

Approved: 3/20/97  
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Carmody at 3:30 p.m. on March 17, 1997 in Room 313-S of the Capitol.

All members were present except: Representative Kline (excused)  
Representative Mayans (excused)  
Representative Wagle (excused)  
Representative Ruff (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department  
Mike Heim, Legislative Research Department  
Jill Wolters, Revisor of Statutes  
Jan Brasher, Committee Secretary

Conferees appearing before the committee: Kelly Feyh, Assistant Attorney General, Criminal Division  
Kyle Smith, KBI  
Wendy McFarland, ACLU  
Scott Curry, Wichita, Kansas  
C. Steven Rarrick, Deputy Attorney General, Consumer Protection Division  
David Debenham, Deputy Attorney General

Others attending: See attached list

The Chair called the meeting to order at 3:40 p.m.

SB 291: Registration requirements for persons who commit certain crimes involving children and sex offenses

Kelly Feyh, Assistant Attorney General, Criminal Division, testified in support of SB 291. The conferee stated that this bill is necessary for compliance with the rules and regulations issued by the United States Department of Justice for the implementation of the Jacob Wetterling Crimes Against Children Act. Ms Feyh explained that if states fail to achieve compliance with the federal rules and regulations by September 13, 1997, there will be a ten percent reduction in their federal Byrne Grant funding. The conferee stated that SB 291 amends the Kansas Sex Offender Registration Act, K.S.A. 22-4901 *et seq.* in several ways. The conferee stated that SB 291 also incorporates SB 311 which is a product of Attorney General Stovall's C.A.M.P.U.S. Task Force. (Attachment 1)

The conferee answered inquiries from Committee members concerning underage victims. The conferee stated that she had requested material from Donna Feinberg of the United States Department of Justice to clarify the implications if one person is under the age of eighteen. Issues concerning language referring to comparable crimes, and the inclusion of language to keep closed to the public records at the KU Medical Center were discussed. In answer to a Committee member's question regarding the "Romeo and Juliet" effect, the conferee stated that a person in that circumstance who was convicted would need to register.

In answer to Committee members' questions, Mr. Kyle Smith, KBI, stated that comparable crimes would be determined by the court with the legislative intent considered. The Committee members discussed reasons for including a number of misdemeanor crimes in this bill. Ms Feyh stated that the federal rules and regulations dictate that those crimes be included.

Wendy McFarland, ACLU, testified offering an amendment to SB 291. Ms McFarland requested that lines 23 and 24 on page 2 be amended out of the bill. The conferee stated that criminal sodomy needs to be removed as a sexually violent act.

The conferee requested an amendment that would amend out lines 23 and 24 on page 2, the portion that addresses criminal sodomy as defined in K.S.A. 21-3505 as a crime that would require registration as a

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on March 17, 1997.

sexually violent criminal. The conferee related that in discussion with the National Office of the ACLU, who did appear to testify on this issue before Congress, it is their belief and the belief of the attorney associated with the ACLU that it is discretionary on the part of the attorneys general in every state as to whether to include criminal sodomy as a sexually violent crime.

The conferee made reference to the provisions on KU Medical Center on page 14, line 3-9. Ms McFarland stated that the ACLU is requesting a simple statement that says these records will remain closed unless these records would include any language that would prohibit a doctor from discussing all available treatment options with their patient.

Committee members asked questions and discussed issues concerning whether the Attorney General has discretionary authority to include criminal sodomy in the list of sexually violent crimes.

In response to Representative Paul's question, the conferee stated that the ACLU is asking that criminal sodomy be removed and not be required to be a registered act only in this case.

Scott Curry from Wichita, Kansas testified in opposition to SB 291. The conferee stated that if this bill passed, gay men and lesbians in the state of Kansas who are convicted of consensual sodomy would be classified as sexually violent criminals. The conferee stated that K.S.A. 21-3301a, 21-3302 and 21-3303a were all repealed in 1994. (Attachment 2)

The Committee members discussed with the Revisor the repeal of the three statutes. The Revisor stated that the (a) should be removed and the reference should be K.S.A. 21-3301, 21-3302, 21-3303. The Revisor requested that reference cleanup in three places.

The Chair closed the hearing on SB 291.

