental health services providers; changing the criminal code to make it illegal for a mental health services provider to sexually exploit a patient; and creating a civil cause of action for sexual exploitation victims who have been harmed, see Attachment VIII.

Ron Hein, Kansas Association for Marriage and Family Therapy, informed the Committee the Association for Marriage and Family Therapy would not oppose the concept of HB 2837 as long as the language remains permissive. He said they oppose any reporting mechanism or responsibilities upon marriage and family therapists without providing a definition of marriage and family therapists, establishing minimum qualifications for such professionals, and designating the appropriate governmental body to receive reports concerning such defined professionals. He stated there is currently a bill pending in the Senate Public Health and Welfare Committee that would provide for registration of marriage and family therapists, see Attachment IX.

Elizabeth Taylor, Kansas Federation of Licensed Practical Nurses, Inc., submitted testimony in support of HB 2837 which specifically includes LPNs, see Attachment X.

The hearing on HB 2837 was closed.

HEARING ON HB 3038 Child hearsay exception allowed in any proceeding

Tamara Hawk, Licensed Specialist Clinical Social Worker, testified she has been involved in several cases involving child sexual assault. Her testimony as a professional, regarding the statements of these children was inadmissible in court. The statements were not admitted due to the current statutes on child hearsay. She said in changing the statute, children would be given a voice through the adults they confide in and the courts would be allowed access to all relevant information about the children they are trying to protect, see Attachment XI.

Kay Garies, M.S.W., testified in favor of HB 3038. She recommended allowing child hearsay evidence in civil proceedings to determine visitation and custody, see Attachment XII.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,

room 313-S, Statehouse, at 3:30 xxx./p.m. on February 28, 1990

Representative Sheila Hochhauser testified the purpose of HB 3038 is to extend the child victim hearsay exception to statements of children of the parties to divorce proceedings who are the alleged victims of sexual abuse by one of the parties to the divorce. She offered two amendments to the bill, see Attachment XIII.

Virginia Olson-Chaput, Ph.D., Student-in-Training in Marriage and Family Therapy, testified in support of HB 3038. She recommended allowing child hearsay to be admissible in civil proceedings when said child has been the victim of a crime, see Attachment XIV.

Kyle Smith, Assistant Attorney General, submitted testimony in support of HB 3038. His testimony stated Attorney General Stephan urged the Committee to pass HB 3038 as an important advancement in victim and witness rights, see Attachment XV.

The Chairman reported Charles Harris, Attorney, Wichita, who is the President of the Family Law Section of the Kansas Bar Association, contacted him and expressed his concern that the amendment be limited to physical sexual abuse.

There being no other conferees, the hearing on HB 3038 was closed.

HEARING ON HB 2258 Interference with parent/child communications in domestic relations

Representative George Dean explained in HB 2258 the repeated denial and or interference with communications between a child and the noncustodial parent could be considered a material change of circumstances which justifies modification of a prior order of child custody. The intent of the bill is to cover written communications.

John Polson, Wichita, requested the bill to give parents legal assistance in regard to communications between noncustodial parents and their children.

The hearing on HB 2258 was closed.

HEARING ON HB 3039 Personal service of process at time of arrest allowed in drug forfeiture cases

Representative George Gomez explained in drug forfeiture cases, in addition to service by certified mail, a person may be given personal service of process for the forfeiture of property. Such person may further be required to give the law enforcement official an address where such person could receive a copy of the petition and order.

James C. Brent, Assistant County Attorney, Harvey County, representing Kansas County and District Attorneys Association, testified this bill gives the County or District Attorney another option to use in giving notice to individuals that a forfeiture proceeding has commenced. He recommended the statute could be further strengthened by the addition of language prohibiting an individual giving an address, which is not current or correct, from using improper service as a defense, see Attachment XVI.

There being no other conferees, the hearing on HB 3039 was closed.

The Committee meeting was adjourned at 6:15 p.m.

GUEST LIST

COMMITTEE: HOUSE JUDICIARY DATE: 2/28/90

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Kyle Smith	Topeka	KBI
Patricia Henshall	TOPEKA	OJA
RALPH SKOOG	Topeka	RES P/A
Jim Clark	Topeka	KCDAA
Judith DeFelice PhD	Topeka	KPA

STATE OF KANSAS

WANDA FULLER
REPRESENTATIVE, EIGHTY-SEVENTH DISTRICT
2808 SENNETT
WICHITA, KANSAS 67211-3848

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: APPROPRIATIONS
JUDICIARY
LEGISLATIVE BUDGET
TAXATION
CHAIRMAN: APPROPRIATIONS SUB-COMMITTEE
CORRECTIONS OMBUDSMAN BOARD
NATIONAL CONFERENCE ON STATE LEGISLATURES—
STATE AND FEDERAL ASSEMBLY—FEDERAL
BUDGET AND TAXATION COMMITTEE

Washington Times 6/26/89

Gun law spurs rush on locking devices

MIAMI (AP) — Gun shop operators are having trouble keeping gun locks and safety boxes in stock following passage of a bill that could send adults to jail for leaving guns within children's reach.

The Florida Legislature was called into special session last week after a string of accidental shootings left three children dead. The shootings reversed long-standing opposition to toughening the state's liberal gun laws.

"We used to sell maybe four or five trigger locks for every 100 guns," said Ray Ribas, assistant manager at Tamiami Gun and Range Shops in Miami. "Now it seems everyone wants one."

Gun locks work by immobilizing the trigger. Some consist only of plastic straps, while lock-and-key units sell for $8 to $12. Some gun owners are opting for more costly vaults with a key or combination lock.

"There's a whole new awareness about guns, and that can only lead to less accidents," Mr. Ribas said.

WJNO-AM in West Palm Beach distributed more than 500 gun locks free last week at two shopping malls.

"People have been calling the station asking where they can get more," said WJNO producer Rebecca Wynne. "People are very aware of the new law."

Southern Gun and Tackle, a Florida-based nationwide gun distributor, said gun lock orders have more than doubled in the past month.

"We've proposed to the dealers that they offer the lock with every gun they sell," said Al Russell, manager of the company's purchasing department.

Under the statute, gun owners who fail to secure loaded weapons in homes or businesses could face a third-degree felony charge if a child 15 years old or younger shoots someone. The charge carries a maximum prison sentence of five years and a $5,000 fine.

Lesser penalties would apply if the child brandishes the gun in public or threatens others with the weapon.

The bill was drafted with the help of the National Rifle Association and would take effect Oct. 1 once signed by Gov. Bob Martinez. Police officers and military personnel are exempted as are cases in which the guns were obtained illegally, such as a burglary.

A call for similar gun-control action was made Friday by Wisconsin Lt. Gov. Scott McCallum after shootings involving children in that state.

Master Lock Co., one of the nation's largest gun lock makers, distributes 220,000 to 250,000 locks each year, said spokesman Tom Campbell at the company's Milwaukee headquarters. He said sales were increasing.

"Unfortunately, sales increases often follow catastrophes such as accidental shootings," he said.

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Attachment I

Facts about...

Kids & HANDGUNS

Every day, 10 American children ages 18 and under are killed in handgun suicides, homicides and accidents. Many more are wounded.

Gunshot wounds to children ages 16 and under have increased 300 percent in major urban areas since 1986. Additionally, one of every 25 admissions to American pediatric trauma centers is due to gunshot wounds. *(Barbara Barlow, MD, American Academy of Pediatrics, Committee on Trauma, Surgical Section)*

In 1987, gun accidents were the fourth-leading cause of accidental death for children ages 14 and under. *(National Safety Council)*

An estimated 135,000 boys carried handguns to school daily in 1987, and another 270,000 carried handguns to school at least once, based on a survey of 11,000 students conducted jointly by four health organizations. Nearly 8.7 million youngsters have access to handguns. *(National School Safety Center)*

Florida reported a 42 percent increase in gun incidents in schools during 1987-88, and 86 percent of the guns that were traced came from the students' homes. California schools reported a 28 percent increase in gun confiscations during the 1986-87 school year. *(Florida School Boards Association & Florida Association of School Administrators; California State Department of Education)*

In 1987, more than half of the 2,498 murder victims ages 19 and under were killed with guns. *(U.S. Department of Justice, Federal Bureau of Investigation, Uniform Crime Reports, 1987)*

An estimated 23,900 teenagers were assaulted with guns in 1985. *(U.S. Bureau of Justice Statistics)*

A study of 266 accidental shootings of children ages 16 and under revealed that 50 percent of accidents occurred in the victims' homes, and 38 percent occurred in the homes of friends or relatives. The handguns used were most often (45%) found in bedrooms. Boys were predominantly the victims (80%) and shooters (92%). *(Center to Prevent Handgun Violence)*

Easy access to loaded guns in the home is the chief contributing factor in accidental shootings of children ages 14 and under. *(Garen J. Wintemute, MD, MPH, University of California, Davis)*

The suicide rate of adolescents has tripled in the past three decades, making suicide the third-leading killer of teenagers. Guns are the leading method used by teenagers to commit suicide (60%), and nine out of ten attempted suicides involving handguns are completed. *(National Center for Health Statistics; Centers for Disease Control, Youth Suicide Surveillance, 1986; Omega Journal of Death and Dying)*

Center to Prevent Handgun Violence

1225 Eye Street, N.W., Suite 1100
Washington, DC 20005
(202) 289-7319

703 Market Street, Suite 1511
San Francisco, CA 94103
(415) 546-9189

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HOUSE COMMITTEE ON JUDICIARY
House Bill No. 3007
February 28, 1990

The Kansas Association of Chiefs of Police supports passage of House Bill 3007 and encourages the Committee to vote favorably on it.

