Approved: 14 June 1991
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Senator Wint Winter Jr. at 10:05 a.m. on March 18, 1991 in room 514-S of the Capitol.

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

Committee staff present:
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:
Jonathan P. Small, Washington County Citizens for Sound Economic Progress
Mark Ohlde, Washington County
Ernie Mosher, League of Kansas Municipalities
Chuck Simmons, Kansas Department of Corrections
Joan Strickler, Kansas Advocacy and Protective Services, Inc.
Marvin Stottlemire, Kansas Department of Health and Environment
Jack Markham, National Association of People with AIDS and American Civil Liberties Union

Chairman Winter called the meeting to order by opening the hearing for HB 2003.

HB 2003 - prohibiting cities and counties from owning or operating certain prisons.

Mike Heim, Legislative Research Department, gave a staff review of the interim study on prisons.

Jonathan P. Small, Washington County Citizens for Sound Economic Progress, testified in support of HB 2003. (ATTACHMENT 1)

Mark Ohlde, Washington County, testified in support of HB 2003. (ATTACHMENT 2)

Ernie Mosher, League of Kansas Municipalities, testified in opposition to HB 2003 because they view it as a violation of the Home Rule principles. He stated their position would stand unless the issue was studied and a public policy established for correction facilities.

Chuck Simmons, Kansas Department of Corrections, presented testimony on behalf of Secretary of Corrections Steven Davies expressing their desire for a clear public policy on the issue incorporated in HB 2003. (ATTACHMENT 3)

Chairman Winter asked for other speakers on the issue of HB 2003. No one appeared from any community currently attempting to build facilities. The Chairman also ask the guests to identify themselves and asked if any wished to express their concerns. No additional concerns were expressed or noted.

This concluded the hearing for HB 2003 and the Chairman turned the Committee's attention to the hearing for SB 373.

SB 373 - access to records by developmental disabilities protection and advocacy agency.

Joan Strickler, Kansas Advocacy and Protective Services, Inc., testified in support of SB 373. (ATTACHMENT 4)

As no other conferees appeared, this concluded the hearing for SB 373.

Chairman Winter reopened the hearing for SB 287 (which had previously been heard by the Subcommittee on Civil Procedure) to receive additional information.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,

room 514-S, Statehouse, at 10:05 a.m. on March 18, 1991.

Marvin Stottlemire, Director of the Office of Legal Services with the Kansas Department of Health and Environment, presented the Committee with clarifying statements on the eligibility requirements for "Ryan White" funding and in support of SB 287. (ATTACHMENT 5)

Jack Markham, National Association of People with AIDS and American Civil Liberties Union, testified in opposition to SB 287. (ATTACHMENT 6)

This concluded the information on SB 287.

The Chairman turned the Committee's attention to discussion and possible action on bills heard by the Committee.

Senator Morris moved to recommend HB 2003 favorable for passage. Senator Gaines seconded the motion. The motion carried. The Committee was in unanimous agreement to recommend HB 2003 favorable for passage.

Senator Rock moved to recommend SB 373 favorable for passage. Senator Oleen seconded the motion. The motion carried.

Senator Rock moved to conceptually amend SB 287 to removed the specific HIV reference and include "deadly infectious diseases". The motion died for lack of a second. Committee discussion followed on the possibility that adequate measures already exist in the statutes for crimes against persons or sex offenses.

SB 287 was held for action at a later date to allow time for a response from the Attorney General and the Judicial Counsel Committee on Criminal Law.

The meeting was adjourned.

(No guest log completed for this date)

JONATHAN P. SMALL, CHARTERED
Attorney and Counselor at Law
Suite 304, Capitol Tower
400 West Eighth Street
Topeka, Kansas 66603
913/234-3686

BEFORE THE SPECIAL COMMITTEE OF JUDICIARY

TESTIMONY OF JONATHAN P. SMALL
RE: 1991 HOUSE BILL 2003
MARCH 18, 1991

I am Jonathan Small and I represent Washington County Citizens for Sound Economic Progress (WC/CSEP) which is a non-profit association of several hundred citizen who oppose private prisons, especially any contemplated to be built and operated in Washington County, Kansas. We strongly support HB 2003.

