

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on February 7, 2005, in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Helen Pedigo, Office of Revisor of Statutes
Nancy Lister, Committee Secretary

Conferees appearing before the committee:

Alma Weber, Murder Victims Families for Reconciliation
Sister Therese Bangert, Kansas Catholic Conference
Kevin O'Connor, Deputy District Attorney, Sedgwick County

Others attending:

See attached list.

Chairman Vratil called the meeting to order. There were no bill introductions.

Chairman Vratil announced that several individuals scheduled to testify on **SB 6** would be allowed to give their testimony before final action would be taken.

SB 6 Abolition of the Kansas death penalty

Proponents:

Alma Weber, with Murder Victims Families for Reconciliation, stated that even though her son, Paul, a State Parole Officer, had been murdered, she opposed the death penalty. (Attachment 1)

Sister Therese Bangert, representing Kansas Catholic Conference, stated that she is a Prison Chaplain and had been in attendance at many crime scenes and five death penalty trials. Sister stated that her experiences have taught her several things, including that most people think about a murder from the perspective of a loved one being murdered, but not of a loved one being the murderer. Sister stated that a lifelong burden is put on those we ask to be part of a killing. Sister also stated that an incredible expense goes in to convicting a person of murder, and that those dollars could be better spent in other more positive ways. (Attachment 2)

One testimony was provided in writing in support of the bill from Mary Ann Slattery, former Assistant District Attorney for Wyandotte County. (Attachment 3)

Neutral:

Kevin O'Connor, Deputy District Attorney in the Criminal Division of Sedgwick County, stated that he and Jerry Gorman, District Attorney in Wyandotte County, were present to address any questions of the Committee. Mr. O'Connor stated it has been almost 11 years that Kansas has had the death penalty, and he feels that the record is clear that prosecutors have taken their responsibility seriously and saved the death penalty for the worst of the worst. Mr. O'Connor addressed briefly the issues of whether the death penalty is a deterrent to crime, the cost of capital punishment, "innocents" on death row, and the geographical and racial disparity of prosecutions of capital punishment in Kansas. (Attachment 4) Mr. O'Connor answered several questions of Committee members about these issues.

Opponents:

Six testimonies were submitted in writing: Megan Heyka DeJohn; Larry Heyka; Elizabeth Heyka Daily; Barbara Oblander; Amy Scott; and the Lucille Gallegos family. (Attachments 5-10)

Chairman Vratil announced that final action would be taken at this time on **SB 6**.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on February 7, 2005, in Room 123-S of the Capitol.

Final Action:

SB 6 Abolition of the Kansas death penalty

A motion was made to pass the bill out of Committee without recommendation. Senator Bruce moved, seconded by Senator Betts, and the motion carried.

Chairman Vratil announced that final action would be taken at this time on **SB 28.**

Final Action:

SB 28 Death penalty; if aggravating circumstances outweigh mitigating circumstances, the sentence is death; if circumstances are equal, the defendant is not sentenced to death

Chairman Vratil stated that there has been much testimony, including from the Sedgwick County District Attorney, the District Attorney from Johnson County, and the County and District Attorney's Association, all imploring the Committee not to "fix" this problem; likewise, there have been arguments on the other side of the issue. The Chairman asked for a motion on the bill. Senator Bruce motioned to pass the bill out of Committee without recommendation, and Senator Betts seconded the motion. Chairman Vratil asked if there was any discussion on the motion.

Senator Schmidt stated that the legislature is between a rock and a hard place on what is the right course of action on fixing the Kansas death penalty law. The legislature is being asked to make a judgment that is dependent upon what the United States Supreme Court may or may not do at some point in the future. If the legislature acts to fix the flaw in the Kansas statute which the Kansas Supreme Court has identified, and then if the U.S. Supreme Court chooses not to grant *certiorari* in the case on appeal, the legislature will certainly be blamed and may be culpable for the U.S. Supreme Court's decision not to take up that appeal. The consequences of the U.S. Supreme Court not taking up the appeal would mean that the seven men on death row who have been sentenced to death would never be executed. Senator Schmidt stated the legislature does not have within its power to reach "backwards" and change the law in a manner that affects the punishment of the seven. On the other hand, if the legislature chooses not to act, and then the U.S. Supreme Court, after the legislature has adjourned for this session, decides not to grant *certiorari*, the legislature would put Kansas in the position where Kansas has no death penalty law for at least an eight month period until the next legislative session, and in that period of time the legislature would be answerable to future victims if crimes were committed in that window of time.

Senator Schmidt stated that, in an attempt to find a third avenue, he is exploring with legal counsel two possibilities. The first possibility would be for the legislature, or at least the Senate, to go on record through the form of passing a resolution articulating some particular facts which the body is uniquely situated to express, such as why the legislature did not respond to change the *Kleypas* decision, which was a conscious decision and reliance upon the Court's articulation of what was thought to be the law. Then, the decision was reversed in *Marsh* and the Court's articulation went the other direction. Senator Schmidt suggested adding these things on the record might be useful to the State in its attempt to persuade the U.S. Supreme Court to consider Kansas' request for *certiorari* and the appeal. The second possibility Senator Schmidt is exploring is trying to determine whether it is possible, by an act of the Law or by an act of the Rule, to look at the scope of a potential special session that might occur this summer after the U.S. Supreme Court acts, so that the legislature could, if the body choose not to fix this problem now, address it in a narrowly focused session if and when it becomes clear that the U.S. Supreme Court has chosen not to hear the appeal.

Chairman called for a vote. A motion was made to pass the bill out of Committee without recommendation. Senator Bruce moved, seconded by Senator Betts, and the motion carried.

Chairman Vratil announced that the Committee would next consider final action on **SB 36.**

Final Action:

SB 36 The supreme court may require applicants to practice law to be fingerprinted and submit to a national criminal history record check

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on February 7, 2005, in Room 123-S of the Capitol.

Senator Schmidt provided to the Committee a copy of the proposed amendment he offered, which would give the Supreme Court discretion to allow students who had graduated from a now defunct Wichita law school to apply to sit for the bar exam. (Attachment 11) Senator Schmidt moved to amend the bill, seconded by Senator Goodwin, and the motion carried. A motion was made to recommend the bill favorably as amended. Senator Goodwin moved, seconded by Senator Donovan, and the motion carried.

Chairman Vratil asked the Committee to consider next taking action on **SB 30**.

