Approved April 6, 1990
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

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

3:30 ~~x~~p.m. on March 21, 19 90 in room 527-S of the Capitol

All members were present except:
Representatives Douville, Peterson and Snowbarger, 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:

Woody Longan, Attorney, Kansas Trial Lawyers Association, Overland Park
Paul Shelby, Assistant Judicial Administrator, Office of Judicial Administration
Michael Corrigan, Administrative Judge, Eighteenth Judicial District, Wichita
Arthur W. Weiss, Deputy Attorney General
Gene Johnson, Kansas Alcoholism and Drug Addiction Counselors Association; Kansas Association of Alcohol and Drug Program Directors; and Kansas Community Alcohol Safety Action Project Coordinators Association
Senator Lana Oleen
Jim Flory, Douglas County District Attorney
Senator Wint Winter, Jr.
Cathy Leonhart, Association of Court Services Officers
Dr. Roger H. Carlson, Director, Kansas Health and Environmental Laboratory, Department of Health and Environment
Roger Werholtz, Deputy Secretary of Corrections
Commissioner Andrew O'Donovan, Alcohol and Drug Abuse Services, Social and Rehabilitation Services

HEARING ON HB 3047 **In a civil action, parties may request a change in judge without a showing of cause**

Woody Longan, Attorney, Kansas Trial Lawyers Association, testified in support of HB 3047. HB 3047 would change the present system of judge disqualification to the alternative of preemptory challenge. HB 3047 proposes a system which would grant any litigant, or one of a class of litigants in a case, a change of judge without showing cause. This affords citizens who use the courts more confidence in a system where they may have a change of judge if they perceive bias, see Attachment I.

Paul Shelby, Assistant Judicial Administrator, Office of Judicial Administration, testified in opposition to HB 3047. He said the procedure under HB 3047 would cause case delay and established time standards would become totally ineffective. It would also have an adverse effect on their budget by increasing the cost of judge assignments. Last year the impact of this procedure would have affected approximately 150,000 cases. He said there are three judicial districts that have only one district judge, six judicial districts where there are only two district judges and twenty-two judicial districts where there are three or more district judges. The procedures in this bill would increase both the assignments and costs, see Attachment II.

Michael Corrigan, Administrative Judge, Eighteenth Judicial District, submitted a letter in opposition to HB 3047. He said the Sedgwick County District Court uses the Central Assignment System. A judge is frequently not assigned to try a particular case until just prior to trial. To allow litigants to reject the assigned trial judge at that late date would have a disastrous effect on the trial docket, see Attachment III.

The Chairman reported he had received a telephone call from Judge Paul Miller of Manhattan, Chairman of the District Judges Association, who opposed H.B. 3047.

There being no other conferees, the hearing on HB 3047 was closed.

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,

room 527-S, Statehouse, at 3:30 ~~a~~/p.m. on March 21, 1990

HEARING ON SUB SB 219 Suspension of minor's driving privileges for alcohol or drug-related offense

Arthur W. Weiss, Deputy Attorney General, testified under SB 219 a child who is convicted of either a traffic offense or adjudged to be a juvenile offender by reason of an act involving any alcoholic beverage or controlled substance or both would be required to surrender his or her driver's license. The Division of Motor Vehicles would then revoke the driving privileges of that child. The child could petition the court to have driving privileges restored no sooner than 90 days after the revocation upon a first offense and no sooner than one year after revocation upon a second or subsequent offense. The Attorney General believes this bill takes a necessary and positive step forward in recognizing and dealing with the serious problems faced by our youth in dealing with drug and alcohol abuses, see Attachment IV.

Gene Johnson, Kansas Alcoholism and Drug Addiction and Drug Addiction Counselors Association; Kansas Association of Alcohol and Drug Program Directors; and Kansas Community Alcohol Safety Action Project Coordinators Association, testified in support of SB 219 as another means of curbing the rampaging use of alcohol and drugs with our Kansas youth, see Attachment V.

Senator Marge Petty explained the original bill was modeled after Oklahoma law. The major difference in the original bill from Oklahoma law is that Oklahoma provides a notice to all high schools that the law was in effect. The notice would result in a $5,000 fiscal note. Oklahoma reported a 22% reduction in the youth arrested in violation of this law.

HEARING ON SB 231 Endangering a child to include failure to report child abuse by certain persons

Senator Lana Oleen submitted testimony in support of SB 231. She stated in her testimony this bill makes it a class B misdemeanor for any adult member of a household to fail to report sexual or other abuse of a child living within the same household, see Attachment VI.

