

Approved

3-19-91

Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by ROY M. EHRLICH at _____
Chairperson

10:00 a.m. on March 5, _____, 1991 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Emalene Correll, Legislative Research
Bill Wolff, Legislative Research
Norman Furse, Revisor's Office
Jo Ann Buntten, Committee Secretary

Conferees appearing before the committee:

Helen Stephens, Kansas Peace Officers' Association
Kathy Williams, Wichita Area Sexual Assault Center
Jack Pearson, Kansas Association Chiefs of Police
Charles Simmons, Department of Corrections
Nancy Lindberg, Assistant to the Attorney General
Jim Kaup, League of Kansas Municipalities
Ed Klumpp, Kansans for Highway Safety
Wayne K. Wiancki, Kansas Public Employees Union
Jeff Moots, American Civil Liberties Union

Chairman Ehrlich called the meeting to order at 10:05 a.m. asking for approval or correction to the minutes of February 25, 26, 27 and 28, 1991. Senator Burke made the motion to accept the minutes as presented, seconded by Senator Walker. The motion carried.

Hearing on:

SB 253 - Court ordered test for certain infectious diseases.

Helen Stephens, presented written testimony and appeared in support of SB 253. She stated the bill would allow court-ordered testing for AIDS, exposure to HIV, hepatitis, and meningococcal meningitis if there had been a transmission of bodily fluids and if the person had not consented to voluntary testing. Court-ordered testing would take place only if the suspected person had refused to be tested, and results are confidential. She further stated that although the AIDS test is not conclusive, and retesting would need to take place, the court-ordered testing is one course of action that is not presently available. Court-ordered testing would alleviate stress, give those persons exposed to bodily fluids some avenue other than nothing, and protect an innocent family, spouse or companion from being exposed. (Attachment 1)

Kathy Williams, Sexual Assault Center, Wichita, presented written testimony and appeared in support of SB 253. She stated people that are victims of a violent sexual assault not only have the trauma of the assault, but they are also at risk of infectious diseases. Sexual assault is an act of violence beyond their control, and being put at risk for AIDS is a situation not of their choosing. (Attachment 2)

Jack Pearson, Kansas Association of Chiefs of Police, presented written testimony and spoke in support of SB 253. He stated the bill offers two major advantages over the existing law: (1) it expands coverage beyond only AIDS to a number of infectious diseases, and (2) it offers a reasonable avenue for emergency personnel to acquire critical information. The bill covers anyone under the definitions existing in the statutes under law enforcement personnel. (Attachment 3)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH & WELFARE,
room 526-S, Statehouse, at 10:00 a.m. ~~pm~~ on March 5, 1991

Chuck Simmons, Kansas Department of Corrections, submitted written testimony and appeared before the committee supporting SB 253. Mr. Simmons stated the department requested the introduction of SB 149 and SB 288 to provide information to those individuals who work in a correctional environment that had been exposed to the body fluids of an inmate. He further stated after reviewing the two bills, they did not go far enough. The department has determined that SB 253 addressed the concepts proposed in SB 149 and SB 288 in an acceptable manner, and now supports SB 253 in exclusion to the other two. The department also urges the definition of correctional officer be expanded to include unit team personnel. (Attachment 4) Questions from the committee regarding bodily fluids, blood tests on inmates, language in the bill changing "physician may disclose information" to "shall", testing of all inmates, and possible error in New Section 3, (d) ... "the results shall be reported to the employee" instead of stating "employer", were discussed.

Nancy Lingberg, on behalf of the Attorney General's Victims' Rights Task Force submitted written testimony and appeared in support of SB 253. Ms. Lindberg stated the bill is designed to allow victims who come in contact with the bodily fluids of a suspect request the court order an infectious disease test of the offender as her reason to support SB 253. (Attachment 5)

Jim Kaup, general counsel, League of Kansas Municipalities, submitted written testimony and appeared in support of SB 253. He stated the League believes there is need for an effective procedure under Kansas law whereby public safety employees and volunteers may be notified of their exposure to AIDS, while at the same time safeguarding as much as possible the privacy interest of infected persons. Suggested amendments to SB 149 and SB 253 were also discussed. (Attachment 6)

Ed Klump, Kansans for Highway Safety, submitted written testimony and appeared in support of SB 253. He stated the bill would correct many deficiencies in the current law. He also pointed out testing goes far beyond just peace of mind in knowing whether one may have been exposed to an infectious disease, it also impacts medical care costs and retirement benefits. (Attachment 7)

Wayne Wianecki, Kansas Public Employees Union, also spoke in support of SB 253. He stated he supports the definition of correctional officer be expanded to include unit team personnel (or manager). Unit team managers have direct contact with an inmate and should be included. Senator Reilly also pointed out secretaries in correctional institutions should also be covered in the bill, or why not include everyone. Mr. Wianecki felt there are a variety of people who should be included, but would not want to jeopardize or have the bill "bogged down" by including everyone.

