

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 p.m. on February 16, 2004 in Room 313-S of the Capitol.

All members were present except:  
Representative Dan Williams- excused

Committee staff present:  
Jill Wolters, Revisor of Statutes  
Diana Lee, Revisor of Statutes  
Jerry Ann Donaldson, Kansas Legislative Research Department  
Cindy O'Neal, Secretary

Conferees appearing before the committee:  
Senator John Vratil  
Representative Paul Davis  
Judge Christel Marquardt, Kansas Court of Appeals  
Loren Snell, Office of Attorney General, Medicaid Fraud Division  
Representative Doug Patterson  
Vicky Johnson, Kansas Department of Transportation, Chief Legal Counsel

The hearing on **SB 324 - concerning appellate jurisdiction of supreme court**, was opened.

Senator John Vratil, explained that the proposed bill would provide that the appellate jurisdiction of the Kansas Supreme Court may be invoked by appeal as a matter of right from a preliminary or final decision in which a Kansas statute has been held unconstitutional as a violation of Article 6, of the Kansas Constitution. The bill would be effective upon publication in the *Kansas Register* and would expire on July 1, 2006.

The hearing on **SB 324** was closed.

The hearing on **HB 2618 - terms of office of court of appeals judges from four to six**, was opened.

Representative Paul Davis appeared as the sponsor of the bill which would treat the Appeals Court the same as the Supreme Court with regard to length of terms. Currently, the Supreme Court has six year terms and the Appeals Court has four year terms. This would make both Courts have terms of six years. (Attachment 1)

Judge Christel Marquardt, Kansas Court of Appeals, stated that she would be the only Appeals Court judge affected by this legislation this year. She provided the committee with a chart showing the terms of all Appellate Court Judges in each state and Kansas was shown to have the shortest terms with regard to the Appeals Court. (Attachment 2)

The hearing on **HB 2618** was closed.

The hearing on **HB 2802 - hearsay exception provided for videotaped statements of certain elderly adults who are unavailable at trial**, was opened.

Loren Snell, Office of Attorney General, Medicaid Fraud Division, appeared in support of the proposed bill which would allow for the admission of videotaped statements by a victim when the victim is unavailable to testify due to death or disability. The proposed bill is modeled after a California statute which has withstood legal challenges. It is also similar to the current exception under Kansas law in which a child is permitted to provided a videotaped statement in cases involving abuse. It would give total discretion to the court to allow or disallow the videotaped statement. He estimated that the Attorney General has had to turn down 25-30 cases in the last six years due to death or disability of the elder adult. (Attachment 3)

The hearing on **HB 2802** was closed.

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on February 16, 2004 in Room 313-S of the Capitol.

The hearing on **HB 2800** - eminent domain, determination and payment of relocation assistance, was opened.

Representative Doug Patterson applauded the Legislature for making long strides forward in condemnation cases last year but has determined that 2003 HB 2032 created a right, but not a remedy. What has been happening is that relocation benefits are not being paid in a timely manner and there is no appeal right to determine the adequacy of the relocation award. The proposed bill would require relocation expenses be paid prior to possession and would allow for an appeal of the adequacy of the award. (Attachment 4)

Vicky Johnson, Kansas Department of Transportation, Chief Legal Counsel, appeared before the committee in opposition to the bill. She explained that the landowner receives the condemnation award up front and has up to 1 year to turn in his relocation expenses. It's impossible to determine the relocation benefits at the same time as the condemnation award because the costs have not yet been incurred. She also had concerns that the appeal through the court system would be more expensive than the current administrative appeals process. (Attachment 5)

Written testimony in opposition of the bill was provided by the City of Overland Park. (Attachment 6)

The hearing on **HB 2800** was closed.

Representative Long-Mast made the motion to approve the committee minutes from February 2, 3, 4 & 9<sup>th</sup>. Representative Pauls seconded the motion. The motion carried.

The committee meeting adjourned at 5:15 p.m. The next meeting was scheduled for February 17, 2004.

