JUDICIARY SUBCOMMITTEE ON CRIMINAL LAW

Senator Jerry Moran, Chairman

March 23, 1992

HB 2837 - grounds for removal from office of district coroners.

PROPONENTS

James Clark, Kansas County and District Attorneys Association (ATTACHMENT 1)
Dwight Allen, The Medical Society of Sedgwick County (ATTACHMENT 2)
Representative Elizabeth Baker (ATTACHMENTs 3, 4, 5, and 6)

OPPONENTS

Senator Norma Daniels (ATTACHMENT 7)
Larry Buening, Kansas Board of Healing Arts
Chip Wheelen, Kansas Medical Society (ATTACHMENT 8)

SUBCOMMITTEE RECOMMENDATION: recognized the problems existing in the current system; no formal recommendation tohe full Committee, but suggest this is an area to recommend to the Kansas Judicial Council for study.

HB 3146 - enforcement of county codes and resolutions.

PROPONENTS

Gerry Ray, Johnson County Office of County Administrator (ATTACHMENT 9)

OPPONENTS

none appeared

SUBCOMMITTEE RECOMMENDATION: recommend favorable for passage.

HB 3151 - transportation of alcoholic liquor or cereal malt beverage in open container.

PROPONENTS

James Clark, Kansas County and District Attorneys Association (ATTACHMENT 10)
Gene Johnson, Kansas Community Alcohol Safety Action Project Coordinators Association (ATTACHMENT 11)

OPPONENTS

none appeared

SUBCOMMITTEE RECOMMENDATION: recommend new section 1 and to find out why remainder of the bill is included in this bill; amend in paragraph 3 "is in exclusive possession of passenger in the vehicle and has not been in the possession of the driver." to clarify that the driver can not be held guilty by virtue of the passengers' guilt; recommend favorable for passage as amended.

Kansas County & District Attorneys Association

827 S. Topeka Blvd., 2nd Floor • Topeka, Kansas 66612
(913) 357-6351 • FAX (913) 357-6352
EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

Testimony in Support of

HOUSE BILL NO. 2837

The Kansas County and District Attorneys Association appears in support of House Bill No. 2837. While the general crime rate has leveled off, and in some instances, declined, it is clear that the rate of violent crime is ever increasing, leading to an increasing number of homicides that establish new records every year. This is a problem in Shawnee County, and throughout the United States. It is also a problem throughout the State of Kansas, and the result is an increasing need on forensic evidence, which under the present system requires competent coroners. As prosecutors, we are charged with proving the elements of a crime beyond a reasonable doubt. In crime resulting in death, we must rely on medical testimony to establish not only the time and cause of death, such as a bullet wound, but in many instances, we must also establish the path of the bullet through the victim's body. Of equal importance is the fact that this testimony must come from a person who is able to effectively testify in court, and convey this highly technical information to a judge or jury. At the present time, such testimony is available only through a district coroner, or through contracts with other medical experts who are increasingly unavailable, because of financial or time constraints, to assist in criminal cases. In many counties, no such assistance is available.

At a bare minimum, each county must have available to it a competent pathologist willing to do the work required in medico-legal investigations. That person must be prepared to make difficult decisions, and that person must be willing and able to testify in court and subject himself or herself to the rigors of the legal system.

Our support of **HB 2837** should be obvious. In order to obtain the evidence we need, we must have competent coroners who are able to determine the cause and manner of death, and are able to convey this information effectively. The grounds for removal of a coroner in this bill all deal with this issue. A coroner who is incompetent will not be able to determine if a bullet has entered from the front or the rear, and a coroner who is guilty of a felony or other misconduct will not be an effective witness in court.

Our Association also supports of a more long range approach found in HB 3047, which was an attempt to create a state medical examiner system. Clearly, the establishment of a qualified, independent state medical examiner system will provide a resource not always available throughout the state, but also will provide a system wherein HB 2837 is not needed. A similar system is in place in Oregon, and receives rave reviews not only from our colleagues in Oregon, but from prosecutors in neighboring states as well.

Criminal Law Subcommittee
3/23/92

Attachment 1 4/1

The Medical Society of Sedgwick County

1102 South Hillside • Phone (316) 683-7557 • Wichita, Kansas 67211-4099

FAX TRANSMISSION

Date: 3-23-92

TO: Senator Jerry Moran

FROM: Dwight Allen

Chm. -- Judicial Subcommittee on Criminal Matters

Fax # 913-296-6718

Fax # 316-683-1606

SUBJECT OR NOTE: URGENT !

