

Approved: 4-7-95
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:00 a.m. on March 9, 1995 in Room 514--S of the Capitol.

All members were present except: Senator Oleen (excused)
Senator Bond (excused)

Committee staff present: Michael Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Janice Brasher, Committee Secretary

Conferees appearing before the committee:

Mike Dalen, Director of Drug and Alcohol Services, Inc.
Larry Peterson, Menninger Drug and Alcohol Counselor
Ben Farlney, Attorney, Former Probate/Juvenile Judge in Johnson County
Gene Johnson, Kansas Alcohol Safety Action
Thomas Culala, Cypress Recovery, Olathe
Barry Reed, Columbia Court Services
George Heckman, DCCCA
Honorable Karen Arnold-Burger, Johnson County Drug and Alcohol Council
Honorable Joseph Cox, Municipal Judge, Topeka

Others attending: See attached list

The Chair called the meeting to order at 10:00 a.m. and introduced Senator Vancrum sponsor of **SB 213** and **SB 295**.

SB 213--Alcohol and drug safety action programs; evaluation and treatment by separate programs

Senator Vancrum explained **SB 213** by stating that this bill was introduced by request of a constituent it essentially is intended to prohibit those doing the evaluation and monitoring from self referring to their own programs. There is an exception for those counties where there are less than three certificated programs. Senator Vancrum stated that since three was chosen arbitrarily, he would be okay if that number per county were higher. Senator Vancrum stated that there is a problem, that there are programs today that are almost 100% self referral. Senator Vancrum continued that when the legislature set up Alcohol, Drug and Safety Action Programs(ADSAP) programs it was never intended that those performing evaluation for ADSAP programs be self referrals or affiliated with the treatment program in any way.(Attachment 1) Senator Vancrum introduced Mike Dalen.

Mike Dalen, Director of Drug and Alcohol Services, Inc. testified in support of **SB 213**, because this bill would eliminate court referred clients (offenders) from obtaining treatment from the same program that provided the court-order evaluation. Mr. Dalen continued that the intent of the ADSAP program was to evaluate all persons arrested for alcohol offenses to establish their needs, if any for treatment, of alcoholism and to provide education for those determined not to be alcoholics. In the event that treatment was needed the client/offender was referred to a appropriate treatment center. Clients were given their choice of treatment programs. As the number of government controlled treatment programs decreased, the number of for profit treatment programs increased.(Attachment 2)

During decision by the Committee, Senator Feleciano suggested that there needs to be an investigation into the money being spent on court-ordered evaluations. Concerns were addressed regarding the criteria for treatment being dependent on the insurance available.

Larry Peterson, Menninger Drug and Alcohol Counselor, spoke in favor of **SB 213**. Mr. Peterson stated that he is a resident of Olathe, and had worked for Valley Hope. Mr. Peterson referred to drafting of standards for

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on March 9, 1995.

the district court in 1988 by himself, Judge Walton and other interested parties. Mr. Peterson stated that central among these standards was the one addressing conflict of interest, with the statement that no agency providing treatment should be certified to do ADSAP evaluations.

Ben Farlney, Attorney, spoke in support of **SB 213**, stating that as probate judge, he had something to do with initiating the Alcohol and Drug Court Program in Johnson County with the help of a lot of other people, i.e. AA, court personnel, etc. Mr. Farlney stated that the purpose of that program was to try to make some assessment, to get people who were drinking out from behind the wheel, or away from situations where they would cause damage to society. Mr. Farlney pointed out that methods to curtail drunk drivers have improved, from the time when persons were either jailed or a deal was struck. Mr. Farlney suggested that there is room for improvement and that government has an obligation in court ordered evaluations to declare that there is no conflict of interest in those programs doing the evaluations and those programs providing treatment.

Judge Joseph Cox of Topeka spoke as Legislative Chairman of the Municipal Judges Association in support of **SB 213** stating that the Association feels that it is needed to protect the people.

Gene Johnson, Kansas Alcohol Safety Action, addressed the Committee in opposition to **SB 213**. Mr. Johnson stated that many counties only have one treatment center. Mr. Johnson acknowledged that Johnson County has a unique situation. Mr. Johnson suggested amending language in **SB 213** on page 5, line 24 to read as follows: "In any Judicial District where the population is less than 250,000, the provision of this subsection will not apply.(Attachment 3)

Tom Culala, Cypress Recovery, Olathe, spoke in opposition to **SB 213**, stating his concern is for the people these bills will impact most, the indigents, those who can not pay for treatment. Mr. Culala noted that the word, "education" had not been mentioned in **SB 213** stating that the issue of conflict can arise in education programs as well as treatment programs. Mr. Culala noted that it had been a long established practice with his program to offer at least three options to those evaluated which is documented by the signature of the person evaluated. Mr. Culala stated that court ordered evaluated person are often referred to education programs if the assessment shows that to be appropriate. Mr. Culala repeated there is no conflict when people are evaluated under premise of ADSAP certification when they are oriented to the options of different programs. Mr. Culala stated that under **SB 213** anyone evaluated by his staff at Cypress Recovery, ADSAP certified and an ADSAP-licensed diagnostic and referral program, offering outpatient counseling, would not have the option to select one of its programs. Mr. Culala suggested that all evaluation programs should offer at least three options, and that should be documented. Mr. Culala also stated that if a program shows a conflict of interest, the administrative judge always has the option to withdraw certification. Mr. Culala concluded that **SB 213** is not necessary and would adversely affect those who could not pay for treatment or for those with special physical impairments.(Attachment 4)

George Heckman, DCCCA of Lawrence, Kansas, stating that his organization is opposed to **SB 213**, stating that to his knowledge the separation of the evaluation and treatment services is generally a concern in Johnson County, and yet the legislation is drafted to affect the whole state. Mr. Heckman continued that in Douglas and Franklin Counties there has been no problems of conflict of interest with the current system. Mr. Heckman stated there is a question of what is to be gained by the proposed statutory changes. Mr. Heckman continued by stating enactment of this legislation would adversely affect those would could not pay as it would take funding away from outpatient services which are costly to run and offer a sliding scale for payment. Currently, DUI offenders are able to make their own choices regarding where to get an evaluation and treatment. Mr. Heckman asked, "why change the law to deal with problems in one county?" Mr. Heckman concluded by suggesting that legislation specific to Johnson County could be drafted, and by stating that the courts can simply not recertify the agency under the current statute.(Attachment 5)

Barry Reed, Columbia Court Services, spoke in opposition to **SB 213** because there are safeguards already employed. Mr. Reed continued that by omission, **SB 213** makes a distinction between self-referral for treatment and self referral for other services such as DUI schools. The distinction should not exist because the majority of offenders who go through an ADSAP evaluation process are referred to an education program, not a treatment program. Mr. Reed outlined a number of significant problems if **SB 213** was passed.(Attachment 6)

In response to the Committee, Mr. Reed offered some corrections to statements made earlier, referring to the DOT guidelines, Federal Omnibus Employee Testing Act, referencing a prohibition against self-referrals, Mr. Reed stated that the DOT in their guidelines made five exceptions to that. Referring to testimony given about Judge Walton's ruling in 1988, prohibiting ADSAP agencies from also referring to treatment, in a later ruling, Judge Walton on the merits of the issue, decided that it was not practical to do so and reversed his decision.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on March 9, 1995.

SB 295--Alcohol and drug evaluation programs; qualifications

Karen Arnold-Burger, representing the Drug and Alcoholism Council of Johnson County spoke in support of **SB 295**. Ms Arnold-Burger stated that the Drug and Alcoholism Council is an advisory body that looks at various drug and alcohol issues in Johnson County, and examines the provision of services and makes recommendations regarding what gaps can be filled and what needs there are. Ms Arnold-Burger referred to a study by the DAC which reviewed the delivery of Alcohol and Drug and Safety Action Program (ADSAP) services and identified areas of need. The study found critical inconsistencies in the provision of services by various ADSAP certified agencies. The ADSAP study identified the need for system improvements to ensure that persons who may require treatment are referred to and received the most appropriate level of care, in a timely fashion, regardless of ability to pay. Ms Arnold-Burger referred to 1987 when the Administrative Judge in Johnson County attempted to adopt guidelines with regards to educational requirements of key personnel, state certification through DADACA, continuing education and criteria concerning conflict of interest. However, an Attorney General opinion (No. 89-4) challenged the enforceability of any guidelines that were not set out in the legislation. Ms Arnold-Burger continued by stating **SB 295** will correct this oversight by specifically providing that the administrative judge of the district court or the secretary of social and rehabilitation services may establish criteria for certification. (Attachment 7)

Judge Joseph Cox of Topeka spoke as Legislative Chairman of the Municipal Judges Association in support of **SB 295** stating that the Association feels that it is needed to protect the people.