PAUL DAVIS  
REPRESENTATIVE, 46TH DISTRICT  
1101 1/2 MASSACHUSETTS  
LAWRENCE, KANSAS 66044  
(785) 749-1942

STATE CAPITOL BUILDING, ROOM 284-W  
TOPEKA, KANSAS 66612-1504  
(785) 296-7665  
davis@house.state.ks.us



TOPEKA

HOUSE OF  
REPRESENTATIVES

**LEGISLATIVE TESTIMONY**  
**HOUSE BILL 2618**  
**REPRESENTATIVE PAUL DAVIS**

February 16, 2004

TO: CHAIRMAN MIKE O'NEAL AND MEMBERS OF THE HOUSE JUDICIARY  
COMMITTEE

FROM: REPRESENTATIVE PAUL DAVIS

RE: HOUSE BILL 2618

Members of the House Judiciary Committee:

I appear today as a proponent of House Bill 2618. I asked this committee for introduction of the bill because I believe that terms of office for appellate judges in Kansas ought to be made consistent. Currently, judges on the Kansas Court of Appeals serve four year terms while justices on the Kansas Supreme Court serve six year terms. This bill would change the terms of office for Court of Appeals judges to six year terms.

Judge Marquardt from the Kansas Court of Appeals is here today to present testimony and an amendment to the bill. I fully support her amendment. It was brought to my attention that passage of this bill would actually shorten the tenure of several judges that are currently sitting on the Court. That was not my intention and Judge Marquardt's amendment will remedy this situation.

I would be happy to answer any questions.

**Testimony before the Kansas House Judiciary Committee  
on House Bill No. 2618**

Monday, February 16, 2004, at 3:30 p.m.

by

The Honorable Christel E. Marquardt,  
Judge on the Kansas Court of Appeals

K.S.A. 20-3006 has been amended in recent years to add judges to the Kansas Court of Appeals in order to accommodate the large caseload handled by our court. We are grateful because this has lessened our dependence on outside judges and in turn, has taken some of the burden off the Court of Appeals judges.

House Bill 2618 is one that is supported by the Kansas Court of Appeals, the district court judges, and to the best of my knowledge, the Kansas Supreme Court provided a minor amendment is made to the bill. It is my understanding that the term of office of the judges on the Court of Appeals has remained at 4 years since the Court was established some 26 years ago. Since that time, the work of the Court of Appeals has changed dramatically.

I am suggesting that there be an amendment to House Bill No. 2618 (c). Under the current law, I am eligible to run for retention election this November

and if retained, I would be allowed to serve 4 more years.

The way this bill is written, my current term would be extended 2 years but that would not allow me to run for retention election at the end of that term. In other words, the new legislation would required me to retire 2 years earlier than the current legislation. I am the only judge that would be affected by this change. I am, therefore, asking that the bill be amended as follows:

"(c) Any judge of the court of appeals in office on July 1, 2004, shall have such judge's term of office extended two years from the date of expiration of the current term of office of such judge, except, those judges who are scheduled to be on the retention ballot in the November 2004 election shall run for a 6 year term. Thereafter, the term of office of the judges of all court of appeals shall be 6 years."

There are 3 of us on the Court of Appeals who have paid our \$20.00 filing fee and have executed the paperwork to appear on the ballot for this November's election. The other 2 are not affected by the current wording of the bill because of their ages. Additionally, the way the bill is currently worded, there would be no

Court of Appeals judge on the ballot this November.

The data from the United States Department of Justice, (a copy of which is attached to these remarks), although certainly not controlling on our legislature, shows that the terms of office for judges on other states' courts of appeals range from 6 years to lifetime appointments:

16 states have 6 year terms

10 states have 8 year terms

7 states have 10 year terms

2 states have 12 year terms

1 state has a 14 year term

1 state has a 15 year term

1 state has lifetime appointment

Members of the Missouri Court of Appeals have 12 year terms. There are 11 states that do not have courts of appeals. Kansas is the only state that limits its court of appeals to 4 year terms. Most of the states have the same term of office for their court of appeals as their supreme court. Our Supreme Court justices serve 6 year terms. It should also be noted that federal judges in Kansas and elsewhere

have lifetime appointments. You probably are aware that federal Judge Brown in Wichita is in his mid-90's and is still carrying an almost full caseload. He has a wonderful mind and is respected by the lawyers who appear before him.

Even though it does not bear directly on this legislation, you should be aware of the fact that our court is concerned about the fact that the public lacks knowledge about appellate judges while at the same time they are asked to vote for us in retention elections. Our court is currently looking at what other states have done in the area of performance standards and in the future will hopefully provide information to the public so that they will have a basis for their votes.

I respectfully ask that you pass House Bill 2618 with the suggested amendment. Thank you for your time and consideration of my request.

Christel E. Marquardt

Proposed Amendment to House Bill 2618

"(c) Any judge of the court of appeals in office on July 1, 2004, shall have such judge's term of office extended two years from the date of expiration of the current term of office of such judge, except, those judges who are scheduled to be on the retention ballot in the November 2004 election shall run for a 6 year term. Thereafter, the term of office of all judges of the court of appeals shall be 6 years."