RE: HB 2837

Number of pages including cover page: 3

Senate Judiciary
Criminal Law Subcommittee
March 23, 1992
Attachment 2

1/3

The Medical Society of Sedgwick County

March 18, 1992

TO: SEDGWICK COUNTY LEGISLATORS

FROM: Michael Bates, M.D. and Ivan Rhodes, M.D., Co-Chairman
MSSC Legislative Committee

RE: PENDING LEGISLATION

The Medical Society of Sedgwick County, again this year, has impaneled a committee of physicians from a variety of specialties who have the responsibility of evaluating and commenting on proposed state legislation which may have an impact on the health and welfare of Kansas citizens, as well as the medical care delivery system. The following is a consensus statement from the committee regarding various bills relating to medicine now under legislative consideration. If you have any questions regarding our comments, please contact Dr. Michael Bates at (316) 685-6521, Dr. Ivan Rhodes (316) 683-7384 or Mr. Dwight Allen, MSSC executive director, (316) 683-7557.

HB 2837 - AS AMENDED AND PASSED BY THE HOUSE - RELATES TO CORONERS - REMOVAL FROM OFFICE

The committee, as previously reported in our memo dated February 27, 1992, supports the concept of this bill, however, the causes for removal as enumerated in lines 35 through 37 should be amended by addition of the following: revocation or suspension of license to practice medicine. This addition assures compliance with the licensure requirement set forth in Section 1.

HB 2695 - AS AMENDED AND PASSED BY HOUSE - RELATES TO CHILD HEALTH ASSESSMENTS:

Conceptually, the committee concurs with the intent of the bill, but must oppose it as written because of the language in line 36, page 1. The use of the words "health care provider" is far too broad and could include persons who are not adequately trained or qualified to provide child health assessments.

1102 South Hillside • Phone (316) 683-7557 • Fax (316) 683-1806 • Wichita, Kansas 67211-3000

ACTION: The committee endorses the intent of this proposed legislation.

SB 644 - WEARING OF MOTORCYCLE HELMETS:

ACTION: In efforts to reduce injury, suffering and deaths, the committee favors the amendments called for in this proposed legislation. This bill is not only in the public interest from a medical point of view but also from the stand point of health care cost containment.

HB 2694 - RELATES TO IMMUNIZATIONS:

ACTION: From a public health and preventive medicine point of view, the committee supports the intent and passage of this bill.

HB 3044 - RELATES TO EX PARTE COMMUNICATIONS:

Current law allows communications between a defendant, their attorney, insurance company and treating physicians. This provides for obtaining relevant information and evaluation of claims in a timely and cost effective manner. The proposed bill attempts to inhibit efficient and timely discovery. It will increase the use of subpoenas, depositions and time which in the end will increase defense and premium costs.

ACTION: The committee opposes this proposed legislation.

HB 2837 - CORONERS - REMOVAL FROM OFFICE:

Current law sets forth procedures for appointing district coroners, however, the statutes are silent regarding removing coroners from office.

ACTION: The committee supports the intent of HB 2837 but recommends that on page 1, line 34, the words "misconduct in office; incompetence;" be deleted and the following words be inserted: " . . .suspension or revocation of the district coroner's license to practice medicine and surgery in this state; . . ."

HB 2794 - RELATES TO EXTENDING CONDOLENCES:

STATE OF KANSAS

ELIZABETH BAKER
REPRESENTATIVE, EIGHTY-SECOND DISTRICT
SEDGWICK COUNTY
601 HONEYBROOK LANE
DERBY, KANSAS 67037

TOPEKA

HOUSE OF
REPRESENTATIVES

OFFICER: BOARD OF TRUSTEES
WICHITA STATE UNIVERSITY
REGIONAL OMBUDSMAN: KANSAS
COMMITTEE FOR EMPLOYEE
SUPPORT OF THE GUARD AND
RESERVE

COMMITTEE ASSIGNMENTS
STATE FEDERAL ASSEMBLY: COMMERCE, LABOR
& REGULATION
RANKING MINORITY MEMBER: FEDERAL & STATE
AFFAIRS
MEMBER: ECONOMIC DEVELOPMENT
ELECTIONS

February 20, 1992

To: House Committee on Local Government

From: Representative Elizabeth Baker

Re: HB 2837 and HB 3047

Thank you Madam Chairperson and members of the committee for the opportunity to appear before you today in support of HB 2837 and HB 3047. HB 2837 is a very simple proposal that allows the person who appoints the coroner the authority to remove the coroner under certain conditions. HB 3047 is an extensive proposal that creates a state medical examiners investigation board. This legislation is modeled after a law that was used to establish the medical examiners investigation board in Oklahoma.