Senator Wint Winter, Jr. said SB 231 sends a message that abuse of a child in a household must be reported. The bill allows for reporting such abuse to Social and Rehabilitation Services, licensed social workers, persons licensed to practice the healing arts, denistry, optometry or psychology or persons licensed as professional or practical nurses, as well as to law enforcement officers. The conduct that is required to be reported is actual physical abuse.

There being no other conferees, the hearing on SB 231 was closed.

HEARING ON SB 628 Providing greater penalty for desecrating a cemetery if damage exceeds $500

Jim Flory, Douglas County District Attorney, informed the Committee SB 628 amends current law to include desecrating a cemetery is a class E felony if the damage is to the extent of $500 or more.

Senator Wint Winter, Jr. submitted testimony explaining this bill was introduced in response to vandalism to a cemetery that resulted in $15,000 worth of damage. Current law allows damage resulting in the defacing of a cemetery as a class A misdemeanor which carries a maximum punishment of a year in jail. Prosecutors are not able to charge a felony under the criminal destruction of property law for the reason there is no living owner. This bill would enable vandals to be convicted of a felony and sentenced up to three years if the damage is in excess of $500, see Attachment VII.

There being no other conferees, the hearing on SB 628 was closed.

HEARING ON SB 725 Public health laboratory tests; laboratory defined

Paul Shelby, Assistant Judicial Administrator, Office of Judicial Administration, explained this bill was requested by the Association of Court Services Officers. SB 725 addresses urinalysis testing for controlled substances for management purposes on inmates, parolees or probationers.

Cathy Leonhart, Association of Court Services Officers, explained the individuals that Court Services Officers supervise while on probation are all too often abusing chemicals. Random urinalysis is done as a condition of probation to monitor this problem. Court Services Officers are asking that they be exempt under the definition of "laboratory" for the purpose of doing internal screening for case management purposes. If a test is positive it is sent on to an approved laboratory for confirmation. It is very expensive to send all tests to an approved lab as there is often a flat rate regardless of whether the test is negative or positive, see Attachment VIII.

Dr. Roger H. Carlson, Director, Kansas Health and Environmental Laboratory, Department of Health and Environment, recommended that any exemptions granted be limited to specific purposes so that the intent of the statute to assure the quality of laboratory data is not seriously weakened, see Attachment IX.

Roger Werholtz, Deputy Secretary of Corrections, testified in support of allowing parole officers in the field to administer urinalysis tests to individuals under their supervision. He stated the bill also continues the authorization of field tests in institutions to determine if inmates are using controlled substances. Such testing is necessary to effectively operate and maintain control over the inmate population and provide institutional security, see Attachment X.

Gene Johnson, Kansas Alcoholism and Drug Addiction Counselors Association, Kansas Association of Alcohol and Drug Program Directors, and Kansas Community Alcohol Safety Action Project Coordinators Association, proposed an amendment to SB 725 which would begin on line 39 "or (5) Urinalysis tests performed for management purposes only by personnel of alcohol and drug treatment programs which are licensed or certified by the Secretary of Social and Rehabilitation Services", see Attachment XI.

Andrew O'Donovan, Commissioner, Alcohol and Drug Abuse Services, Social and Rehabilitation Services, submitted testimony in support of the amendment to SB 725 which would allow alcohol and drug treatment programs the ability to test clients for management purposes, see Attachment XII.

Dr. Roger H. Carlson, in response to a Committee question, replied the Department of Health and Environment endorses the amendment proposed for urinalysis tests performed for management purposes only by personnel of alcohol and drug treatment programs.

There being no other conferees, the hearing on SB 725 was closed.

SB 629 Eliminate right to jury trial for defendants charged with minor traffic violations

Senator Wint Winter, Jr. said that some judges are now ruling that jury trials are not allowed in traffic infraction cases. He suggested the bill should be rewritten. The term traffic infraction is already defined in the statute to mean one for which there is no penalty other than a fine less than $500 and no possibility of jail. He suggested striking in Section 1 (1), (2) and (4) the word "infraction" and inserting the word "offense", and in (5) strike all of the language and insert "The trial of traffic infraction cases shall be to the court.

There being no other conferees, the hearing on SB 629 was closed.

The Chairman announced the minutes of March 5, 12, 13 and 14 would be approved by 3:30 p.m. March 22, 1990 if there are no additions or corrections.

The Committee meeting was adjourned at 5:30 p.m.