## **Bureau of Justice Statistics**

# **State Court Organization 1998**

**Courts and judges**  
**Judicial selection and service**  
**Judicial branch**  
**Appellate courts**  
**Trial courts**  
**The jury**  
**The sentencing context**  
**Court structure**

# State Court Organization 1998

By David B. Rottman  
Carol R. Flango  
Melissa T. Cantrell  
Randall Hansen  
Neil LaFountain

*A joint effort of  
Conference of State Court Administrators  
and National Center for State Courts*

June 2000, NCJ 178932

Table 5. Terms of Appellate Court Judges

	Length of term	Selection of chief justice/judge	Term of office for chief justice/judge	Chief justices/judges— can they succeed themselves?
<b>Alabama</b>				
Supreme Court	6 years	Popular election	6 years	Yes
Court of Criminal Appeals	6 years	Court selection	Indefinite	Yes
Court of Civil Appeals	6 years	Seniority	Indefinite	Yes
<b>Alaska</b>				
Supreme Court	10 years	Court selection	3 years	No
Court of Appeals	8 years	Supreme court, chief justice appointment	2 years	Yes
<b>Arizona</b>				
Supreme Court	6 years	Court selection	5 years	Yes
Court of Appeals	6 years	Court selection	1 year	Yes
<b>Arkansas</b>				
Supreme Court	8 years	Popular election	8 years	Yes
Court of Appeals	8 years	Supreme court, chief justice appoints	4 years	Yes
<b>California</b>				
Supreme Court	12 years	Gubernatorial appointment	12 years	Yes
Courts of Appeal	12 years	Gubernatorial appointment	12 years	Yes
<b>Colorado</b>				
Supreme Court	10 years	Court selection	Indefinite	Yes
Court of Appeals	8 years	Supreme court, chief justice appoints	At pleasure	Yes
<b>Connecticut</b>				
Supreme Court	8 years	Legislative appointment <sup>1</sup>	8 years	Yes
Appellate Court	8 years	Supreme court's chief justice appoints	Indefinite	Yes
<b>Delaware</b>				
Supreme Court	12 years	Gubernatorial appointment	12 years	Yes
<b>District of Columbia</b>				
Court of Appeals	15 years	Judicial nominating commission appointment	4 years	Yes
<b>Florida</b>				
Supreme Court	6 years	Court selection	2 years	Yes
District Courts of Appeal	6 years	Court selection	2 years	Yes
<b>Georgia</b>				
Supreme Court	6 years	Court selection	4 years	No
Court of Appeals	6 years	Rotate by seniority	2 years	Yes
<b>Hawaii</b>				
Supreme Court	10 years	Judicial Selection Commission nominates, governor appoints with consent of senate	10 years	Yes
Intermediate Court of Appeals	10 years	Judicial Selection Commission nominates, governor appoints with consent of senate	10 years	Yes
<b>Idaho</b>				
Supreme Court	6 years	Court selection	4 years	Yes
Court of Appeals	6 years	Supreme court, Chief Justice appointment	2 years	Yes
<b>Illinois</b>				
Supreme Court	10 years	Court selection	3 years	Yes
Appellate Court	10 years	Court selection	1 year	Yes

