

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Arlen Siegfried at 1:30 P.M. on February 13, 2008, in Room 313-S of the Capitol.

All members were present:

Committee staff present:

Dennis Hodgins, Kansas Legislative Research Department
Mike Heim, Revisor of Statutes Office
Jason Long, Revisor of Statutes Office
Jeannie Dillon, Committee Assistant

Conferees:

Representative Sharon Schwartz
Nick Keller
Jennifer Keller
Harold Casey
Angie Vanburkleo
Peter Ninemire
Jennifer Roth

Others attending:

See attached list.

The Chairman opened the floor for bill introductions. Representative Olson requested a bill concerning Kansas electric energy for the future, seconded by Representative Peterson. Without objection, the bill was accepted.

Representative Dillmore requested a bill concerning campaign finance, seconded by Representative Peterson. Without objection, the bill was accepted.

Representative Brown requested a bill regarding child support payment and questionable licensing, seconded by Representative Peterson. Without objection, the bill was accepted.

Representative Loganbill offered a conceptual bill that would have treatment for those people who are diagnosed under the early detection worker's program, seconded by Representative Peterson. Without objection, the bill was accepted.

Representative Peterson requested a bill be introduced that addresses workmen's compensation injuries, seconded by Representative Hodge. Without objection, the bill was accepted.

Representative Peterson requested a bill regulating pharmaceutical manufacturing within the state, seconded by Representative Ruiz. Without objection, the bill was accepted.

Representative Knox announced there would be a room change for the subcommittee for tomorrow, February 14, to 136 North.

The Chairman opened the hearing on **HB 2602 - Creating the crime of use of a controlled substance endangering a child.**

The Chairman recognized Representative Sharon Schwartz. Representative Schwartz spoke as a proponent of **HB 2602.** She said that a year ago she was contacted by Jennifer and Nick Keller who asked if she would assist them in trying to better protect children by allowing authorities to intervene when a pregnant woman is using substances and putting her child at risk and to reduce the incidence of babies born with

CONTINUATION SHEET

MINUTES OF THE House Federal and State Affairs Committee at 1:30 P.M. on February 13, 2008, in Room 313-S of the Capitol.

addiction to controlled substances. She stated that the bill is based on Idaho legislation and makes it a crime to introduce certain controlled substances into the body of a pregnant female or a child, except as authorized by the uniform controlled substance act or valid prescription. The key provisions for pregnant women charged under this law are New Sec. 1 (b) and (c).

Representative Schwartz asked the Committee to support this important legislation to better protect children by allowing authorities to intervene when a pregnant woman is using substances and putting her child at risk. ([Attachment 1](#))

Mike Heim, Revisor of Statutes, briefed the Committee on **HB 2602**. He explained the bill and said that the bill creates a new crime and that the severity level is a level nine. Mr. Heim answered all questions asked by the Committee.

Nick and Jennifer Keller were welcomed to the Committee. Mr. Keller spoke as a proponent of **HB 2602** and related their experiences with the adoption of children from methamphetamine and other substance abuse parents. He explained that he would like to protect the unborn child and also the pregnant mother by drug rehabilitation and asked the committee to consider **HB 2602**. ([Attachment 2](#))

Harold W. Casey, Substance Abuse Center of Kansas, Inc., came before the Committee as a neutral conferee to **HB 2602** but had some concerns as well. His concern was that women who are using illicit substances who are pregnant are less likely to access prenatal care, medical care, or treatment services because of possible incarceration. He stated that he was also concerned that a pregnant woman might choose to abort the child rather than seek help. He concluded by suggesting that if passed, **HB 2602** be amended to provide funding that supports additional HIP (Health in Pregnancy) case management services across the State of Kansas. ([Attachment 3](#))

The Chair welcomed Angie Vanburkleo, Director to Health in Pregnancy, as a neutral conferee. Ms. Vanburkleo gave information about the HIP program. Ms. Vanburkleo stated that they have worked with 51 women in the program in the past 16 months and all 39 babies have been delivered substance free. ([Attachment 4](#))

The Chairman said that HIP was located in four counties and asked Ms. Vanburkleo if there were similar programs under different names that are available in other counties. Ms. Vanburkleo responded by saying that she was not aware of any at this time.

