Approved: March 2, 1999
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Emert at 10:13 a.m. on February 23, 1999 in Room123-S of the Capitol.

All members were present.

Committee staff present:
Gordon Self, Revisor
Mike Heim, Research
Jerry Donaldson, Research
Mary Blair, Secretary

Others attending: see attached list

The minutes of February 22 meeting were approved on a motion by Senator Oleen and seconded by Senator Harrington, carried.

SB 205–an act concerning healing arts; relating to licensure; conviction of certain crimes

Senator Vratil reviewed his subcommittees work done on **SB 205** (attachment 1) Following discussion Senator Vratil moved to adopt an amendment which would allow the Board to grant a license to any person convicted of a felony if the Board finds by clear and convincing evidence that the person will not pose a threat to the public and has been rehabilitated, Senator Harrington seconded, carried. Senator Vratil moved to pass **SB 205** out favorably as amended, Senator Goodwin seconded, carried.

SB 148–an act concerning courts; relating to district magistrate judges; residency requirements

Senator Pugh reviewed his subcommittees work done on **SB 148**. (See 2-18 minutes, attachment 7) During discussion it was determined that the House recently passed out a bill similar to this so there was consensus to let **SB 148** rest and work on the House bill when it passes over to Senate Judiciary.

SB 191–an act concerning school safety and security; relating to the reporting of information regarding specified pupils

SB 203–concerning school safety and security

SB 321–an act concerning pupils; prohibiting withholding of records; relating to suspension or expulsion

Senator Emert reported on work done by an informal committee which gathered together for the purpose of seeking to merge **SB 191** and **SB 321** into **SB 203.** He stated that **SB 203** was sponsored by the Kansas Association of School Boards (KASB) and he described how it amends current law regarding the reporting of any pupil who has engaged in any conduct which may result in serious injury to self or others. (attachment 2) He stated that the committee recommended: reporting should be done 365 days of the year (attachment 3); reinstating the stricken language on page 11; and including addition of the proposed language at lines 36-37, ... "serious injury to self or others." Following discussion, Senator Vratil moved to strike the amendments made to the law on pages 11 and 12, Senator Goodwin seconded, carried.

Senator Goodwin reviewed the amendments in **SB 321** regarding the issue of withholding school records. Following discussion Senator Vratil made a motion to leave the stricken language in the bill, remove all references to weapons and amend the rest of the bill into **SB 203**, Senator Goodwin seconded, carried.

Senator Vratil reviewed **SB 191** and stated that the informal committee recommended eliminating the term "knowledge" and substituting the term "information". He then discussed the amendments to Section 5 of **SB 203** (attachment 4) Following discussion, Senator Vratil moved to adopt the amendments, Senator Goodwin seconded, carried 9-1 with Senator Pugh voting nay. Senator Vratil moved to pass **SB 203** out favorably as amended, Senator Goodwin seconded, carried 9-1 with Senator Pugh voting nay.

SB 165–concerning crimes; relating to capital murder; discovery
SB 297–an act concerning crimes, punishment and criminal procedure; relating to capital murder and the sentence of death

Senator Emert reviewed **SB 165**, a bill sponsored by the Attorney General's Office. Following discussion, Senator Goodwin moved to strike all the language in **SB 165** and substitute **SB 297** (repealer of the death penalty). Senator Petty seconded. Following further discussion, a vote was taken and the motion died, 4-5 with Senator Bond abstaining.

The meeting adjourned at 11:04 a.m. The next scheduled meeting is Tuesday, March 2, 1999.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb 23, 1999

NAME	REPRESENTING
Laurie William	Governor's Office
Chip Wheelen	KS Assn of Osteopathic Med.
Ron Smith	KS Bar Assn
Kevin A Ahlen	KSC
Carla Jones	KSC
Kathy Porter	OJA
JAKE FISHER	WHITNEY/DAMRON
James CLARK	KCDAA
Vicki Lynn Nelson	Division of Budget
Mark Stafford	Bd of Healing Arts
Nancy Lindberg	Atty Gen.
[illegible]	KTLA
Harold Riehm	KS Assn Osteo. Medicine
LARRY BUENING	BD OF HEALING ARTS
Dean Fergon	Visitor
Doris Hager	Visitor

SJ 2-23-99 att 1

Senator Vratil's Judiciary Subcommittee

1. S.B. 205 would amend the healing arts act to mandate that certain felony convictions disqualify individuals from practicing the healing arts.

Conferees

The bill was requested by the Kansas Medical Society, a representative of which supported the bill and offered some further clarifying amendments. Also testifying was a representative of the Kansas State Board of Nursing and the Kansas Association of Osteopathic Medicine. A representative of the Osteopaths suggested an amendment. Representative Gwen Welshimer also appeared and suggested an amendment dealing with naturopathic medicine and licensing.
A representative of the Kansas Board of Healing Arts opposed the bill.

Subcommittee Action

The Subcommittee adopted the amendment suggested by the Kansas Association of Osteopathic Medicine which would allow the Board to grant a license to any person convicted of a felony if the Board finds by clear and convincing evidence that the person will not pose a threat to the public and has been rehabilitated. The Subcommittee recommends S.B. 205 with the suggested amendment for passage by the full Committee.

Sen Jud 2-23-99 att 1

Session of 1999

SENATE BILL No. 205

By Committee on Judiciary

2-2

AN ACT concerning healing arts; relating to licensure; convictions of certain crimes; amending K.S.A. 1998 Supp. 65-2836 and repealing the existing section.

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

Section 1. K.S.A. 1998 Supp. 65-2836 is hereby amended to read as follows: 65-2836. A licensee's license may be revoked, suspended or limited, or the licensee may be publicly or privately censured, or an application for a license, *except in subsection (c)(1) where a person's application for a license shall be denied,* or for reinstatement of a license may be denied upon a finding of the existence of any of the following grounds:

(a) The licensee has committed fraud or misrepresentation in applying for or securing an original, renewal or reinstated license.

(b) The licensee has committed an act of unprofessional or dishonorable conduct or professional incompetency.

(c) The licensee has been convicted of a felony or class A misdemeanor, whether or not related to the practice of the healing arts~~, subject to the following: (1)~~ *In the case of a person with a felony conviction described in K.S.A. 21-3401, subsection (a) of 21-3402, 21-3438, subsection (a)(1), (a)(3) or (a)(4) of 21-3502, 21-3503, 21-3504, 21-3505, 21-3506, 21-3510, 21-3511, 21-3518 or 21-3609 and amendments thereto, an application for original licensure on or after July 1, 1999, shall not be granted; (2) in the case of a person with a felony conviction contained in subsection (a)(1) who applies for renewal or reinstatement of a license first granted prior to July 1, 1999, a license may be granted only pursuant to the provisions of subsections (3)(A) and (3)(B); (3) in the case of a person with any other felony conviction described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, who applies for renewal, reinstatement or original licensure, a license may not be granted unless: (A) The board determines that such person will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust; and (B) such person's application is approved by a two-thirds majority of the board members present and voting on such application.*

(d) The licensee has used fraudulent or false advertisements.

Amendment Requested by the Kansas Association of Osteopathic Medicine

[insert a period]

, based upon clear and convincing evidence,

KMS

KANSAS MEDICAL SOCIETY

February 16, 1999

To: Senate Judiciary Subcommittee

From: Jerry Slaughter
Executive Director

Subject: **SB 205; concerning felony convictions involving licensees of the healing arts**

The Kansas Medical Society appreciates the opportunity to appear today in support of SB 205, which was introduced at our request.

This bill came about as a result of a case involving a physician who several years ago obtained a license to practice in Kansas, even though he had been convicted of a serious felony crime in another state. He subsequently has been charged with another felony due to recent allegations made by patients he has apparently seen in his practice. Currently, a felony conviction is one of the reasons the board of healing arts may deny licensure, but it does not automatically bar a physician from licensure. K.S.A. 65-2836 © gives the board the ability to consider conviction of a felony when deciding whether to grant a license or not.

Frankly, this issue had not ever come up in the deliberations of the various policy making committees or boards of the KMS prior to the recent case. We have always assumed that the licensure process, and the related disclosures that are required as part of the application, would have identified and disqualified applicants who had serious felony convictions in their past. We view the current case as an anomaly; an exception to the rule. Notwithstanding, we also believe that Kansans have a right to expect that when they or their family members seek medical care from a physician, they should do so knowing the state has done everything it reasonably can to assure that the physician warrants the public trust.

There are a couple of key questions associated with this issue. One, is the current law and licensure process adequate to protect the public? Two, should all felony convictions, or just the most egregious ones, be a bar to licensure?

While one could debate whether the current law is adequate, the fact is that the recent case has cast doubt in the minds of the public about the status quo. Quite clearly, at a minimum the bar should be raised for these types of cases. I would expect that the board will be extremely cautious in the future in such situations, which is probably small consolation to those who feel they have been harmed by the board's decision in the current case.

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Western Kansas office • 108 E 12th St. • Hays KS 67601 • 913.625.8215 • 800.293.2363 • FAX 913.625.8234

To us the central issue is whether the law should be changed so that in the future physicians with a felony conviction will be denied licensure. This is a more complex question than it may appear. In the first place, our further research into this issue has shown us that any change will have to recognize that current licensees have certain property rights that must be respected. In other words, a license once issued cannot be taken away without due process (see Kansas Attorney General Opinion No. 97-88). A change in rules today cannot operate to the disadvantage of someone licensed yesterday under different rules. We have attached to our statement an amendment to address this issue in SB 205.