The problems in the Sedgwick County Coroner's office are multiple and are indicative of a larger problem that is facing Kansas. It is time for the Kansas Legislature to address our states outmoded system of dealing with unattended death. Kansas is one of only 16 states that place preliminary death investigations in the hands of the coroners. Our Kansas coroners are not trained in the field of forensic pathology. A morgue, lab, autopsy room equipment, located in a centralized medical examiners office are essential in modern criminal investigations, but Wichita is one of just a few large cities that is not properly equipped. Dr. William Reals, vice-chancellor of the University of Kansas, School of Medicine at Wichita believes it is time to scrap the system. "We have a coroner's system that harkens back to medieval England. You need photographers; you need toxicologists; you need lab attendants. We don't have any of that stuff. We don't even have a morgue. We use a mortuary service to do autopsies. We have an archaic system here." HB 3047, to establish a state medical examiners investigation board, would meet Kansas' needs as we approach the 21st century. Since this proposal involves <u>major</u> policy decisions on the part of the legislature, it is my suggestion that this committee place HB 3047 at the forefront of the list of topics for interim study in 1992.

Criminal Law Subcommittee
March 23, 1992
Attachment 2

HB 2837, that gives the appointing judge the authority to dismiss for cause, is a simple change that provides a reasonable solution if problems are insurmountable. Briefly let me acquaint you with the concerns that have been raised repeatedly in my community. The list of complaints is lengthy and ranges from simple paperwork delays, inaccurate and incomplete reports, to the fear that the office may be overlooking key evidence in homicide cases. It is the opinion of many including myself, that the operation is definitely antiquated and in some instances both cruel and dangerous to our citizenry. I have included with my testimony copies of articles that appeared in the Wichita Eagle this past fall. In an editorial of October 3, 1991, "the Sedgwick County district coroner's office is woefully inadequate to its important task". The message is clear. The time has arrived for the legislature to take action.

Last year Judge Michael Corrigan established the District Coroner Study Committee to examine all possible avenues for reform of the system. The membership of that committee was composed as follows: Dr. Robert Daniels, District Coroner, Dr. William G. Eckert, Deputy District Coroner, Dr. Paul Harrison, Trauma Surgeon, Dr. Joe Lin, Pathology Director at St. Francis Regional Medical Center, Nola Foulston, District Attorney, Jim Puntch, Assistant District Attorney, Maj. Leo Willey, Sedgwick County Sheriff's Office, Lt. Ken Landwehr, Lab Commander, Wichita Police Dept., Robert Sterbins, Funeral Director, Culbertson-Smith, Henry H. Blase, Sedgwick County Counselor. From that committee came an amendment to K.S.A. 22a-226 which became HB 2837. They officially took action on this proposal, January 22, 1992 with eight members voting affirmatively, one in the negative, and one abstaining. The opportunity was given to explain their votes. From correspondence from the County Counselor's office concerning the explanation of those votes: "Dr. Daniels, the coroner, explained that his "no" vote was based on the fact that no doctor would want to be fired in the media from a job in which they are providing public service, and that this amendment will make it more difficult to get doctors to serve. Dr. Eckert, Deputy District Coroner, stated that he abstained for obvious reasons, but stressed the fact that there is no training for District Coroners available."

When I requested individuals to come before this committee and testify in favor of this bill they repeatedly expressed their fear of retaliation by the coroner's office. Quite frankly, I was shocked by the response I received upon telephoning the very same individuals with whom I had previously visited concerning the severity of the problems that exist in the coroner's office. This fear was expressed by funeral directors, police officers, elected officials and bureaucrats. These comments only strengthened my resolve to bring this issue before you today in an attempt to disperse the dark clouds that surround it. In my ten years serving in the Kansas House of Representatives I can not remember citizens being so fearful of playing a part of the democratic process. That kind of fear has no place in the hearing rooms of this stately old building. I urge your support of HB 2837 and HB 3047.

STATE OF KANSAS

ELIZABETH BAKER
REPRESENTATIVE, EIGHTY-SECOND DISTRICT
SEDGWICK COUNTY
601 HONEYBROOK LANE
DERBY, KANSAS 67037

For your information

TOPEKA

HOUSE OF
REPRESENTATIVES

OFFICER: BOARD OF TRUSTEES
WICHITA STATE UNIVERSITY
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COMMITTEE FOR EMPLOYEE
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STATE FEDERAL ASSEMBLY: COMMERCE, LABOR & REGULATION
RANKING MINORITY MEMBER: FEDERAL & STATE AFFAIRS
MEMBER: ECONOMIC DEVELOPMENT
ELECTIONS

Tuesday, February 25, 1992 THE WICHITA EAGLE 5A

EDITORIALS

Intolerable

Legislature mustn't ignore coroner system's fatal ills

If a friend or loved one dies under suspicious circumstances and you live in Kansas, you're likely to be in for uncertainty and heartbreak. The state relies on a system of district coroners to investigate such deaths. And as testimony before the House Local Government Committee last week made frighteningly clear, the system doesn't work.

Because the state suffers a critical shortage of certified forensic pathologists, autopsies often are haphazardly done. That means that criminal investigators, attorneys and anyone else who needs to know the cause of a given death can't do their jobs properly. But this is only one of the ills that plague the Kansas coroner system — especially in Sedgwick County.