A Committee member asked how successful was the program with unwilling patients. Mr. Casey stated that statistically when looking at involuntary commitments, the recovery rates are about the same.

Peter Ninemire, Drug and Alcohol Council and supervisor of the Wichita and Sedgwick Daily Reporting Center, spoke as an opponent of **HB 2602**. Mr. Ninemire defined addiction as a chronic, relapsing brain disease that is characterized by compulsive drug seeking and use despite harmful consequences. He stated that addiction is considered a brain disease because drugs change the brain. In his testimony, Mr. Ninemire highlighted related points and stated how best to treat this disease. In closing, he said he believed that this bill would affect lifetime separation and guaranteed disenfranchisement of both the mother and child. In conclusion, Mr. Ninemire urged us not to criminalize or dehumanize these people but to hold them accountable and have graduated sanctions. ([Attachment 5](#))

The Chairman welcomed Jennifer Roth, Kansas Association of Criminal Defense Lawyers to the Committee. Ms. Roth spoke as an opponent to **HB 2602**. She listed four main areas that would be affected.

- Parents who “knowingly permit” their child to introduce a controlled substance in his/her body can

CONTINUATION SHEET

MINUTES OF THE House Federal and State Affairs Committee at 1:30 P.M. on February 13, 2008, in Room 313-S of the Capitol.

be prosecuted for a person felony.

- The bill has no guidance as to when or how a person will be tested. Prescription drug users or parents of prescription drug users will suffer.
- The bill is contrary to the legislature's position that people need treatment, not person felonies and incarceration.
- The costs involved would be substantial. Costs would include the increase in prison beds, increase in prenatal and birthing medical expenses by jails and prisons, drug testing costs and litigation among other expenses.

(Attachment 6)

Written testimony - Opposed: Kansas County & District Attorneys Assn. (Attachment 7)

After all committee questions were answered, the Chairman closed the hearing on **HB 2602** and the meeting was adjourned. The next meeting will be on February 18, 2008, in room 313-S at 1:30 pm.

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

SHARON J. SCHWARTZ
2051 20th Road
Washington, Kansas 66968
(785) 325-2568
schwartz@house.state.ks.us



State Representative
106th District
State Capitol, Room 517-S
Topeka, Kansas 66612
(785) 296-7637

CHAIR
House Appropriations Committee

TESTIMONY IN SUPPORT OF HB 2602

Mr. Chairman and Committee Members:

I appear today in support of HB2602

A year ago I was contacted by Jennifer and Nick Keller who asked if I would assist them in trying to better protect children by allowing authorities to intervene when a pregnant woman is using substances and putting her child at risk and to reduce the incidence of babies born with addition to controlled substances. The presence of illegal drugs, specifically methamphetamine or “meth” is a very serious problem in many of the rural communities in Kansas. Although we have made strides in curbing the rapid rise of meth production and abuse in Kansas, the drug still threatens our communities and children, including the unborn. Each year more than 4300 Kansas children are born exposed to illegal drugs while in the womb. Among those who have chosen to adopt children with potential drug-related problems are Nick and Jennifer. They are appearing today and will tell their compelling story of why it is important to them. The Keller’s are the proud parents of a remarkable family with an amazing story.

This measure as introduced creates a crime for the use of a controlled substance endangering a child. The bill is based on Idaho legislation and makes it a crime to introduce certain controlled substances into the body of a pregnant female or a child, except as authorized by the uniform controlled substance act or valid

House Federal & State Committee
February 13, 2008

Attachment /

prescription. The key provisions for pregnant women charged under this law are New Sec. 1 (b) and (c). For evidentiary purposes, there is an inference that if during pregnancy a woman tests positive for the presence of a controlled substance or if the female of newborn child tests positive for the presence of a controlled substance after the child is born. In either case a female charged under this law must be ordered to submit to drug abuse examination and evaluation in a public or private treatment facility or state institution as a condition of release. Physicians or other licensed health care professionals have no duty to report that a patient under their care may have violated this law. However, if they choose to report a violation, they are immune from liability for making such a report unless the report was not made in good faith. The bill only applies to schedule I and schedule II controlled substances. Examples of schedule I substances include: codeine, heroin & marijuana. Examples of schedule II substances include: opium, cocaine, methadone and methamphetamine. Thus things like nicotine or pseudoephedrine are not covered by this law.