SB 30 Exercising the state's option to provide an exemption to disqualification for public assistance to certain drug offender

Senator Journey provided to the Committee a copy of the proposed amendment he offered, which gives discretionary authority to a case worker to request a random urinalysis test to confirm an offender who is applying for state and federal assistance is drug free. (Attachment 12) Senator Bruce suggested that, for clarity, the words "for 30 days" be struck from the next to the last sentence, and the words "after 30 days" be added at the end of the last sentence. Senator Journey concurred. Senator Bruce motioned to make the change to the proposed amendment, seconded by Senator Journey, and the motion carried. Senator Journey clarified to the Committee that the state and federal assistance benefits, if suspended, would only affect the individual offender, and not the offender's family or dependants. Senator Journey moved to amend the bill, seconded by Senator Donovan, and the motion carried. A motion was made to recommend the bill favorably as amended. Senator Journey moved, seconded by Senator Bruce, and the motion carried.

Chairman Vratil adjourned the meeting at 10:30 A.M. The next meeting is scheduled for February 8, 2005.

PLS continue to PASS

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/7/05

NAME	REPRESENTING
DAVID KLEPPER	KC STAR
Douaa Schneeweis	Amnesty Internat'l
Bill Lamm	MLPR
Alexa Weber	M.V.R.R.
Elizabeth (Heyka) Daily	victims' families
Megan Heyka DeJohn	victims' families
Amy Scott	victims' family
Kevin O'Connor	DA's office, Wichita
Jerome Gorman	Wyandotte Co. D.A.
Jan Harlett	Supreme Court
J Buter	KSC
JEREMY S BARCLAY	KDOC
Lane Worsley	OJA
Allan Harrison	KANAC
Amber Shwendi	PMCA
Kevin Barone	KTLA
Kerrie Bacon	Kansas Commission on Disability Concerns
Rocky Nichols	DRC
Kelly Shumpe	Gov.'s Fellow

Alma Weber
5847-1 SW 22nd Terrace
Topeka, 66614

Good Morning,

As I read the articles about the murder of Matt Samuels, Sheriff of Greenwood County, I felt helpless. There was nothing anyone could do to ease the raw, seemingly unending pain of his loved ones as they entered into their journey of grief.

I am Alma Weber, mother of Paul Weber, a State Parole Officer, murdered by one of his parolees on October 19, 1976 -- John Turner is housed at Larned Mental Health Correctional Facility. Paul's birthday was January 25th, — he would have been 55 yesterday.

A bit of family history – I became a single parent about the time Paul entered high school; and as the oldest, he became my assistant and the role model for his eight brothers and sisters. Even after his marriage, he and his wife continued to be emotional support, listening ear and mediator to them.

Now, my thoughts and feelings on this issue:

I believe the value of a human being far exceeds any commodity in the universe and on earth. Each human being created is unique and irreplaceable. This is the belief I passed on to my children. To approve of capital punishment would negate this belief.

Secondly, I believe that capital punishment is a form of retaliation and it must be fed by emotional anger. Anger consumes much energy and time and that would have greatly affected the time and energy given to my family. I refused to pay that price.

I also noted that capital punishment is the sentence requested for the murder of law-enforcement personnel. In addition to Paul; Ben, my youngest son, has also chosen this field of endeavor and is a Social Worker at the Shawnee County Adult Detention Center. I can assure you that if Ben or any of his seven brothers or sisters were killed; my feelings of grief, loss and anger would be no different. They would be just as deep and long-lasting.

Paul had a way of bringing others into his interests and activities. His enthusiasm for the course in "Corrections" he was taking at Washburn was contagious and became a family project. We, as a family attended the movie, "In Cold Blood" and discussed it later. Paul, of course, led the discussion stating his abhorrence of the death penalty.

My first and oldest son-in-law, Bob, died of cancer in February of 2004. After Paul's death, he just seemed to become the role-model for his brothers and sisters-in-law. We are now again working our way through the feelings of grief, loss and family emptiness – we

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do this by celebrating their lives and being grateful for the gift of having had them in our lives. We celebrate Paul's love of his sail boat, camping, love of family, family gatherings, football (both touch and as a fan) and cinnamon rolls. With Bob, we celebrate his patience, wit, wisdom, fun with card games and scrabble, love of family and family gatherings.

I believe that respect for human life must be taught from the day the baby is brought into the world. In addition, I believe that responsibility for his/her actions must also be taught and reinforced in childhood.

Finally, I believe we all need to value our own humanness and accept the responsibility for our words and actions—respect for and valuing our fellowman will follow.

While reading articles in the Wichita Eagle about Sheriff Samuels which contained comments of friends, my attention became focused on one comment noting that Sheriff Samuels had a great interest in attempting to resolve conflict.

As Paul drove to the home of John and his mother that October morning, I am convinced that his goal was to mediate the continuing differences between Mother and Son.

Thank You.



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**Testimony on SB 6
Abolition of the Death Penalty
Senate Judiciary – January 26, 2005
Kansas Catholic Conference – Sister Therese Bangert**

“The new evangelization calls for followers of Christ who are unconditionally pro-life: who will proclaim, celebrate and serve the Gospel of life in every situation. A sign of hope is the increasing recognition that the dignity of human life must never be taken away, even in the case of someone who has done great evil.” (Pope John Paul)

The death penalty issue is what first brought me to the Capitol in 1987 – the year that six Senators changed their vote from “yes” to “no” when Gov. Carlin’s veto was not on the other end of their vote.

I learned a lot about Senators and the death penalty issue that session. There were a few Senators who were quite sure that the death penalty was good public policy for Kansas. There were a group of Senators who felt strongly that the death penalty was wrong and that Kansas had no business being in the killing business. Then there was the group that struggled in their heart and spirit with their vote. They struggled because they knew the polls showed that the majority of their constituents favored the death penalty.

One Senator at my first visit said,
“After my last vote for the death penalty,
I had nightmares that I was executing someone.”
He changed his vote.

I came to respect the special struggle of the vote on the death penalty.
I came to respect Senators for their struggle.

