

Approved: February 6, 1992  
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 January 30, 1992 in room 514-S of the Capitol.

All members were present.

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:

James Clark, Kansas County and District Attorneys Association  
Senator Lana Oleen  
Ann Elliott, Geary County Landlord Association  
Ed Jaskinia, The Association of Landlords of Kansas (TALK)  
Carol McDowell, City of Kansas City, Kansas  
Noelle St. Clair, Kansas National Association of Housing and Redevelopment Officials  
Jim Lutz, Shawnee County Landlords Association  
Mike Grossman, American Civil Liberties Union  
Dennis Shockley, Department of Commerce, Chief of Housing

Chairman Winter opened the meeting by recognizing James Clark, Kansas County and District Attorneys Association who presented requests for legislation. (ATTACHMENT 1)

Senator Bond moved to introduce the seven bills as requested by Mr. Clark. Senator Martin seconded the motion. The motion carried.

Chairman Winter opened the hearing for SB 331.  
SB 331 - Drug-Free Housing Act.

Senator Lana Oleen, who had originated the request for SB 331, described the bill to the Committee.

Ann Elliott, Geary County Landlord Association, testified in support of SB 331 and requested amending the bill to give the same eviction rights to landlords as the housing authority and to clarify when a dwelling is classified as a public nuisance. (ATTACHMENT 2)

Ed Jaskinia, The Associated Landlords of Kansas President, testified in support of SB 331 with amendments. (ATTACHMENT 3)

Carol McDowell, City of Kansas City, Kansas, testified in support of SB 331. She presented a letter addressed to the Committee from Douglas Bach, Intergovernmental Coordinator of the City of Kansas City, Kansas, also in support of SB 331. (ATTACHMENT 4)

Noelle St. Clair, Kansas National Association of Housing and Redevelopment Officials (NAHRO), testified in support of incorporating SB 331 into the Kansas Residential Landlord Tenant Act. (ATTACHMENT 5)

Jim Lutz, Shawnee County Landlords Association President, appeared in support of SB 331 by echoing the statements and concerns of previous conferees. He concluded that the landlord is often caught in the middle, both legally and philosophically.

Michael Grossman, American Civil Liberties Union of Kansas, testified in opposition to SB 331 as a group imposed harm to the very young and the elderly. (ATTACHMENT 6)

Dennis Shockley, Kansas Department of Commerce Chief of Housing, stated the Housing Concerns Advisory Committee supports the concept of drug-free housing in SB 331. He concluded that it would be a good bill if the technical questions were resolved.

Mr. Shockley responded to questions from the Committee by stating he would research the federal laws on housing and return with that information.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 514-S, Statehouse, at 10:05 a.m. on January 30, 1992.

This concluded the hearing form SB 331. Committee discussion followed that expressed the gaps in the Kansas Landlord Tenant Act. Chairman Winter referred the measure to the Subcommittee on Criminal Law and suggested Senator Oleen and others concerned with the topic, meet to discuss ways to resolve the problems.

The meeting was adjourned at 11:00 a.m.



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## Kansas County & District Attorneys Association

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### REQUEST FOR LEGISLATION

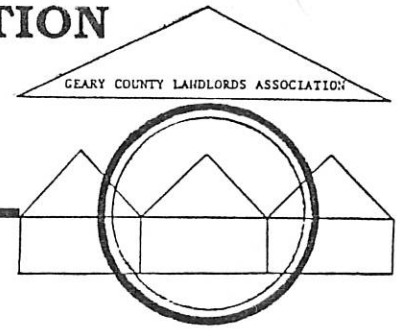
Presented to the Senate Judiciary  
by the  
Kansas County and District Attorneys Association