Since the late 1980's, policymakers have debated the question of how society should deal with the problem of women's substance abuse during pregnancy;

- 16 states consider substance abuse during pregnancy to be child abuse under civil child-welfare statutes, and 3 consider it grounds for civil commitment.
- 14 states require health care professionals to report suspected prenatal drug abuse, and 4 states require them to test for prenatal drug exposure if they suspect abuse.
- 19 states have either created or funded drug treatment programs specifically targeted to pregnant women, and 7 provide pregnant women with priority access to state-funded drug treatment programs.

House Federal & State Committee
February 13, 2008

Attachment

1-2

- Kansas currently gives pregnant women priority access in general programs and protects pregnant women from discrimination in publicly funded programs.

According to a 2005 government survey, nearly 4 percent of pregnant women use illicit drugs. Some of these drugs can cause a baby to be born too small or too soon, or to have withdrawal symptoms, birth defects, or learning and behavioral problems.

I ask for your support of this important legislation to better protect children by allowing authorities to intervene when a pregnant woman is using substances and putting her child at risk.

House Federal & State Committee
February 13, 2008

Attachment 1-3



Kathleen Sebelius, Governor
Duane A. Goossen, Director

<http://budget.ks.gov>

February 11, 2008

The Honorable Arlen Siegfried, Chairperson
House Committee on Federal and State Affairs
Statehouse, Room 161-W
Topeka, Kansas 66612

Dear Representative Siegfried:

SUBJECT: Fiscal Note for HB 2602 by Representative Schwartz

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2602 is respectfully submitted to your committee.

HB 2602 would create a new crime, the use of a controlled substance endangering a child. The crime would apply to a person who introduces a controlled substance into the body of a pregnant woman, a pregnant woman who knowingly uses a controlled substance, or the actions of any person who knowingly permits the use of a controlled substance by a child under the age of 18. The penalty would be a severity level 9, person felony. Upon the filing of a charge for the crime, the court would order the person or child to submit to a drug abuse examination and evaluation in either a public or private treatment facility. If a test result is positive for the use of a controlled substance, and the head of the facility determines that the person is an abuser of drugs, or is incapacitated by the use of drugs, the head of the facility could require drug abuse treatment as a condition of release. Any physician or other licensed health care professional who reports a person for violating HB 2602 would be immune from liability for making the report, unless the report was not made in good faith.

The passage of HB 2602 has the potential for increasing litigation in the courts because of the new crime created by the bill. If it does, the Office of Judicial Administration indicates that there would be a fiscal effect on the operations of the court system. However, it is not possible to predict the number of additional court cases that would arise or how complex and time-consuming they would be. Therefore, a precise fiscal effect cannot be determined. The Sentencing Commission and the Department of Corrections are unable to estimate the fiscal effect of the bill, since the bill creates a new crime for which the Commission has no data to use to estimate how the bill would affect the cost for treatment programs or probation expenses. Any

900 S.W. Jackson Street, Room 504-N, Topeka, KS 66612 • (785) 296-2436 • Fax: (785) 296-0231
e-mail: duane.goossen@budget.ks.gov

House Federal & State Committee
February 13, 2008

Attachment 1-4

The Honorable Arlen Siegfroid, Chairperson
February 11, 2008
Page 2—2602

fiscal effect resulting from the passage of the bill would be in addition to amounts recommended in *The FY 2009 Governor's Budget Report*.