Nationwide, we are seeing more and more incidents of minors, some as young as 8 to 10 years old, accidently shooting themselves, friends, and relatives. These incidents occur, in part, because firearms belonging to their parents are accessible. Within the last six months, the State of Florida had five shooting incidents involving minors within one week. During the week of February 19, Kansas City experienced an incident where a minor obtained a loaded firearm at his home and took it to school where an accidental discharge occurred wounding the child. Network television has aired a number of stories, addressing the overall problem.

In many of these incidents, the child involved is too young to be held responsible. There is a fascination with firearms and when parents become lax or are simply irresponsible with those firearms, disaster strikes.

House Bill 3007 places the burden of responsible actions on the adult, but also recognizes that even with the most reasonable precautions, accidents do happen. While it would appear that keeping loaded firearms out of the reach of minors is a common sense issue, the information coming to us from across the nation indicates that a lot of people are not using common sense in this matter.

Again, the Association supports this bill not because it attempts to control firearms, but because it insists that those who choose to have a firearm take reasonable steps to make it safe.

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TO: Judiciary Committee

FROM: Stuart W. Twemlow, M.D.

RE: House Bill #2837

I am a board certified psychiatrist who has been in practice in Kansas for the past 19 years. A brief biographical sketch summarizing my clinical and professional background is attached. I am appearing in support of this bill based on my clinical and research activities with people who have been victims of sexual exploitation by professionals. In addition, I have had numerous occasion to treat the exploiting professional, who has sought my help either stimulated by peer group and/or legal threats or by virtue of his own realization of the pathological nature of his relationship with the patient/client.

In the edited collection entitled Sexual Exploitation in Professsional Relationships(1), published by the American Psychiatric Association in 1989, I authored a chapter entitled "The Lovesick Therapist" together with the editor of the volume, Dr. Glen O. Gabbard, who has already presented his views to committees concerned with penalties for such exploitation. That chapter addresses the psychodynamic pathology behind the abusing therapists.

Bill 2837 should be taken as an expression of the current increased concern with exploitation in relationships where there exists an element of emotional dependency between the client or patient and the professional individual. The legal term, "fiduciary relationship", has

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been used for this phenomenon. Although this term is a legal one, it is more widely known and understood than most psychoanalytic ideas and thus is useful because of widespread acceptance. In Black's Law Dictionary, such a relationship is defined as one; "Where there is a special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to interests of one reposing the confidence." (P. 753-754). All of the professional groups named in this bill are fiduciaries within that definition by virtue of their licensure and/or practice. This bill does not address other fiduciary relationships such as school teachers, attorneys, etc. It is apparent that such fiduciary trust occurs in these groups as well and that similar exploitation is likely as frequent as in the groups named in this bill. I am pleased to see that the bill addresses not only psychiatrists, but the physician group as a whole. Non-psychiatric physicians are much less aware of the problems associated with emotional dependency and more in need of such training. Our research into the nature of physician-caused (iatrogenic(2 & 3)) illness has indicated that frequently in relationships between doctors and patients, an unconscious dependency exists in which the patient relates to the doctor in a child-like way, expecting the same care, attention and consideration as they would from a parent. The vast majority of clinicians respect that unconscious trust. A small percentage of the various professions do not. At least this was the view until recently. A number of surveys

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have been performed by anonymous questionnaire and reported in the book, providing us with a much more worrying picture. It appears that in most groups surveyed, the prevalence of sexual contact with patients or clients exceeds the rare event one might have hoped for. A variety of estimates have been given, ranging from 6% to 12%, but one must remember that anonymous questionnaires probably only tap the tip of the iceberg. It is conceivable that perhaps even 12-20% of patients are the victims of a variety of forms of inappropriate sexual contact representing a manipulation of the fiduciary relationship with the professional concerned. From a common sense point of view, one would expect that the exploiting professional would be an extremely disturbed individual. From time to time, patients who have been the victims of perverse and bizarre sexual abuse will publish autobiographical sketches. The physicians or professionals represented in these types of books in general fall into either severely disturbed criminal elements (anti-social personality) or psychotic professionals. One recent publication in that regard is the book Therapist[4]. Unfortunately, the experience of ethical committees of the American Psychiatric Association and professionals such as myself indicate that such dramatically disturbed medical professionals are only a very small percentage of the exploiting group, a majority of which never actually come to the attention of the law courts nor do the patients or physicians report the relationship. They come in the typical context of my practice, which is in the strictly

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confidential pyschoanalytic one-on-one contact. In our chapter, we summarize the pathology of this neurotic group who are not severely disturbed and who probably represent at least 90% of the abusing professionals. We have found that such professionals tend to be middle-aged men who abuse women on the average of 16 years younger than they are in the context of an unhappy marriage and family relationship and unsatisfying professional life.

With regard to the prevention of this tragic situation; I quote here from page 85 of our chapter entitled "Prevention".

> Prevention of lovesickness in therapists and the countertransference acting out that accompanies it is a formidable task. Clearly, a personal treatment experience for the therapist is not a fool-proof method of prevention. The Chapter 1 survey by Gartrell et al. found that offenders were more likely than nonoffenders to have undergone therapy or analysis. Profiles of susceptible therapists, such as those by Brodsky in Chapter 2 and by Pope and Bouhoutsos (1986), provide some guidelines for detecting which therapists might be at risk. The middle-aged male therapist, who is in the midst of a divorce or other problems in his intimate relationships should be alert to any tendencies toward overinvolvement with his patients. Does he inappropriately disclose aspects of his personal life to his patients? Does he think about a particular patient when she is not in the office with him? Does she enter his dreams? Does he begin to think that what his patient needs is love to make up for the lack of love she received in childhood? Finally, does he begin to think that he sees aspects of himself in his patients?
>
> The primary difficulty with preventing therapist-patient sexual intimacy is that all of these questions must be asked by the therapist

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himself. Many of them are simply standard questions that every well-trained therapist uses to monitor his countertransference on a continual basis. However, the fact remains that no one can monitor these internal states other than the therapist himself. If the therapist does not seek out help at the first sign of these warning signals, he will rapidly descend into the chasm of lovesickness and no longer be amenable to help. Moreover, we are aware of some therapists who developed lovesickness while they were in regular supervision and simply withheld the information about the developing sexual relationship from their supervisors. These therapists felt that the relationship was so special that no supervisor could truly understand it. They concealed the information from supervision precisely because they did not want to stop the sexual relationship.

One prophylactic measure—one that therapists must enforce for themselves—is the avoidance of nonsexual dual roles with patients. A therapist-patient relationship should be a strictly professional one that is not contaminated with financial deals (other than fee arrangements) or various forms of socializing outside the therapy hour. An extensive questionnaire survey of 4,800 psychiatrists, psychologists, and social workers (Borys and Pope, in press) revealed that therapists involved in nonsexual boundary violations during psychotherapy are at an increased risk of becoming sexually involved with their patients.

While education about ethical problems in the practice of psychotherapy is important, if not essential, in training programs and continuing education workshops, the surveys reported in this book indicate that inadequate training is not the main problem. The narcissistic disturbance in the lovesick therapist is so pervasive among psychotherapists in general (see Buie 1982-83; Finell 1985; Miller 1981) that we would be hard pressed to delineate some point on the continuum at which a therapist's wish to receive certain affirming responses from his patient becomes so extreme that it places him at risk for falling in love with the patient and acting out his sexual wishes with her. Psychotherapists would do far better to assume that everyone is at risk and to engage in a continual intrapsychic monitoring process as part of their professional practice.

