

Approved May 5, 1991
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Representative Kathleen Sebelius at
Chairperson

1:30 ~~am~~ p.m. on Tuesday, March 26, 1991 in room 526-S of the Capitol.

All members were present except:
Representative Arthur Douville - Excused

Committee staff present:
Mary Galligan - Kansas Legislative Research Department
Lynne Holt - Kansas Legislative Research Department
Mary Torrence - Office of the Revisor

Conferees appearing before the committee:

SB 134 - PROPONENTS

Richard Schodorf, Chief Attorney Consumer Fraud and Economic Crime Division of the Office of the District Attorney, 18th Judicial District, Sedgwick County, Kansas

SB 134 - NEUTRAL

William Henry, Kansas Association of Financial Services

SB 246 - PROPONENTS

John "Joe" Kisner, Jr., Assistant District Attorney, Consumer Fraud and Economic Crime Division, District Attorney's Office of the Eighteenth Judicial District, Sedgwick County, Kansas

Dan Kolditz, Deputy Attorney General, Consumer Protection, Office of the Attorney General

HB 2582 - PROPONENTS

Jeanette Martin, Legal Intern for Representative Joan Wagnon, Kansas

John Bork, Assistant Attorney General, Criminal Division, Kansas

Shannon Manzanaras, Commissioner of Youth Services, S.R.S.

Jim McHenry, Kansas Child Abuse Prevention Council

Dr. Azzie Young, Kansas Department of Health and Environment

Dr. Elizabeth Saadi, Kansas Department of Health and Environment

HB 2582 - NEUTRAL

James Clark, Kansas County And District Attorneys Association

Keith Landis, Christian Science Committee on Publication For Kansas

Chair Sebelius called the meeting to order.

SB 134

Chair Sebelius explained that SB 134 came out of the Attorney General's office and deals with consumer protection.

Richard Schodorf introduced himself as the Chief Attorney Consumer Fraud and Economic Crime Division of the Office of the District Attorney, 18th Judicial District, Sedgwick County, Kansas, and that explained that SB 134 was originally sponsored by his District Attorney's office. He read from his written testimony, Attachment #1, explaining the need for this legislation, and asking the Committee to support the bill. He added that his office feels the use of a live operator over that of a recorded messages would eliminate most of the situations that his office has objections to. He stated that you are unable to hang up on a recorded messages because the computer calling system will not disengage from the line until the entire message is read. He pointed out that Alabama, Michigan, and Georgia already have this type of legislation with Georgia's being a complete prohibition.

William M. Henry on behalf of the Kansas Association of Financial Services appeared neither as a proponent or an opponent of SB 134. He read from his written testimony, Attachment #2, to explain that some of his organization's members could be using telemarketing practices that might be in violation of the measure, and asked that the bill be amended at line 34 by adding after the word caller "or its subsidiaries and affiliates". In response to a question

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS,

room 526-S, Statehouse, at 1:30 ~~xxx~~/p.m. on Tuesday, March 26, 1991.

from a Committee member, Mr. Henry that his organization is companies such as Household Finance, and in some cases there are also banking institutions which are affiliates of these organizations.

Ralph Skoog representing the Kansas Cable Television Association, and appearing as an opponent, explained to the Committee that he is monitoring this legislation because as a modern business, telemarketing can be used. He remembered the first time that he had ever run into a dialing automatic telephones was in the political business soliciting votes. He added that in reference to the sequential thing, this legislation does not deal with sequential dialing, but rather with any recorded telephone message from anybody for any purpose. He also stated that this legislation does not make any distinction between trying to gather money for the United Way or KTWU Public Television or being involved with some kind of scam. He did not have written testimony.

SB 246

Joe Kisner, Jr., Assistant District Attorney, Consumer Fraud and Economic Crime Division, District Attorney's Office of the Eighteenth Judicial District, Sedgwick County, Kansas, explained that SB 246 is actually a bill sponsored by the Consumer Protection Division of the Kansas Attorney General's Office. He read from his written testimony to express his office's support for the bill, Attachment #3.

Dan Kolditz, Deputy Attorney General, Consumer Protection, Attorney General's Office, Kansas, explained that Attorney General Stephan and the Consumer Protection Advisory Council has sought introduction and passage of SB 246 to increase the general civil penalty that can be assessed for any violation of the Kansas Consumer Protection Act. He explained that the original bill focused attention on schemes that target senior citizens, the Attorney General is pleased that the Senate decided to provide an increase in the maximum civil penalty for all consumers. By increasing the penalty to \$5,000 a violation, the Legislature can provide a greater deterrent. He closed by saying that the Attorney General urges the passage of SB 246.

Committee Discussion:

In response to a question, Mr. Kolditz stated that he believed that the civil penalties collected are paid over to the State General Fund. Mr. Kisner pointed out that on a point of clarification, in Sedgwick County, if his office receives the civil penalty that goes to the Sedgwick County General Fund, but if the Attorney General does it, then it goes to the State General Fund.

HB 2582

Jeanette Martin, Legal Intern for Joan Wagnon, came before the Committee as a proponent of the HB 2582. She read from her written testimony, Attachment #4, explaining what the bill is and what the provisions of the bill are. She also listed in her testimony amendments needed for the proposed legislation. She also added that after talking to local physicians and coroners, they are willing to sit on the Child Death Review Board. She did say that she did not have a fiscal note written on this, so it is unclear how much this will cost to retain local doctors and coroners.

John Bork, Assistant Attorney General, Criminal Division, Office of the Attorney General, Kansas, came before the Committee in support of HB 2582. He read from his written testimony, Attachment #5, and added that this bill will help make it possible to determine what steps could have been taken to prevent a child death from abuse and neglect.

Shannon Manzanara, Youth Services Division, S.R.S., came before the Committee in support of HB 2582, and to pledge S.R.S.'s cooperation with its intent. She read from her written testimony, Attachment #6, and offered some amendments to help strengthen the bill. She added that it is S.R.S.'s estimation that to staff the Child Death Review Board will require one full time position state-wide, which would cost approximately \$18,000 annually (S.R.S.'s piece of the state and local review).

Jim McHenry, Kansas Child Abuse Prevention Council, appeared in support of HB 2582. He read from his written testimony, Attachment #7, which is a compilation of different statements from various people and agencies giving reasons for the passage of this bill. Moreover, he added that his organization is also finding professionals willing to step forward and volunteer their time on a limited basis. Generally, these teams are talking about meeting once a month to review one to five cases. Under those terms, Mr. McHenry stated that many professionals in his experience, so far, are willing to step forward and donate their

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MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS,

room 526-S, Statehouse, at 1:30 ~~xxx~~/p.m. on Tuesday, March 26, 1991.

time, or their agencies are willing to make their time available. He also added that to illustrate that fact, after contact with Dr. Roy Menninger, The Menninger Foundation has made available to the Shawnee County Multi-Disciplinary Team, two of their child psychiatrists to serve at no charge as a public service.