Gene Johnson, Kansas Alcohol Safety Action, testified in opposition to **SB 295** by stating that a Legislative DUI Bill already exists which establishes guidelines to certification of programs. The administrative judge of each judicial district, with the approval of a majority of the judges in that district certifies the local programs. Mr. Johnson continued that in 1992 **SB 458** was passed, which requires documentation to the Secretary of SRS, of certain requirements regarding education and training within the field. Mr. Johnson stated that the current legislation has worked quite successfully in most of the counties of the State of Kansas during the past thirteen years. Mr. Johnson concluded that **SB 295** is unnecessary legislation for most counties in the state. (Attachment 8)

In response to questions regarding the problems in Johnson County, Mr. Johnson stated that Johnson County represents an unique situation, because there are approximately twenty judicial districts in that county.

Mr. Culala testified in opposition to **SB 295**, stating that the mechanisms are already in place for counselor and training designation, and for certification requirements. (Attachment 4)

Barry Reed, Columbia Court Services offered written testimony in opposition to **SB 295**, (Attachment 6,6-4)

Meeting was adjourned at 11:10 a.m.

The next meeting is scheduled for March 13, 1995.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-9-95

NAME	REPRESENTING
Thomas Cibala	Cypress Recovery, OLATHE
Matt Truett	AP
Gron Miller	SRs/ADAs
Peggy Janna	PCAL
Shannon Peterson	RBA
Barry Reed	Columbia Court Sv.
Paul Shelby	OJA
Gene Johnson	Ks. ASAP ASSN
John W. Smith	KDOR DMV
LARRY PETERSON	Former member Walton Committee
Mike Daler	AOS, IDC
Benjamin F. Faney	active in starting ASAP programs former member, Judicial Co. Alcohol Comm.
Jeanne J. Howard	Kansans for Life
Cleta Renyes	Right to Life of Ks
GEORGE HECKMAN	DCCCA, INC
Robin Lehman	DCCCA, Inc.
Joseph J. Cox	Kansas Municipal Judges Assn
Adrianne B. Burger	Jo. Co. Drug and Alcoholism Board
Debra White-Burman	Drug & Alcoholism by Judge

BOB VANCURUM

SENATOR, ELEVENTH DISTRICT
OVERLAND PARK, LEAWOOD,
STANLEY, STILWELL, IN
JOHNSON COUNTY
9004 W. 104TH STREET
OVERLAND PARK, KANSAS 66212
(913) 341-2609



TOPEKA

SENATE CHAMBER
STATE CAPITOL
TOPEKA, KANSAS 66612-1504
(913) 296-7361

COMMITTEE ASSIGNMENTS

VICE-CHAIRMAN: ENERGY AND NATURAL RESOURCES
MEMBER: WAYS AND MEANS
JUDICIARY
MEMBER: COMMERCE, LABOR AND REGULATIONS
COMMITTEE, NATIONAL CONFERENCE ON
STATE LEGISLATURES
MEMBER: ENVIRONMENTAL TASK FORCE,
COUNCIL ON STATE GOVERNMENTS

**TESTIMONY OF ROBERT VANCURUM
TO THE SENATE JUDICIARY COMMITTEE
ON SENATE BILLS 213 AND 295**

Members of the Committee:

Thank you for taking time to hold hearings on these two important bills relating to the alcohol and drug safety action program. It was called to my attention some time ago by Mr. Mile Dalen, of Overland Park, that contrary to the intent of the Legislature at the time the ADSAP programs were set up, many programs were being approved for use by the Johnson County District Court that not only were run by people with no minimum qualifications, but were all or nearly all self referral for treatment. This struck Mr. Dalen as a serious conflict of interest in that the agency doing the evaluation and monitoring of an individual certainly had every incentive to refer patients for treatment if they could do so to a program they operated or was closely affiliated.

In fact the former administrative judge of the Johnson County District Court was so concerned with the proliferation of these programs and with the apparent conflict of interest that he set up a task force in 1989 which recommended that the evaluation function be divorced from the treatment function and that there be some kind of minimum qualification requirements. Former Judge Walton was about to implement these requirements by court rule when he was contacted by one of the agencies who was then certified who threatened to file suit and persuaded him to seek an Attorney General's opinion. That opinion basically agreed with the Judge that these ground rules needed to be established, but stated that the Judge had no legal authority to impose such requirement and only the legislature could do so.

It's also interesting to note that the Federal Department of Transportation recently has taken the position that agencies doing the evaluation for commercial drivers under the program they instituted cannot self refer. They clearly state that this is a deemed conflict of interest. The National Certification Group for professional drug and alcohol counselors (NCAC) likewise have taken the position that this is a conflict. It's long since time that Kansas took some action in this area.

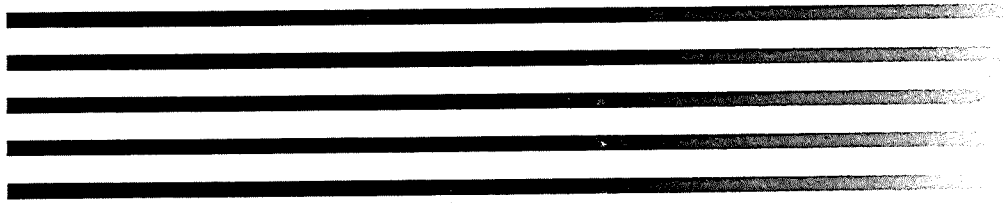
*Senate Judiciary
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Attachment 1*

Senate Bill 213 prohibits self referral for treatment and that creates an exemption for those counties where there are less than three certificated programs. I recognize where there is only one program self referral will have to be the rule and if there are only two competing programs, it could create some serious problems to prohibit self referral. Nevertheless, there are approaching 30 programs approved in Johnson County and probably three fourths of them self refer all their patients. If you still need to be convinced that this is not what the legislature intended I would ask you to read through the current law and tell me if it does not clearly contemplate that the person doing the evaluation and monitoring will be some one separate from the entity providing the treatment.

Senate Bill 295 is intended to solve part of the same problem from a different viewpoint. This bill was recommended by the Drug and Alcohol Counsel of Johnson County, an organization that makes recommendations as to which treatment program are eligible for drink tax funding. Their concern is that there should be some minimum educational qualifications for persons performing these functions in that Administrative Judge should also have the power to disqualify programs if he finds a conflict of interest. Certainly I think we would all agree that there should be some minimum educational requirements for programs to be approved. I am less enthused about the handling of the conflict of interest issue in SB 295. It is my feeling that the Administrative Judge currently has the power not withstanding the Attorney General opinion described above to prohibit self referral as a conflict of interest as one of the conditions for approval. The problem is that District Judges have neither the time nor the staff to monitor the operations of these entities. What we're asking them to do is essentially an executive function which they are very reluctant to do. Furthermore, because of the Attorney General's opinion described above, they aren't going to regulate this area until there is some kind of legislative direction as to what we believe to be a conflict of interest. I would suggest that we adopt a minimum qualification in education requirements of SB 295. but also adopt SB 213 dealing with conflict of interest.

Once again, thanks for taking the time to hear these bills.

*Salon
Attach 1*



1988 NATIONAL ALCOHOLISM FORUM
**"ALCOHOL & OTHER DRUGS:
RECENT KNOWLEDGE/
STATE OF THE ART"**



ANNUAL CONFERENCE
OF THE
NATIONAL COUNCIL
ON ALCOHOLISM

and Presenting the 1988
NCA/Marty Mann Course for
Counselors

Hyatt Regency Crystal City
Arlington, VA
April 21-24, 1988



To be held concurrently with the 19th annual Medical-Scientific Conference conducted
by the American Medical Society on Alcoholism and Other Drug Dependencies



National Council on Alcoholism Inc
12 West 21st Street, New York, NY 10010

*Senate Judiciary
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Attachment 2*

9:00-10:30 am
Tidewater

NCA Council Round Robin II

Moderator: Ellen Pritzlaff, Executive Director, Saginaw County Information Center on Alcoholism

9:00-10:30 am
Potomac 1

NCA Medical-Scientific Track Session IV

Moderator: Richard Dardano, Executive Director, Mohawk Valley Council on Alcoholism and Addictions, New Hartford, NY

"ACA's: Transgenerational Patterns and Psychopathology," Edward Kaufman, M.D., Vicki Weatherford, Ph.D.; University of California, Irvine Medical Center

"The Chemically Dependent Family as a Context for Eating Disorders," Carol-Ann Casner M.A., R.N.C., Marshal Hale Memorial Hospital, San Mateo, CA