Table 5. Terms of Appellate Courts Judges

	Length of term	Selection of chief justice/judge	Term of office for chief justice/judge	Chief justices/judges—can they succeed themselves?
<b>Indiana</b>				
Supreme Court	Initial = 2 yrs Retention = 10 yrs	Judicial nominating commission appointment	5 years	Yes
Court of Appeals	Initial = 2 yrs Retention = 10 yrs	Chief judge by full court selection	3 years	Yes
Tax Court	Initial = 2 yrs Retention = 10 yrs	-	-	-
<b>Iowa</b>				
Supreme Court	8 years	Court selection	8 years or duration of term	Yes
Court of Appeals	6 years	Court selection	2 years	Yes
<b>Kansas</b>				
Supreme Court	6 years	Rotation by seniority	Indefinite	Yes
Court of Appeals	4 years	Supreme court appointment	Indefinite	Yes
<b>Kentucky</b>				
Supreme Court	8 years	Court selection	4 years	Yes
Court of Appeals	8 years	Court selection	4 years	Yes
<b>Louisiana</b>				
Supreme Court	10 years	Seniority	Duration of service	Yes
Courts of Appeal	10 years	Seniority	Duration of service	Yes
<b>Maine</b>				
Supreme Judicial Court	7 years	Gubernatorial appointment	7 years	Yes
<b>Maryland</b>				
Court of Appeals	10 years	Gubernatorial appointment	Indefinite	Yes
Court of Special Appeals	10 years	Gubernatorial appointment	Indefinite	Yes
<b>Massachusetts</b>				
Supreme Judicial Court	Until age 70	<sup>2</sup>	To age 70	-
Appeals Court	Until age 70	<sup>2</sup>	To age 70	-
<b>Michigan</b>				
Supreme Court	8 years	Court selection	2 years	Yes
Court of Appeals	6 years	Appointed by supreme court	2 years	Yes
<b>Minnesota</b>				
Supreme Court	6 years	Popular election	6 years	Yes
Court of Appeals	6 years	Gubernatorial appointment	3 years	Yes
<b>Mississippi</b>				
Supreme Court	8 years	Seniority	Duration of service	Yes
Court of Appeals	8 years	Appointment by Supreme Court Chief Justice	4 years	Yes
<b>Missouri</b>				
Supreme Court	12 years	Court selection	2 years	Yes <sup>3</sup>
Court of Appeals	12 years	Court selection	2 years <sup>4</sup>	Yes
<b>Montana</b>				
Supreme Court	8 years	Popular election	8 years	Yes
<b>Nebraska</b>				
Supreme Court	More than 3 years for first election; every 6 years thereafter	Gubernatorial appointment from judicial nominating commission	Duration of service	Yes
Court of Appeals	More than 3 years for first election; every 6 years thereafter	IAC by majority vote; upon ratification of selection by Supreme Court	2 years as presiding	Yes

Legend: ~ = Not Applicable

Table 5. Terms of Appellate Court Judges

	Length of term	Selection of chief justice/judge	Term of office for chief justice/judge	Chief justices/judges—can they succeed themselves?
<b>Nevada</b>				
Supreme Court	6 years	Rotation	2 years	5
<b>New Hampshire</b>				
Supreme Court	Until age 70	Gubernatorial appointment with approval of elected executive council	Until age 70	~
<b>New Jersey</b>				
Supreme Court	7 years, followed by tenure	Gubernatorial appointment with consent of senate	Duration of service	Yes
Superior Court, Appellate Division	Annual assignment by Chief Justice <sup>6</sup>	Designation by Chief Justice	At the pleasure of the Chief Justice	~
<b>New Mexico</b>				
Supreme Court	8 years	Court selection	2 years	Yes
Court of Appeals	8 years	Court selection	2 years	Yes
<b>New York</b>				
Court of Appeals	14 years	Gubernatorial appointment from judicial nominating commission	14 years	Yes
Supreme Court, Appellate Divisions	5 years or duration	Gubernatorial appointment from judicial screening commission	Duration of service	Yes
<b>North Carolina</b>				
Supreme Court	8 years	Popular election	8 years	--
Court of Appeals	8 years	Supreme court, chief justice appointment	At the pleasure of the chief justice of the Supreme court	~
<b>North Dakota</b>				
Supreme Court	10 years	Selection by the judges of the supreme and district courts	5 years or until term expires, whichever occurs first	Yes
<b>Ohio</b>				
Supreme Court	6 years	Popular election	6 years	Yes
Courts of Appeals	6 years	Selected by Judges of District	Calendar year	Yes
<b>Oklahoma</b>				
Supreme Court	6 years	Court selection	2 years	Yes
Criminal Appeals	6 years	Court selection	2 years	Yes
Court of Civil Appeals	6 years	Court selection	1 year	Yes
<b>Oregon</b>				
Supreme Court	6 years	Court selection	6 years	Yes
<b>Pennsylvania</b>				
Supreme Court	10 years	Rotation by seniority	Duration of term	~
Superior Court	10 years	Court selection	5 years	No
Commonwealth Court	10 years	Court selection	5 years	No
<b>Rhode Island</b>				
Supreme Court	Life	Gubernatorial appointment from the judicial nominating commission	Life	~
<b>South Carolina</b>				
Supreme Court	10 years	Legislative election	10 years	Yes
Court of Appeals	6 years	Legislative election	6 years	Yes
<b>South Dakota</b>				
Supreme Court	8 years	Court selection	4 years	Yes
<b>Tennessee</b>				
Supreme Court	8 years	Court selection	4 years	Yes
Courts of Appeal	8 years	Court selection	1 term	Yes
Court of Criminal Appeals	8 years	Court selection	1 term	Yes

