

Approved: 3/10/98
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Carmody at 3:30 p.m. on January 28, 1998 in Room 313--S of the Capitol.

All members were present except: Representative Kline (excused)
Representative Powell (excused)
Representative Mayans (excused)
Representative Ruff (excused)
Representative Adkins (excused)
Representative Wilk (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: Michelle Miller, Johnson County
Roger Tarbutton, Johnson County Counselor
David Brant, Securities Commissioner
Jerry Slaughter, Kansas Medical Society
Robyn Johnson, Kansans for Life
Beatrice Swoopes, Kansas Catholic Conference
Donna Bales, Association of Kansas Hospices
John Carney, Association of Kansas Hospices, Wichita
Harold Riehm, Exec. Director, Kansas Association of
Osteopathic Medicine-Written testimony only

Others attending: See attached list

The Chair called the meeting to order and requested that the Committee members review the minutes for January 21, 1998.

A motion was made Representative Gilmore, second by Representative Dahl to approve the minutes. The motion carries.

The Chair discussed the Family Law and Criminal Law subcommittee assignments and the agenda plans for the subcommittees' reports. The Chair stated that the subcommittee reports with amendments will be worked the third week of February. The Chair announced the rooms available for subcommittee meetings.

Bill introductions:

Michelle Miller, Intergovernmental Relations Coordinator, Johnson County, requested the introduction of a bill to facilitate delinquent personal property tax collections. (Attachment 1)

A motion was made by Representative Mays, second by Representative Wilk to introduce as a committee bill. The motion carries.

The Chair stated that Mr. David Brant, Securities Commission, requested the introduction of a bill. The Chair stated that the bill will adopt changes to the code of evidence that would allow certification by the official custodian of those records, this would only apply to states of the United States and its possessions.

A motion was made by Representative Mays, second by Representative Wilk, to introduce as a committee bill. The motion carries.

Representative Gilmore requested the introduction of a bill that adds language that would require that the parent(s) or legal custodian be given information regarding a child who is a runaway.

A motion was made by Representative Gilmore, second by Representative Shriver to introduce as a committee bill. The motion carries.

The Chair stated that Representative Powell requested the introduction of a bill concerning dual parenting. The Chair stated that the dual parent involvement act would set guidelines to mandate in some cases and encourage in others more active involvement by both parents involved in a divorce.

A motion was made by Representative Carmody, second by Representative Mayans to introduce as a committee bill. The motion carries.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on January 28, 1998.

HB 2531

Prevention of assisted suicide act

Jerry Slaughter, Executive Director, Kansas Medical Society, testified in support of **HB 2531** offering suggestions on the bill. The conferee stated that there is a distinction between curative or comfort care and assisted suicide. The conferee stated that under current law there must be intent to assist a suicide for it to be illegal and that language is appropriate. The conferee stated that a suggested amendment is attached. The conferee stated that there is concern with new sections 5-7 outlining a new cause of action for civil damages in these cases and list individuals who would have standing to bring such an action. The conferee urged restraint in such legislation. (Attachment2)

During Committee discussion with the conferee, the conferee stated that a cause of action already exists, and he was concerned with how the courts will interpret the new cause of action in this bill. The conferee urged that caution should be used when intervening in the patient and family relations these complex situations. The Committee members and conferee also discussed medical protocol and issues dealing with end of life care.

Robyn Johnson, Kansans for Life, testified in support of **HB 2531**. The conferee stated that **HB 2531** will improve the current Kansas law prohibiting assisted suicide by establishing a more detailed legal definition of assisted suicide, providing for injunctive relief, and establishing criminal penalties and civil remedies for violation of the law. (Attachment3)

The Committee members and conferee discussed clarification of assisted suicide, injunctive relief and who it applies to and some drafting problems with the bill.