1. Include prior adjudication as a juvenile offender as predicate offense for self-contained habitual sentences, i.e. possession of a firearm within five years of a conviction of a felony or adjudication as a juvenile offender for a felony offense.
2. Amend K.S.A. 38-1602(b)(3), (4) and (5) to also exclude juveniles who have been charged, or convicted as an adult in another state or federal court.
3. Amend the code of civil procedure, K.S.A. 60-226, to require the same procedure as the Kansas Open Records Act, K.S.A. 45-215 et seq.
4. Repeal the C.P.A. privilege, K.S.A. 4-401; or, in the alternative, amend it to correspond to the attorney client privilege and place it in the evidence code.
5. Amend the "hard-forty" sentence, K.S.A. 21-4624(2) by deleting the premeditation requirement, which would allow the sentence to apply to felony murder. Add the premeditation as one of the aggravating factors in K.S.A. 21-4625.
6. Amend the statute of limitations in criminal cases, K.S.A. 21-3106(1), and juvenile offender cases, 38-1603, by adding language to the effect that where a defendant is charged with homicide and is convicted of a lesser offense, the court retains jurisdiction over the case.
7. Amend the diversion statutes, K.S.A. 22-2906 et seq. to permit stipulation of facts, as is now required in DUI diversions.

*Senate Judiciary Committee*  
*January 30, 1992*  
*Attachment 1*

# GEARY COUNTY LANDLORDS ASSOCIATION

364 Grant Avenue  
JUNCTION CITY, KANSAS 66441  
913/238-1894



Testimony to Senate Judiciary Committee  
January 30, 1992

Senate Bill 331 - Drug Free Housing

I am Ann Elliott, a landlord from Junction City, KS. I am testifying in support of Senate Bill 331 in behalf of the Geary County Landlord Association, representing approximately 3,000 rentals in Geary County.

Junction City is a unique city in Kansas in that Ft. Riley military families are the main source of income for landlords in Geary County, welfare is probably the second. Due to this, Junction City has been a prime target for Drug Traffic, Prostitution, and other illegal activities for many years. These illegal activities and the people involved have plagued landlords for just as many years.

In 1990, our Landlord Association contacted the Geary County Drug Task Force for help. Guidelines were set out by the Task Force as to what a landlord should watch for and who to contact if the landlord suspects illegal activities.

Also, the "Party Shack Bill" of 1990 requires the landlord to notify the authorities in writing if illegal activities are suspected and to "make a bona fide attempt to abate such nuisance". As a landlord I feel I have to have actual proof to evict a tenant.

The notification is a simple process, a notarized letter is sent to the Police or Sheriff's Department by the landlord stating the tenants, where they live and any other information available to locate and identify them and that the landlord suspects possible illegal activities at that location.

The problem that landlords encounter is trying to get the tenants out of the home. Current statutes relating to the Kansas Residential Landlord-Tenant Act give a couple of options:

*Senate Judiciary Committee  
January 30, 1992  
Attachment 2*

1) KSA 58-2564 - Material Non-Compliance by Tenant

A "14/30 day notice" may be issued if the tenant is in non-compliance with the rental agreement. This notice will break a lease or serve as a warning to the tenant. The tenant has 14 days to comply or move out at the end of 30 days. Many times the tenant moves on to another location and continues the same lifestyle. Some tenants will comply and be good tenants on the premises from thereon. However, they may continue to do the illegal activities at another location. Then there are the tenants who will comply during the 14 day period and start again later in the remaining 16 day period. The landlord then must issue a "Notice to Quit", giving the tenant 30 days to be out of the home. The tenant may be in the home for 45 days or more before the landlord can seek repossession through the court system.

2) KSA 58-2570 - Termination of Tenancy

EXCEPT when used with the "14/30 day notice", a "Notice to Quit" may be issued to a tenant on a month-to-month rental basis. If the tenant is on a lease longer than month-to-month, this notice cannot be used until at least a month before the lease expires. This notice is effective at the next rent paying date, not less than 30 days. Again the landlord has to wait at least 30 days and as much as 59 days to seek repossession through the court system.

There is nothing in either option to keep the tenant from returning to the property.