Sincerely,



Duane A. Goossen
Director of the Budget

cc: Mary Rinehart, Judiciary
Jeremy Barclay, Department of Corrections
Helen Pedigo, Sentencing Commission

1-5

I would like everyone to picture a child that you love. A son or daughter, niece or nephew, grandchild, neighbor, I'm sure you all can think of some one. Now, imagine someone giving that child a little cup of juice... mixed in that juice is a little battery acid, drain cleaner, some paint thinner, lighter fluid, a few cold tablets and some Freon, Oh, and I forgot the rubbing alcohol. Imagine that sweet little one that you love gulping that poison down. It angers you doesn't it but guess what? If I did this to my child or you did it to yours, we would probably spend the rest of our lives behind bars. I'm sure many of you know that the "ingredients" I mentioned are all found in the illegal drug called "crystal meth". But, methamphetamine abuse and other substance abuse is being done to literally 4,300 unborn children in the state of Kansas yearly (estimate based on research by Dr. Ira Chasnoff). Can you believe this is perfectly legal? 60,767 Kansas children live in environments where alcohol and other drugs are abused (estimate based on data from Office of Applied Studies and 2007 Census) Can you believe this is allowed to be done?

About myself. As she told you, my name is Jennifer Keller, I am married to my great husband, Nick who is at home with most of our children so he couldn't join me. We have a daughter Brooke who just turned 17. We had infertility issues so we decided to adopt since I too was adopted as an infant through the state of Kansas. We took MAPP classes to be foster/adoptive parents in 2003 and in August 2004, adopted our first two children-5 year old Brendan and his 3 year old sister Victoria-now 6 and 8. Brendan & Victoria are with us today! They were in state custody because their father was in prison for manufacturing meth and their mother could not provide for them financially once he was gone. 6 months later we took in our first meth positive newborn-Myah-now 2. 8 months later we took in newborn Katy-also meth positive at birth with the highest level of meth out of all kids. She had some problems at birth coming off of the meth-she was very lethargic and unresponsive the first few days after birth-she had to go back in the hospital for a couple of days to get more stabilized. 3 weeks later, we privately adopted Brendan and Victoria's meth exposed brother, Wyatt. At this time their mom was serving time at the Women's Correctional Facility in Topeka, KS for a probation violation which included being meth positive while on probation. The baby would have gone into the states custody at birth if we had not stepped in. Nick and I both felt it was extremely important to keep the siblings together. NO, the story doesn't end there- In the fall of 2006-I got a call from Myah's mom saying that she was pregnant again and due in just 3 months-at this time she had no job, home and was still admittedly addicted to methamphetamines. She asked at this time if we would take Myah's unborn sibling. Thankfully, she felt comfortable enough to call us and at least make sure the child had a safe place to be once it got here. HOW could we refuse? KEEP IN MIND.. we already had 3 babies under 2 at home plus 3 kids over 2. And most importantly... we were just starting to sleep through the night. I'm not talking about the babies, I'm talking about Nick and I!! It was a difficult decision for us to make but it didn't take long for us to decide to take the baby, especially as we looked into Myah's sweet eyes. We attended some rough Dr. appointments with Myah's birth mother. She was high during some, going through withdrawal during others, it was very difficult for us to see her convulsing and her body and mind both out of control knowing our little baby was inside. Mom tested positive for meth plus some other drugs several times during the pregnancy. We will never forget the time we took her out to eat and her body was so out of control, she

House Federal & State Committee
February 13, 2008

Attachment 2

couldn't even hold her fork still-slurring words etc. We felt so helpless and frustrated! The doctor was frustrated because he was reporting her drug use to SRS and there was NOTHING anyone could do about it. Many people reported her to SRS during the pregnancy for using drugs-I even had a detective call me-so frustrated that there was nothing she could do to prevent this child abuse. We took her for mental health services-she wanted help but there was no room for her to go in patient. Something about this system is BROKEN and it needs to be fixed. Everyone I talk to simply CANNOT believe this is legal-from county attorneys, judges, social workers, politicians, police officers-not ONE person thinks this is okay. They ALL want the laws changed in Kansas. We said a lot of prayers for the little one, just hoping God would protect him until he came into this world. On January 19, 2007 little Jett Johndale Keller (#7) came into our lives. It was a joyous day-the only thing that was upsetting was the fact that his mom knew we would have him drug tested at birth and she told us that she had gotten high that morning on the way to the hospital. We thought, our poor child.. What has he been exposed to and how will this affect his future??