Beatrice Swoopes, Programs Director, Kansas Catholic Conference, testified in support of **HB 2531**. The conferee stated that this bill would strengthen the current legal definition of assisted suicide and provide injunctive relief for persons who suspect someone is attempting to assist in a suicide. The bill establishes criminal penalties for those violating the law, and provides a cause of action for civil damages. The conferee stated that the Kansas Catholic Conference strongly endorses **HB 2531** on moral grounds and out of respect for human life. (Attachment4)

Donna Bales, Association of Kansas Hospices, testified in support of **HB 2531**. The conferee stated that her Association views this bill as a stop-gap bill that protects Kansans from assisted suicide, while improvements are worked out on end of life care. The conferee stated that her Association is working on measures to alleviate the occasion that would cause a person to ask for assisted suicide. The conferee stated that it is important that the bill retains patient's access to adequate pain management and symptom control. The conferee referred to her written testimony discussing the issue of adequate end of life treatment. (Attachment5)

John Carney, President of Hospice, Wichita, testified in support of **HB 2531**. The conferee stated that he would like to clarify the issue by distinguishing between the increase of dosage of pain medication and assisted suicide. The conferee stated that increasing the dosage of pain medication will not increase the likelihood of a patient dying, but decrease the anxiety associated with the inability to breath when capacity is not there to begin with; therefore, in some cases when increased morphine is administered, there is less likelihood of a patient dying. Many times there are multiple bodily system failures that do not assimilate medication.

The conferee stated that there is a distinction between the definition of health care professional and health care providers. Health care providers may not be licensed professionals, but may in fact be aware of family or others who might be assisting a suicide. The conferee stated that those health care providers who report that possibility of assisted suicide need to be protected..

In response to a question, the conferee stated that he will be glad to provide copies of the court decision on the distinction between administration of medication and withholding medication.

The Chair noted that written testimony was provided by Harold Riehm, Kansas Association of Osteopathic Medicine support the primary purpose of HB 2531, but with reservation regarding language in new section 4 (pages 1-2). (Attachment6)

The Chair stated that the Committee will meet tomorrow and since testimony was concluded today, **HB 2531** will not be heard tomorrow. The Committee will deal with **HB 2604** tomorrow.

The Chair adjourned the meeting at 4:50 p.m.

The next meeting is scheduled for January 29, 1998.

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: January 28, 1998

NAME	REPRESENTING
Susan Briggs	T.I.L.R.C.
Carol Boss	T.I.L.R.C.
Bruce Dimmitt	Kansans For Life
BEATRICE SWOOPES	KS CATHOLIC CONFERENCE
Bolyn Johnson	Kansans For Life
Jason Oldham	OJA
Tom Bruno	Allent Assoc.
Sandy Rogers	Association of Ks Hospices
Donna Bales	Assoc. Ks Hospices
John Carney	ASSO Ks Hospices/Hospice Inc
Rosa Jull	Asst. Comm. on Consumer Johnson County
Merideth Miller	Johnson County
Mary Ann Breib	Voter
(leta M) Remyer	Right to Life of Ks.
Mark Stefford	Bd of Healing Arts
Larrie Ann Brown	KS Govt Consult
Susan Anderson	Hein + wein
Mary Draper	KS Medical Society
Mary Ellen Conlee	via Christi Health System

HOUSE JUDICIARY COMMITTEE
GUEST LIST

DATE: _____

NAME	REPRESENTING
Ann Dunkey	DOB
Ed M. Hazzell	Federal Council
Alex M. Stahl	KILA
Harold Riem	KAOM
James Clark	KCDAA



Johnson County, Kansas

MEMORANDUM

TO: House Judiciary Committee

FROM: Michelle Miller, Intergovernmental Relations Coordinator

RE: Request for Introduction of Committee Bill to Facilitate Delinquent Personal Property Tax Collections

DATE: January 28, 1998

Johnson County respectfully requests of the House Judiciary Committee the introduction of a bill that will close a tax-loophole, provide a vehicle for collection of unpaid property tax, and promote fairness and uniformity in statewide property tax collection efforts. The bill draft that we have attached will create a priority tax lien against personal property and promote secured-creditor status to counties faced with bankruptcy filings.

Last session, and in interim session, Johnson County sought to amend S.B. 108, an oil and gas property tax bill to provide many of the same features as the draft bill before you. However, S.B. 108 proved to be the wrong vehicle for what we'd like to effect, and the Interim Committee on Assessment and Taxation strongly suggested we bring this bill to you, the House Judiciary Committee, for consideration.