A second aspect of this question is whether licensure should be prohibited for *all* felonies, or should some distinction be made based on the severity of the crime. After considering this issue at length over several months, we came down on the side of distinguishing among felonies, in effect making a "laundry list" of the most egregious crimes. Not that all felony convictions are not serious, but that some felonies are particularly offensive for one who seeks licensure to practice medicine. We decided that several felonies, classified generally as crimes against persons, certain sex offenses, and crimes against children should be automatic disqualifiers for someone making application for licensure. Those crimes are listed in the bill on page 1, lines 27-29, and they include the following: first degree murder, second degree murder, stalking, rape, indecent liberties with a child, aggravated indecent liberties with a child, criminal sodomy, aggravated criminal sodomy, indecent solicitation of a child, aggravated indecent solicitation of a child, aggravated sexual battery and abuse of a child. Under the provisions of the bill with our suggested amendment, two classes of applicants will be excluded from being licensed in Kansas: (1) any applicant for original licensure who has been convicted of one of the specified crimes; and (2) any applicant seeking renewal or reinstatement of an existing license who was convicted of one of the specified crimes after the effective date of the act.

A second subset, all the remaining felony crimes against persons, sex offenses and crimes against family relationships and children contained in articles 34, 35 and 36, are treated differently in the bill. Conviction of one of those crimes *could*, but would not automatically result in loss or denial of licensure. In these instances, in order to assure a higher level of review by the board of healing arts, a process is established whereby: (1) the applicant must convince the board that he or she will not pose a threat to the public, and that the public trust is warranted; and (2) the application must be approved by a two-thirds vote of the board.

The net result of all this is that in the future, conviction of certain serious crimes will disqualify an applicant for licensure as a physician in Kansas. Additionally, for other felony crimes the bar will be raised higher, and licensure will be more difficult, but not impossible. This in effect sets up a higher standard of review, but allows the board of healing arts some discretion to take all the facts and circumstances into consideration prior to issuing a license. There are clearly circumstances in which too rigid a law would be unfair. There are also circumstances in which licensure is just not warranted because of the nature of the crime. We believe this bill strikes a balance between the two, and we urge its adoption. Thank you.

KNCS Amendment
2-16-99

1-5

Session of 1999

SENATE BILL No. 205

By Committee on Judiciary

2-2

AN ACT concerning healing arts; relating to licensure; convictions of certain crimes; amending K.S.A. 1998 Supp. 65-2836 and repealing the existing section.

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

Section 1. K.S.A. 1998 Supp. 65-2836 is hereby amended to read as follows: 65-2836. A licensee's license may be revoked, suspended or limited, or the licensee may be publicly or privately censured, or an application for a license, *except in subsection (c)(1) where a person's application for a license shall be denied,* or for reinstatement of a license may be denied upon a finding of the existence of any of the following grounds:

(a) The licensee has committed fraud or misrepresentation in applying for or securing an original, renewal or reinstated license.

(b) The licensee has committed an act of unprofessional or dishonorable conduct or professional incompetency.

(c) The licensee has been convicted of a felony or class A misdemeanor, whether or not related to the practice of the healing arts, *subject to the following: (1) In the case of a person with a felony conviction described in K.S.A. 21-3401, subsection (a) of 21-3402, 21-3438, subsection (a)(1), (a)(3) or (a)(4) of 21-3502, 21-3503, 21-3504, 21-3505, 21-3506, 21-3510, 21-3511, 21-3518 or 21-3609 and amendments thereto, an application for original licensure on or after July 1, 1999, shall not be granted; (2) in the case of a person* ~~*with a felony conviction contained in subsection (a)(1) who applies for renewal or reinstatement of a license first granted prior to July 1, 1999, a license may be granted only pursuant to the provisions of subsections (3)(A) and (3)(B); (3) in the case of a person with any other felony conviction described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated and amendments thereto,*~~ *who applies for renewal, reinstatement or original licensure, a license may not be granted unless: (A) The board determines that such person will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust; and (B) such person's application is approved by a two-thirds majority of the board members present and voting on such application.*

(d) The licensee has used fraudulent or false advertisements.

who is convicted of a felony contained in subsection (c)(1) prior to the effective date of this act who applies for renewal or reinstatement of a license first granted prior to July 1, 1999, a license may be granted only pursuant to the provisions of subsections (4)(A) and (4)(B); (3) in the case of a person who commits and is convicted of a felony contained in subsection (c)(1) after the effective date of this act who applies for renewal or reinstatement of a license first granted prior to July 1, 1999, a license shall not be granted; (4) in the case of a person with a felony conviction described in articles 34, 35, or 36 of chapter 21 of the Kansas Statutes Annotated and amendments thereto other than those contained in subsection (c)(1),

November 5, 1997

ATTORNEY GENERAL OPINION NO. 97- 88

Patsy Johnson, Executive Administrator
Kansas State Board of Nursing
Landon State Office Building
900 S.W. Jackson, Room 551
Topeka, Kansas 66612-1230

Re: Public Health--Regulation of Nursing; Nurses--Denial, Revocation of License; Prohibition on Licensure of Felons; Retroactivity

Synopsis: Amendments to the Nurse Practice Act stating that no license shall be granted to a certain class of felons apply only to applicants for new licenses after the effective date of the amendment. The class of felonies, however, is not limited by time, and applies to felonies occurring before the effective date of the amendment. This limit on licensure is a rational exercise of the state's police power and is not prohibited by the ex post facto clause of the United States Constitution. Cited herein: K.S.A. 1996 Supp. 65-1120 as amended by 1997 S.B. 14, 4; K.S.A. 65-1117; U.S. Const., Article 1, 10, Amend. XIV.

Dear Ms. Johnson:

As Executive Director for the Kansas State Board of Nursing, you request our opinion regarding amendments to K.S.A. 65-1120 contained in 1997 Senate Bill No. 164. K.S.A.65-1120 sets forth grounds for discipline of nurses and grounds for denial of licenses. Youare concerned with the amendments to subsection (a) which bar licensure of persons withany of the felony convictions specified in article 34 of chapter 21 of the Kansas StatutesAnnotated. As amended the statute now provides, in relevant part:

> "(a) Grounds for disciplinary actions. The board may deny, revoke, limit or suspend any license, certificate of qualification or authorization to practice nursing as a registered professional nurse, as a licensed practical nurse, as an advanced registered nurse practitioner or as a registered nurse anesthetist that is issued by the board or applied for under this act or may publicly or privately censure a licensee or holder of a certificate of qualification or authorization, if the applicant, licensee or holder of a certificate of qualification or authorization is found after hearing:
>
> . . . .
>
> "(2) to have been guilty of a felony or to have been guilty of a misdemeanor involving an illegal drug offense, if the board determines, after investigation, that such person has not been sufficiently rehabilitated involving an illegal drug offense unless the applicant or licensee establishes sufficient rehabilitation to warrant the public trust, except that notwithstanding K.S.A. 74-120 no license, certificate of qualification or authorization to practice nursing as a licensed professional nurse, as a licensed practical nurse, as an advanced registered nurse practitioner or registered nurse anesthetist shall be granted to a person with a felony conviction for a crime against persons as specified in article 34 of chapter 21 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto;"

Before addressing your specific questions, it is necessary to determine the rights of anursing licensee once a license is granted. The Fourteenth Amendment to the UnitedStates Constitution, commonly known as the Due Process Clause, provides that no stateshall "deprive any person of life, liberty, or property, without due process of law."

In order for the Fourteenth Amendment to apply, a nurse would have to have a propertyinterest in his or her license. In Board of Regents v. Roth, 408 U.S. 564, 33 L.Ed.2d 548,92 S.Ct. 2701 (1972) the Court determined:

> "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined. . . .
>
> "Property interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law - rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." Board of Regents v. Roth, 408 U.S. at 577, 33 L.Ed.2d at 561.

In a companion case, the Court elaborated on its definition:

> "A person's interest in a benefit is a 'property' interest for due process purposes if there are . . . rules or mutually explicit understandings that support his claim of entitlement to the benefit. . . ." Perry v. Sindermann, 408 U.S. 593, 601, 33 L.Ed.2d 570, 92 S.Ct. 2694, 2699 (1972).

Whether a license to practice a profession or an occupation falls within the SupremeCourt's expressed definition of property was addressed in Richardson v. Town ofEastover, 922 F.2d 1152 , 1156-1157 (4th Cir. 1991):

> "A license issued by the state which can be suspended or revoked only upon a showing of cause creates a property interest protected by the Fourteenth Amendment. . . . Where a license or similar benefit may be withdrawn at will, however, the holder of the license or benefit has no property interest because he has no legitimate claim of entitlement to something that can be withdrawn at the whim of the grantor. . . .
>
> "While an entitlement is required before a property interest is implicated, the entitlement need not be given explicitly. An entitlement to a renewal may be implied, for instance, from policies, practices and understanding, if state law or other sources support a finding of such an entitlement. . . .
>
> "Similarly, mutual expectations may create an entitlement in a license. For instance, a state-issued license for the continued pursuit of the licensee's livelihood, renewable periodically on the payment of a fee and revocable only for cause, creates a property interest in the licensee."

See also, Kansas Racing Management, Inc. v. Kansas Racing Commission, 244 Kan.342 (1989) (holder of racetrack facility owner license or facility manager license hasproperty right in license); State ex rel. Stephan v. Adam, 243 Kan. 619 (1988) (memberof the bar, licensed to practice law, has property right in license); Brown v. South CarolinaState Board of Education, 391 S.E. 2d 866 (S.C. 1990) (a teacher certificate necessaryfor employment is a protected property interest); Green v. Brantley, 719 F.Supp. 1570(N.D. Ga. 1989) (flight examiner had due process property interest in his Federal AviationAdministration "Certificate of Authority" which afforded means by which he earned hisliving); Medina v. Rudman, 545 F.2d 244 (1st Cir. 1976) (once racing track license isgranted, property right under state law comes into being).

