

Approved January 30, 1990

Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Wint Winter, Jr. at
Chairperson

10:00 a.m./~~p.m.~~ on January 22, 1990 in room 514-S of the Capitol.

All members were present except: Senator Moran who was excused.

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Eric Witkoski, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee
Conferees appearing before the committee:

David Rodeheffer, Ph.D., Kansas Psychological Society
Julie Hein, Kansas Association for Marriage and Family Therapy
Rick Kittel, Assistant Appellate Defender, Appellate Defender Office
Chip Wheelen, Kansas Psychiatric Society
Charles Kent Pomeroy, Topeka attorney

The Chairman reopened the hearing on SB 425.

SB 425 - Defining certain crimes relating to sexual exploitation by mental health service providers and prescribing punishments therefor.

David Rodeheffer, Ph.D., Kansas Psychological Society, testified in support of SB 425, (ATTACHMENT I) with proposed amendments to increase the effectiveness of enforcement. (ATTACHMENT II)

Julie Hein, Kansas Association for Marriage and Family Therapy, testified on SB 425 as neither an opponent or a proponent. She stated the Association has serious concerns about the constitutionality and effectiveness of this legislation. (ATTACHMENT III)

Rick Kittel, Assistant Appellate Defender, Appellate Defender Office, testified in opposition to SB 425. (ATTACHMENT IV)

Chip Wheelen, Kansas Psychiatric Society, offered the Society's testimony on SB 425. (ATTACHMENT V) Mr. Wheelen offered amendments to current law as possible remedy to the situation. (ATTACHMENT VI) He further stated that the Society would most likely request introduction of legislation through the Committee on Financial Institutions and Insurance that addressed their needs and concerns.

This concluded the hearing for SB 425.

The Chairman turned the committee's attention to committee discussion and possible action on HB 2347.

HB 2347 - concerning certain common nuisances; party shacks described as common nuisances.

Charles Kent Pomeroy, Topeka attorney, representing certain landlord interests, responding to questions by the Committee, stated the local and state landlord associations were pleased with the direction of the bill, but wanted to make sure the language is clear to the courts and judges of legislative intent. He renewed support of Representative Roy's proposed amendments (ATTACHMENT VII) but suggested the addition of the language "under the circumstances" to the section regarding seizure of property in order to give the court more discretion in case-by-case application.

A second point Mr. Pomeroy expressed for the landlords association is the validity of the 14 to 30 day notice if the tenant is in violation of the lease or other violations of the Landlord Tenant Act. The associations feel the burden of proof lies too heavily with the landlords and if abatement is not achieved in 14 days, why give an additional 16 days for the problem to continue?

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.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514 S, Statehouse, at 10:00 a.m./~~p.m.~~ on January 22, 1990.

The third and final point Mr. Pomeroy felt needed brought to the committee's attention regards the formal notification of warrant execution, the association feels that it would be fair to include with the property owner the contract purchasers and mortgagees.

Senator Gaines moved to amend HB 2347 using Representative Roy's balloons as the guideline of intent with the concept of allowing courts to interpret the property owner's involvement by including language to allow for circumstances on a case-by-case basis. Senator Martin seconded the motion. The motion carried.

Senator Gaines moved to amend HB 2347 by creating in each subsection regarding a bona fide attempt to abate such a nuisance, to specifically say that among other things, a report to a law enforcement agency about the violations is a bona fide attempt to abate, creating a "safe harbor." Senator Kerr seconded the motion. The motion carried.

The meeting was adjourned.