MOST REVEREND GEORGE K. FITZSIMONS, D.D.
DIOCESE OF SALINA

MOST REVEREND JAMES P. KELEHER, S.T.D.
Chairman of Board
ARCHDIOCESE OF KANSAS CITY IN KANSAS

MOST REVEREND THOMAS J. OLMSTED, J.C.D., D.D.
DIOCESE OF WICHITA

MOST REVEREND RONALD M. GILMORE, S.T.L., D.D.
DIOCESE OF DODGE CITY

MOST REVEREND

MOST REVEREND MARION F. FORST, D.D.
RETIRED

MICHAEL P. FARMER
Executive Director

MOST REVEREND

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Attachment 2

Respect for all human life and opposition to the violence in our society are at the root of our long-standing position against the death penalty. We see the death penalty as perpetuating a cycle of violence and promoting a sense of vengeance in our culture. As we said in Confronting a Culture of Violence: "We cannot teach that killing is wrong by killing."

All my experiences have taught me that there are many parts of this process that I suspect you and your constituents have not thought about:

- Most of us think in terms of our loved one being murdered not our loved one being the murderer.
- Most don't consider the Corrections' officers who we ask to strap a person down and put them to death. Wardens and corrections officers have told me, "I can't say this publicly, Sister, but I'm against the death penalty. It is against everything we hope for in the Department Of Corrections."
- Most don't consider jurors who come back 10 to 15 years later in an appeals process and say, "If I had known such and such, I would not have voted for death." I believe we lay a life-long burden on people who we ask to be part of the process of killing someone.
- Most don't think of the incredible number of resources that go into executing someone. To this point, Kansas has provided good defense. But I watch huge amounts of resources go into both prosecution and defense.

We seek to educate and persuade our fellow citizens that this penalty is often applied unfairly and in racially biased ways.

- Since my move to Kansas City I experience what I have heard others talk about – watching the murders that make the front page and return to that space and the murders that merit two inches on an inside page.

Modern society has the means of protecting itself, without definitively denying criminals the chance to reform. I renew the appeal I made most recently at Christmas for a consensus to end the death penalty, which is both cruel and unnecessary.

(Pope John Paul, January '99)

Last year this legislature passed a bill that provides for a sentence of life without the possibility of parole. Some call this bill death by incarceration.

In the name of the Catholic Bishops of Kansas, I urge your vote for SB 6 and the abolition of the death penalty in Kansas.

A lot has happened to me since that session in 1987.

I've served and am serving

on the Board of the Kansas Coalition Against the Death Penalty.

For six years I served on the Board

of the National Coalition Against the Death Penalty.

My religious community, the Sisters of Charity of Leavenworth

have taken a corporate stance against the death penalty.

In some way I have almost daily contact with some death penalty issue.

I tell people I've experienced more about the death penalty

then you want to know!

Sadly, many Americans – including many Catholics – still support the death penalty out of understandable fear of crime and horror at so many innocent lives lost through criminal violence.

Eight years ago I moved from Topeka to Kansas City.

In Kansas City I became a Police Chaplain.

I've gone to the prisons as a Chaplain since 1973.

I became a Police Chaplain

to place myself on the other side of the crime equation

– to minister there soon after a murder happens . . .

– to be the bearer of the news that someone's loved one is dead . . .

And in my pride I did not want people to say

that "naïve nun" does not know

what she is talking about when she quotes

the Bible, the Pope, the words of the Church in opposing the death penalty.

At this point I've lost track of how many J-1's (Police lingo for homicide) . . .

of how many J-1 scenes are part of my experience.

These experiences have taught me much.

They've taught me much

and only further deepened my resolve

to raise my voice against any violence wherever that may be.

I've also spent some time at each of the 5 death penalty trials

held in Wyandotte County.

I've seen grieving, angry victim families.

I've seen grieving defendant families.

I've seen pictures and heard scenarios

that have left bruises on my spirit.

But I've never felt killing another human being is a solution.

Testimony
Senate Judiciary Committee
February 7, 2004
Mary Ann Slattery
Former Assistant District Attorney
Wyandotte County
In support of Repeal of the Death Penalty

For the past twenty-five years I have been a prosecutor in Wyandotte County. As you well know, Wyandotte County always is either number 1 or 2 in the violent crime category. Until two weeks ago, when I retired, I was the Chief Deputy District Attorney. I have always been very concerned about public safety and victims' rights. However, I have grave concerns about Kansas having any type of death penalty and would urge you to repeal our current law.

If you were to talk with defense attorneys in our jurisdiction, I believe they would tell you I am considered tough on plea bargains and definitely not "soft on crime."

I am wholeheartedly against the death penalty for the following five reasons:

1. I think it is morally wrong to take any person's life. Capital punishment will not bring back the life lost. It is not a proven deterrent. Many states with the death penalty have very high homicide rates in spite of capital punishment laws.
2. The death penalty is not cost effective. Money could better be spent on victim compensation, prisons, rehabilitation programs, crime prevention or to ease the crisis in funding to all levels of education.
3. I believe that society can be protected by locking up extremely dangerous people for life. The State should have available sentencing options which would virtually guarantee that dangerous criminals would not be released.
4. It is inconsistent for a society to teach the value of human life and then to take a human life by means of a death penalty. Some people have been sentenced to death—and even executed—and later have been found to be innocent.
5. The death penalty, whether broad or narrow in scope, would ultimately be applied to very few persons. Our resources and energies should be focused on making life better for all Kansans rather than on taking life from a few.

The five reasons I have just given I sent to all members of the Kansas Senate and House in February of 1994. Unfortunately in 1994, Kansas implemented the Death Penalty. Thankfully no one has yet been executed.

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Since the death penalty law was passed Wyandotte County has filed and tried several death penalty cases. My convictions against the death penalty have only grown stronger. To see the time and energy expended on capital murder cases is appalling. The expense to the taxpayers in Kansas is much greater than was ever projected when the death penalty was passed. Because of the heightened scrutiny in these cases, the time devoted by the Court, the State and the Capital Defenders is unbelievable. Victim families wait two, three or four years for resolution of a case when a typical first degree murder case should be resolved by a jury within a year from arrest. The appeal process is also very costly. Before Kansas enacted the death penalty there was only speculation as to its cost. Now the figures are coming in. It is unconscionable the amount being spent so that the State may execute an offender. The needs of the poor, the elderly and our youth could be much better met with the funds now being wasted on death penalty cases.

I would ask you to vote to repeal the death penalty and to put our limited financial resources where they will benefit all Kansans. I ask that you not fund death penalty cases and executions in the name of our citizens.