Based upon the structure of the Kansas Nurse Practice Act, we believe a nurse has aproperty right in a nursing license once the nurse receives the nurse's license, certificateof qualification, or authorization to practice. [For convenience sake, we will only addresslicenses in the remainder of this opinion.]

You ask whether the prohibition on licensure of a person with an article 34, chapter 21person felony is limited to felonies occurring after the effective date of the amendments(July 1, 1997), or if it also applies to article 34 person felonies committed before that date.The amendment refers to "a felony conviction." We believe these words are clear andunambiguous, and that no statutory construction is necessary--there is nothing in thisphrase to limit application to new felonies. We believe it applies to all such felonies,whether the felonious act or conviction occurred before or after the effective date of theamendment (July 1, 1997). We do not believe that this constitutes a retrospectiveapplication of the statute (which is not favored at law) because, as will be discussed, webelieve this portion of the amendment only applies to those persons applying for a newlicense after July 1, 1997.

You ask whether the prohibition on granting a license applies to licensees who may berenewing or reinstating a license but have a prior conviction. The Kansas Nurse PracticeAct sets forth procedures nurses must follow to obtain a license and the rights a personhas once that license is obtained. For instance, an applicant for a license to be aprofessional nurse must meet certain requirements and then pass an examination. "Uponsuccessfully passing such examinations the board shall issue to the applicant a license topractice nursing as a registered professional nurse." K.S.A. 65-1115(c)(1). The initialissuance of a license grants to the licensee certain rights, including a property right in thelicense so that it may not be taken away without due process. See, e.g., State ex. rel.Stephan v. Smith, 242 Kan. 336 (1987).

Under the statutory scheme, so long as a nurse continues to meet certain requirements,including "the requirements set forth in K.S.A. 65-1115 or 65-1116 and amendmentsthereto in effect at the time of initial licensure of the applicant" the nurse receives a"renewal license" K.S.A. 65-1117(a). Reinstatement of a lapsed license is different,however. The nurse must essentially furnish "proof that the applicant is competent andqualified." K.S.A. 65-1117(b)

The issue is whether the words in the amendment "no license . . . shall be granted" referto just the initial issuance of the license or renewals also. Because a license becomes atype of property right once issued, we believe that a "renewal license" is somethingdifferent from the issuance of the initial license. Black's Law Dictionary defines "grant" asfollows:

> "To bestow; to confer upon some one other than the person or entity which makes the grant. . . . Transfer of property real or personal by deed or writing. . . . To give or permit as a right or privilege. . . ." Black's Law Dictionary 700 (6th ed. 1990) .

We believe that the initial issuance of a license is legally a "grant" of a license and certainproperty rights. A renewal cannot be considered a grant of a license because a renewalis essentially a continuation of the property interest which has already been granted. Inorder to read the bar to issuance of a license so as to apply to renewal licenses, it wouldhave to provide "no license, certificate of qualification or authorization to practice nursingas a licensed professional nurse . . . shall be granted or renewed. . . . " In essence, wedo not believe the bar on issuance of a license applies to renewal licenses, only the initialgrant of a license. We do believe, however, the absolute bar does apply to reinstatementof lapsed licenses because of the requirements of K.S.A. 65-1117(b).

We believe there is a rational basis for such a distinction between existing licensees andnew applicants. Applying the prohibition to nurses who have already been granted alicense but who have a preexisting felony would amount to a retrospective application ofthe statute. Retrospective application of a statute is not favored, especially when it affectssubstantive rights.

> "A statute operates prospectively unless its language clearly indicates that the legislature intended that it operate retrospectively. . . . This rule is normally applied when an amendment to an existing statute or a new statute is enacted which creates a new liability not existing before under the law or which changes the substantive rights of the parties." Jackson v. American Best Freight System, 238 Kan. 322 (1985).

This amendment concerning the bar to licensure for felony convictions in K.S.A. 65-1120clearly affects substantive rights and there is no clear indication in the amendatorylanguage that it operate

retrospectively. Therefore, we believe the absolute bar ongranting a license to a person convicted of an article 34, chapter 21 person felony appliesonly to applicants for a new license after July 1, 1997, the effective date of theamendments to K.S.A. 1996 Supp. 65-1120. If a licensee is subsequently convicted ofsuch a crime, the board could proceed under its discretionary authority to revoke thelicense "unless the applicant or licensee establishes sufficient rehabilitation to warrant thepublic trust." If it is discovered that a nurse seeking renewal or reinstatement haspreviously been convicted of such a crime, the board could refuse to renew or reinstateunder its discretionary authority to revoke a license "unless the applicant or licenseeestablishes sufficient rehabilitation to warrant the public trust."

You also ask whether the bar on licensure would apply to students who entered nursingschool before the effective date of the amendments, but who have a prior person felonyconviction under article 34, chapter 21.

The state has police power to regulate the practice of health care providers. State ex. rel.Schneider v. Liggett, 223 Kan. 610, 615 (1978). Prior to licensure, a person has no"property right" in the practice of nursing and is not entitled to constitutional procedural dueprocess rights. See, e.g., State ex rel. Stephan v. Adam 243 Kan. 619, (1988), KansasRacing Management, Inc. v. Kansas Racing Comm'n, 244 Kan. 342 (1989). One limiton the state's exercise of police power is one of substantive due process or equalprotection (i.e. discrimination against the class of felons). The Kansas Supreme Courtexplained the standard for reviewing legislation when challenged on substantive dueprocess grounds:

> "If a statute is attacked as violating due process, the test is whether the legislative means selected have real and substantial relation to the objective sought. This rule has been restated in terms of whether the statute is reasonable in relation to its subject and is adopted in the interests of the community." Cott v. Peppermint Twist Mgt. Co., 253 Kan. 452, Syl. 18 (1993).

This standard is functionally equivalent to the rational basis test in the context of equalprotection challenges. For equal protection purposes the class is felons, which is not asuspect class (one based on gender, race, age, etc.) so the test is the "rational basis" test.

> "Under the 'rational basis' test, if there is any rational relationship between the act and a legitimate governmental objective, the act passes muster. Under this test one challenging the constitutionality of the act bears the burden of showing no rational relationship exists between the means and the end." State v. Risjord, 249 Kan. 497, 501-02 (1991).

Nurses routinely deal with patients who are in a weak and dependent condition. The levelof trust between a patient and nurse must be uncompromised. The absolute bar on felonsas nurses is only for those with article 34 person felony convictions, meaning violent,person felonies such as murder, manslaughter, kidnapping, etc. We believe there is arational relationship between an absolute bar against future licensure of nurses with suchconvictions and the goal of protecting the public health and promoting the profession ofnursing.

We note, as an aside, that in De Veau v. Braisted, 363 U.S. 144, 80 S.Ct. 1146, 4 L.Ed.2d1109 (1960), the Supreme Court upheld a statute which prohibited any person from beinglicensed as a longshoreman if that person had a felony conviction. The court held it was"a reasonable means for achieving a legitimate state aim, namely, eliminating corruptionon the waterfront." 363 U.S. at 157. We believe that if a longshoreman can be denied alicense for any felony conviction, a nurse certainly can be denied a license for a violentfelony conviction, as set forth in the person felonies in article 34 of the Kansas statutes.

Another possible constitutional issue raised by application of the law to student nurses withprior felonies is whether the prohibition on licensure of certain felons amounts to animproper ex post facto law.

Article I, Section 10, of the United States Constitution provides: "No State shall . . . passany . . . ex post facto law." This constitutional provision only applies to penal statutes.Collins v. Youngblood, 497 U.S. 37, 110 S.Ct. 2715, 111 L.Ed.2d 30 (1990); State v.Meyers, 260 Kan. 669 (1996). In De Veau, the

prohibition on licensure as a longshoremanapplied to prior felonies, so the Court had to determine whether it was a prohibited ex postfact law. The court described an ex post fact law:

> "The mark of an ex post facto law is the imposition of what can fairly be designated punishment for past acts. The question in each case where unpleasant consequences are brought to bear upon an individual for prior conduct, is whether the legislative aim was to punish that individual for past activity, or whether the restriction of the individual comes about as a relevant incident to a regulation of a present situation, such as the proper qualifications for a profession. [Citation omitted]. No doubt is justified regarding the legislative purpose of 8. The proof is overwhelming that New York sought not to punish ex-felons, but to devise what was felt to be a much-needed scheme of regulation of the waterfront, and for the effectuation of that scheme it became important whether individuals had previously been convicted of a felony." 363 U.S. at 161.

In Meffert v. Medical Board, 66 Kan. 723 (1903), aff'd. 195 U.S. 625, the court upheld anew statute allowing the Medical Board to deny a license to practice medicine based upona felony conviction. The court said it was not an invalid ex post facto law:

> "The revocation of a license to practice medicine for any of the reasons mentioned in the statute was not intended to be, nor does it operate as, a punishment, but as a protection to the citizens of the state."

We believe that the clear purpose of the amendments to K.S.A. 65-1120 are for theprotection of the public. They are not punitive and do not constitute an ex post facto law.Consequently, a nursing student who applies for a license after July 1, 1997, with a personfelony conviction as specified in article 34, chapter 21 must be denied a license.

In determining the scope of the amendments to K.S.A. 65-1120, we have attempted todetermine the Legislature's intentions. We note that the Legislature could constitutionallyhave gone further and barred licensure (or made revocation mandatory) for persons withother convictions, so long as there was a rational basis for barring licensure. For instance,the bar for licensure for article 34 felonies does not prohibit licensure of a person convictedof any of the felony sex offenses set forth in article 35. We believe that a bar of licensureor revocation of licensure for such crimes would not be punitive in nature, but would be arationally based measure designed for the protection of the citizens of this state. It isunclear to us why the legislatively enacted ban was drawn so narrowly.