Dr. Azzie Young, KDHE, appeared before the Committee as a proponent of HB 2582, and read from her written testimony, mainly in the area of child abuse prevention programs, Attachment #8. She closed her testimony by pointing out several recommendations of change needed in the bill as set out in her written testimony.

Dr. Elizabeth Saadi, Statistician, Kansas Department of Health and Environment, presented a report entitled Children's Deaths in Kansas 1985 - 1987, which she also authored, Attachment #9. Dr. Saadi also urged the Committee to pass favorably HB 2582 with the recommended changes from KDHE.

As a neutral conferee, James Clark, Kansas County and District Attorneys Association handed out testimony to the Committee, Attachment #10, which listed several problems concerning the coroner's report and recommendations for changes. He also handed out a copy of HB 2385, Attachment #11, which was an unsuccessful attempt to address the problem with the coroner's report, which he felt might fall into the hands of the abusive parent before the county or district attorney gets them.

Keith Landis, Christian Science Committee on Publication for Kansas, also appeared as a neutral conferee, and handed to each Committee member his testimony which requested that language be added to the bill that prevent the singling out of Christian Scientists for autopsy in case of death as we usually do not employ the services of a licensed physician, Attachment #12.

Chair Sebelius closed the public hearings, and announced that the Committee would meet at 5:00 p.m. the following day. Chair Sebelius adjourned the meeting.

GUEST LIST

FEDERAL & STATE AFFAIRS COMMITTEE

DATE 3/26/91

(PLEASE PRINT)

NAME	ADDRESS	WHO YOU REPRESENT
BILL HENRY	Topeka	Ks Assn of Financial Services
Kay Farley	Topeka	OJA
Doug Bowman	"	Children Youth Advisory Council
Shannon Margenau	Topeka	SBS - Youth Services
Jim McArmy	Topeka	Ks. Child Abuse Prevention Council
Julienne Masler	Topeka	A.G. office
John Bock	Topeka	A.G. Office
Dan Koltz	Topeka	AG office
Percy Lindberg	Topeka	AG office
Sydney Kerr	Lawrence	Ks Action for Children
Elizabeth Sead	Topeka	KDHE
RALPH SKOPE	Topeka	KCATV
KETH R LANDIS	TOPEKA	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Mike Reecht	"	AJ+T

TO: Chairperson and Representatives of the Kansas House Federal and State Affairs Committee

BY: Richard L. Schodorf, Chief Attorney Consumer Fraud and Economic Crime Division of the Office of the District Attorney, 18th Judicial District, Sedgwick County, Kansas.

RE: Senate Bill No. 134-An act concerning Consumer Protection; relating to Delivering Commercial Advertising by Recorded Message

Problem: On a daily basis Kansas citizens are being barraged by recorded sales pitches from automatic dialing machines. Many of these recorded messages entice the consumer into believing that they have won a free gift or vacation and then direct them to call a 900 number in order to receive their prize. In three such cases investigated by the Sedgwick County District Attorney's Office and the Attorney General's Office for the State of Kansas, the entire promotion turned out to be a fraud and there are presently pending two district court cases involving said promotions. In addition to the fraudulent propensity of many of these calls, many Kansas citizens are aggravated by the method in which they are conducted. The typical case involves an operation from Florida where a boiler room operation is set up with a computer generated telephone calling system which randomly calls in sequence each number of a given prefix. Local hospitals have had their phones tied up as the phone calls begin coming in to emergency areas not otherwise listed. Large businesses have been affected as the automatic dialing machine calls one desk after another through an entire department. A Sedgwick County resident recently could not make an emergency call because the automatic dialing machine would not disconnect and that individual was required to go to a neighbor's house to use their phone in order to obtain help in the emergency. Individuals who have unlisted phone numbers still receive these intrusive calls because of the sequence dialing system. Our office has received more calls from consumers expressing dissatisfaction with being harassed by recorded sales pitches than any other problem in the history of the office.

Solution: Senate Bill No. 134 provides an answer to this problem. This proposed legislation would forbid telemarketers from using the telephone lines to contact consumers to deliver recorded messages for the purposes of delivering commercial advertising. The bill provides for exceptions in the following circumstances:

1. Where the subscriber has consented or authorized the contact;
2. Where the subscriber has voluntarily provided his telephone number to the supplier;
3. Where the purpose of the recorded message is to advise consumers concerning merchandise or goods or services which were previously ordered.

The type of language found in Senate Bill No. 134 has been acted in a number of states including the state of Michigan. We were told

HOUSE FEDERAL AND STATE AFFAIRS

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Attachment #1 - Page 1

by one fraudulent telemarketer who was selling phony trips to Florida that if we didn't want people like him calling into our state we should enact a prohibition like many of the southern states because he didn't call into those states.

Senate Bill No. 134 has been amended to reflect the use of a live operator. We feel that this amendment will help diffuse any constitutional question concerning the Act while still keeping the emphasis of the proposed statute intact. We support the amendment.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Richard L. Schodorf".

Richard L. Schodorf
Chief Attorney

William M. Henry

Attorney at Law
627 S. Topeka, P.O. Box 477
Topeka, Kansas 66601

Testimony Before the
House Federal and State Affairs Committee
March 26, 1991

Madam Chairman, members of the committee, I am Bill Henry and I appear before you on SB 134 on behalf of the Kansas Association of Financial Services.

Recently some of our members in review of SB 134 discovered that part of their current telemarketing practices might be in violation of the measure.

Several of our members exchange the names and phone numbers of customers with their corporate affiliates and subsidiaries. This exchange occurs because certain financial services provided by one corporation are not offered by its corporate affiliate or subsidiary.

The opportunity to provide other financial services is sometimes offered by phone calls covered by SB 134.

Members of the Kansas Association of Financial Services wish to continue this intra-corporate exchange of names of customers between corporate affiliates and subsidiaries.

We believe that could be accomplished by amending SB 134 at line 31 by adding after caller "or its subsidiaries and affiliates."

We appreciate the opportunity to be heard and I would respond to any questions the committee might have on our amendment.

Respectfully submitted,

William M. Henry
Attorney at Law

TO: Chairperson and Representatives of the Kansas House Committee on Federal and State Affairs

BY: John J. (Joe) Kisner, Jr., Assistant District Attorney, Consumer Fraud and Economic Crime Division, District Attorney's Office of the Eighteenth Judicial District, Sedgwick County, Kansas

RE: Senate Bill No. 246-An Act concerning the Kansas consumer protection act; relating to penalties for certain violations; amending K.S.A. 50-636 and repealing the existing section.

Senate Bill No. 246, as amended, provides for an increase in the general civil penalty that can be assessed for any violation of the Kansas Consumer Protection Act. Currently, the penalty is \$2,000 and this bill would increase that penalty to \$5,000.

