

JUDICIARY SUBCOMMITTEE ON CRIMINAL LAW

Senator Jerry Moran, Chairman

February 26, 1992
10:00 a.m.

SB 331 - drug-free housing act.

PROPONENTS

Noelle St. Clair, Kansas National Association of Housing and Redevelopment Officials (NAHRO)
(ATTACHMENTS 1 and 2)

Ronald E. Miles, Kansas Board of Indigents' Defense Services (ATTACHMENT 3)

OPPONENTS

American Civil Liberties Union, written (ATTACHMENT 4)

SUBCOMMITTEE RECOMMENDATION: no action taken.

SENATE BILL No. 331

By Committee on Judiciary

2-26

8 AN ACT enacting the ~~drug free housing act.~~

9

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

11 Section 1. This act shall be known and may be cited as the drug-

12 free housing act.

13 Sec. 2. Any landlord, as a condition of leasing, extending or

14 renewing a residential lease, may require a tenant to sign a lease

15 which:

16 (a) Requires the tenant to agree that no person occupying or

17 otherwise using the leased unit will ~~violate the provisions of K.S.A.~~

18 ~~1990 Supp. 65-4127a or 65-4127b, and amendments thereto, on the~~

19 ~~leased premises, and~~

20 (b) stipulates that if any person occupying or otherwise using the

21 leased unit violates the terms of subsection (a), the landlord may

22 elect to:

23 (1) Terminate the lease immediately and proceed to seek re-

24 possession of the property in accordance with applicable law;

25 (2) declare a breach of the lease and proceed to seek repossession

26 of the property in accordance with applicable law; or

27 (3) require any lessee or other person occupying or using the

28 leased unit and committing ~~a violation of the provisions of K.S.A.~~

29 ~~1990 Supp. 65-4127a or 65-4127b, and amendments thereto, to vacate~~

30 ~~the unit permanently no later than 10 days from the date of written~~

31 ~~notice from the landlord, and not thereafter enter upon the landlord's~~

32 ~~premises. If the person vacating the unit is one of the lessees, the~~

33 ~~person shall be severed from the tenancy.~~

34 Sec. 3. (a) Any housing authority created pursuant to K.S.A. 17-

35 ~~2337 et seq., and amendments thereto:~~

36 (1) Shall evict any housing project tenant who is adjudicated

37 guilty of a ~~felony violation of the provisions of K.S.A. 1990 Supp.~~

38 ~~65-4127a or 65-4127b, and amendments thereto, if such offense is~~

39 ~~committed in or on the premises of any public housing project;~~

40 (2) may evict all tenants of a dwelling unit when any tenant of

41 such unit is adjudicated guilty of a ~~felony violation of the provisions~~

42 ~~of K.S.A. 1990 Supp. 65-4127a or 65-4127b, and amendments~~

43 ~~thereto, if such offense is committed in or on the premises of any~~

Emergency Eviction for Criminal Activity Act.

not engage any any criminal activity including domestic violence that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants and/or occupants or any drug - related criminal activity on or near such premises, engaged in by the tenant, any member of the tenant's household, or any guest or other person under the tenant's control.

any criminal activity including domestic violence that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or near such premises, engaged in by the tenant, any member of the tenant's household, or any guest or another person under the tenant's control.

A hearing shall be held within 14 calender days after the filing of an emergency evition peticion. Each tenant sought to be evicted shall receive at least five days notice of the hearing and shall have the right to be present and to be represented by legal counsel at the hearing. The court shall appoint legal counsel for any such tenant who is without legal representation.

(4) A landlord that does not comply with this section shall be ineligible to receive state funding to assist in managing or operating any of its housing units, including any funding from any of the housing assistance programs operated by the state.

any criminal activity including domestic violence that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or near such premises, engaged in by the tenant, any member of the tenant's household, or any guest or another person under the tenant's control,

any criminal activity including domestic violence that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or near such premises, engaged in by the tenant, any member of the tenant's household, or any guest or another person under the tenant's control