SB 261: Increased penalties and longer time limitations for crimes of deceptive commercial practices

C. Steven Rarrick, Deputy Attorney General, Consumer Protection Division testified in support of SB 261. The conferee stated that this bill will increase the statute of limitation from two years to five years for deceptive commercial practices. The conferee stated that the second section of SB 261 amends the definitions and penalties contained in K.S.A. 21-4403. The conferee stated that this bill also amends the definition of "sale" to include "lease" and "assignment." The conferee stated that this bill will enhance the penalties for deceptive commercial practices from the current penalty. The conferee stated that the Senate Judiciary Committee amended this bill at page 1, line 41 by replacing the word "trade" with the word "commercial" as offered by the Attorney General. (Attachment 3)

In response to Committee members inquiries, Mr. Rarrick stated that the word "trade" is used in Consumer Protection laws which are a civil proceeding. The conferee stated that this bill is a criminal bill providing for more impact than a civil proceeding when the offender has no money.

The Chair closed the hearing on SB 261.

SB 262: Responsibilities of attorney general in capital murder and hard 40 sentencing proceedings.

David Debenham, Deputy Attorney General testified on behalf of the Attorney General in support of SB 262. The conferee stated that this bill would amend the language of K.S.A. 21-4623, K.S.A. 21-4624 and K.S.A. 21-4623 to specifically include the Attorney General as one of the listed parties having the authority to make the necessary decisions under these statutes. The conferee stated that the amendment to these statutes will lessen the possibility of reversible error in a sentence of death. (Attachment 4)

In response to Committee members questions, Mr. Debenham stated that this bill would apply only upon request from a county or district attorney who specifically requested that the Attorney General's office be a lead party to an action.

The conferee also stated in response to a Committee member's inquiry that this bill would give authority to the Attorney General to file notice of intent to request the death penalty even if the local prosecutor did not choose to do so.

The Chair closed the hearing on SB 262.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on March 17, 1997.

SB 263:                    Prosecution's right to discovery and inspection of materials to be produced at any hearing.

David Debenham, Deputy Attorney General testified on behalf of the Attorney General in support of SB 263. The conferee stated that this bill would amend K.S.A. 22-3212 to specifically provide for reciprocal discovery by the state of scientific or medical reports, books, papers, documents or tangible objects which the defendant intends to produce at any hearing. The conferee stated that this would allow for prosecutors to be better prepared particularly when it comes to expert witness testimony. The conferee stated that this would apply in limited situations in which the defendant intends to produce this type of material at any hearing. (Attachment 5)

The Chair closed the hearing on SB 263.

SB 264:                    Assistance of counsel for persons convicted of capital murder.

David Debenham, Deputy Attorney General testified on behalf of Attorney General Stovall in support of SB 264. The conferee stated that this bill addresses an issue which has arisen out of the Antiterrorism and Effective Death Penalty Act of 1996. The conferee stated that this legislation will provide for timely review of capital penalty cases while protecting, if not adding protection, to the rights of the accused. (Attachment 6)

The Chair closed the hearing on SB 264.

The Chair told the Committee members of the items to be considered at future Committee meeting.

The Chair adjourned the meeting at 4:55 p.m.

The next meeting is scheduled for March 18, 1997.



State of Kansas

## Office of the Attorney General

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

CARLA J. STOVALL  
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215  
FAX: 296-6296  
TTY: 291-3767

HOUSE COMMITTEE ON JUDICIARY  
ASSISTANT ATTORNEY GENERAL KELLY FEYH'S  
TESTIMONY IN SUPPORT OF  
SENATE BILL NO. 291  
March 17, 1997

Mr. Chairman, members of the committee, thank you for this opportunity to testify in support of these two bills.

On April 4, 1996, the United States Department of Justice issued final rules and regulations for the implementation of the Jacob Wetterling Crimes Against Children and Sexually Violent Predator Act, 42 U.S.C. § 14071. The Wetterling Act mandates the establishment of state registration systems for certain enumerated offenders by September 13, 1997. States that have failed to achieve compliance with the federal rules and regulations by that time will face a ten percent reduction in their federal Byrne Grant funding.

On December 10, 1996, I testified before the Interim Special Committee on Judiciary regarding the changes that my office felt were necessary to bring the State of Kansas into compliance with the Wetterling Act. The Special Committee on Judiciary requested that the Revisor of Statutes draft a bill which would reflect the necessary changes. Senate Bill 291 is the product of that request.