A Wichita Eagle investigation of the Sedgwick County coroner's office last fall revealed a host of problems: sloppy record-keeping, poor organization and administration, careless handling of dead bodies, contamination of evidence critical in determining whether a crime has taken place and, most serious, a disinclination on the part of the county coroner, Robert Daniel, to admit and correct these problems.

Elsewhere, the picture isn't quite so grim. But nowhere in Kansas is the coroner system adequate to the task of removing as much doubt as is scientifically possible about the cause of a given suspicious death. And in instances where there are serious doubts about the ability of the coroner's office to perform at even a minimally competent level, there's no legal way to remove a coroner from office before the expiration of his or her term.

Rep. Elizabeth Baker, R-Derby, has proposed two bills to deal with these problems. One would amend current law to allow a judicial district's judges to remove a coroner from office for incompetence, commission of a felony or failure to perform his or her duties. The second bill would abolish the coroner system and replace it with a state medical examiner's office staffed by certified forensic pathologists. The Local Government Committee will decide the fate of the bills.

Both should become law. But realistically, the medical examiner bill probably won't pass this session because of the millions of dollars it would take to establish and operate a medical examiner's office. Certified pathologists tend to have high salaries. And state-of-the-art lab facilities necessary to make accurate, timely cause-of-death determinations don't come cheaply.

If committee members do nothing else this session, they should send the coroner-removal bill to the full House with a strong recommendation that it be passed. And they should lay the groundwork for future passage of the medical examiner bill. To do any less would be to give an intolerable situation the backs of their hands.

Criminal Law Subcommittee
3/23/92 Attachment # 4/1

SEDGWICK COUNTY, KANSAS

LEGAL DEPARTMENT

HENRY H. BLASE
County Counselor

COUNTY COURTHOUSE * 525 NORTH MAIN STREET, SUITE 359 * WICHITA, KANSAS 67203-3790 * Telephone: (316) 383-7111

January 23, 1992

Rep. Elizabeth Baker
Rep. Henry M. Helgerson, Jr.
House of Representatives
State Capitol Building
Topeka, Kansas 66612

Re: Proposed Amendment to K.S.A. 22a-226

Dear Reps. Baker and Helgerson:

The District Coroner Study Committee met on January 22, 1992, with the following committee members present:

Dr. Robert Daniels	- District Coroner
Dr. William G. Eckert	- Deputy District Coroner
Dr. Paul Harrison	- Trauma Surgeon
Dr. Joe Lin	- Pathology Director at St. Francis Regional Medical Center
Nola Foulston	- District Attorney
Greg Waller	- Assistant District Attorney (sitting on behalf of Jim Puntch)
Maj. Leo Willey	- Sedgwick County Sheriff's Office
Lt. Ken Landwehr	- Lab Commander, Wichita Police Dept.
Robert Sterbins	- Funeral Director, Culbertson-Smith
Henry H. Blase	- Sedgwick County Counselor

Also in attendance were Judge Michael Corrigan, Deputy Police Chief Paul Goward, and WPD Homicide Commander Lt. Paul Dotson.

An item on the agenda for discussion by the committee at this meeting was a review of the proposed legislation amending K.S.A. 22a-226. After thorough discussion of this matter, Nola Foulston moved and Dr. Joe Lin seconded that the committee vote on the approval of the proposed amendment with the single addition of the words "a majority of" just prior to the words "administrative judge and district judges..." in the proposed new language, with the vote to be recorded and those voting

Criminal Law Subcommittee
March 23, 1992
Attachment 5 1/2

in the negative being given the opportunity to explain their vote. After further discussion, a vote was taken with eight members voting in the affirmative, one voting in the negative, and one abstaining.

Dr. Daniels explained that his "no" vote was based on the fact that no doctor would want to be fired in the media from a job in which they are providing public service, and that this amendment will make it more difficult to get doctors to serve. Dr. Eckert stated that he abstained for obvious reasons, but stressed the fact that there is no training for District Coroners available.

As a result of the discussion and the vote of the committee, I can report that the majority of eight voting in favor of the amendment were very positive in their position of support. The comments centered around the fact that the amendment is really a clean-up measure that fixes something that was left undone in times past. No other public official is appointed or elected to office without some procedure to remove that official in the appropriate circumstances. The public which is being served is entitled to such accountability.

If you should have any questions about the action of the committee, or if we can be of further assistance to you in this matter, please call on us. Thank you for your attention hereto.

Sincerely,

Henry H. Blase

HENRY H. BLASE
Sedgwick County Counselor

HHB\bb

cc: Hon. Michael Corrigan, Administrative Judge
Betsy Gwin, County Commission Chair
William P. Buchanan, County Manager

The University of Kansas Medical Center
School of Medicine-Wichita

Office of the Vice Chancellor

DATE: February 20, 1992

TO: House Committee on Local Government

FROM: William J. Reals, M. D.
Professor of Pathology
Vice Chancellor

RE: H. B. 2837 and H. B. 3047

I write to strongly support the above noted house bills. Both address a growing need in our state in the pursuit of justice and to investigate sudden and unexplained deaths.