We understand that other bills have been introduced in the 1998 session that would be germane to this issue, most notably the Kansas Statutory Lien Act, HB 2606, which in its present form, however, excludes delinquent tax liens. We would hope that while these other bills are

being considered, our ideas for improving the statutory means to collect delinquent property taxes will also be included in those deliberations. In Johnson County alone, approximately \$2.5 million dollars a year in personal property taxes are declared delinquent. While this statutory change will not ensure recoupment of all delinquencies, even a ten percent return would be significant. While there has been a trend to reduce personal property taxes in the past several years, and the tenor of this year's effort is toward tax-relief, Johnson County believes this bill is a worthy effort to promote overall fairness in the tax system, facilitating the collection of delinquent taxes and thereby eliminating the shift of the tax burden to other sectors.

Thank you for taking my testimony and considering the introduction of this bill. As I am not only new to my position, but also this issue, Johnson County Counselor Roger Tarbutton is present today to address the legal aspects of the draft bill. Mr. Tarbutton is responsible for delinquent property tax collections for the County, and is intimately familiar with the issue as the author of the draft bill. While I am happy to stand for questions or comments, I would defer to Mr. Tarbutton any technical questions you might have.



MEMORANDUM

TO: House Judiciary Committee

FROM: Roger L. Tarbutton, Assistant Johnson County Counselor

RE: Personal Property Tax Collections

DATE: January 28, 1998

Thank you for the opportunity to share some of my thoughts concerning this important legislation. I have been involved in the collection of personal property taxes for Johnson County for the past five years. During that period, it has been my observation that although county counselors have an array of statutory tools for the collection of personal property taxes (K. S.A. 79-2109, 79-2110, 79-2111, and 79-2020), unfortunately loopholes still exist. In Johnson County alone, nearly \$5,000,000.00 in delinquent personal property taxes assessed in 1995 and 1996 remain unpaid (approximately a 7% delinquency rate). As a result, taxpayers who do pay personal property taxes subsidize those who do not. It is hoped that the proposed legislation will increase overall personal property tax collections and contribute equity to the tax collection system.

The current statutory framework suffers a major deficiency in that unlike real estate tax liens that attach annually on November 1, none of the existing personal property tax lien statutes provide for the attachment of personal property tax lien on a specific date. Instead, each statute provides for the attachment of a personal property tax lien upon the occurrence of a specific event such as the sale, seizure, or other transfer of the personal property subject to tax. As a result, various loopholes have been asserted by creditors having competing interests in the property. For example, although bankruptcy courts have determined that K. S. A. 79-2020 automatically creates a priority personal property tax lien effective upon the filing of a bankruptcy petition, such liens have been successfully avoided by bankruptcy trustees pursuant to § 545(1)(A) of the bankruptcy code. That section provides for the avoidance of liens against the debtors property that spring into existence immediately upon the filing of bankruptcy as is the case under K. S.A. 79-2020. In re Knights Athletic Goods, Inc., 128 B. R. 679 (1991). As a result, the administrative expense claimants of the bankruptcy estate (e.g., bankruptcy attorneys, etc.) benefit from the lien at the expense of county taxpayers. By providing that personal property tax liens will attach annually as of a specific date, avoidance under § 545(1)(A) should be precluded.

Similar loopholes exist under the current laws wholly independent of bankruptcy. In High Plains Oil v. Nat. City Bank, 22 Kan. App.2d 968 (1996), for instance, the Court of Appeals determined that delinquent personal property taxes could not be collected from the proceeds of a taxpayers personal property sold at a sheriff's sale in the course of a judicial foreclosure proceeding. Despite the fact K. S.A. 79-2109 and K. S. A. 79-2110 provide for the attachment of a personal property tax lien immediately upon the sale of personal property subject to delinquent tax, the court correctly found that these statutes were inapplicable due to the fact each requires that the seller be one and the same as the party against whom the personal property tax was originally assessed. Further, K. S. A. 79-2111 was also determined to be inapplicable due to the fact the sheriff's possession of the property was obtained from the filing of a motion for relief from stay in the taxpayers prior bankruptcy proceeding and not from a seizure by legal process. These issues could have been avoided had a personal property tax lien attached on a specific date.