Senate Bill 291 amends the Kansas Sex Offender Registration Act, K.S.A. 22-4901 *et seq.*, in several significant ways: 1. It expands the number of crimes for which registration is applicable; 2. It places a duty upon the sentencing court or prison officials to affirmatively collect registrant information; 3. It requires address verification checks to be conducted by the Kansas Bureau of Investigation every ninety days; 4. It expands registrant information to include documentation of any treatment received for a mental abnormality or personality disorder; 5. It places a mandatory ten year registration requirement on all enumerated offenders; 6. It places a duty upon a person convicted of a second or subsequent "sexually violent offense" to show that he/she has been rehabilitated and does not suffer from a mental abnormality or personality disorder that would make him/her likely to engage in a predatory sexually violent crime in order to be relieved from the duty to register after ten years; 7. It calls for a board of experts in the behavior and treatment of sexual offenders to assist in the above determination and requires the

House Judiciary  
Attachment 1  
3/17/97

Attorney General to promulgate rules and regulations pertaining to the said board; 8. It requires the sentencing court, rather than the court where the offender currently resides, to entertain any relief applications; and 9. It allows for the confidentiality of victim information.

Senate Bill 291 also incorporates Senate Bill 311 which is a product of Attorney General Stovall's C.A.M.P.U.S. Task Force. It would expand the Kansas Sex Offender Registration Act, K.S.A. 22-4901 *et seq.* to require the registration of those convicted of capital murder, murder in the first degree, murder in the second degree, voluntary manslaughter and involuntary manslaughter. The Task Force believes that awareness is an essential tool in addressing public safety concerns. To the extent that the public is aware of offenders living within their communities, they are able to take the measures needed to increase their personal safety. Registration also provides law enforcement officers with a current data base reflecting the criminal history, identification and present location of known criminals within their communities.

I would appreciate your support of these bills. Thank you.

#2

SB 291  
Judiciary Committee  
Testimony by Scott Curry  
March 5, 1996  
Opponent

Chairman Carmody, Members:

I am opposed to S.B. 291, as currently drafted.

According to this bill, any person engaging in consensual sex with a person of the same gender is, by definition, guilty of committing a sexually violent crime. If this bill is passed, gay men and lesbians in the state of Kansas will no longer be the ordinary criminals that they are today, but will be sexually *violent* criminals.<sup>1</sup>

There is no proof available anywhere that gay men and lesbians are, by virtue of their sexuality, violent. To allow this definition to stand is nothing less than intellectual dishonesty. I trust the House Judiciary Committee will remove the Senate's oversight.

Unfortunately, the bill does not stop with this one oversight. It goes on to state that two persons of the same gender who simply *discuss the possibility* of consensual sex will also be known as sexually violent offenders.<sup>2</sup>

Again, if this result is the intent of the legislature, it is an exercise in intellectual dishonesty given the complete lack of legal, sociological or psychological evidence supportive of the supposition that gay men and lesbians are violent.

For the purposes of analysis, I will ignore for the moment that whoever wrote this bill forgot to check current law. K.S.A. 21-3301a, 21-3302a and 21-3303a were all three repealed in 1994. I trust this bill is the result of sloppy drafting and not based on an intent to discriminate against lesbians and gay men.

---

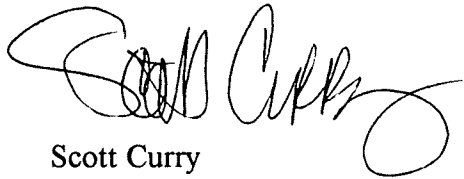
<sup>1</sup> Line 23 on page 1 of S.B. 291 states that an "offender" means a sex offender as defined in subsection (b). Lines 7-9 on page 2 state that a sex offender includes any person who, after the effective date of this act, is convicted of any sexually violent crime set forth in subsection (c). Lines 17, and 25-26 on page 2 state that a "Sexually violent crime" means criminal sodomy as defined in K.S.A.21-3505 and amendments thereto.

<sup>2</sup> Line 38 on page 1 of S.B. 291 states that an attempt, conspiracy or criminal solicitation under K.S.A. 21-3301a, 21-3302a or 21-3303a an "offense". Line 5-7 on page 3 makes the act of planning consensual sex between two persons of the same gender a "sexually violent crime". Line 30-33, page 3 puts the two together, making those of the same gender who plan consensual sex "sexually violent offenders".