"Acupuncture Treatment for Alcohol Abuse," Michael O. Smith, M.D., D.AC., Lincoln Hospital, Acupuncture Clinic, Bronx, NY

9:00-10:30 am
Potomac 2

NCA Prevention & Education Track Session IV

Moderator: Lotie James, Executive Director, National Council on Alcoholism and other Dependencies, Greater Detroit Area, Detroit, MI

"Each One-Reach One Youth Prevention Program," Thomasina Borkman, Ph.D., David Anderson, Ph.D., Gayle Hamilton, Ph.D., Joan Volpe, Ph.D.; George Mason University, Fairfax, VA, Fairfax County Government

"Cross-Cultural Prevention Strategies," Marva M. Crawford, M.P.H., Marvin R. Williamson, M.A.; M & M Associates, Oklahoma City, OK

"Profiles of Familial Alcohol Abuse," Robert H. Boswell, M.A., Associate Director, The Cottage Program International, Inc., Salt Lake City, UT

9:00-10:30 am
Potomac 5

NCA Public Information Track Session IV

Moderator: Robert Y. Halford, Executive Director, Metropolitan Atlanta Council on Alcohol and Drugs, Atlanta, GA

"Community Awareness: What Works—What Doesn't!," Donna Hearn, M.Ed., C.A.P., Miami, FL

"Comprehensive School-Based Substance Abuse and Prevention Program in the D.C. Public Schools," Marsha Zibalese-Crawford, Karen Wright, Mahmoud Baptiste; Washington Area Council on Alcoholism, Washington, DC

"Healthy Information: An Awareness Program About Alcohol and Health," Joan M. Kuver, Deputy Director, Alcoholism Council of Greater NY, New York, NY

9:00-10:30 am
Arlington

NCA Public Policy Track Session IV

Moderator: Susan Galbraith, NCA Assistant Washington Representative

"Drug Testing: Legal and Policy Issues," Paul N. Samuels, Legal Action Center, New York, NY

"Provider Based Policy Development," Neil Carolan, Director of Chemical Dependency Program—Catherine McAuley Health Center, Ann Arbor, MI; Mary Morin, Executive Director, National Council on Alcoholism, Michigan Division, Inc.

"Ethical Considerations in Evaluation & Treatment of Court-Referred Clients," Michael S. Dalen, MEd., SCADC, Alcohol & Drug Services, Inc., Mission, KS and representing 190th Air Refueling Group, Kansas Air National Guard, Forbes Field, Topeka, KS—Drug/Alcohol Counselor

9:00-10:30 am
Potomac 6

NCA Treatment Track Session IV

Moderator: Daniel R. Flavin, M.D., NCA Medical-Scientific Officer

"The Functional Model Approach to Dual Diagnosis in Chemical Dependency Treatment," Pamela Irwin, M.A., CAC, Program Director, Central East Alcoholism & Drug Council, Charleston, IL

"The AIDS Crisis: Living with the Fear of Death and Recovery from Addictions," Richard S. Werner, Ph.D., Psychologist in Private Practice; Professor, Antioch University, California

ETHICAL CONSIDERATIONS IN EVALUATION AND
TREATMENT OF COURT-REFERRED CLIENTS

PRESENTED BY: MICHAEL S. DALEN
DIRECTOR
ALCOHOL AND DRUG SERVICES, INC.
6005 MARTWAY #100
MISSION, KANSAS 66202

BACKGROUND

On January 1, 1974, the Special Court Procedures for Alcohol Related Offenses program was begun in Johnson County, Kansas. The county was, at that time, a suburban community of approximately 200,000 people, made up of seventeen municipalities. The need for the program was determined by the Judge of the Probate Court, which was then a county court. Advice and assistance was sought in the design and development of the services to be offered from the municipal courts, the district court, members of Alcoholics Anonymous and representatives of the two treatment programs that existed in the county at that time.

The intent of the program was to evaluate all persons arrested for alcohol offenses to establish their needs, if any, for treatment of alcoholism and to provide education for those determined not to be alcoholic. In the event it was determined that a need existed for treatment, the client (offender) was referred to an appropriate treatment facility for a more complete evaluation and specific treatment recommendations. Clients were given their choice of several treatment programs from which to choose.

Nationally, during the years from 1978 to 1984, government control of treatment programs decreased by 16% and the numbers of for-profit treatment

programs increased by 392% (US Department of Health and Human Services, 1987).

This change has certainly been reflected in Johnson County. Today, there are five programs that perform these evaluations. In the last three years, the number of treatment facilities has increased dramatically. The program begun by the court system itself is now privately owned (a result of some changes within the court system that were statewide.) There are a dozen treatment programs within the county and many more within the metropolitan Kansas City area, 80% of which are privately owned, for-profit organizations.

Since 1982, Kansas State law has required programs that perform evaluations on court-referred clients to be certified by the Administrative Judge of the District Court. The legislation also included a requirement that all persons arrested for driving under the influence (DUI) be evaluated and specified the fee for the evaluations be collected by the court and then transmitted to the program providing the evaluation. The administrative judge has, over the last three years, received requests on a frequent basis from new programs wishing to be certified. Without exception, all of these programs have also offered treatment.

THE PROBLEM

Of the five programs providing evaluations of court-ordered clients, three also provided treatment, to our knowledge, none of the clients determined to be in need of treatment by those three programs were referred elsewhere.

Alcohol and Drug Services, one of the agencies that does not offer treatment has frequently been approached by treatment agencies in the community, seeking referrals. Not infrequently, these contacts have been accompanied by monetary offers of some nature, such as serving, for pay, on a board of directors or even direct "kick-backs".

According to Bissell and Royce (Ethics for Addiction Professionals, 1987), all clients seeking treatment as a result of coercion, should be evaluated by someone that will not benefit from the results of the evaluation. Therefore, a court referred client should not be treated by the same agency that completes the evaluation and recommends a course of treatment to the court.

The court-referred client is not the same as a client seeking help on their own. The self-referred client has the option of rejecting the recommendations and/or seeking another opinion. Even the client that is referred by an employer, or other third party, likely has the opportunity to express their dissatisfaction with how they are treated or what is recommended. Many times, other quality control mechanisms are in place to monitor the programs to whom these persons are referred. That is rarely the case with court-ordered clients.

The opportunity to increase revenues is, of course, a concern for all programs, public or private. But the privatization of treatment and the "bottom-line" concerns are such an increasing factor that safeguards must be added. From January, 1983 to July, 1987, Alcohol and Drug Services, Inc., alone, saw 3467 people referred by the Courts. 44% of those were identified as being chemically dependent and in need of treatment. They were referred to other agencies to receive this treatment. Using a conservative estimate of \$3000 per client for primary treatment, this represents \$4,584,000 in treatment revenue. Assuming that Alcohol and Drug Services provides 1/3 of the evaluations in the county, the estimate of the amount of treatment is \$13,752,000. If Alcohol and Drug Services provides only 20% of the evaluations in the county (since there are four other programs) the estimate could be increased to represent \$22, 920,000!

THE RESPONSE

Because the administrative judge had felt such pressure to certify so many programs, he had sought the advice of several persons that were knowledgeable of chemical dependency and had a long history of service in the community. This group recommended he appoint a task force to examine the problem more closely. He took their advice. The task force was chaired by a municipal judge, and included the former judge that had begun the original program, another municipal judge, an employee assistance director, a treatment program director, the coordinator of a diversion program in the District Attorney's office, member of the defense bar, an alcoholism counselor and two persons that could be classified as "interested citizens".

This committee reviewed records, statutes and heard from various people in the community. All programs involved in any way were invited to speak to the committee. Deliberations continued over a period of several months. The recommendations made to the Court by the committee were: 1) anyone performing evaluations be certified by the Kansas Alcoholism and Drug Addiction Counselors Association and 2) that no agency providing treatment be certified to perform evaluations.

These recommendations were accepted by the Administrative Judge, and notices were sent by him to all programs in the county stating that after April 1, 1988, these requirements would be in effect. It is unclear, however, whether or not these will be enforced due to requests for reconsideration and threats of lawsuits. It is likely that the committee recommendations will receive further consideration.

Regardless of the outcome of this issue in our county, this is a problem that,

along with similar problems, our field needs to address. Conflict of interest will always be difficult to determine and to avoid, but a mark of a profession is its ability to deal with such matters in a fashion that best serves its clientele.

FINAL REMARKS

In 1988 the administrative judge of the 10th Judicial District of Kansas did, indeed, declare that substance abuse treatment programs would be de-certified as ADSAP agencies. One of them retained an attorney who threatened suit against the judge, who then backed off. But he did request an opinion from the attorney general. That Opinion No. 89-4, dated 1/19/89, reads, "While we agree that allowing the same entity to provide treatment and to diagnose the necessity for such treatment may create the potential for conflict of interest, we believe this problem must be addressed legislatively rather than through administrative guidelines."