The Consumer Fraud and Economic Crime Division of the Sedgwick County District Attorney's Office strongly supports Senate Bill No. 246. The increase in the general civil penalty is long overdue. General inflation and the increased profits being made on various consumer scams support the need for such an increase in the general civil penalty provision of the Kansas Consumer Protection Act. In some cases, out of state violators simply see these civil penalties as a risk or cost of carrying on their illegal business. This increase will give our courts the opportunity, if appropriate, to penalize such individuals and/or companies an amount which would serve as a deterrent against such activity.

The office of the District Attorney for the Eighteenth Judicial District requests this committee vote in favor of Senate Bill No. 246.

Date: March 26, 1991
To: Federal & State Affairs Committee
From: Jeanette Martin, Legal Intern, Joan Wagnon
Subject: State Child Death Review Board and
Local Child Death Review teams
Proposed H.B. 2582

With less than a week to draft a child death review bill, the draft submitted to the revisor's office was being prepared up to the final deadline; as a result, there was little time for editing the draft. It is necessary to amend the proposed bill in order to add the county or district attorney to the local review team. Originally, the devised draft proposed having the county or district attorney chairing the local review team. After deliberations with various agency representatives, it became apparent that the local team would function more effectively with a state representative acting as its chair. Therefore, the county or district attorney was deleted from chairing the team and was inadvertently not added as a team member.

The following corrections should be amended into proposed House Bill 2582:

- page 2, line 2, add: , and county or district attorney
- page 3, line 22, add: county or district attorney
- page 3, line 24, change: physician to pediatrician
- page 3, line 30, delete: if available
- page 6, line 38, change: team to board
- page 8, line 9, change: any to every
- page 8, lines 11 & 14, change: 15 to 18

Homicide ranks among the five leading causes of childhood deaths, accounting for at least twenty percent of all deaths of children under eighteen. Most child homicides are perpetrated by their parents. Virginia Child Protection Newsletter, Fall 1990. Kansas statistics show that in seventy-three percent of child abuse/neglect deaths the

HOUSE FEDERAL AND STATE AFFAIRS

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Attachment #4 - Page 1

biological parent was implicated as at least one of the perpetrators leading to the child's death. SRS Memorandum, Jan Waide, Director, CINC, January 29, 1988.

Since 1985, child abuse fatalities have increased more than thirty-eight percent nationwide. There were 1,237 reported child abuse fatalities in 1989. This data reveals that in the United States more than three children a day are child abuse fatality victims. Virginia Child Protection Newsletter, Fall 1990. An SRS memorandum, January 29, 1988, listed twenty-two reports of child deaths due to child abuse/neglect in Kansas during January 1, 1987 through June 30, 1987.

Methods of killing children included: drowning, suffocating, squeezing, stabbing, shooting, hitting with hands or instruments, and leaving exposed to natural elements. Children have been killed by being given sulfuric acid in nursing bottles, by various poisons, medications, or lethal substances disguised in foods or force fed. Children have been thrown out of windows or other high places, and have been buried alive. Virginia Child Protection Newsletter, Fall 1990.

The following is a brief summary of benefits to be realized by having a state child death review bill:

When there is a suspicious death reported by the coroner, the state child death review board will create a team to investigate and report on the child's death.

In an SRS memorandum, dated January 22, 1988, it was shown that there were cases of child deaths occurring from child abuse/neglect which had been prosecuted by the county attorney but the local SRS office had not been informed of these child deaths. In other reports of child abuse deaths appearing on SRS statistical reports, the county or district attorney knew nothing about these cases. The necessary action could not be taken, because there was no sharing of information by the vital public agencies.

The state representative will coordinate local child death review teams to ensure cooperation among team members in order to provide important data to agencies dealing with children abused/neglected and their families.

Dr. Van Sickle, Topeka pediatrician, stated that he was in support of any legislation that would bring public agencies together and coordinate efforts to prevent further child abuse/neglect and child

abuse/neglect deaths from occurring.

Members of a local review team will be able to provide background information on the child and his (her) family in order to expedite and accurately determine the cause of the child's death.

Local review teams will facilitate prosecution. The accumulation of necessary information will be immediately available for the county or district attorney.

Dr. Hiszczynskjy, certified forensic pathologist, discussed the outcome of the Charlie Walker case. In October 1988, Charlie was hospitalized from the intentional infliction of first, second, and third degree burns. Against the advice of the pediatrician, pathologist, plastic surgeon, and other hospital staff, Charlie was sent back to his home. A month to the day later, Charlie was rehospitalized with head injuries. There was no neurological damage. He was released and once again returned to his home; twelve hours later he was returned to the hospital for the last time. He had been a victim of child abuse. Dr. Hiszczynskjy called and conferred with a renowned certified child forensic pathologist, who reiterated what Dr. Hiszczynskjy already knew. Charlie Walker would have had to fall down twenty-seven flights of stairs in order to have had the extensive internal injuries which caused his death. No one was convicted and it was approximately two years later before his brother was removed from this same home environment. (Report was gathered from talking to various doctors and other people aware of the case.)

Child death review teams will provide the state review board with collected statistics of documented data as to why children are dying. If the state does not know the full circumstances as to why its children are dying, it cannot prevent the occurrence of suspicious child deaths.

A state review team reported to the American Bar Association that the team had noticed that children were dying from water standing in drainage ditches. Through the team's investigation and discussions, the team evaluated and recommended ways to prevent these deaths from occurring.

A child death review team will clarify to a parent what happened and help the parent cope with the child's death in cases where the original cause of death was unknown. Children should not be dying from unexpected, unexplained

causes. Through autopsies and investigations, unknown deaths can be alleviated.

The Children's Deaths in Kansas study reviewed child deaths from 1985 through 1987. The study was completed in March 1989 and was researched by the Department of Health & Environment and the Kansas Department of Social & Rehabilitation Services. Dr. Elizabeth Saadi, author of this study, explained that physicians do not always state who or what event caused the child's death. On the death certificate, e.g., a physician may have listed that death was caused by a head injury, but may not have stated by who or what event. As a result, Kansas does not currently have accurate statistics to reveal how many child deaths are a result of child abuse or neglect. I asked Dr. Saadi if her department could research and document how many questionable children's deaths there were from 1985 through 1987, the years of the Children's Death in Kansas study. Dr. Saadi agreed to report this information to the Committee.

Dr. Saadi will you tell the Committee the number and the percentage of questionable deaths that were discovered by reviewing child death certificates between 1985 and 1987?

The state review board will establish the protocol for coroners, state review board, and local review teams. The protocol will also include: a description of suspicious circumstances, child abuse/neglect, and social agencies; methods to ensure coordination and cooperation among team members; procedures for facilitating prosecution, methods for developing statistical records; and programs for prevention of child abuse and neglect.

The cost of this system is minimal. There are no permanent local teams to fund and no additional agencies required. There are states, such as Georgia, which have very expensive programs with permanent local teams in place. With the present drafted bill, the state review board will develop the protocol necessary to organize a local team only when necessary.