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: January 22, 1990

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Lee James	771 Elm	Central Jr. High
David C. Rodick	Topeka	Ks Psychological Ass
Rick Kittel	1031 Kansas Ave	Appellate Defender Office
Laura Egan	Topexa	NOTE
Rick Sabel	204 W. 5th	F.O.P.
Chip Wheelen	Topeka	Ks Psychiatric Soc.
Mindie Rice	Maple Hill	NOTE
Joseph F. Koser	Topeka	KOITF
Mike Miller	Topeka	City of Topeka
Julie Hein	Topeka	Hein & Ebert/KRIST
Cathy Pao	"	KDITE
Cole & Forbes	312 Lawrence Ave, Lawrence	Page
Adaine Maskey	Topeka	Atty General Office
Matt Truell	Topeka	AD
Brod Smoot	"	KCTR
Kevin Kelley	OP	SUN
Linda J. DeCunzio	Topeka	Ks Psychologist Assn
Richard Morrissey	Topeka	NOTE
Jim Smith	Topeka	Observer
Tom Stanley	"	Atty General
Dawn & Flora	431 Woodland Top	Shawnee Co. Landlord
Charles Pomeroy	935 Western Topeka	Shawnee Co. Landlord Assn Associated Landlord of Ks
KEITH R. LANDIS	TOPEKA	CHRISTIAN SCIENCE COMM ON PUBLICATION FOR KANSAS
CAROL WHEELER	KSNT - Topeka	KSNT-TV
BILL MISKELL	TOPEKA	KBO Corrections

January 22, 1990

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GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 1-22-90 (2)

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
David McKune	400 Jackson Topeka	Dept. of Corrections
Ron Smith	Ks Bar Assoc	Topeka
R. Froy	Topeka	K.T.H.A.
John Henry	Legis Topeka	57th
Frank Haste	RDHE Topeka	RDHE
Wayne L. Stuenkel	Topeka	Topeka P.D.
Jean Clark	Topeka	Topeka
Ruth Rice	Topeka	Topeka
Jean Clark	Topeka	KCPA



KANSAS PSYCHOLOGICAL ASSOCIATION

Testimony - Senate Bill 425

1/18/90

Members of the committee, I am Dr. David C. Rodeheffer, and am speaking today on behalf of the Kansas Psychological Association, its President, Dr. Joseph Weaver and its Board of Directors. I would like to thank-you for allowing us this time to comment on this proposed legislation regarding sexual exploitation by mental health service providers.

We would like to offer strong support for this legislation. The emotional ties that a patient develops towards a mental health provider are such that the patient can easily be led into actions that later can have devastating effects on their psychological health. In addition, most consumers lack the knowledge necessary to make an informed choice as to what constitutes appropriate and professional mental health treatment. For these and other reasons, both the Kansas Psychological Association and our national affiliate, the American Psychological Association take strong stands against any type of sexual contact between the psychologist and his/her patient.

We believe that Senate Bill 425 is a necessary and helpful step in the direction of dealing with this issue. First of all, we believe that criminal sanctions against this behavior are the most appropriate step. Statutes that facilitate the reporting of such behavior on the part of providers or that facilitate civil litigation against the provider, are inadequate, in our opinion, to deal with the issue. Secondly, the broad definition of "mental health service provider" is helpful in giving the consumer some recourse against non-licensed and non-registered providers. While most professional organizations and licensing boards impose sanctions on offending professionals, the provider who is neither associated with an official organization nor recognized through state statute currently operates with immunity in this area.

We would like to propose a few additions and changes in the bill that would, we believe, make its enforcement more effective. Firstly, in New Section 1, subsection (1) (a), we would propose adding registered masters level psychologist to the list of providers named under the definition of "mental health service provider". This would simply make the list of statutorily recognized providers more complete.

Under New Section 1, subsection (1), paragraph (c) we would propose deleting "... the mental health service provider knows or has reason to know that..." (lines 33 - 34). Our position is that presence of "emotional dependence" should be defined by the nature of the relationship that is present between the provider and the patient regardless of whether or not the provider has such knowledge or awareness. In that same paragraph, we would also propose the deletion of the words "...significantly impaired..." (line 34) and insert in their place the word "limited". The dependency ties that develop in

this type of relationship are often subtle and may not manifest themselves with "significant impairment". We are concerned that too many perpetrators would defend themselves by attempting to show that the patient evidenced no gross defect in their judgement capacities. Yet, this unethical behavior occurs even when it might appear that the patient's judgement is not significantly compromised. Nonetheless the behavior is just as unethical and damaging.

We would propose the elimination of the phrase "for remuneration" in lines 38, 41, and 43 in New Section 1 page one. Our concern is that the inclusion of such a phrase might inadvertently eliminate sexual contact by providers who are offering their services for no fee, either as a representative of some non-fee agency or as a pro-bono case.