Many people say that Nick and I have saved these 6 little ones when in all reality they have saved us and are blessings in our lives daily. Most importantly.. the cycle is being broken here! Hopefully, by being raised in a loving caring environment these children will be able to grow up strong, proud, well-educated, loved and tell their stories and change the world but until they can.... that is why we feel we are here. I feel my purpose is to speak up so other children can be saved and NOT go through what these kids did in the womb. We don't know the future of our kids born meth positive. We don't know the full affects these horrific drugs had on their little brains while they were developing but what we do know is that these children are our future leaders and no matter how they turn out, they will have always known love and they will know that I have fought to stick up for others just like them.

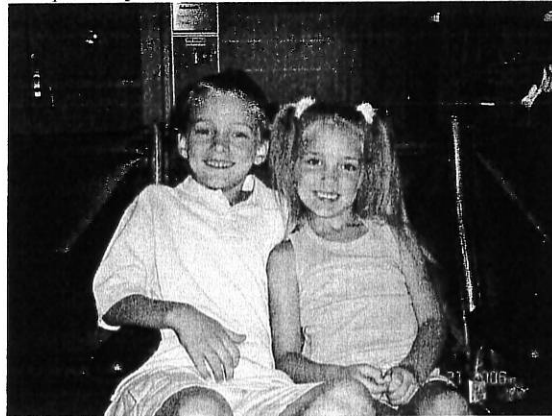
What would I like to see happen in legislation? I have asked many people involved in "the system" and I agree with them all. Any mother who tests positive for illegal drugs during the pregnancy should be rehabilitated or jailed until the birth of the child and these sentences should be mandatory with no chance of plea bargaining them down to a lesser sentence. Why is this so hard to get passed? Because in the state of Kansas the unborn child is not considered a child until it is born. Then why I ask you does the state of Kansas provide health insurance, WIC and food stamps to pregnant women? What are they pregnant with if it is not a human life? That's very contradictory to me.

Section 2 of Alexas law changes the Kansas Criminal Code definition of person and human being also to mean an unborn child and would allow the accused to face two murder charges. The federal government and 34 other states have a similar law already in place. Alexas Law has really opened the door to protect the death and abuse of the unborn child.

We are just ONE Kansas family, and in our family alone between our 3 birth mothers they have 17 children with #18 on the way in May. That makes 18 children from only 3 women and these 3 women have custody of zero of their children. What is going on KANSAS?? That is just unbelievable to me. Just imagine how many more are out there that we don't know about??

We will leave you 2 things. #1-I am asking for your help and my children are asking for your help. HELP US make a difference. We are one family and sometimes we feel we are fighting a tough up hill battle but we know we will persevere, even if it takes us all our life. #2 is a verse we are passionate about in our home Isaiah 1:17 Learn to do right!! Seek justice, encourage the oppressed. Defend the cause of the orphan! I want to read that again. This is what we intend to do until new legislation is passed to protect the unborn from harm. Thank you for your time.

Brendan and Victoria left their home at age 1 and 3 after their father was put in prison for manufacturing meth and mom had no way to financially care for them. Both exposed to drugs in the womb with Brendan being exposed to cocaine and Victoria born a preemie dying twice in the neonatal intensive care. Both victims of drug abuse-spent 2 years in foster care before being adopted by us at age 3 & 5.



Myah-born prematurely in the back seat of the car of a stranger. Born methamphetamine positive and came to live with us as a foster child at 3 days old. the 4th child of 5 siblings. Another victim of child abuse in the womb.



Cathryn Izabel-born with the highest content of methamphetamines in her system of all our children. Born the 7th child of her then 26 year old mother who now remains incarcerated for meth charges. Caty suffers with motor skill and speech delays, startles easily, has some sleep problems is very hyperactive. She also suffers from repeated pneumonia & respiratory problems from the drug abuse she suffered in the womb.



Wyatt's bio mother spent the last 3 months of her pregnancy in prison which we think helped save his life. Born the 5th child to his mother-Brendan and Victoria's baby brother. Wyatt had a meconium drug screen at birth which revealed the abuse to him of MANY legal and illegal drugs to include meth and marijuana.



Jett Johndale the 5th born to his meth addicted mother-Myah's baby brother. Abused daily during the pregnancy with methamphetamines. Also marijuana and alcohol used during the pregnancy and to our surprise marijuana smoked and cyphened into his little body even on the day of his birth-admittedly told to us by his birth mother.