Thank you again for permitting me to present Johnson County's perspective on the proposed legislation. I will look forward to working with the committee in the future concerning this matter.

1 **Tax lien against personal property; exceptions; collection.**

2 A lien for personal property taxes shall attach to the personal property subject to the same
3 as of the first day of November of the year in which such tax was or should have been
4 assessed, and such lien shall continue until such taxes and penalty, charges and interest
5 which may have accrued thereon, shall be paid by the owner of the property or other
6 person liable to pay the same. Such lien shall be in preference to all other claims against
7 such property. The lien shall remain on the property and any person taking possession of
8 the property does so subject to the lien. If the property is sold in the ordinary course of
9 retail trade it shall not be liable in the hands of the purchasers. No personal property
10 which has been transferred in any manner after it has been assessed shall be liable for the
11 tax in the hands of the transferee after the expiration of three years from the time such tax
12 originally became due and payable. The county treasurer, after receiving knowledge of
13 delinquent personal property taxes, shall issue a tax warrant and the sheriff shall collect
14 them as in other cases.


#2



KANSAS MEDICAL SOCIETY

Date: January 28, 1998

To: House Judiciary Committee

From: Jerry Slaughter
Executive Director 

Subject: HB 2531; concerning assisted suicide

The Kansas Medical Society appreciates the opportunity to appear today as you consider HB 2531, which amends the assisted suicide law. This bill makes it abundantly clear that Kansas does not condone, nor will it tolerate, assisted suicide in any manner, by any person. We would like to offer our comments within the context of how this measure will affect the way care is delivered by physicians to patients at the end of life.

There is probably not a more emotionally wrenching, clinically frustrating medical situation than care at the end of life. Frequently, the clinical choices involve balancing treatment options that are less than ideal, and do not hold the promise of full, if any, recovery. Often it is difficult to achieve consensus among family members on how to proceed. It is not uncommon for the patient to be incapacitated and incapable of making medical decisions for themselves. Physicians struggle to find direction and clarity in situations where legal, moral, cultural, familial, and ethical considerations collide. In short, the issues surrounding end of life care are complex. They are not reducible to simple answers or sweeping generalizations.

The issue before you today is limited to assisted suicide, which must not be confused with curative or comfort care that is provided near or at the end of life. Assisted suicide implies *intent* to end a life, either on the part of the patient, or the patient's physician. It is a far cry from trying to cure or provide comfort care as a person goes through the dying process. KMS has adopted some principles which are intended to guide physicians in who care for patients in the dying process. Those principles are:

- physician assisted suicide is fundamentally inconsistent with the physician's professional role as a healer;
- the principle of patient autonomy requires that physicians must respect the decision to forgo life-sustaining treatment by patients who possess decision-making capacity;
- there is no ethical distinction between withdrawing and withholding life-sustaining treatment at the patient's request;
- physicians who care for patients with terminal illnesses should seek to educate themselves about advanced pain management techniques;

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- physicians have an obligation to relieve pain and suffering and to promote the dignity and autonomy of dying patients in their care, including providing palliative treatment even though it may potentially hasten death.

As to the bill before you, we have a couple of suggestions. Under the current statute there must be intent to assist a suicide for it to be illegal. We believe that is an appropriate standard which should be a part of the proposed language. Particularly because of situations in which physicians prescribe pain medications to dying patients. These medications can have the dual effect of controlling pain, yet slowing respiration and potentially hastening death. As long as the physician's intent is to cure the patient, or control pain and provide comfort care, he or she should not inadvertently violate the assisted suicide act. We have attached a suggested amendment which would re-insert the concept of intent into the bill.

Additionally, new sections 5 - 7 outline a new cause of action for civil damages in these cases, and list individuals who would have standing to bring such an action. While we are unsure of the full impact of these sections, we do have some questions. We are concerned that the unintended result could be more intrusion into the already complicated clinical situation involving the dying patient. Does this new language start to drive a legal wedge between family members who may not agree on the best course of action for a loved one? Will it make it difficult for physicians to aggressively treat pain in dying patients because a family member believes a physician is "about to violate" this act, and seeks an injunction to prevent the administration of powerful pain medications that could have the dual effect of hastening death? Obviously, this is not the intent of these sections, but we have questions about how it will be interpreted by the courts in the future.

