

Approved: March 14, 1996
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on February 7, 1996 in Room 313-S of the Capitol.

All members were present except:

Representative Gary Merritt - Excused
Representative Candy Ruff - Absent

Committee staff present: Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:

Representative Jim Garner
Ellen Piekalkiewicz, Association Community Mental Health Centers
Leary Johnson, Trego County Commissioner
Kyle Smith, Kansas Sheriff's Association
Jim Clark, Kansas County & District Attorneys Association
Anne Spiess, Kansas Association of Counties

Others attending: See attached list

Hearings on **HB 2767** - if a person is incompetent to stand trial for charges of a nonperson felony or misdemeanor, person may be directed to receive help at a community mental health center, were opened.

Representative Garner appeared before the committee as the sponsor of the bill. He commented that he introduced this legislation to raise attention to the issue of the mentally ill in the criminal justice system. This bill would provide judges the option of sending mentally ill criminals to a community health center or a state mental health hospital. He stated that this bill was not in the form he would like and suggested that it be assigned to interim study or referred to Judicial Council. (Attachment 1)

Ellen Piekalkiewicz, Association Community Mental Health Centers, appeared before the committee as an opponent to the bill. She agreed with Representative Garner in having the issue of mentally ill person in the criminal justice system studied. (Attachment 2)

Hearings on **HB 2767** were closed.

Hearings **HB 2031** - civil forfeiture; relating to the proceeds of such forfeiture, were opened.

Leary Johnson, Trego County Commissioner, appeared before the committee as a proponent of the bill. He explained that there is an alarming amount of drug trafficking across the state and because of successfully combating the trafficking a financial burden has been placed on the Trego County sheriffs budget. He suggested that these funds, in addition to the current distribution, should be used to reimburse the expenses incurred during incarceration. (Attachment 3)

Kyle Smith, Kansas Sheriff's Association, appeared before the committee as an opponent to the bill. He told the committee that this is not an appropriate remedy because: sometimes the county may not be involved in the investigation, the "additional" money would probably be taken out of their budget to offset the award, and when the forfeiture bill was debated it was the decision of the legislature that the forfeited goods not be used for operating expenses. (Attachment 4)

Hearings **HB 2778** - county may be reimbursed for cost of sexual assault evidence collection kit cost considered an additional court cost, were opened.

Jim Clark, Kansas County & District Attorneys Association, appeared before the committee in support of the bill. He explained that this bill would simply allow counties to attempt to recover the cost of the rape kit and examination from the convicted sex offender. (Attachment 5)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313 S-Statehouse, at 3:30 p.m. on February 7, 1996.

The committee was concerned with the cost of the rape kit and the exam. Upon further discussion it was determined that rape kits generally cost \$15 and the examination can cost up to \$1,000 depending on the "degree" of the rape. There was also concern as to whether the victims health insurance company would cover the cost of the examination.

Anne Spiess, Kansas Association of Counties, appeared before the committee as a proponent of the bill. She stated that the rape kits used to be free and now that the county is being charged for them it is taking a big chunk out of their budget. (Attachment 6)

Attorney General Carla Stovall did not appear before the committee but requested her written testimony be included in the minutes. (Attachment 7)

Hearing on HB 2778 were closed.

Representative Ott made a motion to approve the committee minutes of January 23, 24 & 25. Representative Standifer seconded the motion. The motion carried.

The committee meeting adjourned at 5:00 p.m. The next meeting is scheduled for February 8, 1996.

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: February 7, 96

NAME	REPRESENTING
Jancy Lindberg	Ad office
Julie Meyer	KSC
Leah Tombs	KSC
Paul Shelley	OJA
Wanda M. Zaleski	ACLU
Ellen Pickelknecht	Assoc. of CMHCs
Jerry Johnson	Trego County
Greg DeBorja	Trego Co. Board
Mary E. Lowe	Trego County
DAVID SCHLOSSER	PETE McMill & Assoc.
Rev. Dale Mellenkamp	Ref
Don Clark	KC DAA
Helen Stephens	KPOA/KSA
Samuel A. Grant	Kansas Highway Patrol
Lina Brown	Peterson Public Affairs Group - Carthage
Lynne Sanderson	Ark City Leadership
Lina Brown	Ark City Leadership
Koz Underdahl	SRS/MHDD
Carin Wood	KBI

