

Approved 5-2-91  
Date

MINUTES OF THE House COMMITTEE ON Judiciary

The meeting was called to order by Representative John M. Solbach at  
Chairperson

3:30 ~~am~~ p.m. on March 25, 1991 in room 313-S of the Capitol.

All members were present except:

Representatives Douville, Heinemann, Sebelius, Hamilton, Snowbarger and Gregory, who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research  
Jill Wolters, Revisor of Statutes  
Gloria Leonhard, Secretary to the Committee

Conferees appearing before the committee:

Representative Tom Love  
Tim Madden, representing the Department of Corrections  
Douglas G. Bach, representing the City Administrator of the City of Kansas City, Ks.  
Diane M. Glynn, Assistant Attorney General, Litigation Division  
Barbara A. Lombrano, Assistant Attorney General, Consumer Protection

The Chairman called for hearing on HB 2225, increase penalty for perjury at felony trial.

Representative Tom Love, sponsor of HB 2225, appeared in support of the bill. (See Attachments # 1 and 2).

Committee questions followed.

There being no further conferees, the hearing on HB 2225 was closed.

The Chairman called for hearing on HB 2424, arrest of inmates who violate conditions of release.

Tim Madden, representing the Department of Corrections, appeared in support of HB 2424. (See Attachment # 3).

There were no committee questions.

There being no further conferees, the hearing on HB 2424 was closed.

The Chairman called for action on HB 2424.

Representative Smith made a motion that HB 2424 be passed. Representative Carmody seconded the motion. The motion carried.

The Chairman called for action on HB 2541, prohibiting discrimination based on disability.

Representative O'Neal made a motion that HB 2541 be amended, per balloon provided by Revisor's Staff. (See Attachment # 4).

Committee discussion followed.

Written testimony regarding HB 2541 by Paul M. Klotz, dated 3/21/91, was submitted this date and made a part of these minutes. (See Attachment # 5).

Representative Hochhauser made a motion that HB 2541 be passed as amended. Representative Everhart seconded the motion. The motion carried.

The Chairman called for hearing on HB 2550, mandatory prison term for drug violations.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,

room 313-S, Statehouse, at 3:30 ~~x~~m./p.m. on March 25, 1991

Douglas G. Bach, representing the City Administrator of the City of Kansas City, Kansas, appeared in support of HB 2550. (See Attachment #6).

Committee questions followed.

There being no further conferees, the hearing on HB 2550 was closed.

The Chairman called for hearing on SB 250, default procedures under the Kansas Administrative Procedure Act.

Diane M. Glynn, Assistant Attorney General, Litigation Division, appeared in support of SB 250. See (Attachment # 7).

Committee questions followed.

There being no further conferees, the hearing on SB 250 was closed.

The Chairman called for hearing on SB 249, prohibits solicitations disguised as bills or invoices.

Barbara A. Lombrano, Assistant Attorney General, Consumer Protection, appeared in support of SB 249. (See Attachment # 8).

Committee questions followed.

There being no further conferees, the hearing on SB 249 was closed.

The Chairman called for action on SB 250.

Representative Parkinson made a motion that SB 250 be passed. Representative Macy seconded the motion. The motion carried.

The Chairman called for action on SB 249.

Representative Macy made a motion that SB 249 be amended on Page 2, by striking (B), Lines 29 through 35. Representative Parkinson seconded the motion. The motion carried.

Representative Macy made a motion that SB 249 be passed as amended. Representative Everhart seconded the motion. The motion carried.

The Chairman called for action on SB 102, increase in compensation for members of screening panels.

Representative Scott made a motion that SB 102 be passed. Representative Rock seconded the motion. The motion carried.

Representative Everhart made a motion that SB 102, SB 250, and HB 2424 be placed on the Consent Calendar. Representative Smith seconded the motion. The motion carried.

The Chairman called for action on HB 2551, requiring juvenile offenders and their parents to attend counseling.

Representative Everhart made a motion that HB 2551 be tabled. Representative O'Neal seconded the motion. The motion carried.

The meeting adjourned at 4:30 P.M. The next meeting is scheduled for March 26, 1991, 3:30 P.M. in room 313-S.