House Judiciary  
Attachment 2  
3/17/97

However, if my presumption is incorrect, I would like to remind the committee that International Law has held that discrimination based on a sodomy statute such as K.S.A. 21-3505 is a violation of human rights.<sup>3</sup> Currently, a case which occurred in Topeka<sup>4</sup> is making its way up through the courts to test the constitutionality of K.S.A. 21-3505<sup>5</sup>. It is my belief that the 14th Amendment will not allow the unequal application of the law to gays and lesbians mandated by S.B. 291.

Assuming my belief is wrong, assuming that a portion of this bills intent is to discriminate against gay men and lesbians, wouldn't it be simpler for S.B.291 to just state that citizens have the right to know where fags live? This, at least, would be intellectually honest.<sup>6</sup>



Scott Curry  
1221 N. Waco  
Wichita, KS 67203  
(31 6) 267-8634

---

<sup>3</sup> Nicholas Toonen v. Australia, U.N. Hum. Rts. Comm., No. 488, U.N. Doc. CCPR/c/50/D/488/1992 (1994).

<sup>4</sup> City of Topeka v. Max D. Movsovitz, No. 96-77372-A (KS App. 1996)

<sup>5</sup> Bowers v. Hardwick, 478 U.S. 186, 106 S.Ct. 2841, 92 L.Ed.2d 140 (1986), is distinguishable. The U.S. Supreme Court, deciding five to four that sodomy statutes were constitutional, was not faced with a sodomy statute which dealt solely with gays and lesbians. The Georgia statute, unlike K.S.A. 21-3505, dealt with both same-gender and heterosexual sodomy.

<sup>6</sup> See line 23, page 2 of S.B. 291. By intentionally removing specific references to subsections (a)(2) and (a)(3) of K.S.A. 21-3505, subsection (a)(1), dealing with consensual same-gender sex, was included in the bill.

#3



CARLA J. STOVALL  
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General

CONSUMER PROTECTION DIVISION

301 S.W. 10TH, LOWER LEVEL, TOPEKA 66612-1597  
PHONE: (913) 296-3751 FAX: 291-3699 TTY: 291-3767

CONSUMER HOTLINE  
1-800-432-2310

Testimony of  
C. Steven Rarrick, Deputy Attorney General  
Consumer Protection Division  
Office of Attorney General Carla J. Stovall  
Before the House Judiciary Committee  
RE: SB 261  
March 17, 1997

Chairperson Carmody and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of Attorney General Carla J. Stovall to testify in support of Senate Bill 261. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

The Attorney General has proposed the amendments to K.S.A. 21-3106 and K.S.A. 21-4403 which are contained in SB 261. SB 261 relates to the crime of deceptive commercial practice.

The first section of this bill would increase the statute of limitations for this crime from two years to five years. The Consumer Protection Division receives many consumer complaints which could be referred for criminal prosecution under this statute but for the fact the two-year statute of limitations has already expired. This is especially true in complaints involving elderly victims, which are often brought to our attention by family and friends rather than by the victims. We believe extending the statute of limitations will allow prosecutors to file charges in more of these cases.

The second section of SB 261 amends the definitions and penalties contained in K.S.A. 21-4403. First, the definition of a deceptive commercial practice would be amended to include the knowing "omission" of a material fact. We believe the omission of a material fact, with the required intent, is just as damaging to victims as is an affirmative misrepresentation of a material fact. For example, if a person knows a piece of real estate has been determined to contain toxic waste by federal and state officials, yet knowingly fails to disclose this fact to the purchaser, the damage to the purchaser is the same as if the person had knowingly misrepresented the condition of the property.

The bill would also amend the definition of "sale" to include "lease" and "assignment." We believe these transactions should be included in the definition due to the prevalence of leases and assignments in consumer transactions.

House Judiciary  
Attachment 3  
3/17/97



Next, the bill would enhance the penalties for deceptive commercial practices from the current penalty, a class B nonperson misdemeanor, in order to make the punishment fit the crime. Values less than \$500 would constitute class A nonperson misdemeanors, values from \$500 to \$25,000 would constitute severity level 9, nonperson felonies, and values of \$25,000 or more would constitute severity level 7, nonperson felonies.

The amendment by the Senate Judiciary at page 1, line 41 of the bill (replacing the word "trade" with the word "commercial)," was offered by the Attorney General to correctly refer to the crime of deceptive commercial practice under K.S.A. 21-4403.