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb. 7, 1996

NAME	REPRESENTING
Robert Heintzen	Washburn University
Kamberly A. Schneider	Washburn University
D. Alan S.G.	Washburn University
Robert Alvarez	Washburn University

JIM D. GARNER
 REPRESENTATIVE, 11TH DISTRICT
 601 EAST 12TH, P.O. BOX 538
 (316) 251-1864 (H), (316) 251-5950 (O)
 COFFEYVILLE, KS 67337
 STATE CAPITOL, RM 284-W
 TOPEKA, KS 66612-1504
 (913) 296-7675
 1-800-432-3924 (DURING SESSION)



TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 RANKING DEMOCRAT: JUDICIARY
 MEMBER: SELECT COMMITTEE ON JUVENILE
 CRIME
 SELECT COMMITTEE ON HIGHER
 EDUCATION
 RULES AND JOURNAL
 KANSAS JUDICIAL COUNCIL
 CRIMINAL LAW ADVISORY COMMITTEE
 NCSL ASSEMBLY ON FEDERAL ISSUES—LAW
 AND JUSTICE COMMITTEE

February 7, 1996

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to appear today and testify in support of HB 2767. I introduced this legislation for the purpose of raising awareness to the growing problem of mentally ill persons appearing in our state's court system.

I have personally represented two mentally ill individuals in the past year. Fortunately, my local judges were willing to allow some creative resolutions to my particular cases. However, the courts are not providing adequate options in sentencing or handling mentally ill lower-level offenders. I would like to see a greater coordination of efforts and resources between judges and community mental health centers in dealing with mentally ill lower-level offenders. Placing such individuals on probation is not always a good solution for either the defendant or the community--there is a great likelihood that such individuals will fail to abide by the terms and conditions of probation and thus end up in prison. These folks need direct intervention and contact with mental health care providers.

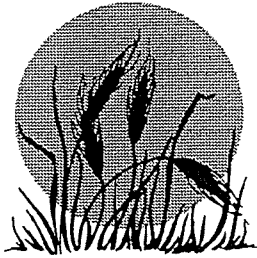
Since the introduction of this bill, I have visited with representatives of community mental health centers. I realize that the bill, in its current form, does not properly address the issues about which I am most concerned.

However, I do believe the issue of the mentally ill in our court systems is a matter which merits thorough study and recommendations. For these reasons, I would ask the committee and Chairman O'Neal to consider this matter for either interim study or referral to some other

House Judiciary
 2-7-96
 Attachment 1

research or advisory body for a complete study of the matter.

Again, thank you for the opportunity to appear and share my concerns on, what I perceive to be, a growing problem facing our courts.



**Association of Community
Mental Health Centers of Kansas, Inc.**
700 SW Harrison, Suite 1420 • Topeka, Kansas 66603-3755
Phone (913) 234-4773 • Fax (913) 234-3189

**Testimony on H.B. 2767
Presented to House Judiciary Subcommittee
by Ellen Z. Piekalkiewicz
February 7, 1994**

The Association of Community Mental Health Centers (CMHCs) opposes the passage of H.B. 2767 for the following reasons:

1. Someone who is found incompetent to participate in their own defense because they are too mentally ill or developmental disabled may not be someone who would be appropriate for an outpatient setting which would require keeping appointments at the CMHC, medication compliance, and general care for themselves which in some cases would necessitate 24-hour secure supervision which most CMHCs do not have access to. CMHCs are outpatient facilities which rely on the state hospitals and other facilities to provide the 24-hour secure supervision when needed. State hospitals play a vital role in the continuum of care and the inpatient setting the hospitals many times provide is a needed component of the entire treatment of an individual with mental illness.
2. CMHCs currently do not have the staff expertise required to provide treatment in these instances. Larned State Hospital is the only facility in the state (public or private) which specializes in this type of care. On an annual basis for all offenses, Larned State Hospital sees appropriately 85 individuals.
3. The cost of providing the above described services could syphon limited resources from CMHCs already struggling to serve increasing needs in their communities. Currently, the CMHCs conduct the evaluation needed to determine if someone is competent to stand trial and the CMHCs are specifically reimbursed for this service by the State.