STATE OF KANSAS  
HOUSE OF REPRESENTATIVES

TOM LOVE  
REPRESENTATIVE, 38TH DISTRICT  
WYANDOTTE COUNTY  
7037 HASKELL  
KANSAS CITY, KANSAS 66109



COMMITTEE ASSIGNMENTS  
MEMBER: PUBLIC HEALTH & WELFARE  
ECONOMIC DEVELOPMENT  
PENSIONS, INVESTMENTS & BENEFITS  
ELECTIONS

TESTIMONY ON HOUSE BILL 2225

House Bill 2225 would keep the present penalty for perjury intact, but adds a provision for enlarging the penalty in certain cases. When the defendant in a case is faced with a sentence that is higher than the sentence for perjury, the penalty for a witness who commits perjury during that case would be equal to that of the defendant's possible sentence, under this new provision.

The penalty for perjury is currently sufficient to reflect the nature of that offense in most circumstances. However, when a defendant is faced with a serious criminal charge such as those that carry possible sentences of over five years in prison, the penalty for perjury is not sufficient. The testimony of co-defendants and witnesses are essential to a successful prosecution of those crimes. It is already difficult to prove a perjury case. In serious cases, co-defendants may view the consequences of perjury as less of a risk, in view of the benefits incriminating their co-conspirators. Thus, the penalty for perjury in serious crimes should be higher to reflect the increased importance of providing the trier of fact with truthful testimony. Perjury needs to be recognized as a serious offense in all cases, but especially those in which the defendant faces the risk of being imprisoned for an extended period of time. By making the penalty for perjury equal to the penalty faced by the defendant, if found guilty, witnesses will be more keenly aware of the importance of telling the truth. Furthermore, it would be a just penalty, equating the seriousness of the perjury to the seriousness of the crime for which their testimony is directed.

True testimony is fundamental to a fair trial. People tell the truth under oath because they believe that justice will prevail. A system under which

*HJUD  
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witnesses are willing to risk perjury undermines the respect all people have for the system and without that respect, our system of justice will ultimately be weakened.

EXCERPT FROM 60A AM JUR 2D RE: PERJURY

60A Am Jur 2d

PERJURY

§ 120

ALR Digest to 3d, 4th, and Federal, Perjury §§ 1 et seq.  
Index to Annotations, Criminal Law; False Swearing; Perjury

§ 119. Generally

Perjury, which was not originally punishable as a crime, is now a crime punishable in the courts,<sup>49</sup> and the punishment is generally prescribed by statute.<sup>50</sup> For example, the general federal perjury statute provides that a person found guilty of perjury is subject to a fine or imprisonment, or both.<sup>51</sup> In addition, perjury may be punishable as contempt of court.<sup>52</sup>

Ordinarily, in a perjury prosecution, a single punishment for a single lie suffices. Multiple sentences, however, may be imposed where it is clear that each question posed to the defendant sought information concerning, and the proof of each falsehood necessitated establishment of, different facts.<sup>53</sup> In other words, an individual may be sentenced on separate counts of perjury, as long as those counts state separate offenses.<sup>54</sup>

■■■■ *Observation:* The sentencing of a convicted perjurer may reflect the court's resolve that while all perjury tends to obstruct justice, the potential for harm to the criminal justice system is especially great when the perjurer testified under a grant of immunity from prosecution. The goals of deterrence and reaffirming societal norms must be given prominence in sentencing such offenders.<sup>55</sup>

VIII. SUBORNATION OF PERJURY AND ATTEMPTS TO SUBORN  
[§§ 120-131]

A. IN GENERAL [§§ 120-123]

Research References

18 USCS § 1622

ALR Digest to 3d, 4th, and Federal, Perjury § 9

Index to Annotations, Criminal Law; False Swearing; Perjury

Torcia, Wharton's Criminal Law (14th ed.) § 741

§ 120. Generally; definition

Although there is authority that subornation of perjury is only a particular form of perjury, or is, in substance, the same as perjury,<sup>56</sup> in most jurisdictions and under federal law,<sup>57</sup> it is declared by statute to be an offense separate and distinct from perjury.<sup>58</sup>

49. United States v Hall (DC Ga) 44 F 864.

50. Collins v Johnston, 237 US 502, 59 L Ed 1071, 35 S Ct 649; Brown v State, 47 Ala 47; De Man v State (Alaska App) 677 P2d 903.