Finally, the bill would give the Attorney General concurrent jurisdiction with county and district attorneys. We believe this bill would provide the Attorney General and county and district attorneys with enhanced tools to fight financial crimes.

On behalf of Attorney General Stovall, I urge your favorable consideration of Senate Bill 261. Thank you.



State of Kansas

## Office of the Attorney General

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

CARLA J. STOVALL  
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215  
FAX: 296-6296  
TTY: 291-3767

STATEMENT OF  
DEPUTY ATTORNEY GENERAL DAVID B. DEBENHAM  
BEFORE THE HOUSE JUDICIARY COMMITTEE  
RE: SENATE BILL 262  
MARCH 17, 1997

Mr. Chairman and Members of the Committee:

I appear before you today on behalf of Attorney General Carla J. Stovall, to ask for your support of Senate Bill 262. This bill would amend the language of K.S.A. 21-4623, K.S.A. 21-4624 and K.S.A. 21-4633 to specifically include the Attorney General as one of the listed parties having the authority to make the necessary decisions under these statutes.

K.S.A. 21-4623 provides for a request to be made to the court to determine if the defendant is mentally retarded, after the defendant has been convicted of capital murder, when there has been a notice of intent filed by the county or district attorney requesting a separate sentencing hearing to determine whether the defendant should be sentenced to death.

K.S.A. 21-4624 requires the county or district attorney to file a written notice if such attorney intends to seek a separate sentencing hearing to determine whether the defendant should be sentenced to death.

K.S.A. 21-4633 allows the county or district attorney to seek a mandatory sentence of 40 years imprisonment, when a court has authorized the prosecution of a juvenile as an adult.

None of these statutes specifically mention the Attorney General as one of the parties having the necessary authority to make the specific decisions delineated within these statutes. It is the position of the Attorney General, that as the chief law enforcement officer of the State of Kansas, the Attorney General has concurrent legal jurisdiction as to any criminal offense arising under the laws of the State of Kansas. However, this question has never been specifically addressed and resolved by the Kansas Supreme Court.

Since the reinstatement of the death penalty in the State of Kansas, the Office of the Attorney

House Judiciary  
Attachment 4  
3/17/97

Page 2

General has been consulted and provided assistance to the county and district attorneys in the form of additional investigative expertise, legal advise and technical support in the vast majority of these cases. Additionally, the Office of the Attorney General has become directly involved in the direct prosecution of four different death penalty cases.

In order to avoid any type of technical error, which could possibly lead to a reversal of a conviction, when it is time to file a written notice of intent to seek a separate sentencing hearing to determine whether the defendant should be sentenced to death, the Attorney General has required the county or district attorney to sign the written notice. This has been required even in those cases where the Attorney General has taken over the case as the lead prosecutor.

The amendment of these statutes to specifically include the Attorney General as an authorized party, will avoid any possibility of error which could lead to the reversal of a criminal conviction or sentence of death.

On behalf of Attorney General Stovall, I would urge your favorable consideration of Senate Bill 262.



State of Kansas

## Office of the Attorney General

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

CARLA J. STOVALL  
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215  
FAX: 296-6296  
TTY: 291-3767

STATEMENT OF  
DEPUTY ATTORNEY GENERAL DAVID B. DEBENHAM  
BEFORE THE HOUSE JUDICIARY COMMITTEE  
RE: SENATE BILL 263  
MARCH 17, 1997

Mr. Chairman and Members of the Committee:

I appear before you today on behalf of Attorney General Carla J. Stovall, to ask for your support of Senate Bill 263. This bill would amend the language of K.S.A. 22-3212 to specifically provide for reciprocal discovery by the state of scientific or medical reports, books, papers, documents or tangible objects which the defendant intends to produce at any hearing.

As the criminal discovery statutes are now written, this material is to be made available to the state only when the defendant intends to produce the material at the trial stage of a criminal case. The amendment to the statute would provide for the discovery of this material if the defendant intends to introduce this material at any hearing and not just the trial of the matter.

Recently the Office of the Attorney General was advised, in a criminal case the office was handling, that the defendant intended to have a psychiatrist testify at a motion to suppress hearing. The purpose of the hearing was to attempt to have the court suppress the defendant's confession, thus making this evidence unavailable to the state for use at the trial of the matter.