The data in Chapter 1 by Gartrell et al. indicate that only 41 percent of offenders sought out consultation because of their sexual involvement. Obviously, we have no data on the number of therapists who seek out consultation before getting involved as a way of preventing it. The therapist who wishes to seek help may be faced with a dilemma. As Pope (1987) points out, neither consultation nor supervision provide the extensive privilege under some state laws that the therapist-patient relationship provides. The therapist may wish to enter psychotherapy rather than pay for supervision or consultation simply to assure himself that whatever he says will be held in strict confidence. This situation may change in the near future, however, as many states are currently considering whether to allow either mandatory or discretionary reporting of therapist-patient sex even when therapist-patient privilege applies, similar to the current situation in most states regarding child abuse. For those who do seek out therapy, Pope (1987) has provided a useful model of intervention.

Finally, nothing can be more important than attention to one's private life. Far too many therapists put more energy into treatment relationships than into their marriages, where one can rightfully expect to seek personal gratification. The best prophylaxis is a satisfying personal life.

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In commentary on this excerpt; clearly for the abusing professional psychotherapist there is comprehensive supervisory and peer review, including impaired physician groups available for detection of sexually exploiting medical psychotherapists and for their treatment. I am not implying that training is the only solution to the problem, but it's certainly a very important one. The other authors in this book strongly support the need for training in the ethics and problems associated with intense emotional feelings for patients. For professional counselors including sex therapists and ministers, the rules, regulations and monitoring and licensing bodies are far less formally structured and monitored, largely because of the less clearly defined nature of the professional boundaries in such groups. Such counselors are also often trained in ways which are more technique-oriented and much less attuned to subtle nuances of the relationship which can lead to unconscious emotional dependency.

The bill might well be criticized by some groups who would perhaps correctly imply that their professional licensing and monitoring authorities already contain sufficient safeguards against this type of behavior (e.g. psychiatrists), yet still in my opinion, it would be useful to specify this relationship as a unique case for this broad range of professional groups. The reasons for this include the following:

1. The problem is more widespread than had been thought.

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2. The effect on patients or clients of sexually exploitative relationships is incredibly destructive. Clinical opinion of most therapists concur that at least 90% of patients are very severely damaged by such contact, including a very high suicide rate. This has also been my clinical experience. Patients who have been exploited in such a way are not psychologically dissimilar to veterans who have been severely traumatized in war. Both groups often show signs of a Post Traumatic Stress Disorder, and significant psychological disorganization, often out of proportion to any preexisting psychopathology in the patient.

3. There is a natural enough tendency in all professional groups to avoid facing issues that are distasteful to the image of the profession. No professional group is immune to this particular problem. By specifying the uniqueness of this problem, the licensing authorities and professional therapists are forced to deal directly with something that often is unconsciously swept under the carpet. To imply that such abuse occurs only rarely and in very disturbed professionals is not supported by the facts.

In summary, this bill provides a specific category for sexual exploitation, and a specific protection for those who report such offences. I strongly support this bill.

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Footnotes:

1. Twemlow, S., Gabbard, G.O.: The Lovesick Therapist in Sexual Exploitation in Professional Relationships. Edited by Gabbard, G.O. Washington, DC, American Psychiatric Press, 1989; 71-87.

2. Twemlow, S., Gabbard, G.O: Iatrogenic Disease or Doctor-Patient Collusion? American Family Physician, 24:3; 129-134. September 1981.

3. Twemlow, S., Gabbard, G.O.: Iatrogenic Disease or Folie a Deux? in The Iatrogenics Handbook. Edited by Morgan, R. Toronto, Ontario, IPI Publishing, 1983; 109-119.

4. Plasil, E. Therapist. New York, St. Martins, 1985.

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Brief Biographical Sketch Revised January, 1990

Stuart W. Twemlow, M.D., married with five children, was born in New Zealand and has traveled widely. He graduated from medical school in New Zealand and entered General Practice in New Zealand and Australia emphasizing Surgery, Obstetrics and Trauma Medicine until 1970. He then traveled to the U.S.A. to study psychiatry and became a Fellow in The Menninger School of Psychiatry, Topeka, Kansas. He is Board Certified in General Psychiatry, a Fellow of the American Psychiatric Association, and is certified in Adult Psychoanalysis by the Topeka Institute for Psychoanalysis, Menninger Foundation.

He started writing with an educational book and since has published over 75 articles and book reviews in various areas such as health care delivery systems, the doctor-patient relationship, psychotherapy, drug abuse and alcoholism, psychiatric hospital treatment, biofeedback, altered states of consciousness, guided affective imagery, intensive meditation and neuropathology. His newest book with Dr. Glen Gabbard is entitled "With the Eyes of the Mind: An Empirical Analysis of Out-of-Body States" published by Praeger Special Studies, New York, 1984.

His current professional writing includes articles on clinical aspects of Out of Body Experiences, a Psychoanalytic study of the sexually abusing psychotherapist and incest. He has a Veterans Administration funded research study of the Doctor-Patient relationships derived from his clinical research into iatrogenic disease. This questionnaire and interview study investigates unconscious factors distorting communication between doctor and patient. The study will also follow-up subsequent health and practice patterns of physicians who graduated from a medical school which placed special emphasis on doctor-patient relationships. He has begun a tentative excursion into writing on psychological topics for the general public. His first book, now under contract, is entitled "Stopping Violence: A Survival Guide for the 21st Century". This book explores the pyschology of the victim and attacker with techniques to avoid bodily harm.

Formerly he was Chief of Research Service, Topeka Veterans Administration Medical Center and a faculty member of the Menninger School of Psychiatry. Currently he is in the private practice of Psychiatry in Topeka, Kansas, and is an instructor in the Topeka Psychoanalytic Institute. He is also Associate Clinical Professor of Psychiatry in two Kansas University Medical Schools; Kansas City and Wichita, Kansas. He is a member of a number of professional and Scientific Societies including the Sigma Xi Scientific Research Society, the Shawnee County Medical Society, and the American Psychoanalytic Association.

His main (even consuming) extraprofessional interests are the Martial and Meditative Arts. With his children he studies Karate and is ranked Advanced Black Belt in three systems including the Okinawa Kobudo (weapons) system. He is a Member of the Board of Directors and Head of Certification for the United States Kempo Federation and is listed in <u>Who's Who in American Martial Arts</u>. He is also studying and practicing the Zen Meditative approach to Mind-Body integration and teaches these techniques to students in his Topeka <u>School of the Martial & Meditative Arts</u>.

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Kansas State Board of Nursing

Landon State Office Building
900 S.W. Jackson, Rm. 551
Topeka, Kansas 66612-1256
913-296-4929

Lois Rich Scibetta, Ph.D., R.N.
Executive Administrator

Janette Pucci, R.N., M.S.N.
Educational Specialist

Patsy L. Johnson, R.N., M.N.
Educational Specialist

Belva J. Chang, R.N., M.N., J.D.
Practice Specialist

TO: The Honorable Representative Michael O'Neal, Chairman & Members of the House Judiciary Committee

FROM: Patsy L. Johnson, R.N., M.N.
Acting Executive Administrator

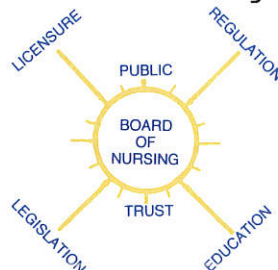
RE: HB 2837

DATE: February 28, 1990

Thank you Mr. Chairman for allowing me to testify to HB 2837. The Kansas Board of Nursing supports the protection of patients or former patients from acts of sexual abuse, misconduct or exploitation from all mental health service providers. This would include not only nurses but also licensed mental health technicians. Although licensed mental health technicians may be classified as nurses, they are licensed under a separate category and have separate statutes. At present, we have three cases being investigated which may be considered as sexual misconduct or exploitation. Two cases involve registered nurses and one involves a licensed mental health technician.

In discussion of HB 2837, the Board took the position that sexual abuse, misconduct or exploitation could be dealt with as a regulation under unprofessional conduct; K.A.R. 60-3-110 for R.N.'s and L.P.N.'s, and K.A.R. 60-7-106 for L.M.H.T.'s rather than under statute. We are presently using unprofessional conduct as the standard for revocation, suspension, or limitation of nursing licensure.