Criminal Law Subcommittee
February 26, 1992
Attachment 1
1-1/3

1 public housing project;
 2 ~~(3) may evict any housing project tenant upon clear and con-~~
 3 ~~vincing evidence that such tenant is committing or has committed~~
 4 ~~any violation of the provisions of K.S.A. 1990 Supp. 65-4127a or 65-~~
 5 ~~4127b, and amendments thereto, regardless of where the violation~~
 6 ~~occurred, and~~
 7 ~~(4) may evict all tenants of a dwelling unit upon clear and con-~~
 8 ~~vincing evidence that any tenant of such unit is committing or has~~
 9 ~~committed any felony violation of the provisions of K.S.A. 1990 Supp.~~
 10 ~~65-4127a or 65-4127b, and amendments thereto, regardless of where~~
 11 ~~the violation occurred, and that the other tenants knew or reasonably~~
 12 ~~should have known of such activity.~~
 13 (b) Any person found to have violated this section who returns
 14 to the premises is guilty of criminal trespass. A housing authority
 15 may consider a rental application by a person evicted under this
 16 section only upon a showing of rehabilitation.
 17 (c) An explanation of the provisions of this section shall be in-
 18 cluded in all leases made or renewed after the effective date of this
 19 act.
 20 (d) A housing authority that does not comply with this section
 21 shall be ineligible to receive state funding to assist in managing or
 22 operating any of its housing projects, including any funding from
 23 any of the housing assistance programs operated by the state.
 24 Sec. 4. (a) If the housing authority has reason to believe that
 25 cause exists for eviction under section 3, the authority shall conduct
 26 an investigation to determine whether there is cause for emergency
 27 eviction. If the investigation results in a finding of cause for emer-
 28 gency eviction, the authority shall deliver an emergency eviction
 29 petition notice to the premises of the dwelling unit involved, and
 30 within 24 hours after delivery of such notice, shall petition the circuit
 31 court for an emergency order authorizing eviction. The petition shall
 32 allege the name, age and address of each tenant sought to be evicted
 33 and the specific facts constituting the cause for eviction under section
 34 3.
 35 (b) A hearing shall be held within 14 days after the filing of an
 36 emergency eviction petition. Each tenant sought to be evicted shall
 37 receive at least five days notice of the hearing and shall have the
 38 right to be present and to be represented by legal counsel at the
 39 hearing. The court shall appoint legal counsel for any such tenant
 40 who is without legal representation.
 41 (c) If at the hearing, the court finds clear and convincing evidence
 42 that cause exists for eviction under section 3, the court shall issue
 43 an order for emergency eviction of the tenant or tenants involved.

(3) may evict any housing project tenant and/or occupant upon evidence that such tenant and/or occupant is engaging in criminal activity including domestic violence that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants and/or occupants or any drug-related criminal activity on or near such premises, engaged in by a public housing tenant, any member of the tenant's household or any guest or other person under the tenant's control.

delete

calender

AN ACT relating to drug-free housing and emergency eviction for criminal activity Act.

SENATE BILL No. 331
By Committee on Judiciary

2-26

Session of 1991

1 Such order shall be executed immediately.
 2 Sec. 5. (a) Any dwelling, house, apartment, building, vehicle,
 3 vessel, aircraft or any place whatever which is resorted to for pur-
 4 poses of illegally administering controlled substances or which is used
 5 for the manufacture, distribution, dispensing, storage or concealment
 6 of controlled substances shall be considered a public nuisance.
 7 (b) It shall be unlawful to rent to a tenant any dwelling, house,
 8 apartment, building, vehicle, vessel, aircraft or any place whatever
 9 if the landlord has actual or constructive knowledge that the place
 10 is a public nuisance as defined in subsection (a).
 11 ~~Sec. 6. 7~~ This act shall take effect and be in force from and after
 12 its publication in the statute book.

delete constructive

New Section 6

Any neighboring resident may initiate eviction proceedings when the landlord after written notification fails to evict within a reasonable time any tenant and/or occupant engaged in any criminal activity and/or domestic violence activity that threatens the health, safety or right to peaceful enjoyment of the premises by other tenants and/or occupants or neighboring residents or any drug-related criminal activity on or near such premises, by any member of the tenant's household, or any guest or other person under the tenant's control. Eviction proceedings initiated by a neighboring resident shall follow procedures as outlined in (3) Section 2 .

Session of 1981

SENATE BILL No. 331

By Committee on Judiciary

2-26

8 AN ACT enacting the drug-free housing act
 9
 10 enacted by the Legislature of the State of Kansas:

Emergency Eviction for Criminal Activity Act.

submitted to the appropriate local public official (as determined by the Secretary); except that the Secretary may permit agencies owning or operating less than 250 units to comply with the requirements of this subparagraph by accounting on an agency-wide basis."