Sincerely,

Mary Ann Slattery
7709 Corona
Kansas City, Kansas 66112
913-788-2255

Submitted by
Kevin O'CONNOR

February 7, 2005

Chairman Vratil & Members of the Senate Judiciary Committee:

We appreciate the opportunity to address the Committee on Senate Bill 6. We testify today not as proponents or opponents to capital punishment. However, we have been involved in the prosecution of capital murder cases and believe that it is important that the legislature debate this issue on facts. We feel a responsibility to answer some of the testimony presented the last time the Committee held a hearing on this bill.

THE LAW

The death penalty is a constitutional form of punishment. The Constitution of the United States is the ultimate support for this fact. The United States Supreme Court has never found the death penalty to be unconstitutional. The Court has only taken issue with procedural questions. The Kansas Supreme Court did not find the death penalty to be unconstitutional. The Court found a problem with a word or two in the statute. (A decision that prosecutors and others believe should and will be overturned by the United States Supreme Court.)

In Gregg v. Georgia, 428 U.S. 153 (1976), the Supreme Court said, “[t]he Court on a number of occasions has both assumed and *asserted* the constitutionality of capital punishment.” The Court added, “[i]t is *apparent* from the text of the Constitution itself that the existence of capital punishment was accepted by the framers.”

3 Opponents of capital punishment often argue that the death penalty has no deterrent effect. We will not argue the issue because it is simply impossible to prove and ignores the real issue. How does one prove the point? Are individuals asked if they would have committed a capital eligible murder but for the fear of the death penalty? One convicted Kansas murderer, Richard Grissom, told investigators that the bodies would not be found in Missouri. Grissom was convicted of murdering two young women in Johnson County. I do not believe the bodies have ever been found. Grissom held the women in a storage facility in Missouri at one point. Investigators believe that Grissom made the statement regarding the whereabouts of the bodies because he knew Missouri had a death penalty and Kansas did not. Grissom committed the murder before the death penalty was reinstated in Kansas.

The United States Supreme Court has stated that, “[t]he death penalty is said to serve two principal social purposes: retribution and deterrence of capital crimes by prospective offenders.” See Gregg, 428 U.S. 153. Regarding deterrence, the Court has held, “[s]tatistical attempts to evaluate the worth of the death penalty as a deterrent to crimes by potential offenders have occasioned a great deal of debate. The results simply have been inconclusive.” The Court continued, “[a]lthough some of the studies suggest that the death penalty may not function as a significantly greater deterrent than lesser penalties, there is no convincing empirical evidence either supporting or refuting this view. We may nevertheless assume safely that there are murderers, such as those who act in passion, for whom the threat of death has little or no deterrent effect. But for many others, the death penalty *undoubtedly* is a significant deterrent... There are carefully contemplated murders, such as murder for hire, where the possible penalty of death may well enter into the cold calculus that precedes the decision to act. And there are some

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Attachment 4

categories of murder, such as murder by a life prisoner, where other sanctions may not be adequate.” The statement by the Supreme Court regarding murders of passion is more important in Kansas because most, if not all, murders of passion would not fall under the purview of the Kansas capital murder statute.

As we stated earlier, the debate over the deterrence effect of capital punishment ignores the other principal social purpose recognized by the United States Supreme Court: retribution. The Court has held, “[i]n part, capital punishment is an expression of society’s moral outrage at particularly offensive conduct. This function may be unappealing to many, but it is essential in an ordered society that asks its citizens to rely on legal processes rather than self-help to vindicate their wrongs.” See Gregg, 428 U.S. 153. The Court continued, “[i]ndeed, the decision that capital punishment may be the appropriate sanction in extreme cases is an expression of the community’s belief that certain crimes are themselves so grievous an affront to humanity that the only adequate response may be the penalty of death.” The Kansas Legislature enacted a capital murder statute that ensures that the death penalty will be imposed only on those murderers that commit crimes that “are themselves so grievous as affront to humanity.” A review of the murderers on death row in Kansas proves the point. United States Supreme Court Justice Stewart wrote in a concurring opinion in Furman v. Georgia, 408 U.S. 238 (1972), that “[t]he instinct for retribution is part of the nature of man, and channeling that instinct in the administration of criminal justice serves an important purpose in promoting the stability of a society governed by law. When people begin to believe that organized society is unwilling or unable to impose upon criminal offenders the punishment they ‘deserve,’ then there are sown the seeds of anarchy - of self-help, vigilante justice, and lynch law.”

COSTS

Cost is often cited as a reason to abolish capital punishment. Prosecutors believe and have consistently insisted that the study regarding the costs of capital cases was seriously flawed. Nevertheless, the “disparity” was not to the level expected by some. District Attorney Paul Morrison of Johnson County and the District Attorney’s Office in Sedgwick County warned auditors that they were comparing apples to oranges. Differing factual situations were not taken into account. We warned but no one listened. The auditors themselves are not to blame. In a 2001 study, the Virginia Joint Legislative Audit and Review Commission (JLARC) stated, “[i]n being asked to evaluate the application of the death penalty, JLARC has been placed in the unenviable position of evaluating an issue difficult, if not impossible, to analyze in a quantitative way. Litigation of this type does not lend itself to quantitative analysis, and capital litigation is no exception. Appearances to the contrary, no two cases are identical. No two defendants can have identical backgrounds, criminal records, psychological profiles or other personal characteristics. And in cases which seem factually similar, the quantity and strength of the evidence varies greatly. External factors, including community sentiment, the philosophy of the local judges, and other variables, are difficult to incorporate into any analysis.” The Office of the District Attorney of the Eighteenth Judicial District has always maintained that capital cases have not cost the office any more or less than any other first degree murder case. We as prosecutors will perform our responsibility to seek justice no matter the penalty. Cases are not prosecuted on the basis of punishment. For example, DNA tests will be ordered in a non-capital murder case and a capital murder case if the circumstances warrant such tests. Hard work and time away from one’s family are issues in non-capital murder cases and capital murder cases

because evidence is evidence. Evidence in any murder case and the prosecution of such case is not driven by the punishment. Also, can one really put a price on justice? How much worth does one put on the life of the murdered victim? Who wants to tell the family and loved ones of the victim it costs too much? Finally, if the most severe punishment is life then the life sentence will be attacked and appealed. Appeals will not stop if the death penalty is abolished.