51. 18 USCS § 1621.

52. 17 Am Jur 2d, CONTEMPT § 33.

53. United States v Doulin (CA2 NY) 538 F2d 466, cert den 429 US 895, 50 L Ed 2d 178, 97 S Ct 256.

54. United States v Lazaros (CA6 Mich) 480 F2d 174, cert den 415 US 914, 39 L Ed 2d

468, 94 S Ct 1409; De Man v State (Alaska App) 677 P2d 903 (sentencing defendant to serve concurrent terms for seven counts of perjury).

55. De Man v State (Alaska App) 677 P2d 903.

56. Hammer v United States, 271 US 620, 70 L Ed 1118, 46 S Ct 603.

57. 18 USCS § 1622.

58. Stone v State, 118 Ga 705, 45 SE 630; State v Lomack, 130 Iowa 79, 106 NW 386;

STATE OF KANSAS



DEPARTMENT OF CORRECTIONS

OFFICE OF THE SECRETARY

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Joan Finney  
Governor

Steven J. Davies, Ph.D.  
Secretary

To: House Judiciary Committee

From: Steven J. Davies, Ph.D.  
Secretary of Corrections

Subject: House Bill 2424

Date: March 25, 1991

The Department of Corrections supports the passage of House Bill No. 2424 amending K.S.A. 75-5217 relating to inmates who violate the conditions of their release. Specifically, the bill would clarify how delinquent time lost on parole is computed for persons who have violated the conditions of their release.

This bill clarifies the current language of K.S.A. 75-5217 regarding assessment of delinquent time lost on parole and is consistent with the practice of the Department in the computation of time lost for parole violators. Passage of HB 2424 would have no fiscal impact on the State, but would enhance the Department's ability in training and instruction of Department officials who have the responsibility for computing delinquent time for parole violators by clarifying when an individual's sentence while on parole tolls and resumes as currently provided for by K.S.A. 75-5217.

Delinquent time lost on parole is that period of time which will not be credited towards service of the offender's sentence. HB 2424 clarifies the four types of parole violator situations and the corresponding delinquent time that is to be assessed in each case.

Scenario number 1 which involves the arrest of a parole violator in the State of Kansas is found in HB 2424 on page 2 at lines 28 through 35. The delinquent time lost in this situation is identical to that provided in the stricken language of HB 2424, page 2, at lines 17 through 22.

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House Judiciary Committee  
Page Two  
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HB 2424, however, clarifies the delinquent time lost in the event the parolee has been authorized to be in another state and has not absconded from supervision. This scenario is addressed in HB 2424, page 2 at lines 36 through page 3 line 1. In scenario number 2, since the parolee's presence in the other state is lawful, the parolee will be treated in the same manner as a parolee that has been placed under supervision in Kansas, and the delinquent time assessed against that individual will be identical to the assessment made in scenario number 1.

In scenario number 3, which is set out on page 3, lines 1 through 10, a parolee that is unlawfully in another state and arrested for new criminal charges arising out of the other state, will not have his or her Kansas sentence resume running until the sentence imposed in the other state is completed and he or she is available to be returned to Kansas.

Scenario number 4 involves the arrest of a parolee in another state solely on a parole violation warrant with no criminal prosecution pending in the other state. This scenario is set out in HB 2424 at page 3, lines 10 through 18. In this case, since the parolee is not being subjected to another state's prosecution and incarceration, the parolee is available for return to Kansas upon his or her arrest and the Kansas sentence would again begin to run when the parolee is arrested regardless of whether the presence of the parolee in the other state was authorized or not.

The amendment of K.S.A. 75-5217 as proposed in HB 2424 will clarify when delinquent time ceases and will treat parolees whose supervision has been undertaken by another state in the same manner as parolees under supervision in Kansas, which is consistent with the Department's interpretation of the current version of K.S.A. 75-5217.