We are willing to work with the Legislature in reviewing the procedures of the criminal justice system when dealing with individuals with mental illness, however, we do not believe this bill will accomplish a practical solution to the issues.

House Judiciary
2-7-96
Attachment 2

FROM: Trego County Commissioners
DATE: February 7, 1996
SUBJECT: Testimony before House Judicial Committee on House Bill
2031

My colleague, Mr. Gleyne Lowe, and I are here today to ask for your favorable consideration on House Bill 2031. We are county commissioners from Trego County. We wish to convey what we perceive as a problem for county government and offer a solution which we feel is addressed in House Bill 2031.

Our county has an aggressive law enforcement program which encompasses mutual cooperation between federal, state, and local agencies. This is not because we have an abundant amount of local crime but rather due to our proximity to a major highway which transcends the state.

Unfortunately, we are experiencing an alarming amount of drug trafficking across our state. Fortunately, we have been very successful in combating this delima, especially in our county. The problem, however, is that this is not without a financial burden on our local sheriffs budget.

Current law concerns civil forfeiture and the disposition of the proceeds. It specifies the percentage of distribution and the conditions in which the proceeds, if any, can be expended.

We accept the current distribution but feel that these funds should be allowed to reimburse the expenses accrued during incarceration. We believe that additional costs without replenishment can detract and even be a disincentive to effective law enforcement.

In essence, we ask today not for a greater piece of the pie but rather that current law be less restrictive. We would certainly be appreciative of your favorable consideration on this issue.

Leary J. Johnson
Trego County Commissioner



JERRY WHITE

SHERIFF OF TREGO COUNTY

Phone: (913) 743-5721
525 Warren
WaKeeney, Kansas 67672

July 14, 1995

TREGO COUNTY COMMISSIONERS

Please find below the statistics for the Trego County Sheriff's Office for the first two quarters of calendar year 1995:

Number of accidents worked by Sheriff's Office: 33
Number of fatalities caused by accidents: 2
Number of serious injuries: 2

Total number of prisoners held in Trego Co. Jail: 65
Total prisoner days stayed in jail: 621
Average days stayed per prisoner: 9.55
Number of prisoners for drugs: 35
Total days for drug prisoners: 378
Average days stay for drugs: 10.8
Cost for drug prisoners: \$11,340

72 of total budget

I felt this information would be of interest to you. I will be giving you a quarterly report from this day forth. We have been getting a lot of calls from Collyer about a youth who lives there speeding down the streets. Of course by the time we get over there, the youth is no longer out. We have spoken with his parents and the youth about his activities. At this time there are no critical situations in Trego County.

Very Respectfully,

Jerry D. White
Jerry D. White, Sheriff
Trego County

*Suggest you submit bill
to Bernie for drug prisoners
Arlene Fuleigh
Leary Johnson*

To: Hiway Patrol

Special Prosecutors Trust

Erv's Body Shop (March)	vehicle tow & storage	\$ 115.00
Midwest Drug (March)	VCR and case	509.90
Greg Jirak (June)	cellular phone bill	75.28
Rich Jimerson (July)	tape dispenser	6.85
Cellular One (October)	cellular phone bill	163.39
Cellular One (December)	cellular phone bill	59.05
Frank Communications (December)	antenna	25.42
Western Kansas World (December)	business cards	67.70
TOTAL		\$1,022.59

Federal Asset Shared Forfeiture

Greg Jirak (September)	camera	\$ 239.87
	2 batteries	21.94
	camera bag	19.83
	tax	18.02
	bolt cutter	39.99
	4-10 pc. wrench sets	79.96
	2 socket adapters	7.38
	2 square adapters	3.98
	2 mechanic tool sets	119.98
	2 drill bit sets	49.98
	hammer	19.99
	pliers	24.99
	2 drill kits	399.98
	2 hex key sets	13.98
	wrecking bar	10.99
	tax	49.36
Newcomer Home Furn. (September)	19" Zenith TV/VCR	469.00
Verbeck Lumber (October)	24" bolt cutter	57.00
	6 oz. hammer	11.49
	utility knife	3.59
	14.4 Dewalt cordless drill	199.95
Wheatbelt Dist. (October)	metal snips	16.98
	hammer	9.49
	vise grips	11.30
	v/a multi bits	2.75
	chisel	8.00
	diagonal pliers	6.98
	inspection mirror	4.93
	v/a multi bit set	45.30
	air chisel kit	64.21
Sportman's Supply (November)	2 fire arms	640.00
	ammo	80.00
Western Kansas World (November)	business cards	435.75