INNOCENCE

At the last hearing, legislators received a book by a reporter that describes “innocents” on death row. Court TV recently ran a movie about “innocents” on death row. Studies, books and movies regarding “innocents” on death row often distort the facts. Reliance on such “studies” is misplaced. For example, opponents of capital punishment often cite and rely upon a study published by James S. Liebman and others entitled A Broken System: Error Rates in Capital Cases (Liebman Study) and a website maintained by the anti-death penalty Death Penalty Information Center to support the innocence claim. The reliance is misguided, misleading, irresponsible, and intellectually dishonest. The sources suffer from serious methodological flaws that render them unreliable.

The Liebman study has been exposed as a political statement masquerading as a scientific study. Liebman is no “neutral” observer in the debate over the death penalty. Liebman “is a zealous partisan, clearly committed to the abolition of capital punishment.” Bennett A Berlyn, Deputy Attorney General (New Jersey), A Response to Professor Liebman’s “A Broken System”, November 2000. Between 1982 and 1997, Liebman has represented no less than eight capital defendants in appeals before the United States Supreme Court. Id. Liebman’s vehement opposition to the death penalty is revealed in the study’s opening pages.

The most basic flaws in the Liebman Study were revealed in an article by Barry Latzer and James Cauthen, Another Recount: Appeals in Capital Cases, the Prosecutor, January/February 2001. In the article, Latzer, a professor at John Jay College of Criminal Justice and Graduate Center of the City University of New York, and Cauthen, an assistant professor of government at John Jay College of Criminal Justice, explain serious defects in the methodology employed in the Liebman Study. The article established that Liebman’s irresponsible and intellectually dishonest assertion of a 68% “error” rate in capital cases is wrong. Liebman defined the “error” rate as “the proportion of fully reviewed capital judgments that were overturned at one of the three stages [state direct review, state habeas review, and federal habeas review] due to serious error.” Liebman, at 6. However, Liebman selectively viewed only those cases in which federal habeas petitions had been filed rather than all of the cases where federal habeas review was available. Latzer & Cauthen, at 26. When the second, more accurate, figure is used, the “error” rate drops to 58%. Liebman does not bother to distinguish between reversed convictions and reversed sentences. The very important distinction reveals that only 20% of the “error” noted in the Liebman study were reversed convictions. Latzer & Cauthen, at 27. After retrials or re-sentences, defendants were found not guilty after a previous conviction of capital murder in only 4% of the cases contained in the Liebman Study. Id. Liebman performs absolutely no analysis of whether defendants in the capital cases he considered were “actually innocent,” including the cases where the defendants were ultimately found not guilty. Liebman conveniently ignores the little understood but extremely important distinction between “actual innocence” and a “not guilty” verdict.

The Latzer & Cauthen article identifies only a few of the many criticisms that the

Liebman Study has generated. The study conveniently fails to tell the full story. For example, half of data on California's "error" rate cases comes from the tenure of former Chief Judge Rose Bird. During Judge Bird's reign, the California Supreme Court reversed nearly every death penalty case that was brought before the Court, including 18 cases in which it found improper jury instructions that were later approved by the same Court after Judge Bird was voted out of office. Paul G. Cassell, We're not Executing the Innocent, The Wall Street Journal, June 16, 2000 (Mr. Cassell is a law professor at the University of Utah.) The study also includes cases that were reversed during the 1970s when the United States Supreme Court was creating a new set of rules in death penalty cases (including the time the death penalty procedure was declared unconstitutional in 1972 and the Gregg decision in 1976) and applying the new rules retroactively. Id.

The bottom line, plain truth is that Liebman's so-called "error" rate is extremely deceptive. The rate has nothing to do with cases in which an innocent person is convicted of murder. After reviewing twenty-three years of capital sentences, Liebman was unable to find a single case in which an innocent person was executed. Id. The "error" rate has been tailored to say what Liebman wanted it to say. The rate includes any reversal for any reason at any stage even if the capital sentence was ultimately upheld. "Under such curious score keeping, the report can list 64 Florida post-conviction as involving 'serious errors,' even though more than one-third of these cases ultimately resulted in a reimposed death sentence, and in not one of the Florida cases did a court ultimately overturn the murder conviction." Id. Liebman's misleading rate leaves the false impression that Florida convicted "innocent" persons when the facts prove otherwise. Reg Brown, Florida Governor's Office, RE: Columbia Law School Death Penalty Study. In addition to Liebman's misleading definition of error, the study mistakenly claims that William Thompson's death sentence was set aside. Thompson remains on death row. See Thompson v. State, 619 So.2d 261 (Fla. 1993). The State of Nevada took exception to Liebman's claim of a 38% "error" rate in the state's death penalty cases. An independent analysis by the Nevada Attorney General's Office using official records (Liebman relied upon information obtained from criminal defense attorneys and the NAACP Capital Punishment Project, an organization committed to the abolition of the death penalty) determined that the "error" rate was 19%. The analysis noted that the reversals had nothing to do with an "innocent" person being convicted. See Nevada Attorney General, Nevada's Death Penalty System is Working! The State of New Jersey points out that Liebman ignores the fact that the high number of death sentence (not capital murder convictions) reversals are attributable to unforeseen legislative changes or judicial interpretations of the New Jersey's relatively new death penalty law. Bennett A Berlyn, Deputy Attorney General (New Jersey), A Response to Professor Liebman's "A Broken System", November 2000.

Unfortunately, the glaring errors in Liebman's study have gone largely unreported. Liebman's Study is clearly a political statement designed to mislead the public and further an anti-death penalty agenda. The Study offers no legal basis to declare the death penalty unconstitutional.

The "Innocence: Freed from Death Row" list on a website maintained by the anti-death penalty Death Penalty Information Center (DPIC) is fraught with error and questionable methodology. The most important flaw is the shocking failure to distinguish between "actual innocence" and not guilty verdicts. The list erroneously and purposefully lumps together individuals found "not guilty" at retrials or cases that were not pursued for reasons unrelated to the issue of "actual innocence." The list is simply a political statement intended to promote an

anti-death penalty agenda. The anti-death penalty religion will not allow the truth to get in the way of the goal to abolish the death penalty. The list is not reliable and does not, by any stretch of the imagination, provide legal justification or support to declare the death penalty unconstitutional.