Our plea to you is to be cautious in legislative intervention in this area because of the unintended effect it may have on care provided those going through the dying process. Please do not tie the hands of physicians, or patients, in accessing optimal curative or comfort care in end of life situations. Decisions on care at the end of life should be made by the patient and family in consultation with their physicians and other family advisors or counselors. We should strive to minimize intrusions which further complicate an already difficult situation.

Thank you for considering our comments.

with the intent

1 ministered, prescribed or dispensed to cause death.

2 (b) Withholding or withdrawal of a life-sustaining procedure does not
3 violate K.S.A. 21-3406 and amendments thereto.

4 New Sec. 5. (a) A cause of action for injunctive relief may be main-
5 tained against any person who is reasonably believed to be about to violate
6 or who is in the course of violating K.S.A. 21-3406 and amendments
7 thereto by any person who is:

8 (1) The spouse, parent, child or sibling of the person who would
9 commit suicide.

10 (2) Entitle to inherit from the person who would commit suicide.

11 (3) A health care provider of the person who would commit suicide.

12 (4) A public official with appropriate jurisdiction to prosecute or en-
13 force the laws of this state.

14 New Sec. 6. A cause of action for civil damages against any person
15 who violates or who attempts to violate K.S.A. 21-3406 and amendments
16 thereto may be maintained by any person given standing by section 5 and
17 amendments thereto for compensatory damages and exemplary damages,
18 whether or not the plaintiff consented to or had prior knowledge of the
19 violation or attempt.

20 New Sec. 7. Reasonable attorney fees shall be awarded to the pre-
21 vailing plaintiff in a civil action brought pursuant to section 5 or 6 and
22 amendments thereto, or in a proceeding for a judgment of contempt of
23 court for violating an injunction issued under section 5 and amendments
24 thereto. If the defendant prevails, and the court determines that a plaintiff
25 brought the suit or the proceeding for a judgment of contempt frivolously
26 or in bad faith, reasonable attorney fees shall be awarded to the defend-
27 ant.

28 Sec. 8. K.S.A. 1996 Supp. 65-1120 is hereby amended to read as
29 follows: 65-1120. (a) *Grounds for disciplinary actions.* The board may
30 deny, revoke, limit or suspend any license, certificate of qualification or
31 authorization to practice nursing as a registered professional nurse, as a
32 licensed practical nurse, as an advanced registered nurse practitioner or
33 as a registered nurse anesthetist that is issued by the board or applied for
34 under this act or may publicly or privately censure a licensee or holder
35 of a certificate of qualification or authorization, if the applicant, licensee
36 or holder of a certificate of qualification or authorization is found after
37 hearing:

38 (1) To be guilty of fraud or deceit in practicing nursing or in procuring
39 or attempting to procure a license to practice nursing;

40 (2) to have been guilty of a felony or to have been guilty of a mis-
41 demeanor involving an illegal drug offense, if the board determines, after
42 investigation, that such person has not been sufficiently rehabilitated to
43 warrant the public trust;

HOUSE BILL No. 2531

By Committee on Calendar and Printing

3-14

9 AN ACT enacting the prevention of assisted suicide act; concerning the
10 assisting of suicide; providing criminal penalties; providing civil rem-
11 edy; providing injunctive relief; amending K.S.A. 21-3406, 65-2006 and
12 65-2896b and K.S.A. 1996 Supp. 65-1120, 65-1436, 65-1627 and 65-
13 2836 and repealing the existing sections.
14

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

16 New Section 1. Sections 1, 2, 4, 5, 6, 7 and 14, and amendments
17 thereto, shall be known and may be cited as the "prevention of assisting
18 suicide act."

19 New Sec. 2. As used in this act:

20 (a) "Licensed health care professional" means a person licensed to
21 practice medicine and surgery, licensed podiatrist, registered physician
22 assistant, licensed nurse, dentist or licensed pharmacist.

23 (b) "Suicide" means the act or instance of taking one's own life vol-
24 untarily and intentionally.