Presenting written testimony and appearing in opposition to SB 253 was Jeff Moots, ACLU. He stated the victim should be the one taking the test, not the inmate, and that this bill will not benefit anyone, but will violate the constitutional rights of citizens to privacy. He also stated if the Department of Corrections' employees and volunteers can obtain court ordered, involuntary HIV testing of others, why not every "first responder" who fears he may have been infected by the individual he helped resuscitate, and hospital emergency room personnel who fear they may have been infected. (Attachment 8) After considerable discussion by the committee, the Chairman announced that SB 149, SB 253 and SB 288 would be assigned to a subcommittee chaired by Senator Langworthy, with Senators Walker and Reilly members.

Written testimony on SB 253 was submitted by Dr. Charles Konigsberg, Director of Health, Department of Health and Environment who objects to certain language in the bill and offered suggested amendments. (Attachment 9)

The meeting was adjourned at 11:05 a.m.

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE
DATE 3-5-91

(PLEASE PRINT)
NAME AND ADDRESS

ORGANIZATION

Jack Markham 2718 S. Kansas, Topeka Ks 66611	National Association of People with AIDS
IRENE JOHNSON RT 1 Box 63 Disburg, Ks 66520	CONSERVATION DISTRICT
LT. BILL JACOBS	KANSAS HIGHWAY PATROL
Chief Chet Hall, 6535 Quivira, Shawnee	Shawnee Police
Jack Pearson KC, Ks.	Ks. ASSOC. of CHIEFS OF POLICE
TERRY STEVENS TOPEKA	Ks. FRATERNAL ORDER OF POLICE
Bob McDanel Topka	Board of EMS
Sharon Stegman 3917 N Athenia Wichita	Wichita State U. - Grad Student
Gron Thome / 1900 W 55 th St. So Viola, Ks	WSU - Graduate Program
Wendy Hall SMC Wichita	
Jan Kallew 752 2909 Wedgewood Dr Wichita, Ks	WSU - Grad. Nsg Student
Sue Katz 8019 Lakeside Way #210	WSU - Grad. Nursing Student SMC Nursing Instruction, KANSAS Legislative comm, WSU Grad Student
Cleda Meyer - Rt. 2, Box 78, Alma, Ks.	
Nicholas Taylor KSHPE	DeLois Johnson KACN-EO KANSAS FOR HIGHWAYS SAFETY
Ed Krumpf 4339 SE 21 Topeka, Ks	
Francine N. Nichols, 1906 White Oak Cir Sedwick, Ks 67207	WSU
David McKune	Ks Dept of Corrections
June Teasley	Ks Dept of Corrections
Helen Stephens	KPOA

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 3-5-91

(PLEASE PRINT)
NAME AND ADDRESS

ORGANIZATION

Carl Schmitthauer

Kansas Dental Assn.

Elaine Hacker, M.D.

Med. Prog. Dept - SRS

Tom Gross

KS Hosp. Assn.

Kathy Williams

Wichita Area Sexual Assault Center

Charles Knissberg, M.D.

~~KS~~ KDHE

J.A. Ladd

KS 77A

Michelle Hunter

John Potrowski & Associates

Shawn Martin

KACD-ED

Susan Newbold Box 277, Manhattan KS 66502

Kansas State Univ. (Student)

Kay Powell

Topeka-Shawnee Co Health Agency

Paul Shelby

OJA

CAROLYN EASTWOOD 766 LAKEWOOD RD <sup>BOUNER
SPRINGS
KS
66602</sup>

Anne Miller KCR

Conservation Dist

Anne Smith Topeka

Ks. Assoc of Counties

WAYNE K Wiannecki

KS. AFSCME

LISA Getz

WICHITA Hospitals

Jeff Meets

ACHU of KS

Nancy Lindberg

Att. Gen

Jay Johnson

Topeka AIDS Project

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE March 5-1991

(PLEASE PRINT)
NAME AND ADDRESS

ORGANIZATION

WENDY Mosiman RN BSN

St Francis Regional Medical
Center

Doree Hamner

IND

Richard Morrissey

HOPE

AROLD RICHM
M. Hawwa

KADAN

Teresa Car-Journal

RICE, President
Chief of Police
Arkansas City, Kansas 67005

ED PAVEY, President-Elect
Ks. Law Enforcement Training Cen.
Hutchinson, Kansas 67504