SJD:TGM/pa



## HOUSE BILL No. 2541

By Committee on Federal and State Affairs

2-28

8 AN ACT amending the Kansas act against discrimination; concerning  
9 certain procedures relating to enforcement thereof; relating to  
10 discrimination because of disability or familial status; prohibiting  
11 certain acts and providing penalties for violations; amending  
12 K.S.A. 44-1001, 44-1002, 44-1004, 44-1006, 44-1009, 44-1015, 44-  
13 1016, 44-1017, 44-1018, 44-1020, 44-1021, 44-1022, 44-1026, 44-  
14 1027 and 44-1030 and K.S.A. 1990 Supp. 44-1005 and 44-1019  
15 and repealing the existing sections.  
16

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

18 Section 1. K.S.A. 44-1001 is hereby amended to read as follows:  
19 44-1001. This act shall be known as the Kansas act against discrim-  
20 ination. It shall be deemed an exercise of the police power of the  
21 state for the protection of the public welfare, safety, health and  
22 peace of the people of this state. The practice or policy of discrim-  
23 ination against individuals in employment relations, in relation to  
24 free and public accommodations or, in housing by reason of race,  
25 religion, color, sex, ~~physical handicap~~ *disability*, national origin or  
26 ancestry *or in housing by reason of familial status* is a matter of  
27 concern to the state, since such discrimination threatens not only  
28 the rights and privileges of the inhabitants of the state of Kansas  
29 but menaces the institutions and foundations of a free democratic  
30 state. It is hereby declared to be the policy of the state of Kansas  
31 to eliminate and prevent discrimination in all employment relations,  
32 to eliminate and prevent discrimination, segregation, or separation  
33 in all places of public accommodations covered by this act, and to  
34 eliminate and prevent discrimination, segregation or separation in  
35 housing.

36 It is also declared to be the policy of this state to assure equal  
37 opportunities and encouragement to every citizen regardless of race,  
38 religion, color, sex, ~~physical handicap~~ *disability*, national origin or  
39 ancestry, in securing and holding, without discrimination, employ-  
40 ment in any field of work or labor for which ~~he~~ *a person* is properly  
41 qualified, to assure equal opportunities to all persons within this  
42 state to full and equal public accommodations, and to assure equal  
43 opportunities in housing without distinction on account of race, re-

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1 ligion, color, sex, ~~physical handicap~~ *disability, familial status*, na-  
 2 tional origin or ancestry. It is further declared that the opportunity  
 3 to secure and to hold employment, the opportunity for full and equal  
 4 public accommodations as covered by this act and the opportunity  
 5 for full and equal housing are civil rights of every citizen.

6 To protect these rights, it is hereby declared to be the purpose  
 7 of this act to establish and to provide a state commission having  
 8 power to eliminate and prevent segregation and discrimination, or  
 9 separation in employment, in all places of public accommodations  
 10 covered by this act, ~~and~~ in housing because of race, religion, color,  
 11 sex, ~~physical handicap~~ *disability*, national origin or ancestry *and*  
 12 *in housing because of familial status*, either by employers, labor  
 13 organizations, employment agencies, realtors, financial institutions or  
 14 other persons as hereinafter provided.

15 Sec. 2. K.S.A. 44-1002 is hereby amended to read as follows:  
 16 44-1002. When used in this act:

17 (a) ~~The term~~ "Person" includes one or more individuals, part-  
 18 nerships, associations, organizations, corporations, legal representa-  
 19 tives, trustees, trustees in bankruptcy, or receivers.

20 (b) ~~The term~~ "Employer" includes any person in this state em-  
 21 ploying four (4) or more persons, and any person acting directly or  
 22 indirectly for an employer as ~~herein defined~~, ~~and~~ labor organi-  
 23 zations, nonsectarian corporations, ~~and~~ organizations engaged in so-  
 24 cial service work, and the state of Kansas and all political and  
 25 municipal subdivisions thereof, but shall not include a nonprofit  
 26 fraternal or social association or corporation.

27 (c) ~~The term~~ "Employee" does not include any individual em-  
 28 ployed by ~~his or her~~ *such individual's* parents, spouse, or child, or  
 29 in the domestic service of any person.