25 Sec. 3. K.S.A. 21-3406 is hereby amended to read as follows: 21-
26 3406. Assisting suicide is ~~intentionally advising, encouraging or assisting~~
27 ~~another in the taking of the other's life which results in a suicide or~~
28 ~~attempted suicide. Assisting suicide is a severity level 9, person felony:~~

29 (1) *Knowingly by force or duress causing another person to commit*
30 *or to attempt to commit suicide, or;*

31 (2) *with the purpose of assisting another person to commit or to at-*
32 *tempt to commit suicide, knowingly either:*

33 (A) *Providing the physical means by which another person commits*
34 *or attempts to commit suicide, or*

35 (B) *participating in a physical act by which another person commits*
36 *or attempts to commit suicide.*

37 *Assisting suicide under (1) is a severity level 3, person felony. Assisting*
38 *suicide under (2) is a severity level 9, person felony.*

39 New Sec. 4. (a) A health care professional who administers, pre-
40 scribes or dispenses medications or procedures to relieve another person's
41 pain or discomfort, even if the medication or procedure may hasten or
42 increase the risk of death, does not violate K.S.A. 21-3406 and amend-
43 ments thereto unless the medications or procedures are knowingly ad-

intent and

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(12) Chapters



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**IN SUPPORT OF H.B. 2531,
THE PREVENTION OF ASSISTED SUICIDE ACT**

by Robyn Johnson, Legislative Director, Kansas For Life, Inc.
Kansas House Judiciary Committee, January 28, 1998

Mr. Chairman, members of the Committee, good afternoon. Thank you for the opportunity to come before you today. My name is Robyn Johnson. I am the Legislative Director for Kansas For Life, the state's largest single-issue pro-life organization with 75 local chapters and over 100,000 members.

While most members of this committee are familiar with our efforts to pass laws which protect women and the unborn, it is also the mission of Kansas For Life to support public policy which protects the right to life of the chronically ill, the disabled, the elderly and the terminally ill.

That is why I appreciate the opportunity and it is my pleasure to testify in support of H.B. 2531, the Prevention of assisted Suicide Act. Kansas For Life exists to promote the sanctity of human life in all its stages from conception through natural death and to protect the right to life of all innocent human beings from the threats of abortion, infanticide and euthanasia.

For the past eight years, in the state of Michigan, Dr. Jack Kevorkian has helped seventy-six people to die. Fifty-five of them female.

Twenty-five persons were suffering from cancer, twenty from Multiple Sclerosis, eleven from A L S, one from AIDS, one from Emphysema and one from Alzheimer's Disease. The other cases involved various complaints.

Most recently, in 1996, Dr. Kevorkian helped eighteen people die, and just last year, in 1997 he helped twenty-eight people to die.

Jack Kevorkian helps people die in Michigan. Assisted suicide is illegal in Michigan. Jack Kevorkian has been arrested numerous times for this offense. He has been through a series of trials in a court of law but juries fail to convict him.



Kansas affiliate to the National Right to Life Committee

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Legal experts believe the reason Dr. Kevorkian continues to break the law and go unpunished is do to the lack of civil remedies in Michigan's assisted suicide statute. Criminal penalties alone have failed to deter and punish Jack Kevorkian for his involvement in the killing of innocent people.

Assisted suicide is illegal in Kansas. There are criminal penalties for infringement of K.S.A. 21-3406 but currently no civil remedies exist.

Kansans For Life is thankful for the wisdom of Kansas lawmakers who are responsible for the state's current law prohibiting assisted suicide and for physicians who abide by the statute and their oath to uphold the sanctity of human life.

H.B. 2531 will improve the current Kansas law prohibiting assisted suicide by establishing a more detailed legal definition of assisted suicide, providing for injunctive relief, and establishing criminal penalties and civil remedies for violation of the law.

H.B. 2531 will better protect the lives of thousands of vulnerable people in Kansas who suffer from painful illness, disability, depression, and the natural effects of old age. It will prevent someone like Jack Kevorkian from helping people to die in Kansas.

Kansans For Life urges the members of the House Judiciary Committee to pass H.B. 2531 the Prevention of Assisted Suicide Act and continue to uphold and improve the Kansas tradition of preventing assisted suicide in our state.