CLIFF HACKER, Vice-President ALVIN THIMMESCH, Secretary-Tre.
Lyon County Sheriff
Emporia, Kansas 66801
Kansas Peace Officers' Assn.
Wichita, Kansas 67201

Kansas Peace Officers' Association

INCORPORATED

TELEPHONE 316-722-7030

FAX 316-729-0655

P.O. BOX 2592 • WICHITA, KANSAS 67201

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Wichita, KS 67203
LARRY WELCH
Ks. Law Enforcement Training Cen.
Hutchinson, KS 67504

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Riley County Police Dept.
Manhattan, KS 66502
RANDALL THOMAS
Lyon Co. Sheriff's Office
Emporia, KS 66801
DOUGLAS PECK
Kansas Highway Patrol
Emporia, KS 66801
SERGEANT-AT-ARMS
LARRY MAHAN
Kansas Highway Patrol
Wichita, KS 67212



March 5, 1991
Senate Bill No. 253

Mr. Chairman and Members of the Committee:

My name is Helen Stephens, representing the 3,000 members of the Kansas Peace Officers Association.

KPOA supports passage of Senate Bill 253. I will be commenting on those portions of the bill that pertain to law enforcement officers.

Briefly, this bill would allow court-ordered testing for ADS, exposure to HIV, hepatitis, and meningococcal meningitis IF there has been a transmission of bodily fluids and IF the person has not consented to voluntary testing. Please remember that court-ordered testing takes place ONLY if the suspected person has refused to be tested. All test results will be confidential.

Due to the nature of their job, LEO's do not always have the luxury of time to use the universal precautions -- a fleeing suspect, an unexpected assault, a heart attack victim, a potential suicide, a serious traffic accident -- these are times when immediate action is necessary and to equip with gloves or other items would imperil public safety or the safety of an individual. Law enforcement officers do not work in a controlled environment.

Presently there are Kansas law enforcement officers who have been exposed to the bodily fluids of another and have no avenue to find out if that person has an infectious disease.

One of these instances involved a law enforcement officer and a suspected felon ; who, when the officer arrived, fled. The officer immediately pursued and after a chase over fences, yards, etc. the felon was captured. Both had open cuts on their hands. When handcuffing the suspected felon,

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In Unity There Is Strength

an exchange of blood took place. The LEO was taunted by that person that he had an infectious disease and he was happy he had exposed the officer. In another case, the exposure occurred during an attempt to save a potential suicide victim who had broken windows with her hands and arms. Upon arrival, the LEO had no time to don the gloves, etc. In the course of saving her life, the officer was splattered by the bleeding victim getting blood into his left eye.

Opponents have said that court-ordered testing will give a false sense of security and that law enforcement would see no need for education or the use of universal precautions. That is not true -- no law enforcement officer would chance this exposure for himself or his family. They do, and will continue to do, everything possible to use universal precautions and further their knowledge of aids, hepatitis, and other infectious diseases.

Law enforcement is a life of stress and a series of potential dangerous situations. Each officer and their families are fully aware of and accept these situations.

Officers know they are putting their lives on the line in certain circumstances -- that is their job -- BUT if in the course of their duties they are exposed to these infectious diseases, is it proper that their families or companions be exposed to total uncertainty as it is now. Most in our society would freely submit to a test; others would not. This bill would have the court order testing only for those who refuse voluntarily.

Although the AIDS test is not conclusive, and retesting will need to take place, the court-ordered testing is one course of action that is not presently available. Court-ordered testing will alleviate stress, will give those persons exposed to bodily fluids some avenue other than nothing, and could protect an innocent family, spouse, or companion from being exposed.

Law Enforcement understands and agrees with the rights of those who are ill and their right to privacy; but we do not believe these rights should be allowed to affect so dramatically the lives of law enforcement and their families.

We urge your support of Senate Bill 253.

If you have any questions, I will be happy to try and answer them for you.

Thank you for the opportunity to speak to you today.

Testimony by

Kathy Williams, Wichita Area Sexual Assault Center,
Coordinator of Victim Services

Given to the Committee on Public Health and Welfare
with regard to Senate Bill No. 253 on March 5, 1991.