Senate Bill 331 gives the landlord the legal right to require tenants to sign that they or their guests will not violate the statutes pertaining to unlawful acts regarding controlled substances on the premises, OR, the landlord will terminate the lease immediately, declare a breach of the lease, or the landlord will sever tenancy and require the tenant "to vacate the unit permanently no later than 10 days from the date of written notice from the landlord, and not thereafter enter upon the landlord's premises." The landlord may have to go to court for repossession of the property, however Senate Bill 331 shortens the time the tenant may be in the home.

2-2/4

I feel this could be a good bill, however, I would like to suggest a few changes. As the bill now reads:

1) Section 2 (a) limits a landlord to violations of the statutes pertaining to unlawful acts regarding controlled substances on the leased premises only. Many times the situation causing the conviction happened off the leased premises.

2) Section 2 (3) implies that only the person in violation may be evicted.

Where,

3) Section 3 (4) gives the housing authority the right to evict all tenants of the unit, no matter where the violation occurred.

I feel the same option should be given to the landlords as the housing authorities. As the bill now reads, if the tenant was picked at another location for violations of the unlawful acts regarding controlled substances statutes and convicted, the landlord cannot evict or terminate the lease for the conviction because it did not happen on the leased premises. If only one of tenants was convicted, he must leave, but the balance of the tenants may remain in the home. In most cases, it would be more beneficial for the landlord and the neighboring tenants if everyone in the home must leave.

Also, Section 5 (b) as written, is not clear. If the tenant has been evicted and the unit readied to rent, the unit would, in most cases, no longer be a public nuisance.

I have two options for your consideration to clarify the paragraph:

1) change Page 3, Line 10 to read:  
will be used as a public nuisance as defined in subsection (a)

OR,

2) change Section 5 (b) to read:

It shall be unlawful for a landlord to rent to a tenant any dwelling, house, apartment, building, vehicle, vessel, aircraft or any place whatever, if the landlord has actual knowledge the place will be used for the purpose of illegally administering controlled substances or which will be used for the manufacture, distribution,

dispensing, storage, or concealment of controlled substances.

I ask that you consider the information I have presented, I thank you for the opportunity to testify before the Judiciary Committee. I will attempt to answer any questions you may have.

Thank you.



**Jaskinia**  
President  
(913) 299-8383



**Bill Nelson**  
Vice President (Zone 2)  
(913)827-1865

**Tess Raydo**  
Vice President (Zone 1)  
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**Pat McBride**  
Vice President (Zone 3)  
(316) 331-4379

**The Associated Landlords of Kansas**  
P.O. Box 2025 • Topeka, Kansas 66601 • (913) 232-0507

The Associated Landlords of Kansas (TALK) was created in 1975 by a group of people from across Kansas to "Promote a strong voice in the legislature, a high standard of ethics, and provide educational opportunities for landlords." Some of our members helped create "The Landlord-Tenant Act of 1975, a model of fair law for both landlords and tenants. Our organization has several thousand members in 10 cities across the state, and new chapters are in the process of being formed.

In this 1992 legislative session, we are working in a number of different arenas, some of which we have listed below.

**1) SRS Direct Pay to Landlords** - Discussion about direct payment from SRS to landlords has been picking up steam from last year. Several individual cities in the United States are doing this, and we believe that Kansas should adopt this policy as well. In addition, we feel that natural gas, electric and water utilities should be included in this program.

There are many benefits to the tenants, local communities, and school districts. For example, tenants would not have to move over and over again after being evicted for non-payment of rent. Children could stay in school without the fear of new teachers and friends every few months, and local communities could be assured that very little welfare money is used for drug and alcohol addictions.

Money for food is being given to SRS recipients in the form of food stamps in order to ensure that basic nutritional needs are met. We believe that the need for shelter deserves the same type of consideration. It is our understanding that there is a proposal in the House that would set up electronic transfer of funds to SRS recipients, saving the state several millions of dollars. This could be an effective tool which could be utilized for direct pay to landlords and utilities.