(2) IMPLEMENTATION.—The Secretary of Housing and Urban Development shall, under the rulemaking procedures under section 553 of title 5, United States Code, establish guidelines and timetables appropriate to implement the amendment made by paragraph (1)(C), taking into account the requirements of public housing agencies of different sizes and characteristics, to achieve compliance with requirements established by such amendment not later than January 1, 1993.

(C) REPORT.—

(1) IN GENERAL.—Within 180 days after the date of the enactment of this Act, the Secretary of Housing and Urban Development shall submit to the Congress a report on the operation and efficiency of the Buffalo Municipal Housing Authority using, among other criteria, the performance indicators under section 6(j)(1) of the United States Housing Act of 1937 (as amended by this section), and giving special attention to such Authority's desegregation program and to the vacancy rate.

(2) SPECIFIC RECOMMENDATIONS.—For purposes of the report required by paragraph (1), the Secretary may specifically determine whether to—

(A) petition for the appointment of a receiver for the Buffalo Municipal Housing Authority under the provisions of section 6(j)(3) of the United States Housing Act of 1937 (as amended by this section); or

(B) reduce operating subsidies for such Authority under the provisions of section 9 of the United States Housing Act of 1937.

SEC. 503. EVICTION AND TERMINATION PROCEDURES.

(a) GRIEVANCE PROCEDURE.—Section 6(k) of the United States Housing Act of 1937 (42 U.S.C. 1437d(k)) is amended by striking the matter after the period at the end of paragraph (6) and inserting the following:

"For any grievance concerning an eviction or termination of tenancy that involves any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other tenants or employees of the public housing agency or any drug-related criminal activity on or near such premises, the agency may (A) establish an expedited grievance procedure as the Secretary shall provide by rule under section 553 of title 5, United States Code, or (B) exclude from its grievance procedure any such grievance, in any jurisdiction which requires that prior to eviction, a tenant be given a hearing in court which the Secretary determines provides the basic elements of due process (which the Secretary shall establish by rule under section 553 of title 5, United States Code). Such elements of due process shall not include a requirement that the tenant be provided an opportunity to examine relevant documents within the possession of the public housing agency. The agency shall provide to the tenant a reasonable opportunity, prior to hearing or trial, to examine any relevant documents, records, or regulations

(b) LEASES.—Section 6(1) of the United States Housing Act of 1937 (42 U.S.C. 1437d(1)) is amended—

(1) by striking "and" at the end of paragraph (4);

(2) by inserting after paragraph (5), the following new paragraph:

"(6) specify that with respect to any notice of eviction or termination, notwithstanding any State law, a public housing tenant shall be informed of the opportunity, prior to any hearing or trial, to examine any relevant documents, records, or regulations directly related to the eviction or termination."

(c) REGULATIONS.—The Secretary of Housing and Urban Development shall issue, and publish in the Federal Register for comment, proposed rules implementing the amendments made by this section not later than the expiration of the 60-day period beginning on the date of the enactment of this Act and shall issue final rules implementing the amendments not later than the expiration of the 180-day period beginning on the date of the enactment of this Act.

(d) APPLICABILITY.—Any exclusion of grievances by a public housing agency pursuant to a determination or waiver by the Secretary (under section 6(k) of the United States Housing Act of 1937, as such section existed before the date of the enactment of this Act) that a jurisdiction requires a hearing in court providing the basic elements of due process shall be effective after the date of the enactment of this Act only to the extent that the exclusion complies with the amendments made by this section, except that any such waiver provided before the date of the enactment of this Act shall remain in effect until the earlier of the effective date of the final rules implementing the amendments made by this section or 180 days after the date of the enactment.

SEC. 504. LEASE REQUIREMENTS REGARDING TERMINATION OF TENANCY IN PUBLIC HOUSING.

* Section 6(l)(5) of the Housing Act of 1937 (42 U.S.C. 1437d(l)(5)) is amended to read as follows:

"(5) provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or near such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy; and"

* SEC. 505. NOTICE TO POST OFFICE REGARDING EVICTION FOR CRIMINAL ACTIVITY.

Section 6 of the United States Housing Act of 1937 (42 U.S.C. 1437d) is amended by adding at the end the following subsection:

"(n) When a public housing agency evicts an individual or family from a dwelling unit for engaging in criminal activity, including drug-related criminal activity, the public housing agency shall notify the local post office serving that dwelling unit that such individual or family is no longer residing in the dwelling unit."

SEC. 506. PUBLIC HOUSING ASSISTANCE FOR FOSTER CARE CHILDREN.