30 (d) ~~The term~~ "Labor organization" includes any organization  
 31 which exists for the purpose, in whole or in part, of collective bar-  
 32 gaining ~~or~~, of dealing with employers concerning grievances, terms  
 33 or conditions of employment, or of other mutual aid or protection  
 34 in relation to employment.

35 (e) ~~The term~~ "Employment agency" includes any person or gov-  
 36 ernmental agency undertaking, with or without compensation, to  
 37 procure opportunities to work, or to procure, recruit, refer, or place  
 38 employees.

39 (f) ~~The term~~ "Commission" means the commission on civil rights  
 40 created ~~and amended~~ by this act.

41 (g) ~~The term~~ "Unlawful employment practice" includes only  
 42 those unlawful practices and acts specified in K.S.A. 44-1009, *and*  
 43 *amendments thereto* and includes segregate or separate.

4-3

1 (h) The word "Hotel," "motel" and "restaurant" shall each  
 2 have the meanings ascribed to them respectively by K.S.A. 36-  
 3 101 and K.S.A. 36-301, and the term "public accommodations"  
 4 shall include any person as defined herein; "Public accommo-  
 5 dations" means any person who caters or offers goods, services,  
 6 facilities, and accommodations to the public, but shall. Public ac-  
 7 commodatons include, but are not limited to, any lodging estab-  
 8 lishment or food service establishment, as defined by K.S.A 36-501  
 9 and amendments thereto; any bar, tavern, barbershop, beauty par-  
 10 lor, theater, skating rink, bowling alley, billiard parlor, amusement  
 11 park, recreation park, swimming pool, lake, gymnasium, mortuary  
 12 or cemetery which is open to the public; or any public transportation  
 13 facility. Public accommodations do not include a nonprofit fraternal  
 14 or social association or corporation.

15 (i) The term "Unlawful discriminatory practice" means any dis-  
 16 crimination against persons in a hotel, motel, cabin camp, res-  
 17 taurant or trailer court and the segregation against persons in  
 18 a place of public accommodations covered by this act, by reason  
 19 of their race, religion, color, sex, physical handicap disability,  
 20 national origin, or ancestry. The term "Unlawful discriminatory  
 21 practice" also means any discrimination against persons in a  
 22 bar, tavern, barbershop, beauty parlor, theater, skating rink,  
 23 bowling alley, billiard parlor, amusement park, recreation park,  
 24 swimming pool, lake, gymnasium, mortuary, cemetery which  
 25 is open to the public or on any public transportation facility.

26 The term "Unlawful discriminatory practice" also means any  
 27 discrimination against persons:

- 28 (1) In any place of public accommodations; or  
 29 (2) in the full and equal use and enjoyment of the services,  
 30 facilities, privileges and advantages of any institution, department or  
 31 agency of the state of Kansas or any political subdivision or munic-  
 32 ipality thereof.

33 (j) The term "physical handicap" means the physical con-  
 34 dition of a person, whether congenital or acquired by accident,  
 35 injury or disease which constitutes a substantial disability, but  
 36 is unrelated to such person's ability to engage in a particular  
 37 job or occupation "Disability" means, with respect to an individual:

- 38 (1) A physical or mental impairment that substantially limits one  
 39 or more of the major life activities of such individual;  
 40 (2) a record of such an impairment; or  
 41 (3) being regarded as having such an impairment.

42 Disability does not include current, illegal use of or addiction to a  
 43 controlled substance as defined in section 102 of the federal con-

by the person or entity alleged to have committed  
 the unlawful discriminatory practice complained  
 of

1 trolled substance act (21 U.S.C. 802).

2 (k) "Reasonable accommodation" means:

3 (1) Making existing facilities used by employees readily accessible  
4 to and usable by individuals with disabilities; and

5 (2) job restructuring; part-time or modified work schedules; reas-  
6 signment to a vacant position; acquisition or modification of equip-  
7 ment or devices; appropriate adjustment or modifications of  
8 examinations, training materials or policies; provision of qualified  
9 readers or interpreters; and other similar accommodations for in-  
10 dividuals with disabilities.

11 Sec. 3. K.S.A. 44-1004 is hereby amended to read as follows:  
12 44-1004. The commission shall have the following functions, powers  
13 and duties:

14 (1) To establish and maintain its principal office in the city of  
15 Topeka, and such other offices elsewhere within the state as it may  
16 deem necessary.