There is a nationwide interest in establishing state child death review boards and local child death review teams. The majority of states have child fatality review systems or are presently proposing child death review legislation.

The American Bar Association has received a grant to provide technological assistance to states who are developing child death review systems. Consultants associated with the ABA program will, upon request, assist states in developing protocol and will advise and recommend methods to implement the program most effectively. The grant expires in October 1991. Kansas may be able to benefit from ABA's extensive

research and consulting programs, if the bill becomes law this year.

Kansas has a vested interest in its children and the Committee on Federal & State Affairs should adopt this bill as another step in the right direction to protect its children from child abuse and neglect.



STATE OF KANSAS

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ATTORNEY GENERAL

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TESTIMONY

DEPUTY ATTORNEY GENERAL EDWIN A. VAN PETTEN
OFFICE OF ATTORNEY GENERAL
BEFORE THE HOUSE FEDERAL AND STATE AFFAIRS
MARCH 21, 1991
RE: HOUSE BILL 2582

MADAM CHAIRMAN AND MEMBERS OF THE COMMITTEE:

Attorney General Stephan wants to thank you for this opportunity to address the committee in support of House Bill 2582.

This Act will provide review procedures in dealing with the death of a child that will ensure a complete investigation in these cases, in an attempt to make certain there are no deaths of children in our state, that simply "fall through the cracks."

Great strides have been made in recent years in the area of child abuse and neglect, however there are still children dying for reasons that cannot be explained, or merely explained away in the manner most convenient.

House Bill 2582 will provide an avenue whereby we can have an organized pool of knowledge at the state level, and investigative authority at the local level, which will enable the "review teams" to ascertain specific causations regarding

injuries, and to determine who or what was at fault regarding those causations.

One of the big problems faced by law enforcement is a total lack of any protocol in the handling of death cases, especially the death of a child due to unexplained trauma. I would hope that the cooperation established between the state board and the local review teams in House Bill 2582, will enable us to establish procedures statewide, so that investigations into such matters will be uniform, and a full disclosure of facts will be made in all cases, whether there are the resources of a metropolitan department or a small rural sheriff's office.

Only by coordinating a statewide plan can we ensure accountability by those who make the determinations on how to proceed following an investigation of this type, and by accumulation of information in a system such as that proposed, we can strive to eliminate the root causes of these deaths, if a common causation can be discerned.

The benefits appear to be many, including organization of knowledge and facts, standardization of procedures, accountability, and hopefully future prevention, with the largest concerns at this time being how to set the system up, and what it will cost. These concerns can easily and quickly be addressed, as this is a system that will be of great benefit in the review of cases involving the death of a child.

Department of Social and Rehabilitation Services

Testimony before

House Judiciary Committee

Regarding

House bill 2582

On

March 21, 1991

Presented on behalf of:

Carolyn Risley Hill Acting Commissioner
Youth and Adult Services
Kansas Department of Social and Rehabilitation Services
(913) 296-3284

HOUSE FEDERAL AND STATE AFFAIRS

March 26, 1991
Attachment #6 - Page 1

Department of Social and Rehabilitation Services
Robert C. Harder, Acting Secretary

Testimony in support of H.B. 2582

AN ACT CONCERNING CHILDREN; REQUIRING REVIEW OF DEATHS OF CHILDREN AND INVESTIGATIONS THEREOF UNDER CERTAIN CIRCUMSTANCES; AMENDING K.S.A. 22a-231 AND 22a-233 AND K.S.A. 1990 SUPP. 38-1507 AND 38-1522 AND REPEALING THE EXISTING SECTIONS; ALSO REPEALING K.S.A 22a-238

(Mr. Chairman), Members of the Committee, I appear today to support this bill in principle and to recommend certain amendments. The concept of a mechanism to review circumstances surrounding the unexplained death of a child may well serve as a vehicle for interagency cooperation in the important endeavor of protecting children from maltreatment. The development of review teams holds the potential to provide valuable information, not now available, concerning the dimensions of this problem.

The bill requires the participation of a representative of the Secretary in every county and one at the state level. While the number of cases to be reviewed may not be large (perhaps under 100 per year), the time required for a thorough review is considerable, thus creating a burden, especially in urban areas. This legislative body is already well aware that the fiscal and staff resources of the agency are severely strained. While we support the principle of child death reviews I must report in all candor that we do not have the capacity at present staff levels to take on an additional responsibility, however meritorious.

There is an apparent discrepancy in the way the bill defines "child" in K.S.A. 22a-231 and in K.S.A. 38-1522 as proposed. In the latter instance the bill appears to exclude 15, 16 and 17 year old children from the requirement that

suspicious deaths be reviewed. The children which this bill addresses presumably will have been victims of the most extreme maltreatment. We can think of no rational basis for excluding children age 15 and above. It would be the department's recommendation that all children, generally defined in statute as any person under the age of 18, be included under provisions of this bill.

We strongly suggest that New sections 3 and 4 include a pediatrician among the members of a review team. When considering causes of death among infants and children, specialized knowledge in child development, injuries and diseases peculiar to children may be critical. Additionally, the inclusion of a pathologist, if the coroner is not a pathologist, and broadening the law to permit utilization of clinical social workers and psychologists instead of only psychiatrists will facilitate the development of local teams.

The best skills will be required at the local team level as it is there that the review takes place. To that end, permitting the development of multi-county or regional teams may be more conducive to implementation of this mandate, especially in rural areas.

We suggest that the bill be amended to permit the direct appointment by heads of departments and agencies of their representatives to local teams. The way the bill now reads, department and agency heads have neither the authority to nominate nor appoint persons to represent them on local teams.

This bill holds forth the promise of multidisciplinary cooperation in the review of community efforts to deal with child maltreatment. We presume the Committee intends that the local team report reflect the efforts of the full range of

community agencies (social, psychological, legal, medical, and educational) available to provide services. We recommend that new section 4 (e) be amended to reflect that emphasis.

With the suggested amendments, I urge favorable consideration of this bill.

Carolyn Risley Hill
Acting Commissioner
Youth and Adult Services
Department of Social and
Rehabilitation Services
(913) 296-3284



**Kansas
Child Abuse
Prevention Council**

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James McHenry, Ph.D.

**Testimony in support of HB 2582
House Federal and
State Affairs Committee
March 21, 1991**

I appreciate the opportunity to appear before the committee in support of HB 2582, a bill requiring review of deaths of children, particularly those involving suspicious circumstances.

In 1976, Dr. Milton Halpern, the chief medical examiner of the City of New York, drew our nation's attention to the fact that many child killings were going unlabeled or mislabeled. While there has been a gradual shift toward a more systematic handling of child fatalities, many states still do not provide for a comprehensive review of suspicious child deaths.