Under New Section 1, subsection (2) paragraph (a), we would propose deleting "...and the sexual contact occurred during the psychotherapy session;" (lines 19 - 20, page 2) and insert "...at any time during the period that the patient was seeing the provider for mental health services". Any sexual contact that occurs while the patient is in treatment is detrimental to the patient and is unethical conduct on the part of the provider, whether that contact occurs within or outside of the therapy hour. The nature of the "emotional dependency" that develops in this type of relationship extends beyond the therapy hour. As long as the patient is in treatment, sexual contact at any time is harmful.

We believe that these proposed changes will strengthen the enforcement of this legislation. We would like to reiterate our strong support for these measures and would encourage the committee at some point to consider sexual contact in other fiduciary relationships. Research has suggested for example that sexual contact between obstetricians, general practitioners and internists and their patients may be as high or higher than that between psychiatrists (and other mental health professionals) and their patients.

Thank-you for your time. I have attached a copy of the changes as proposed. I would be glad to answer any questions now or at a later date.



KANSAS PSYCHOLOGICAL ASSOCIATION

Proposed Changes to SB 425

New Section 1 Paragraph (1)(a) line 21 "...nurse, professional counselor, **registered masters level psychologist**, social worker, ..."

New Section 1 Paragraph (1)(c) "emotionally dependent" means that the nature of the patient's or former patient's emotional condition and the nature of the treatment provided by the mental health service provider are such that ~~the mental health service provider knows or has reason to know that~~ the patient or former patient is **significantly impaired limited** in the ability to withhold consent to sexual contact or sexual intercourse by the mental health service provider;

(d) "...obtains mental health services ~~for remuneration~~ from a mental health service provider ..."

(e) "...obtained mental health services ~~for remuneration~~ from a mental health service provider ... who was not obtaining mental health services ~~for remuneration~~ from such ..."

New Section 1 (2)(a) The offender is a mental health service provider and the victim is a patient of the mental health service provider and the sexual contact occurred ~~during the psychotherapy session~~ **at any time during the period that the patient was seeing the provider for mental health services.**

**SENATE JUDICIARY COMMITTEE
TESTIMONY RE: SB 425**

**PRESENTED BY KANSAS ASSOCIATION
FOR MARRIAGE AND FAMILY THERAPY
January 22, 1990**

My name is Julie Hein. Ron Hein and I represent the Kansas Association for Marriage and Family Therapy, which is an association of members who have met the strict certification requirements of the American Association for Marriage and Family Therapy. These qualifications include either a Masters or Doctorate level degree, supervised clinical counseling, and numerous other requirements. Although marriage and family therapy as a profession has been around since 1942, states have only recently begun to recognize the need to license marriage and family therapists. Nine states have licensed marriage and family therapists in the last three years bringing the total of states with licensing to 20. Marriage and family therapists are also recognized as a separate and distinct profession by the federal government and by CHAMPUS, which insures approximately 8,000,000 Americans.

The Association generally supports prohibitions on sexual conduct between a marriage and family therapist and his or her patient. In states that license marriage and family therapists, revocation of licensure is deemed to be an appropriate remedy.

The issue becomes stickier when states attempt to deal with sexual exploitation by therapists with criminal penalties. Criminal statutes obviously must meet additional constitutional burdens beyond those set out for civil or administrative remedies. Included among these is the issue of vagueness.

With regards to SB 425, mental health service providers include "marriage or family therapists." However, there is absolutely no definition of marriage or family therapists in the statute or in any other statutes in the state.

SB 257, currently before Senate Public Health and Welfare, provides for credentialing of marriage and family therapists, all of whom have Masters and Doctorate level degrees.

It is currently legal for anybody, regardless of training or qualifications, to practice marriage and family therapy in Kansas. SB 425 does absolutely nothing to keep unqualified people from practicing marriage and family therapy.

While we do not condone any sexual exploitation by any professional therapist against any patient, we would note that SB 425 is an effort to punish the person only after the offense has been committed, and in addition, only after the offense has been reported. Due to confidentiality requirements on mental

health providers, and for numerous other reasons, reporting is already a problem. When dealing with currently unlicensed individuals, whether those persons who are properly trained to hold themselves out as marriage and family therapists or not, there is no board or entity to report to.