GUEST LIST

COMMITTEE: HOUSE JUDICIARY DATE: 3/21/90

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Art Wells	AG's office	
Jim FLORY	DIST ATTY ⟷	Lawrence
Roger Carlson	KDHE	Topeka
Tom Miller	SRS/ADMS	"
Cathy Lenhart	Topeka	Ks Assn. of Ct. Services Officers
[illegible]	LSOB	KOAC
KEITH R LANDIS	TOPEKA	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Bill Dean	O.P. Ks.	MMD

KANSAS TRIAL LAWYERS ASSOCIATION

Jayhawk Tower, 700 S.W. Jackson, Suite 706, Topeka, Kansas 66603
(913) 232-7756 FAX (913) 232-7730

TESTIMONY
of the
KANSAS TRIAL LAWYERS ASSOCIATION
before
HOUSE JUDICIARY COMMITTEE
by
S. W. "Woody" Longan

March 21, 1990

House Bill 3047

House Bill 3047 is concerned with maintaining and strengthening the public's view about the judiciary. The perception of impartiality is two dimensional. Not only the appearance of impartiality but actual impartiality has to be maintained. The proposal of HB 3047 is to change the present system of judge disqualification to the alternative of peremptory challenge.

Presently K.S.A. 20-311d provides that if a party believes the judge of the action "cannot afford the party a fair trial," the party may file for a motion for a change of judge. This motion need not state any reason for the party's belief of bias. The motion is then heard by the judge who informally stands accused of bias in the case. He is given the chance to recuse himself. If the judge refuses to recuse himself, the party seeking recusal files an affidavit which sets forth the factual basis of the motion for change of judge. The legal sufficiency of the affidavit is determined by either the administrative judge, another judge appointed by him, or by a judge appointed by the departmental justice, if there is no other judge in the district qualified to hear the matter.

There are five distinct grounds on which an affidavit supporting a motion for change of judge may be based:

(1) Where the judge has been engaged as counsel in the action prior to becoming a judge;

(2) Where the judge has some interest in the action;

(3) Where the judge is related to either party to the action;

(4) Where the judge is a material witness in the action; and

(5) Where the party filing the affidavit has cause to believe, and does believe, that because of the personal bias, prejudice, or interest of the judge, such party cannot obtain a fair and impartial trial or enforcement of remedies.

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Attachment I

Thus, the present method available to a party seeking a change of judge either requires the judge to voluntarily recuse himself after an informal hearing why such recusal is desired by the moving party, or the moving party must set forth the grounds for recusal in an affidavit, the sufficiency of which is determined by another judge. It is interesting to note that a judge cannot hold a party or lawyer in contempt for filing a motion to disqualify.

This procedure is wholly inadequate for several reasons. First, an overwhelming burden is placed on the movant to show bias. Evidence of such bias is often known only to the allegedly biased judge himself. What party is foolhardy enough to seek such evidence from the one who, if the motion fails, will hear the case?

Second, the realization by the potential movant that bringing such a challenge will probably result in alienating the trial judge discourages even the most meritorious motions. (Baron, Roger M., "A Proposal for the Use of Judicial Peremptory Challenge System in Texas," 40 Baylor Law Review 49 (1988).) Bringing a motion for change of judge places the litigant in the position of making embarrassing accusations about the judge. Because bias is so difficult to prove, bringing such a motion often only serves to anger the person who is about to decide the litigant's fate. The would-be movant for a change of judge feels it is better to remain quiet, no matter how unfairly he feels the judge will treat his case, than to face the arduous task of proving a virtually unprovable proposition.

A request for recusal or disqualification under the present system presents an inherent obstacle. The difficulty of its application appears obvious. When a judge accedes to a request for recusal, he is admitting his personal prejudices. Such an admission is totally inconsistent with his professed position of impartiality. No judge desires to have his impartiality questioned. A system which requires accusations of bias, prejudice or impropriety serves to offend judges. There is a chilling effect upon the movants.

The present system is costly to both the litigants, the court system and, ultimately, the taxpayers. Time and money, both precious and scare judicial resources, are wasted litigating the personal aspects of judges' careers and lives. This time and money would be much better spent on the merits of the controversy itself. As the number of judges of this State increase, a difference system for a change of judge is required.

House Bill 3047 proposes a system which would grant any litigant, or one of a class of litigants in a case, a change of judge without a showing of cause. All a moving party need do is apply for a change of judge, in writing, within 30 days after the answer is due if the judge has been designated. If the judge has not been designated by the time the answer is due, the application must be

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filed no later than 30 days after the judge is designated. If the designation of the judge occurs less than 30 days before trial, the application must be submitted before the trial begins.