2-10

Table 5. Terms of Appellate Courts Judges

	Length of term	Selection of chief justice/judge	Term of office for chief justice/judge	Chief justices/judges— can they succeed themselves?
<b>Texas</b>				
Supreme Court	6 years	Partisan election	6 years	Yes
Court of Criminal Appeals	6 years	Partisan election	6 years	Yes
Courts of Appeals	6 years	Partisan election	6 years	Yes
<b>Utah</b>				
Supreme Court	Initial = 3 yrs; Retention = 10 yrs	Court selection	4 years	Yes
Court of Appeals	Initial = 3 yrs; Retention = 6 yrs	Court selection	2 years	Yes <sup>7</sup>
<b>Vermont</b>				
Supreme Court	6 years	Gubernatorial appointment from judicial nominating commission with consent of senate	6 years	Yes
<b>Virginia</b>				
Supreme Court	12 years	Seniority	Indefinite	~
Court of Appeals	8 years	Court selection	4 years	Yes
<b>Washington</b>				
Supreme Court	6 years	Court selection	4 years	Yes
Courts of Appeals	6 years	Presiding chief judge by court selection; however, position rotates among the 3 divisions; chief judge by division judges	1 year for presiding judge and 2 years for chief judge	Not the presiding judge
<b>West Virginia</b>				
Supreme Court	12 years	Rotation by seniority	1 year	No
<b>Wisconsin</b>				
Supreme Court	10 years	Seniority	Until declined	~
Court of Appeals	6 years	Supreme court appointment	3 years	Yes
<b>Wyoming</b>				
Supreme Court	8 years	Court selection	At the pleasure of the court	~
<b>Federal</b>				
U.S. Supreme Court	Life	Nominated and appointed by the President with advice and consent of Senate	Life	~
U.S. Courts of Appeals	Life	Seniority <sup>8</sup>	7 years or until age 70	No
U.S. Court of Veterans Appeals	15 years	Nominated and appointed by president with advice and consent of Senate	15 years	Yes

FOOTNOTES:

**Connecticut:**

<sup>1</sup>Governor nominates from candidates submitted by Judicial Selection Commission.

**Massachusetts:**

<sup>2</sup>Chief Justice, in the appellate courts, is a separate judicial office from that of an Associate Justice. Chief Justices are appointed, until age 70, by the Governor with the advice and consent of the Executive (Governor's) Council.

**Missouri:**

<sup>3</sup>Selection is typically rotated among the judges.

<sup>4</sup>Two years in western and southern districts; one year in eastern district.

**Nevada:**

<sup>5</sup>Not immediately; later, as part of rotation.

**New Jersey:**

<sup>6</sup>All Superior Court judges, including Appellate Division judges, are subject to gubernatorial reappointment and consent by the senate after an initial 7-year term.

**Utah:**

<sup>7</sup>Presiding judge can serve no more than two successive terms.

**Federal:**

<sup>8</sup>The chief judge is the active circuit judge who is senior of those judges who (1) are 64 years or under, (2) have served for one or more years as a circuit judge, and (3) have not served previously as chief judge. Per 28 U.S.C. § 45(a).

2-11



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

**PHILL KLINE**  
ATTORNEY GENERAL

120 SW 10TH AVE., 2ND FLOOR  
TOPEKA, KS 66612-1597  
(785) 296-2215 • FAX (785) 296-6296  
WWW.KSAG.ORG

February 17, 2004

To: House Judiciary Committee  
From: Loren F. Snell, Jr., Assistant Attorney General

Re: HB 2802, Amending K.S.A. 60-460, Exceptions to the Hearsay Rule

Chairman O'Neal and Members of the Committee:

I am honored to appear before you today on behalf of the Medicaid Fraud and Abuse Division of the Attorney General's Office. Established with the enactment of the Medicaid Fraud Control Act in 1996, the Medicaid Fraud and Abuse division of the Attorney General's Office has statutory jurisdiction for prosecuting those that commit fraud against the Kansas Medicaid Program. In addition, our office has jurisdiction, and may intervene in matters involving the mistreatment or abuse of any individual being cared for or receiving services in a facility that is partially or totally funded through Medicaid Program funds.

