

Approved: 2-12-96
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:00 a.m. on February 1, 1996 in Room 514-S of the Capitol.

All members were present except:

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:

Julienne Maska, Victims Rights Coordinator, Office of Attorney General
Kyle Smith, Kansas Bureau of Investigation
Rae Smith, Hays, Kansas
Jim Clark, County and District Attorneys Association
Doctor Gianofranco Pezzino, Epidemiologist, Department of Health and Environment

Others attending: See attached list

Bill introductions:

Helen Stephens, Kansas Peace Officers Association, requested the introduction of a bill that would provide federal law enforcement official peace officer status in certain situations. (Attachment 1)

A motion was made by Senator Bond, seconded by Senator Reynolds to introduce as a Committee bill. The motion carried.

SB 334--Court order to test for certain infectious diseases; disclosure of certain information.

Senator Moran stated that the purpose of this bill is to test the perpetrator of a crime for HIV before conviction. Senator Moran stated that the Attorney General and crime victims expressed a need for this legislation.

Julienne Maska, Victims Rights Coordinator, Attorney General's Office, testified in support of **SB 334**. The conferee stated that this bill will allow for testing of a perpetrator of a crime where bodily fluids have been transmitted when requested by the victim. The conferee explained that current law requires the victim or victim's family to wait until a conviction before ordering such test. The conferee stated that convictions can take over a year. The conferee continued by stating that testing the arrested person for infectious diseases is a necessary step for the crime victim's peace of mind. Ms Maska stated that the Attorney General has been instrumental in the formation of the Kansas Organization for Victim Assistance (KOVA). The conferee stated that KOVA is suggesting an amendment in New Section 4 that would also allow the prosecutor to ask for testing to be performed. This amendment would allow the prosecutor to order the test of the arrested person in those instances where the victim is unable to do so. The conferee concluded by stating that crime victims and their families have strongly urged the need for this bill. (Attachment 2)

Kyle Smith, testified on behalf of The Kansas Peace Officers' Association (KPOA), and the Kansas Bureau of Investigation (KBI) in support of **SB 334**. Mr. Smith stated that while proper safeguards are part of the training provided to all officers and persons who are likely to come in contact with these fluids, circumstances or mistakes sometimes result in dangerous exposure to these fluids. The conferee requested that the definition of law enforcement employee should include "any person employed by a city, county or the state of Kansas who works as a scientist or technician in a forensic laboratory." The conferee offered that this amendment be inserted on page 2, after line 10, and it will be New Subsection (4) under (k) in Section One. The conferee referred to the language in Section 3, and requested an amendment subsection ©, that all tests which result in a negative reaction should require a six month retest, the current bill states a retest "may" be requested. The conferee suggested striking the prepositional phrase "upon proper application" in line 24, page 3, to make essential retest mandatory in all cases where a negative reaction is determined. (Attachment 3)

In response to Committee questions, Mr. Smith stated that on the issue of constitutionality, this is a public health issue. Addressing other Committee questions, Mr. Smith stated that there is always potential for civil suit in criminal cases. Mr. Smith discussed the elements of aggravated battery where the testing may provide evidence. Mr. Smith explained the significance of the six month retesting period, by stating that with current

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on February 1, 1996.

testing technics, the presence of HIV antibody may not be detected until six months after exposure.

Discussion concerning the application of this bill to emergency room personnel followed with Mr. Smith stating that he would be amenable to an amendment to include emergency room personnel. In response to a Committee member's question, Mr. Smith stated that this bill is under Chapter 65 and has nothing to do with criminal procedure other than there could be exposure during a criminal act. Mr. Smith stated that this is a separate cause of action. Issues concerning the payment of the testing procedure were discussed. The Committee discussed issues of immunity in court proceedings.

Issues regarding physician confidentiality were discussed. A Committee member suggested changing "may" to "shall" on line 22, of page 2 to allow for disclosure of HIV positive test results. Discussion followed regarding notification requirements for physicians to inform health care providers and others. Mr. Smith stated that physicians had requested the use of "may" instead of "shall."