The bill on the coroner, H. B. 2837, better regulates the present system and establishes a district coroner's office in each judicial district of Kansas. The bill details the method of appointing and removing coroners from office and also provides for filling vacancies. It allows the district judge to appoint one or more deputy coroners. It also sets four year terms which may be renewed.

The second bill, H. B. 3047, proposes a state medical examiners board and the appointment of a chief medical examiner. This system is in use in nearby states; for example, Texas and Oklahoma, and provides a statewide system for the investigation of sudden and unexplained deaths.

In the pursuit of justice in our state, the system would provide a better means for forensic pathologists to operate a proper laboratory with the necessary equipment and analytic devices to pursue the cause of the death.

This system has long been needed and I support both bills and will be pleased to respond to any pertinent questions that may arise.

WJR:jm
cc: Representative Elizabeth Baker

1010 N. Kansas · Wichita, Kansas 67214-3199 · (316) 261-2600
Main Campus, Lawrence · Medical Center, Kansas City and Wichita

Criminal Law Subcommittee
March 23, 1992
Attachment 6

CORRIN & KRYSL, CHARTERED
ATTORNEYS AT LAW
304 LANDMARK SQUARE
212 NORTH MARKET
(316) 263-9706

DWIGHT A. CORRIN
SHANNON S. KRYSL

P. O. BOX 47828
WICHITA, KANSAS 67201-7828

TESTIMONY OF SHANNON S. KRYSL BEFORE THE LOCAL GOVERNMENT COMMITTEE

February 20, 1992

My name is Shannon S. Krysl. I am a civil trial lawyer from Wichita, Kansas. I practice primarily in the areas of personal injury, medical negligence, and legal negligence law.

Autopsies are very important in tort law to both plaintiffs and defendants. They are very important in wrongful death cases to ascertain the cause of death. When autopsies are not performed in a thorough and competent manner, neither side is able to properly investigate, prosecute and/or defend a case.

When a client comes to me about the death of a loved one, it is very important in my investigation to learn whether or not there is a causal connection between the cause of death and the alleged negligence. If the family believes the cause of death is related to medical negligence, then I need a thorough and reliable autopsy to decide whether or not a causal connection exists. For example, if the alleged negligence is inappropriate performance of knee surgery and the patient died of an unrelated heart attack, I need to know whether or not the cause of death is related to the negligence so that the doctor is not needlessly sued and I do not incur needless expense.

In my experience with the Sedgwick County Coroner's Office, autopsies are not thoroughly done and there is a considerable delay in generating reports. The problem, as I see it, is that there are no checks and balances on the system. There are no quality or time reporting controls. In my experience, it can take months and months to get a report

Criminal Law Subcommittee
March 23, 1992
Attachment 7

from the coroner's office. In those instances where I have called the coroner to complain, I have been told that he has no authority to do anything about it.

I have several recent cases I would like to relate to you, as I believe they are illustrative of the problems which exist.

Case #1 illustrates the significant delay in getting autopsy reports from the coroner's office. This case involved the death of a three week old infant. The baby died on January 20, 1990. The autopsy was performed on January 20, 1990. My office requested a copy of the autopsy report in February 1990. By April 6, 1990, we had still not received a copy of the report. The following is a chronology of events which transpired:

4/6/90	Called the Coroner to find out where autopsy report was. Told could not do anything about it, and he suggested that I call the Deputy Coroner who performed the autopsy.
4/7/90	Called Deputy Coroner who performed the autopsy. Was told by the Deputy Coroner that he would try and find the report and get it sent out.
5/7/90	Still no report. Called Coroner. Coroner said he didn't know what could have happened to the report.
05/07/90	Called Clerk's Office to see if report had been filed. No report had been filed.
05/07/90	Called Deputy Coroner who performed autopsy and left a message with his wife.
05/11/90	Called Deputy Coroner who performed autopsy and left a message on answering machine.
05/16/90	Called Deputy Coroner who performed autopsy and left a message on answering machine.

05/16/90 Received return call from Deputy Coroner. Deputy Coroner indicated that he was just about ready to submit the report and was waiting on one more thing. Indicated he would release it as soon as possible.

10/03/90 Call to the Clerk's Office. Still no autopsy report on file.

10/27/90 Received autopsy report.

Luckily, my client did not have a statute of limitations problem, so the nine month delay did not irreparably harm the case. However, I was unable to have an expert look at the matter for nine months while I was waiting on the autopsy report.