Finally you ask whether the absolute bar applies to convictions which occur outside ofKansas. The bar on licensure applies to persons with a "felony conviction for a crimeagainst persons as specified in article 34 of chapter 21 of the Kansas Statutes Annotated."The Legislature is presumed to intend that a statute be given a reasonable constructionso as to avoid unreasonable or absurd results. Todd v. Kelly, 251 Kan. 512 (1992). Itwould make no sense to distinguish between crimes committed in another state and thosecommitted in Kansas. We believe that by saying "as specified," the Legislature meant anycriminal conviction in any jurisdiction which meets the elements of a crime as set forth inthe person felonies in article 34 of chapter 21 of Kansas Statutes Annotated. We do notbelieve it is limited to Kansas convictions.

In summary, we believe that the amendments to K.S.A. 1996 Supp. 60-1120 which provide"no license, . . . shall be granted" apply only to applicants for new licenses after theeffective date of the amendment, July 1, 1997. The felonies to which the amendmentapplies, however, include felonies committed before or after the effective date of the act.The felonies may be from another jurisdiction, so long as the elements are the same asthose of crimes specified in the person felonies in article 34 of chapter 21.

Very truly yours,

CARLA J. STOVALL
Attorney General of Kansas

Steve Phillips
Assistant Attorney General

CJS:JLM:SP:jm

Kansas Association of Osteopathic Medicine

Harold E. Riehm, Executive Director
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February 16, 1999

To: Chairman Vratil and Members, Senate Judiciary Subcommittee on SB 205

From: Harold E. Riehm, Executive Director, Kansas Association of Osteopathic Medicine

Subject: Testimony on SB 205

Thank you for this opportunity to present our views on SB 205. This Bill addresses matters of great concern to Kansas physicians. Those I represent are well aware that a license to practice medicine in Kansas is a privilege, not a right. To be entrusted with this privilege one must show evidence of required training, education and moral character. It is the Board of Healing Arts that is entrusted with ensuring those qualifications are present when licensing a physician.

This Bill would establish new guidelines in the licensing process, for those previously convicted of felonies. We have concerns with that part of the Bill which would preclude a person convicted of certain felonies from ever being licensed. Our concerns fall in two categories.

First, we note that the proposal does not give due attention to the possibility of rehabilitation on the part of a convicted felon. We suggest that there can be a type of review of license applications from such persons that sets in process a thorough review of the state of rehabilitation, including expert testimony. While a conviction should always be weighed, so also, we think, should the state of rehabilitation of that person.

Second, to forever preclude licensing on the conviction of a felony, assumes the infallibility of the criminal justice system which, following the recent example of the Stan Naramore, D.O. case, is an assumption few Kansas Osteopathic Physicians are prepared to make.

It is our observation that the Kansas Board of Healing Arts has been diligent in protecting citizens of Kansas in its licensing practices. It is unfortunate that a physician, previously convicted of a felony and later apprehended on another charge, was recently licensed by the Board. That situation is not indicative of a trend nor is it a frequent occurrence. This has resulted in a perception that the Board has abused the public trust and that the suggested solution is a new, onerous provision regarding licensing. We think the former is an overgeneralization and the latter an overreaction.

Our first choice is that no change is needed other than, perhaps, a restatement of purpose of stipulation, as is to be suggested by the Board of Healing Arts. If substantive changes are to be made, we respectfully suggest that SB 205 be amended to require that any physician seeking licensure and having a previous felony conviction in Kansas or any other State, could be licensed only upon a two-thirds vote by the members of the Board. We think this would give pause to the licensing process in such instances, providing opportunity for evidence of rehabilitation as well as public input to guide the Board's decision. A balloon amendment to SB 205 is attached.

There is some question as to whether the provisions of the Bill, or even this suggested amendment, can withstand constitutional challenge as it applies to persons already licensed, seeking license renewal. We understand this may be addressed by other conferees.

I will be pleased to respond to questions.

SENATE BILL No. 205

By Committee on Judiciary

2-2

AN ACT concerning healing arts; relating to licensure; convictions of certain crimes; amending K.S.A. 1998 Supp. 65-2836 and repealing the existing section.

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

Section 1. K.S.A. 1998 Supp. 65-2836 is hereby amended to read as follows: 65-2836. A licensee's license may be revoked, suspended or limited, or the licensee may be publicly or privately censured, or an application for a license, *except in subsection (c)(1) where a person's application for a license shall be denied,* or for reinstatement of a license may be denied upon a finding of the existence of any of the following grounds:

(a) The licensee has committed fraud or misrepresentation in applying for or securing an original, renewal or reinstated license.

(b) The licensee has committed an act of unprofessional or dishonorable conduct or professional incompetency.

(c) The licensee has been convicted of a felony or class A misdemeanor, whether or not related to the practice of the healing arts~~, subject to the following: (1)~~ *In the case of a person with a felony conviction ~~described in K.S.A. 21-3401, subsection (a) of 21-3402, 21-3438, subsection (a)(1), (a)(3) or (a)(4) of 21-3502, 21-3503, 21-3504, 21-3505, 21-3506, 21-3510, 21-3511, 21-3518 or 21-3609 and amendments thereto, an application for original licensure on or after July 1, 1999, shall not be granted; (2) in the case of a person with a felony conviction contained in subsection (a)(1) who applies for renewal or reinstatement of a license first granted prior to July 1, 1999, a license may be granted only pursuant to the provisions of subsections (3)(A) and (3)(B); (3) in the case of a person with any other felony conviction~~ described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, who applies for renewal, reinstatement or original licensure, a license may not be granted unless: (A) The board determines that such person will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust; and (B) such person's application is approved by a two-thirds majority of the board members present and voting on such application.*

(d) The licensee has used fraudulent or false advertisements.

[insert a period]

Amendment Requested by the Kansas Association of Osteopathic Medicine

1-13

KANSAS BOARD OF HEALING ARTS

BILL GRAVES
Governor

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February 16, 1999

The Honorable John L. Vratil
State Senator, 11th District
Chair, Senate Judiciary Subcommittee
State Capitol, Room 128-S

Re: 1999 Senate Bill No. 205

Dear Senator Vratil:

Thank you for the opportunity to appear on behalf of the State Board of Healing Arts in opposition to Senate Bill 205. Essentially, the bill amends the healing arts act to mandate that certain felony convictions disqualify individuals from practicing the healing arts. The Kansas Medical Society requested this legislation after the recent arrest of a physician who, ten years ago, was granted reinstatement following a felony conviction. In place of the bill, the Board suggests the attached amendment which accomplishes a legitimate purpose but which does not deprive citizens of competent health care.

By way of introduction, the Board is a fifteen member body appointed by the Governor to regulate practitioners of 11 health care professionals. It is comprised of five medical doctors, three doctors of osteopathic medicine and surgery, three doctors of chiropractic, one podiatrist and three members of the general public. The purpose of the Board is to protect the public health and safety. This is accomplished by granting licenses or registrations to those who meet statutory requirements, and for disciplining those who commit certain acts of unprofessional, dishonorable, or incompetent practice.

Under the healing arts act at K.S.A. 1998 Supp. 65-2836(c), the Board may discipline or deny a license upon a conviction of a class A misdemeanor or a felony, whether or not the crime is related to the practice of the healing arts. Senate Bill 205 would amend that part of the statute, removing the Board's discretion to grant a license to persons who have been convicted of certain felonies. The Board believes that a criminal conviction need not necessarily disqualify a person from practicing a healing profession. Rather, a return to practice should depend upon whether the individual is sufficiently rehabilitated to warrant the public trust.

Initially, the fact of a criminal conviction, or even the acquittal from criminal charges, should not be the determining factor of whether a person may practice the healing arts. Standing between an accused individual and an actual conviction lies many things, some of which have nothing to do with whether the misconduct actually occurred. For example, the skill of the prosecutor and defense counsel, the accuracy of the jury instructions, the competence of the law enforcement officers in collecting information, and sometimes even the popularity of the accused may influence the actual verdict. When disciplining a person under the healing arts act, the Board is most concerned with the facts of the case rather than with the ultimate outcome of a related hearing or trial.

Secondly, the Board believes that each case should be considered on its own merits for the purpose of public protection, not additional punishment. Protecting the public does not require revoking the professional license of every person who violates the law. The public expects to be protected from dangerous practitioners of the healing arts. But the public also needs access to professional services provided by competent practitioners. The physician's skills are a unique benefit to society. Thus, when the practitioner engages in misconduct, discretion should be applied to fashion appropriate remedies. Revocation or denial of a license may be the appropriate remedy. However, placing conditions or limitations upon the license may provide adequate public protection. The only purpose served by systematically revoking or denying a license based upon a felony conviction is to punish the individual. As often stated, the purpose of the healing arts act and of the Board is public protection, not punishment. Exacting appropriate and sufficient punishment is the function of the criminal justice system.

Thirdly, the Board believes that rehabilitation is possible. If this were not the case, then the Board would not pay close to $200,000.00 a year to the state professional societies and associations to keep impaired physician programs in business. Determining the extent of an individual's rehabilitation is not a perfect science. However, the Kansas Supreme Court has approved factors for establishing rehabilitation. In *Vakas v. Kansas Board of Healing Arts*, 248 Kan. 589 (1991), the Court upheld the Board's decision not to reinstate a revoked license. The Board had applied eight factors to determine that the Dr. Vakas was not sufficiently rehabilitated. Those factors included: (1) the present moral fitness of the doctor; (2) the demonstrated consciousness of the wrongful conduct and the disrepute brought upon the profession; (3) the extent of rehabilitation; (4) the nature and seriousness of the original misconduct; (5) subsequent conduct; (6) the time elapsed since the original discipline; (7) the individual's character, maturity, and experience at the time of the original revocation; and (8) the individual's present competence in medical skills. While *Vakas* dealt with reinstatement of a revoked license, these factors are applied any time rehabilitation is questioned.