Rae Smith from Hays, Kansas addressed the Committee in support of **SB 334**. Ms Smith related that she is a rape victim and that not having the right to the perpetrator's HIV information caused additional trauma. The conferee related information concerning the attack and stated that being a victim of such a crime is traumatic enough, but that the uncertainty of not knowing if she was infected with HIV greatly increased her anxiety. The conferee stated that the perpetrator was captured, and her case was his fifth conviction. The conferee stated that HIV, AID test results information was received three months after the attack from someone in another state where the perpetrator was standing trial for previous charges in that state. The conferee stated she would have had to wait at least nine months for the trial and conviction in Kansas before she would have known if she had been infected with HIV. The conferee urged the passage of this bill with the language ordering the arrested and charged person to be tested for certain infectious diseases, at the request of the victim, so that the victim does not have to wait until there is a conviction to know the results of such tests. (Attachment 4)

Mr. Jim Clark, Kansas County & District Attorneys Association, testified in support of **SB 334**. Mr. Clark stated that he is also representing Mr. Paul Morrison, Johnson County who could not be present. Mr. Clark stated that his Association does support the amendment that allows the prosecutor to make application. Mr. Clark stated that the Association particularly supports New Section 4. The conferee stated that this is not a criminal bill, but New Section 4 brings the victim into this protection of quarantine effort. The conferee stated that the purpose of this bill allows access of this type of information to law enforcement, hospital employees and others, and Section 4 allows the victim access to this relevant information. The conferee suggested that an immunity clause inserted in the bill may serve the basic purpose of the bill. The conferee stated that under Section 4 there has already been a determination of probable cause. (Attachment 5)

A Committee member requested that Mr. Clark provide the Committee with an amendment supplying immunity language

In response to a Committee member's question regarding the issue of immunity of physicians from liability for failure to disclose, Mr. Clark stated that adding " or fails to disclose" on line 41, page 2, Section 2 would cure the civil problem. The conferee stated that the same immunity that is granted for testifying at a congressional hearing should apply on criminal immunity. The Committee discussed the implications for notification if the word "shall" replaced "may" (line 22, page 2).

Doctor Gianfranco Pezzino, MPH, State Epidemiologist with the Kansas Department of Health and Environment testified opposing several provisions of **SB 347**. The conferee addressed several medical issues concerning the expanded definition of an "infectious disease" contained in this bill. The conferee stated that illness of meningococcal meningitis should not be included in this bill. The conferee stated that the test for meningococcal meningitis requires a spinal tap which is an invasive procedure. The conferee stated that Hepatitis B is included under K.S.A. 65-6017. The conferee stated that there is no provision for juvenile offenders under this bill. The conferee noted that this bill does not include HIV counseling. Doctor Pezzino stated that the Department of Health and Environment supports appropriate measures to protect those who might be exposed to infectious diseases, but the Department believes that this bill will not assist that effort. (Attachment 6)

Responding to the Committee, Doctor Pezzino stated that making this bill apply only to HIV would help with some of the concerns the Department has with this bill. In response to Committee questions, Doctor Pezzino stated that current statutes apply to convicted persons being required to test for certain infectious diseases. The conferee suggested adding language to existing bills. The conferee stated that adding mandatory language does not help in the case of testing for Hepatitis B. In answer to a Committee member's question, Doctor Pezzino stated that current statutes and protocol already take care of most situations addressed in this bill.

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The Committee discussed that the purpose of this bill is to address the concerns of victims to know as soon as possible whether the perpetrator was infected with HIV. The Chair requested that Mr. Kyle Smith make some adjustments to the bill and consider some of the concerns addressed by the Committee and Doctor Pezzino.

The Chair adjourned the meeting at 11:00 a.m.

The next meeting is scheduled for February 5, 1996.