#4

TESTIMONY

H.B. 2531

HOUSE JUDICIARY COMMITTEE

Wednesday, January 28, 1998 – 3:30 p.m. – Room 519-S

KANSAS CATHOLIC CONFERENCE

Beatrice E. Swoopes, Programs Director

Chairman Carmody, members of the Judiciary Committee – my name is Beatrice Swoopes, Programs Director of the Kansas Catholic Conference, which represents the Roman Catholic Bishops of Kansas. Thank you for the opportunity to speak to the provisions of **H.B. 2531** – the prevention of assisted suicide act.

This bill would strengthen the current legal definition of assisted suicide, and provide injunctive relief for persons who suspect someone is attempting to assist in a suicide. The bill establishes criminal penalties for those violating the law, and provides a cause of action for civil damages.

The Kansas Catholic Conference strongly endorses **H.B. 2531**.

The Catholic Church teaches a reverence and respect for human life from the moment of conception to natural death. We value life as a gift from God, the decision to end life is not ours.

There is a difference between allowing death and assisting it. That is why the Bishops of Kansas several years ago created the "Declaration of a Catholic on Life and Death" – A Living Will, that allows death without using extraordinary

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means to sustain life. The Prologue* of that document further explains the significance that death and suffering have in our journey of life.

The subjects of assisted suicide and euthanasia are extremely complex. Legalizing either would only compound the problems, and add to the prevailing lack of respect for human life that permeates our society today. Our energy would be better spent in providing means to adequate pain relief, hospice care for the terminally ill and dying, and education that would enable a better understanding of suffering and the part it plays in this great mystery of life and death.

We applaud you, our Kansas legislators, for keeping our state among the many that still ban assisted suicide. Suicide is morally wrong, and assisted suicide is an aberration of the concept of compassion. Passage of **H.B. 2531** will further strengthen that conviction.

*"Declaration of a Catholic on Life & Death" attached

#5
January 28, 1998

Testimony by the Association of Kansas Hospices

HB2531: A bill related to physician assisted suicide

The Association of Kansas Hospices supports the bill as it currently reads. The law exist to prevent assisted suicide. The Association of Kansas hospices supports legislation, however, that will assist Kansans in accessing quality care at the end of life. There are a number of initiatives that our organization is currently studying, and AKH expects to continue to advocate for all Kansans at the end of life. Hospice has set the standard for excellence in care of the dying. Many authorities, notably the Institute of Medicine of the National Academy of Sciences, have supported the hospice approach and advocated extending it more widely throughout the medical system. However, barriers exist to improving care of the dying. AKH views HB2531 as a stop-gap bill that protects Kansans from assisted suicide while more effective care at the end of life continues to emerge.

The public debate over physician-assisted suicide has helped focus attention on the plight of the dying in the US and on shortcomings in end of life care. AKH believes that the vast majority of persons who might seek assistance in dying results from lack of awareness and open access to excellent hospice and palliative care. Widespread anecdotal evidence in hospice and palliative care indicate that good end of life care resolves many of the pressures that lead to requests for aid in dying. AKH believes that it is critical to address these barriers to adequate pain management and appropriate end of life care.

It is important to note that the bill retains patient access to adequate pain management and symptom control as well as to advance directives regarding end of life care. AKH will continue to

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work within the state to educate the public about hospice and palliative care, to identify and work to remove barriers to quality care at the end of life, and to speak as advocate for all Kansans at the end of life. To these ends, AKH pledges its continuing time, energy and resources.

Kansans Should Have Access to Quality Care at the End of Life

The experience of dying, for far too many Americans, does not go well. A major four year study, funded by the Robert Wood Johnson Foundation, began in 1989. *The Study to Understand Prognosis and Preferences for Outcomes and Risks of Treatment* became known as the SUPPORT study. The study discovered, in short, that many patients died in considerable pain, without their health care wishes being known to their physicians and with family finances depleted. The Institute of Medicine has cited a variety of studies indicating that 40 to 80 percent of terminally ill patients receive inadequate medication for their pain.

The truth of the findings of the SUPPORT study have become more clear to Americans. The study demonstrated the experience of many Americans and provided “whispers” of the need to improve care at the end of life. More recently, our society has sounded “screams” for help for quality care at the end of life. The debate on physician assisted suicide highlights our country’s need to more adequately meet the needs of those at the end of life.