Typically, when a physician comes before the Board either for discipline or for granting a new or reinstated license, the Board has the benefit of appropriate mental or physical evaluations. Often members of the profession testify or write in support of the doctor. Sometimes a member of the profession agrees to mentor or supervise the doctor. Conditions such as participation in therapy or drug screens may be ordered or limitations upon the practice location or patient population are ordered. In short, licensing decisions are not made arbitrarily.

As Mr. Slaughter wrote in the November/December 1998 edition of the *Kansas Physician*, perhaps the bar ought to be raised to provide a greater degree of public protection. This does not mean taking away the Board's discretion to inquire into the degree of rehabilitation and then form an appropriate remedy. Mr. Slaughter also wrote that we should be careful about taking the ultimate

decision out of the Board's hands completely.

We believe that the attached amendment to the bill appropriately raises the bar, keeps the ultimate decision with the Board, yet gives the public broader protection. This amendment allows the Board to discipline a license or to deny an application if the individual has engaged in conduct defined as a class A person misdemeanor or any person felony under articles 34, 35 or 36 of the criminal code, whether or not a prosecution is successful. A list of the crimes that are described in the proposed amendment is also attached. When a person is convicted of a felony or class A misdemeanor, then the person must show rehabilitation by clear and convincing evidence that the public is not in danger.

The phrase "clear and convincing" is a term of art referring to a high quality of proof. Evidence is clear if it is certain, unambiguous, and plain to the understanding. Evidence is convincing if it is reasonable and persuasive enough to cause the trier of fact to believe it. In other words, the Board would have to find that rehabilitation is a virtual certainty.

Some have suggested that a super majority of the Board should be required in order to grant a license to a person who has been convicted of a crime. As a matter of practice, this is not necessary. The Board wrestles with each case to reach a consensus before issuing an order. Giving a minority of the Board veto power is simply not necessary.

Finally, I have attached a letter to the Senate from Dr. Glenn O. Gabbard, M.D. Dr. Gabbard is a Distinguished Professor at The Menninger Clinic. He has been instrumental in assisting the Board with impaired professionals. Dr. Gabbard urges you to maintain the existing system rather than enacting restrictive legislation.

In conclusion, it is easy to react emotionally to a particular case in which a physician with a prior conviction was granted a license and then arrested many years later on charges unrelated to the original felony conviction. History may very well suggest that the Board should not have reinstated the physician's license. That same history will likely be written without the benefit of the support of the many physicians who supported the application for reinstatement. That history will also be written without the benefit of the lives saved as the physician worked in the emergency room. There is no way of knowing how many of those patient lives might have been compromised but for the efforts of the physician. In judging the Board, we must all remember that it does not have a crystal ball. But this is not sufficient reason to limit its discretion to determine rehabilitation.

Very truly yours,

Mark W. Stafford
General Counsel

1-18

SENATE BILL No. 205

AN ACT concerning healing arts; relating to licensure; convictions of certain crimes; amending K.S.A. 1998 Supp. 65-2836 and repealing the existing section.

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

Section 1. K.S.A. 1998 Supp. 65-2836 is hereby amended to read as follows: 65-2836. A licensee's license may be revoked, suspended or limited, *or appropriate conditions for practice may be ordered,* or the licensee may be publicly or privately censured, or an application for a license or for reinstatement of a license may be denied upon a finding of the existence of any of the following grounds:

(a) The licensee has committed fraud or misrepresentation in applying for or securing an original, renewal or reinstated license.

(b) The licensee has committed an act of unprofessional or dishonorable conduct or professional incompetency.

(c) The licensee has *committed an act punishable as a person felony or class A person misdemeanor under articles 34, 35, or 36 of chapter 21 of the Kansas Statutes Annotated, or* been convicted of a felony or class A misdemeanor, whether or not related to the practice of the healing arts, *unless the licensee establishes by clear and convincing evidence that the licensee is sufficiently rehabilitated and does not pose a threat to the public.*

(d) The licensee has used fraudulent or false advertisements.

(e) The licensee is addicted to or has distributed intoxicating liquors or drugs for any other than lawful purposes.

(f) The licensee has willfully or repeatedly violated this act, the pharmacy act of the state

* * *

Statute number	Crime	Penalty
	Chapter 21, Article 34	
21-3401	First Degree Murder	Felony: off-grid, person
Supp.21-3402(a)	Second Degree Murder--intentional	Felony: off-grid, person
Supp. 21-3402(b)	Second Degree Murder–unintentional	Felony: level 2, person
21-3403	Voluntary Manslaughter	Felony: level 3, person
21-3404	Involuntary Manslaughter	Felony: level 5, person
21-3405	Vehicular Homicide	Misd.: Class A, person
Supp. 21-3406	Assisting Suicide	Felony: level 9, person
21-3408	Assault	Misd.: Class A
21-3409	Assault on a Law Enforcement Officer	Misd.: Class A
21-3410	Aggravated Assault	Felony: level 7, person
21-3411	Aggravated Assault on a LEO	Felony: level 6, person
Supp. 21-3413	Battery against a Law Enforcement Officer(a) (b)	Misd.: Class A, person Felony: Level 6, person
21-3414	Aggravated Battery	Felony: Level 4, person
21-3415	Aggravated Battery against a LEO	Felony: Level 6, person
21-3419	Criminal Threat	Felony: level 9, person
21-3419a	Aggravated Criminal Threat	Felony: level 4, person
21-3420	Kidnaping	Felony: level 3, person
21-3421	Aggravated Kidnaping	Felony: level 1, person
21-3422	Interference with Parental Custody	Misd.: Class A, person Felony: level 10, person
21-3422a	Aggravated Interference with Parental Custody	Felony: level 7, person
21-3424	Criminal Restraint	Misd.: Class A, person
21-3425	Mistreatment of a Confined Person	Misd.: Class A, person

21-3426	Robbery	Felony: level 5, person
21-3427	Aggravated Robbery	Felony: level 3, person
21-3435	Exposing Another to a Life Threatening Communicable Disease	Misd.: Class A, person
21-3437	Mistreatment of a Dependent Adult	Misd.: Class A, person
21-3438	Stalking	Felony: level 10, person
21-3439	Capital Murder	Felony: off-grid, person
21-3440	Injury to a Pregnant Woman	Misd.: Class A, person
Supp. 21-3442	Involuntary Manslaughter while DUI	Felony: level 4, person
Supp. 21-3443	Battery against a School Employee	Misd.: Class A, person
Supp. 21-3445	Unlawful Administration of a Substance	Misd.: Class A, person
	Chapter 21, Article 35	
Supp. 21-3502	Rape	Felony: level 2, person
21-3503	Indecent Liberties with a Child	Felony: level 5, person
21-3504	Aggravated Indecent Liberties with a Child	Felony: level 3, 4, person
21-3505(a)(2), (3)	Criminal Sodomy	Felony: level 3, person
21-3506	Aggravated Criminal Sodomy	Felony: level 2, person
Supp. 21-3508(b)	Lewd and Lascivious Behavior (in the presence of a minor)	Felony: level 9, person
21-3510	Indecent Solicitation of a Child	Felony: level 7, person
21-3511	Aggravated Indecent Solicitation of a Child	Felony: level 6, person
21-3513	Promoting Prostitution	Misd: Class A, person Felony: level 7, person
Supp. 21-3516	Sexual Exploitation of a Child	Felony: level 5, person
21-3517	Sexual Battery	Misd.: Class A, person
21-3518	Aggravated Sexual Battery	Felony: level 5, person
21-3520	Unlawful Sexual Relations	Felony: level 10, person

	Chapter 21, Article 36	
21-3602	Incest	Felony:, level 10, person
21-3603	Aggravated Incest	Felony: level 5, 7, person
21-3604	Abandonment of a Child	Felony: level 8, person
21-3604a	Aggravated Abandonment of a Child	Felony: level 5, person
21-3608	Endangering a Child	Misd., Class A person
21-3609	Abuse of a Child	Felony: level 5, person
21-3610b	Furnishing alcohol to a minor for illicit purposes	Felony: level 9, person
Supp. 21-3612	Contributing to a child's misconduct or deprivation	Felony: level 7, person

Menninger

Date: February 15, 1999

To: The Kansas State Senate

From: Glen O. Gabbard, M.D.

I am writing because of my concern about pending legislation that would unduly restrict the discretion of the Kansas Board of Healing Arts to assess the fitness of health care practitioners who have a history of past felony convictions. For many years I have conducted evaluations for the Board and found that some competent physicians have been convicted of felonies in the past and have since been adequately rehabilitated so that they represent no risk to the public safety. A felony conviction in and of itself does not necessarily connote incompetence. The most efficient system is the one in place now. It allows the Board to assess each physician's suitability to practice on a case-by-case basis.

I urge you to maintain the system as it now exists rather than enacting new restrictive legislation.

Sincerely,

Glen O. Gabbard, MD

Glen O. Gabbard, M.D.
Callaway Distinguished Professor
The Menninger Clinic

The Menninger Clinic
PO Box 829
Topeka, KS 66601-0829
913 350 5000

1-21

2-23 Att 2

KANSAS ASSOCIATION OF SCHOOL BOARDS

1420 SW Arrowhead Road • Topeka, Kansas 66604-4024
785-273-3600

Testimony on Senate Bill No. 203
before the
Senate Judiciary Committee

by
Patricia E. Baker
Deputy Executive Director/General Counsel
Kansas Association of School Boards
February 18, 1999

Mr. Chairman, members of the committee, thank you for the opportunity to appear in support of Senate Bill 203.

We believe the provisions of this bill, especially Section 5, will clarify for local school boards and local school districts the duty to report potentially dangerous behaviors.