Today, I am testifying in support of House Bill 2802, a bill that would amend the current law to allow for the admission of videotaped statements by victims of medicaid fraud or mistreatment of a dependent adult, in those limited situations where the victim is unavailable to testify due to death or disability. Testimony that would currently be excluded as hearsay under the rules of evidence, unless it were to fall within a firmly rooted hearsay exception. As proposed, HB 2802 would permit such statements, in the discretion of the court, only after the offering party has satisfied the court that the specific requirements for admission, as set forth in the amendment, have been satisfied.

The proposed amendment is modeled primarily after a California statute, Cal. Evid. Code § 1380, which was enacted in 2000. This is important for at least two reasons. First, the California statute has been challenged in the appellate courts and has withstood those challenges. *See People v. Tatum*, 108 Cal. App. 4<sup>th</sup> 288, 133 Cal. Rptr. 2d 267 (Cal. Ct. App., 2003). Second, the language utilized by California, as does the language of HB 2802, specifically addresses requirements set forth by our United States Supreme Court in considering whether the admission of videotaped testimony violates the constitutional right guaranteed to the criminally accused under the Sixth Amendment. The right "to be confronted with witnesses against him." *See Idaho v. Wright*, 497 U.S. 805, 110 S. Ct. 3139 (1990).

House Judiciary Committee  
2-16-04  
Attachment 3

In *Wright*, the Supreme Court set forth two requirements that had to be satisfied before a hearsay statement could be admitted against a criminal defendant. The declarant must be unavailable, and the statement must bear “adequate ‘indicia of reliability.’” The Court further stated that “‘indicia of reliability’ requirement could be met in either of two circumstances: where the hearsay statement ‘falls within a firmly rooted hearsay exception,’ or where it is supported by a ‘showing of particularized guarantees of trustworthiness.’” The Court also stated that “the ‘particularized guarantees of trustworthiness’ required for admission under the Confrontation Clause must likewise be drawn from the totality of the circumstances that surround the making of the statement and render the declarant particularly worthy of belief. As proposed, HB 2802, would satisfy these requirements, thereby removing any constitutional concerns over the enactment and subsequent utilization of this much needed exception.

The Attorney General’s Office’s support of this Bill stems from the numerous instances in which a case has been investigated for possible medicaid fraud or mistreatment, only to be lost due to the death or disability of a very important witness, the victim. It is estimated that just since our creation in 1996, approximately 25 cases have been either directly or indirectly impacted by the death or disability of a key witness for the prosecution. As a result those cases have either been closed without further investigation, or have been dismissed prior to trial. In at least one instance the case was able to proceed, however, the charges against the defendant had to be reduced due to the lack of key testimony. For example, our office is currently investigating a case involving medicaid fraud. This case involves a large number of potential victims. It was discovered just this morning, that one of the victims, potentially a key witness, linked to thousands of dollars of fraud, is now deceased. Another victim witness has been in and out of the hospital and is considered to be in critical condition. Due to the voluminous nature of these cases, particularly the records that must be reviewed as part of the investigation, these investigations typically take months, possibly even a year, before they are in proper form to file criminal charges. Then there is the lengthy process of the criminal trial. As a result, our victims, which are typically elderly or dependent adults, face the possibility that they may not be available to see that justice is in fact carried out on their behalf.

Our office recently prosecuted a mistreatment case in which one of the victims, after being removed from the defendant’s care, was found to have contracted a sexually transmitted disease. Statements made upon initially interviewing the victim indicated that there had possibly been instances of sexual abuse in the home where she was being cared for. However, within a month after her removal from the home she died as a direct result of the sexually transmitted disease, which had gone untreated for a number of years. Without the victim’s statements, there was little that our investigators could proceed on to investigate the possibility of sexual abuse and the resulting death. As a result the defendant was only able to be charged with a misdemeanor charge of mistreatment. Had this exception been available, perhaps our office may have been able to charge the defendant, as well as the sexual offenders with felonies.



There are numerous other cases, including the alleged victim of abuse in a nursing home, who passed away three months after the case was presented to our attorneys for prosecution. Ultimately, the case had to be declined for prosecution.

While it would be nice to be able to place all of our cases on a "fast track" and have them prosecuted in a short period of time, we understand that due to the nature of the cases that we are handling this is not possible. Being able to videotape the statements of select victims, those that we have an inclination may not be available in the event the case proceeds to trial, and then have that statement admitted at trial would serve as a tremendous tool for our office in a our continuing effort to protect the elderly from the dangers of medicaid fraud and mistreatment. Moreover, if there was some method by which we could bring this type of testimony in without the need for an amendment we would most certainly make that effort. However, these statements, because of the circumstances that surround there making, are not generally subject to admissibility under another exception. We are quite simply precluded from offering the statements as evidence of wrongdoing.