In 1988, SRS Youth Services compiled a document entitled "Analysis of Child Deaths in Kansas Related to Intra-Familial Child Abuse and Neglect, January 1986-June 1987." This review of 22 confirmed deaths found that in 73 percent of the cases a biological parent was implicated as at least one of the perpetrators of child abuse or neglect leading to a child death. Herein lies KCAPC's second reason for supporting HB 2582. Since many child victims have siblings still in the home, it is imperative that an accurate assessment be made, and that steps be taken to protect those children.

In March 1989, the Kansas Department of Health and Environment and SRS jointly released a study entitled "Children's Deaths in Kansas, 1985-1987." Among the more disturbing findings of that study was the conclusion that "children in low-income households in Kansas are dying at a significantly higher rate than children in non-low-income households for virtually all causes of death." Moreover, the second leading cause of death among low-income children was found to be "death relating to symptoms, signs and ill-defined conditions." That fact alone ought to prompt our desire to know more.

Finally we have the testimony of Dr. Ronald Reeves, a nationally-known forensic pathologist, who remarks that "a very significant proportion" of fatal child abuse cases he has consulted on were originally diagnosed as sudden infant death syndrome (SIDS). The death of any child is an immeasurable tragedy. We compound that tragedy when we fail to accurately determine the cause of death, particularly when faced with suspicious circumstances.

Testimony submitted by James McHenry, Ph.D.

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March 26, 1991
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State of Kansas

Joan Finney, Governor

Department of Health and Environment Division of Health

Stanley C. Grant, Ph.D.,
Acting Secretary

Landon State Office Bldg., Topeka, KS 66612-1290

FAX (913) 296-6231

Testimony Presented to
The House Committee on Federal and State Affairs

By

Kansas Department of Health and Environment

House Bill 2582

Child abuse and neglect is a major social and health problem in the United States. While the actual incidence of child abuse is hard to determine, in 1986 an estimated two million reports of child abuse were made to responsible officials in the states. An estimated 1,200 children died in 1986 as a result of maltreatment.

The long-term consequences of abuse are costly for all of us. Studies show that most juvenile delinquents, teenage runaways, and teenage drug and alcohol abusers are running away from abuse. Most parents who abuse their children had poor childhoods themselves, characterized by serious abuse and neglect. Child abuse is clearly a source of many of our other social and family problems.

In the U.S., organized efforts to respond to child abuse began at the turn of the century through local societies for the Prevention of Cruelty to Children. A government role in these efforts was provided in 1912 with the establishment of the U.S. Children's Bureau. In 1935, with the passage of the Social Security Act, government grants became available for the protection and care of homeless, dependent, and neglected children. In the 1960's and 70's, the basic elements of a nationwide response were in place. A federal Child Abuse Act was passed in 1974. Model reporting laws were prepared and disseminated throughout the country. Most states, including Kansas, developed and expanded their capacities to investigate and respond to reports of child abuse. Most state responses were characterized by an emphasis on detection, intervention, and treatment, or after-the-fact measures. Stopping the problem before it occurs, prevention, is the hallmark of our more recent efforts.

Kansas Department of Health and Environment prevention efforts include: support programs for new parents, home and hospital visits to new parents, education for parents, referrals for family support services and for child care, child care inspection and licensing, prevention education for children and adolescents, referrals for therapeutic services for victims and survivors.

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Future challenges in child abuse prevention in Kansas, as elsewhere, include continued increased public awareness with public support for investigations due to improved reporting, tailoring treatment and prevention programs to community and individual needs, and use of a multidisciplinary response to child abuse. Social work and law enforcement interventions alone are not the answer to this complex problem. There needs to be cooperation and integration of efforts from the public health, educational, and medical communities as well as from other professions. Only as we all work together will we be able to reduce and eventually end the problem of child abuse. The Department believes that the multidisciplinary team would benefit by the inclusion of a pediatrician.

Recommendation:

KDHE has one problem with the bill as drafted. Section 2.(f) (line 10 on page two) appears to make KDHE responsible for payment for all autopsy performed on children under 18 years of age. We do not believe that this is the intent of the legislature. We therefore recommend that the bill be amended by striking the words "under this section" from line 10 on page two and replacing them with the words, "on a child less than one year of age." This amendment will maintain the status quo in which KDHE pays for autopsy in cases of suspected sudden infant death syndrome."

The Kansas Department of Health and Environment strongly supports state and local efforts to protect the health and well-being of Kansas children. The Department supports the multidisciplinary, state-wide and community-wide approach of this bill as a most effective means of responding to the problem of child abuse in Kansas.

Presented by:

Azzie Young, Ph.D.
Director, Bureau of Family Health
Kansas Department of Health and Environment
March 21, 1991

Children's Deaths in Kansas

1985-1987



Kansas Department of
Health and Environment
Landon State Office Building
900 SW Jackson
Topeka, Kansas 66612-1290

Kansas Department of Social
and Rehabilitation Services
915 Harrison
Topeka, Kansas 66612

CHILDREN'S DEATHS IN KANSAS

1985 - 1987

Mike Hayden, Governor

Stanley C. Grant, Ph.D., Secretary
Department of Health and
Environment

Winston Barton, Secretary
Department of Social and
Rehabilitation Services

Gary K. Hulett, Ph.D.
Under Secretary



March, 1989

Acknowledgements

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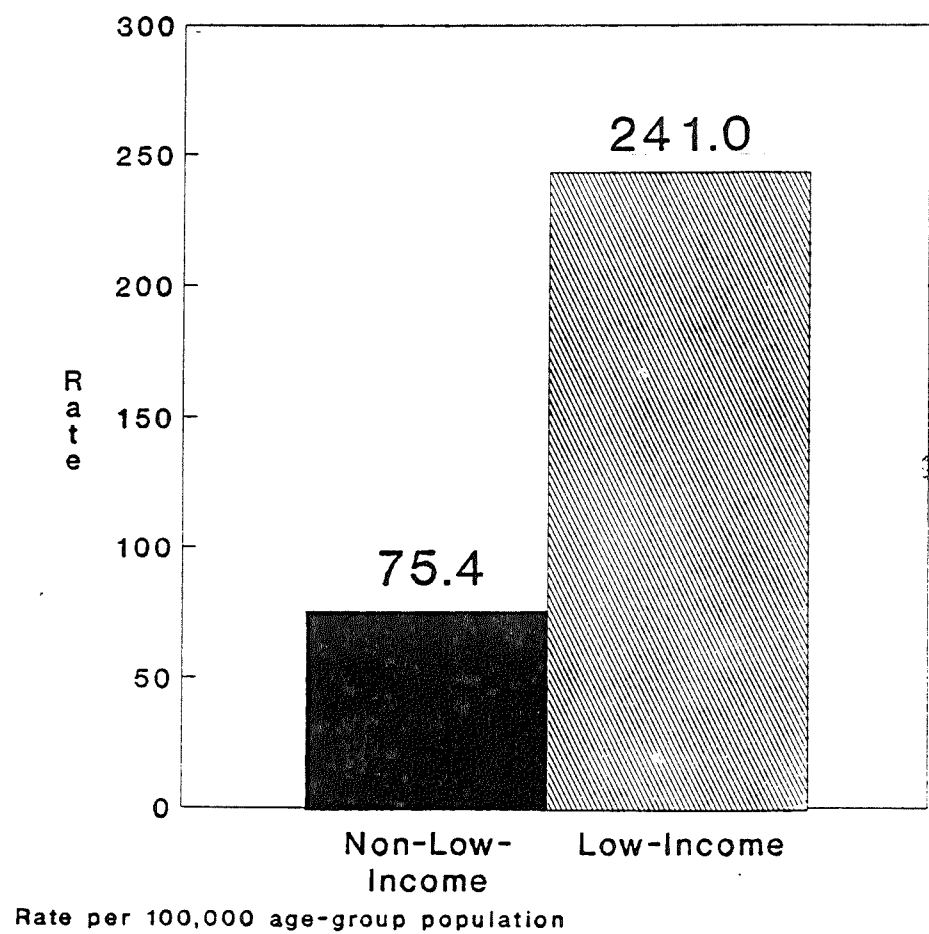
Quality Control Section, SRS
Dale Barnes