Under current law, school employees are required to report the identity of certain students as shown in Section 5, page 11, lines 20 through 36. We request that the laundry list be eliminated and the language in lines 36 through 39 be substituted. Information regarding behavior described in the list may not be known specifically by school officials although they may know of dangerous behavior which warrants greater diligence.

This is similar to language found in House Bill 2201 which had hearings in the House Education Committee earlier this week.

Also, we suggest a change in the language of the reporting to law enforcement of certain student behaviors. School officials are not trained to identify felonies and misdemeanors and the current language has caused confusion.

Finally, I would like to call your attention to Senate Bill 191, which had a hearing in the Senate Education Committee this morning. We support the changes in that bill as well as the above and hope that our recommended changes as well as those in Senate Bill 191 and House Bill 2201 might be looked at together.

Thank you.

Sen Jud
2-23-99
Att 2

Session of 1999

SENATE BILL No. 191

By Committee on Education

2-1

AN ACT concerning school safety and security; relating to the reporting of information regarding specified pupils; amending K.S.A. 1998 Supp. 38-1502, 38-1507, 38-1602, 72-89b02 and 72-89b03 and repealing the existing sections; also repealing K.S.A. 1998 Supp. 38-1502c and 38-1602a.

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

Section 1. K.S.A. 1998 Supp. 72-89b02 is hereby amended to read as follows: 72-89b02. As used in this act:

(a) "Board of education" means the board of education of a unified school district or the governing authority of an accredited nonpublic school.

(b) "School" means a public school or an accredited nonpublic school.

(c) "Public school" means a school operated by a unified school district organized under the laws of this state.

(d) "Accredited nonpublic school" means a nonpublic school participating in the quality performance accreditation system.

(e) "School employee" means any ~~teacher or other~~ *administrative,* professional or paraprofessional employee of a school ~~who has exposure to a pupil specified in subsection (a)(1) through (5) of K.S.A. 1998 Supp. 72-89b03 and amendments thereto~~.

~~(f) "Administrator" means any individual who is employed by a school in a supervisory or managerial capacity.~~

(f) "Superintendent of schools" means the superintendent of schools appointed by the board of education of a unified school district or the chief administrative officer of an accredited nonpublic school appointed by the board of education of the school.

New Sec. 2. (a) If a school employee has knowledge that a pupil is a pupil to whom the provisions of this section apply, the school employee shall report such knowledge and identify the pupil to the superintendent of schools. The superintendent of schools shall investigate the matter and, upon determining that the identified pupil is a pupil to whom the provisions of this section apply, shall provide the reported knowledge and identify the pupil to all school employees who are directly involved or likely to be directly involved in teaching or providing other school related

services to the pupil.

(b) The provisions of this section apply to:

(1) Any pupil who has been expelled for the reason provided by subsection (c) of K.S.A. 72-8901, and amendments thereto, for conduct which endangers the safety of others;

(2) any pupil who has been expelled for the reason provided by subsection (d) of K.S.A. 72-8901, and amendments thereto;

(3) any pupil who has been expelled under a policy adopted pursuant to K.S.A. 1998 Supp. 72-89a02, and amendments thereto;

(4) any pupil who has been adjudged to be a juvenile offender and whose offense, if committed by an adult, would constitute a felony under the laws of Kansas or the state where the offense was committed, except any pupil adjudicated as a juvenile offender for a felony theft offense involving no direct threat to human life; and

(5) any pupil who has been tried and convicted as an adult of any felony, except any pupil convicted of a felony theft crime involving no direct threat to human life.

(c) As used in this section, the term "knowledge" means familiarity because of direct involvement or observation of any incident specified in subsection (b) which causes the provisions of this section to apply to a pupil.

Sec. 3. K.S.A. 1998 Supp. 72-89b03 is hereby amended to read as follows: 72-89b03. (a) ~~School employees with knowledge that a pupil is a pupil specified in this subsection shall inform administrators and administrators with knowledge that a pupil is a pupil specified in this subsection shall inform all other school employees of the following:~~

~~(1) The identity of any pupil who has been expelled as provided by subsection (c) of K.S.A. 72-8901 and amendments thereto for conduct which endangers the safety of others;~~

~~(2) the identity of any pupil who has been expelled as provided by subsection (d) of K.S.A. 72-8901 and amendments thereto;~~

~~(3) the identity of any pupil who has been expelled under a policy adopted pursuant to K.S.A. 1998 Supp. 72-89a02 and amendments thereto;~~

~~(4) the identity of any pupil who has been adjudged to be a juvenile offender and whose offense, if committed by an adult, would constitute a felony under the laws of Kansas or the state where the offense was committed, except that this subsection shall not apply to an adjudication as a juvenile offender involving a felony theft offense involving no direct threat to human life; and~~

~~(5) the identity of any pupil who has been tried and convicted as an adult of any felony, except that this subsection shall not apply to any felony conviction of theft involving no direct threat to human life.~~

2-3

~~(b)~~ Each board of education shall adopt a policy that includes:

(1) A requirement that an immediate report be made to the appropriate state or local law enforcement agency by or on behalf of any school employee who knows or has reason to believe that an act has been committed at school, on school property, or at a school supervised activity and that the act involved conduct which constitutes the commission of a felony or misdemeanor or which involves the possession, use or disposal of explosives, firearms or other weapons; and

(2) the procedures for making such a report.

~~(c)~~ *(b)* ~~Administrators and other~~ School employees shall not be subject to the provisions of subsection (b) of K.S.A. 1998 Supp. 72-89b04, *and amendments thereto* if:

(1) They follow the procedures from a policy adopted pursuant to the provisions of subsection ~~(b)~~ *(a)*; or

(2) their board of education fails to adopt such policy.

~~(d)~~ *(c)* Each board of education shall annually compile and report to the state board of education at least the following information relating to school safety and security: The types and frequency of criminal acts that are required to be reported pursuant to the provisions of subsection ~~(b)~~ *(a)*, disaggregated by occurrences at school, on school property and at school supervised activities. The report shall be incorporated into and become part of the current report required under the quality performance accreditation system.

~~(e)~~ *(d)* Each board of education shall make available to pupils and their parents, to school employees and, upon request, to others, district policies and reports concerning school safety and security, ~~including those required by this subsection,~~ except that the provisions of this subsection shall not apply to ~~the disclosures required~~ *reports made by a superintendent of schools and school employees* pursuant to ~~subsection (a)~~ *section 2 and amendments thereto*.

~~(f)~~ *(e)* Nothing in this section shall be construed or operate in any manner so as to prevent any school employee from reporting criminal acts to school officials and to appropriate state and local law enforcement agencies.

~~(g)~~ *(f)* The state board of education shall extract the information relating to school safety and security from the quality performance accreditation report and transmit the information to the governor, the legislature, the attorney general, the secretary of health and environment, ~~and~~ the secretary of social and rehabilitation services, *and the commissioner of juvenile justice*.

~~(h)~~ *(g)* No board of education and no member of any such board shall be liable for damages in a civil action for the actions or omissions of ~~any administrator~~ *a superintendent of schools* pursuant to the requirements

and provisions of the Kansas school safety and security act and to this end such board and members thereof shall have immunity from civil liability related thereto. No ~~administrator~~ *superintendent of schools* or school employee shall be liable for damages in a civil action for the actions or omissions of such ~~administrator~~ *superintendent* or school employee pursuant to the requirements and provisions of the Kansas school safety and security act and to this end such ~~administrator~~ ~~or~~ *superintendent of schools and* school employee shall have immunity from civil liability related thereto.

Sec. 4. K.S.A. 1998 Supp. 38-1502 is hereby amended to read as follows: 38-1502. As used in this code, unless the context otherwise indicates:

(a) "Child in need of care" means a person less than 18 years of age who:

(1) Is without adequate parental care, control or subsistence and the condition is not due solely to the lack of financial means of the child's parents or other custodian;

(2) is without the care or control necessary for the child's physical mental or emotional health;

(3) has been physically, mentally or emotionally abused or neglected or sexually abused;

(4) has been placed for care or adoption in violation of law;

(5) has been abandoned or does not have a known living parent;

(6) is not attending school as required by K.S.A. 72-977 or 72-1111, and amendments thereto;

(7) except in the case of a violation of K.S.A. 41-727, subsection (j) of K.S.A. 74-8810 or subsection (m) or (n) of K.S.A. 79-3321, and amendments thereto, or, except as provided in subsection (a)(12) of K.S.A. 21-4204a and amendments thereto, does an act which, when committed by a person under 18 years of age, is prohibited by state law, city ordinance or county resolution but which is not prohibited when done by an adult;

(8) while less than 10 years of age, commits any act which if done by an adult would constitute the commission of a felony or misdemeanor as defined by K.S.A. 21-3105 and amendments thereto;

(9) is willfully and voluntarily absent from the child's home without the consent of the child's parent or other custodian;

(10) is willfully and voluntarily absent at least a second time from a court ordered or designated placement, or a placement pursuant to court order, if the absence is without the consent of the person with whom the child is placed or, if the child is placed in a facility, without the consent of the person in charge of such facility or such person's designee;

(11) has been residing in the same residence with a sibling or another person under 18 years of age, who has been physically, mentally or emo-

tionally abused or neglected, or sexually abused; or

(12) while less than 10 years of age commits the offense defined in K.S.A. 21-4204a and amendments thereto.

(b) "Physical, mental or emotional abuse or neglect" means the infliction of physical, mental or emotional injury or the causing of a deterioration of a child and may include, but shall not be limited to, failing to maintain reasonable care and treatment, negligent treatment or maltreatment or exploiting a child to the extent that the child's health or emotional well-being is endangered. A parent legitimately practicing religious beliefs who does not provide specified medical treatment for a child because of religious beliefs shall not for that reason be considered a negligent parent; however, this exception shall not preclude a court from entering an order pursuant to subsection (a)(2) of K.S.A. 38-1513 and amendments thereto.