The 1990 Kansas Legislature enacted a one-year prohibition against private prisons with the publicly announced purpose of putting all such proposals on hold until a legislative interim committee could thoroughly examine the issue. The legislative committee completed its review and its recommendation appears as House Bill 2003, which unqualifiedly extends the prohibition indefinitely. This is prudent legislation. Until someone answers the hundreds of questions surrounding the privatization issue the state should not tolerate attempts to pursue this project at the local level.

The members of WC/CSEP oppose the authorization of private prisons by the Kansas Legislature and urge this committee to recommend this bill favorably. Our purpose today is to ask you to continue to counsel caution, to rein in the blind rush being made by municipalities who are willing to build and operate maximum/medium security prisons without first definitively defining the duties, obligations and liabilities of the several governmental entities which will necessarily be involved in an incredibly complex infant industry. Let us all continue to cautiously approach this kind of endeavor to answer the hundreds of questions which are all presently unanswered.

Private prisons as a municipal industry for rural Kansas is not an idea whose time has come. Unlike state operated correctional facilities, private prisons are not a known, definable entity with carefully drawn lines of elaborate responsibility and liability. Who knows what to expect from the creation of such industries that will be starting from scratch in Kansas? in fact, facilities such as those originally contemplated for the cities of Washington and Holton will be the first in the nation. HB 2835 proposed last session did little to answer these questions; in fact, it created more questions than it answered.

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Attachment 1

We have much to learn about an industry of which little is yet known.

Ira P. Robbins, a nationally respected authority on privatization of prisons, has provided the Senate Federal and State Affairs Committee with a well-researched and documented overview of the private prison issue nationwide. He opines directly upon the wisdom of the Legislature's 1990 efforts which places a hold on municipal, privately operated prison facilities. He states:

> "After having studied the issues surrounding private incarceration for many years, I conclude that the concept is clearly unwise and arguably even unconstitutional. The issues -- including policy, legal, and symbolic issues -- are enormously complex. One well-considered position would be to bar private prisons and mails altogether. At the least, however, I believe that the Kansas Legislature should require a great deal of further study over time, such as by monitoring the experiences of those states that have allowed some degree of privatization."

I have delivered his research paper to this committee with the hope that it will serve as a point of departure for studying critically any bill.

If the state of Kansas is to seriously consider permitting private prisons to operate as a municipal industry let us first know the answers to what the people are expected to live with. Let us carefully and wisely analyze the hundreds of questions which surround the issue to allow us all an opportunity to be informed on an issue of such importance. To err on the side of caution is prudent; to rush headlong into this incredibly complex issue without first seeking resolution of the concerns of many who will be affected is folly at best.

To date no one has presented a cogent, persuasive argument for allowing this kind of business to begin in Kansas. We seriously doubt that they will. Until they do we ask that HB 2003 be enacted to protect us all from the unknown consequences of such an industry.

AS0318T1

Statement supporting House Bill No. 2003
by Mark Ohlde, Washington Co. resident
Presented to the
Members of the Judiciary Committee
of the Kansas Senate

February 18,1991

Over the past two years private prison promoters have taken their pitch to economically beleaguered rural communities throughout the state. These promoters have touted private prisons as a nearly ideal, risk-free, lucrative, and environmentally safe form of development....the region's "Industry of the Future". Several cities already have taken the bait with few or no probative questions asked.

The leading advocate of these facilities actually envisions western Kansas being repopulated by means of prisons filled with out-of-state felons. Certainly a profitable vision if he can continue to command a million dollar consultation fee for each contract signed.

The passage of H.B. 2003 is urgently needed to protect the State of Kansas from consequences of a poorly conceived private prison scheme. Without H.B. 2003 there will be no statute limiting or regulating private prison construction or operation. An ominous situation indeed!