Section 6 of the United States Housing Act of 1937 (42 U.S.C. 1437d), as amended by the preceding provisions of this Act is

LANDLORD TENANT LAW BULLETIN

**76 Ways to Deal with
Agonizing Tenant Problems**

1. Tenant Injury in Slip and Fall Causes Premature Birth – Liability of Landlord Not Proven

A tenant who was six months pregnant fell while descending a flight of stairs. The next day she delivered her baby prematurely. A jury award in a suit brought by the tenant against the landlord was reversed. There was not enough evidence to support a finding of liability against the landlord for premature delivery.

Citation: 568 So.2d 571.

2. Swimming Pool Accident – Landlord not Liable for Negligence of Tenants

An 11 year old boy fell into a swimming pool on residential property owned by the landlord. The boy's representative sued the landlord. The court held the owner or lessor is not liable in negligence for conditions of the land after the transfer of possession and control. Here, the tenants were fully responsible for the maintenance of the pool. Thus, the owners could not be held liable.

Citation: 560 N.Y.S.2d 829.

3. Renovations – Owner's Liability for Tenant's Improvements

The tenant-operators of a hotel contracted for more than \$40,000 worth of improvements. When the partnership which leased the hotel became insolvent, the contractor tried to extract payment from the landlord. A court held a property owner could not be held liable for work performed at the behest of the tenant, even though the owner received an incidental benefit as a result.

Citation: 795 S.W.2d 606.

4. Child Falls from Window but Landlord not Held Liable

A young child was injured when he fell through an ordinary screen covering a second story window. The court held that unless a landlord makes an express agreement to install protective window screens, he or she has no duty to provide such screens.

Citation: 396 S.E.2d 325.

5. Insurance Coverage – Breach of Warranty of Habitability

Several tenants sued the management of an apartment complex claiming it breached the implied warranty of habitability. They cited numerous health and safety violations. The management company's insurer refused to defend it. The court held the insurer had a duty to defend. Coverage was provided under the "invasion of the right of private occupancy clause."

Citation: 746 F.Supp. 1145.

**Publishing Editor: E. Michael Quinlan, Esq. Managing Editor: Kevin P. Jones
Assistant Editor: Bernadette C. Murphy**

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57. Demands Reimbursement for Improvements

A commercial tenant sued the landlord for reimbursement of expenses incurred for purchasing and installing a new air conditioning system. The court entered a judgment for the landlord. Nothing in the lease provided for such reimbursement. Although the premises got so hot during the day a landlord had a duty to make the premises habitable for a tenant's use, this duty did not apply to commercial leases.

Citation: 744 S.W.2d 898.

58. Tenant's Failure to Maintain Premises — Damages

A landlord instituted eviction proceedings against a tenant on the grounds the tenant breached the lease by failing to maintain the premises. The landlord demonstrated that the tenant failed to repair the premises' leaky roof. The court entered judgment for the landlord but did not allow the landlord to evict the tenant. The lease clearly created a duty on the part of the tenant to prevent the apartment from falling into disrepair. The court did not allow the landlord to evict the tenant, however, because the amount of damages arising from the tenant's negligence was not sufficiently extreme to warrant eviction.

Citation: 745 S.W.2d 826.

59. Criminal Activity of Tenant

A landlord sought to evict a tenant because the tenant's son had been involved in the burglary of another tenant's apartment. The landlord argued the action of the tenant's son was a breach of the lease, which required tenants to quietly reside in their apartments. The court disagreed. It found that the provision in the lease regarding non-peaceful conduct which interfered with the rights of other tenants could not reasonably be held to apply to the tenant's son. However, if it was reasonably foreseeable to the tenant that such conduct could occur, then the landlord would have a basis to evict the tenant.

Citation: 519 N.E.2d 258.

60. Owners' Son Becomes Violently Drunk and Injures Guest

Owners of property allowed their son to invite a guest to their property. The son injured the guest, who sued the owners, claiming they breached a duty of care when they allowed their son to get so drunk as to hit the guest. The court disagreed. It ruled the owners owed no special duty of care to the guest, either as parents or as owners.

Citation: 519 So.2d 209.

61. Rent Increase — Tenant Claims Fraud

The landlord's property was subject to a rent control statute. The landlord applied for an increase in rent from the appropriate agency, which allowed the increase. A tenant legally challenged the validity of the increase. It noted the landlord falsely represented to the appropriate agency certain facts which justified the increases.