**2) Drug Free Housing Act** - Senate Bill 331 is an act brought forth to achieve several purposes. The first one is to bring Kansas laws into compliance with Federal laws as they pertain to drugs in and around public housing. The second one is to give housing providers a remedy to more quickly evict a tenant if the tenant is found to be guilty of drug related offenses. The third purpose of this bill is to make it illegal to rent property to a tenant if the landlord has "actual or constructive knowledge" that the property is being used for drug related purposes.

We believe the intent of the bill is good, and will give landlords another tool to enable them to help keep drugs out of their community. That, of course, is a goal with which we all agree.

However, as in almost all proposals, we have found several things that need to be clarified or eliminated, such as the "actual or constructive knowledge" phrase, and some of the wording in Section 5b.

We will work to make sure this bill is as clear and concise as possible, thereby helping us deal with potential drug problems in our communities.

**3) Governor's Housing Proposal** - At the time of this writing, we do not know what the proposals are. We will, of course, examine them carefully and do whatever we can to help promote those that are beneficial to the taxpayers of Kansas.

If we can be of help to you in these or any other areas concerning property, tenants, or landlords, please feel free to contact us.

Ed Jaskinia, President

*Senate Judiciary Committee  
January 30, 1992  
Attachment 3*



# CITY OF KANSAS CITY, KANSAS

INTERGOVERNMENTAL & PUBLIC AFFAIRS



EXECUTIVE CHAMBER  
ONE MCDOWELL PLAZA

KANSAS CITY, KANSAS 66101  
PHONE (913) 573-5038

January 30, 1992

The Honorable Wint Winter  
Members of the Senate Judiciary Committee  
State Capital, Room 514-S  
Topeka, KS 66612

Mr. Chairman and Members of the Senate Judiciary Committee:

**Re: SENATE BILL 331**

The City of Kansas City, Kansas would like to show our support for Senate Bill 331 which pertains to drug-free housing. The federal laws which now allow our housing authority to evict or prevent individuals who are guilty of felony violations from living in public housing have assisted our city in maintaining control of our housing projects. After reviewing S.B. 331 with members of the City of Kansas City, Kansas Police Department and the staff of the Kansas City, Kansas Housing Authority, we feel the enactment of this bill will be beneficial to the members of this community. Providing our landlords with the same mechanism our housing authority has to control their property will help improve our city's neighborhoods by deterring the negative influences.

Currently, our city Police Department, through our state-supported DARE Units, spends a lot of time in the lower-income neighborhoods which have many rental houses. These units work to educate the youth in the area about the harmful effects of drugs and alcohol, as well as teach the children about gang awareness. Lieutenant Ron Miller of the Police Inspections Bureau, which accommodates the DARE Units, stated that, "allowing landlords to have the ability to evict convicted felons or prevent them from living in some neighborhoods would assist our DARE Units in achieving their objectives." These objectives include showing the youth of our community that there are better ways to live their lives than what the criminals in the community show them. Having felons live among our youth, whether it is in public housing or in neighborhoods, not only creates the threat of negative influences but provides adverse role models for our children to see.

We realize that convicted felons must have a place to live; however, please let our landlords control some of the places where we do not want them to live in order that they may not commit another crime against not only us, but our children. Please support S.B. 331.

Sincerely,

Douglas G. Bach  
Intergovernmental Coordinator  
City of Kansas City, Kansas

*Senate Judiciary Committee  
January 30, 1992  
Attachment 4*



**KANSAS NATIONAL  
ASSOCIATION OF  
HOUSING AND  
REDEVELOPMENT  
OFFICIALS**

TESTIMONY

Senate Bill 33

By: Noelle St.Clair

Kansas NAHRO

January 30, 1992

Mr. Chairman and members of the committee:

I'm here today on behalf of the Kansas Chapter of The National Association Of Housing And Redevelopment Officials. Kansas NAHRO's membership is comprised of Public Housing Authority Directors and Staff, Community Development Officials as well as Social Service Providers and Non Profits.