(c) "Sexual abuse" means any act committed with a child which is described in article 35, chapter 21 of the Kansas Statutes Annotated and those acts described in K.S.A. 21-3602 or 21-3603, and amendments thereto, regardless of the age of the child.

(d) "Parent," when used in relation to a child or children, includes a guardian, conservator and every person who is by law liable to maintain, care for or support the child.

(e) "Interested party" means the state, the petitioner, the child, any parent and any person found to be an interested party pursuant to K.S.A. 38-1541 and amendments thereto.

(f) "Law enforcement officer" means any person who by virtue of office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

(g) "Youth residential facility" means any home, foster home or structure which provides 24-hour-a-day care for children and which is licensed pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated.

(h) "Shelter facility" means any public or private facility or home other than a juvenile detention facility that may be used in accordance with this code for the purpose of providing either temporary placement for the care of children in need of care prior to the issuance of a dispositional order or longer term care under a dispositional order.

(i) "Juvenile detention facility" means any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders which must not be a jail.

(j) "Adult correction facility" means any public or private facility, secure or nonsecure, which is used for the lawful custody of accused or convicted adult criminal offenders.

(k) "Secure facility" means a facility which is operated or structured so as to ensure that all entrances and exits from the facility are under the

exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeters of the facility, or which relies on locked rooms and buildings, fences or physical restraint in order to control behavior of its residents. No secure facility shall be in a city or county jail.

(l) "Ward of the court" means a child over whom the court has acquired jurisdiction by the filing of a petition pursuant to this code and who continues subject to that jurisdiction until the petition is dismissed or the child is discharged as provided in K.S.A. 38-1503 and amendments thereto.

(m) "Custody," whether temporary, protective or legal, means the status created by court order or statute which vests in a custodian, whether an individual or an agency, the right to physical possession of the child and the right to determine placement of the child, subject to restrictions placed by the court.

(n) "Placement" means the designation by the individual or agency having custody of where and with whom the child will live.

(o) "Secretary" means the secretary of social and rehabilitation services.

(p) "Relative" means a person related by blood, marriage or adoption but, when referring to a relative of a child's parent, does not include the child's other parent.

(q) "Court-appointed special advocate" means a responsible adult other than an attorney guardian *ad litem* who is appointed by the court to represent the best interests of a child, as provided in K.S.A. 38-1505a and amendments thereto, in a proceeding pursuant to this code.

(r) "Multidisciplinary team" means a group of persons, appointed by the court or by the state department of social and rehabilitation services under K.S.A. 38-1523a and amendments thereto, which has knowledge of the circumstances of a child in need of care.

(s) "Jail" means:

(1) An adult jail or lockup; or

(2) a facility in the same building or on the same grounds as an adult jail or lockup, unless the facility meets all applicable standards and licensure requirements under law and there is (A) total separation of the juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities; (B) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping, and general living activities; and (C) separate juvenile and adult staff, including management, security staff and direct care staff such as recreational, educational and counseling.

(t) "Kinship care" means the placement of a child in the home of the

child's relative or in the home of another adult with whom the child or the child's parent already has a close emotional attachment.

(u) "Juvenile intake and assessment worker" means a responsible adult authorized to perform intake and assessment services as part of the intake and assessment system established pursuant to K.S.A. 75-7023, and amendments thereto.

(v) "Abandon" means to forsake, desert or cease providing care for the child without making appropriate provisions for substitute care.

(w) "Permanent guardianship" means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining without ongoing state oversight or intervention. The permanent guardian stands in loco parentis and exercises all the rights and responsibilities of a parent.

(x) "Aggravated circumstances" means the abandonment, torture, chronic abuse, sexual abuse or chronic, life threatening neglect of a child.

(y) "Permanency hearing" means a notice and opportunity to be heard is provided to interested parties, foster parents, preadoptive parents or relatives providing care for the child. The court, after consideration of the evidence, shall determine whether progress toward the case plan goal is adequate or reintegration is a viable alternative, or if the case should be referred to the county or district attorney for filing of a petition to terminate parental rights or to appoint a permanent guardian.

(z) "Extended out of home placement" means a child has been in the custody of the secretary and placed with neither parent for 15 of the most recent 22 months beginning 60 days after the date at which a child in the custody of the secretary was removed from the home.

(aa) "Educational institution" means all schools at the elementary and secondary levels.

(bb) "Educator" means any administrative, professional or paraprofessional employee of an educational institution who has exposure to a pupil specified in subsection (b)(1) through (5) of section 2 and amendments thereto.

Sec. 5. K.S.A. 1998 Supp. 38-1507 is hereby amended to read as follows: 38-1507. (a) Except as otherwise provided, in order to protect the privacy of children who are the subject of a child in need of care record or report, all records and reports concerning children in need of care, including the juvenile intake and assessment report, received by the department of social and rehabilitation services, a law enforcement agency or any juvenile intake and assessment worker shall be kept confidential except: (1) To those persons or entities with a need for information that is directly related to achieving the purposes of this code, or (2) upon an order of a court of competent jurisdiction pursuant to a determination by the court that disclosure of the reports and records is

in the best interests of the child or are necessary for the proceedings before the court, or both, and are otherwise admissible in evidence. Such access shall be limited to in camera inspection unless the court otherwise issues an order specifying the terms of disclosure.

(b) The provisions of subsection (a) shall not prevent disclosure of information to an educational institution or to individual educators about a pupil specified in subsection ~~(a)~~ *(b)*(1) through (5) of ~~K.S.A. 1998 Supp. 72-89b03~~ *section 2* and amendments thereto.

(c) When a report is received by the department of social and rehabilitation services, a law enforcement agency or any juvenile intake and assessment worker which indicates a child may be in need of care, the following persons and entities shall have a free exchange of information between and among them:

(1) The department of social and rehabilitation services;

(2) the commissioner of juvenile justice;

(3) the law enforcement agency receiving such report;

(4) members of a court appointed multidisciplinary team;

(5) an entity mandated by federal law or an agency of any state authorized to receive and investigate reports of a child known or suspected to be in need of care;

(6) a military enclave or Indian tribal organization authorized to receive and investigate reports of a child known or suspected to be in need of care;

(7) a county or district attorney;

(8) a court services officer who has taken a child into custody pursuant to K.S.A. 38-1527, and amendments thereto;

(9) a guardian ad litem appointed for a child alleged to be in need of care;

(10) an intake and assessment worker; and

(11) any community corrections program which has the child under court ordered supervision.

(d) The following persons or entities shall have access to information, records or reports received by the department of social and rehabilitation services, a law enforcement agency or any juvenile intake and assessment worker. Access shall be limited to information reasonably necessary to carry out their lawful responsibilities to maintain their personal safety and the personal safety of individuals in their care or to diagnose, treat, care for or protect a child alleged to be in need of care.

(1) A child named in the report or records.

(2) A parent or other person responsible for the welfare of a child, or such person's legal representative.

(3) A court-appointed special advocate for a child, a citizen review board or other advocate which reports to the court.

(4) A person licensed to practice the healing arts or mental health profession in order to diagnose, care for, treat or supervise: (A) A child whom such service provider reasonably suspects may be in need of care; (B) a member of the child's family; or (C) a person who allegedly abused or neglected the child.

(5) A person or entity licensed or registered by the secretary of health and environment or approved by the secretary of social and rehabilitation services to care for, treat or supervise a child in need of care. In order to assist a child placed for care by the secretary of social and rehabilitation services in a foster home or child care facility, the secretary shall provide relevant information to the foster parents or child care facility prior to placement and as such information becomes available to the secretary.

(6) A coroner or medical examiner when such person is determining the cause of death of a child.

(7) The state child death review board established under K.S.A. 22a-243, and amendments thereto.

(8) A prospective adoptive parent prior to placing a child in their care.

(9) The department of health and environment or person authorized by the department of health and environment pursuant to K.S.A. 59-512, and amendments thereto, for the purpose of carrying out responsibilities relating to licensure or registration of child care providers as required by chapter 65 of article 5 of the Kansas Statutes Annotated, and amendments thereto.

(10) The state protection and advocacy agency as provided by subsection (a)(10) of K.S.A. 65-5603 or subsection (a)(2)(A) and (B) of K.S.A. 74-5515, and amendments thereto.

(11) Any educational institution to the extent necessary to enable the educational institution to provide the safest possible environment for its pupils and employees.

(12) Any educator to the extent necessary to enable the educator to protect the personal safety of the educator and the educator's pupils.

(e) Information from a record or report of a child in need of care shall be available to members of the standing house or senate committee on judiciary, house committee on appropriations, senate committee on ways and means, legislative post audit committee and joint committee on children and families, carrying out such member's or committee's official functions in accordance with K.S.A. 75-4319 and amendments thereto, in a closed or executive meeting. Except in limited conditions established by ⅔ of the members of such committee, records and reports received by the committee shall not be further disclosed. Unauthorized disclosure may subject such member to discipline or censure from the house of representatives or senate.

(f) Nothing in this section shall be interpreted to prohibit the secre-

tary of social and rehabilitation services from summarizing the outcome of department actions regarding a child alleged to be a child in need of care to a person having made such report.

(g) Disclosure of information from reports or records of a child in need of care to the public shall be limited to confirmation of factual details with respect to how the case was handled that do not violate the privacy of the child, if living, or the child's siblings, parents or guardians. Further, confidential information may be released to the public only with the express written permission of the individuals involved or their representatives or upon order of the court having jurisdiction upon a finding by the court that public disclosure of information in the records or reports is necessary for the resolution of an issue before the court.

(h) Nothing in this section shall be interpreted to prohibit a court of competent jurisdiction from making an order disclosing the findings or information pursuant to a report of alleged or suspected child abuse or neglect which has resulted in a child fatality or near fatality if the court determines such disclosure is necessary to a legitimate state purpose. In making such order, the court shall give due consideration to the privacy of the child, if, living, or the child's siblings, parents or guardians.