Please note that we are not proposing a blanket exception for these types of statement to make them admissible in any criminal proceeding, but rather this amendment is limited only to those cases involving victims of medicaid fraud or mistreatment of a dependent adult as defined by K.S.A. 21-3437. The intent of this legislative amendment is to allow victims of medicaid fraud and abuse to have a voice in the injustice perpetrated against them, even after they have passed away or become so disabled that they are no longer able to speak for themselves. Victim as contemplated in this amendment is not intended to be limited only to the Kansas Medicaid Program, as the victim of fraudulent claims, but also includes those victims that are medicaid recipients that have been exploited by those committing fraud. Although they may not always suffer direct physical loss, they are the true victims as contemplated in this proposed amendment.

This is a very important piece of legislation, that the Office of the Attorney General feels is worthy of consideration. I thank you for your time, and would be happy to answer any questions the chairman or members might have.



HOUSE OF  
REPRESENTATIVES



DOUG PATTERSON  
MAJORITY WHIP

REPRESENTATIVE, 28TH DISTRICT  
JOHNSON COUNTY  
12712 EL MONTE  
LEAWOOD, KANSAS 66209  
(913) 897-6905

ROOM 174-W  
STATE CAPITOL  
TOPEKA, KANSAS 66612-1504  
(785) 291-3500

VICE-CHAIR: JUDICIARY  
MEMBER: COMMERCE AND LABOR  
HEALTH AND HUMAN SERVICES  
JT. COMMITTEE ON STATE  
INDIAN AFFAIRS  
HOUSE RULES COMMITTEE

February 16, 2004

Chairman O'Neal and  
Judiciary Committee Members

Re: HB 2800 - Supportive

Dear Mr. Chairman:

We will recall the last year, we passed HB 2032 which requires the payment of moving expenses and relocation allowance in all condemnation cases, not just KDOT projects as was then the case. The Federal guidelines were established as a "safe harbor".

What we created in HB 2032 was a right - but not a remedy. Relocation benefits are not timely paid by the time possession is expected and there is no appeal right to determine the adequacy of the relocation award.

Accordingly, this bill

1. Requires the relocation and allowance for moving expenses to be paid prior to possession.
2. Allows the appeal of the adequacy of the award for moving expenses and relocation allowance along with the adequacy of the appraiser's report.

Thank you Mr. Chairman and I will stand for questions.

Respectfully,

A handwritten signature in blue ink, appearing to read "Doug Patterson", with a large, stylized initial "D".

Doug Patterson

# KANSAS

DEPARTMENT OF TRANSPORTATION  
DEB MILLER, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

## TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE

### REGARDING HOUSE BILL 2800 EMINENT DOMAIN AND RELOCATION ASSISTANCE

February 16, 2004

Mr. Chairman and Members of the Committee:

I am Vicky Johnson, with the Kansas Department of Transportation (KDOT), Office of Chief Counsel. On behalf of KDOT, I am here to oppose House Bill 2800 concerning eminent domain and relocation assistance. There are several issues relating to this bill that the Department would like to bring to the attention of this committee for consideration.

**First, House Bill 2800 would require that governmental entities pay relocation benefits at the same time that they pay the condemnation award.** This is not realistic given that the federal law on relocation requires that the benefit be paid "only to such a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the one year period beginning on the date on which they receive from the Federal agency final payment of all costs of the acquired dwelling or on the date on which they move from the acquired dwelling, whichever is the later date." In many cases it is impossible, at the time of the condemnation, to determine the relocation benefits due because the costs have not yet been incurred and won't be until up to one year later. Under the current process, there is the ability to provide temporary housing assistance to persons if necessary in order to allow them the one year period to locate their replacement housing. This allows the right-of-way to be cleared sooner and provides the opportunity to lock in construction costs and get the projects built sooner.

**Second, House Bill 2800 would allow displaced persons to appeal the adequacy of relocation benefits through the condemnation appeal.** There are several problems with this.

1. This would put relocation assistance computations in the hands of a jury which has no knowledge of or experience with the application of the federal guidelines. Such a process would put at risk the eligibility of these costs for federal participation. The federal statute requires that the displaced person is entitled to administrative review by the state agency head, who under the proposed amendments would not be allowed to override the findings of the court appointed appraisers.

2. This could significantly delay the beginning of construction (and therefore increase the cost of projects) because the administrative process for reviewing relocation assistance determinations is generally much faster than the condemnation appeal process.