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Attachment 2

STATE OF KANSAS

DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
Landon State Office Building
900 S.W. Jackson—Suite 400-N
Topeka, Kansas 66612-1284
(913) 296-3317

Joan Finney
Governor

Steven J. Davies, Ph.D.
Secretary

Date: March 18, 1991

To Senate Committee on Judiciary

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

Subject: House Bill 2003

House Bill No. 2003 would prohibit cities, counties, and private entities from operating correctional facilities for confining inmates from another state until a public policy was developed. This prohibition would be accomplished by removing the July 1, 1991, expiration date on the prohibition. This date was established last session when the issue of private prisons and regional prisons was considered.

The Department has testified concerning this legislation on several occasions. In doing so we have stated that the Department neither opposes nor supports private prisons or regional prisons. However, I have stated that a public policy regarding such facilities should be in place, and that specific areas should be addressed in any such policy. In addition, the role of the Department of Corrections in the operation and oversight of such facilities should be clearly determined prior to the establishment of any of these facilities.

Any public policy regarding an issue such as corrections must first address the paramount concern of public safety. The safety and wellbeing of the citizenry of this state must always be our primary responsibility in the development and implementation of correctional facilities and programs. As a means of meeting this responsibility, reasonable measures to provide assurances that the facilities are being operated in a responsible and professional manner should be included in the guidelines for privately or municipally operated facilities.

The protection of the general public from the risk of liability resulting from the operation of privately or municipally operated correctional facilities should also be a primary consideration in

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Attachment 3

the development of a public policy in this area. A number of provisions to limit the exposure of the state to liability were suggested by the Department of Corrections during hearings last session.

In addition to addressing the state's liability exposure, measures to allow the state to recover expenses resulting from oversight activities and other involvement in privately or municipally operated correctional facilities should be considered. It is my position that the general public should not be expected to assume financial burdens resulting from the operation of such facilities.

Some of the measures suggested by the Department of Corrections in hearings last session on this issue included:

- A requirement that such correctional facilities be operated in conformance with standards of the American Correctional Association and that audits to determine compliance with these standards be conducted on an annual basis. All contracts for the placement of inmates at such correctional facilities must require conformance with ACA standards.

- A requirement that the state and any local unit of government be reimbursed for court costs and jury fees resulting from the prosecution of an out-of-state inmate who is convicted of a felony committed while confined in a facility operated by a private entity or a municipality and is sentenced to the custody of the secretary of corrections. The amount of the reimbursement should be the per diem cost of incarcerating an inmate in a Kansas facility as calculated by the Department of Corrections.

- A requirement that the state be reimbursed for the reasonable costs incurred by the state in responding to any emergency situation whether the response is initiated by the state or is requested by the entity operating the correctional facility.

- A requirement that the state be reimbursed for the reasonable expenses incurred by state agencies in monitoring pursuant to K.S.A. 75-5228, the correctional facility.

- A provision that the State of Kansas and the Department of Corrections will not be held liable for the design, construction, and operation of such a correctional facility.

- The entity operating the correctional facility should be required to purchase a surety bond or other financial assurance to provide security for all reimbursable costs to the

State of Kansas or local units of government. The form and amount of the bond should be determined by the state.

- The entity operating the correctional facility should be required to maintain in effect at all times liability insurance policies regarding all operational aspects of the facility.

- The entity operating the correctional facility should be required to provide for the indemnification of the state for all legal actions resulting from the operation of the facility. This should extend to any judgments against state officials resulting from such operations as well as all legal expenses incurred by the state in defending itself from such actions.

- A procedure should be in place to specify what will occur in the event that an entity operates a facility in violation of any statutory requirements or in an unconstitutional manner. This should include a provision for the return of any inmates to the sending state within a specific time period.

The provisions set forth above are viewed by the Department of Corrections as being important to any public policy regarding the private prison issue. There may well be additional guidelines, restrictions, or protections which should be considered. In suggesting the need for these provisions, it is not my intent to kill the private prison concept. However, I do not believe the state should venture into this area without taking reasonable and responsible measures to protect the public's interests.