Developments: From the growing awareness of need for more quality care at the end of life, a plethora of initiatives and studies are appearing across the country.

* The state of New York recently named a “Commission on Quality Care at the End of Life.”

* The state of Maryland has begun a four year project to address end of life care.

* Twenty-one state legislatures, during the past year alone, have considered bills dealing with pain treatment for terminally ill patients.

* Texas and Minnesota enacted laws that address pain medications for those at the end of life.

* South Dakota required medical schools to teach students about hospice care and pain management.

* The American Medical Association adopted a dying patients bill of rights, created an Institute of Ethics to address issues in end of life care, and has called for increased physician education on pain management and end of life care.

* Six Catholic Healthcare Organizations have joined in a "Coalition for Compassionate Care" at the end of life.

* Rosalyn Carter has become spokeswoman for "Last Acts" to create consumer awareness and savvy regarding end of life care.

* The Project on Death in America is focused on addressing end of life care.

* The Robert Wood Johnson Foundation has earmarked 12 million dollars for "Promoting Excellence in End of Life Care."

Opportunity:

Americans are coming more fully to terms with the reality that we each, at some point, come to the end of life. Rather than continuing futile treatment OR turning to despair and hopeless, America stands at the threshold of embracing a third, more healthy choice. That choice is the development of quality care at the end of life. More than ever before, there are numerous indicators, like the few mentioned above, that our country is ready to move forward in dealing more adequately, fully and healthily in addressing end of life care. To this discussion, Kansas hospices bring expertise and experience in pain management, symptom control, comprehensive care for both patient and loved ones, bereavement support and care for social and emotional needs of patients and families.

Conclusion:

The Association of Kansas Hospices supports HB2531 as currently written, but will continue to work to secure legislation that improves care for those at the end of life.

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Kansas Association of Osteopathic Medicine

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January 28, 1998

To: Representative Tim Carmody and Members, House Judiciary Committee
From: Harold Riehm, Executive Director, Kansas Association of Osteopathic Medicine
Subject: Comments on House Bill 2531

Thank you for this opportunity to offer a brief comment on HB 2531. KAOM is and has long been opposed to physician assisted suicide. To that extent we support the primary purpose of HB 2531.

We do, however, have a reservation regarding language in New Sec. 4 (pages 1-2). It is our understanding that the Kansas Medical Society may be offering some new language, that would include reference to the "intent" to cause death. Given the importance of the presence or absence of intent in so many of the considerations of patient death in the treatment of pain, we feel that inclusion of this would further define the purpose of the Bill.

We are exceptionally sensitive to concerns of this nature, given the recent conviction of an osteopathic physician in St. Francis, Kansas, on charges of murder and attempted murder. In the attempted murder case, Stan Naramore, D.O., was found guilty in the treatment of a patient suffering severe cancer pain. A consensus of family practice physicians—M.D. and D.O.—have concluded, after careful examination of the records and evidence presented in the case, that Stan Naramore, D.O., did not commit murder. Further, they agree that there was grossly insufficient evidence to suggest that he either attempted to kill his patient, or had an intent to kill his patient.

An appeal of the Naramore conviction will be heard next Tuesday, February 3, by the Kansas Appeals Court. Amicus Briefs in support of Dr. Naramore have been filed by the Kansas Association of Osteopathic Medicine, the Kansas Medical Society, and the American Osteopathic Association.

Numerous medical studies have concluded that severe and intractable cancer pain is undertreated in our society. These studies also reveal that many physicians continue to fear retribution by licensing boards, or the courts should pain relief medication they administer hasten patient death. That exclusion in HB 2531 is important. We feel, however, that use of language of "intent" further strengthens this provision.

We think that the decision reached by the trial court in the Naramore case is one of the great miscarriages of justice in Kansas History. At a time we are attempting to educate physicians in the treatment of intractable pain, a Kansas physician administering pain relief which he felt necessary to reduce patient pain, is charged and convicted of attempted murder.

I will be pleased to share the details of the Naramore case with the committee if you wish.

Thank you for the opportunity to provide you with this information.

House Judiciary
1-28-98
Attachment 6