SUBSTANCE ABUSE CENTER OF KANSAS INC.

Specializing in the prevention & treatment of individuals and families affected by substance abuse.

731 N. Water, Suite 2 • Wichita, KS 67203 • (316) 267-3825 • Fax (316) 267-3843

LEGISLATIVE TESTIMONY

TO: The Federal and State Subcommittee

02-13-08

SUBJECT: House Bill 2602: Use of a Controlled Substance Endangering a Child

Dear Representative Sharon Schwartz and Committee Members:

Please allow me to begin by thanking you for your time and consideration on behalf of my staff, our consumers, and community stakeholders. I am the Director of the Substance Abuse Center of Kansas providing services to SRS, affiliated contractors, and other community stakeholders throughout eight counties in South-Central Kansas. I am currently the Post President of the Kansas Association of Addiction Professionals (KAAP).

I am here today to present information about our Health In Pregnancy program. As a voluntary program, Health In Pregnancy, HIP, supports substance free pregnancies through creative use of resources. The Project Director of HIP, Angie Vanburkleo will present in more detail, the benefits, and successful outcomes of the project. I wanted to present several concerns regarding Bill 2602 potential impact for pregnant women who are actively using schedule I and schedule II controlled substances. These concerns are related to my over 25 years of experience working with alcoholics and addicts in a recovery environment.

1. Women who are actively using illicit substances, and who are pregnant are less likely to access pre-natal care, medical care, or treatment services if concerned about incarceration.
2. The children of women, who are using illicit substances and pregnant and incarcerated, would potentially be placed into foster care rather than remaining with their mother in a treatment setting.
3. The HIP program is a voluntary enrollment and reached capacity within several months of its inception. This would indicate that incarceration, or the threat of incarceration is not warranted, and pregnant women, and their children, all benefit if offered immediate access to care, incentives, and appropriate treatment services throughout a continuum of care.

House Federal & State Committee
February 13, 2008

3

4. We would suggest, and encourage that if passed, Bill 2602 be amended to provide funding that supports additional HIP case management services across the State of Kansas. Women charged under this law would be offered HIP services as a diversion and required to follow HIP recommendations as part of their diversion rather than incarceration.

In 1980 I was voluntarily admitted to a public funded substance abuse treatment facility in Wichita, Kansas. I attended outpatient treatment services for my addiction to alcohol and illicit drugs. I was an unemployed, unemployable single father caring for my then five-year-old daughter Mandy. My last drink was June 6, 1981. I now have 25 years of recovery, have remarried and with my wife care for two beautiful children, Emily age 9, and Owen age 6. I manage a non-for-profit agency employing more than 30 staff. My daughter Mandy, whom I am very proud, has completed her certification as a Substance Abuse Counselor. I can attest to the fact that treatment works, saves lives, and effectively reduces cost, supports self-sufficiency and provides hope to individuals and their families.

In closing, I would like to thank you again for your time and consideration.

Respectfully,


Harold W. Casey

House Federal & State Committee
February 13, 2008

Attachment

3-2



SUBSTANCE ABUSE CENTER OF KANSAS INC.

Specializing in the prevention & treatment of individuals and families affected by substance abuse.

731 N. Water, Suite 2 • Wichita, KS 67203 • (316) 267-3825 • Fax (316) 267-3843

LEGISLATIVE TESTIMONY

TO: The Federal and State Subcommittee

2-13-08

SUBJECT: House Bill 2602: Use of a Controlled Substance Endangering a Child

Dear Representative Sharon Schwartz and Committee Members:

Please allow me to begin by thanking you for your time and consideration on behalf of my staff, our consumers, and community stakeholders. I am the Clinical Coordinator of the Substance Abuse Center of Kansas providing services to SRS, affiliated contractors, and other community stakeholders throughout eight counties in South-Central Kansas. I am the Project Director of the Health in Pregnancy program.