Even after an individual has been convicted, there is nothing in this act that prevents the individual from continuing the activity so long as they are not a licensed practitioner. With regard to licensed practitioners, the board can suspend or revoke their license and utilize injunctive relief to keep them from practicing. With unlicensed individuals, there are no such procedures available.

Based upon these concerns, we do not oppose the concept of a criminal penalty for sexual exploitation, but we have serious concerns about both the constitutionality and the effectiveness of SB 425. We believe that the answer to the problem of sexual exploitation is more likely to be achieved by a multi-faceted approach, which includes licensing educated mental health professionals, prohibiting untrained individuals from practicing in the mental health field, setting minimum standards and qualifications at the state level, giving strong enforcement powers to the licensing or regulating boards, and then, perhaps including criminal penalties as part of a comprehensive plan. Setting minimum qualifications to practice in the mental health arena should be the first line of defense. Licensing or registering marriage and family therapists in addition to the other licensed mental health professionals would provide a licensing board that can take away the privilege of providing mental health services. We believe this to be a greater penalty, more efficient, easier to enforce, and more effective than a criminal penalty standing alone.

We have numerous other concerns about the effectiveness and practical workability of this bill. Terms are not adequately defined. Apparently M.D.s who are only providing physical treatment are excluded. Are lawyers included? But in the interest of time we will not get into all of those areas.

Thank you very much for hearing our views on this matter today, and I would be happy to yield for any questions.

FROM: Rick Kittel
Assistant Appellate Defender
Appellate Defender Office
RE: SB 425

Summary of Testimony in Opposition

1. There are presently statutes contained in Article 35 of Chapter 21 of the Kansas Statutes Annotated which could be used in the situations contemplated by SB 425.
2. There are already criminal statutes prohibiting the acts contemplated by SB 425 (e.g. rape, sexual battery, aggravated sexual battery), so prosecutors will charge these higher classes of felonies and ignore the crime of sexual exploitation by a mental health service provider. If a patient is significantly impaired he or she cannot give consent and such act would be prohibited by the rape and sexual battery statutes.
3. The term "professional counselor" as contained in New Section (1)(a) seems overly broad and could conceivably be interpreted to include job and career counselors, financial planning counselors, attorneys, etc.
4. What methods are contemplated to prove that a patient is "emotionally dependent" upon the mental health service provider?
5. Does this act purport to totally prohibit sexual contact and sexual intercourse between mental health service providers and their patients? (i.e. if parties involved are both consenting adults should such relationships be prohibited?)
6. This proposed crime risks wrongful prosecution of therapists by disgruntled patients who have become "emotionally dependent" upon therapists, or who have fallen in love with therapists, but whose sexual advances have been rejected by the therapists; or prosecution by patients who are not pleased with the results of their therapy sessions.
7. If the alleged victim in such cases is significantly impaired or needs treatment for cognitive, behavioral, emotional, mental, or social dysfunctions, this will present a problem regarding the competence of such a person to testify.
8. Will a new set of hearsay exceptions, similar to those used with child sexual abuse victims, be necessary for the prosecution this proposed crime?
9. There are other remedies -- loss of license and civil suit.



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January 18, 1990

TO: Senate Judiciary Committee

FROM: Kansas Psychiatric Society *Chip Wheelen*

SUBJECT: Senate Bill 425, As Introduced

We appreciate this opportunity to offer a few comments about the provisions of SB425 and the subject of sexual exploitation in general. As you may recall, during the 1989 interim committee hearings the KPS testimony stated that we are not opposed to additional or more stringent penalties when it can be proven that a psychiatrist or other provider of mental health service has sexually exploited a patient or client. This position is conditioned upon the caveat that the due process rights of the licensee must be preserved.

On the other hand, we believe there are important questions that should be answered before enacting legislation of any kind. First, is it our purpose to reduce the incidence of sexual exploitation or are we instead intent upon punishing those who are guilty of such transgressions? And second, are providers of mental health services the only ones in our State who exploit others during a time when the victim is particularly vulnerable?