This procedure would give each class of litigants in a case the right to a change of judge. Any embarrassment on the part of the judge is avoided. The movant need not worry about repercussions resulting from his moving for a different judge. Judicial resources are spared. The tedious job of determining if bias or prejudice exists is no longer necessary. Perhaps most importantly, the citizens who use the Courts have more confidence in a system where they may have a change of judge if they perceive bias.

Some may question whether a legislative enacted statute that determines when one may move for a change of judge is an unconstitutional abrogation of the doctrine of separation of powers. Indeed, some states have struck down such statutes on that bias. (Johnson vs. Goldman, 94 Nev. 6, 575 P2d 929 (1978).) However, in State vs. Holmes, 106 Wis. 2d 31, 315 NW2d 703 (1982), the Wisconsin Supreme Court upheld such a statute, finding the parties' feelings of fairness to be important in the administration of justice. The Court also noted other states had successfully adopted such systems.

Particularly important in the decision was the Court's reasoning. The system (peremptory challenge) was not proven to materially impair the functioning of the the judicial system. The statute was a constitutional exercise of the State Legislature's power to ensure litigants a fair trial. A fair trial, concluded the Court, includes both the actuality and the appearance of fairness under the Wisconsin Constitution and the Fourteenth Amendment of the United State Constitution.

Although Canon 3(c) of the Canons of Judicial Conduct require a judge to disqualify himself from a case where his impartiality might be reasonably questioned, the proposed procedure eliminates the burden of analyzing the possible bias a judge may have in a case when a party moves for a change of judge. A judge may still disqualify himself under Canon 3(c) without such a motion.

The thirty day time limit removes the possibility that a party will move for a change of judge as a stalling tactic. If HB 3047 is adopted, cases where bias is suspected will actually move quicker through the system due to the absence of hearings and applications for extraordinary writs to determine a judge's impartiality.

Another objection which may be leveled at this bill is that it permits "judge shopping". This is impossible in the present system. The litigants have no choice or input into the assignment of a new judge. It is done by random selection.

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Additionally, some opponents of this type of procedure assert that specific judges may be targeted by conspiring attorneys, thereby leaving such judges little or no work. The tremendous backlog of cases present today suggest this would not be the case. There would be an abundance of cases to supply such a judge if, in fact, such a conspiracy could be put together, which is doubtful.

The method of HB 3047 is the most efficient and removes the personalities of the litigants, attorneys and judges from the process.

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House Bill No. 3047
House Judiciary Committee
March 21, 1990

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Mr. Chairman:

I appreciate the opportunity to appear today to discuss House Bill No. 3047, which provides that a change of judge shall be ordered in any civil action upon the filing of a written application therefor by any party or by such party's agent or attorney. The application need not allege or prove any cause for such change of judge and need not be verified.

This procedure, if approved, would include all Chapter 60 cases including domestic relations, limited actions, small claims, and even probate matters. Under these categories of cases, last year the impact of this procedure would have affected approximately 150,000 cases. It is our understanding of the bill it would not include criminal, traffic, fish and game, or juvenile cases.

This bill allows each party an opportunity to disallow a judge for no cause. If one party had the chance, it would not be too bad; we could reassign a judge. But when such party has this chance and can continue for as many parties as there are in each case, this causes us concern. For example, if there were ten parties in a case, we would end up assigning eleven judges.

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Attachment II

We already have K.S.A. 20-311, which covers disqualification of judges, and K.S.A. 20-311d, for procedures on changing judges.

We feel this procedure would cause case delay in our system, and our established time standards would become totally ineffective. It would also have an adverse impact on our budget by increasing the cost of judge assignments. Last fiscal year we completed approximately 300 assignments at a cost of about $25,000. This procedure would increase both the assignments and costs.

On lines 38-40 on page one, the language reads that in a single-judge district, the judge shall request the supreme court to transfer a judge to try such cause or, if the parties so stipulate, call in another judge agreed upon by the parties. We have three judicial districts that have only one district judge.

On lines 41-43 on page one, the language reads that in a district in which there are two or more judges, the judge shall transfer the civil action to another judge in the same district or request the supreme court to transfer a judge. Currently, we have six judicial districts where there are only two district judges, and twenty-two judicial districts where there are three or more district judges.