In conclusion, the Board of Nursing agrees there is a need to strengthen the ability to take action against a nurse's license for sexual abuse, misconduct or exploitation of patients or former patients. They also support such action with regard to other disciplines who



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Attachment IV

deal with patients who become emotionally dependent. The Board prefers to change regulations rather than statutes with regard to this. It is suggested if HB 2837 moves forward, then the licensed mental health technicians be included as mental health service providers and changes be made in K.S.A. 65-4209 as well.

PLJ:bph

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Att IV

KANSAS PSYCHOLOGICAL ASSOCIATION

TESTIMONY HB 2837

FEBRUARY 28, 1990

Members of the committee, I am Dr. Judy DeFelice and am here today to testify on behalf of the Kansas Psychological Association, its president, Dr. Joseph Weaver and the Board of Directors. We are in favor of any attempts that increase the protection of consumers of mental health services from unethical practitioners and that augment their ability to take action against such providers.

We are concerned that HB 2837, however, may inadvertently remove protection afforded patients or clients by removing from privileged communication information pertaining to previous sexual contact by a former therapist. HB 2837, if passed, would permit a practitioner to report sexual contact to a licensing board without the consent of the patient/victim. Privilege exists for the protection of the patient or client and not for the benefit of the practitioner. Its purpose is to afford the client a safe haven, wherein highly personal and sensitive information can be shared with a professional with assurances that that information will not be released without the client's permission.

Sexual contact by a therapist with a client is indeed a very damaging and destructive act for the client. It also is a highly sensitive one, often involving feelings of shame, guilt and embarrassment on the part of the client. Dealing with this information is a very sensitive issue that must be approached with the client's benefit in mind. Therefore, that information should not be released or used for legal purposes unless the client agrees to that course of action. HB 2837 as written could in fact inflict even more damage by precipitously releasing highly sensitive information that the client is not yet prepared psychologically to have released.

With this in mind we would propose the following changes to this legislation:

New Section 1. Paragraph (b) (Lines 30 - 35 page 1): A mental health service provider who possesses knowledge that a second mental health service provider has committed an act of sexual abuse, misconduct or exploitation against a patient or former patient of such second mental health service provider ~~may lawfully~~ **shall** report such knowledge to the state agency, if any, which licenses, registers or certifies such second mental health service provider **after acquiring written permission from the patient or former patient of such second mental health provider.**

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Attachment V

Secondly, privileged communication in this area should be retained, not eliminated as this bill proposes. It is important to assure that the client is able to maintain control over this information and how it is used. Therefore, we would propose deleting the several references in the bill where information involving sexual contact between a therapist and a patient is exempted from the protection of privileged communication. [Section 2, PP (e); Section 3, PP (c); Section 7, lines 27 - 28; Section 9, PP (a), subsection (5); Section 10; and Section 12]

We are in support of the sections providing that a history of sexual misconduct on the part of a practitioner be grounds for either revocation of or refusal to grant a license or registration by a licensing board. We would note however, that the psychology licensing rules and regulations already have such provisions. However, HB 2837 would give such regulations the force of law.

We would make two additions relative to the Registered Masters Level Psychologist. Firstly, they should be added to the definition of "Mental health service provider" (New Section 1, Paragraph (2), lines 21 - 26, page one). Secondly, the bill should include amendments to K. S. A. 1989 Supp. 74-5369 dealing with the granting and revocation of registration for Masters Level Psychologists by including similar language added to the other licensing statutes referenced in the bill to make sexual misconduct grounds for revocation and denial of registration.

Thank-you for allowing us this opportunity to testify on this legislation. I would be glad to answer any questions now or later.

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State of Kansas

Office of
RICHARD G. GANNON, Executive Director
LAWRENCE T. BUENING JR., General Counsel
JOSEPH M. FURJANIC, Disciplinary Counsel
SUSAN LAMBRECHT, Licensing Supervisor

Kansas State Board of Healing Arts
235 S. TOPEKA BLVD.
TOPEKA, KS 66603
LICENSURE 913 296 7413
DISCIPLINARY 913 296 7942

Board of Healing Arts

MEMORANDUM

TO: House Judiciary Committee

FROM: Richard G. Gannon, Executive Director

DATE: February 28, 1990

RE: House Bill 2837

Thank you very much for the opportunity to appear before you and submit testimony in support of House Bill 2837 on behalf of the State Board of Healing Arts.

I should advise the last meeting of the Board as a whole was February 10 and due to the timing of the introduction of H.B. 2837, it was not addressed by the Board at its February meeting. However, since introduction of this bill, we have received the endorsement of the Executive Committee which includes a practicing psychiatrist. It was the unanimous opinion of the Executive Committee that testimony be provided on the Board's behalf in support of this bill.

The Board understands and appreciates the sanctity of the physician patient privilege and a physician's obligation to maintain the confidentiality of information obtained during the course of the treatment of an individual. However, in light of the fact that subsection (b) of section 1 makes the reporting of knowledge of sexual abuse or exploitation permissive rather than mandatory, concerns about possible damage to the therapeutic relationship by the reporting are minimized. Therefore, the protection of the public against such activities and misconduct would appear to outweigh the concerns regarding the relaxation of the physician patient privilege.

MEMBERS OF BOARD
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KENNETH D. WEDEL, M.D., Minneapolis
REX A. WRIGHT, D.C., Topeka

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Attachment VI

Under present law, a physician may not report knowledge which is subject to the physician patient relationship. The mandatory reporting obligation set forth in K.S.A. 1989 Supp. 65-28,122 and K.S.A. 1989 Supp. 65-4923 do not enable the reporting of information obtained during the physician patient relationship. Rather, a physician under the Healing Arts Act who would report such information without the consent or authority of the patient could be in danger of disciplinary proceedings for the wilful betrayal of confidential information as specified in K.S.A. 1989 Supp. 65-2837(b)(6).

Two examples are illustrative of the frustration the Board of Healing Arts now faces under existing law. In one case, the Board received information from a physician that he believed several patients had been sexually abused. These patients were presently being seen by a masters level psychologist in a community mental health center. Although our investigators contacted the psychologist, the psychologist refused to provide any information whatsoever based upon the present language of K.S.A. 1989 Supp. 74-5323 (see section 10 of H.B. 2837). In the second case, a psychiatrist from a large mental health institution had been apprised by one of the psychologists in that institution that the psychologist had become aware of sexual abuse by another mental health service provider committed against one of the clients that psychologist was presently treating. The Board's response to both of these cases was that under existing law unless the patients voluntarily came forward and filed a complaint with our office or executed a release authorizing the mental health service provider to provide such information to the Board, the information should not and could not be released. As a result, we have information to believe that at least two physicians are continuing to practice and provide mental health services to individuals when it appears those physicians have sexually exploited and abused patients during the therapeutic relationship in the past.

I am sure that this committee will receive expert testimony from individuals as to the damage done to patients when there is sexual abuse by mental health service providers during the treatment process. Every meeting of medical licensure boards or licensing boards involving health care professionals has at least one session dealing with sexual exploitation of patients and clients. The damage to these patients is far reaching and includes lowering of self-esteem, depression brought about by the guilt and shame attributed to the incidents, loss of objectivity by the treating therapist and aggravation of pre-existing or creation of new emotional conditions which require additional treatment and expense.

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The Board, while supporting H.B. 2837, would suggest that this legislation may not go far enough. Rather, the Board would suggest comprehensive statutory reform to authorize the reporting of sexual abuse, misconduct or exploitation by all individuals engaged in the practice of medicine or in providing health care. For instance, H.B. 2837 would not authorize a mental health service provider who obtains knowledge of sexual abuse or exploitation by an obstetrician, gynecologist, dentist, podiatrist, physicians' assistant or any other professional who is not specifically engaged in providing mental health services for enumeration. Sexual exploitation and abuse does not occur only in the mental health services field but can occur in any number of treatment settings. Therefore, the Board would urge the Legislature to consider legislation which would authorize reporting of such incidents which occurred outside of the mental health service field.

As stated at the beginning, H.B. 2837 is a step towards resolving a very serious issue and one that has far reaching adverse effects on the citizenry of the state of Kansas. However, additional legislation such as requiring a patient to read a "Bill of Rights" prior to commencing of treatment by a mental health service provider, could be another step. In the state of Minnesota, a law became effective August 1, 1986 which requires prospective employers to make inquiry of past employers before hiring a "psycho-therapist". Employers may be liable if they fail to make inquiry of former employers regarding requests for and occurrences of sexual contact and/or if they fail to respond to such inquiries.

