

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

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

1:30 ~~xxx~~ p.m. on Thursday, April 2, 1992 in room 526-S of the Capitol.

All members were present except:

Representatives Don Smith, Sherman Jones, James Cates, Arthur Douville - Excused

Committee staff present:

Mary Torrence, Office of the Revisor of Statutes
Mary Galligan, Kansas Legislative Research Department
Lynne Holt, Kansas Legislative Research Department
Connie Craig, Secretary to the committee

Conferees ~~SB 567~~ SB 567 before the committee:

R.E. "Tuck" Duncan, Kansas Wine and Spirits Wholesalers Association, Inc.
Rebecca Rice, Kansas Retail Liquor Dealers Association
Jim Conant, Chief Administrative Officer, Alcoholic Beverage Control
Division (ABC), Department of Revenue

SB 245

Nancy Lindberg, Kansas Attorney General's Office

HB 3182

Donna Whiteman, Secretary, Kansas Department of Social and
Rehabilitation Services

Chair Sebelius called the meeting to order and opened the public hearing of
SB 567.

R.E. "Tuck" Duncan appeared as a proponent of SB 567, Attachment #1.

Jim Conant appeared before the Committee with information regarding SB
567, Attachment #2, and handed out a balloon amendment, Attachment #3,
with minor technical changes to SB 567.

Representative Graeber moved to adopt the balloon amendments,
Attachment #3. Representative Ramirez made a second to the motion,
which passed on a voice vote.

Representative Ramirez moved to report SB 567 as amended favorable for
passage. Representative Graeber made a second to the motion, which
passed on a voice vote.

SB 245

Nancy Lindberg, Attorney General's Office, reported that the Secretary of
State's Office has approximately 500 charitable organizations that are on
file. She stated that by making the change from \$10,000 to \$25,000, as
amended by the Senate, you are deleting from those who would have to file
approximately 200 charitable organizations. You're basically, helping
groups like various civic organizations that fall within the \$10,000 to

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\$25,000 range.

One Committee member asked what kind of monies would it take and what fee would enable the Secretary of State's Office to monitor that increase?

Ms. Lindberg stated last year when this was discussed, it was her understanding that they were looking at a half-time attorney to work with the Secretary of State's Office and do a follow-up with various charitable organizations.

One Committee member asked why this was expanded to members' families. It was also asked if this legislation would bring the State in line with the federal income tax laws? One Committee member asked if SB 245 would loosen or tighten the restrictions on charities, and also asserted that decreasing restrictions would be detrimental to donors.

Representative Wagon made a motion to table SB 245. Representative Baker made a second to the motion, which passed on a voice vote.

HB 3182

Secretary Whiteman appeared before the Committee with amendments to HB 3182. She stated the two amendments of the most consequence are amendments to K.S.A. 22-3428. The first would basically allow transfers of inmates back to as well as from Larned State Security Hospital without going through the court system. The second amendment deals with K.S.A. 22-3219, specifying the evidence of a mental disease or defect and why a plea of insanity was accepted by the Court.

Questions from Committee members:

- Does it make sense to delineate between felonies and misdemeanors as opposed to somehow classifying person and non-person crimes?
- Does Topeka State Hospital consider a dual committed person, and would they list them as committing a crime and as incompetent?
- These amendments do not address K.S.A. 22-3219?
- Why is S.R.S. is needing to talk about the definition of criminal insanity, which is traditionally a Judiciary Committee matter?
- If the Court wanted an evaluation done at a mental health center, there is still language on page 2 of HB 3182 which would allow this?
- Would this have addressed the situation at Topeka State Hospital?

One Committee member suggested that language be included in the bill to notify the District Court where the inmate who is being transferred came from, if they are going to release them from a secured unit to a less secured unit.

Representative Wagon made a motion to adopt the language which would

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allow the chief medical officer to determine if a finding is warranted; and if the move is made, the court be notified. Representative Gilbert made a second to the motion, which passed on a voice vote.