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Att II

We oppose this judge-shopping bill and urge the committee to report the bill adversely.

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Att II

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ADMINISTRATIVE OFFICES OF THE DISTRICT COURT
EIGHTEENTH JUDICIAL DISTRICT
ROOM 1136 11TH FLOOR
525 N. MAIN
WICHITA, KANSAS 67203

Michael Corrigan
Administrative
Judge

(316) 268-7302

March 12, 1990

Representative Michael R. O'Neal
House of Representatives
State Capitol Building
Topeka, KS. 66612

Dear Representative O'Neal:

I understand that House Bill No. 3047 is presently being considered by the House Judiciary Committee. This bill would permit any one of various litigants to have an assigned judge removed from a lawsuit with no reason being required.

Under the terms of this bill, up to five different judges could be removed in certain cases.

This bill would allow blatant judge shopping and deal making by litigants and would make a mockery of our judicial process.

Because the Sedgwick County District Court uses the Central Assignment System, a judge is frequently not assigned to try a particular case until just prior to trial. To allow litigants to reject the assigned trial judge at that late date would have a disastrous affect on our trial docket.

I respectfully solicit your support to reject this ill-conceived bill.

Sincerely,

Michael Corrigan
Administrative Judge

MC/er

3/21/90
H. Jud Com.

Attachment III

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 OF
DEPUTY ATTORNEY GENERAL ARTHUR R. WEISS
ON BEHALF OF ATTORNEY GENERAL ROBERT T. STEPHAN
TO THE HOUSE JUDICIARY COMMITTEE

RE: S.B. 219

MARCH 21, 1990

Mr. Chairman and Members of the Committee:

On behalf of Attorney General Robert Stephan I wish to take this opportunity to address this committee concerning Senate Bill 219. The Attorney General wishes to express his support for this bill.

Under Senate Bill 219, a child who is convicted of either a traffic offense or adjudged to be a juvenile offender by reason of an act involving any alcoholic beverage or controlled substance or both would be required to surrender his or her driver's license. The Division of Motor Vehicles would then revoke the driving privileges of that child. The child could petition the court to have driving privileges restored no sooner than 90 days after the revocation upon a first offense and no soon than one year after revocation upon a second or subsequent offense. The court would have discretion as to whether or not the child's driving privileges

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Attachment IV

should be restored and could require the child to complete a driver's license examination.

There is a connection between the abuse of drugs and alcohol and the propensity of a juvenile to commit crime. We must remember that driving is a privilege not a right in the State of Kansas. Those who abuse that privilege, particularly through the use of illegal drugs or the consumption of alcohol, should not be allowed to endanger themselves or others.

The Attorney General believes this bill takes a necessary and positive step forward for Kansas in recognizing and dealing with the serious problems faced by our youth in dealing with drug and alcohol abuse.

Thank you very much for this opportunity to appear on behalf of this bill.

S.B. 219

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Att IV

TESTIMONY

House Judiciary Committee
March 21, 1990

SUBSTITUTE FOR SENATE BILL NO. 219

Mr. Chairman and Members of the Committee:

I represent the Kansas Alcohol and Drug Addiction Counselors Association, the Kansas Association of Alcohol and Drug Program Directors and the Kansas Community Alcohol Safety Action Project Coordinators Association. These individuals and organizations crisscross our State to offer professional assistance for those persons who are afflicted with that fatal illness of alcoholism and drug addiction. We support the proposed legislation in Senate Bill No. 219 as another means of curbing the rampaging use of alcohol and drugs with our Kansas youth. This proposed legislation will create a hardship on that young person's living style by eliminating their Kansas driving privileges. In our observation, the youth of our State are quite mobile and exercise their privilege to drive to a great extent. Some of this driving is necessary, such as a farm youth in a rural area and essential for educational purposes. Sandwiched in between those essential driving are the pleasures of the youth that some of us long have since forgotten.

This proposes legislation would provide a carrot for that young Kansan and also further their education by having them, after an evaluation, complete an alcohol and drug education program or treatment program which is recommended by that evaluation. Upon successful completion of this Court ordered program, the offender at that time would be eligible for some limited driving privileges.

In short, we are sending the message to our youth of Kansas that they have broken the law and there is a penalty. However, that penalty may be substantially reduced if they cooperate in furthering their own alcohol and drug education and/or treatment.