TOTAL

\$3,816.94

GRAND TOTAL OF BOTH FUNDS

\$4,209.53



LARRY WELCH
DIRECTOR

KANSAS BUREAU OF INVESTIGATION
DIVISION OF THE OFFICE OF ATTORNEY GENERAL
STATE OF KANSAS



CARLA J. STOVALL
ATTORNEY GENERAL

BEFORE THE HOUSE JUDICIARY COMMITTEE
KYLE G. SMITH, SPECIAL AGENT
KANSAS BUREAU OF INVESTIGATION
ON BEHALF OF
THE KANSAS PEACE OFFICERS' ASSOCIATION
AND
KANSAS SHERIFFS' ASSOCIATION
IN OPPOSITION TO HOUSE BILL 2031
FEBRUARY 8, 1996

Chairman O'Neal and Members of the Committee:

I appear today on behalf of the Kansas Peace Officers' Association and the Kansas Sheriffs' Association in opposition to House Bill 2031. The opposition is reluctant because the commissioners who have requested this bill have a legitimate concern. Counties are traditionally stuck with paying for the incarceration of prisoners and the consequential medical bills with very little control over who makes arrests. Having agreed with the problem, however, I believe it is the consensus of the law enforcement community that HB 2031 is not an appropriate remedy.

Under current forfeiture law, each of the agencies that are involved in investigation that serves as the basis for a civil forfeiture, is entitled to a proportional share of any forfeitures generated. If a sheriff's office is involved in the investigation then they share in proportion to that investigation with the proceeds of any action. HB 2031 creates several problems by changing this system.

1. HB 2031 would have the state legislature make a policy determination that even if a police department did the entire investigation, authorized the overtime, police department officers, went through the trash or conducted the hours of surveillance, the state legislature would decide that the proceeds from any forfeiture should first go to the sheriff's office, which may not have been involved in the investigation at all.

Needless to say, this would obviously hold the potential for damaging cooperation between law enforcement agencies. Numerous task forces have been set up throughout the state to try to enhance coordination and this decision that money should first go to the sheriff's office would preempt sharing agreements now in place.

2. As a practical matter, money generated from such forfeitures would probably not benefit the sheriffs offices. The money would go to the general fund of the county and would not increase a sheriff's budget by one dollar.

3. Forfeiture action under the Standard Asset Seizure and Forfeiture Act in Kansas is a civil action. It is possible that the sheriff's office or the county would not even be a party to the forfeiture being conducted by the state or police department. It is interesting, but dangerous precedent to establish that an entity which is not even a party to a civil action is entitled to receive some or all of the judgement.

If a victim of a drunk driver accident sued the driver and his insurance company, would the Highway Patrol be entitled to receive part of the settlement or judgement to pay for the Patrol Officer's time working the accident?

4. As the Committee may be aware, there is intense litigation regarding whether civil asset forfeiture violates the double jeopardy clause of the Constitution. In other words, is a civil forfeiture really another form of punishment in addition to that meted out by the criminal courts?

HB 2031 would hurt the government's position as this litigation goes through the courts as tying the results of a civil forfeiture to paying for the punishment, i.e. incarceration of the owner of the property. The United States Supreme Court has accepted two cases from the Ninth and Sixth Circuits for review and a ruling on this important issue will hopefully come by the end of the summer. In the meantime, legislation such as HB 2031 could be used by opponents of forfeiture to strengthen their briefs, suggesting that this is, in fact, another form of punishment.

5. The practical consideration would be the time frame involved. A forfeiture may be completed

prior to the end of the criminal case. Would the civil litigation need to be stayed until the criminal case and the resulting incarceration and its costs are determined; or if the forfeiture is granted and additional charges are approved for medical emergency; or on revocation of bond, is the judgement set aside; the money taken back from the police; what if already spent?