In conclusion, the Board supports H.B. 2837 and, if passed, would vigorously investigate any reports made to the Board as authorized by this legislation. Further, in hopes that it may act as a deterrent, the Board would attend to initiate such disciplinary action as would be appropriate in individual cases to ensure the citizens of the state of Kansas are adequately protected from any recurrent behavior.

Thank you very much for the opportunity to appear before you. I would be happy to answer any questions you might have.

2/28/90
H Jud Com.
Att VI

Kansas Psychiatric Society

1259 Pembroke Lane
Topeka, KS 66604
Telephone: (913) 232-5985
or (913) 235-3619

Officers 1988-1990

Donald R. Brada, M.D.
President
929 N. St. Francis
Wichita, KS 67214

Samuel L. Bradshaw, M.D.
President-elect
3910 Parlington Dr.
Topeka, KS 66610

Cathy Shaffia Laue, M.D.
Secretary
P.O. Box 1634
Lawrence, KS 66044

Donna Ann Vaughan, M. D.
Treasurer
R.R. 1, Box 197 A
Newton, KS 67114

Manuel P. Pardo, M.D.
Councillor, 1988-91
UKMC-Psychiatry
39th & Rainbow
Kansas City, KS 66103

George W. Getz, M.D.
Councilor, 1987-90
P.O. Box 89
Larned, KS 67550

Eberhard G. Burdzik, M.D.
Councillor, 1986-89
2700 West Sixth St.
Topeka, KS 66606

George Dyck, M.D.
Representative
Prairie View, Inc.
Newton, KS 67114

H. Ivor Jones, M.D.
Deputy Representative
8901 West 74th St.
Shawnee Mission, KS 66204

Jo Ann Klemmer
Executive Secretary
Telephone: (913) 232-5985

Chip Wheelen
Public Affairs Contact
Telephone: (913) 235-3619

February 28, 1990

TO: House Judiciary Committee

FROM: Kansas Psychiatric Society *Chip Wheelen*

SUBJECT: House Bill 2837; Reporting of Sexual Exploitation

Thank you for this opportunity to express our reserved support of HB 2837. As you may be aware, the Kansas Psychiatric Society testified during the 1989 interim study that sexual exploitation of a patient or former patient is unacceptable under any circumstances. Our endorsement of HB 2837 is reserved because it would constitute a breach in the time-tested confidential physician/patient relationship. The ability to exchange privileged information in that relationship is extremely important for purposes of promoting productive therapy.

We respectfully request a few changes in HB 2837 that would improve upon its features. First, the definition of "patient" should be changed to "client" and then be clarified to include patients of physicians. This will require appropriate substitution of the term "client" for "patient" throughout the bill. Secondly, we believe that the term "knowledge" should be defined in order to provide guidance to those health care providers and others who would be affected by the provisions of this bill. Attached to this statement is a balloon style amendment which would define knowledge to mean "acquired information which is clearly not the product of delusional thinking or the imagination of a patient."

We believe that such knowledge should be supported by testimony because otherwise the respective regulatory agency would have very little basis for disciplinary action. The due process rights of licensees could be eroded substantially if regulatory agencies were allowed to discipline based upon hearsay. For this reason we have also drafted amendatory language that would require the reporting provider to follow-up in person and submit to questioning.

In addition, we respectfully request a technical correction to current law, which you'll find at clause (2) of subsection (a) of section 2 (lines 6-10, P. 2). You will note that current law refers to a physician as a person licensed to practice medicine or one of the healing arts. It is important to note that there are three branches of the healing arts. Allopathic physicians and osteopathic physicians are licensed to practice medicine and surgery. That scope of practice includes diagnosis and treatment of psychological disorders and mental illness. Doctors of chiropractic, however, are not licensed to diagnose and treat psychological disorders or mental illness. Therefore, we have attached a second balloon amendment to this statement, which would clarify that physician means a person licensed to practice medicine and surgery and refers specifically to the statute which defines the scope of practice for a physician.

Thank you for your consideration. We respectfully request that you adopt our proposed amendments to HB 2837 prior to recommending the bill for passage.

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Attachment VII

HOUSE BILL No. 2837

By Representatives Wagnon and Sebelius

2-6

AN ACT concerning mental health service providers; relating to certain acts of sexual abuse, misconduct or exploitation by such providers; amending K.S.A. 60-429 and K.S.A. 1989 Supp. 60-427, 65-1120, 65-2837, 65-5809, 65-5810, 65-6311, 65-6315, 74-5323, 74-5324 and 74-5372 and repealing the existing sections.

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

New Section 1. As used in this section:

(1) "Mental health service" means the treatment, assessment, or counseling of another person for a cognitive, behavioral, emotional, mental or social dysfunction, including any intrapersonal or interpersonal dysfunction.

(2) "Mental health service provider" means a physician, psychologist, nurse, professional counselor, social worker, marriage or family therapist, alcohol or drug counselor, member of the clergy or any other person, whether or not licensed or registered by the state, who provides or purports to provide mental health services for remuneration.

(3) "~~Patient~~" means a person who seeks or obtains mental health services for remuneration from a mental health services provider and who is not married to the mental health services provider.

(b) A mental health service provider who possesses knowledge that a second mental health service provider has committed an act of sexual abuse, misconduct or exploitation against a patient or former patient of such second mental health service provider may lawfully report such knowledge to the state agency, if any, which licenses, registers or certifies such second mental health service provider.

(c) Any person who, in good faith, makes a report as authorized by this section shall not be liable in a civil action for damages or other relief arising from the reporting except upon clear and convincing evidence that the report was completely false and that the falsity was actually known to the person making the report at the time thereof.

Sec. 2. K.S.A. 1989 Supp. 60-427 is hereby amended to read as follows: 60-427. (a) As used in this section:

Client

For purposes of this section, a patient of a physician or nurse shall also be considered a client if the patient seeks or obtains mental health services from the physician or nurse.

(4) "Knowledge" means acquired information which is clearly not the product of delusional thinking or the imagination of a ~~patient.~~ client.

Any mental health service provider who makes a report as authorized by this section must appear in person at any subsequent investigative proceeding involving the alleged sexual abuse, misconduct or exploitation in order to corroborate such report and submit to questioning by members of the board or staff of the licensing agency.

(d)

1 (1) "Patient" means a person who, for the sole purpose of securing
2 preventive, palliative, or curative treatment, or a diagnosis prelim-
3 inary to such treatment, of such person's physical or mental con-
4 dition, consults a physician, or submits to an examination by a
5 physician.
6 (2) "Physician" means a person licensed or reasonably believed
7 by the patient to be licensed to practice medicine ~~or one of the~~
8 ~~healing arts~~ as defined in K.S.A. ~~65-2802~~ and amendments thereto
9 in the state or jurisdiction in which the consultation or examination
10 takes place.
11 (3) "Holder of the privilege" means the patient while alive and
12 not under guardianship or conservatorship or the guardian or con-
13 servator of the patient, or the personal representative of a deceased
14 patient.
15 (4) "Confidential communication between physician and patient"
16 means such information transmitted between physician and patient,
17 including information obtained by an examination of the patient, as
18 is transmitted in confidence and by a means which, so far as the
19 patient is aware, discloses the information to no third persons other
20 than those reasonably necessary for the transmission of the infor-
21 mation or the accomplishment of the purpose for which it is
22 transmitted.
23 (b) Except as provided by subsections (c), (d), (e) and (f), a person,
24 whether or not a party, has a privilege in a civil action or in a
25 prosecution for a misdemeanor, other than a prosecution for a vi-
26 olation of K.S.A. 8-1567 and amendments thereto or an ordinance
27 which prohibits the acts prohibited by that statute, to refuse to
28 disclose, and to prevent a witness from disclosing, a communication,
29 if the person claims the privilege and the judge finds that: (1) The
30 communication was a confidential communication between patient
31 and physician; (2) the patient or the physician reasonably believed
32 the communication necessary or helpful to enable the physician to
33 make a diagnosis of the condition of the patient or to prescribe or
34 render treatment therefor; (3) the witness (i) is the holder of the
35 privilege, (ii) at the time of the communication was the physician
36 or a person to whom disclosure was made because reasonably nec-
37 essary for the transmission of the communication or for the accom-
38 plishment of the purpose for which it was transmitted or (iii) is any
39 other person who obtained knowledge or possession of the com-
40 munication as the result of an intentional breach of the physician's
41 duty of nondisclosure by the physician or the physician's agent or
42 servant; and (4) the claimant is the holder of the privilege or a
43 person authorized to claim the privilege for the holder of the

and surgery

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State of Kansas
Mike Hayden, Governor

Department of Health and Environment
Division of Health
Landon State Office Bldg., Topeka, KS 66612-1290

Stanley C. Grant, Ph.D., Secretary

(913) 296-1343
FAX (913) 296-6231

TESTIMONY PRESENTED TO THE

HOUSE JUDICIARY COMMITTEE

BY

THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

House Bill 2837

House Bill 2837 allows any mental health services provider to report to the state licensure/registration board another mental health services provider who has sexually abused or exploited a patient or former patient.