17 (2) To meet and function at any place within the state.

18 (3) To adopt, promulgate, amend and rescind suitable rules and  
19 regulations to carry out the provisions of this act, and the policies  
20 and practices of the commission in connection therewith.

21 (4) To receive, initiate, investigate, and pass upon complaints  
22 alleging discrimination in employment, public accommodations and  
23 housing because of race, religion, color, sex, ~~physical handicap~~  
24 *disability*, national origin or ancestry *and complaints alleging dis-*  
25 *crimination in housing because of familial status.*

26 (5) To subpoena witnesses, compel their appearance; *and* require  
27 the production for examination of records, documents and other  
28 evidence or possible sources of evidence and to examine, record and  
29 copy such materials and take and record the testimony or statements  
30 of such persons. The commission may issue subpoenas to compel  
31 access to or the production of such materials, or the appearance of  
32 such persons, and may issue interrogatories to a respondent to the  
33 same extent and subject to the same limitations as would apply if  
34 the subpoena or interrogatories were issued or served in aid of a  
35 civil action in the district court. The commission shall have access  
36 at all reasonable times to premises and may compel such access by  
37 application to a court of competent jurisdiction: ~~Provided, however,~~  
38 *provided* that the commission first complies with the provisions of  
39 article 15 of the Kansas bill of rights and the fourth amendment to  
40 the United States constitution relating to unreasonable searches and  
41 seizures. The commission may administer oaths and take depositions  
42 to the same extent and subject to the same limitations as would  
43 apply if the deposition was taken in aid of a civil action in the district

4-4  
(m) "Regarded as having such an impairment" means the absence of a physical or mental impairment but regarding or treating an individual as though such an impairment exists.



**Association of Community  
Mental Health Centers of Kansas, Inc.**

835 SW Topeka Avenue, Suite B, Topeka, KS 66612  
Telephone (913) 234-4773 Fax (913) 234-3189

**TESTIMONY ON H.B. 2541  
HOUSE JUDICIARY COMMITTEE  
Honorable John Solbach, Chair**

John G. Randolph  
President  
Emporia

Eunice Ruttinger  
President Elect  
Topeka

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Vice President  
Independence

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Secretary  
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Dan Watkins  
Member at Large  
Lawrence

Kermit George  
Past President  
Hays

Paul M. Klotz  
Executive Director  
Topeka

**Paul M. Klotz  
March 21, 1991**

Thank you for this opportunity to comment.

The mentally ill are not now included in the Kansas Act Against Discrimination. Yet these Kansas citizens are probably the population most discriminated against in this state and in the country. The mentally ill are perceived as dangerous when in fact as taken as a total population as against the nonhandicapped populations, these persons have the least violent behavior of any other individual group of people. In fact and unfortunately, when these people do exhibit violence it is usually against themselves, rather than others.

With mental health reform as passed by the 1990 Session of the Legislature, many of these people will be returned to the community. It is most imperative that these people be protected in their choice of housing, jobs and social life.

We urge your support of H.B. 2541.

*HJUD  
Attachment # 5  
3-25-91*



# CITY OF KANSAS CITY, KANSAS

**DAVID T. ISABELL**  
**City Administrator**



**EXECUTIVE CHAMBER**  
**ONE MCDOWELL PLAZA**

**KANSAS CITY, KANSAS 66101**  
**PHONE (913) 573-5030**

House Judiciary Committee  
H.B. 2550

Testimony of Douglas G. Bach  
City of Kansas City, Kansas  
March 25, 1991

I appear today representing an idea of a special task force on crime which was organized in Kansas City, Kansas with the intent of studying crime activity in the community and developing ideas to curb this criminal action. H.B. 2550 includes one of these ideas.

The task force believes that much of the criminal activity in Kansas City is related to drug trafficking and other drug related activities. With the enactment of this bill we feel the state will be taking a great step toward reducing criminal activity because we will be removing individuals who are involved in many crimes out of society.