Respectfully Submitted,

Gene Johnson

Gene Johnson
Lobbyist
Kansas Alcoholism and Drug Addiction Counselors Association
Kansas Association of Alcohol and Drug Program Directors
Kansas Community Alcohol Safety Action Project Coordinators Association

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Attachment V

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STATE OF KANSAS

LANA OLEEN
SENATOR, 22ND DISTRICT
RILEY AND GEARY COUNTIES

LEGISLATIVE HOTLINE
1-800-432-3924

TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
CHAIRMAN: GOVERNMENTAL ORGANIZATION
VICE-CHAIRMAN: CONFIRMATIONS
LABOR, INDUSTRY AND SMALL BUSINESS
MEMBER: ASSESSMENT AND TAXATION
ECONOMIC DEVELOPMENT
JUDICIARY
LEGISLATIVE EDUCATIONAL PLANNING COMMITTEE
CHILDREN AND YOUTH ADVISORY COMMITTEE
JOINT COMMITTEE ON ARTS AND CULTURAL RESOURCES

HOUSE JUDICIARY COMMITTEE

March 22, 1990

Senate Bill 231

Chairman O'Neal and Members of the Committee:

I had planned to testify yesterday, but the Senate session ran until after your meeting's adjournment.

I appreciate the opportunity to share a few comments with you regarding Senate Bill 231. The Senate Judiciary Committee had several factions of child advocates lend support to the bill. Persons involved in the judicial, social services, and private sectors have shared their comments regarding the new provision making it a class B misdemeanor for any adult member of a household to fail to report sexual or other abuse of a child living within the same household.

As a member of the Child and Youth Advisory Committee (which specifically deals with child abuse prevention), and as Chairman of the Kansas Family & Children Trust Fund Sub-committee, I have had experience in dealing with child abuse and neglect.

It is my belief that this bill sends a message of providing further protection for our most vulnerable --- our Kansas kids. I urge your favorable consideration of this legislation.

1631 FAIRCHILD
MANHATTAN, KANSAS 66502
(913) 537-7718

STATE CAPITOL, ROOM 143-N
TOPEKA, KANSAS 66612
(913) 296-7360

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H. Jud Com

Attachment VI

STATE OF KANSAS

WINT WINTER, JR.
SENATOR, SECOND DISTRICT
DOUGLAS COUNTY
737 INDIANA
BOX 1200
LAWRENCE, KANSAS 66044

STATE CAPITOL, ROOM 120-S
TOPEKA, KS 66612-1594
(913) 296-7364

LEGISLATIVE HOTLINE:
1-800-432-3924

TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
CHAIRMAN: JUDICIARY
VICE-CHAIRMAN: WAYS AND MEANS
MEMBER: JOINT COMMITTEE ON ECONOMIC DEVELOPMENT
JOINT COMMITTEE ON SPECIAL CLAIMS AGAINST THE STATE
ECONOMIC DEVELOPMENT
KANSAS JUDICIAL COUNCIL

HOUSE JUDICIARY COMMITTEE

SB 628

This bill was introduced as a response to the August 6, 1989 vandalism to the Holy Family Catholic Cemetary in Eudora, KS. During this incident, an estimated $15,500 worth of damage was caused when vandals painted symbols on grave markers and broke crosses from the tops of tombstones.

Current law allows damage resulting in the defacing of a cemetary as a Class A Misdeanor which carries a maximum punishment of a year in jail. Other property vandalism is considered a felony and could result in a prison sentence. Prosecutors are not able to charge a felony under the criminal destruction of property law for the reason that the civil law provides that cemetary headstones are essentially owned by the deceased; a cemetary association or parish such as this has no legal ownership interest in the headstones to allow a charge under the criminal destruction of property act since there is no living "owner."

This bill would enable vandals to be convicted of a felony and sentenced up to 3 years if the damage is in excess of $500 or to be convicted of a Class A Misdeanor if the damage is less than $500.

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3/21/90
H. Jud. Com.
Attachment VII

KANSAS ASSOCIATION OF COURT SERVICES OFFICERS

KACSO

M E M O R A N D U M

TO: Judiciary Committee

FROM: Cathy Leonhart, Legislative Chairperson

RE: SB 725: An act concerning public health labortory testing

The individuals that Court Services Officers supervise while on probation are all too often abusing chemicals. It is frequently a condition of probation that random urinalysis be done to monitor this problem. We are asking that we be exempt under the definition of "laboratory" in 65-1,108 for the purpose of doing internal screening for case management purposes. Community corrections programs, which have virtually the same responsibilities as Court Services, are currently exempt. These tests are not to be used for show cause and revocation. If a test was positive, it would be sent on to an approved "laboratory" for confirmation.