"Mental health services provider" means a physician, psychologist, nurse, professional counselor, social worker, marriage and family therapist, alcohol or drug counselor, member of the clergy, or any other person, whether or not licensed or registered by the state, who provides mental health services for remuneration.

The term "sexual abuse, misconduct, and exploitation" should be defined in the bill. In addition, the term "emotionally dependent" should be defined.

It is indeed appropriate to allow such reporting to take place. However, it is important to note that this bill will have a very limited impact on the issue of sexual exploitation.

The bill may help stimulate some additional complaints. However, compared to the projected number of incidents of sexual exploitation, very few victims choose to file such complaints with regulatory boards. In the case where a therapist becomes aware of another therapist's unethical actions through the course of treating a client who was the victim, the report would most likely only be made if it is in the best interest of the client to do so. That is, the client/victim is willing and able to withstand an investigation and hearing and going through the complaint process regardless of results would be therapeutic to the client's recovery. Peer review mechanisms have shown that often health care professionals are reluctant to judge their colleagues, nor may they feel morally or technically equipped to do so. This may also be true in cases of reporting by a colleague concerning another mental health services provider's sexual involvement with a patient.

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Attachment VIII

Charles Konigsberg, Jr., M.D., M.P.H., Director of Health (913) 296-1343

James Power, P.E., Director of Environment (913) 296-1535

Lorne Phillips, Ph.D., Director of Information Systems (913) 296-1415

Roger Carlson, Ph.D., Director of the Kansas Health and Environmental Laboratory (913) 296-1619

The bill's provisions concerning disciplinary action that may be taken against nurses, social workers, psychologists, and professional counselors who sexually abuse or sexually exploit patients is appropriate. However, physicians and psychiatrists already can be disciplined for sexual abuse or exploitation of a patient and the threat of revoking one's license has not been an effective system of control. As you are aware, national surveys show that approximately five to seven percent of licensed male psychiatrists, PhD psychologists, and physicians reported having had sexual intercourse with patients during treatment stages. Once a therapist becomes sexually involved with one patient, there is repetition of the behavior in 75 to 80 percent of the cases. In addition, the bill allows for disciplinary actions to be taken against mental health services providers who sexually abuse or exploit former patients who are emotionally dependent on the mental health services provider. The issue of determining emotional dependence will be complicated and difficult even with a statutory definition of "emotional dependency."

This proposal is also limited in that it only applies to disciplinary actions that can be taken against professionals who are regulated by the state. The bill does allow for the reporting of an act by a nonlicensed/nonregistered practitioner. However, the state has, in most cases, no grounds to discipline such a practitioner. For example, the Kansas Attorney General's office concluded that there were 25 to 35 complaints filed in 1985. The most common complaint made against persons who call themselves "counselors" or "therapists" who are not regulated was that the practitioner made sexual advances or actually engaged in sexual conduct with the client. However, no action could be taken on the complaints received about the nonlicensed/nonregistered therapist unless the therapist misrepresented himself as a licensed or registered professional.

The department recommends that a comprehensive approach to the problem of sexual exploitation be initiated including: (1) requiring regulated and unregulated mental health services providers to distribute educational materials about ethics to patients prior to treatment, (2) establishing a regulatory body to review complaints and discipline unethical nonregulated mental health services providers, (3) changing the criminal code to make it illegal for a mental health services provider to sexually exploit a patient, and (4) creating a civil cause of action for sexual exploitation victims who have been harmed. (A summary of these four initiatives that Minnesota and other states have initiated is attached.)

Presented by: Joseph Kroll, Director
Bureau of Adult and Child Care
Kansas Department of Health and Environment
February 28, 1990

SEXUAL EXPLOITATION

Summary of Proposed Bills

Educating the Client

This initiative creates a new statutory requirement that all mental health service providers distribute to a client prior to treatment a disclosure of information statement. The bill requires that the disclosure include 16 informative items. Twelve of these items are one sentence statements that describe ethical practice standards (e.g., in a professional relationship, sexual intimacy is never appropriate). The information required should consist of one or two pages of information. A state designed form can be developed to eliminate any perceived problem of excessive qualification narratives.

No penalties for violations of the proposed law or any provision contained in the disclosure statements have been included since the state boards would determine the appropriate disciplinary actions against licensed or registered personnel. In the case of unlicensed and unregistered groups, the disciplinary authority and possible disciplinary options for violators of this bill are created in the second proposal.

Regulating Unlicensed and Unregistered Mental Health Providers

This initiative requires all unlicensed and unregistered mental health providers to file certain information on a state designed form with the Board of Behavioral Sciences in order to practice. Violation of this requirement is a Class A misdemeanor. The bill allows consumers to file complaints with the board and gives the board authority to reject a filing or application or impose adverse action under the conditions described in the bill. Sixteen conditions are listed and a majority of the conditions deal with violating ethical practice standards which includes sexual exploitation. Disciplinary actions, including the revoking the right to practice, are also delineated in this bill. This proposal does not establish educational requirements for the practice of the various unregulated occupations, nor does it imply or certify in any way that a particular practitioner has met any educational training standards or criteria, nor does it protect or define a scope of practice for the various occupational groups not required to be licensed or registered by the state.

Criminal Law

This proposal amends the criminal code by adding sexual exploitation and aggravated sexual exploitation to the list of unlawful sexual acts. The bill makes it unlawful for health care providers who are rendering mental health services for remuneration to be sexually intimate with clients under certain circumstances. The circumstances being "during the therapy session, or if the client is emotionally dependent upon the therapist, or if the actions occurred by therapeutic deception." In addition, this proposal removes the consent plea as a defense in any sexual exploitation case.

Sexual exploitation refers to "sexual contact" under the circumstances described in the above paragraph and is a Class D felony. Sexual contact is defined as

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lewd fondling or touching to arouse or satisfy sexual desires. Aggravated sexual exploitation refers to sexual intercourse or sodomy under the circumstances described above and is a Class E felony.

This proposal is designed to apply to the most apparent situations in which the inherent nature of the therapeutic relationship may lend itself to sexual exploitation. This being the health care providers who are rendering mental health services.

Civil Law

This bill creates a new statutory cause of action for clients who have been sexually exploited by a health care provider rendering mental health services. This proposal allows the victim to sue the abusing health care provider and/or the provider's employer for damages under certain circumstances. As with the criminal code proposal, the act of consent is not a defense. The health care provider is liable if the sexual contact occurred: (1) during the period the client was receiving services from the health care provider, or (2) after the period the client received services from the health care provider if the former client was emotionally dependent on the provider at the time of sexual contact, or (3) if the sexual contact occurred by means of therapeutic deception. The employer is liable if: (1) the employer failed to take action when he/she knew that the provider was engaging in sexual activity with a client, and (2) the employer failed to ask the provider's previous employers about his/her sexual conduct with clients, or (3) the employer failed to pass on such information to subsequent employers who asked for it. Employers who comply in good faith with the law cannot be sued.

HEIN AND EBERT, CHTD.
ATTORNEYS AT LAW
5845 S.W. 29th, Topeka, Kansas 66614
913/273-1441

Ronald R. Hein
William F. Ebert

HOUSE JUDICIARY COMMITTEE
TESTIMONY RE: HB 2837

PRESENTED BY RONALD R. HEIN ON BEHALF OF
KANSAS ASSOCIATION FOR MARRIAGE AND FAMILY THERAPY
February 28, 1990

Mr. Chairman, members of the committee:

My name is Ron Hein, and I am legislative counsel for the Kansas Association for Marriage and Family Therapy (KAMFT).

We do not oppose the concept of HB 2837 as long as the language remains permissive. We believe that the professional should make the decision as to whether the information should be reported by the professional, reported by the alleged victim, or not reported at all, depending upon the particular circumstances of each and every case.