I am here today to present information about our Health in Pregnancy program. The HIP program was initiated in October 2006 as a pilot program and one year later due to the success of the program became an SRS/Addiction Prevention Service funded program for our agency. The HIP program is a voluntary program for pregnant women 34 weeks or less gestation with substance abuse issues and no age or income restrictions. The HIP program is limited to four Kansas counties Douglas, Barton, Ellis, and Sedgwick. The HIP program supports and encourages substance free births. We have worked with 51 women in the HIP program in the past 16 months and all 39 babies have been delivered substance free.

In the HIP program pregnant women voluntarily sign a family contract to work with a HIP case manager and agree to submit to no less than three toxicology screenings throughout the pregnancy in order to measure sobriety status. HIP participants must submit an initial toxicology screening when joining the program and at the hospital after the birth of their babies.

In the past 16 months the Health in Pregnancy program has had 133 referrals from various community agencies and SRS. We currently have funding in Sedgwick County for three case managers who are restricted to working with 15 pregnant women per caseload at one time. The HIP program allows us to work with pregnant women up to 18 months in which we encourage women to attend their doctor's appointments, substance abuse treatment, mental health appointments, and any other agency supporting healthy personal development for women and children.

House Federal & State Committee
February 13, 2008

In the HIP program women are able to earn incentives as they accomplish goals throughout their time in the program and remain substance free. We have been able to help women with housing, clothing, transportation, furniture, and baby items. The HIP program supports and encourages women to obtain employment and reducing barriers to employment sustainability.

In the HIP program we work with women to discourage behaviors which could lead to out of home placement for children in foster care. We have had a 97% success rate in this area and have successfully helped many women reintegrate their children back in their homes. The HIP case managers have maintained services at full capacity in regards to their caseloads. Pregnant women, who do not meet criteria, or are unable to access HIP services due to capacity, are provided services under other funding. These services are limited, and incentives are unavailable, as are some other services provided through the HIP project.

I believe this is a program that supports hope, self-sufficiency and a new healthy way of life for substance abusing pregnant women to change their lives.

In closing, I would like to thank you again for your time and consideration.

Respectfully,



Angie Vanburkleo

State of Kansas Health In Pregnancy Project

A collaborative effort between Children and Family Services and Addiction and Prevention Services

Participating Counties:

Barton, Douglas, Ellis, and Sedgwick

Mission:

Health In Pregnancy program is designed to promote health and wellness for mothers and their unborn children. The ultimate goal is to remain drug and alcohol free throughout their pregnancy in order to deliver substance free babies. Participants who volunteer for HIP services set their own goals and are assisted by case managers with creative direction to community resources to reduce barriers and develop an action plan to achieve these goals. Health in pregnancy case managers want to help promote families having quality daily living and higher levels of self-sufficiency.

Eligibility/Target Population:

- Women residing in Barton, Douglas, Ellis, and Sedgwick counties.
- Identifies as using and or abusing substances while pregnant (other than tobacco).
- Less than 34 week's gestation.
- Planning to remain in county through the delivery of the child.

Key Program Measures:

- Participate engagement is determined by signed case plans.
- Sobriety status of participants as measured through toxicology.
- Toxicology results of participant births.
- Child welfare outcomes of participant children (out of home placement status of substantiated abuse/neglect).

Over the last 16 months Substance Abuse Center of Kansas has developed the HIP project in Sedgwick County with 133 referrals from various community agencies and referrals from clients themselves to the HIP program. Presently SACK has served 51 active clients in the HIP project. Thirty-nine mothers and their babies have been born without the presence of alcohol or illicit drugs present in their system. Another 50 of our referrals qualified for Solutions Recovery Care Coordinator program in conjunction with SRS were referred and connected with SRCC case managers. All babies connected with HIP and SRCC programs have been delivered substance free in the past five years.

Sedgwick County Data	
Number of referrals	133
Number served	51 in HIP program only
Babies born	39

Project Indicators Overall	
Outcome Description	Value
Engagement Rate	78% when computed adjusting for wait list effect
Sobriety rate as measured through UA	91% of urine screens were negative throughout the program no babies have been born positive to date.
Out of home placement CINC-NAN	3.5%
Substantiated Abuse or neglect cases	3%
Alcohol or drug free births	100% in Sedgwick County

Health in Pregnancy Reward System Description

The Four Reward Areas:

1: Attendance

Eg: Make treatment meetings, prenatal visits, mental health, HIP appointments, AA/NA meetings, etc.