According to Mr. Fred Jamison, Court Administrator for Johnson County District Court, as of March 6, 1995 there are 29 agencies certified by the administrative judge as ADSAP agencies. It should be noted that not all of them are physically located in Johnson County, and at least 1 of them is not even in the state of Kansas, but is in Kansas City, Missouri.

According to the RESOURCE DIRECTORY published in 1993 by the Alcohol and Drug Abuse Services of SRS, there are presently 17 licensed treatment agencies in Johnson County, not including 2 psychiatric hospitals or Shawnee Mission Medical Center which also offer inpatient and outpatient substance abuse treatment services.

In conclusion, I recently had a conversation with a defense attorney about this conflict of interest issue. His response was the only advantage he has ever realized sending his clients to an outpatient treatment agency for an ADSAP evaluation, is he has never had to worry about his clients ever being referred to inpatient treatment, even those who he knows to be in need of inpatient treatment.

To: Senator Tim Enert, Chairman
Senate Judiciary Committee
Statehouse
Topeka, KS 66612

Attachment 3

From: Gene Johnson, Lobbyist

Testimony
Senate Bill 213
March 9, 1995

Good Morning, Mr. Chairman and Members of the Committee,

I am Gene Johnson and I represent the Kansas Community Alcohol Safety Action Project Coordinators Association, The Kansas Alliance on Alcohol and Other Drug Abuse Services and the Kansas Alcoholism and Drug Addiction Counselors Association. Our organizations do oppose Senate Bill 213.

This Bill would create some problems in the western part of our State where there is sparse population and there are not that many alcohol and drug programs certified by SRS or the administrative judges of those districts. In those western judicial districts, there may be only one alcohol and drug treatment program and that program may provide both the alcohol and drug evaluations for the court as well as provide the monitoring of offenders for that judicial district. These alcohol and drug programs in addition to serving the court as an alcohol safety action project, may also offer an alcohol and drug treatment for those persons that the court of that district or the prosecutor have ordered to treatment. Remember, it is the prosecutor in the DUI diversion or the judge in the case of a sentencing who makes the referrals to a treatment facility. In most instances the prosecutor and the judge have the evaluation from the community alcohol safety action project. Remember it is the prosecutor in the DUI diversion or the judge in the case of a sentencing who make the referrals to a treatment facility. In most instances the prosecutor and the judge have the evaluation from the community alcohol safety action project but they must also consider the defendant's preference for a treatment facility, under his defense attorney's advise. In most districts, the judge has maybe two or three treatment programs to choose from and he makes the referral, not necessarily the choice of the court evaluator, the defense counsel or the defendant.

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Another problem would arise if the community based alcohol and drug safety action program has a treatment contract with a managed health care provider. The court evaluator may make a recommendation for treatment and the court follows thru with that recommendation. The defendant then finds that his insurance carrier has a managed health provider contracting for treatment services. The managed health care provider refers the defendant to the same community based program for outpatient treatment who had conducted the evaluation as ordered by the court. I am sure the judge would honor the defendant's request to complete a treatment for which his insurance provider would recognize. Should this legislation pass, he would not be able to accommodate the defendant's request to receive treatment approved by his insurance provider

In the past there have been many alcohol and drug programs who have attempted to provide alcohol and drug evaluations to our court systems or attempted to open a treatment facility. These programs start up, get certification from SRS and convince an administrative judge that they are qualified in all aspects of the Law and can do court evaluations. Then, for some unknown reason, these programs do not make it. They pull up stakes and leave. This gives the judicial district and the court no other alternative but to go to another community alcohol safety action program, within their district. this established agency then cleans up the mess left over from the now "gone with the wind" agency.

We feel that the present system has worked very well in the State of Kansas, with the exception of one or two counties. Apparently there has been some difficulties in Johnson County and this is probably due to their large number of judicial systems. Maybe this problem could be solved by amending the language on page 5, line 24, to read as follows: "In any Judicial District where the population is less than 250,000, the provision of this subsection will not apply.

I will now attempt to answer any of your questions.

Respectfully submitted,


Gene Johnson

Legislative Liaison
Kansas Alcoholism and Drug Addiction Counselors Association
Kansas Alliance on Alcohol & Other Drug Services Inc.
Kansas Community Alcohol Safety Action Project Coordinators Association

#.7

ARGUMENT AGAINST SENATE BILL 213 & 295 AS PRESENTED

Presented in hearing March 9, 1995

By Thomas Steven Culala

Senate Judiciary
3-9-95
Attachment 4

SUBJECT: Page five, of Senate Bill 213, reads as follows:

(g) Except as otherwise provided, any community-based alcohol and drug safety program, which conducts evaluation and supervision of any person who is required to complete an alcohol drug safety action program, shall be prohibited from providing either direct treatment services to such person or referring such person to services provided by any treatment facility with which they are affiliated. Affiliation is determined as (1) One's own private practice; (2) a person or organization from which the community-based alcohol and drug safety program or any of its employees receives remuneration ; or (3) one in which the community-based alcohol and drug safety program or any of its employees have a financial interest. In any judicial district where there are fewer than three community-based alcohol and drug safety action programs, the provisions of this subsection shall not apply.

EXCEPTIONS: Although the intent of this "rewrite" appears to be the safeguard against "harvesting" or "self-serving" agencies or institutions, the following concerns are presented for serious consideration:

- 1) Would negatively impact delivery of quality services to indigent and low income persons in jurisdictions where alternatives for care are not available, or where cost of services severely prohibits a person's ability to access such services.
- 2) Is prejudicial in implying "potential for conflict" in treatment environments only; excluding education programs from such mandates and conditions, and pointing only at treatment programs.
- 3) Does not consider the levels of intensity in treatment, or allow that a majority of communities have limited accessible, affordable care and would prohibit participation to individuals in the program "most appropriate" to identified needs.
- 4) Would create extreme financial hardships on persons without insurance or ability to pay by limiting choices, or completely eliminate choices and access to care in most highly populated areas where, in actuality, intensive or intermediate programs are numbered, and the demand for such "non profit" or "ability to pay" programs is already experiencing regional, state, and national problems (and concerns) about waiting lists and waiting list reductions.

ABSTRACT

In reference to Senate Bill 213; CYPRESS RECOVERY was established in March of 1989 as a ADAS-licensed Diagnostic & Referral program and Outpatient Counseling Center, and received Certification for ASAP in Johnson County in 1991 and in Wyandotte County in 1992. The motivation in attaining these certificates and licensures were for the purpose of providing a quality of care non-existent to indigent and low-income persons in Johnson County and surrounding areas.

Elements exclusive to CYPRESS RECOVERY, or initially instigated at CYPRESS RECOVERY, and duplicated in other agencies are:

- * Expedient access to evaluations
- * Jail/incarcerated evaluations without regard to payment for services
- * No-cost placement assistance for intermediate care to indigent and low-income persons
- * Individualized, intensive outpatient counseling services
- * Gender specific programs with mandatory family participation
- * Free aftercare
- * Never denying a person care
- * Never utilizing a waiting list

To support the posture of services at CYPRESS RECOVERY, personnel and programs have been complimented with recognition of accomplishments in the following manner:

- * Founder received the national "Jefferson Award" for Community Service in 1991
- * Program selected to receive a congressional "Special Projects Grant" in 1992 sponsored by Senator Dole and Representative Meyers
- * Special Programs Director nominated for 1994 Community Care Givers Award

The founder of CYPRESS RECOVERY has advocated quality care for indigent and low income persons by aggressively addressing in "advocacy and testimony" in the following manner:

- * For certification or licensure of substance abuse counselors (established in 1993)
- * For a intermediate care program in Johnson County (Licensed in July of 1993)
- * Against "fraud, misrepresentation, and unfair business practice (on going advocacy)
- * For "A Drug Free Kansas" (community volunteer)

To directly reflect on the issue of Senate Bill 213 no program in Johnson County, as of 1987, offered individuals choices regarding education or care if that agency already offered such a service. At that point in time the number of agencies was at four or five. By 1991, the number of certified agencies had grown to over ten. As a advocate for choice, and against self-serving programs, CYPRESS RECOVERY established a policy of providing each individual evaluated with at least three choices of education or care, oriented them to the general offering of each program and assisted the individuals in enrollment in the most appropriate program for their assessed needs. To continue this philosophy, CYPRESS RECOVERY documented each orientation by signature of the client and has maintained the process of ASAP as a element separate from all clinical process.