Representative Wagnon made a motion to report HB 3182 favorable for passage. Representative Gilbert made a second to the motion, which passed on a voice vote.

Chair Sebelius adjourned the meeting.

K · A · N · S · A · S
WINE & SPIRITS
WHOLESALE ASSOCIATION, INC.

April 2, 1992

To: House Committee on Federal and State Affairs
From: R.E. "Tuck" Duncan
RE: Senate Bill 567

The primary focus of this bill is to permit the spouse of a decedent upon gaining her citizenship to acquire a license for her deceased husband's store. His recent death leaves no alternative except to enact this provision so as to avoid a financial hardship. It is my understanding the store will be administered in his estate until this law, if approved, becomes effective.

The bill, to avoid similar hardships in the future and for other reasons, permits a liquor retail license to be held in a "living trust." A "living trust" can hold assets to be managed by a Trustee for the benefit of the person who established the trust (the Grantor) or his/her heirs. This provision will provide an estate management tool available to most, but not currently available to liquor retailers. All persons involved, the Grantor, Trustee and Beneficiaries must meet strict license eligibility requirements. The Alcoholic Beverage Control, Kansas Department of Revenue, has had requests to issue licenses to such trusts. A.B.C. drafted the language adopted by the Senate committee and has no objections to this provision. This provision is supported by the Kansas Retail Liquor Dealers Association, without objection from any other industry group.

The bill also allows a licensee, who has met all eligibility requirements, and has their license renewed for no less than ten years, to appoint by power-of-attorney, a process agent, who is responsible for the licensee's business, so that the licensee may retire and relocate to another state. This provision would not force the licensee to sell their business, and permits an estate planning option. This provision will permit licensees who have been in the business for a significant period to enter into retirement and still have an income from their business, as owners of other business are now permitted. The Alcoholic Beverage Control, Kansas Department of Revenue, drafted the language adopted by the Senate committee and has no objections to this provision.

No one appeared in opposition to this bill in the Senate hearings, and the bill passed the Senate 39-1. Thank you for your attention to and consideration of this matter.

STATE OF KANSAS

Robert A. Engler, Director
512 S.W. 6th, 2nd Fl.
Topeka, Kansas 66603-3150



(913) 296-3946
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Department of Revenue
Division of Alcoholic Beverage Control

MEMORANDUM

TO: Rep. Kathleen Sebelius, Chairperson
House Committee on Federal & State Affairs

FROM: Jim Conant, Chief Administrative Officer
Alcoholic Beverage Control Division

DATE: April 2, 1992

SUBJECT: Senate Bill 567

The ABC Division appears before the committee today primarily for informational purposes regarding Senate Bill 567. In modifying the list of business entities which may hold a license under the Liquor Control Act, the bill has no negative impact on our ability to monitor the background and qualifications of applicants. The Division has noted a marked increase in inquiries regarding licensure of trusts as business owners evaluate the various methods available to shelter income and retain ownership within a family structure. So long as the Division is able to evaluate the qualifications of individuals involved in a licensed business, the organizational structure is of less significance.

The Division recommends several minor technical changes to ensure that the bill is consistent and enforceable across all license types. These suggestions are contained in the attached balloon.

I appreciate the opportunity to appear before you today and would be happy to answer any questions.

*House Federal & State Affairs
April 2, 1992
Attachment # 2*

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#2-2

1 purpose of correcting natural deficiencies.