However, although the bill states that the provision shall be applicable whether or not the individual professional is licensed or registered by the State, the bill does not address how unlicensed or registered professionals are to report.

There is not even a definition for marriage and family therapists. The KAMFT is composed of individuals who have met strict and comprehensive eligibility criteria as established by the American Association for Marriage and Family Therapy, and are nationally accredited pursuant to that association. Numerous states credential marriage and family therapists who have met these professional standards, but the State of Kansas does not.

Currently, in Kansas, anybody can be a marriage and family therapist, regardless of their background, training, competence, criminal record, age, or anything. They cannot be a member of our association unless they have at least a masters or doctoral level education in an approved program from an accredited institution, and meet other strenuous requirements. But as far as the State of Kansas is concerned, anybody can hang up their shingle and call themselves a marriage and family therapists.

There is currently a bill pending in the Senate Public Health and Welfare Committee that would provide for registration of marriage and family therapists.

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But until that bill passes, there is no board to report to.

In addition, in light of the fact that anybody can currently hold themselves out as being a marriage and family therapist, without meeting any minimum qualifications, we are concerned about any reports that would be made about "marriage and family therapists" and the impact that that reporting about unqualified individuals will have upon the professional reputation of marriage and family therapists who have met the certification requirements of the AAMFT.

Therefore, we would oppose any reporting mechanism or responsibilities upon marriage and family therapists without providing a definition of marriage and family therapists, establishing minimum qualifications for such professionals, and designating the appropriate governmental body to receive reports concerning such defined professionals.

Thank you very much for permitting me to testify today, and I would be happy to yield for any questions.

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Att IX

KANSAS FEDERATION OF LICENSED PRACTICAL NURSES, INC.
Affiliated with NATIONAL FEDERATION OF LICENSED PRACTICAL NURSES, INC.
933 Kansas Avenue, Topeka, KS 66612 913-354-1605

February 28, 1990

STATEMENT OF SUPPORT FOR HB 2837
HOUSE JUDICIARY COMMITTEE

On behalf of the Kansas Federation of Licensed Practical Nurses, please accept our support for the provisions in HB 2837 which specifically refer to the practice of nursing as LPNs. Page 5 Section 4 beginning with line 3 deals specifically with LPNs to include them under disciplinary actions for such exploitation with which we are in support.

Thank you Mr. Chairman and thank you to Representatives Wagnon and Sebelius for their dedication to the needs of those who are often exploited.

For further information contact Elizabeth E. Taylor, Legislative Consultant to KFLPN at the office listed above.

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Chairman O'Neil and Members of the House Judiciary Committee:

My name is Tamara Hawk. I am a licensed specialist clinical social worker, currently in private practice in Manhattan, Ks. I have worked for 15 years in the area of child welfare protective services and sexual assault.

During my carreer, I have interviewed approximately 300 children and their families who have been involved in allegations of physical and sexual abuse.

In the past several months I have been involved in several cases involving child sexual assault as an issue in divorce proceedings. In each of these cases, I determined that children had experienced sexual assault during visitation with their fathers. My testimony as a professional, regarding the statements of these children, was inadmissable in court, leaving the visitation plans unchanged. The statements were not admitted due to the current statutes on child hearsay.

In the first case, four and six year old sisters were visiting their father out of town two times per month. The girls returned from each visit more upset, withdrawn, and regressing developmentally. Their mother observed them masturbating excessively, having sudden onset of nightmares, and talking about killing themselves. During therapy with the six year old, she disclosed that her father drank beer until he passed out every night; that she, being worried that he was dead, would leave the house in the middle of the night, knocking on neighbors doors, trying to get help for him. Later at home, upon awakening, he would come into the girls' room and get into bed with one of them, forcing them to participate in oral sex and mutual genital fondling with him.

The mother attempted to stop visitation. The father denied the charges. The children's explicit descriptions of their experiences with their father, were not admissable in civil court. The mother, at this time, has chosen to disregard the court order for twice monthly visitation. The father has yet to respond or file a motion of contempt and the case is in limbo. At any point, however, the mother could be forced to comply with the original visitation order. Other than the children's statement and the mother's observations of their behavior, no other evidence exists to support a change in the current visitation plan.

The second case involves twin sisters of preschool age. Their parents divorced when they were infants and the father had regular visitation. Since age eighteen months, the girls had been making a number of statements accusing their father of sexually abusing them during visitation. They returned from each vist more anxious and disturbed. Their behavior

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was unmanageable. They screamed with nightmares, smeared feces on the walls, wet the bed, vomited, and masturbated constantly. They repeatedly talked of being poked in their genital area by their father. They repeated this story consistently to as many as five professionals and five other adults over the next two years.

In therapy, they gave specific information, in their own language, as to what sexual abuse they had experienced, how and where the abuse occurred, what their father said to them, how they accomodated to him, how they dreamed about the incidents, and how fearful they were of it re-occuring on each visit. At this point, they were three and a half years old.

I testified in civil court regarding visitation on several occasions. I recommended that all visitation should be stopped, and reinstituted only after treatment had progressed and then occur in the therapy office. My recommendations were based, in part, on the children's statements. Disallowing my testimony about the children's statements due to the child hearsay statute, the judge stated that he saw no difference in these children's behavior from any other children of divorce.

The criminal justice system does not always work on the child's behalf. Few of these cases produce hard physical evidence. County attorney's are reluctant to prosecute without it. The children are not good witnesses due to the trauma they have experienced, as well as the power they perceive the perpetrator has over them. Most of them are just too young to offer testimony within the structure of courtroom protocol. In some cases, county attorney's have refused to file Child in Need of Care cases because the case was being heard in civil (divorce) court.

In many cases, numerous interviews are needed to obtain a full disclosure. Many of these cases come to therapists after investigations are incomplete and a decision has been made not to file child in need of care action. This leaves the issue to be resolved in civil court, where child hearsay is not admissable.

In many cases that come before civil court where children are being abused, the adult has rights to custody and visitation that they can rely on. But if the child, for many reasons, is unable to speak in court for themselves, their experiences cannot be heard.

In changing this statute, we are asking that children be given a voice through the adults they confide in, and that courts be allowed to make these important decisions by having access to all of the relevant information about the children they are trying to protect. Thank You.

Tamara J.Hawk, LSCSW
200 Southwind Pl. #101
Manhattan, Ks. 66502
(913)539-7789

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Chairman O'Neil and Members of the House Judiciary Committee:

My name is Kay Gareis. I am an M.S.W. and have been a School Social Worker in Manhattan in eleven years. This past year, I have testified in two court cases, one civil and one criminal, involving the same family. I have come before the court in both cases as a neighbor of the family, and a person to whom the children disclosed statements indicating possible sexual abuse by the father. In the criminal case, the non-custodial father faces charges of taking indecent liberties with his minor daughters, now age 4. The accompanying civil case revolves around visitation and custody issues. As is common in child sexual abuse cases, there is no conclusive medical evidence and the basis of the case rests on statements made by the children out of court. The criminal court has had access to child heresay evidence from more than ten witnesses. The civil proceedings, in which none of the child heresay has been accepted, continues to determine the status of visitation and custody of these minor children. When much of this evidence was presented before the civil court, the judge did not admit the child heresay evidence and explicitly made his decisions as if it were just another divorce case. I do not believe that the best interest of these children, or others like them, can be served unless the child heresay evidence is available in all of the proceedings having to do with their welfare.

I believe that the reasons for allowing child heresay evidence in abuse cases are valid. Kansas Statue 60-460DD is a good law but omits mention of civil cases. The legislature now has the opportunity to remedy this oversight and it my sincere hope that you will do so by supporting this bill.

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STATE OF KANSAS

SHEILA HOCHHAUSER
REPRESENTATIVE, 67TH DISTRICT
1636 LEAVENWORTH
MANHATTAN, KANSAS 66502
(913) 539-6177 HOME
(913) 296-7691 TOPEKA OFFICE

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: JUDICIARY
PUBLIC HEALTH AND WELFARE
LEGISLATIVE EDUCATIONAL PLANNING COMMITTEE

TESTIMONY BEFORE HOUSE JUDICIARY COMMITTEE
HOUSE BILL 3038

February 28, 1990

Mr. Chairman, Colleagues on the Judiciary Committee, thank you for introducing HB 3038 and for holding hearings on the bill. This past summer and fall I spent much time involved in post-divorce proceedings in a case involving allegations of sexual abuse by the father of twin 3-year old girls. The father had been granted visitation with his daughters for two days every weekend. When SRS and the county attorney became involved, the civil court in the divorce case was asked to suspend visitation between the father and his daughters. The court refused to do so.