In considering the role of the Department of Corrections, I feel I must again point out that the Department does not now have the personnel and resources to undertake a significant participation in the planning and monitoring of such a facility. The review and approval of plans takes literally thousands of manhours and is a continuing process through the construction of the facility. I do not now have the time, personnel, or resources to undertake this additional task. In previous legislation on this issue there is a provision that the plans for a facility operated by a regional prison authority will be developed in "full consultation with and approval of the secretary of corrections of the state of Kansas." The inclusion of such a provision in any public policy on this issue would have to be made with the full recognition that it will require additional staff and resources for the Department of Corrections.

As I have said before, I do not oppose the regional prison authority or private prison concept. I do believe, however, that the state should not venture into this area without taking reasonable and responsible measures to protect the public safety and interest.

SJD:CES/pa

Kansas Advocacy & Protective Services, Inc.

kaps

513 Leavenworth
Manhattan, KS 66502
(913) 776-1541

TO: The Senate Judiciary Committee
Senator Wint Winter, Jr., Chairman

FROM: Kansas Advocacy and Protective Services, Inc.,
R.C. Loux, Chairman

RE: S.B. 373

DATE: March 18, 1991

KAPS assists disabled children and adults in gaining access to the rights and services to which they are entitled. Our agency fulfills the protection and advocacy requirements of P.L. 94-103, as amended, the Developmental Disabilities Act, and the Protection and Advocacy for Mentally Ill Individuals Act, P.L. 99-319, as amended. We also administer the Kansas Guardianship Program. KAPS is a private, non-profit corporation created in 1977 specifically to provide these services for Kansas.

The amendments proposed would update K.S.A. 74-5515 to bring Kansas law into compliance with recent changes to the Developmental Disabilities Act (42 U.S.C. 6000) and the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. 10801) pertaining to access to records requirements for designated state protection and advocacy agencies.

We ask your support for these proposed amendments.

Respectfully submitted,

Joan Strickler
Executive Director

Senate Judiciary Committee
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Attachment 4

State of Kansas
Joan Finney, Governor
Department of Health and Environment
Office of the Secretary
Landon State Office Bldg., Topeka, KS 66612-1290

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

Respond to: (913) 296-1522
FAX (913) 296-6231

Testimony presented to

Senate Judiciary Committee

by

The Kansas Department of Health and Environment

Senate Bill 287

Thank you Mr. Chairman, for permitting us to appear before you again today. When we appeared before the subcommittee hearings on this bill we indicated that the bill as written was the minimum requirements to receive federal funding under the "Ryan White Bill." Since that testimony we have visited with interest groups who called to our attention that the bill may not represent "minimum requirements" in that the federal law only mandates a statute which prohibits knowing exposure to HIV with the intent to infect another. The original draft did not include the element of intent.

I have presented to the committee two balloons on SB 287. One amends the bill to make it clear that intent to infect another is an element of the crime. The second adds the intent language, plus language providing that none of the otherwise proscribed activity is criminal if the person exposed to the virus provided prior informed consent to the activity. Any of the three versions of the bill will provide the eligibility requirements for Ryan White funding.

Testimony presented by: Marvin G. Stottlemire
Director, Office of Legal Services
March 18, 1991

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

[redacted] Director of Environment (913) 296-1535

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

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

SENATE BILL No. 287

By Committee on Public Health and Welfare

2-22

AN ACT making it unlawful for individuals infected with human immunodeficiency virus to engage in certain activities; providing penalties for violations.

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

Section 1. (a) It is unlawful for an individual who knows oneself to be infected with human immunodeficiency virus (HIV) knowingly:

(1) To engage in sexual intercourse or sodomy with another individual ~~without first informing~~ that individual ~~of~~ the human immunodeficiency virus (HIV) ~~infection~~;

(2) to sell or donate one's own blood, blood products, semen, tissue, organs or other body fluids;

(3) to share with another individual a hypodermic needle, syringe, or both, for the introduction of drugs or any other substance into, or for the withdrawal of blood or body fluids from, the other individual's body ~~without first informing that individual that the needle or syringe, or both, have been used by someone infected~~ with human immunodeficiency virus (HIV).