GEOGRAPHICAL DISPARITY

The issue of geographical disparity was mentioned at the last hearing. We believe that a complaint was made regarding the death penalty being imposed in Sedgwick County but not Wyandotte County. We reiterate that no two murder cases, capital or otherwise, can be compared. Even so, what is the problem with a community, through the jury, imposing the appropriate punishment for murders committed in that community? Who better knows the views of the community regarding crime and punishment than the duly elected local prosecutor? If there is a problem with a particular community expressing its opinion of an appropriate punishment, what is the solution? Should the decision be made by an authority outside of the community? One could argue that an outside authority making the decision would lead to more capital murder prosecutions. Opponents of the death penalty vehemently objected to United States Attorney General John Ashcroft centralization of the federal death penalty decision making process. The Economist of May 3, 2003 wrote, “[i]f you examine Mr. Ashcroft’s record...[y]ou find [a] pattern of John-knows-best centralization...He has repeatedly tried to bully local federal prosecutors into seeking the death penalty, despite a long tradition of local discretion in death penalty cases.” Kansas prosecutors have used their discretion well since the death penalty was reinstated in 1994. The Virginia study mentioned earlier stated, “[b]ecause every case is unique, we echo the sentiment of the report which says, ‘no viable system of capital punishment can be sustained without vesting [prosecutors] with the discretionary authority they need to prosecute these difficult and troubling cases.’”

RACIAL DISPARITY

At the prior hearing, a criminal defense lawyer stated that prosecutors and jurors seek death more for white victims than African-American or other minority victims. The statement was made with no empirical data to support it. That same criminal defense lawyer defended the co-defendant of a young man charged with the capital murder of two young African-American females and two young African-American males. The State pursued the death penalty against the young man convicted of the murders, but a jury with African-American members declined to impose the sentence of the death. The race of the defendant or the race of the victim plays no role in a prosecutor’s decision to seek death.

Even more disturbing was how demeaning the statement is to the jurors of death penalty cases. Jurors are members of the various communities that you represent. The statement ignores the long process involved in selecting capital murder juries and discredits their hard work. People summoned for jury duty sacrifice time away from work and family to perform an indispensable public service. Jurors that have served on capital murder cases swore an oath to justice and worked very hard to return verdicts based solely upon the law and the evidence. The choice that juries face in a death penalty case is the most difficult we could ever ask of citizens called to serve in that capacity.

Capital punishment is an emotional issue. Senator Haley has offered a bill based upon a strongly held belief that capital punishment is immoral. Senator Haley's heartfelt belief and that of other death penalty opponents should be respected. So should the views of the overwhelming majority of people that do support the death penalty. We hope this testimony provides the Committee with information that it can use to make an informed decision on this important matter.

Sincerely,

Kevin O'Connor
Deputy District Attorney
Office of the District Attorney
Wichita, Kansas
(316)383-8119
koconnor@sedgwick.gov

Jerome Gorman
District Attorney, 29th Judicial District
Wyandotte County Courthouse
Kansas City, Kansas
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jgorman@wycokck.org

Dear Senators-

I would like to take this opportunity to introduce myself, my name is Megan Heyka DeJohn and my brother was one of the victims from the crime spree in Wichita, KS in December of 2000. My brother, Brad Heyka and his friends were not only murdered but they were tortured for hours before their final minutes of life.

I come from a family where we were taught that you work hard and earn what you get in life and that things don't come free. It is very obvious that the Carr brothers did not learn the same lesson. Not only did they commit the various acts in December of 2000 but we also had to endure their presence during the trial. During this time they not only showed no remorse but they also proceeded to wink at the family members, including myself, as well as the woman that survived. As I sat in the court room day after day I had to see them look me up and down like I was a prostitute, turning around in their chairs and only being concerned with one thing, themselves. Even at that time they took none of their actions serious.

Although I do not remember much of the day on December 15, 2000 after receiving such horrific news that changed my life forever, but I do remember making a promise to myself that I would see to it that even an ounce of justice would be done. On December 20, 2000 before we closed the casket of Bradley Charles Heyka, I shared my promise with him and told him that I would do whatever it took, no matter how long it takes, to see that the Carr brothers received the hardest punishment allowed in Kansas, the death penalty. This is why I am writing to you today Senator.

My family has had to learn to move forward, something we still struggle with on a daily basis. No matter how long it takes, how many judiciary committee meetings I have to sit in on, how many Senators I have to write or how many times I have to keep fighting, I will in order to keep my promise. It drains me every time but I will keep on doing it for my brother. **You** have the **power** to help the families of the victims from horrendous crimes like the one my brother had to suffer. A jury has convicted every man on death row in Kansas and there is no reasonable evidence that proves that they did not commit the crimes. For that we need to show them that Kansas takes the death penalty serious and that there are actual consequences for their actions. Right now on death row they get a TV in their room, the opportunity to have visitors and to see their loved ones (an opportunity that I do not have with my brother) as well as three meals a day. Where is the punishment in that? They may not get the freedom that you and I receive on a daily basis but they still get privileges that they do not deserve.

For this reason, I am asking that you please do what is in the best interest of the victims and their families and to give the US Supreme Court a chance to do what is needed here in Kansas with the death penalty. Your support would be greatly appreciated by those that have had to suffer like I have, not to mention the communities that have suffered as well. I hope that before you make a decision you sit back and think about if that was your brother or sister lying in a soccer field with no shred of life left.

Thank you for your time.

Megan Heyka DeJohn

Dear Senators:

My name is Larry Heyka. I have resided in Kansas for 56 of my 58 years. I must say that I am appalled at the interest in the Kansas legislature to once again review the merits of the death penalty. We would only be sending a message that Kansas is soft on crime and weak in its conviction that serious crime is dealt with seriously in our state.

Every week, we read about serious crimes being committed in Kansas and normally notice a pattern that most of these are committed by repeat violators. Current laws and penalties are not firm enough and the "revolving door" criminal who makes crime a profession understands and takes advantage of the weaknesses in our criminal system. Serious crime requires serious consequences and penalties. The death penalty makes a statement to criminals that Kansans must respect the life of others.

You see, I have always believed in the death penalty for certain horrendous crimes and have believed that it is a deterrent to those who seek to take the life of others. My son, Brad, who I continue to love dearly, was brutally murdered in Wichita on December 15, 2000 by the Carr Brothers. This action and loss to our family is devastating and will affect us forever. The Carr Brothers past reflected a pattern of repeated crime, soft sentences, plea bargains and reflected a "beat the legal system" attitude. Their crimes simply continued to get more severe. Then in December, 2000, they went on a murder spree in Wichita killing five very wonderful and loved Kansans. I will never forget that horrible phone call telling me of Brad's death. These senseless actions of the Carr Brothers tore the heart out of families, friends and Kansas communities. The Carr's actions were the most heinous in nature and they showed no remorse whatsoever throughout the hearings and trial. They actually taunted the families of the victims with jesters, winking and obscene actions throughout the trial. The Wichita jury reviewed all evidence diligently for weeks and found the Carr Brothers guilty of the numerous crimes including capital murder. Their sentence for these crimes was the death penalty. By their own actions, they chose death rather than life. Now, I expect the State of Kansas and the judicial system to carry out this sentence in a timely manner.