After felony child abuse charges were brought against the father, a full evidentiary hearing on whether visitation should be suspended was held. At the hearing professionals testified as to what the children had told them and shown them about their father's abusive conduct. The court permitted the testimony, but by Memorandum Decision stated:

> The Court finds that the statements on videotape of the minor children and the conclusions drawn by the social workers based upon the hearsay statements of the children are not admissible in evidence for the reason that this proceeding is not a criminal proceeding, a proceeding to determine if a child is a deprived child or proceedings to determine if a child is in need of care.

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I believe the court was correct in its ruling based upon the current language of K.S.A. 60-460(dd) and the law as set forth in <u>In Re: Mary P</u>., 237 Kan. 456(1985). Having not admitted the child hearsay evidence of abuse, the divorce court had no evidence upon which to suspend visitation, and the court refused to do so, even temporarily. The criminal court, hearing the felony child abuse case, refused to suspend visitation pending the disposition of the felony charges against the father for two reasons:

(1) visitation between the children and their father was not at issue in the criminal proceedings;

(2) the court hearing the civil (divorce) case had already ruled against suspending visitation.

K.S.A. 60-460(dd) currently permits child hearsay to be admitted into evidence in criminal, juvenile offender and child in need of care proceedings if the child is alleged to be a victim of the crime, offense, or a child in need of care. To be admissible the statement must be from a child who is unable to testify, the statement must be apparently reliable, and the statement must not have been induced by false threats or promises.

The purpose of HB 3038 is to extend the child victim hearsay exception to statements of children of the parties to divorce proceedings who are the alleged victims of sexual abuse by one of the parties to the divorce. As divorce proceedings are not tried before a jury, it will be for the divorce judge to determine the weight and credit to be given to the hearsay statement of the child. The judge will consider the following factors as set out in K.S.A. 60-460(dd):

(1) age and maturity of the child;
(2) nature of the statement;

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(3) circumstances under which the statement was made;
(4) any possible threats or promises that might have been made to obtain the child's statement.

The bill as drafted is broader than I had envisioned. I offer the following amendment: Changes lines 29-36 on page 6 to read as follows:

> "(dd) Actions involving children. In a criminal proceeding, a proceeding pursuant to the Kansas juvenile offender's code, a proceeding to determine if a child is a child in need of care under the Kansas code for care of children, <u>or in a divorce proceeding involving allegations of physical or sexual abuse of the parties' child or children by one of the parties to the divorce</u>, a statement made by a child to prove the crime, that a child is a juvenile offender or a child in need of care, <u>or to show that the child has been physically or sexually abused by one of the parties to a divorce</u>, if:
>
> (1) The child is alleged to be a victim of the crime or offense,a child in need of care, <u>or the child of the parties to a divorce proceeding in which the allegations of physical or sexual abuse of the child have been made</u>."

Thank you for your time. I would be happy to answer any questions.

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I was demoralized. Today I am hopeful. I come before you as a pioneer in the assessment and treatment of child neglect, physical, emotional and sexual abuse. I am not an author or a researcher, but a woman struggling in the trenches for the last twenty years.

I recall a young Thai psychiatrist who first informed me of the generational nature of incest. I was then a fledgling juvenile probation officer cast in the role of counselor/youth evaluator working in a youth detention center housing children in limbo, or to phrase it, as we did then, youth in pre-placement evaluation. My training didn't prepare me then to grasp the tragedy of throw-away children. Conservatively, 80 to 90% of the female runaways were fleeing from father-daughter incest. I didn't know then that the American family is the most violent social institution. Nor did I imagine that our prisons house unprecedented numbers of formerly neglected, abused, and sexually traumatized people.

Many years have passed since then. I've treated the chemically dependent, massive numbers of whom self-medicate to blot out intrusive memories of being abused as children. At a Federal enclave I served as child advocate for 3 years and nearly 5 years with a multidisciplinary child protection case management team within out-patient psychology and psychiatry. I was a co-therapist for a group of parents who severely battered their children of 4 years of age and under and thus frequently testified concerning treatment recommendations as a friend of the court or as an expert witness. I facilitated a mother-daughter group for intra-family sexual abuse in that setting and served with a male co-therapist in a court-mandated father-perpetrator group. It is with agony I recall those evidentiary hearings

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in which hurt and vulnerable children were made to testify in adversarial proceedings, when the family member perpetrator refused to stipulate to the allegations of the petition. It was then and it is now my professional opinion that this procedure cruelly re-traumatizes both children and adolescents and their non-abused siblings.

Must we have blood, guts, and semen? How much longer shall we choose to ignore that, it is the rule, not the exception, that medical evidence for child sexual abuse is rarely found. Is the incest taboo so profound that we cannot bring ourselves to believe these children? Adult survivors of incest have told me repeatedly how devastating it was to tell the "secret" as children to a trusted adult who failed to believe them. It has been my experience that children tell the truth about sexual abuse and that the first set of interviews is the most accurate. We must stop subjecting children to interrogative strategies designed for adults. We must apply criteria which are age-appropriate and compassionate. Let us support and validate our judiciary by promoting and passing Bill #3038 which allows child hearsay to be admissable in civil proceedings when said child has been the victim of a crime.

Statement submitted by:

Virginia Olson-Chaput
Ph.D. Student-in-Training in Marriage and Family Therapy

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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

TESTIMONY
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
ON BEHALF OF ROBERT T. STEPHAN, ATTORNEY GENERAL
BEFORE THE HOUSE JUDICIARY COMMITTEE
REGARDING HOUSE BILL 3038
FEBRUARY 28, 1990

Mr. Chairman and Members of the Comittee:

On behalf of Attorney General Robert T. Stephan, I am here in support of House Bill 3038 expanding the application of the child hearsay exception, K.S.A. 60-460(dd), in the Kansas Code of Civil Procedures.

Kansas law under K.S.A. 60-460 currently allows the admission of what would otherwise be hearsay statements by children, if certain criteria of reliability are met. However, admission is limited to criminal proceedings where the child is a victim, and proceedings under the Kansas laws concerning Juvenile Offenders, or children in need of care. The proposed amendment would keep the procedural safeguards requiring the judge to find the statement to be reliable, but expand the application of the testimony to all proceedings under Kansas law.

Such statements are currently allowed in the most serious kinds of cases, i.e. criminal prosecutions, so there would seem little reason to continue to restrict the use of such evidence in civil matters and other proceedings. Clearly, the trauma to the child and the usefulness of the testimony would not be significantly different.

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Further, in criminal procedures there is currently a gap under the statute whereby a child might be a witness to a crime and hence involved in the proceedings, but if not a victim the current statute would prevent the statement of the child from being admitted, even if all the safeguards under Section (dd) are met.

Attorney General Stephan would urge you to pass House Bill 3038 as an important advancement in victim and witness rights and a logical expansion of the use of these statements.

I would be happy to answer any questions.

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TESTIMONY IN SUPPORT OF H.B. 3039
JAMES C. BRENT
ASSISTANT COUNTY ATTORNEY
HARVEY COUNTY, KANSAS

I am here today to voice support for House Bill 3039. Forfeiture statutes such as K.S.A. 65-4171, is a solid foundation of any drug enforcement law. Forfeiture statutes allow County and District Attorney's to supplement the criminal prosecution by penalizing an individual who is in violation of Kansas drug laws by hitting the criminal where it hurts, in the pocket book.

The addition of section (h), gives the County or District Attorneys another option to use in giving notice to individuals that a forfeiure proceeding has commenced. At times it is necessary to immediately seize and forfeit particular property. The statute, as it exists, requires the prosecution to mail notice of the forfeiture petition to each person having ownership in that property. By allowing for personal service two things occur: 1) personal service can be made allowing the forfeiture hearings to commence immediately; and 2) it would bar the use of improper notice as a defense to the forfeiture proceeding.

When the prosecution determines that forfeiture is not an immediate concern but proceeds under the statute at a later date, often it is difficult to give notice by mail because there may be no current address for the owner. Requiring an owner of the property at the time of arrest to provide a current address avoids the problem.

However, the statute could be further strengthened by the addition of language prohibiting an individual giving an address, which is not current or correct, from using improper service as a defense.

Forfeiture of property used or intended to be used in violation of the drug laws in the State of Kansas is an important and effective deterrent. The addition of personal service language in section (2), and section (h) can only strengthen this law. I would urge you to pass H.B. 3039 on to the House and to support its adoption. Thank you.

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