2 Section 1 Sec. 2. K.S.A. 1991 Supp. 41-311 is hereby amended
3 to read as follows: 41-311. (a) No license of any kind shall be issued
4 pursuant to the liquor control act to a person:

5 (1) Who has not been a citizen of the United States for at least
6 10 years; *except that, upon the death of the holder of a current*
7 *retailer's license, the licensee's surviving spouse shall not be*
8 *ineligible for renewal of such license by reason of the require-*
9 *ment of this subsection if the surviving spouse is a citizen of*
10 *the United States*], *except that the spouse of a deceased retail*
11 *licensee may receive and renew a retail license notwithstanding the*
12 *provisions of this subsection (a)(1) if such spouse is otherwise qual-*
13 *ified to hold a retail license and becomes a United States citizen*
14 *within one year after the deceased licensee's death];*

and is a United States citizen or

15 (2) who has been convicted of a felony under the laws of this
16 state, any other state or the United States;

17 (3) who has had a license revoked for cause under the provisions
18 of this act or who has had any license issued under the cereal malt
19 beverage laws of any state revoked for cause except that a license
20 may be issued to a person whose license was revoked for the con-
21 viction of a misdemeanor at any time after the lapse of 10 years
22 following the date of the revocation;

23 (4) who has been convicted of being the keeper or is keeping a
24 house of prostitution or has forfeited bond to appear in court to
25 answer charges of being a keeper of a house of prostitution;

26 (5) who has been convicted of being a proprietor of a gambling
27 house, pandering or any other crime opposed to decency and mo-
28 rality or has forfeited bond to appear in court to answer charges for
29 any of those crimes;

30 (6) who is not at least 21 years of age;

31 (7) who, other than as a member of the governing body of a city
32 or county, appoints or supervises any law enforcement officer, who
33 is a law enforcement official or who is an employee of the director;

34 (8) who intends to carry on the business authorized by the license
35 as agent of another;

36 (9) who at the time of application for renewal of any license issued
37 under this act would not be eligible for the license upon a first
38 application, except as provided by subsection (a)(12);

39 (10) who is the holder of a valid and existing license issued under
40 article 27 of chapter 41 of the Kansas Statutes Annotated unless the
41 person agrees to and does surrender the license to the officer issuing
42 the same upon the issuance to the person of a license under this
43 act, except that a retailer licensed pursuant to K.S.A. 41-2702 and

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1 amendments thereto shall be eligible to receive a retailer's license
2 under the Kansas liquor control act;

3 (11) who does not own the premises for which a license is sought,
4 or does not have a written lease thereon for at least 3/4 of the period
5 for which the license is to be issued; or

6 (12) whose spouse would be ineligible to receive a license under
7 this act for any reason other than citizenship, residence requirements
8 or age, except that this subsection (a)(12) shall not apply in deter-
9 mining eligibility for a renewal license.

10 (b) No retailer's license shall be issued to:

11 (1) A person who is not a resident of this state;

12 (2) a person who has not been a resident of this state for at least
13 four years immediately preceding the date of application;

14 (3) a person who has beneficial interest in the manufacture, prep-
15 aration or wholesaling of alcoholic beverages;

16 (4) a person ~~or copartnership or association~~ who has beneficial
17 interest in any other retail establishment licensed under this act;

18 (5) a copartnership, unless all of the copartners are qualified to
19 obtain a license; ~~or~~

20 (6) a corporation; ~~or~~

21 (7) *a trust, if any grantor, beneficiary or trustee would be in-*
22 *eligible to receive a license under this act for any reason, except*
23 *that the provisions of subsection (a)(6) shall not apply in determining*
24 *whether a beneficiary would be eligible for a license.*

25 (c) No manufacturer's license shall be issued to:

26 (1) A corporation, if any officer or director thereof, or any stock-
27 holder owning in the aggregate more than 25% of the stock of the
28 corporation would be ineligible to receive a manufacturer's license
29 for any reason other than citizenship and residence requirements;

30 (2) a copartnership, unless all of the copartners shall have been
31 residents of this state for at least five years immediately preceding
32 the date of application and unless all the members of the copart-
33 nership would be eligible to receive a manufacturer's license under
34 this act;

35 (3) an individual who is not a resident of this state; ~~or~~

36 (4) an individual who has not been a resident of this state for at
37 least five years immediately preceding the date of application;

38 (d) No distributor's license shall be issued to:

39 (1) A corporation, if any officer, director or stockholder of the
40 corporation would be ineligible to receive a distributor's license for
41 any reason. It shall be unlawful for any stockholder of a corporation
42 licensed as a distributor to transfer any stock in the corporation to
43 any person who would be ineligible to receive a distributor's license

or

(5) a trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this act for any reason, except that the provisions of subsection (a)(6) shall not apply in determining whether a beneficiary would be eligible for a license.