I have been a Victim Advocate in the area of sexual assault for over two years. I have talked with victims of sexual assault by phone, face-to-face and at the hospital emergency room. These women, children and men are people who may be someone close to you - a family member, friend, neighbor or partner. These people are victims of a violent crime. These people have been traumatized by an act of violence that was beyond their control. The trauma does not stop when the police respond or when they go to the hospital. The trauma does not stop in a few days or a few weeks. The recovery is a process which takes months and maybe years to complete.

The victims of sexual assault not only have the trauma of the assault to deal with; they are also at risk for infectious diseases. Just as the sexual assault is an act of violence beyond their control, being put at risk for AIDS is a situation which was not of their choosing and beyond their control.

Time and time again, we hear from victims, "I thought I was going to die" or "He said he would kill me". Victims of sexual assault have to deal with the life threatening aspect during and after the assault. Victims have to deal with the trauma of the personal violation. Victims have to deal with family and friends that buy into the myths of sexual assault. Victims have to deal with the possibility that they may have AIDS as a result of the sexual assault.

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Some of the same kinds of issues surface again. "I lived through the rape, but will I have AIDS" becomes yet another life threatening issue of survival for the victim. This becomes another life threatening trauma. Victims now have to deal with family and friends that are afraid and may understand even less about AIDS than they understand about rape.

By making information available to victims as soon as possible following a sexual assault, some of the trauma that the victim feels may be reduced. By making the results of the offenders AIDS test available to the victim, we may help to reduce some of the trauma.

Victims' rights have been violated by the act of violence perpetrated against them. I urge you to empower victims by making information available to them as soon as possible regarding AIDS testing of their offenders.



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Committee on Public Health & Welfare Senate Bill No. 253 March 5, 1991

Senate Bill No. 253 offers changes in the current law which are timely and needed. The Kansas Association of Chiefs of Police supports passage of this legislation and encourages the Committee to vote favorably on it.

This proposed legislation offers two major advantages over the existing law; first, it expands coverage beyond only AIDS to a number of infectious diseases, and second, it offers a reasonable avenue for emergency personnel to acquire critical information.

While AIDS is of course an area of serious concern, it is not the only infectious disease which public safety personnel run the risk of exposure to. The other diseases listed in this bill are of equal concern and exposure occurs with as much, if not more, frequency.

Speaking strictly for the law enforcement personnel who will benefit from this law, it is not uncommon for a police officer to be engaged in an activity which exposes him or her to body fluids. At times, this exposure is accidental, but it also occurs with some degree of intent by a suspect attempting to infect the officer with a disease. Once this intent becomes known, the officer has a strong interest in learning whether the suspect is capable of passing along a disease.

While it is recognized that in most cases public safety personnel will be able to learn whether the exposure carries a health threat, there are circumstances where this information is not readily obtainable. In particular, situations arise where a suspected carrier will not voluntarily submit to testing. In these cases, this bill will provide a vehicle for obtaining that information, while safeguarding the rights of the individual.

Even with passage of this legislation, the need to educate our public safety personnel must continue. Towards this goal, the law enforcement training academies are instituting programs within the basic training curriculums to teach recruits about health threats. This includes the recognition that no public safety worker can assume that one test will answer all his or her questions and concerns.

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

To: Senate Committee on Public Health and Welfare

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

Subject: Senate Bill 149
Senate Bill 253
Senate Bill 288

Date: March 5, 1991

The Department of Corrections requested the introduction of SB 149 and SB 288.

The interest of the Department in requesting the bills was to provide information to those individuals who work in a correctional environment and have been exposed to the body fluids of an inmate. In providing this information it is the Department's intent that it be done in a way that did not create an unacceptable breach of an inmate's right to confidentiality and privacy.

Employees in correctional facilities are frequently placed in situations where they are exposed to an inmate's bodily fluids. This exposure could result from an employee intervening in an altercation between inmates or in giving first aid or CPR to an inmate. After an employee has been exposed to the inmate's bodily fluids, the employee or his or her family will naturally have questions and concerns about the possibility of exposure to infectious diseases, including AIDS.

At the current time the Department of Corrections does not have the authority to administer a test, without the inmate's consent, to determine if the inmate has AIDS or is HIV positive. SB 149 provides that whenever there is probable cause to believe the employee, while performing duties within the scope of his or her duties, came into contact with or was exposed to the bodily fluids of another person, a court may order the person to submit to AIDS

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testing. The results of the testing would then be disclosed to the employee and the person tested. Otherwise, the test results would be confidential.