In addition, in the same case the coroner diagnosed "severe and diffuse pulmonary congestion, edema and hemorrhage, and active chronic tracheitis." Unfortunately, the coroner failed to order any bacterial or viral studies to determine the cause of these conditions. Therefore, neither side had any way of knowing if the conditions were viral or bacterial in nature. This omission was detrimental to both sides. If the problems were viral, it would have been beneficial to the defendant doctor as the condition would have been untreatable. If the problems had been bacterial, then the condition would have been treatable and beneficial to the plaintiff. Because of an incomplete autopsy, neither side was helped.

Case #2 illustrates a lack of professionalism in the Sedgwick County Coroner's Office among colleagues. My firm represented a family who's child died of what we alleged to be child abuse. An autopsy was performed at the time of death on the child. During the civil trial in November 1990, and in several prior proceedings the deputy coroner, who performed the autopsy, testified on behalf of the plaintiff at trial. Another deputy coroner from the same office who did not perform the autopsy testified for the defense at the trial. The plaintiff ended up winning the case and obtaining a substantial verdict. The jury was very

7-3/5

unimpressed by the "game playing" between professionals from the same office.

While I realize we cannot stop medical professionals from serving as expert witnesses, this kind of professional back stabbing does not serve the interest of justice. This situation further illustrates the fact that there are no standards of conduct for the office and that it is run in a haphazard manner.

Case #3 is also illustrative of problems in the Sedgwick County Coroner's Office. We represent the family of a man who died of a cerebral hemorrhage. He died in March 1990. The autopsy was performed at the time of death. We requested a copy of the autopsy report in August 1990. We received a copy shortly thereafter. The autopsy report indicated that the patient had died of a subdural hematoma secondary to an "abnormality" in the cerebral artery branches. The report also indicated that the heart, kidneys, liver, spleen, bone and corneas had been harvested for transplantation.

The autopsy report was incomplete since the abnormality in the cerebral artery had not been further defined. We needed to know if this abnormality was an aneurysm and its location. We decided to have another pathologist take a look at the tissue slides of the brain. In late June 1991, we made arrangements for the deputy coroner to deliver the tissue to another pathologist. The deputy coroner delivered a canister of tissue to the other pathologist. The canister of tissue, which was delivered, contained a heart and kidneys. Since the heart and kidneys of our client were harvested and had in fact been transplanted into another patient, we knew this tissue could not belong to our client. In early August 1991, the deputy coroner acknowledged that he had delivered the wrong tissue, and that he would in fact deliver the correct tissue. Shortly thereafter on August 26, 1991, we received a detailed report from the same deputy coroner on the brain. The new report indicated that the abnormality was a ruptured berry aneurysm in the posterior communicating artery.

7-4/5

We were very confused at this point in time since we received this report well over a year after we received the first report. We finally decided to have the brain tissue slides sent off to a neuropathologist. The deputy coroner finally agreed. In November 1991, the brain tissue slides were sent to a neuropathologist to see whether or not he could confirm the existence of an aneurysm. He in fact did confirm the existence of an aneurysm in the brain slides and now my investigation is complete.

Unfortunately, there was a lot of additional delay, time and expense invested in a simple cause of death investigation. Had a complete detailed autopsy been performed initially, I would have had the answer I needed. Instead, the deputy coroner delivered the wrong tissue when I attempted to get a second opinion and them generated a second supplemental report. This only clouded the investigation further. Finally, after some very terse communication, it was agreed that at neuropathologist would review the materials.

I do not have any particular ax to grind with any member of the Sedgwick County Coroner's Office. I am here only to provide testimony which I hope will assist this committee in solving the dilemma the courts and litigants now face in my area of the state.

Thank you for listening to my comments.

7-5/5

KANSAS MEDICAL SOCIETY
623 W. 10th Ave. • Topeka, Kansas 66612 • (913) 235-2383
WATS 800-332-0156 FAX 913-235-5114

March 23, 1992

TO: Senate Judiciary Subcommittee on Criminal Law

FROM: Kansas Medical Society Chris A. Steele

SUBJECT: House Bill 2837; Removal from Office of District Coroners

We are sorry that it was not possible to testify at your hearing. We do, however, wish to express opposition to the wording of HB 2837.

While we can agree that any district coroner who is convicted of a felony, or fails to perform statutory duties should be removed from office, there are two criteria for removal in HB 2837 that are unacceptable. "Misconduct in office" and "incompetence" are entirely subjective and could easily be construed to mean a number of different things, such as inability to adhere to pressures of local politics. We believe that it is extremely important to maintain the autonomy and objectivity of the office of District Coroner in order to assure that criminal investigations are conducted in an appropriate fashion.

There is however, an established method whereby a physician may be judged as to competence and professionalism. These criteria are spelled out at great length in the Healing Arts Act. Under that law, physicians are guaranteed due process rights, and the benefit of being judged by a body which consists of peers who are acquainted with standards of medical practice, as well as public members and members of other professions. We have attached to this statement a copy of an amendment to HB 2837 that we believe would make it acceptable. Otherwise, we must ask you to report HB 2837 adversely.