3. The administrative appeal process is also a less expensive process for both the landowner and the governmental entity and generally does not consume court resources. However, if the landowner is not satisfied with the administrative hearing officer's decision, they still have the right to seek judicial review. KDOT sees very few administrative appeals of relocation assistance determinations and almost no judicial appeals and believes that, at least with respect to roadway projects receiving state or federal funds, the current process is working well, as is.

**Third, the change in section 3 that would put the relocation benefits in the hands of the court appointed appraisers on non federal-aid projects could result in considerable differences in the relocation costs paid on federal-aid projects and those on non federal-aid projects.** Court appointed appraisers would not generally be familiar with the computation of relocation assistance under the federal act. The result of leaving the determination of those benefits in the hands of the court appointed appraisers, who may be different people on every project, is that there will be no way to provide consistent interpretation and application of the provisions of the federal act and therefore equitable treatment of owners on different projects. Under current procedures, KDOT has personnel specifically trained in this area to perform this function.

**Fourth, there will also be difficulties associated with the selection of court appointed appraisers and the timely and cost effective accomplishment of their work.** Many of the people that might be approached to serve as court appointed appraisers will, most likely, be uncomfortable attempting to apply the very detailed guidelines in the federal act and regulations to determine relocation assistance. Because there are a different group of appraisers on every condemnation, each group will have to become familiar with the statutes and regulations to perform their work thus increasing the time and cost associated with determining the awards. Finally, the process of determining relocation assistance benefits is not one that can easily be accomplished in the current 20 day period that the appraisers have to issue a report or even within the 45 day period proposed by Senate Bill 421.

**Finally, there will be the risk that owners will be paid their relocation assistance payments and the condemning authority will be forced to pay for the same things a second time.** Relocation assistance benefits are sometimes provided to cover the costs of moving personal property off of right-of-way acquired. If those payments are required to be made to the owner at the time of the condemnation award, then the owner neglects or refuses to move the personal property, the condemning authority will be forced to pay the construction contractor to move the

HB 2800  
House Judiciary Committee  
Page 3  
February 16, 2004

property and will incur the same costs twice. This is one of the reasons that relocation assistance is a reimbursement program that pays for costs actually incurred, rather than a payment of anticipated costs.

In conclusion, KDOT has not received complaints about relocation assistance services and payments it provides to landowners and tenants on property being acquired. Further, there are very few administrative appeals filed and almost no requests for court review of administrative action. Therefore, it appears that at least with respect to the projects with which KDOT has involvement, the process is not in need of change. Finally, the proposed changes will introduce problems with uniformity, delay, increased cost, and compliance with the federal statutes and regulations governing the subject and thus KDOT opposed House Bill 2800.



City Hall • 8500 Santa Fe Drive  
Overland Park, Kansas 66212-2899  
TEL 913.895.6080/6086 • FAX 913.895.5095  
E-MAIL jane.neff-brain@opkansas.org

TESTIMONY IN OPPOSITION TO HOUSE BILL NO. 2800

TO: The Honorable Mike O'Neal, Chairperson  
Members of the House Judiciary Committee  
Room 313-S

DATE: February 16, 2004

RE: House Bill No. 2800--Proposed legislation pertaining to  
relocation benefits for property subject to eminent domain

Ladies and Gentlemen:

The City of Overland Park opposes House Bill No. 2800 for the following reasons:

1. House Bill No. 2800 is contrary to the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 which mandates "fair and reasonable relocation benefits", defines those benefits and provides for an administrative review process should the property owner dispute the benefits. House Bill No. 2800 would allow court appointed appraisers and a jury on appeal to define the benefit, rather than the federal act. Additionally it would obviate the administrative review process in favor of a review by the courts.
2. House Bill No. 2800 makes doubtful a city's ability to tender a relocation package and issue a 30 day letter to vacate if the adequacy of the benefits can be contested in a jury trial or appellate review. That delay would have a detrimental and costly impact on a city's ability to let contracts and commence construction of public improvements.

House Bill No. 2800 is in direct conflict with federal law on the subject of relocation benefits. Additionally, it diminishes a City's ability to timely contract for public improvements. For these reasons, the City of Overland Park strongly opposes House Bill No. 2800.

Thank you for your consideration.

A handwritten signature in cursive script that reads "Jane Neff-Brain". The signature is written in black ink and is positioned above the printed name and title.

Jane Neff-Brain  
Senior Assistant City Attorney