6. The final concern is that this is a major change in policy. When the Standard Asset Seizure and Forfeiture Act was passed, determination was made that the proceeds from asset seizure and forfeiture should be designated and set aside as additional funds to help fight the war on drugs. Narcotics organizations are well financed and well organized. The methodology used in some of these investigations and the number of cases is taxing the abilities of law enforcement agencies at all levels. To that end, the statutes were written so that proceeds from forfeitures could not be considered for operating expenses, but were to be additional money to supplement, not supplant, regular appropriations. HB 2031 for the first time would turn the proceeds from forfeiture into operating expenses for existing programs. As stated before, this is a major change in policy and a precedent which could be used to gut this effective tool against the drug trade.

For the reasons set out above, the men and women of the Kansas Peace Officers Association and Kansas Sheriffs Association respectfully request the Committee not to pass HB 2031 out favorably. I would be happy to stand for questions.

OFFICERS

Paul J. Morrison, President
Nanette L. Kemmerly-Weber, Vice-President
William E. Kennedy, Sec.-Treasurer
Dennis C. Jones, Past President



DIRECTORS

Julie McKenna
David L. Miller
Jerome A. Gorman
James T. Pringle

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. 2778

The Kansas County and District Attorneys Association supports HB 2778, which allows the county to request that costs of the rape kits used to gather evidence in sex crime cases be assessed against a defendant convicted of the offense.

The importance of physical evidence is paramount in sex crimes cases, since there are seldom eyewitnesses. Often the case is reduced to the credibility of the victim against the credibility of the offender: and physical evidence tips the scale towards conviction. The Kansas Legislature has recognized the importance of such evidence in the passage of K.S.A. 65-448; and recognized the burden on crime victims when it amended the statute in 1993 to require that the costs of the rape kits, like most prosecution costs, be paid by the counties.

HB 2778 simply allows the counties to attempt to recover those costs from the convicted sex offender.



First District-
 Genie Long
 Phone 913-562-3647
 Marysville, Kansas 66508

Second District-
 David R. Stump
 Phone 913-226-7410
 Blue Rapids, Kansas 66411

Third District-
 J. Leo Caffrey
 Phone 913-396-4469
 Vermillion, Kansas 66544

Phone 913-562-5361
 MARYSVILLE, KANSAS 66508

County Clerk
 Gayle Landolt
 Phone 913-562-5361
 Marysville, Kansas 66508

Road & Bridge Dept.
 Phone 913-562-5349
 Marysville, Kansas 66508

February 5, 1996

Representative Michael O'Neil
 Chairman, House Judiciary Committee

Re: House Bill 2778

Chairman O'Neil and members of the committee:

We would like to take this opportunity to ask for your support of House Bill 2778, which would allow the counties to recoup the costs of conducting an examination of a victim of sexual assault by charging the defendant for the costs as court costs.

Being a small county, we are fortunate in that this has been an infrequent expense to our county, but when this did occur the cost was much more than we could have anticipated.

We are currently operating at the maximum of our tax lid and would appreciate any help to alleviate expenses for our county.

Yours truly,

MARSHALL COUNTY COMMISSIONERS

David R. Stump

 David R. Stump, Chairman

J. Leo Caffrey

 J. Leo Caffrey, Member

Genie Long

 Genie Long, Member

gll



State of Kansas

Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

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CONSUMER PROTECTION: 296-3751
FAX: 296-6296

February 7, 1996

Rep. Mike O'Neal, Chair
House Judiciary Committee
State Capitol
Topeka, KS 66612

RE: House Bill 2778

Dear Rep. O'Neal and Members of the Committee:

I urge the Committee's support of HB 2778. This bill will allow the convicted offender to be charged for the costs of the sexual assault evidence collection kit. I believe that perpetrators should be responsible for the cost of evidence collection.

Currently counties and in some cases the crime victim must bear the costs for the sexual assault examination. House Bill 2778 allows the courts the ability to assess the offender for these costs. This bill holds the offender accountable.

Thank you for your consideration for this bill.

Sincerely,

A handwritten signature in blue ink, appearing to read "Carla J. Stovall".

Carla J. Stovall
Attorney General

House Judiciary
2-7-96
Attachment 7