Citation: 538 A.2d 887.

62. Psychotic Tenant — Eviction

A landlord instituted eviction proceedings against a tenant because

the tenant was schizophrenic and caused damage to the premises. The court noted the tenant was under medical attention and was supposed to receive regular medical treatment but failed to take the prescribed medication. Because the tenant was aware of the need for the treatment but deliberately failed to take the medication, the court found it was liable for the damages. The court permitted the landlord to evict the tenant.

Citation: 534 A.2d 448.

63. Tenant Claims Discrimination

A landlord instituted eviction proceedings. The lease between the landlord and the tenant expired and the landlord refused to renew it. The tenant claimed the eviction was an attempt by the landlord to discriminate against it. The court ruled that if the landlord had discriminated against the tenant, it was a sufficient defense to the eviction. However, because the tenant failed to prove the landlord discriminated against it in refusing to renew the lease, the court allowed the landlord to evict the tenant.

Citation: 518 N.Y.S.2d 712.

64. Loud, Intoxicated Tenant Disturbs Neighbors

A landlord instituted eviction proceedings against a tenant because the tenant disturbed neighbors and other tenants. The court permitted the landlord to evict the tenant because it found it disrupted the neighborhood by driving while intoxicated, failing to restrain an intoxicated guest from disturbing neighbors, and creating excessive noise. Nothing the tenant could do would correct this disruption. Therefore, the landlord was entitled to evict.

Citation: 743 P.2d 345.

65. Abandoned Property — Demands Return of Security Deposit

A landlord sought to evict a tenant for nonpayment of rent. The tenant claimed the premises were uninhabitable, thereby justifying the withholding of rent, and sought the return of a security deposit. The court ruled the lease did not allow the tenant to withhold rent as a means of getting the landlord to make certain repairs. More importantly, the tenant was not entitled to the return of the security deposit because the tenant broke the lease by vacating the premises before the lease expired.

Citation: 509 So.2d 572.

66. Failure to Discipline Children — Damage to Property

A landlord sought to evict a tenant because it failed to stop her children from playing in the common area, where they damaged the premises. The landlord demonstrated that the tenant failed to discipline her children after repeated requests were made for her to do so. The landlord offered evidence of the expense incurred in repairing the property. The court permitted the landlord to evict.

Citation: 357 S.E.2d 288.

67. Criminal Activity — Drug Trafficking

Under a state statute, people who live within 200 feet of a residential building could initiate eviction proceedings against the tenants of that building, but only if those tenants engaged in illegal narcotics

transactions. Neighbors to a particular building instituted such a proceeding. The court found that the occupants of the building used the premises exclusively for the sale of illegal narcotics, and that such a use disrupted the neighborhood. The court ordered that the tenants be evicted from the building.

Citation: 516 N.Y.S.2d 827.

68. Notice to Evict - Not in Tenant's Language

A landlord initiated proceedings to evict a tenant. The tenant challenged the sufficiency of the landlord's notice to evict, since the notice was in English and the tenant claimed only to understand Spanish. The court found that the landlord had given sufficient notice. While a statute required that any notice to evict had to be in a language that the tenant spoke and the notice was given only in English, the court ruled the tenant could read and understand English. Therefore, the tenant received proper notice and could be evicted.

Citation: 527 A.2d 1292.

69. Past Due Rent - Tenant's Furniture Sold

A landlord had a tenant evicted for nonpayment of rent. The landlord then instituted proceedings to sell the tenant's furniture, which was still in the apartment, to satisfy the amount of rent owed. The tenant challenged the right of the landlord to institute such proceedings. The court concluded the landlord properly instituted the proceedings and was entitled to sell the furniture as a means of recouping the back rent.

Citation: 527 A.2d 109.

70. Late Rent Payments - Forfeiture of Lease

A tenant was late in making regular monthly rental payments. The landlord sought to terminate the lease. The tenant made the rental payment but the landlord continued legal action to have the lease forfeited. The tenant claimed there should be no forfeiture because the landlord failed to give proper notice. The court disagreed. The lease stated the landlord was not required to give notice when the tenant was late in making payments. Furthermore, the landlord was under no obligation to accept the late rental payment once the legal action was initiated.

Citation: 727 S.W.2d 126.