SB 288 proposes amendments to legislation enacted during the 1990 Session (SB 529). That legislation provided that in the event a physician knows an individual has AIDS or has had a positive reaction to an AIDS test may disclose that information to correctional officers, and others, who have been or will be placed in contact with bodily fluids of such individual.

While this legislation was important, it did not go far enough. It did not address at all the situation where there had been no test for AIDS or where it was not known that a positive reaction for AIDS had resulted. Thus, the court ordered testing proposed by SB 149 is necessary in those instances where there has been exposure but no test information is available and the inmate refused to voluntarily submit to a test.

After having reviewed SB 149 and SB 288 in conjunction with SB 253, the Department of Correction has determined that SB 253 addressed the concepts proposed in SB 149 and SB 288 in an acceptable manner. Consequently, the Department of Corrections supports SB 253 and urges its enactment. The Department believes such action will be an important step towards resolving a complicated problem.

In recommending SB 253 as the vehicle to address this problem, the Department does urge that the definition of correctional officer be expanded to include unit team personnel. This will mean that those employees who are most likely to be exposed to an inmate's bodily fluids will have an avenue by which to be informed of exposure to AIDS and other infectious diseases.

SJD:CES/pa



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

Testimony of
Nancy Lindberg
Assistant to the Attorney General
Before the Senate Public Health and Welfare Committee
RE: Senate Bill 253
March 5, 1991

On behalf of Attorney General Bob Stephan and his Victims' Rights Task Force, I ask for your support of Senate Bill 253. Similar legislation was introduced last year by the Criminal Justice Coordinating Council of which Attorney General Stephan is a member.

This bill is designed to let law enforcement employees, corrections officers, emergency services personnel, and victims who come in contact with the body fluids of a suspect to request the court order an infectious disease test of the offender. This will keep these people from waiting, wondering and worrying if they have contacted hepatitis, meningitis, or AIDS.

Application can be made to the court for an order requiring such person or persons to submit to infectious disease tests. This application would only be made if the person or persons have not agreed to voluntarily submit to the tests.

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It is a critical time for intervention. Even U.S. Senator Bob Dole has proposed federal legislation which requires expedited AIDS testing of people charged with a federal sex crime.

By 1993, it is estimated that half a million Americans will have AIDS or test positive for HIV. We can no longer sit back and believe that victims and individuals who are in high risk positions of coming into contact with infectious diseases will not be infected.

Misinformation about AIDS is common, but we know that it is possible to infect someone through the exchange of body fluids. Therefore, victims of sexual assault or law enforcement officers who come in contact with an offender are in risk of contacting AIDS.

I urge your support of Senate Bill 253.



League of Kansas Municipalities

Municipal Legislative Testimony

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 112 W. 7TH TOPEKA, KS 66603 (913) 354-9565 FAX (913) 354-4186

TO: Senate Committee on Public Health and Welfare
FROM: Jim Kaup, League General Counsel
RE: SB 149 and SB 253; Testing for Infectious Diseases
DATE: March 4, 1991

The League supports SB 149 and SB 253 to the extent that they advance our convention-adopted Statement of Municipal Policy: **"G-5 AIDS Protection. Public safety, emergency medical service and other public employees who may come in contact with AIDS infected persons should have the statutory right to medical information as to their possible exposure to the disease."**

In its present form SB 253 goes beyond the League's policy position favoring legislation to inform public safety employees of their exposure to AIDS. We defer to the judgment of the Legislature as to whether each of the infectious diseases listed at Section 1(m) constitutes a threat to the public, and public safety personnel, of a magnitude sufficient to require involuntary medical testing.

The League believes there is a need for an effective procedure under Kansas law whereby public safety employees and volunteers may be notified of their exposure to AIDS, while at the same time safeguarding as much as possible the privacy interest of infected persons.

"Special consideration" of public safety employees and volunteers is justifiable, we believe, because those public servants are exposed to bodily fluids as a day-to-day part of their public duties. It is an occupational hazard. Even with the best of training and protective clothing and equipment, public safety personnel can and do come into direct contact with bodily fluids which serve as the means for transmission of certain infectious diseases. SB 149 and SB 253 will not stop that exposure, nor will they prevent the transmission of those diseases. What they do seek to do is provide information to the employee or volunteer--information that not only can be critical to that person's health, but can also help prevent the subsequent transmission of disease by an infected employee or volunteer.