EXECUTIVE SUMMARY

- During 1985-1987, 1,816 children 0-17 years of age died in Kansas. Of those children, 28.4% (516) were from low-income environments.
- Low-income children for this study were those who lived in households that were listed as participants in all Kansas public assistance programs except Food Stamps.
- Deceased, low-income children included in this study were from households with incomes at approximately 60% of the poverty level eg.:
 - single mother with 2 children and income of \$5,472 annually
 - family of 4 and income of \$6,600 annually

- Low-income children died at a rate 3.2 times higher than non-low-income children.

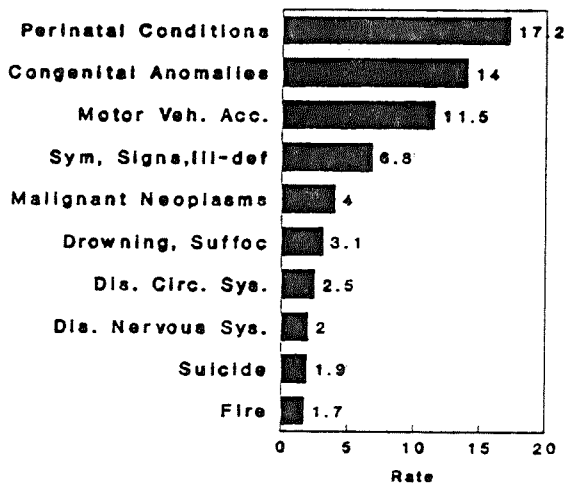
Death Rates for Non-low and Low-income Children 0-17 Years of Age
Kansas, 1985-1987



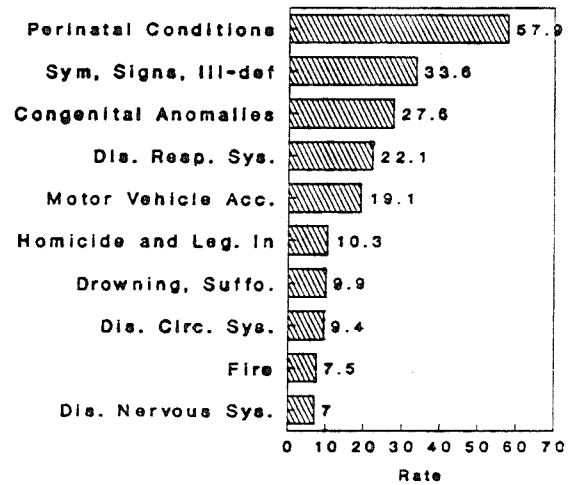
- The ten-leading causes of death for low- and non-low-income children are dissimilar, with deaths associated with poor medical care and unsafe environmental conditions affecting low-income children more frequently than non-low-income children.

**Ten-Leading Causes of Death by Rate
Children 0-17 Years of Age
Kansas, 1985-1987**

Non-low-income Children



Low-income Children

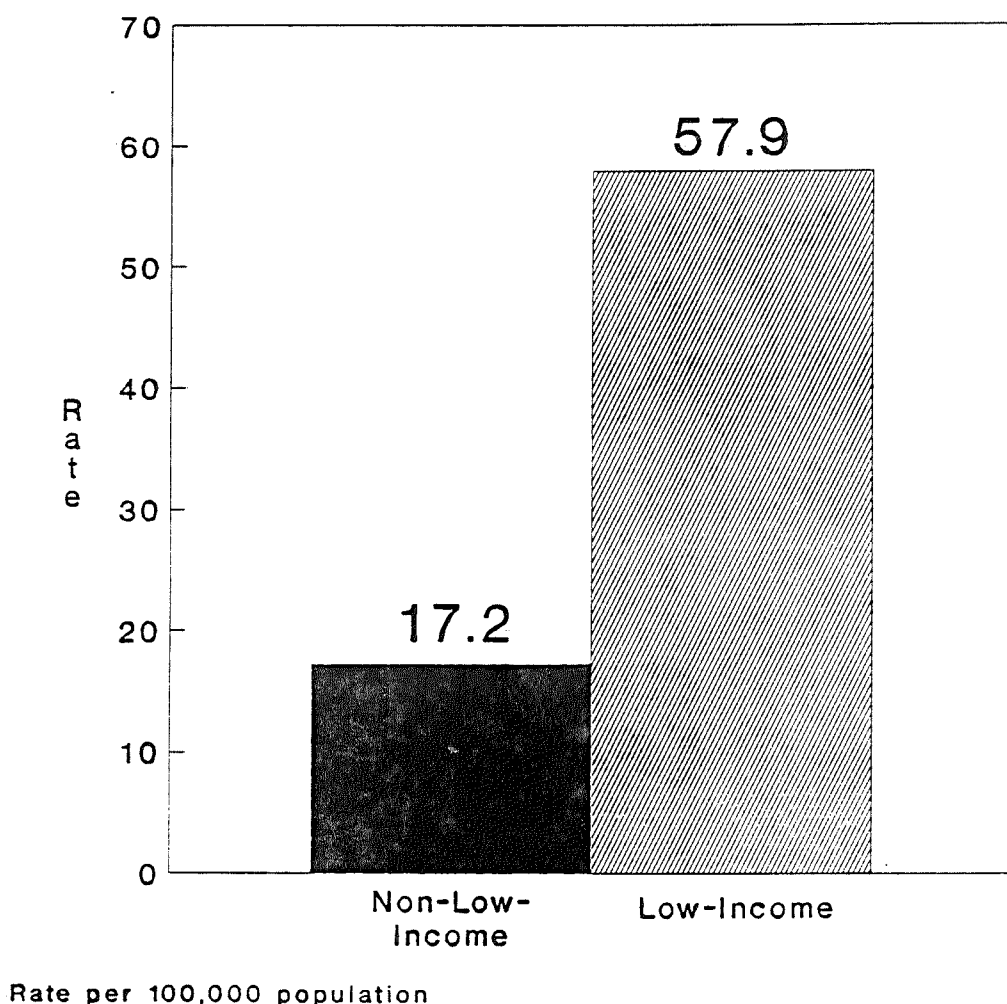


Rate per 100,000 age-group population

- Deaths due to conditions originating in the perinatal period occurred 3.4 times more often in low-income children than in non-low-income children.