Helen Stephens

AN ACT

**PROVIDING FEDERAL LAW ENFORCEMENT OFFICIALS PEACE
OFFICER STATUS IN CERTAIN SITUATIONS**

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF KANSAS:

Section 1. Arrests and Assistance by Federal Law Enforcement Officers

1. For purposes of this section, "federal law enforcement officer" means a person employed by the United States Government who is empowered to effect an arrest with or without a warrant for violation of the United States Code and who is authorized to carry a firearm in the performance of the person's official duties as a federal law enforcement officer.
2. A federal law enforcement officer has the same authority, and immunity and defenses from suit, as a peace officer of this state when making an arrest or rendering assistance involving a nonfederal crime if any of the following exists:
 - a. The federal law enforcement officer has reasonable grounds for believing that a serious public offense, such as a felony or indictable offense, has been committed and has reasonable grounds for believing that the person to be arrested has committed the offense;
 - b. The federal law enforcement officer is rendering assistance to a peace officer or other law enforcement officer of this state in an emergency or at the request of the peace or law enforcement officer of this state; or
 - c. The federal law enforcement officer is effecting the arrest or assistance as part of a bona fide task force or joint investigation, in which peace or law enforcement officers of this state are participating.

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Attach 1



State of Kansas

Office of the Attorney General

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TESTIMONY OF
JULIENE A. MASKA
STATEWIDE VICTIMS' RIGHTS COORDINATOR
BEFORE THE SENATE JUDICIARY COMMITTEE
RE: SENATE BILL 334
FEBRUARY 1, 1996

On behalf of Attorney General Carla J. Stovall, I ask for your support of Senate Bill 334. This bill will allow crime victims to ask the court, when a person who has been arrested and charged with a crime where bodily fluids have been transmitted, to be tested for infectious diseases.

Current law requires the victim or victim's family to wait until a conviction before ordering such a test. All too often, the victim must wait for months, sometimes even a year or longer before a conviction. Medical providers and sexual assault advocates inform victims of the availability of testing and the importance of being tested, however, victims have no reassurance that they are not infected unless they continually repeat the testing. Having the arrested person tested for infectious diseases is a necessary step for the crime victim's peace of mind.

General Stovall has been instrumental in the formation of the Kansas Organization for Victim Assistance (KOVA). This organization is made up of professionals who work with crime victims and those who have been victims of crime. KOVA is supportive of this bill and is suggesting one amendment. In addition to the victim or victim's family asking for the test in New Sec. 4 (a), the prosecutor should also be allowed to ask for testing to be performed. This way, the prosecutor can act on the crime victim's behalf and request the court to order the test of the arrested person in those instances where the crime victim is unable to do so.

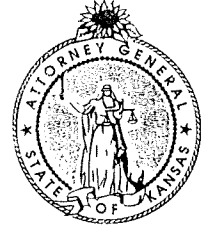
Crime victims and their families have been diligent in wanting these changes made in regard to testing for infectious diseases. We ask that you pass Senate Bill 334 with the amendment. Thank you for your consideration.

*Sen. Juel. Cam
2-1-96
Attach 2*



LARRY WELCH
DIRECTOR

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



CARLA J. STOVALL
ATTORNEY GENERAL

TESTIMONY
BEFORE THE SENATE JUDICIARY COMMITTEE
KYLE G. SMITH, SPECIAL AGENT
ON BEHALF OF
THE KANSAS PEACE OFFICERS' ASSOCIATION AND
KANSAS BUREAU OF INVESTIGATION
IN SUPPORT OF SENATE BILL 334
JANUARY 30, 1996

Chairman Emert and Members of the Committee:

I appear today on behalf of both the Kansas Peace Officers' Association (KPOA) and the Kansas Bureau of Investigation (KBI) in enthusiastic support of Senate Bill 334. Ensuring public safety can sometimes be a messy business, and unfortunately, sometimes part of that mess involves bodily fluids.

While proper safeguards are part of the training provided to all officers and persons who are likely to come in contact with these fluids, circumstances or mistakes sometimes result in dangerous exposure to these fluids. SB 334 provides a mechanism for those persons serving the public safety to at least obtain vital information as to the possibility of exposure to infectious diseases. While treatment and counseling may be the same regardless of the test results, we believe the life choices a person exposed to such diseases may vary drastically based on the results. We feel the amendments proposed in SB 334 are a substantial improvement over existing laws being more comprehensive in its coverage and providing a mechanism in section 3 to have court-ordered testing of persons independent of a criminal conviction.

We would, however, like to suggest a friendly amendment. Last year one of the forensic

scientists at the KBI laboratory was accidentally exposed to blood while conducting a blood alcohol content examination on a blood sample. That was when we first became aware that current statutes did not cover our laboratory personnel. Fortunately, in this particular case, the suspect was agreeable to a voluntary test, but we would like to see this bill amended, so that the definition of law enforcement employee would include "any person employed by a city, county or the state of Kansas who works as a scientist or technician in a forensic laboratory".