The Office of the Attorney General filed a request with the court asking for discovery of any reports that the psychiatrist had made and intended to use in his testimony at this hearing. The request was opposed by the defendant's counsel. The court ruled that the state was not entitled to this material because the expert witness was not testifying at trial and the statute did not require reciprocal discovery at any hearing other than the trial of the case.

In this situation, the state was faced with trying to cross-examine an expert witness without the basis of having reviewed the experts' underlying rationale for his opinion, prior to the witness's actual testimony at the hearing. The result of the court's ruling was to leave the state in a position of being ambushed and unprepared to rebut the expert's testimony.

House Judiciary  
Attachment 5  
3/17/97

Page 2

This amendment does not allow for wholesale discovery by the state of the defendant's case or witnesses. It would only apply to those limited situations in which the defendant intends to produce this type of material at any hearing, rather than just the trial of the case, as the statute is now written. If the defendant has this material and does not intend to introduce it at such a hearing or even the trial of the case, the state would still not be entitled to the discovery of this material.

On behalf of Attorney General Stovall, I would urge your favorable consideration of Senate Bill 263.



State of Kansas

## Office of the Attorney General

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

CARLA J. STOVALL  
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215  
FAX: 296-6296  
TTY: 291-3767

STATEMENT OF  
DEPUTY ATTORNEY GENERAL DAVID B. DEBENHAM  
BEFORE THE HOUSE JUDICIARY COMMITTEE  
RE: SENATE BILL 264  
MARCH 17, 1997

Mr. Chairman and Members of the Committee:

I appear before you today on behalf of Attorney General Carla J. Stovall, to ask for your support of Senate Bill 264. This bill addresses an issue which has arisen out of the Antiterrorism and Effective Death Penalty Act of 1996, signed into law by President Clinton on April 29th of that year.

In accordance with § 2261 of Title 22 of the United States Code, the state of Kansas is obligated to institute a mechanism for the appointment, compensation and payment of reasonable litigation expenses of competent counsel for those individuals who have been charged, convicted and sentenced to death and who are unable to secure counsel due to their indigence.

The cornerstone of this bill is to assure that trial and post conviction proceedings will be commenced in a timely fashion, additionally assuring the citizens of the state of Kansas that justice has been served in both an adequate and constitutional manner. It is without question that prolonged decisions and repeated appeals from prisoners has fostered a system throughout the United States where justice is served in an unsatisfying manner, particularly with regard to death penalty cases. This legislation is designed to curb these types of problems, which have plagued the judicial process for the better part of 20 years.

The primary issue, with regard to this proposed legislation, is the requirement for the board of indigent defense services to provide, by rule and regulation, standards of competency and qualification for the appointment of counsel in death penalty cases for those unable to secure representation. Such representation will be at both the trial and appellate stages.

Pursuant to these guidelines separate counsel will be appointed at the trial and appellate levels. No trial counsel may represent the defendant on appeal unless both defendant and counsel expressly request continued representation. Various requirements have been established as well

House Judiciary  
Attachment 6  
3/17/97

to determine a defendants need for counsel based upon competency and indigence.

The focus of any death penalty case is primarily on appeal. This legislation is designed to protect the appellant's constitutional rights as well as guarantee qualified counsel at the post conviction stages. Additionally, proper implementation of these guidelines will afford state death penalty cases expedited consideration on collateral review in federal court pursuant to Chapter 28, Section 2254 of the United States Code, the chapter dealing with habeas corpus. In considering such an appeal the federal court will determine whether the State of Kansas is in compliance with section 2261 of chapter 28 of the United States Code. If compliance is found, paramount consideration is given to a death penalty case presented through 28 U.S.C. section 2254, thus allowing for timely disposition of cases that are historically protracted.

In short, this legislation will provide for qualified representation in death penalty cases throughout the state. Kansas is quite clearly at the beginning stages in the area of death penalty cases, and does not face the burdensome concerns that states like California and Texas face with an ever increasing population on death row. Again, this legislation will provide for timely review of capital penalty cases while protecting, if not adding protection, to the rights of the accused. Its central goal is to foster timely adjudication at the appellate level and as Congress has stated to "address the acute problems of unnecessary delay and abuse in capital cases."

On behalf on Attorney General Stovall, I would urge your favorable consideration of Senate Bill 264.