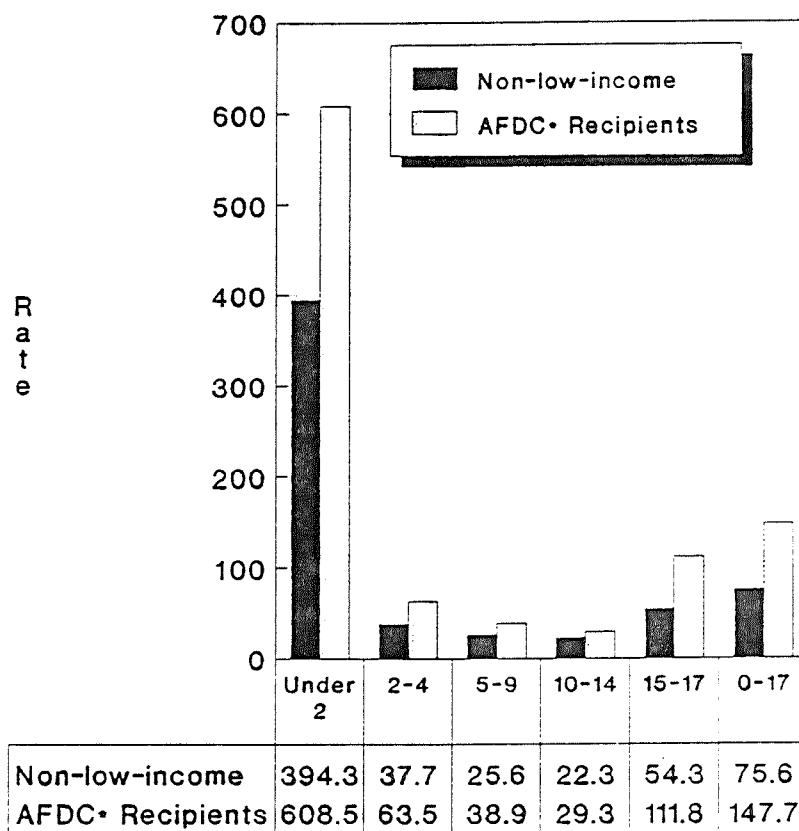
Conditions Originating in the
Perinatal Period by Rate, Non-low-income
and Low-income Children

Kansas, 1985-1987



- Death rates for children of AFDC recipients were 2 times higher than for non-low-income children.

**Age-Specific Death Rates
Non-low-income and AFDC* Children
Kansas, 1985-1987**



Rate per 100,000 age-group population
*AFDC-Aid to Dependent Families with Children

Rod Symmonds, President
 James Flory, Vice-President
 Randy Hendershot, Sec.-Treasurer
 Terry Gross, Past President



Wade Dixon
 Nola Foulston
 John Gillett
 Dennis Jones

Kansas County & District Attorneys Association

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 EXECUTIVE DIRECTOR • JAMES W. CLARK, CAE

TESTIMONY REGARDING

HOUSE BILL 2582

Because of the late introduction of HB 2582, and the haste with which it was set for hearing, the Kansas County and District Attorney's Association has not had time to take a formal position on the bill.

However, on an initial reading of the bill, I would like to offer the following observations:

1. The bill is well-intentioned and would attempt to establish a standard procedure for investigation of the deaths of children. In addition, it would provide state funding for following such procedures.
2. There are some problems with the bill as written:
 - a.) The county or district attorney is considered the chief law enforcement officer of the county, and should be included in the local child death review team (New Section 4).
 - b.) The bill seems to shift the responsibility for child abuse cases in which death results from the SRS protective service workers and law enforcement to the district coroner. While SRS and law enforcement reports are confidential, coroner reports are not (see A.G. Opinion No. 86-5, attached). Attempts to correct this problem have so far been unsuccessful (see HB 2385, attached). Without clear language to the contrary in HB 2582, it is possible that an abusive parent may have the results of the local coroner's determination and/or the local review team's results even before the county or district attorney gets them. New Section 4, which amends K.S.A. 22a-231 and 22a-233, should be amended to add 22a-232 to make it clear that reports of local death review teams are kept confidential.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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

January 21, 1986

ATTORNEY GENERAL OPINION NO. 86- 5

Edwin M. Wheeler, Jr.
Marion County Attorney
Marion County Courthouse
Marion, Kansas 66801

Re: Laws, Journals and Public Information -- Records
Open to Public -- Disclosure of Coroner's Reports

Counties and County Officers -- District Coroner --
Disclosure of Coroner's Reports

Synopsis: Reports prepared by a district coroner or deputy
district coroner pursuant to K.S.A. 19-1032 are
public records open to inspection by any person
under the Open Records Act, K.S.A. 1984 Supp.
44-215 et seq. Cited herein: K.S.A. 19-1026;
19-1032; 19-1033; 19-1034; 22-4701; K.S.A. 1984
Supp. 45-216; 45-217; 45-221.

* * *

Dear Mr. Wheeler:

As county attorney for Marion County, you request our
opinion regarding coroner's reports. You ask whether such
reports are public records which must be disclosed to an
insurance company which requests a copy of any report filed
with the clerk of the district court.

The primary responsibility of a district coroner or deputy
district coroner is to determine the cause of death of a
person who dies from other than natural causes. State v.
Gordon, 219 Kan. 643, Syl. ¶6, 549 P.2d 886 (1976). The
duties of a coroner are stated in K.S.A. 19-1032:

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"Upon receipt of such notice, the coroner shall take charge of the dead body, make inquiries regarding the cause of death, and reduce the findings to a report in writing. Such report shall be filed with the clerk of the district court of the county in which death occurred."
(Emphasis added.)

Pursuant to K.S.A. 19-1033, an autopsy shall be made on a dead body if the coroner believes it is advisable and in the public interest, or if the county or district attorney makes a written request for an autopsy. K.S.A. 19-1033 also requires that:

"A full record and report of the facts developed by the autopsy and findings of the person making such autopsy shall be promptly made and filed with the coroner and with the clerk of the district court of the county in which the decedent died."