Another amendment we would suggest the committee consider is under new section 3, subsection (c), that all tests which result in a negative reaction should require a six month retest. The concern is that all a negative result indicates is that either the person tested is not currently infected or else sufficient antibodies have not been generated at the time to register on the test. In either case, it is important that a person who has been exposed to the bodily fluids not treat a negative result as a clean bill of health, but through counseling and appropriate behavior treat that initial testing as a conditional indication. It's not going to be known until 6 months have passed, so the retest is vital. Current language in SB 334 would suggest that a second application should be made in case a negative reaction is obtained.

We would suggest striking the prepositional phrase "upon proper application" in line 24, page 3, to make this essential retest mandatory in all cases where a negative reaction is determined.

On behalf of the men and women in the KPOA, KBI and law enforcement officers throughout Kansas, we urge this committee to look favorably upon SB 334 and pass it with the proposed amendments. I would be happy to stand for questions.

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January 31, 1996


TO: Senate Judiciary Committee

FROM: Rae A. Smith
1008 W. 37th Street
Hays, KS 67601

RE: I would like to request SB 334 be changed to include wording that allows a person arrested or charged with a crime to be tested for HIV instead of waiting until a conviction is made.

Two years ago I was a rape victim. I was attacked in my church in Hays, Kansas at 12:30 on a Tuesday afternoon. The perpetrator had a gun, a knife, and tied me to the inside of a coffee table before he raped me. This was the most horrifying experience of my life. The first question from my 15 year old son when he saw me was "Mom, what if he gave you something?" To this I had no answer. Bixler (my perpetrator) was apprehended and taken into custody one week later. This man had been in prison three times before and was out on his own recognizance from an indecent liberties with a minor charge in Ohio. Upon finding out this information, I was told I had no right to his HIV information. You will never know the fear I felt each and every day. No matter how many people told me the odds were in my favor, I didn't believe them. It was not until I finally received his HIV test information in writing that I could somewhat relax. I only waited three months for this report. (I was fortunate that after his conviction in Ohio the information was shared with me. If I would have had to wait for his conviction in Kansas it would have been nearly 9 months.) No one can imagine what a helpless, unfair feeling it is to wonder if you have been given a death sentence by no choice of your own. Every time my child took a drink of my pop or a bite of my food I panicked. Believe me, a rape victim has enough trauma to deal with without having this added to their burden. I was a rape victim two years ago, now I am a rape survivor. As a survivor of such a hideous crime, I ask you to please change the wording of SB 334 to include language that allows a person arrested or charged to be tested for HIV instead of waiting until a conviction is made.

Respectfully Submitted,


Rae Smith

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2-1-96
Attach 4

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Testimony in Support of

SENATE BILL NO. 334

The Kansas County and District Attorneys Association supports Senate Bill 334, which broadens the ability of persons who may have been exposed to deadly infectious disease to begin taking steps to reduce exposing their families, friends and fellow employees to the disease. Specifically the Association supports New Section 4 which moves the time frame for testing offenders from conviction to first appearance. While medical science does not yet provide absolute certainty to such early testing, at least we would no longer have to tell crime victims that we can't test their assailant because the law requires waiting until after conviction.

*Sen Jud Com
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Attach 5*

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State of Kansas



Department of Health and Environment

Testimony presented to
Senate Committee on Judiciary
by

The Kansas Department of Health and Environment
Senate Bill 334

Senate Bill No. 334 proposes to amend K.S.A. 65-6001 so that the definition of an "infectious disease" is broadened to include hepatitis B and meningococcal meningitis as well as AIDS. This bill contains provisions for involuntary testing of persons who have exposed corrections, emergency services, and law enforcement employees. Finally, the bill repeals K.S.A. 1994 Supp. 22-2913, which provides for HIV testing and counseling of certain offenders and victims, and incorporates part of those provisions into the new bill.

While we understand and we share the desire to protect the workers and victims addressed by this bill, there are some medical issues that, in our opinion, undermine the intention of this bill and make its implementation problematic.