(i) Information authorized to be disclosed in subsections (d) through (g) shall not contain information which identifies a reporter of a child in need of care.

(j) Records or reports authorized to be disclosed in this section shall not be further disclosed, except that the provisions of this subsection shall not prevent disclosure of information to an educational institution or to individual educators about a pupil specified in subsection ~~(a)~~ *(b)*(1) through (5) of ~~K.S.A. 1998 Supp. 72-89b03~~ *section 2* and amendments thereto.

(k) Anyone who participates in providing or receiving information without malice under the provisions of this section shall have immunity from any civil liability that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceedings resulting from providing or receiving information.

(l) No individual, association, partnership, corporation or other entity shall willfully or knowingly disclose, permit or encourage disclosure of the contents of records or reports concerning a child in need of care received by the department of social and rehabilitation services, a law enforcement agency or a juvenile intake and assessment worker except as provided by this code. Violation of this subsection is a class B misdemeanor.

Sec. 6. K.S.A. 1998 Supp. 38-1602 is hereby amended to read as follows: 38-1602. As used in this code, unless the context otherwise

requires:

(a) "Juvenile" means a person 10 or more years of age but less than 18 years of age.

(b) "Juvenile offender" means a person who ~~does an act~~ *commits an offense* while a juvenile which if ~~done~~ *committed* by an adult would constitute the commission of a felony or misdemeanor as defined by K.S.A. 21-3105 and amendments thereto or who violates the provisions of K.S.A. 21-4204a or K.S.A. 41-727 or subsection (j) of K.S.A. 74-8810, and amendments thereto, but does not include:

(1) A person 14 or more years of age who commits a traffic offense, as defined in subsection (d) of K.S.A. 8-2117 and amendments thereto;

(2) a person 16 years of age or over who commits an offense defined in chapter 32 of the Kansas Statutes Annotated;

(3) a person ~~whose prosecution as an adult is authorized pursuant to K.S.A. 38-1636 and amendments thereto and whose prosecution results in the conviction of an adult crime; or~~

~~(4) a person who has been found to be an extended jurisdiction juvenile pursuant to subsection (a)(2) of K.S.A. 38-1636, and amendment thereto, and whose stay of adult sentence execution has been revoked~~ *under 18 years of age who previously has been:*

(A) Convicted as an adult under the Kansas code of criminal procedure;

(B) sentenced as an adult under the Kansas code of criminal procedure following termination of status as an extended jurisdiction juvenile pursuant to K.S.A. 38-16,126, and amendments thereto; or

(C) convicted or sentenced as an adult in another state or foreign jurisdiction under substantially similar procedures described in K.S.A. 38-1636, and amendments thereto, or because of attaining the age of majority designated in that state or jurisdiction.

(c) "Parent," when used in relation to a juvenile or a juvenile offender, includes a guardian, conservator and every person who is by law liable to maintain, care for or support the juvenile.

(d) "Law enforcement officer" means any person who by virtue of that person's office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

(e) "Youth residential facility" means any home, foster home or structure which provides twenty-four-hour-a-day care for juveniles and which is licensed pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated.

(f) "Juvenile detention facility" means any secure public or private facility which is used for the lawful custody of accused or adjudicated juvenile offenders and which ~~must~~ *shall* not be a jail.

(g) "Juvenile correctional facility" means a facility operated by the commissioner for juvenile offenders.

(h) "Warrant" means a written order by a judge of the court directed to any law enforcement officer commanding the officer to take into custody the juvenile named or described therein.

(i) "Commissioner" means the commissioner of juvenile justice.

(j) "Jail" means:

(1) An adult jail or lockup; or

(2) a facility in the same building as an adult jail or lockup, unless the facility meets all applicable licensure requirements under law and there is (A) total separation of the juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities; (B) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping, and general living activities; and (C) separate juvenile and adult staff, including management, security staff and direct care staff such as recreational, educational and counseling.

(k) "Court-appointed special advocate" means a responsible adult, other than an attorney appointed pursuant to K.S.A. 38-1606 and amendments thereto, who is appointed by the court to represent the best interests of a child, as provided in K.S.A. 1998 Supp. 38-1606a, and amendments thereto, in a proceeding pursuant to this code.

(l) "Juvenile intake and assessment worker" means a responsible adult authorized to perform intake and assessment services as part of the intake and assessment system established pursuant to K.S.A. ~~76-3202~~ *75-7023*, and amendments thereto.

(m) "Institution" means the following institutions: The Atchison juvenile correctional facility, the Beloit juvenile correctional facility, the Larned juvenile correctional facility and the Topeka juvenile correctional facility.

(n) "~~Sanction~~ *Sanctions* house" means a facility which is operated or structured so as to ensure that all entrances and exits from the facility are under the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeters of the facility, or which relies on locked rooms and buildings, fences, or physical restraint in order to control *the* behavior of its residents. Upon an order from the court, a licensed juvenile detention facility may serve as a ~~sanction~~ *sanctions* house. A ~~sanction~~ *sanctions* house may be ~~physically~~ connected *physically* to a nonsecure shelter facility provided the ~~sanction~~ *sanctions* house is not a licensed juvenile detention facility.

(o) "Sentencing risk assessment tool" means an instrument administered to juvenile offenders which delivers a score, or group of scores,

describing, but not limited to describing, the juvenile's potential risk to the community.

(p) "Educational institution" means all schools at the elementary and secondary levels.

(q) "Educator" means any ~~administrator, teacher or other~~ *administrative*, professional or paraprofessional employee of an educational institution who has exposure to a pupil specified in subsection ~~(a)~~ *(b)*(1) through (5) of ~~K.S.A. 1998 Supp. 72-89b03~~ *section 2* and amendments thereto.

Sec. 7. K.S.A. 1998 Supp. 38-1502, 38-1502c, 38-1507, 38-1602, 38-1602a, 72-89b02 and 72-89b03 are hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.

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KANSAS NATIONAL EDUCATION ASSOCIATION / 715 W. 10TH STREET / TOPEKA, KANSAS 66612-1686

Craig Grant Testimony
Senate Judiciary Committee
Thursday, February 18, 1999

Mr. Chairman and Members of the Committee: I apologize for submitting testimony in writing. I am out of state today and Mark Desetti is testifying elsewhere on another issue. We did want to express our opinion about SB 203.

Although Kansas NEA is pleased with the language on page eleven of the bill which loosens the section on which conduct to report, we are not in favor of the additional language on lines 37-39 of the bill which indicates that we are only going to report that this is a potentially dangerous student for that current school year. I guess this means that if a student commits a dangerous act on the last day of school, teachers will not have that knowledge the next school year. This will not help us keep our schools safe.

We believe that if a child has been involved in any of the five different situations described in current law (and which have been struck), that student is potentially dangerous for a number of years following that incident. I certainly want a teacher of my child to be informed if there is a potentially dangerous student in that classroom. Even if the incident happened in the third year, I want my child's fifth grade teacher to know. That is why we probably should not change lines 20 through 36 as we should keep very specific what needs to be reported.

Because of our great concerns with SB 203, we would ask that you not pass it out of committee favorably. Thank you for listening to our concerns.

Tel[illegible]ne: (785) 232-8271 FAX: (785) 232-6012

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AMENDMENTS TO SB 203

Section 5 of SB 203 is hereby amended as follows:

Beginning on line 9 of page 11, the bill will be amended to read: "(e)" "school employee" means any administrative, professional, or para professional employee of a school.

(f) 'Superintendent of Schools' means the superintendent of schools reported by the board Of education of a unified school district or the chief administrative officer of an accredited nonpublic school appointed by the board of education of a school"

Section 6 of SB 203 is hereby amended as follows:

Beginning on line 16 of page 11, the following language will replace existing Language: "follows: 72-89b03. (a) if a school employee has information that a pupil is a a pupil specified in this section, the school employee shall report such information and Identify the pupil to the superintendent of schools. The superintendent of schools shall Investigate the matter and, upon confirming that the identified pupil is a pupil to whom t the prevision of this section apply, shall provide the reported information and identify the pupil to all school employees who are directly involved or likely to be directly involved in teaching or providing other school related services to the pupil.

(b) the provisions of this section apply to:

(1) any pupil who has been expelled for the reason provided by sub-section (c) of K.S.A. 72-8901, and amendments thereto, for conduct which endangers the safety of others;

(2) any pupil who has been expelled for the reason provided by sub-section (d) of K.S.A. 72-8901, and amendments thereto;

(3) any pupil who has been expelled under a policy adopted pursuant to K.S.A. 1998 Supp. 72-89a02, and amendments thereto;

(4) any pupil who has been adjudged to be a juvenile offender, and who offense, if committed by an adult, would constitute a felony under the laws of Kansas or the state where the offense was committed, except any pupil adjudicated as a juvenile offender for a felony theft offense involving no direct threat to human life;

(5) any pupil who has been tried and convicted as an adult of any felony, except any pupil convicted of a felony theft crime involving a direct threat to human life; and

(6) any pupil who has engaged in any conduct which may result in serious injury to self or others.

(c) school employees and the superintendent of schools shall not be required to report information concerning a pupil specified in this section if the expulsion, adjudication as a juvenile offender conviction of a felony, or conduct which could result in serious injury to self or others occurred more that 365 days prior to the school employee's report to the superintendent of schools"

(7) Section 6 of SB 203 is hereby amended as follows: beginning on line 35 of page 12, the bill will read: "(h)" no board of education, member of any such board, superintendent of schools, or school employee shall be liable for damages in a civil action resulting from a person's good faith acts or omissions in complying with the requirements or provisions of the Kansas school safety and security act."