It is clear that a coroner's report is distinguishable from an autopsy report as an autopsy may not always be done in each case. Such reports are admissible evidence pursuant to K.S.A. 19-1034:

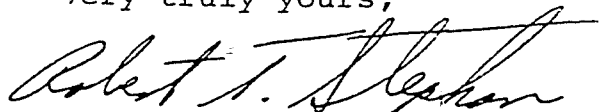
"The records of the coroner filed with the clerk of the district court and other public records of the coroner made by the coroners or by anyone under the direction or supervision [of the coroner] and transcripts certified by the coroner shall be received in any court or administrative body in the state as competent evidence of the matters and facts therein contained. All records filed under this section shall be on a form approved by the director of the Kansas bureau of investigation. The records which shall be admissible under this section shall be records of the results of views and examinations of or autopsies upon the bodies of deceased persons by such coroner or by anyone under such coroner's direct supervision or control, and shall not include statements made by witnesses or other persons."

Under the Open Records Act, public records are to be open for inspection by any person unless otherwise provided. K.S.A. 1984 Supp. 45-216. A "public record" is defined to include recorded information in any form in the possession of a public agency. K.S.A. 1984 Supp. 45-217(f)(1). A "public agency" includes any officer of the state or political or taxing subdivision. K.S.A. 1984 Supp. 45-217(e)(1). As the office of district coroner is established by K.S.A. 19-1026, a coroner is therefore included within the act, and a coroner's report is a public record.

A public record is to be open unless it falls within one of the thirty-five categories of records which the act has indicated public agencies are not required to disclose. K.S.A. 1984 Supp. 45-221(a). The first category exempts records for which disclosure is specifically prohibited or restricted by federal law, state statute, or rule of the Kansas Supreme Court. K.S.A. 1984 Supp. 45-221(a)(1). Coroner's reports are not listed among the exceptions to disclosure of public records. A coroner's report does not fall within the criminal investigation record exception, as the office of district coroner is not a criminal justice agency as defined in K.S.A. 22-4701(c). K.S.A. 1984 Supp. 45-217(b); K.S.A. 1984 Supp. 45-221(a)(10). In addition, there is no specific statute or rule which exempts coroner's reports from public disclosure.

In conclusion, reports prepared by a district coroner or deputy district coroner pursuant to K.S.A. 19-1032 are public records open to inspection by any person under the Open Records Act, K.S.A. 1984 Supp. 44-215 et seq.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Rita L. Noll
Assistant Attorney General

RTS:JSS:RLN:crw

HOUSE BILL No. 2385

By Committee on Judiciary

2-18

8 AN ACT concerning district coroners; relating to a death that is a
9 suspected homicide; amending K.S.A. 22a-233 and K.S.A. 1990
10 Supp. 22a-232 and repealing the existing sections.

11

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

13 Section 1. K.S.A. 1990 Supp. 22a-232 is hereby amended to read
14 as follows: 22a-232. Upon receipt of notice pursuant to K.S.A. 22a-
15 231, and amendments thereto, the coroner shall take charge of the
16 dead body, make inquiries regarding the cause of death and reduce
17 the findings to a report in writing. Such report shall be filed with
18 the clerk of the district court of the county in which death occurred.
19 *If the death is a suspected homicide, the law enforcement agency*
20 *investigating the death may request the district court to order that*
21 *the report not be disclosed. If the court finds that disclosure of the*
22 *report would interfere with the prospective investigation of the sus-*
23 *pected homicide, the court shall order the report not to be disclosed*
24 *by the clerk of the district court until further order of the court.*
25 *Any order entered shall automatically terminate upon the filing of*
26 *criminal charges arising out of the suspected homicide.* If the coroner
27 determines that the dead body is not a body described by K.S.A.
28 22a-231, and amendments thereto, the coroner shall immediately
29 notify the state historical society.

30 Sec. 2. K.S.A. 22a-233 is hereby amended to read as follows:
31 22a-233. (a) If, in the opinion of the coroner, it is advisable and in
32 the public interest that an autopsy be made, or if an autopsy is
33 requested in writing by the county or district attorney or if the
34 autopsy is required under K.S.A. 22a-238, and amendments thereto,
35 such autopsy shall be performed by a qualified pathologist as may
36 be designated by the coroner. A pathologist performing an autopsy,
37 at the request of a coroner, shall be paid a usual and reasonable fee
38 to be allowed by the board of county commissioners and shall be
39 allowed and paid the travel allowance prescribed for coroners and
40 deputy coroners in accordance with the provisions of K.S.A. 22a-
41 228, and amendments thereto, the same to be paid by the board of
42 county commissioners of the county in which the cause of death
43 occurred except that autopsies performed under K.S.A. 22a-238, and
1 amendments thereto, shall be paid for in accordance with K.S.A.
2 22a-238, and amendments thereto.

3 (b) The pathologist performing the autopsy shall remove and re-
4 tain, for a period of three years, such specimens as appear to be
5 necessary in the determination of the cause of death.

6 (c) A full record and report of the facts developed by the autopsy
7 and findings of the pathologist performing such autopsy shall be
8 promptly made and filed with the coroner and with the clerk of the
9 district court of the county in which decedent died. *If the record*
10 *and the report is made in the case of a suspected homicide, the law*
11 *enforcement agency investigating the suspected homicide may request*
12 *the district court to order that the record and report not be disclosed.*
13 *If the court finds that the disclosure of the record and report would*
14 *interfere with the prospective investigation of the suspected homicide,*
15 *the court shall order that the record and report not be disclosed*
16 *by the coroner or clerk of the district court until further order of*
17 *the court. Any order entered shall automatically terminate upon the*
18 *filing of criminal charges arising out of the suspected homicide.* If,
19 in any case in which this act requires that the coroner be notified,
20 the body is buried without the permission of the coroner, it shall
21 be the duty of the coroner, upon being advised of such fact, to
22 notify the county or district attorney, who shall communicate the
23 same to a district judge, and such judge may order that the body
24 be exhumed and an autopsy performed.

25 Sec. 3. K.S.A. 22a-233 and K.S.A. 1990 Supp. 22a-232 are
26 hereby repealed.

27 Sec. 4. This act shall take effect and be in force from and after
28 its publication in the statute book.

Christian Science Committee on Publication For Kansas

820 Quincy Suite K
Topeka, Kansas 66612

Office Phone
913/233-7483

To : House Committee on Federal and State Affairs

Re: House Bill No. 2582

It is requested that the following language be added to this bill:

On page 5, after line 12:

"An investigation or autopsy shall not be required in any case where death occurs without the attendance of a licensed physician solely because the deceased was under treatment by spiritual means through prayer alone in accordance with a recognized religious method of healing permitted under the laws of this state."

On page 7, after line 37:

"A child who is furnished with spiritual treatment solely through prayer in accordance with a recognized method of healing permitted under the laws of this state in lieu of medical treatment shall not for this reason alone be considered to be abused or neglected."

We certainly have no objection to an autopsy being performed in a case where there are suspicious circumstances. Nor do we object to an autopsy where child abuse or neglect is suspected.

This bill, without these amendments, could have the effect of singling out Christian Scientists for autopsy in case of death as we usually do not employ the services of a licensed physician.



Keith R. Landis
Committee on Publication
for Kansas