These loved ones are remembered, missed and loved daily and their families have made strides to move forward knowing that justice will be served to the Carr Brothers. Any repeal of the death penalty will only open up old wounds and inflame the heart of this writer and others.

Sincerely,

Larry Heyka

Senate Judiciary

2-7-05

Attachment 6

Submitted by
Elizabeth Heyka Daily

To: Members of the Senate Judiciary Committee

I am Brad Heyka's mother and I reside in Topeka Kansas. I attended the Judiciary Committee Meeting on Monday, January 24, 2005, and I will agree with Brad's father as well as his sister, that I am sickened by the discussion the Kansas Death Penalty. The signal you are sending is to soften the right and just punishment for the most horrible of crimes committed in Kansas.

This weakness in the State of Kansas laws and penalties for serious crimes as well as the State Department of Corrections is an outrage – it allows for the frequent offenders to “play the system” to their advantage. They know they can repeat crime after crime; use plea bargains; and slip through this weak and poorly enforced system.. The perfect example is the Carr Brothers who started at an early age in Ford County and Gray County in “beating” the juvenile system. Officials turned their backs and/or reduced the long list of penalties that were handed down to the Carr brothers by the Juvenile Court System. It was just easier to accept the fines as paid by the Carr brother's aunt and let these two criminals to continue to roam the streets of Dodge City.

The State Department of Corrections also contributed to the Carr's continued crimes. A costly error by one of the Garden City parole officers allowed Reggie Carr to be released from prison and back onto the streets of Wichita. This error was only explained to our family as it was a result of over-worked parole officers – Reggie was out on the streets in early December 2000 and joined Jonathan in a violent crime spree.

These actions resulted in the death of my only son, Brad Heyka on December 15 2000. Brad was only 27 years old, lived his entire life in Kansas; graduated from Kansas State University; employed by Koch Industries and climbing the corporate ladder in the financial department of Koch. Brad along with my only daughter, Megan are the joys of my whole world; I miss him terribly and have to cope daily with the sickening silence in my life.

I was driving to work on the morning of Dec. 15, 2000 when I received the phone call from the Wichita Police Department informing me about the death of Brad. I could not comprehend the information; the officer had to repeat the horrible ordeal over and over to me. I have no idea how I drove home, but I remember having to call Brad's dad who was at work and tell him his only son had been killed; then I had to find what hotel my daughter, Megan, and her husband were registered at for their vacation. Due to the time change, I woke her up in the middle of the night to give Megan the horrible news of the death of her only sibling. We continue still today to struggle with the senseless loss of Brad and the vicious crimes that were committed by the Carr brothers.

Senate Judiciary

2-07-05

Attachment 7

Our family huddled together with the other victims' families and somehow endured the pain and suffering while attending the Carr trial. I personally saw the Carr brothers give each other the "High 5" in the Wichita courtroom in celebration of their actions as well as their continued sneers and obscene gestures towards our families. How sickening!!! We endured the months and months of testimony to finally hear that the jury of peers had found them guilty and the death penalty was the "right and just" punishment!

Now you the Senate Judiciary Committee sit in your meeting and want to discuss the "merits" of the Kansas death penalty – should it be abolished????? I ask you to listen the families of Brad, Jason, Heather, and Aaron – Do not let us down again and turn your backs on the "right and just" punishment of this horrific crime. The Carr brothers are accountable for their actions – which is punishment by death.

I will repeat my statement as I spoke to Judge Clark and the jury in the Wichita courtroom of the impact of the loss of my only son, Brad – Brad was not only my son, he was my counselor, my financial advisor, my best friend. He gave me LOVE and LAUGHTER everyday of his life!! How do I ever fill that huge void in my life???

"There are people who believe they have the right to do whatever they like to whomever they choose. These people are not insane; they are as sane as you and me. But they don't live by the rules of any moral code. At least not one within human society. They are incredibly selfish that they live by their own rules." Therefore, the Carr death penalties are truly a statement of justice.

If you think you need to show mercy to the Carr brothers because they sit on death row, then show them the same mercy that they showed to my son, Brad, and his friends: Jason Befort; Aaron Sanders; Heather Muller, as well as HG – the only survivor of the horrible crime committed on December 15, 2000.

Elizabeth (Heyka) Daily
Brad Heyka's Mother

Dear Senator,

We were notified this date (Friday, Feb 4) that the final action by the committee regarding repealing the death penalty had been moved to Monday, Feb 7. My husband and I are strongly opposed to any 'fix'. We believe it should be reviewed by the U.S. Supreme Court.

Those persons on 'death row' are there due to their own actions. In the murder case of our son and daughter-in-law, their murders were planned.

The jurors who were asked to serve, set their own lives aside during this time. They carefully followed instructions given to them. Not once, but twice Gavin Scott was sentenced to death. Please listen to the people.

Please uphold the death penalty statute that was put in place by the voters of this state.

Barbara Oblander
Mother of Doug Brittain & wife Beth

Senate Judiciary

2-7-05

Attachment 8

February 4, 2005

Dear Judicial Committee members,

Thanks for your attention to my letter, which comes straight from my heart. I am Amy Scott and I currently reside in Overland Park, Kansas. I was born in Kansas, conducted my education here, and am proud to have worked for several outstanding Kansas-headquartered companies in Wichita and in Kansas City. While working at Koch Industries in Wichita, I met a wonderful man named Brad Heyka, and we dated seriously for 2 ½ years until December 15, 2000. The Carr brothers then shot him execution style and naked in a snowy field along with our four close friends. I support the sentence of death given to them by a jury who took its job very seriously.

I am writing to help you understand the need for the current death penalty to be left alone until the United States Supreme Court can rule on the pending appeal. I understand by reading the paper that Mr. Phill Kline has appealed to our highest court to decide whether the current law is valid. I feel that the Judiciary Committee needs to send a message that Kansas is not soft on crime, that we take murder very seriously, and that ones that violate our laws should be punished. Therefore you need to do whatever it takes to ensure that the current violators on death row, who BEYOND A REASONABLE DOUBT have committed the worst crimes possible, will receive swift and sure punishment of death.