71. Eviction for Nonpayment of Rent - Tendered Payment

A landlord initiated proceedings to have a tenant evicted for nonpayment of rent. The tenant contended a late and complete payment was made. The court allowed the landlord to evict the tenant. It noted the tenant received the required 14-day notice of eviction. As a matter of law, that notice was all the landlord had to provide. More important, there was nothing improper about a clause in the lease which allowed the landlord to accept the late payment without waiving the landlord's right to proceed with the eviction.

Citation: 506 N.E.2d 933.

72. Rent Increase Resisted - Rent Control

A landlord's property was subject to a rent control statute. The landlord applied for a rent increase. The appropriate agency only approved a partial rent increase. The landlord appealed the decision.

The court agreed with the landlord that certain procedures were not followed but it did not permit a larger rental increase. Rather, it ordered the case returned for further hearings to determine whether the landlord was entitled to a higher rent increase.

Citation: 521 A.2d 669.

73. Tenant Sued for Waste - Property a Shambles

A landlord sued a tenant for back rent and to prevent the tenant from allowing the premises to fall into disrepair. The landlord originally signed a one year lease with the tenant, but it lapsed and the tenant was residing there on a month-to-month basis. The tenant argued the landlord's request to have it make necessary repairs was barred since the statute of limitations for such actions was one year, and the tenant's negligence began right after the lease commenced. The court disagreed, saying the time was measured from the beginning of each period of tenancy. Since the lease expired, the tenancy was measured from the beginning of each month. Therefore, the landlord was entitled to a court order requiring the tenant to prevent the premises from falling into disrepair.

Citation: 732 P.2d 486.

74. Right to Sell Property for Nonpayment of Rent

A landlord succeeded in having a tenant evicted because of nonpayment of rent. To offset the outstanding amount of rent owed, the landlord sold the tenant's furniture. The tenant instituted proceedings to recover the value of the furniture from the landlord. The landlord sued for the outstanding rent. The court ruled the landlord wrongfully sold the furniture. It said the landlord could only resort to this remedy if the tenant had, in fact, abandoned the premises. Since the tenant had not abandoned the premises, the landlord owed the tenant the money obtained from the furniture.

Citation: 729 P.2d 1117.

75. Security Deposit for Vacation Housing

Rogers rented a beach house from Donovan for two weeks, paying a \$200 security deposit, and other deposits to cover household and utility expenses. He left the house in good condition, but did not receive his security deposit back. He sued to recover the deposit and double damages. The court found for the landlord. Rogers was entitled to collect only the amount of the deposit, not double. The state's rent security deposit act did not address seasonal housing.

Citation: 517 A.2d 181.

76. Landlord May Bring Action for Property Damage

In a landlord's suit to evict, the court awarded possession to the landlord, but treble damages and attorney fees in the tenant's counterclaim because the landlord violated the state's security deposit statute. The statute says that if a landlord fails to establish an account for a security deposit, he forfeits any right to the deposit or to counterclaim for property damages. The court then allowed the landlord's subsequent claim against the tenant for property damage and rent. The security deposit law only bars him from bringing a damage counterclaim. The landlord brought a separate action.

Citation: 505 N.E.2d 904.

STATE OF KANSAS



BOARD OF INDIGENTS' DEFENSE SERVICES

**LONDON STATE OFFICE BUILDING
900 JACKSON, ROOM 506
TOPEKA, KANSAS 66612-1220**

(913) 296-4505

DATE: February 26, 1992
TO: Senator Jerry Moran, Chairperson
Senate Subcommittee
FROM: Ronald E. Miles, Director
SUBJECT: SENATE BILL NO. 331

Senate Bill No. 331 is known as the "Drug Free Housing Act." It gives the housing authorities additional "muscle" in evicting drug offenders. Section 4(b) allows the tenant to have a hearing within 14 days of the filing of an emergency eviction petition and states, "The act shall appoint legal counsel for any such tenant who is without legal representation."

The agency is concerned that this language does not specify the funding mechanism for counsel appointed in these cases. Historically, the counties have been held responsible for payment of attorney fees in all non-felony cases including juvenile offenders, children in need of care, and domestic relations cases. Because the premise for the eviction may be a felony conviction, (KSA 65-4127a or KSA 65-4127b), there will be uncertainty by both this agency and the district courts as to the source of attorney compensation. We believe this should be clarified in the bill to avoid this uncertainty.

Submitted by,

Ronald E. Miles
Director

REM:mcm

*Criminal Law Subcommittee
February 26, 1992
Attachment 3*

**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.

*Criminal Law Subcommittee
February 26, 1992
Attachment 4 1/2*

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
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(816) 421-4449