Those who deal drugs touch many of our youths, especially those who are underprivileged children, and when they are given probationary sentences or no sentence at all it tells our children that dealing with drugs is not serious because those who do it are not punished. Additionally, it tells them that if they take a chance on dealing drugs to make money, like the role models we are leaving in society, they are not taking much of a risk.

We realize the fiscal condition of the state this year and know that funding for mandatory sentences is highly unlikely, however, we hope that you can realize the impact of letting known drug traffickers remain in society and find that reducing their population through mandatory sentences will reduce our overall criminal activity.

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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

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TESTIMONY BY  
ASSISTANT ATTORNEY GENERAL DIANE M. GLYNN  
HOUSE JUDICIARY COMMITTEE  
MARCH 25, 1991  
RE: SENATE BILL NO. 250

Mr. Chairman and Members of this Committee:

On behalf of Attorney General Bob Stephan, I ask for your support of Senate Bill No. 250. We thank you for this opportunity to speak in support of the same. We requested introduction of this bill as a means to clarify the rights of litigants in administrative hearings. The bill would amend the default provisions of the Kansas Administrative Procedures Act (KAPA).

The need for this legislation arises out of language in K.S.A. 1990 Supp. 77-520 relating to default proceedings. Under subsections (a) and (b) of that statute, a person who fails to attend or participate in an administrative hearing may be held in default, and a proposed default order issued. The party has seven days from service of the proposed order to file a motion to vacate the order. Pursuant to subsection (c), if the

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presiding officer does not vacate the proposed order, it becomes effective after the seventh day.

The current statute allows a person to file a motion to vacate the proposed order. If the presiding officer fails to act on that motion, the proposed order becomes effective even though the pending motion is timely filed. Even if issued in error, the proposed order operates against the individual and substantially affects rights during the pending administrative proceeding. As an example of this scenario, we offer the facts of a recent case which occurred before an agency. Because of an internal oversight, the case was commenced by serving the notice of hearing at an incorrect address. The licensee did not appear at the hearing, and a proposed default order was issued. The board proposed to revoke the license. The licensee received the proposed order, and immediately filed a timely motion to vacate. The motion was filed on the seventh day. The presiding officer did not rule on the motion prior to the time the proposed order became effective by operation of law. The motion to vacate was allowed, eventually ruled upon and granted. However, confusion exists as to whether this individual's license was revoked for the time period between the date the proposed order became effective and the date the order was vacated. Senate Bill No. 250 would resolve this uncertainty by staying the effectiveness of a proposed default order until the motion to vacate is ruled upon.



Other issues regarding the default provisions of the Kansas administrative procedures act must be resolved at some time in the future. This bill does not attempt to address those issues. We understand that the judicial council may be reviewing these provisions later this year with the goal of refining the section. Until such time as all issues may be resolved, we request that Senate Bill No. 250 be passed as an interim measure to clarify individual parties' procedural rights.



STATE OF KANSAS

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Testimony of  
Assistant Attorney General Barbara A. Lombrano  
On Behalf of Attorney General Robert T. Stephan  
Before the House Judiciary Committee  
RE: Senate Bill 249  
March 25, 1991

Attorney General Robert Stephan and his Consumer Protection Advisory Council have requested the introduction of Senate Bill 249 to solve a growing problem which faces all Kansas consumers, most particularly small businesses. Because the "yellow fingers" symbol used by Southwestern Bell and other local yellow pages providers has never been trademarked, it is often used with solicitations disguised as invoices addressed to small businesses.

The solicitations are designed to trick businesses into believing that the notice is a renewal for their local telephone company yellow pages directory. In fact, most of these solicitations are from private yellow page services. Many of the books, if ever printed, are only distributed to those who purchase a listing. Therefore, their usefulness is highly suspect.

The Attorney General and his Consumer Protection Advisory Council asks that such deceptive solicitation practices be

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prohibited. This bill requires prominent disclosure to the consumer that the solicitation is, in fact, just that, and that there was no obligation on the part of the recipient unless the recipient wants to purchase the offered goods or services.

In the case of yellow pages directories which are not affiliated with a local telephone service, an additional disclosure is required. It specifically points out to the recipient that the directory is not affiliated with the local telephone company classified directory.

Thank you for the opportunity to be heard on Senate Bill 249.