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1 for any reason, and any such transfer shall be null and void, except
 2 that: (A) If any stockholder owning stock in the corporation dies and
 3 an heir or devisee to whom stock of the corporation descends by
 4 descent and distribution or by will is ineligible to receive a distri-
 5 butor's license, the legal representatives of the deceased stockholder's
 6 estate and the ineligible heir or devisee shall have 14 months from
 7 the date of the death of the stockholder within which to sell the
 8 stock to a person eligible to receive a distributor's license, any such
 9 sale by a legal representative to be made in accordance with the
 10 provisions of the probate code; or (B) if the stock in any such cor-
 11 poration is the subject of any trust and any trustee or beneficiary
 12 of the trust who is 21 years of age or older is ineligible to receive
 13 a distributor's license, the trustee, within 14 months after the ef-
 14 fective date of the trust, shall sell the stock to a person eligible to
 15 receive a distributor's license and hold and disburse the proceeds
 16 in accordance with the terms of the trust. If any legal representatives,
 17 heirs, devisees or trustees fail, refuse or neglect to sell any stock as
 18 required by this subsection, the stock shall revert to and become
 19 the property of the corporation, and the corporation shall pay to the
 20 legal representatives, heirs, devisees or trustees the book value of
 21 the stock. During the period of 14 months prescribed by this sub-
 22 section, the corporation shall not be denied a distributor's license
 23 or have its distributor's license revoked if the corporation meets all
 24 of the other requirements necessary to have a distributor's license;
 25 (2) a copartnership, unless all of the copartners are eligible to
 26 receive a distributor's license;

27 (3) an individual who is not a resident of this state; ~~or~~
 28 (4) an individual who has not been a resident of this state for at
 29 least 10 years immediately preceding the date of application, except
 30 that:

31 (A) A wholesaler of cereal malt beverages properly licensed on
 32 September 1, 1948, shall be eligible for a beer distributor's license;
 33 and

34 (B) a person who has been a resident of the state for at least
 35 five years immediately preceding the date of application shall be
 36 eligible for a beer distributor's license.

or

37 (e) No nonbeverage user's license shall be issued to a corporation,
 38 if any officer, manager or director of the corporation or any stock-
 39 holder owning in the aggregate more than 25% of the stock of the
 40 corporation would be ineligible to receive a nonbeverage user's li-
 41 cense for any reason other than citizenship and residence
 42 requirements.

(5) a trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this act for any reason, except that the provisions of subsection (a)(6) shall not apply in determining whether a beneficiary would be eligible for a license.

43 (f) No microbrewery license or farm winery license shall be issued

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1 to a:

- 2 (1) Person who is not a resident of this state;
- 3 (2) person who has not been a resident of this state for at least
- 4 four years immediately preceding the date of application;
- 5 (3) person who has beneficial interest in the manufacture, prep-
- 6 aration or wholesaling of alcoholic beverages other than that produced
- 7 by such brewery or winery;
- 8 (4) person, copartnership or association which has beneficial in-
- 9 terest in any retailer licensed under this act or under K.S.A. 41-
- 10 2702 and amendments thereto;
- 11 (5) copartnership, unless all of the copartners are qualified to
- 12 obtain a license; ~~or~~

13 (6) corporation, unless stockholders owning in the aggregate 50%
 14 or more of the stock of the corporation would be eligible to receive
 15 such license and all other stockholders would be eligible to receive
 16 such license except for reason of citizenship or residency; _____ or