(b) As used in this section, the term "sexual intercourse" shall not include penetration by any object other than the male sex organ; the term "sodomy" shall not include the penetration of the anal opening by any object other than the male sex organ.

(c) Violation of this section is a class A misdemeanor.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

with the intent to infect

with

with the intent to infect the recipient with the human immunodeficiency virus (HIV);

with the intent to infect another person

A

5-24

SENATE BILL No. 287

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Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

with the intent to infect

with

with the intent to infect the recipient with the human immunodeficiency virus (HIV);

with the intent to infect another person

(c) The activities described in sub section (a) shall not be unlawful if the person exposed to the infection knew of the infection status of the person exposing him or her and provided prior informed consent to the activity.

d

B

5-3/4

Conf Report 101-652

Public Law 101-381

"SEC. 2647. REQUIREMENT OF STATE LAW PROTECTION AGAINST INTENTIONAL TRANSMISSION.

"(a) IN GENERAL.—The Secretary may not make a grant under section 2641 to a State unless the chief executive officer determines that the criminal laws of the State are adequate to prosecute any HIV infected individual, subject to the condition described in subsection (b), who—

"(1) makes a donation of blood, semen, or breast milk, if the individual knows that he or she is infected with HIV and intends, through such donation, to expose another HIV in the event that the donation is utilized;

"(2) engages in sexual activity if the individual knows that he or she is infected with HIV and intends, through such sexual activity, to expose another to HIV; and

"(3) injects himself or herself with a hypodermic needle and subsequently provides the needle to another person for purposes of hypodermic injection, if the individual knows that he or she is infected and intends, through the provision of the needle, to expose another to such etiologic agent in the event that the needle is utilized.

"(b) CONSENT TO RISK OF TRANSMISSION.—The State laws described in subsection (a) need not apply to circumstances under which the conduct described in paragraphs (1) through (3) of subsection (a) if the individual who is subjected to the behavior involved knows that the other individual is infected and provides prior informed consent to the activity.

"(c) STATE CERTIFICATION WITH RESPECT TO REQUIRED LAWS.—With respect to complying with subsection (a) as a condition of receiving a grant under section 2601, the Secretary may not require a State to enact any statute, or to issue any regulation, if the chief executive officer of the State are adequate. The existence of a criminal law of general application, which can be applied to the conduct described in paragraphs (1) through (3) of subsection (a) is sufficient for compliance with this section.

"(d) TIME LIMITATIONS WITH RESPECT TO REQUIRED LAWS.—With respect to receiving a grant under section 2601, if a State is unable to certify compliance with subsection (a), the Secretary may make a grant to a State under such section if—

"(1) for each of the fiscal years 1991 and 1992, the State provides assurances satisfactory to the Secretary that by not later than October 1, 1992, the State has in place or will establish the prohibitions described in subsection (a); and

"(2) for fiscal year 1993 and subsequent fiscal years, the State has established such prohibitions.

"SEC. 2649. DETERMINATION OF AMOUNT OF ALLOTMENTS.

"(a) MINIMUM ALLOTMENT.—Subject to the extent of amounts made available in appropriations Acts, the amount of an allotment under section 2641(a) for a State for a fiscal year shall be the greater of—

"(1) $100,000 for each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico, and $50,000 for each of the territories of the United States other than the Commonwealth of Puerto Rico; and

5-4/4

To the Senate Judiciary Committee
RE: Senate Bill 287

From Jack Markham
Representing: National Association of People With AIDS (NAPWA)
American Civil Liberties Union (ACLU), Kansas Affiliate

Attachments: Section 2647, Ryan White Care Act
Legal opinion, Jim Lawing, ACLU

Honorable Senators,

The Kansas Dept. of Health and Environment has informed me that they intend to request that the committee consider altering S.B. 287 to include "intent" in the bills language. This makes S.B. 287 considerably more acceptable to NAPWA, conforms to the federal mandate, and I believe maintains the spirit of Kansas Statutes concerning criminal intent.