Regarding the addition of meningococcal meningitis to the list of "infectious diseases" covered by K.S.A. 65-001, unlike AIDS or hepatitis B, meningococcal meningitis is an airborne, not a bloodborne disease, and it is transmitted by close contact with an infectious individual or his or her salivary secretions. In the case of meningococcal meningitis, the most dangerous source of infection is represented by sick individuals, who are usually easily recognized because of the severity of their signs and symptoms. This is a very different situation from HIV or hepatitis B, in which asymptomatic carriers play a major role in the transmission of the infection. It is part of the routine management of a suspect case of meningococcal meningitis to treat

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Attach 6

the patient's close contacts with a drug called rifampin, sometimes even before a laboratory confirmation. Individuals with close contact would be treated, if exposed, just like any other close contact of the patient.

The diagnosis of meningococcal meningitis can be confirmed with a lumbar puncture, commonly referred to as a spinal tap. This is an invasive procedure, not a blood test, and it seems unreasonable and unfeasible to require individuals who are not suspected to have meningitis to submit to this test. Thus, meningococcal meningitis is inappropriate for inclusion in this bill.

As far as hepatitis B is concerned, K.S.A. 65-6017, which is not affected by the bill under discussion, already includes provisions for court-ordered testing of certain offenders in custody of the Secretary of Corrections. The present bill would expand mandatory testing to other categories of workers. All the categories specified in this legislation are covered by the Occupational Safety and Health Administration (OSHA) rule dealing with bloodborne pathogens, which requires employers to provide hepatitis B vaccine to workers at risk. Hepatitis B vaccine is a safe and effective method to prevent infection with this virus.

Should an exposure to hepatitis B occur, the federal Centers for Disease Control and Prevention provide guidelines for protecting exposed workers. The post-exposure prophylaxis recommendations do have some differences, depending on whether the exposed person was immunized or not, and whether the source of exposure is infectious for hepatitis B or not. Theoretically, therefore, there could be an advantage in testing for hepatitis B an individual who exposed an employee. However, this advantage has to be weighed against the delay in starting the post-exposure prophylaxis while waiting for the court order and for the test results. The post-exposure prophylaxis is most effective if started within 24 to 48 hours from the time of exposure, which many times is too short a period to obtain laboratory test results when a court order is not even necessary. Furthermore, if a negative test result were made available in time to avoid the implementation of the post-exposure prophylaxis, there is always the risk that an individual with an early hepatitis infection may test negative because of the so-called "window period" during which commercial tests are not able to detect the infection. For this reason, some experts recommend that an

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individual exposed to potentially infectious body fluids of another individual be treated as if the source of the exposure were hepatitis B positive, unless the source is known NOT to be infected with the hepatitis B virus at the time of exposure.

Current protocols, therefore, appear to be adequate to protect employees potentially exposed to hepatitis B, and mandatory testing would have no additional benefit in terms of protecting these workers. We do want to mention, however, that mandatory testing for hepatitis B is being used successfully as screening of pregnant women to prevent neonatal hepatitis B.

Finally, as I mentioned at the beginning, Senate bill 334 repeals K.S.A. 1994 Supp. 22-2913 (please note a companion statute, 38-1692, for juveniles) incorporating part of those provisions into the new bill. However, the new version of those provisions does not include the availability of HIV counseling for victims of crimes that might have involved when transmission of potentially infectious body fluids. Counseling as part of HIV post-exposure intervention is a national standard. Proper counseling gives individuals the opportunity to receive accurate information about the risk of infection that may have resulted from their particular exposure. It offers them a chance to discuss their risks with a trained professional who can then discuss prevention strategies to avoid further spread of the virus. And, if they are infected, counseling can connect them to medical services and interventions known to improve the quality of life of HIV infected individuals.

The Department of Health and Environment supports appropriate measures to protect corrections, emergency services, and law enforcement employees from infectious diseases, but the Department believes that this bill will not assist that effort. The Department also believes that HIV counseling should remain part of the post-exposure protocols for victims.

Testimony presented by: Gianfranco Pezzino, MD, MPH
State Epidemiologist
Kansas Department of Health and
Environment
February 1, 1996