It is very costly to send all tests out to an approved lab as there is often a flat rate regardless of whether the test is negative or positive. Internal screening would eliminate doing expensive testing on negative screens. It saves a good deal of time and also has a certain psychological advantage. When a probationer knows the test is going to tell you something immediately, as opposed to forty-eight hours to one week later, he or she is more likely to admit using. The admission is more valuable than the test.

The exemption allows the Office of Judicial Administration to explore the most accurate and financially reasonable method of testing as funding options become available statewide.

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3/21/90
H. Jud Com.

Attachment VIII

State of Kansas
Mike Hayden, Governor

Department of Health and Environment
Kansas Health and Environmental Laboratory
Forbes Field, Bldg. 740, Topeka, KS 66620-0002

Stanley C. Grant, Ph.D., Secretary

(913) 296-1620
FAX (913) 296-6247

Testimony presented to
House Judiciary Subcommittee

by

The Kansas Department of Health and Environment

Senate Bill 725

In 1988, the legislature amended KSA 65-1,107 and 65-1,108 to require approval of laboratories performing tests for drugs listed under schedule I and II of the uniform controlled substances act. The approval process requires monitored collection, chain of custody and laboratory quality controls including qualified analysts, standard analytical methods, internal quality assurance, confirmation of positive results, successful performance on external performance evaluation audits and an annual on-site inspection. These requirements assure the accuracy of drug test data which is now used for a wide variety of purposes which include clinical diagnosis and treatment, insurability, sports participation and pre-employment evaluations.

In contrast to the above requirements, some drug test technology is now marketed as being accurate without the controls outlined above. Unfortunately, in an effort to market drug testing at low cost, even elementary quality control is often inadequate in these systems and positive screening results are almost never confirmed by definitive reference methods. In light of the substantial variety of specific drugs and classes of drugs of abuse, both false positive and false negative results can be produced.

The questions before this committee include the important issues of whether we are comfortable with the enormous proliferation of drug testing which has now occurred and whether we are willing to accept two different levels of data quality. Drug screening tests are now performed in a variety of non-laboratory locations such as physician offices, major industries, drug treatment centers and in the criminal justice system. We do recognize that there may be certain limited circumstances where conspicuous drug testing may be a deterrent to drug use and that, under these circumstances, the absolute quality of the test result may be less important than the availability of such tests. The department of corrections, office of judicial administration, and community corrections programs have sought exemptions from statutory requirements in order to conduct tests for management purposes only on inmates, parolees and probationers. It is understood that such test results will not be used for revoking or denying parole or probation. The KDHE recommends that any exemptions granted be limited to specific purposes so that the intent of the statute to assure the quality of laboratory data is not seriously weakened.

Testimony presented by: Dr. Roger H. Carlson, Director
Kansas Health and Environmental Laboratory
March 21, 1990

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H. Jud Com.
Attachment IX

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) 296-1620

TESTIMONY TO THE HOUSE JUDICIARY COMMITTEE ON SB 725
ROGER WERHOLTZ, DEPUTY SECRETARY OF CORRECTIONS
COMMUNITY AND FIELD SERVICES DIVISION
MARCH 21, 1990

The Department of Corrections supports the amendment to Senate Bill 725 as recommended by the Department of Health and Environment. This amendment will allow parole officers in the field to administer urinalysis tests to individuals under their supervision. Urinalysis testing will be used as a management tool to identify those individuals who have, or are experiencing a drug use and/or drug abuse problem, and when appropriate, make necessary referrals for treatment as an alternative to revocation. However, if revocation is pursued, a urinalysis test that has tested positive shall be sent to a certified laboratory for confirmation.

The amendment also continues the authorization to use field tests in institutions to determine if inmates are using controlled substances. This is necessary to effectively operate and maintain control over the inmate population and provide institutional security.

3/21/90
H. Jud. Com.

Attachment X

TESTIMONY

HOUSE JUDICIAL COMMITTEE

March 21, 1990

SENATE BILL NO. 725

Mr. Chairman and Members of the Committee:

I represent the Kansas Alcohol and Drug Addiction Counselors Association, the Kansas Association of Alcohol and Drug Program Directors and the Kansas Community Alcohol Safety Action Project Coordinators Association. These individuals and organizations crisscross our State to offer professional assistance or those persons who are afflicted with that fatal illness of alcoholism and drug addiction. Our organizations would support Senate Bill No. 725 provided that language would be amended into this particular bill to correct a problem that currently exists with some of our alcohol and drug treatment programs. Under current regulations the methods of testing for illegal substances and alcohol are not recognized by the Health and Environment Department which regulates State laws and also Federal laws. Some of these programs have invested a considerable amount of funds into drug testing equipment which is useless to them at this time.