However, the federal mandate created by the Ryan White Care Act, under Section 2647 (c) states "as a condition of receiving a grant under section 2601, the Secretary may not require a State to enact any statute, or to issue any regulation, if the chief executive officer (certifies that the laws of) of the State are adequate. The existence of a criminal law of general application, which can be applied to the conduct described in paragraphs (1) through (3) of subsection (a) (INTENT TO TRANSMIT HIV) is sufficient for compliance with this section.

It is the opinion of James Lawing (attached), attorney with criminal law experience and President of the Kansas ACLU, that K.S.A. 21-3414, aggravated battery, is sufficient to meet the federal mandate. This language applies to specific intent to commit an act which "inflicts great bodily harm" that is done "in any manner whereby great bodily harm, . . . or death can be inflicted". It is the opinion of Mr. Lawing that this existing statute makes S.B. 287 unnecessary.

States have used a variety of existing statutes to prosecute those who intend or threaten to spread HIV. These criminal charges range from making a terrorist threat to attempted murder.

It would be difficult to believe that existing statutes of the state of

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Kansas do not protect its citizens from the "intent" to commit harm by another person. Under these circumstances, I urge the committee to reject this legislation, and if reasonable doubt exists, that the committee take whatever action is necessary to request an opinion from the state Attorney Generals office as to the application of existing statutes to meet the federal mandate. Under the explanatory Conference Report that accompanied these federal regulations, it was noted that most states have applicable statutes that meet the mandate of section 2647(c).

Under section 2647(d)(1), the state need not certify that new or existing statutes comply with the federal mandate until October 1, 1992. This allows ample time and opportunity for the Attorney General to issue an opinion in this matter, without jeopardizing federal funds.

I strongly urge you to reject this legislation.

Jack Markham
NAPWA

6-25

AMERICAN CIVIL LIBERTIES UNION
of Kansas and Western Missouri

201 Wyandotte, Suite 209
Kansas City, MO 64105
Phone: (816) 421-4449
Fax: (816) 421-4860
(call first)

Sandy Krigel
PRESIDENT - WMO

Jim Lawing
PRESIDENT - KS

David Waxse
GENERAL COUNSEL

Dick Kurtenbach
EXECUTIVE DIRECTOR

Carla Dugger
ASSOCIATE DIRECTOR

Sen. Wint Winter
Sen. Richard Rock
Senate Judiciary Committee
State Capitol
Topeka 66612

Dear Wint and Dick

As President of the Kansas Affiliate of the American Civil Liberties Union, I have been asked to review S.B. 287 proposed by the Committee on Public Health and Welfare and give my opinion of whether or not it is needed in order to comply with P.L. 101-381 adopted by Congress last August 18, 1991. In response to that request, I have read sections 2645-2647 of the Congressional enactment, designed to prevent the spread of AIDS by mandating partner notification and punishing individuals who have the HIV virus who intentionally expose others to the virus by way of sharing needles, giving blood or engaging in sexual intercourse with uninfected persons who are not informed of the risk. Section 2647(c) calls for states to adopt and enforce a "criminal law of general application" which proscribes the above conduct and to certify that such legislation exists whenever applications are made for Federal grants available under section 2641 of the law, known as the Ryan White Law. I infer that S.B. 287 is proposed in order to ensure that Kansas will be in a position to apply for such funds from the Federal government.

Since P.L. 101-381 was adopted with an explanatory Conference Report which noted that most states already have laws that meet the mandate of section 2647(c), I reviewed K.S.A. 21-3414, It defines and outlaws "aggravated battery." It takes care of the problem of specific intent to commit an act which "inflicts great bodily harm" that is done "in any manner whereby great bodily harm,...or death can be inflicted" by making such acts Class C felonies. This existing statute makes S.B. 287 unecessary.