As we stated last September, any physician who may be guilty of sexual misconduct is subject to disciplinary action by the Kansas State Board of Healing Arts including revocation of one's license. Furthermore, that same physician can be prosecuted for commission of a sex crime including rape, sexual battery, or aggravated sexual battery. These forms of redress are available under current law.

An argument can be made, however, that it's too easy to use consent as a defense under existing laws and that a person in therapy may readily consent to inappropriate intimacy because of a vulnerable emotional state. If this is the problem, then current law can be amended in a way that removes consent as a defense when the victim has a therapeutic relationship with the offender. Draft amendments to this effect are attached for your consideration.

But neither the attached amendments nor SB425 answer the equal protection question. Is the provider of mental health services to an emotionally vulnerable patient more likely to exploit than a lawyer who counsels a person who is in the process of divorcing his or her spouse? Perhaps we should consider methods of improving adherence to professional standards among all professions rather than inventing new laws designed to penalize a specific class of professionals.

Thank you for considering our concerns. We trust that you will exercise sound judgement in this matter.

CW:lg

ATTACHMENT V

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Article 35.—SEX OFFENSES

Law Review and Bar Journal References:

"Survey of Kansas Law Criminal Law," Robert A. Watson, 32 K.L.R. 395 (1984).

21-3501. Definitions. The following definitions apply in this article unless a different meaning is plainly required:

(1) "Sexual intercourse" means any penetration of the female sex organ by a finger, the male sex organ or any object. Any penetration, however slight, is sufficient to constitute sexual intercourse. "Sexual intercourse" does not include penetration of the female sex organ by a finger or object in the course of the performance of:

(a) Generally recognized health care practices, or

(b) a body cavity search conducted in accordance with K.S.A. 22-2520 through 22-2524, and amendments thereto.

(2) "Sodomy" means oral or anal copulation; oral or anal copulation or sexual intercourse between a person and an animal, or any penetration of the anal opening by any body part or object. Any penetration, however slight, is sufficient to constitute sodomy. "Sodomy" does not include penetration of the anal opening by a finger or object in the course of the performance of:

(a) Generally recognized health care practices, or

(b) a body cavity search conducted in accordance with K.S.A. 22-2520 through 22-2524, and amendments thereto.

(3) "Spouse" means a lawful husband or wife, unless the couple is living apart in separate residences or either spouse has filed an action for annulment, separate maintenance or divorce or for relief under the protection from abuse act.

(4) "Unlawful sexual act" means any rape, indecent liberties with a child, aggravated indecent liberties with a child, criminal sodomy, aggravated criminal sodomy, lewd and lascivious behavior, sexual battery or aggravated sexual battery, as defined in this code.

History: L. 1969, ch. 180, § 21-3501; L. 1983, ch. 109, § 1, July 1.

"Therapeutic relationship" means a contract or understanding between two persons wherein one of the persons receives for consideration a diagnosis, evaluation, or assessment of that person's physical or mental condition or receives any form of treatment, cure, or relief.

(5) "Counseling relationship" means a contract or understanding between two persons wherein one of the persons receives for consideration an evaluation or assessment of that person's interactions with others or receives any consultation or recommendation.

¶ (6)

21-3517. Sexual battery. (1) Sexual battery is ~~the~~ unlawful, intentional touching of the person of another who is not the spouse of the offender and who does not consent thereto, with the intent to arouse or satisfy the sexual desires of the offender or another.

(2) Sexual battery is a class A misdemeanor.
(3) This section shall be part of and supplemental to the Kansas criminal code.

History: L. 1983, ch. 109, § 13; July 1.

: ¶ (a) The

;
or
^

¶ (b) The unlawful, intentional touching of the person of another with the intent to arouse or satisfy the sexual desires of the offender or another, regardless of whether the person consents thereto when these exists a therapeutic or counseling relationship between the offender and the person.