SB 149 and SB 243 would also serve as indicators of the adequacy of workplace practices and policies upon which public safety personnel rely. If current safeguards are not working to protect those people from exposure--but no one knows this because no one is informed when exposure leads to disease transmission--nothing will be done to correct the problems.

Legislation forcing someone to undergo medical testing and then have the results of that testing divulged to others is not something to undertake lightly. Such an intrusion into the privacy interests of citizens should only occur when a compelling need is identified. Legislation

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such as SB 149 and SB 253 serve as acknowledgement by this State of the compelling public need for protecting the lives of public safety employees and volunteers, and the lives of their families, from work-related hazards. These two bills make reasonable effort to provide necessary medical related information to those who need it, while minimizing the intrusion into the privacy of those from whom that information must be taken.

SB 149. Several provisions of SB 149 do create some confusion for the League. We ask the Committee's help in clarifying certain language, as follows:

(1) At page 2, line 3, the bill would authorize "any court of competent jurisdiction" to order involuntary disease testing and retesting. Does this authority extend to municipal courts?

(2) At page 2, lines 33:42, there is an apparent mandate that cities and counties provide "such counseling as directed by the secretary" of KDHE. Because the League is concerned about any open-ended mandate upon local governments imposed by a state agency, we would appreciate some confirmation of our reading of SB 149 that such counseling could be mandated only to the extent that moneys for the counseling have been appropriated (page 2, lines 39:42). If this reading of the state mandate is not correct, the League would ask the committee to amend the bill to so provide. Otherwise, questions arise such as what is the nature, extent and likely cost of the counseling? What if the employee refuses to undergo counseling or the employer refuses to provide it? What if the counseling available through the employer's health benefits program is "different" than that which KDHE would require to be provided?

(3) At page 2, lines 42:43 and page 3, lines 1:8, SB 149 provides the means whereby the state may be reimbursed for the costs incurred in testing and counseling. Why not also allow restitution, under the same conditions, to be paid to cities and counties?

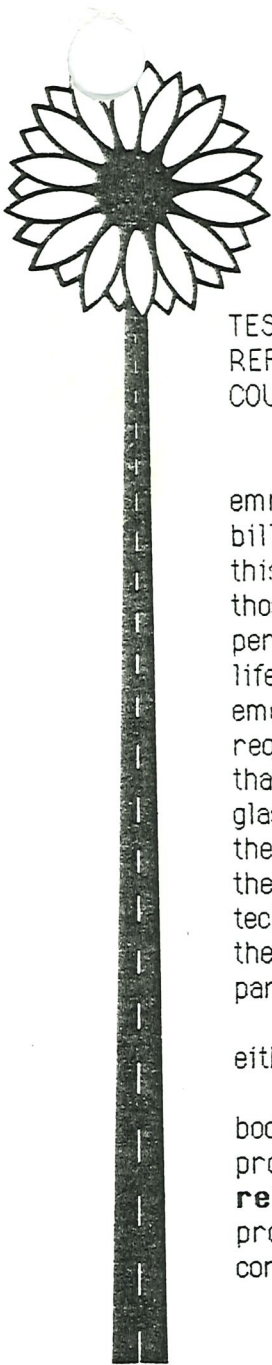
(4) The League supports expanding the categories of employees who are covered by SB 149 to include firefighters and "emergency services employees" (such as is found in SB 253) as well as law enforcement employees and volunteers.

SB 253. The League also has several suggestions to improve upon SB 253:

(1) At page 3, line 13, the term "court of competent jurisdiction" is used. As noted above in comments regarding identical language used in SB 149, does this include municipal courts as well as state courts?

(2) At page 3, line 35:37, the bill provides that positive test results will be reported to the employee and the person tested. Because of the employer's legitimate need to know whether workplace safeguards have failed, the League would support an amendment to provide that such reporting also be made to the employer.

The League asks for favorable consideration of SB 149 and SB 253 with the above-mentioned amendments and clarifications.