Kansas NAHRO supports the language and concepts of Senate Bill 331. This bill clearly makes a statement that drug-free housing is important to communities and that drug activity will not be tolerated.

Kansas NAHRO members have reviewed this bill and have determined that the sections giving specific reference to Public Housing Authorities duplicate current federal regulations dealing with drug elimination in Public Housing and that no changes are needed.

The one recommendation that we would make is that this act be incorporated into the Kansas Residential Landlord Tenant Act. The KRLTA is the act that is most commonly referred to in landlord tenant matters. It makes sense that there be one point of reference.

Kansas NAHRO has believed for a long time that there needs to be an emergency eviction provision in the KRLTA to deal with things such as drugs and domestic violence issues . It is our hope that after you hear the conferees today that you will carefully consider action to incorporate the two bills.

*Senate Judiciary Committee  
January 30, 1992  
Attachment 5*

**TESTIMONY ON BEHALF OF THE AMERICAN CIVIL LIBERTIES UNION  
OF KANSAS, REGARDING SENATE BILL No. 331  
BEFORE THE COMMITTEE ON JUDICIARY  
JANUARY 30, 1992**

My name is Michael Grossman, and I am a student at the University of Kansas. I appear on behalf of the American Civil Liberties Union of Kansas, in opposition to Senate Bill 331. We have concern with sections of this proposed legislation because it punishes people on grounds of who they might associate with, and leaves unanswered questions that need to be addressed before this legislation proceeds further.

The conditions for eviction set forth in Section 3 of this proposed legislation are short-sighted. Sub-section (2) states that all tenants of a state housing unit can be evicted if one resident of that housing unit is convicted of a drug felony. Irrelevant of who may have been convicted of the felony, all residents of that unit are able to be punished, including young children, disabled elderly, and other innocent people. Removing these people from the housing unit does not affect the drug problem; it only creates more problems. What would happen to the young children if thrown out of the only housing available to them? What options would an elderly person have if taken from their only source of shelter?

The proposed legislation reminds one of how justice was handed out in the former Soviet Union. If a person was deemed to be an enemy of the state, and dangerous enough to be thrown in prison, often times their entire family was thrown into prison as well. Guilty by association, as if those who commit a crime were passing along a contagious disease. Such notions of group imposed justice are barbaric, and thankfully are slowly disappearing as the Soviet Union ceases to exist. I shudder to think, though, that similar notions of group imposed justice may be appearing in the state of Kansas, residing in the proposed legislation.

Additionally in Section 3, in subsections (3) and (4), the proposed legislation states that a resident of a state housing unit can be evicted if a housing authority finds "clear and convincing" evidence that a drug felony has occurred. Upon that "clear and convincing" evidence, every member of the housing unit may be evicted, the young and elderly alike.

Clear and convincing evidence is a lesser burden of proof than that required for criminal convictions, and there is no mention of a trial necessary for such evictions. It appears that guilt is determined, and punishment handed out to the accused, upon the opinion of a housing authority who is possibly untrained in the conditions of evidence. Innocent people may be evicted, including young children and elderly, without recourse to prove such innocence.

*Senate Judiciary Committee  
January 30, 1992  
Attachment 6*

I am confident that members of this Committee do not want to harm innocent people, or remove helpless children and elderly from their only housing. However, it is a result of this proposed legislation. I suggest that in its desire to curb illegal drugs in public housing, the Committee has not examined all possible affects of this legislation. I urge the Committee to consider such affects before this legislation proceeds further.

FOR FURTHER INFORMATION CONTACT  
AMERICAN CIVIL LIBERTIES UNION OF KANSAS AND WESTERN MISSOURI  
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KANSAS CITY, MO 64105  
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