21-3518. Aggravated sexual battery. (1) Aggravated sexual battery is:

(a) The unlawful, intentional application of force to the person of another who is not the spouse of the offender and who does not consent thereto, with the intent to arouse or satisfy the sexual desires of the offender or another;

(b) sexual battery, as defined in K.S.A. ~~1983-Supp.~~ 21-3517 and amendments thereto, against a person under 16 years of age;

(c) sexual battery, as defined in K.S.A. ~~1983-Supp.~~ 21-3517 and amendments thereto, committed in another's dwelling by one who entered into or remained in the dwelling without authority;

(d) sexual battery, as defined in K.S.A. ~~1983-Supp.~~ 21-3517 and amendments thereto, of a person who is unconscious or physically powerless; ~~or~~

(e) sexual battery, as defined in K.S.A. ~~1983-Supp.~~ 21-3517 and amendments thereto, of a person who is incapable of giving consent because of mental deficiency or disease, which condition was known by, or was reasonably apparent to, the offender.

(2) Aggravated sexual battery is a class D felony.

(3) This section shall be part of and supplemental to the Kansas criminal code.

History: L. 1983, ch. 109, § 14; July 1.

DRAFT

;
or
^

¶ (f) sexual battery, as defined in K.S.A. 21-3517(b) and amendments thereto when sexual intercourse or sodomy results from the sexual battery.

1 county or district attorney.

2 (7) The provisions of ~~this article~~ K.S.A. 22-3901 through 22-
3 3904, and amendments thereto, shall not limit nor otherwise affect
4 proceedings under ~~section 60-908~~ of the Kansas code of civil
5 procedure K.S.A. 60-908 and amendments thereto, but shall be
6 supplemental and in addition to, and not in lieu of, the remedy
7 provided by that ~~section~~ statute.

8 Sec. 3. K.S.A. 22-3904 is hereby amended to read as follows:
9 22-3904. (1) Upon final judgment that any real property is being or
10 has been used as a place where any of the unlawful activities set
11 forth in ~~section 22-3901~~ K.S.A. 22-3901 and amendments thereto
12 are carried on or permitted to be carried on, the court may order
13 that any house, building, room or other structure located on such
14 real estate be closed and padlocked for a period of not ~~less than~~
15 three months nor ~~more than two years~~, subject to modification in
16 the manner provided by ~~section 60-910~~ of the Kansas code of
17 civil procedure K.S.A. 60-910 and amendments thereto. The court
18 may require, as part of the judgment, require that the owner, lessee,
19 tenant or occupant enter into a bond to the state of Kansas, in such
20 amount and with security as the court may require, conditioned that
21 ~~he such owner, lessee, tenant or occupant~~ will not within a period
22 of two years use or permit ~~such real estate to be used~~ the use of
23 such real estate in violation of law. If any condition of such bond
24 shall be is violated, the whole amount may be recovered as a
25 penalty. In addition, the court may assess a civil penalty not to
26 exceed \$25,000 against any or all defendants, based upon the severity
27 of the nuisance and its duration. Such penalty shall be paid into
28 the county treasury, if recovered by a county or district attorney,
29 and into the city treasury, if recovered by a city attorney.

30 (2) Upon final judgment that any effects, equipment, parapher-
31 nalia, fixtures, appliances, musical instruments or other personal
32 property are designed for and have been used in carrying on any
33 of the unlawful activities set forth in ~~section 22-3901~~ K.S.A. 22-
34 3901 and amendments thereto, the court may order that such effects,
35 equipment, paraphernalia, fixtures, appliances, musical instruments
36 and other personal property be publicly destroyed by the sheriff or
37 other law enforcement officer ~~of the county~~ or that such personal
38 property be sold in the manner provided for sales in execution of
39 judgment.

40 (3) The proceeds of any sale of personal property pursuant to
41 subsection (2) shall be applied as follows:

42 (a) First, to the fees and costs of the removal and sale.

43 (b) Second, to the costs of closing the structure and keeping it
44

strike bracketed language

if the court finds that the owner of the property knew or should have known of the maintenance of a common nuisance on the property and did not make a bona fide attempt to abate such nuisance

1 closed.

2 (c) Third, to payment of the costs of the action.

3 (d) Fourth, to payment of any civil penalty imposed pursuant to
4 this section or any fine imposed for contempt in the proceedings.

5 (e) Fifth, to the owner of the personal property.