Thank you for the opportunity to provide input and for considering our concerns.

CW/cb

Criminal Law Subcommittee
March 23, 1992
Attachment 8

1/2

As Amended by House Committee

Session of 1992

HOUSE BILL No. 2837

By Committee on Federal and State Affairs

1-31

AN ACT concerning district coroners; relating to removal from office; amending K.S.A. 22a-226 and repealing the existing section.

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

Section 1. K.S.A. 22a-226 is hereby amended to read as follows: 22a-226. *(a)* There is hereby established the office of district coroner in each judicial district of the state. The district coroner shall be a resident of the state of Kansas licensed to practice medicine and surgery by the state board of healing arts or shall be a resident of a military or other federal enclave within the state and shall be duly licensed to practice medicine and surgery within such enclave.

(b) The local medical society or societies in each judicial district shall nominate one or more candidates for the office of district coroner and submit the names of the persons so nominated to the administrative judge of the judicial district on or before January 1, 1981, and every four years thereafter. The administrative judge and district judges of the judicial district shall appoint a district coroner for the district. The appointee may be one of the persons nominated or some other qualified person.

(c) Except as otherwise provided in this section, the district coroner shall serve for a term of four years, which term shall begin on the second Monday in January of the year in which such coroner is appointed, and such coroner's compensation shall be as provided by law. ~~*The*~~ Following a hearing, the *district coroner may be removed from office by* ~~*the administrative judge and*~~ a majority vote of all the *district judges of the judicial district upon a finding that one or more of the following grounds exist: Conviction of a felony;* ~~*misconduct in office; incompetence;*~~ *failure to perform duties prescribed by law.* Vacancies in the office of district coroner, *including vacancies resulting from removal from office under this subsection,* shall be filled in the same manner as appointments for regular terms of district coroner. Such an appointment shall be for the remainder of the regular term and shall be effective from the date the coroner is appointed and is otherwise qualified for the office.

(d) The coroner shall, before entering upon the duties of the

delete

suspension or revocation of the district coroner's license to practice medicine and surgery in this state

KMS

KANSAS MEDICAL SOCIETY

1300 Topeka Avenue • Topeka, Kansas 66612
(913) 235-2383 FAX # (913) 235-5114

Chip Wheelen
Director of Public Affairs

8-2/2

Johnson County
Kansas

March 23, 1992

SENATE JUDICIARY COMMITTEE

HOUSE BILL 3146

TESTIMONY OF GERRY RAY, INTERGOVERNMENTAL OFFICER
JOHNSON COUNTY BOARD OF COMMISSIONERS

Mr. Chairman, members of the Committee, my name is Gerry Ray, representing the Johnson County Board of Commissioners. I am appearing today to express support for House Bill 3146, which is a bill that was requested by both the County Commissioners and the Judges of the Tenth Judicial District.

In 1988, at the request of Johnson County, the Legislature enacted a comprehensive code for the enforcement of county codes and resolutions in Johnson and Sedgwick Counties. The act was modeled after and is similar to the code for municipal courts applicable to cities. It is used primarily for the enforcement of housing, zoning, sanitary and environmental codes of the county and park regulations. It does not apply to traffic violations.

Johnson County implemented the code in 1989. It has been successful and is fully supported by the district court judges. In constructing and implementing the code, however, the arrest powers were minimized. Our experience has demonstrated that some persons accused of violations simply fail and refuse to appear in court in response to the summons and notice to appear, or fail to pay the fines imposed. To rectify the problem, House Bill 3146 was proposed, that would expand the powers of the court to specifically provide for contempt citations and bench warrants.

The bill clarifies the existing provisions of K.S.A. 19-4718 related to appearances. It specifies that the judge may issue contempt orders, require appearance bonds, or issue bench warrants for the purpose of compelling the appearance of an accused person. A new section is added that expressly related to failures to appear and authorizes bench warrants to be issued and served. The change is modeled after and consistent with K.S.A. 12-4306, which applies to traffic violations in municipal court and failure to appear on a notice.

The bill also amends K.S.A. 20-310a, which designates the powers of the pro tem judges appointed to hear code violation cases. The powers specified are consistent with the authority to compel appearances.

Without the proposed changes, the appointed judges have limited authority to control and compel appearances. The requested changes provide limited judicial powers, consistent with the municipal court powers.

The County Commissioners and the District Court Judges strongly support House Bill 3146 and urge the Committee to recommend it favorably for passage. The Sedgwick County representative is unable to be here today, but requested that I convey to you that Sedgwick County is also very supportive of the bill.