17 *(g) The provisions of subsections (b)(1), (b)(2), (c)(3), (c)(4),*
 18 *(d)(3), (d)(4), (f)(1) and (f)(2) shall not apply in determining eligibility*
 19 *for the 10th, or a subsequent, consecutive renewal of a license if*
 20 *the applicant has appointed a citizen of the United States who is a*
 21 *resident of Kansas as the applicant's agent and filed with the director*
 22 *a duly authenticated copy of a duly executed power of attorney,*
 23 *authorizing the agent to accept service of process from the director*
 24 *and the courts of this state and to exercise full authority, control*
 25 *and responsibility for the conduct of all business and transactions*
 26 *within the state relative to alcoholic liquor and the business licensed.*
 27 *The agent must be satisfactory to and approved by the director,*
 28 *except that the director shall not approve as an agent any person*
 29 *who:*

(7) a trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this act for any reason, except that the provisions of subsection (a)(6) shall not apply in determining whether a beneficiary would be eligible for a licleense.

- 30 (1) *Has been convicted of a felony under the laws of this state,*
- 31 *any other state or the United states;*
- 32 (2) *has had a license issued under the alcoholic liquor or cereal*
- 33 *malt beverage laws of this or any other state revoked for cause,*
- 34 *except that a person may be appointed as an agent if the person's*
- 35 *license was revoked for the conviction of a misdemeanor and 10*
- 36 *years have lapsed since the date of the revocation;*
- 37 (3) *has been convicted of being the keeper or is keeping a house*
- 38 *of prostitution or has forfeited bond to appear in court to answer*
- 39 *charges of being a keeper of a house of prostitution;*
- 40 (4) *has been convicted of being a proprietor of a gambling house,*
- 41 *pandering or any other crime opposed to decency and morality or*
- 42 *has forfeited bond to appear in court to answer charges for any of*
- 43 *those crimes; or*

Add:
Defense of insanity

22-3219. Plea of insanity; notice and procedure; mental examinations. (1) Evidence of mental disease or defect excluding criminal responsibility is not admissible upon a trial unless the defendant serves upon the prosecuting attorney and files with the court a written notice of such defendant's intention to rely upon the defense of insanity. Such notice must be served and filed before trial and not more than thirty days after entry of the plea of not guilty to the information or indictment. For good cause shown the court may permit notice at a later date.

(1) Add:
Evidence of mental disease or defect which caused a person to be unable to distinguish right from wrong at the time of the commission of the offense charged with respect to the act committed, and/or to be unable to understand the nature and quality of his acts at said time established beyond a reasonable doubt shall constitute a defense of insanity.

(2) A defendant who files a notice of intention to rely on the defense of insanity thereby submits and consents to abide by such further orders as the court may make requiring the mental examination of the defendant and designating the place of examination and the physician or physicians by whom such examination shall be made. No order of the court respecting a mental examination shall preclude the defendant from procuring at such defendant's own expense an examination by a physician of such defendant's own choosing. A defendant requesting a mental examination pursuant to K.S.A. 22-4508 may request a physician of such defendant's own choosing. The judge shall inquire as to the estimated cost for such examination and shall appoint the requested physician if such physician agrees to accept compensation in an amount in accordance with the compensation standards set by the board of supervisors of panels to aid indigent defendants. A report of each mental examination of the defendant shall be filed in the court and copies thereof shall be supplied to the defendant and the prosecuting attorney.

(3) Add:
(4) In the event a plea of insanity is entered by a defendant and a plea bargain is arranged, the plea can not be accepted without the court stating the specific findings of the court which support the plea of insanity and which result in an acquittal on the grounds that the person was insane at time of the commission of the alleged crime.

History: L. 1970, ch. 129, § 22-3219; L. 1977, ch. 120, § 1; March 7, ...