During the year of 1991, procedures and agreements were established with other agencies in this county to afford immediate access without duplication of evaluation process, and eliminating any reference or deference to "conflict of interest" by support, with documentation, assistance in placement in education programs, outpatient counseling programs, and intermediate care programs in this metropolitan area and reaching far into the State of Kansas. This emphasis can be documented by cooperative referrals to education at:

Columbia Court Services
Drug & Alcohol Education Center, Inc.
CARE program of Overland Park

To outpatient counseling programs at:

Catholic Social Services
Care Program
DAEC, Inc.
OPT, Inc.
Project Turnaround
Deaf Hope, Inc.

Additionally, CYPRESS RECOVERY created the first Women's intensive program, and Relapse Prevention program in Johnson County, and has the distinction of having the only "Gorski" certified relapse preventionist in Johnson, Wyandotte or Miami counties.

Passage of Senate Bill 213 would severely limit access to quality care in this area of Kansas and most certainly in Sedgwick and Shawnee counties. The question of "conflict" is easily addressed by providing conditions of "choice" at the time of evaluation, and simple to monitor by the documentation of that orientation in the summary of the evaluation to the courts, and by signature from the individual assessed.

Most important is that this condition of choice bring focus back to the issues as follow:

- * Public Safety
- * Agressive intervention on the Substance Abusers in all forms
- * Assuring the integrity of services
- * Establishing the element of community as a cooperative, and advocating the strength of services, united under the same purpose

In support of modifications to Supp. 8-1008 I would suggest the following in regard to Senate Bill 295 & Senate Bill 213:

Establish state-wide criteria in that "the evaluation process be administered by a person within a certified facility that has adheres to the following:

- 1) Within a SRS/ADAS licensed program, that has the additional certification as ASAP agency; that the person administering the evaluation be designated as a "full counselor" in accordance with current SRS/ADAS requirements, and, if the person is evaluated solely for the purpose of ASAP requirements, that records of this process be maintained separte from those of "clinical process" if the evaluating agency operates under license for counseling services, until such time as that person requests admission to that agency's clinical programs, resulting in a duplication of the assessment papers as records to the clinical file.

or

- 2) Within a agency that is not licensed by SRS/ADAS, yet possesses the certification of ASAP, would require that the person administering the evaluation be registered and in good standing with the Kansas Behavioral Science Board as competent to Alcohol & Other Drug Abuse standards as established by Kansas Law (1993) in reference to the registration of Substance Abuse Counselors. No other license, certificate of competency, or degree would be accepted to preform this duty.

- 3) That a orientation to requirements be provided, and documented (verified by signature) at the time of evaluation to each individual participating in the process, and that options for care regarding available community-based serviced be extended to that individual in respect to his/her right to choice and to maintain the neutral posture of the evaluator.
- 4) That the criteria be consistent in the process of requirement to diversion/probation, and that all conditions be consistent to each municipal and county court system to safeguard the integrity of the law, and to resist "special interest".
- 5) That reported, repeated violations of conditions of counselor/evaluator certifications (persons not possessing the proper level of certifications) will result in the administrative judge for the district withdrawing the certification from such designation as ASAP agency if unable to provide documentation as to orientation of each individual evaluated as to available services, and blatant abuse of this orientation be considered as "conflict of interest" and must withdraw certification if clients records review by a agent of the court to not locate a "signature of orientation" by the person evaluated in regard to ASAP education or any form of substance abuse counseling. This provision or penalty will apply if complaints against any single agency are verified as true in respect to three complaints in any 12 month period, measured from January 1 of each year, through December 31 of that same year.

EXPLANATION OF EXHIBITS:

EXHIBIT ONE: Provides evidence of "choice" offered historically to persons evaluated at CYPRESS RECOVERY

EXHIBIT TWO: Is supportive to the philosophy of "Choice" or "orientation" as adopted by Olathe Municipal Court, and adapted from the practices of CYPRESS RECOVERY

Cypress Recovery
230 S. Kansas Ave.
Olathe, KS 66061
(913) 764-7555

(EXHIBIT ONE)

DIVERSION OR PROBATION REQUIREMENTS

To complete diversion/probation successfully you must be attentive to all areas of your contract with the courts and this agency. This means strict attention to your provisions.

- 1). Enroll in, attend, and complete the following requirements of education or counseling. Your options for care are explained and listed below.

1) _____ 3) _____

If you are to enter outpatient treatment you must be enrolled within 1 week of the date of this contract. If you are to be enrolled in education you must have an appointment within one month of the date of this contract.

- 2). Upon enrollment in one of these programs you must notify your monitor and supply the name of your counselor or instructor.
- 3). You must attend regularly scheduled monitoring sessions, plus all monitoring appointments made by this agency.

Cancellations and missed appointments will not be considered except in extreme cases. Failure to appear for appointments are grounds for termination.

The cost of these appointments are standard at \$10.00 per session and must be paid to be considered in compliance.

- 4). You will place a deposit for urinalysis and also testing in the amount of \$50.00 within 30 days of your assignment to monitoring. Your test dates and results will be logged in your file and a running total of your balance will be maintained in that personal file. DEPOSIT PAID: _____ Cost per test is \$12.50.

If you have a positive urinalysis the cost of the GC/MS confirmation is \$45.00. Refusal to pay for the GC/MS confirmation is considered refusal to test and will be reported to the court. All positive urinalysis and Breathalyzers WILL be reported to the court.

- 5). You are required to sign appropriate release forms for the court of jurisdiction at this session.
- 6). You are required to attend _____ per _____ and have the attendance documented by the LEADER of the group on the card supplied by this agency.

TO: ADSAP AGENCIES
FROM: CARLA GUIHER M.A., N.C.C., A.A.D.C.
COURT SERVICES OFFICER
OLATHE MUNICIPAL COURT
DATE: 9-1-94
RE: DEPARTMENT UPDATE

I began the position of Court Services officer for the Olathe Municipal Court in August, 1994 and wanted to take the opportunity to update you on changes within the Probation Department. Due to an organizational change our department now falls under the Court rather than the Legal department. As a result my address has changed. Please mail all evaluation to my attention at:


Carla Guiher, C.S.O.
Olathe Municipal Court
503 East 56 Highway
Olathe, KS 66061

My phone number remains the same at (913) 782-0306. In addition, we have returned to our prior policy of monitoring our own probation cases and having diversion cases monitored by the evaluating agency, if such services are provided. Questions pertaining to diversion clients should be addressed to the City Prosecutor's office, however all probation questions should be directed to me.

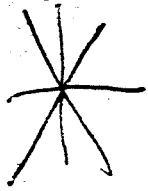
Olathe clients are instructed to complete their evaluations prior to the Diversion Conference or their scheduled PSI. These are the dates the evaluations are needed by the court. I would appreciate your help in eliciting that information from our clients, rather than basing evaluation due dates upon their court date. Specifically, I need the evaluation in my office twenty-four hours prior to the scheduled PSI. All clients are given a sheet with this information, however, feel free to call if the dates need to be verified.

EXHIBIT TWO

(2 PAGES)



With regard to treatment referrals, all clients will be told they may attend the treatment program of their choice, based upon their personal needs and requirements of the court. Feel free to direct clients to a program you feel meets their needs, however I would request that they be given at least three options from which to choose in order to allow the client personal choice and responsibility for their own actions.



Other changes include implementing the \$125.00 ADSAP fee and increasing the court costs from \$5.50 to \$6.50. As before, all Olathe clients will be referred to the DUI Victim Panel. Exceptions may occur at the discretion of the court if they have recently attended a prior panel.

If you have any questions regarding these changes, or I can assist you in any other ways, feel to call.



3-9-95

To: Senate Judiciary Committee

From: George Heckman, Assistant Director, DCCCA Center *GH*

Re: SB 213

I'm here today representing DCCCA Center, a private nonprofit organization which is currently certified to provide ADSAP evaluation and treatment services in Douglas, Franklin and Johnson counties.

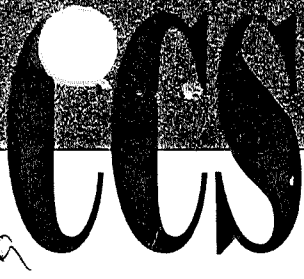
Our agency is opposed to SB 213 for a variety of reasons. To the best of my knowledge, this separation of the evaluation and treatment services is a response to concerns in Johnson County and yet this legislation was drafted to effect the entire state. In Douglas and Franklin counties, there has been no problem with the current system which gives the offender several choices about where to receive an evaluation and participate in a treatment program. With the current system, an offender can be evaluated by one agency and choose to receive treatment in another agency. What is gained by the statutory change?