6 (4) Subject to the provisions of subsection (3), upon final judg-
7 ment for the state the court shall adjudge that ~~the defendant~~ pay
8 all costs, including a reasonable fee, ~~to be~~ fixed by the court, to be
9 paid to the prosecuting attorney. Such costs shall be a lien upon
10 any real property against which an order of abatement is obtained.

any defendant who was maintaining the common
nuisance

11 Sec. 4. K.S.A. 41-805 is hereby amended to read as follows: 41-
12 805. (1) Any room, house, building, boat, vehicle, airplane, structure
13 or place of any kind where alcoholic liquors are sold, manufactured,
14 bartered or given away, in violation of this act, or any building,
15 structure or boat where persons are permitted to resort for the
16 purpose of drinking ~~same~~ alcoholic liquors, in violation of this act,
17 or any place where such liquors are kept for sale, barter or gift, in
18 violation of this act, and all such liquors, and all property kept in
19 and used in maintaining such a place, are each and all of them
20 hereby declared to be a common nuisance; ~~and~~. Any person who
21 maintains or assists in maintaining such common nuisance ~~shall be~~
22 ~~guilty of a violation of this act. If it shall be is guilty of a~~
23 ~~misdemeanor punishable by imprisonment for not more than one~~
24 ~~year or by a fine not exceeding \$25,000, or by both. If ~~it~~ is proved~~
25 ~~that the owner of any building or premises has knowingly suffered~~
26 ~~the same to be used or occupied for the manufacture, sale or pos-~~
27 ~~session of such liquors, contrary to the provisions of this act, such~~
28 ~~building or premises shall be subject to a lien for, and may be sold~~
29 ~~to pay all fines and costs assessed against the occupant of such~~
30 ~~building or premises for any violation of this act; and such lien shall~~
31 ~~be immediately enforced by civil action, in any court having juris-~~
32 ~~isdiction, by the county or district attorney of the county wherein~~
33 ~~such building or premises may be located, or by the attorney for~~
34 ~~the director, when ordered by the director. If a tenant of any building~~
35 ~~or premises uses the same building or premises, or any part thereof,~~
36 ~~in maintaining a common nuisance as hereinbefore defined, or know-~~
37 ~~ingly permits such use by another, such use shall render void the~~
38 ~~lease under which he or she the tenant holds, and shall cause the~~
39 ~~right of possession to revert to the owner or lessor, who may make~~
40 ~~immediate entry upon the premises, or may avail himself or herself~~
41 ~~of invoke the remedy provided for the forcible detention thereof.~~

if the court finds that the owner of such property
knew or should have known of the maintenance of
the common nuisance on the property and did not make
a bona fide attempt to abate such nuisance

the court finds that the owner of real property knew
or should have known of the maintenance of a common
nuisance on such property, contrary to the liquor
laws of this state, and did not make a bona fide
attempt to abate such nuisance, such property

42 (2) Upon the filing of a complaint or information charging that
43 a vehicle or airplane is a common nuisance as above declared, a
44

Sub. for HB 2347—Am. by HCW
7

1 ~~against him or her on appeal he or she is entered against the~~
2 ~~claimant on appeal, the claimant will satisfy the judgment and costs,~~
3 ~~and no bond shall be required for an appeal by the state, and such~~
4 ~~appeal shall stay the execution of the judgment.~~

5 New Sec. 5. (a) Maintenance of a common nuisance is main-
6 taining or assisting in the maintenance of a common nuisance as
7 described by K.S.A. 22-3901 and amendments thereto.

8 (b) Maintenance of a common nuisance is a misdemeanor pun-
9 ishable by imprisonment for not more than one year or by a fine
10 not exceeding \$25,000, or by both.

11 (c) This section shall be part of and supplemental to the Kansas
12 criminal code.

13 ~~Sec. 6. K.S.A. 22-3901, 22-3902, 22-3904 and 41-805 are hereby~~
14 ~~repealed.~~

15 ~~Sec. 7. This act shall take effect and be in force from and after~~
16 ~~its publication in the statute book.~~

New Sec. 6. If a search warrant is executed which
authorizes a search of real property based upon an
alleged offense involving gambling, obscenity,
prostitution, controlled substances or liquor, a copy
of the warrant shall be delivered to the last known
address of the owner of the property within two
business days after execution of the warrant if such
address is different from the address of the property
for which the warrant was issued.