House Judiciary Committee
April 2, 1992
Attachment #3

H.F. 35A
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#3-2

428. Persons acquitted because of insanity; commitment to state security hospital; procedure for release or discharge, notice and hearing; jury instruction. (1) When a person is acquitted on the ground that the person was insane at the time of the commission of the alleged crime, the verdict shall be not guilty because of insanity and the person shall be committed to the state security hospital for safekeeping and treatment. A finding of not guilty by reason of insanity shall constitute a finding that the acquitted person committed an act constituting the offense charged or an act constituting a lesser included crime, except that the person did not possess the requisite criminal intent. A finding of not guilty because of insanity shall be prima facie evidence that the acquitted person is presently likely to cause harm to self or others.

(2) Whenever it appears to the chief medical officer of the state security hospital that a person committed under this section is not dangerous to other persons, the officer may transfer the person to any state hospital.

(3) Any person committed under this section may be granted conditional release or discharge as an involuntary patient pursuant to this subsection. The chief medical officer of the state security hospital or the state hospital where the patient is under commitment shall give notice to the district court of the county from which the person was committed that the patient is ready for such proposed release or discharge. Such notice shall include, but not be limited to: (a) Identification of the patient; (b) the course of treatment; (c) a current assessment of whether the patient is likely to cause harm to self or others if released or discharged; (d) recommendations for future treatment, if any; and (e) recommendations regarding conditional release or discharge, if any. Upon receiving such notice, the district court shall order that a hearing be held on the proposed release or discharge. The court shall give notice of the hearing to the state hospital where the patient was transferred and to the

Add:
At any time subsequent thereto during which such person is still committed to a state hospital the chief medical officer of that hospital finds that the person may again be dangerous to other persons, such officer may transfer the person back to the State Security Hospital.

(Commit) 22-3428

district or county attorney and sheriff of the county from which the person was originally ordered committed and shall order the involuntary patient to undergo a mental evaluation by a person designated by the court. A copy of all orders of the court shall be sent to the involuntary patient and the patient's attorney. The report of the court ordered mental evaluation shall be given to the district or county attorney, the involuntary patient and the patient's attorney at least five days prior to the hearing. The hearing shall be held within 30 days after the receipt by the court of the chief medical officer's notice. The involuntary patient shall remain in the state hospital until the hearing on the proposed release or discharge is to be held. At the hearing, the court shall receive all relevant evidence, including the written findings and recommendations of the chief medical officer of the state security hospital or the state hospital where the patient is under commitment, and shall determine whether the patient will be likely to cause harm to self or others if released or discharged. The patient shall have the right to present evidence at such hearing and to cross-examine any witnesses called by the district or county attorney. At the conclusion of the hearing, if the court finds by clear and convincing evidence that the patient will not be likely to cause harm to self or others if released or discharged, the court shall order the patient discharged or conditionally released, otherwise the court shall order the patient to remain in the state security hospital or state hospital where the patient is under commitment. If the court finds by clear and convincing evidence presented at the hearing that the release or discharge of the patient will not be likely to cause harm to self or others if the patient continues to take prescribed medication or to receive periodic psychiatric or psychological treatment, the court may order the patient conditionally released in accordance with subsection (4). If the court orders the conditional release of the patient, the court may order as an additional condition to the release that the patient continue to take prescribed medication and report as directed to a person licensed to practice medicine and sur-

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22-3428 (Cont)

to determine whether or not the patient is taking the medication or that the patient continue to receive periodic psychiatric or psychological treatment.

(4) In order to insure the safety and welfare of a patient who is to be conditionally released and the citizenry of the state, the court may allow the patient to remain in custody at a facility under the supervision of the secretary of social and rehabilitation services for a period of time not to exceed 30 days in order to permit sufficient time for the secretary to prepare recommendations to the court for a suitable reentry program for the patient. The reentry program shall be specifically designed to facilitate the return of the patient to the community as a functioning, self-supporting citizen, and may include appropriate supportive provisions for assistance in establishing residency, securing gainful employment, undergoing needed vocational rehabilitation, receiving marital and family counseling, and such other outpatient services that appear beneficial. If a patient who is to be conditionally released will be residing in a county other than the county where the district court that ordered the conditional release is located, the court shall transfer venue of the case to the district court of the other county and send a copy of all of the court's records of the proceedings to the other court. In all cases of conditional release the court shall: (a) Order that the patient be placed under the temporary supervision of state parole and probation services, district court probation and parole services or any appropriate private agency; and (b) require as a condition precedent to the release that the patient agree in writing to waive extradition in the event a warrant is issued pursuant to K.S.A. 22-3428b and amendments thereto.