From an agency standpoint, if SB 213 is enacted, our agency will be required to choose between providing either treatment or evaluation services in Franklin and Douglas Counties because Franklin has three eligible ADSAP providers and Douglas has five eligible ADSAP providers. Our agency will likely lose revenue regardless of the decision made. This proposed legislation will remove one source of funding support from outpatient programs that are costly to operate and often provide sliding scale fees and must routinely deal with indigent offenders.

Currently, DUI offenders are able to make their own choices regarding where to get an evaluation and treatment. The system works, why change the law to deal with problems in only one county? If agencies are causing problems to the court, the court can simply not recertify the agency under current statute.

Senate Judiciary
3-9-95
Attachment 5

DRUG-FREE
KANSAS



Columbia Court Services
14201 S. Mur-Len, Suite 202
Olathe, KS 66062

March 9, 1995

Kansas State Senate
Public Health and Welfare Committee

Dear Committee Members:

My name is Barry Reed. Since 1985 I have been an owner of Columbia Health Systems which operates ADSAP programs in Olathe, Kansas City, KS and Paola and an outpatient substance abuse treatment program in Overland Park. Columbia Health Systems is a private agency and employs 20 full time staff in the metropolitan area. The following is a summary of our views on Senate Bills 213 and 295 which concern the regulation of ADSAP agencies:

10114 W. 105th, Suite 100
Overland Park, KS 66212

1333 Meadowlark, Suite 103
Kansas City, KS 66101

133 S. Pearl, Suite 3
Paola, KS 66071
(913) 294-5656

RE: Senate Bill 213

This bill proposes that ADSAP agencies which evaluate DUI offenders be prohibited from providing treatment services to the same client. We believe this bill is unneeded, presents overwhelming practical problems, and benefits a small special interest group to the detriment of the overall industry.

It is common practice in the ADSAP profession for agencies to provide both assessment and treatment services. In fact, the vast majority of ADSAP agencies in Kansas are also certified treatment providers. When an ADSAP agency refers a client for treatment, evaluators take into account the client's clinical, geographic, and financial status. The client is typically given a list of programs, which might include the agency's own treatment program, and are allowed to make a choice. When the above safeguards are employed, a conflict of interest is not present because all relationships between ADSAP and treatment agencies are disclosed and clients have free will to choose the agency which best meets their needs.

By omission, Senate Bill 213 makes a distinction between self-referral for treatment and self-referral for other services such as DUI schools. This distinction is phony. In fact, the majority of offenders who go through an ADSAP evaluation process are referred to an education program - not a treatment program. The same potential for benefiting from unwarranted self-referrals is

Tel: (913) 829-0097
Fax: (913) 829-1656

Senate Judiciary
3-9-95
Attachment 6

present. There is no reason to assume that an organization would act unethically in making self-referrals for treatment and not DUI schools. In fact, a more logical case can be made that agencies with a limited range of services would be more likely to inappropriately assess in order to fit offenders into its own program.

The practical problems involved in implementing the proposed bill are staggering. In Johnson County, there are 21 approved ADSAP agencies in the area, 17 which also provide treatment. The effect of prohibiting these 17 agencies from providing treatment to clients they evaluate would be extremely detrimental to clients by imposing artificial regulations which limit their choices. Consider the following practical scenarios in Johnson County which would exist if this bill were enacted:

- a hearing impaired client goes to Deaf Hope for an ADSAP evaluation and needs treatment. Under the proposed bill, the client could not participate in treatment services at Deaf Hope, the only agency in the county which exclusively deals with a hearing impaired clientele.

- an indigent client goes to Johnson County Substance Abuse Services for an ADSAP evaluation and needs inpatient treatment. Since Johnson County Substance Abuse is the only inpatient provider in Johnson County for indigent clients, the client would be unable to be placed in an inpatient program.

- a client who lives in Olathe and has had his driver's license revoked, goes to Cypress Recovery for an evaluation and needs intensive outpatient treatment. Cypress is the only provider of intensive outpatient services in Olathe but the client would be unable to utilize these services. He would be forced to go outside his community for treatment despite having a revoked license.

- a client goes to Charter Hospital for an evaluation and needs outpatient substance abuse treatment. The client's health insurance coverage is through an HMO which has an exclusive contract with Charter Hospital to provide outpatient substance abuse treatment. The client would be unable to access his health insurance benefits and would be forced to pay out of pocket for treatment.

On a statewide basis, virtually every community and every ADSAP program would be effected by this legislation. In the few counties where there are less than three ADSAP agencies, it won't take new competitors

long to realize that by attaining certification to be an ADSAP provider, existing programs will be placed at a serious competitive disadvantage. The effect of limiting the choices of those seeking treatment will be felt even more acutely in rural areas of the state.

Despite the safeguards and illogic of doing so, it is conceivable that individuals or agencies could be guilty of abusing their responsibilities. They should be dealt with when such occurrences arise. The substance abuse counselor's professional code of ethics prohibits activity that is not in the best interest of a client and the administrative judge of the county has the power to deny an agency's certification. ADSAP agencies which have lengthy track records of professionalism and ethical behavior should not be subjected to sanction for *potential for abuse*. For instance, from time to time attorneys are guilty of taking money from trust accounts which are held for clients. Those attorneys who abuse their responsibilities are subject to penalty, but the concept of trust accounts is not regulated out of existence because there is *potential for abuse*.

The family doctor who diagnoses an illness also provides treatment services in appropriate circumstances. The attorney who initially evaluates the merits of a dispute for a client may also appropriately provide representation in a lawsuit. That is the definition and nature of a professional relationship - that the professional accepts the obligation to act in the interest of his or her client rather than in his or her own interest.

Since KSA 8-1008 was adopted in 1982, traffic fatalities have been reduced nationwide by 15%. The current system, which is an example of public-private cooperation, is working and ADSAP agencies are due a great deal of credit. Last year our agency made referrals to 43 different treatment programs. Approximately 10% of our clients chose to take their treatment in house. This proposed bill flies in the face of Kansas Alcohol and Drug Abuse Services mission of offering a continuum of care by creating barriers to citizens seeking help. ADSAP agencies do not need governmental regulations which hinder the operation of private businesses.

On a business level, when a regulation is to the detriment of a majority of businesses, one must question who benefits. The answer is clear - private, for-profit agencies which choose not to provide a continuum of services. This bill is a classic example of unneeded and unwarranted governmental interference through special interest legislation. We urge defeat of SB 213.

RE: Senate Bill 295

This bill could have a detrimental effect on Columbia Health Systems and could have negative unforeseen consequences on the ADSAP industry as a whole. Our concerns are:

1) the bill is unneeded. KSA 8-1008 is sufficient in giving the administrative judge authority to regulate ADSAP agencies in his jurisdiction. In Johnson County, the administrative judge in 1987 promulgated guidelines for ADSAP agencies concerning attaining certification, ongoing monitoring of agencies, and continuing professional education of staff. The judge requested an attorney general's opinion about the legality of these guidelines and also about prohibiting ADSAP agencies from providing treatment services. The attorney general responded "an administrative judge is authorized to promulgate guidelines for the certification of alcohol and drug safety action programs and may deny certification requests based on those guidelines". The attorney general went on to state that an administrative judge may provide by directive for the ongoing monitoring for certified programs within the judicial district. However, any directive prohibiting agencies from also providing treatment is not within the scope of KSA 8-1008.

The attorney general's opinion confirms that KSA 8-1008 gives the administrative judge the authority to impose the regulations outlined in SB 295 (with the exception of the prohibition of ADSAP agencies also providing treatment) and the bill is therefore unneeded.

2) we are concerned that SB 295 is simply a back door attempt to address the issue of prohibiting ADSAP agencies from also providing treatment. This may be an attempt to gain regulatory preference for a few private agencies at the expense of the majority of other private and public agencies which provide both evaluation and treatment services. It restricts the choice of consumers and presents overwhelming practical problems in Johnson County where 17 of the 21 area ADSAP agencies also provide treatment.

3) the bill proposes needless governmental meddling in the affairs of private business. The ADSAP industry is an excellent example of private/public cooperation. As evidenced by significant reductions in drinking and driving fatalities, the system is operating smoothly and additional regulation is simply not needed.

We urge defeat of SB 295.



Drug and Alcoholism Council
of Johnson County

TESTIMONY BEFORE

Senate Judiciary Committee

March 9, 1995

RE: SB 295

Good morning. My name is Karen Arnold-Burger. I am here today representing the Drug and Alcoholism Council of Johnson County (DAC) as a member and Chair of the Public Policy Committee. The DAC is a division of United Community Services of Johnson County (UCS), and as an advisory body, supports and enhances the mission of UCS by overseeing functions related to alcohol/drug planning and allocations in Johnson County. In October 1994 the DAC released a year-long study which reviewed the delivery of Alcohol and Drug Safety Action Program (ADSAP) services and identified areas of need. Overall, the study found critical inconsistencies in the provision of services by various ADSAP certified agencies. The ADSAP study identified the need for system improvements to ensure that persons who may require treatment are referred to and receive the most appropriate level of care, in a timely fashion, regardless of ability to pay. I am here as a proponent of SB 295 due to stated concerns the DAC has about the ADSAP system in Kansas.