Gov. Finney can comfortably certify that our statute on aggravated battery complies with the Ryan White Law's mandate in order to assure that Kansas will qualify for Federal funding. A more specific bill could actually get in the way of becoming eligible for grants, so I urge you to recommend S.B. unfavorably.

Very truly yours

Jim Lawing

Jim Lawing

March 16, 1991

6-3/5

21-3414. Aggravated battery. Aggravated battery is the unlawful touching or application of force to the person of another with intent to injure that person or another and with either:

(a) Inflicts great bodily harm upon him; or

(b) Causes any disfigurement or dismemberment to or of his person; or

(c) Is done with a deadly weapon, or in any manner whereby great bodily harm, disfigurement, dismemberment, or death can be inflicted.

Aggravated battery is a class C felony.

History: L. 1969, ch. 180, § 21-3414; July 1, 1970.

Source or prior law:

21-430, 21-431, 21-434, 21-435.

Judicial Council, 1968: See comment under section 21-3412. Unlike the former law, the sections attempt to maintain clear distinctions between assaults and batteries.

The language is similar to New Mexico, 3-5.

Law Review and Bar Journal References:

Discussed in relation to 21-3107 (3) in "The Doctrine of Lesser Included Offenses in Kansas," Kay Adam, Helen Packard Dupre, 15 W.L.J. 40, 50 (1976).

"Reform in Kansas Domestic Violence Legislation," David J. Gottlieb and L. Eric Johnson, 31 K.L.R. 527, 536, 537 (1983).

"Survey of Kansas Law: Criminal Law," Robert A. Wason, 32 K.L.R. 395, 413 (1984).

6-4/5

Ry hite Care Act
Title I - HIV Emergency Relief Grant Program

SEC. 2647 REQUIREMENT OF STATE LAW PROTECTION AGAINST INTENTIONAL TRANSMISSION.

(a) IN GENERAL - The Secretary may not make a grant under section 2641 to a State unless the cheif executive officer determines that the criminal laws of the State are adequate to prosecute any HIV infected individual, subject to the condition described in subsection (b), who -

(1) makes a donation of blood, semen, or breast milk, if the individual knows that he or she is infected with HIV and intends, through such donation, to expose another (to) HIV in the event that the donation is utilized;

(2) engages in sexual activity if the individual knows that he or she is infected with HIV and intends through such sexual activity, to expose another to HIV; and

(3) injects himself or herself with a hypodermic needle and subsequently provides the needle to another person for purposes of hypodermic injection, if the individual know that he or she is infected and intends, through the provision of the needle, to expose another to such etiologic agent in the event that the needle is utilized.

(b) CONSENT TO RISK OF TRANSMISSION - The State laws described in subsection (a) need not apply to circumstances under which the conduct described in paragraphs (1) through (3) of subsection (a) if the individual is subjected to the behavior involved knows that the other individual is infected and provides prior informed consent to the activity.

(c) STATE CERTIFICATION WITH RESPECT TO REQUIRED LAWS - With respect to complying with subsection (a) as a condition of receiving a grant under section 2601, the Secretary may not require a State to enact any statute, or to issue any regulation, if the chief executive officer of (certifies that the laws of) the State are adequate. The existence of a criminal law of general application, which can be applied to the conduct described in paragraphs (1) through (3) of subsection (a) is sufficient for compliance with this section.

(d) TIME LIMITATIONS WITH RESPECT TO REQUIRED LAWS - With respect to receiving a grant under section 2601, if a State is unable to certify compliance with subsection (a), the Secretary may make a grant to a State under such section if -

(1) for each of the fiscal years 1991 and 1992, the State provides assurances satisfactory to the Secretary that by not later than October 1, 1992, the State has in place or will establish the prohibitions described in subsection (a); and

(2) for fiscal year 1993 and subsequent fiscal years, the State has established such prohibitions.

I have typed this to provide a more readable copy, I have very carefully checked to insure that there have been no additions or deletions of the text provided to my by the Kansas Department of Health and Envirnment as the actual language of the federal law. I have provided an actual copy of the language provided by KDH&E (attached).

6-5/5