Kansans for Highway Safety

March 5, 1991

TESTIMONY BEFORE THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE
REFERENCE SENATE BILL NO. 253
COURT ORDERED TESTS FOR CERTAIN INFECTIOUS DISEASES

Kansans for Highway Safety has many members that are law enforcement officers and emergency medical services personnel. We support Senate Bill 253. You might ask what this bill has to do with traffic safety. While the ideal goal is to eliminate all motor vehicle accidents, this is obviously an unobtainable goal. There will always be motor vehicle accidents and some of those will result in serious injuries. But law enforcement, fire and emergency medical services personnel can still save the life that otherwise would be lost, and minimize the suffering or lifelong disability that might occur unless medical care is provided without hesitation. When emergency services personnel arrive at the scene of these accidents immediate action is often required. While precautions are taken to reduce the exposure to body fluids, the environment that we must work in are not always conducive to preventing inadvertent exposure. Broken glass cuts our gloves and frequently our arms and fingers. We must handle the patient as we stop the bleeding, protect them from further injury, and move them out of dangerous areas or into the ambulance. Every day law enforcement, fire fighters, and emergency medical service technicians in our state are risking exposure to infectious disease as they unselfishly provide the service that frequently will make the difference between life and death or between lifetime paralysis and full recovery.

It is not uncommon to be intentionally exposed to infectious diseases by combatants who either bite or spit on the officer or others trying to assist them.

Current law allows a physician to release the results of AIDS testing to those exposed to body fluids but it does not require the testing to be done nor does it require the test results to be provided. **Under current law few physicians and health care facilities are releasing this information even when they know test results.** It also does not provide any mechanism for testing if the person is not treated by a physician. This bill would correct many deficiencies in the current law.

1. **It would apply to other infectious diseases** besides just AIDS. Hepatitis B is as much, if not more, of a concern as AIDS and is more predominant among the population than AIDS.
2. It would allow an exposed person to apply to a court for a court order to have the testing performed if the patient declines voluntary testing.
3. It would allow crime victims exposed to body fluids to have testing performed on the convicted perpetrator.
4. It provides protection for the patients right to privacy by having the report go to the court ordering testing and by providing penalties for releasing the information unlawfully.

Why is this testing so important to emergency services employees? This testing goes far beyond just peace of mind in knowing whether or not you have been exposed to an infectious disease. **It impacts medical care costs and retirement benefits.** If an employee becomes ill with an infectious disease and it can be shown that the exposure occurred during the performance of the job workmans comp insurance would pay for treatment. If it can not be shown that it occurred on the job then the employee's individual insurance will probably pay but only after the employee has paid the deductible at his own expense. If the illness leads to the employee having to take a medical retirement there is a big difference in the benefits from a duty related retirement and a non-duty related retirement. The documentation of exposure protects not only the employee from unwarranted financial hardships but also protects retirement systems and workman's comp insurance from false claims. It also can

impact treatment. **If exposure is known, medical treatment can be initiated to help avoid or minimize the advanced development and effects of some infectious diseases.** It can also alert the person exposed to undergo periodic testing themselves if they are exposed.

No doubt you will hear testimony from some that this bill will violate the rights of the the person whose fluids cause the exposure. But this bill provides adequate protection for those concerns and adequate penalties if the information is wrongfully released. There is a need for this testing that out weighs the individuals right to secrecy.

We encourage you to support this bill and to support those individuals who have chosen to risk there own health and safety to save others. Please pass this bill with a favorable recommendation for passage by the full Senate.

Ed Klumpp
4339 SE 21st
Topeka, Kansas 66607
Home:913-235-5619
Work:913-354-9450

This bill is an artifact of the AIDS hysteria that swept this country a couple of years ago. It will benefit no one and will violate the constitutional rights of citizens to privacy and to be secure in their persons against unreasonable searches and seizures. Searches and seizures are usually undertaken to secure evidence of crimes against society. Indeed, the constitutional balancing practiced by the U.S. Supreme Court measures "the nature and quality of the intrusion on Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." (1) This bill would strike a different balance; constitutional rights and medical privacy would be sacrificed to the fears of another individual. Society itself will not benefit at all. The bill is, I think, for these reasons clearly unconstitutional.

Since there has never been a documented case of HIV transmission through contact with the tears, sweat, nasal secretions, saliva, vomitus, urine, or feces of an infected individual, we are talking about transmission through semen, vaginal secretions, and blood. Since the bill concerns itself with duties performed within the scope of employment, the bill really refers to blood, not "bodily fluids," and should reflect this fact. Even in this limited circumstance, testing someone else to find out if you may be infected is of no medical value. If you want to find out if you are infected, you have to test yourself. The bill is based on medical ignorance and, as such, represents bad public health policy.

The bill also, I think, opens a Pandora's box. If corrections department employees and volunteers can obtain court ordered, involuntary, HIV testing of others, why not every "first responder" in Kansas, who fears he may have been infected by the individual he helped to resuscitate? Why not all hospital emergency room personnel, who fear they may have been infected with HIV and who may have a more reasonable basis for their fears than corrections department employees? We don't allow such involuntary testing because it is a violation of constitutional rights.