The ADSAP system was formed in 1982 when a new, tougher DUI law went into effect in Kansas that set mandatory jail penalties, prohibited plea bargaining, established statutorily sanctioned diversion programs and mandated alcohol evaluation and education for all DUIs. As a part of the whole statutory scheme for DUI, K.S.A. 8-1008 was adopted. This statute sets out the procedure for certification of those agencies that provide the mandated alcohol evaluations and education, otherwise known as ADSAP agencies.

*Senate Judiciary
3-9-95
Attachment 7*

Currently, the only language dealing with certification states, in pertinent part,

"A community-based alcohol and drug safety action program shall be certified either by the administrative judge of the judicial district to be served by the program or by the secretary of social and rehabilitation services for judicial districts in which the administrative judge declines to certify a program. In establishing the qualifications for programs, the administrative judge or the secretary shall give preference to those programs which have had practical experience prior to July 1, 1982, in diagnosis and referral in alcohol and drug abuse. Certification . . . shall be done with consultation and approval of a majority of the judges of the district court of the district and municipal judges lying in whole or in part within the district. . . The certification shall be for a four year period. . . To be eligible for certification...the administrative judge or secretary of social and rehabilitation services shall determine that a community-based alcohol and drug safety action program is capable of providing, within the judicial district: (1) The evaluations, supervision and monitoring required . . .; (2) the alcohol and drug evaluation report required . . .; (3) the follow-up duties specified. . . for persons who prepare the alcohol and drug evaluation report; and (4) any other functions and duties specified by law. "

Faced with an ever increasing number of agencies requesting certification (there are now 17 certified in Johnson County) and relying on the above quoted language, in 1987 the Administrative Judge in Johnson County attempted to adopt guidelines with regards to educational requirements of key personnel, state certification through KADACA, continuing education and criteria concerning conflict of interest. However, these guidelines were met with an Attorney General opinion (No. 89-4) challenging the enforceability of any guidelines that are not set out in the legislation. See attachment hereto. SB 295 will correct this oversight by specifically providing that the administrative judge of the district court or the secretary of social and rehabilitation services may establish criteria for certification, including but not limited to, minimum educational, training and professional certification of key personnel, provision of services to indigent clients on an equitable basis with other certified programs and adherence to court established rules regarding conflict of interest.

This change is necessary because the first point of contact for many first time alcohol/drug offenders is the ADSAP system. To reduce the incidence of future alcohol and drug offenses and reduce the incidence of clients "shopping" for the easiest program, the first time offender must receive high quality, standardized, consistent assessment of the problem, care and follow-up regardless of ability to pay. The current ADSAP system does not assure this consistency or standardization of services received. Improving the ADSAP system is critical to reducing problems related to alcohol and other drugs in Kansas. The DAC urges your support of SB 295.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

January 19, 1989

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

ATTORNEY GENERAL OPINION NO. 89- 4

The Honorable Herbert W. Walton
District Judge, Division No. 1
Johnson County Courthouse
Olathe, Kansas 66061

Re: Automobiles and Other Vehicles--Driving Under
Influence of Alcohol or Drugs; Related
Provisions--Alcohol and Drug Safety Action Program

Synopsis: An administrative judge may, by directive, promulgate guidelines setting forth procedural requirements for obtaining certification, and interpreting statutory requirements for qualification of programs seeking certification under K.S.A. 1988 Supp. 8-1008. An administrative judge may not, however, establish and enforce guidelines which impose substantive conditions and requirements not contemplated by statute, as this would constitute a legislative rather than an administrative act. K.S.A. 1988 Supp. 8-1008(e) authorizes the court to contract for services necessary to the administration of its provisions, and to use 10% of the money credited to the alcohol and drug safety action fund to pay for such services. Cited herein: K.S.A. 1988 Supp. 8-1008; K.S.A. 20-239; 20-345.

*

*

*

Dear Judge Walton:

As Administrative Judge of the Tenth Judicial District of the State of Kansas you request our opinion regarding the scope of

your authority in carrying out the responsibilities assigned to you pursuant to K.S.A. 1988 Supp. 8-1008.

K.S.A. 1988 Supp. 8-1008 lists the qualifications of, and services to be provided by, community-based alcohol and drug safety action programs seeking certification. The statute sets forth the responsibilities of the administrative judge certifying such programs as follows:

"A community-based alcohol and drug safety action program shall be certified either by the administrative judge of the judicial district to be served by the program or by the secretary of social and rehabilitation services for judicial districts in which the administrative judge declines to certify a program. In establishing the qualifications for programs, the administrative judge or the secretary shall give preference to those programs which have had practical experience prior to July 1, 1982, in diagnosis and referral in alcohol and drug abuse. Certification of a program by the administrative judge shall be done with consultation and approval of a majority of the judges of the district court of the district and municipal judges of cities lying in whole or in part within the district.

.....

"The certification shall be for a four-year period. Recertification of a program or certification of a different program shall be by the administrative judge, with consultation and approval of a majority of the judges of the district court of the district and municipal judges of cities lying in whole or in part within the district.

.....

"To be eligible for certification under this subsection, the administrative judge or the secretary of social and

rehabilitation services shall determine that a community-based alcohol and drug safety action program is capable of providing, within the judicial district:

- (1) The evaluations, supervision and monitoring required under subsection (a);
- (2) the alcohol and drug evaluation report required under subsection (c) or (d);
- (3) the follow-up duties specified under subsection (c) or (d) for persons who prepare the alcohol and drug evaluation report; and
- (4) any other functions and duties specified by law. . . ."

Initially, you question whether an administrative judge can promulgate standards and guidelines for the exercise of his discretion in certifying community-based alcohol and drug safety action programs. It is generally recognized that an administrative judge has authority to act in a ministerial capacity in order to carry out clerical and administrative functions of the court. K.S.A. 20-329; 48A C.J.S. Judges §63 (1981); 46 Am.Jur.2d Judges §27 (1969); Bankers Trust Co. v. Braten, 420 N.Y.S.2d 584, 590 (1979); Clerk of the Superior Court for the County of Middlesex v. Treasurer and Receiver General, 437 N.E.2d 158, 161 (Mass. 1982). Thus, in our opinion, an administrative judge is authorized to promulgate guidelines for the certification of alcohol and drug safety action programs and may deny certification requests based on those guidelines.

However, the authority to set guidelines is not unlimited. While an administrative judge may act in a ministerial capacity to carry out administrative functions assigned to the court by statute, the judge may not legislate by imposing upon these programs substantive conditions and requirements not mandated by statute. See Keigley v. Bench, 89 P.2d 480, 484, 485 (Utah 1939) (distinction between legislative and administrative acts); Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 226, 29 S.Ct. 67, 53 L.Ed. 150, 158, 159 (1908) (distinction between legislative and judicial acts). Thus, we do not believe an administrative judge has the authority to establish a guideline such as the conflict of interest clause described in your request letter. This clause places an additional substantive condition on programs (that they refrain from providing treatment services) not set out in K.S.A. 1988 Supp. 8-1008. While we agree that allowing the same entity to provide treatment and to diagnose the necessity

for such treatment may create the potential for conflict of interest, we believe this problem must be addressed legislatively rather than through administrative guidelines.

You further ask whether an administrative judge may provide by directive for the ongoing monitoring of certified programs within the judicial district. This appears administrative in nature, thus falling within the scope of an administrative judge's authority. K.S.A. 1988 Supp. 8-1008 specifies the services and duties required of certified programs. It would appear appropriate to provide ongoing monitoring of the programs in order to determine whether they are indeed providing such services and performing such duties. This allows the administrative judge to perform the statutory duty of determining whether a program is qualified for recertification.

You inquire whether the administrative judge may provide for the ongoing monitoring of certified programs by the employment of a professionally qualified monitor and pay for this monitoring from proceeds obtained by the charging of a registration fee. K.S.A. 1988 Supp. 8-1008(e) authorizes the administrative judge to "contract as may be necessary to carry out the provisions of this section." That subsection also contemplates use of money credited to the alcohol and drug safety action fund to "cover expenses of the court involved in administering the provisions of this section." Thus, it appears that if the administrative judge finds it necessary to hire a professional monitor in order to administer the court's responsibilities in certifying programs, the statute would allow the court to contract for such services and use up to 10% of the money credited to the drug safety action fund to pay for the services. See Attorney General Opinions No. 85-68, 86-14, 88-106. We find no authority for assessing a registration fee against programs to fund monitoring services.