(5) At any time during the conditional release period, a conditionally released patient, through the patient's attorney, or the county

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22-3428. (cont)

or district attorney of the county in which the court having venue is located may file an application for modification of the conditions of release, and the court shall hold an evidentiary hearing on the motion within 15 days of its filing. The court shall give notice of the time for the hearing to the patient and the county or district attorney. If the court finds from the evidence at the hearing that the conditional provisions of release should be modified or vacated, it shall so order. If at any time during the transitional period the designated medical officer or supervisory personnel or the treatment facility informs the court that the patient is not satisfactorily complying with the provisions of the conditional release, the court, after a hearing for which notice has been given to the county or district attorney and the patient, may make orders: (a) For additional conditions of release designed to effect the ends of the reentry program, (b) requiring the county or district attorney to file an application to determine whether the patient is a mentally ill person as provided in K.S.A. 59-2913 and amendments thereto, or (c) requiring that the patient be committed to the state security hospital or any state hospital. In cases where an application is ordered to be filed, the court shall proceed to hear and determine the application pursuant to the treatment act for mentally ill persons and that act shall apply to all subsequent proceedings. The costs of all proceedings, the mental evaluation and the reentry program authorized by this section shall be paid by the county from which the person was committed.

(6) In any case in which the defense of insanity is relied on, the court shall instruct the jury on the substance of this section.

(7) As used in this section and K.S.A. 22-3428a and amendments thereto, "likely to cause harm to self or others" has the meaning provided by K.S.A. 59-2902 and amendments thereto.

History: L. 1970, ch. 129, § 22-3428; L. 1971, ch. 117, § 1; L. 1975, ch. 200, § 1; L. 1976, ch. 163, § 23; L. 1978, ch. 129, § 1; L. 1979, ch. 97, § 1; L. 1980, ch. 105, § 1; L. 1981, ch. 148, § 2; L. 1986, ch. 211, § 28; L. 1989, ch. 101, § 1; July 1.

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*Donna
Whiteman
4/1/92
ATTORNEY
LAWMAN*

TESTIMONY ON HOUSE BILL 3182

PRESENTED TO:

HOUSE FEDERAL AND STATE AFFAIRS SUBCOMMITTEE

APRIL 1, 1992

SUBMITTED BY:

**DONNA WHITEMAN, SECRETARY
SOCIAL AND REHABILITATION SERVICES**

**GEORGE D. VEGA, ACTING COMMISSIONER
MENTAL HEALTH AND RETARDATION SERVICES**

*H. Fed + S. Affairs
4/2/92
Att. 4*

ANALYSIS

Current system:

The state hospital system serves two types of forensic patients:

1. The Department of Corrections refers individuals serving criminal sentences who are in need of treatment for mental illness. These referrals are served at the Larned State Security Hospital.
2. District Courts refer individuals charged with crimes. Referrals are primarily for competency evaluations or referral for treatment in lieu of sentencing. Referrals are made to all three State Hospitals.

We estimate approximately 90% of forensic referrals to all state hospitals are felony-related. We collected the following data on forensic offenders residing in the state hospital system on March 20, 1992:

	TOTAL	# FELONY	% FELONY
Topeka St. Hosp.	32	17	50%
Osawatomie St. Hosp.	15	14	93%
Larned St. Hosp.	204	190	93%

Proposed Legislation:

The focus of the proposed legislation is to improve the safety of patients and staff at the open state hospital campuses in Topeka and Osawatomie by designating Larned State Security Hospital as the state institution to house all district court referrals charged or convicted of felonies. Misdemeanor-related referrals would involve no change from the status quo in that they would be optional.