(1) O'Connor v. Ortega 480 U.S. 709, at 719 (1987)



State of Kansas

Joan Finney, Governor

Department of Health and Environment

Division of Health

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

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

Reply to: _____

FAX (913) 296-6231

Testimony presented to

Senate Public Health and Welfare Committee

by

The Kansas Department of Health and Environment

Senate Bill 253

Senate Bill 253 would authorize courts to order tests for AIDS, Hepatitis B and meningococcal meningitis in certain circumstances and would also authorize disclosure in certain circumstances.

Dr. Tom Vernon, former Executive Director of the Colorado Department of Public Health, made a classic statement at a recent meeting of the Kansas Public Health Association. While speaking about the need for planning and goal setting in public health, he stated "The Main Thing is to Keep the Main Thing the Main Thing."

With respect to the concern regarding exposure of emergency workers, fire and police to disease, what is The Main Thing? The Main Thing or the main objective is to have maximal protection for these workers from infection in the occupational setting. Meningococcal meningitis is different from the other two bloodborne diseases under discussion here, namely HIV and Hepatitis B. The bacterium that causes meningococcal meningitis is abundantly present in the respiratory tracts of well humans. The mode of transmission from person to person is through airborne respiratory droplets. Occasionally, infection with this bacterium causes meningococcal meningitis, a rapidly progressive disease that can kill within hours of onset. In the United States the source of infection is almost always a well carrier. In Kansas, for the years 1988, 1989, and 1990, no cases of meningococcal meningitis were reported that could be traced to another case. In other words, no one caught the disease from someone who could be identified as having it, and could thus have reasonably been singled out for testing for infectivity.

How then can such workers best protect themselves from the risk of occupational exposure to bloodborne diseases such as Hepatitis B and HIV? The first thing relates to ATTITUDE. All emergency workers MUST assume the attitude that ALL blood is infected with hepatitis B and HIV. The BEST method of protecting oneself in such situations is the use of universal precautions which consist of employing appropriate barriers to infections, such as gloves, of preventing spread of disease agents by common items and of processes for cleaning and disinfecting equipment and environments. Since one cannot reliably identify all patients infected with HIV or other bloodborne germs, these precautions should be used consistently on all patients or encounters where blood is present. I must stress that this

Senate P H&W

Attachment #9

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

Director of Environment
(913) 296-1535

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

Roger Carlson, Ph.D. 3-5-91
Director of the Kansas Health
and Environment Laboratory
(913) 296-1619

attitude and this best method of universal precautions is absolutely the key to protection of emergency workers and health care workers. If you favorably consider this bill, we would suggest a number of technical amendments. First of all, we would suggest that the bill mandate education concerning the use of universal precautions for all workers covered by the legislation. The importance of this relates to my earlier comments regarding the best method of protection.

We suggest that **bodily fluids** be defined as "blood, amniotic fluid, pericardial fluid, pleural fluid, synovial fluid, cerebrospinal fluid, semen, and vaginal secretions or any bodily fluid visibly contaminated with blood."

As a practical matter, blood is really the only bodily fluid which should cause concern here. We would recommend that **exposure** be defined as "Contact with blood or other bodily fluids as defined by this Act through direct sticks through the skin or contact with an open wound, non-intact skin or mucous membrane." **Universal precautions** may be defined as "a system of infectious disease control which assumes that every direct contact with bodily fluids is infectious and requires every employee exposed to direct contact with bodily fluids to be protected as though such bodily fluids were HIV and HBV infected."

We are not clear on the rationale of the six months retest for HIV, Hepatitis B and meningococcal meningitis negatives. A change from negative to positive during that time period would not indicate when the subject became infected. In the case of meningococcal meningitis, which has a short incubation period, there is no rationale at all for retesting.

We strongly recommend that employees who can expect to have occupational exposure to bodily fluids receive the hepatitis B vaccine. Most documented nosocomial outbreaks of hepatitis B have consisted of provider to patient transmission, rather than patient to provider. However, the combination of pre-exposure prophylaxis of workers at risk combined with the use of universal precautions should almost negate this risk.

The HIV reporting bill signed into law last year, now K.S.A. 65-6004, which authorizes physicians to notify emergency or health care workers who may have had exposure to bodily fluids, gives some assurance that appropriate notification of HIV would occur when infection is diagnosed.

Testimony presented by: Charles Konigsberg, Jr., M.D., M.P.H.
Director of Health
Division of Health
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