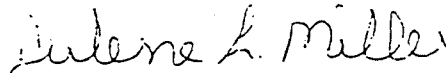
Similarly, if the administrative judge finds that a treatment counselor's services are necessary to carry out the court's responsibilities under K.S.A. 1988 Supp. 8-1008, money from the alcohol and drug safety action fund may be used to pay for such services. However, it is unclear what you envision a treatment counselor doing and thus we are unable to comment on the appropriateness of contracting for such services. Finally, it should be noted that K.S.A. 20-345 requires that district courts hire within staffing limits imposed by the Supreme Court. The court may therefore have to obtain Supreme Court approval before hiring either a monitor or a counselor.

In conclusion, an administrative judge may, by directive, promulgate guidelines setting forth procedural requirements for obtaining certification, and interpreting statutory requirements for qualification of programs seeking certification under K.S.A. 1988 Supp. 8-1008. An administrative judge may not, however, establish and enforce guidelines which impose substantive conditions and requirements not contemplated by statute, as this would constitute a legislative rather than an administrative act. K.S.A. 1988 Supp. 8-1008(e) authorizes the court to contract for services necessary to the administration of its provisions, and to use 10% of the money credited to the alcohol and drug safety action fund to pay for such services.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm

Testimony
Senate Bill 295
March 9, 1995

To: Senator Tim Emert, Chairman
Senate Judiciary Committee
Statehouse
Topeka, KS 66612

From: Gene Johnson, Lobbyist

Good Morning, Mr. Chairman and Members of the Committee,

The Kansas Alliance of Alcohol and Other Drug Abuse Services, the Kansas Alcoholism and Drug Counselors Association and the Kansas Community Alcohol Safety Action Project Coordinators Association are opposed to the enactment of Senate Bill 295.

In 1982 during the Legislative Session, prosecutors, judges, alcoholism and drug addiction counselors, program directors, members of the alcohol and drug abuse section of SRS and members of the Senate Judiciary Committee worked very hard to establish some sound guidelines and create a DUI Legislative Bill that would meet the needs of each of the judicial districts in the State of Kansas. At that time it was the consensus of the Legislature that the administrative judge in each judicial district, with the approval of a majority of the judges in that district, which does include municipal judges, lying in whole, or in a part, of that district, to certify the community alcohol safety action projects.

The Legislature understood that each judicial district in the State of Kansas, which may differ from other judicial districts, should have the right to establish the qualifications of those programs serving that district. In order to certify a community based alcohol safety action program, the administrative judge must take into consideration those programs that had practical experience, prior to July 1, 1982, experience in diagnosis and referral in alcohol and drug abuse. In addition, the administrative judge must be satisfied that community based alcohol and drug safety action program could provide the evaluation, supervision and monitoring required under the DUI Legislation, and any follow up specified by the Statute or ordered by a sentencing court.

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Should the administrative judge of a judicial district decline to certify any program within that judicial district, the judge would notify the Secretary of Social and Rehabilitation Services and the Secretary of SRS shall certify a community based alcohol safety action program for that particular judicial district. At the present time, 29 out of the 31 judicial districts are certified by the administrative judges in those individual districts. Our organizations feel that this procedure for establishing local community based alcohol safety action programs has worked very well in the past thirteen years, provided that the district administrative judge follows the guidelines as set forth in the present Statute.

The Kansas Community Alcohol Safety Action Project Coordinators Association is comprised of 23 members throughout the State, meet quarterly to determine how they can improve their services to the courts that they serve. Of those 23 members, over 90% carry dual-certification. In addition to the certification of the administrative judge in their district, these member programs have also requested and received certification from the Secretary of Social and Rehabilitation Services. To further their professional standards in the alcohol and drug field, Senate Bill 458 was passed by this Legislature in 1992. This is called the Alcohol and Drug Abuse Counselors Registration Act. Under this particular legislation, before a alcohol and drug counselor or a alcohol and drug court evaluator can work in the field, he/she has to provide documentation to the Secretary of SRS, certain requirements regarding their education and training within the field. In addition the Secretary of SRS, through their Alcohol and Drug Abuse Services, sets the standards for the licensing and certification of alcohol and other drug abuse treatment and evaluation programs.

I am attaching the present requirements both for alcohol and drug abuse counselors, that work in community alcohol safety action programs, and the licensing requirement for alcohol and drug safety action programs for your review.

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Again, Mr. Chairman and members of the committee, this legislation has worked quite successfully in most of the counties of the State of Kansas during the past thirteen years. We would hope that this committee will not try to fix a program that "ain't broke."

Respectfully submitted,



Gene Johnson
Legislative Liaison
Kansas Alcoholism and Drug Addiction Counselors Association
Kansas Alliance on Alcohol & Other Drug Services Inc.
Kansas Community Alcohol Safety Action Project Coordinators Association

SB 458
Alcohol and Drug Abuse Counselor Registration Act

SB 458, which became law January 1, 1993, directs the Secretary of the Kansas Department of Social and Rehabilitation Services to adopt rules and regulations and standards for counselors working in licensed and certified treatment facilities. The standards have been developed and approved in cooperation with KADACA and other groups. These rules and regulations require licensed and certified alcohol and drug abuse treatment programs to maintain in their personnel files, documentation on the following:

1. Counselors or counselors in training must document the current completion of at least 18 hours of culturally appropriate, post-secondary academic credit selected from nine areas of course content:
 - Screening and intake
 - Orientation and assessment
 - Treatment planning and counseling
 - Case management and crisis intervention
 - Education and referral
 - Reports and recordkeeping and consultation with other professionals
 - Multi-cultural and individual differences
 - Individual and professional ethics
 - Medical aspects and health related issues of alcohol and other drug abuse including emphasis on Acquired Immune Deficiency Syndrome and Sexually Transmitted Diseases.
2. Programs must document the completion of at least 60 clock hours every two years of approved continuing educational activities for each counselor. Continuing education activities shall meet the following criteria:
3. The documentation shall include written verification of attendance signed by the activity coordination, presenter or trainer.
4. There will be "grandparenting" of counselors if they can document 1000 clock hours of experience in alcohol and drug abuse counseling within the past two years or 3000 clock hours in the past ten years.
5. Staff not meeting the required coursework or experience requirements may be considered counselors-in-training. To qualify, they must have a documented plan to obtain the 18 hours within a three year period of employment.

The regulations have been incorporated into Chapter 13 of the State Licensure and Certification Standards.

July 1993
Commissioner Andrew O'Donovan

STANDARDS
FOR
LICENSURE/CERTIFICATION OF
ALCOHOL AND/OR OTHER DRUG ABUSE
TREATMENT PROGRAMS

Adopted by
The Kansas Department of
Social and Rehabilitation Services
August 1, 1993

2. The following services shall be available at the program to individual clients as needed:
 - a. Medical Services - medical treatment or referral to appropriate medical services.
 - b. Psychological Services - psychometric testing.
 - c. Resocialization Services - socialization activities; job seeking and job placement skills training; and vocational counseling.
 - d. Recreational Services - alternatives counseling and recreational planning/activities.
 - e. Referral to Supportive Services - referral to appropriate supportive services (Job Opportunity Center, VR, SRS, Legal, etc.).

Staff:

1. The Outpatient Program shall have a minimum of one full-time counselor for every 25 hours of counseling sessions per week.

15-6-C ALCOHOL AND DRUG SAFETY ACTION PROGRAM

An Alcohol and Drug Safety Action Program shall provide a presentence alcohol and drug investigation of any person who pleads nolo contendere or is convicted of a violation of KSA 1981 Supp. 8-1567 and provides supervision and monitoring of all persons who plead nolo contendere to or are convicted of a violation of KSA 1981 Supp. 9-1567 and whose sentences or terms of probation require an alcohol/drug education and/or treatment program.

Services:

1. The following services shall be provided by the program.
 - a. Testing - instruments must have proven validity and reliability with abusing populations.
 - b. Supervision/monitoring - the program must provide ongoing monitoring and supervision of the person during the period of education and/or treatment as the court may require.
 - c. Presentence Court Report - must contain history information and recommendations.
 - d. Final Report - must contain information on the offenders completion/noncompletion of treatment and/or education programs.
2. The evaluator of the test instruments must be qualified to administer, score and interpret each instrument.

15-6-D OUTPATIENT DIAGNOSTIC AND REFERRAL PROGRAM

An Outpatient Diagnostic and Referral Program provides only diagnostic and referral services to clients who have a present or past history of alcohol/drug misuse/abuse, and/or their significant others, through the assessment of current problems and needs with the development of a plan to provide services.