On March 20, 1990, various representatives of the Alcohol and Drug Abuse Services of Social and Rehabilitation Services, a member of the Department of Health and Environment and members of the Kansas Association of Alcohol and Drug Program Directors convened at the conference room with the Alcohol and Drug Abuse Services. During this meeting, language was discussed and a proposed amendment was approved by all interested parties at that meeting.

Attached to my testimony is a rough balloon which would solve the problems that are now being experienced by various licensed alcohol and drug treatment programs in the State of Kansas. We urge this committee to adopt the proposed language and approve this bill favorable for passage.

Respectfully Submitted,

Gene Johnson

Gene Johnson
Lobbyist
Kansas Alcoholism and Drug Addiction Counselors Association
Kansas Association of Alcohol and Drug Program Directors
Kansas Community Alcohol Safety Action Project Coordinators Association

3/21/90
H Jud Com.

Attachment XI

As Amended by Senate Committee

Session of 1990

SENATE BILL No. 725

By Committee on Judiciary

2-20

AN ACT concerning public health laboratory testing; relating to the validity of tests; amending K.S.A. 1989 Supp. 65-1,108 and repealing the existing section.

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

Section 1. K.S.A. 1989 Supp. 65-1,108 is hereby amended to read as follows: 65-1,108. (a) It shall be unlawful for any person or laboratory to perform prenatal serological tests for syphilis, serological tests for human immunodeficiency virus or tests for controlled substances included in schedule I or II of the uniform controlled substances act unless the laboratory in which such tests are performed has been approved by the secretary of health and environment to perform such tests. Any person violating any of the provisions of this section shall be deemed guilty of a class B misdemeanor.

(b) As used in this section and in K.S.A. ~~1988~~ *1989* Supp. 65-1,107 and amendments thereto, "laboratory" shall not include: (1) The office or clinic of a person licensed to practice medicine and surgery in which laboratory tests are performed as part of and incidental to the examination or treatment of a patient of such person; (2) the Kansas bureau of investigation forensic laboratory; (3) urinalysis tests for controlled substances performed ~~by the department of corrections for institutional management purposes on inmates in the custody of the secretary of corrections and incarcerated in a correctional institution or facility under the jurisdiction of the secretary of corrections~~ *only for management purposes on inmates, parolees or probationers by personnel of the department of corrections or office of judicial administration and which shall not be used for revoking or denying parole or probation*; ~~or~~ *or* (4) urinalysis tests approved by the secretary of corrections for controlled substances performed by the community corrections programs; ~~or~~ *~~(5) urinalysis tests approved by the Kansas supreme court, office of judicial administration, for controlled substances performed by the court services programs~~.*

Sec. 2. K.S.A. 1989 Supp. 65-1,108 is hereby repealed.

or (5) Urinalysis tests performed for management purposes only by personnel of alcohol and drug treatment programs which are licensed or certified by the Secretary of Social and Rehabilitation Services.

3/21/90 H Jud Com Att XI 2

STATE OF KANSAS

MIKE HAYDEN, *Governor*

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

ALCOHOL AND DRUG ABUSE SERVICES

300 SW Oakley, Topeka, Kansas 66606-1861

☎ (913) 296-3925

TO: House of Representatives
Committee on Judiciary

FROM: Commissioner O'Donovan
SRS/Alcohol and Drug Abuse Services

SUBJ: Senate Bill 725

DATE: March 21, 1990

SRS/Alcohol and Drug Abuse Services is very much in favor of the proposed amendment to SB 725 which would allow alcohol and drug treatment programs the ability to test clients for management purposes, just as the Department of Corrections and the Office of Judicial Administration.

The amendment suggested by the Department of Health and Environment and the Alcohol and Drug Program Directors Association would enable drug treatment facilities to closely monitor clientele and maintain the drug-free environment which is necessary to rehabilitation. It would also allow the operators to accomplish these goals in an affordable and cost-effective manner.

Your support of this amendment is appreciated.

Further information can be provided by SRS Alcohol and Drug Abuse Services at 296-3925 if desired.

AOD:RM:es

TOWARD A DRUG-FREE KANSAS

3/21/90
H. Jud Com.

Attachment XII