I am not a vindictive person nor do I think that when the Carrs are executed that the pain will go away. However, Kansas must find a way to stop the cycle of these repeat offenders. Reggie and Jonathan Carr have shown a pattern of violence since they were children, were given every opportunity to change through juvenile and assistance programs as they grew up, yet they CHOSE to live their life by ignoring Kansas's laws. They continually laughed at our court system, knowing they would not be punished harshly. This is what led them to the weeks of violence in Wichita where they once again felt they would not be held responsible for their actions. In the court room, they mocked the jury, judge, their own attorneys, the prosecutors, the victims, and the victims' families. I can tell you with confidence they are smugishly awaiting your decisions today and in the future, thinking that Kansas will never give them punishment they deserve. Don't give them that pleasure – send the message that what they did was wrong, and they should pay the ultimate price.

No victim's rights group or religious organization that has presented to you represents my views. I represent myself, and you need to hear from true victims who are left to deal with putting our lives back together without the ones we love.

Waiting to make any changes until the US Supreme Court has decided to review the appeal is the best action for Kansas at this time. Please do not repeal the death penalty – it is a sound and just law that was voted in by competent people. Two-thirds of Kansas supports the death penalty. Please do what your constituents wish.

Amy Scott
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913-461-6858
amy.scott@mail.sprint.com

Senate Judiciary

2-7-05

Attachment 9

February 6, 2005

Chairman Vratil and members of the Senate Judiciary Committee:

We are Herman Gallegos, April Gallegos and Jennifer Hamilton. Our mother, Lucille Gallegos was brutally murdered on June 25, 2002 by a convicted felon named Douglas Belt. She was beaten, stabbed and decapitated while she was still breathing.

Douglas Belt was found guilty of Capital Murder, attempted rape and aggravated arson by a jury of his peers. That same jury sentenced him to death for his crimes against our mother. My mother was never given a second chance on the night of her murder. Douglas Belt should not be given a second chance at life for the crimes that he has committed. So before the legislature makes any decisions on the death penalty, please keep in mind the convicted murderers on death row who have caused so much grief and anguish to the families of the victims. This is not about an eye for an eye, this is about the justice that they deserve.

Victim Advocates that are against the death penalty, do not represent our views.

Sincerely,

Lucille Gallegos family.

Senate Judiciary

2-7-05

Attachment 10

SENATE BILL No. 36

By Committee on Judiciary

1-13

9 AN ACT concerning the admission to practice law; requirements; fin-
10 gerprints and criminal history/

; amending K.S.A. 7-103 and repealing the existing section

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) The supreme court may require an applicant for ad-
14 mission to practice law in this state to be fingerprinted and submit to a
15 national criminal history record check. The fingerprints shall be used to
16 identify the applicant and to determine whether the applicant has a record
17 of criminal arrests and convictions in this state or other jurisdictions. The
18 supreme court and the state board of law examiners are authorized to
19 submit the fingerprints to the Kansas bureau of investigation and the
20 federal bureau of investigation for a state and national criminal history
21 record check. The state board of law examiners and the supreme court
22 may use the information obtained from fingerprinting and the applicant's
23 criminal history only for purposes of verifying the identification of any
24 applicant and in the official determination of character and fitness of the
25 applicant for admission to practice law in this state.

26 (b) Local and state law enforcement officers and agencies shall assist
27 the supreme court in taking and processing of fingerprints of applicants
28 seeking admission to practice law in this state and shall release all records
29 of an applicant's arrests and convictions to the supreme court and the
30 state board of law examiners.

31 Sec. 2. This act shall take effect and be in force from and after its
32 publication in the statute book.

— Sec. 2. K.S.A. 7-103 is hereby amended to read as follows:
K.S.A. 7-103. (a) The supreme court of this state may make such
rules as it may deem necessary for the examination of applicants for
admission to the bar of this state and for the discipline and disbarment
of attorneys.

(b) ^{man} The supreme court of this state shall allow persons who
have been granted and hold a juris doctorate degree or bachelor of
laws degree from {correct name of Wichita School} to apply seeking
admission to the bar of this state. Such applicants shall satisfy all
other qualifications and examinations as established by supreme court
rule.

Sec. 3. K.S.A. 7-103 is hereby repealed.
Renumber Sec. 2 as 4.

SENATE BILL No. 30

By Committee on Judiciary

1-11

SENATE JUDICIARY COMMITTEE
JOURNEY AMENDMENT
February 3, 2005

Senate Judiciary
2-7-05
Attachment 12

9 AN ACT concerning public assistance; relating to persons convicted of a
10 controlled substance related felony.

11

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

13 Section 1. Under the authority of subsection (d)(1)(A) of 21
14 U.S.C. §862a, the state of Kansas hereby exercises its option out of sub-
15 section (a) of 21 U.S.C. §862a, which makes any individual ineligible for
16 certain state and federal assistance if that individual has been convicted
17 under federal or state law of any offense which is classified as a felony by
18 the law of the jurisdiction and which has as an element of such offense
19 the possession, use or distribution of a controlled substance as defined
20 by subsection (6) of 21 U.S.C. §802, only if, after such conviction, such
21 individual has:

22 ~~(a)~~ Been assessed by a licensed substance abuse treatment provider
23 as not requiring substance abuse treatment; or

24 ~~(b)~~ been assessed by a licensed substance abuse treatment provider
25 and such provider recommended substance abuse treatment and such
26 individual:

27 ~~(1)~~ Is participating in a licensed substance abuse treatment program;
28 or

29 ~~(2)~~ has successfully completed a licensed substance abuse treatment
30 program.

31 Sec. 2. This act shall take effect and be in force from and after its
32 publication in the statute book.

(a)

1

2

A

B

(b) Such individual shall submit to urinalysis, at the expense of such individual, during the application process and randomly thereafter as determined by the case worker. Upon such individual's request, a confirmation test of a positive result shall be performed at such individual's expense. Any state or federal assistance to such individual, permitted by this section, shall be suspended until receipt of the confirmation result. A positive result shall disqualify such individual from receiving such state and federal assistance for 30 days. Thereafter, such disqualified individual may reapply for assistance.