We strongly support the proposed legislation. The legislation will accomplish its intent. For instance, referrals for evaluation will go directly to Larned State Hospital. Some referrals will return to the District Courts directly from Larned, without transferring to other hospitals. The legislation provides that other referrals may be transferred from Larned State Hospital to Topeka or Osawatomie State Hospitals UPON the recommendation of the LSH treatment team that the patient's condition no longer requires a security setting for treatment.

The result of the legislation for the Topeka and Osawatomie State Hospitals is that no felony-related forensic referrals will be housed on open wards without a review and recommendation for such by the treatment team.

It is important to recognize that, at some point, all security patients are eligible for release as their sentences expire or conditions improve. For an individual whose condition is not improved at the expiration of the sentence, involuntary commitment can continue inpatient treatment, provided the patient's condition meets the statutory requirements for involuntary commitment. This represents no change from the status quo.

EFFECT UPON LSH OPERATIONS AND RESPONSIBILITY:

It would be difficult for the Larned State Hospital program to accommodate additional workload under its current operational policies. However, Larned State Hospital has planned to undertake several initiatives to improve the current program's efficiency, thus minimizing the additional resources needed. For instance, collaborative planning with Department of Corrections, local law enforcement agencies, and courts could reduce the number of optional referrals and reduce the lengths of stay for individuals undergoing evaluation or treatment. This would result in greater turnover of beds, meaning that increased numbers of referrals could be handled by the current number of beds.

The current occupancy rate of the State Security Hospital is 89%. Delays in processing admissions and discharges account for the vacant beds. The proposed change would result in an estimated increase of 10 in the Average Daily Census, assuming lengths of stay remain unchanged. This would result in a higher occupancy rate as well.

Additionally, changes in program components may reduce or eliminate delays experienced with admissions and discharges. Unoccupied beds would be fewer and, as a result, the occupancy rate would be higher. To serve a higher occupancy rate, a reduction in budgeted shrinkage is necessary.

We would expect the occupancy rate to rise at least temporarily, as a result of this bill, until policies to reduce referrals and lengths of stay were fully implemented and working smoothly.

BUDGET IMPACT:

First year costs are estimated to be \$622,615 and are made up of the following items:

1. Staffing Expenditures:

LSH would need one additional social worker position for the evaluation ward. This position would be needed for information-gathering for evaluation of increased numbers of referrals. (\$25,961)

The staff shrinkage rate would need to be lowered from 5% to 3% to meet the staffing needs of increased bed occupancy. (\$559,198)

2. Indirect and support services expenditures:

An estimated increase of 10 in the Average Daily Census (94% occupancy rate) would require adjustment in the LSH budget allocation to cover the cost of serving additional security patients. Examples of services include physician, dental, physical therapy, and chaplaincy. (\$37,456)

These projections are based on the following assumptions:

- > collaborative initiatives with DOC and local agencies will be successful in reducing referrals and lengths of stay.
- > the Average Daily Census will exceed its current level of 196 but will not exceed the bed capacity of 220.

3. Receipts:

Security patients are generally served without reimbursement and thus account for a certain amount of disproportionate share federal dollars. We estimate that moving these individuals would be cost-neutral to the state--disproportionate share revenue would increase for LSH and would decrease, by an equal amount, at OSH and TSH.

We assume that the current amount of disproportionate share revenue will follow the patient.

LONG RANGE FISCAL EFFECT:

We anticipate that collaborative efforts to reduce referrals and lengths of

stay will take some time to be put into place. Success may thus not be immediately realized. We anticipate that future fiscal years' staff shrinkage rate could be raised, provided that the occupancy rate will have fallen to its prior level.

It is reasonable to anticipate that, if referrals and lengths of stay are reduced in the second, third, and fourth fiscal years, the cost would stay constant or fall.