Criminal Law Subcommittee
March 23, 1992
Attachment 9

Office of County Administrator 100 E. Park, Suite 205 Olathe, Kansas 66061 (913) 782-5000 Ext 5251

Kansas County & District Attorneys Association

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EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

Testimony in Support of

HOUSE BILL NO. 3151

Presented to the Senate Judiciary Committee

House Bill No. 3151 combines two statutes covering essentially the same subject matter: transporting an open container. Presently, the offense is contained in two statutes: K.S.A. 41-804 covers the offense of transporting an open container of alcoholic liquor on a street or highway (alcoholic liquor is defined in K.S.A. 41-102(b) as "alcohol, spirits, wine, beer and every liquid ...but shall not contain beer or cereal malt beverage containing not more than 3.2% alcohol"); and K.S.A. 41-2719 prohibits transporting an open container of cereal malt beverage (defined in K.S.A. 41-2701(a) as "fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute, but does not include any such liquor which is more than 3.2% alcohol by weight.")

Historically, the basis for two separate statutes resulted from the unique tolerance of cereal malt beverage, and the fact that people 18 or older were allowed to possess and consume it. Taverns dispensing it were allowed, even in dry counties or cities; and it was allowed on state properties, particularly colleges or universities. In fact, until 1981, it was not unlawful to transport an open container of cereal malt beverage.

The raising of the legal drinking age to 21 for all types of alcohol, however, has eliminated the main legal distinction between the two types of beer. In fact, the policy decision for combining the two offenses has already been made. K.S.A. 41-727 prohibits a minor from possessing alcoholic liquor or cereal malt beverage. Most importantly, transporting an open container means access to alcohol, regardless of percentage, by a driver. The danger to the public is just as great whether the percentage is less or more than 3.2 %.

The current bifurcation of offenses leads to proof problems in prosecution. If a driver is stopped with an open container of beer, that does not specify less than 3.2%, it is considered alcoholic liquor, and the offense is charged under 41-804. Evaporation of alcohol occurs, however, and by the time the contents are tested, there may be less than 3.2% alcohol. Because of the strict construction of statutes against the state, the driver must be acquitted. To have charged under the cereal malt beverage statute would also have been improper, as the container did not contain the required label of less than 3.2% alcohol. Since the danger to the public occurs regardless of the percentage of alcohol, the statutes covering the transportation of an open container should be combined into one offense: avoiding unnecessary technicalities and sending a clear message that transporting an open container is not only dangerous, but is illegal.

Criminal Law Subcommittee
March 23, 1992
Attachment 10

TO: Senate Judicial Sub-committee

RE: HB 3151

DATE: March 23, 1992 - 10:00 a.m.

Mr. Chairman and members of the Sub-committee:

My name is Gene Johnson and I am the lobbyist for the Kansas Community Alcohol Safety Action Project Coordinators Association. I also represent the Kansas Asociation of Alcohol and Drug Program Directors and the Kansas Alcohol and Drug Addiction Counselors Association.

We are generally in support of HB 3151 but do have the following recommendations to be considererd by this committee.

In a new section 1 we would suggest "(a) no person shall transport" and add the language or consume " in any vehicle upon the highway or street any alcoholic liquour unless such alcoholic liquour or cereal malt beverage is." This in effect would eliminate K.S.A. 41-2720 which deals with the consumption of cereal malt beverage while operating a vehicle.

Under present law K.S.A.8- 2719 calls for transportation of cereal malt beverages in open containers. In K.S.A. 41-2720 the present law calls for consumption of cereal malt beverage while operating a vehicle.

In addition we would suggest on page 1, lines 41 and 42 the following changes. "In addition, the court ~~may~~ shall enter an order".

In page 5, section 3 language should be added that if that defendent is in violation of this section and is under 21 years of age then the defendant must undergo and complete an alcohol

Criminal Law Subcommittee
March 23, 1992
Attachment 11

and drug evaluation by a community based alcohol safety action program as provided in K.S.A. 8-1008 and amendments thereto.

Again in Section 5, on page 6 and 7 the language must be added for those persons convicted while under age 21 a misdemeanor of consuming or transporting any alcoholic liquour or cereal malt beverage.

It is imperative that we make these adjustments in this proposed legislation in order not to undue what we did some three years ago in the effort of preventing our young Kansans from drinking and driving.

Our organizations are not against drinking but feel that legislation should be in place to keep that drinking in proper prospective and not in a vehicle.

In addition, it may be wise to make sure that this legislation would not prevent the alcohol beverage control law enforcement officers from making arrests under traffic sections of the statute.

Thank you for the opportunity to come before this committee and at this time I will attempt to answer any questions this committee may have.

Respectfully submitted,

Gene Johnson

Gene Johnson, Lobbyist for
Kansas Community Alcohol Safety Action Project Coordinators Association
Kansas Association of Alcohol and Drug Program Directors
Kansas Alcohol and Drug Addiction Counselors Association

11-2/2