2: Employment/Education

Eg: Finish GED, attending scheduled work hours, get a job, taking a class (parenting, computer, college course)

3: Personal Development

Eg: Eat healthier, take Vitamins, Help oneself during a high risk situation, working on self- esteem



4: Case Plan

Eg: Accomplish Short term goal, UA testing with clean results, working well with HIP worker, consistently working towards long term goal

Depending on your personal goals, we can assign more points to different areas. You are also able to earn bonus points for accomplishing different tasks. Your life coach will set up something that works for you as an individual!

Positive Behavior = Personal Rewards

February 13, 2008

Representative Siegfried and Honorable Members of this Committee:

I am the supervisor of substance abuse services for the Wichita and Sedgwick County Day reporting centers. We respectively provide services to approximately 100 male and female parolees and 250 probationers. I am a Licensed Masters Level Social Worker, and expect to have gained my status as a Licensed Clinical Social Worker within the next year. Previous to this position, I was the supervisor of the adolescent program for Adolescent Adult Family Recovery in Wichita, and placed much focus and treatment on the family, and their holistic involvement overcoming addiction.

I have considerable years of experience treating large numbers of drug and alcohol addicted offenders. In recent years the focus of my practice and area of expertise has been on the neuroscience of addiction. A large part of my testimony has to do with the handout attached to my testimony relating to addiction. It is a concise synopsis of the biopsychosocial effects that create addiction, and how it is best treated, based on scientific research and practice. This information is not conceptual or theory; it is based on facts, and years of research, which in recent years has been catapulted through the use of cat scans and brain imaging showing the effects of drugs on the brain over time. This is supplied with the same intent it is provided to our substance abuse clients, which is, once you know the facts, you will hopefully consider them and be able to make the most informed decisions based on those facts.

Preceding the handout is a vivid picture of a cat scan of a diseased heart caused by a heart disease; and beside it, a picture of a diseased brain caused by drug abuse and addiction. The only difference between these diseases is that the brain is actually more difficult to treat because of the multifaceted biopsychosocial effects addiction has on the brain, and the many areas of the brain effected by addiction. I know many of you are saying to yourselves that one was a conscious choice, and the other was not. Although that may be true, it is only to a small point. The person who tried, or consciously experimented with drugs had no intent of becoming addicted. It is something that just happens to those who have a propensity to become addicted to certain substances.

In regard to this, Father Peter Young (Vol.CEO PHYIT.com) recently stated "Addiction is not a moral failing, but an illness because a limbic area of the brain compulsively demands a drug, once used, in some predisposed people. Please allow me to briefly highlight a couple of related points on your attached handouts, and how to best treat this disease in the respective communities of origin for the female offenders this bill targets. I believe that this bill would affect lifetime separation and guaranteed disenfranchisement of both the mother and child.

Sincerely,



Peter Ninemire, SAPTR
LMSW, LSCSW Candidate
1926 S. Estelle
Wichita, KS 67211
Ph: (316)651-5852
Pj9mire@sbcglobal.net

House Federal & State Committee
February 13, 2008

Attachment 5

WHY COMMUNITY-BASED SUBSTANCE ABUSE TREATMENT IS MOST EFFECTIVE

By Peter Ninemire, SAPTR, LCSW Candidate
Ph: (316)651-5852; E-mail: pninemire@famm.org

Addiction is defined as a chronic, relapsing brain disease that is characterized by compulsive drug seeking and use despite harmful consequences. It is considered a brain disease because drugs change the brain – they change its structure and how it works. These brain changes can be long lasting, and can lead to harmful behaviors seen in people who abuse drugs.

Drug addiction erodes a person's self-control and ability to make sound decisions, while sending intense impulses to take drugs. (NIDA - National Institutes of Drug Abuse)

FACTS RELATED TO ADDICTION AND EFFECTIVE TREATMENT OF THIS CHRONIC RELAPSING BRAIN DISEASE(Please review handout of a diseased heart and diseased brain from addiction)

Physiological Aspects of Drug and Alcohol Addiction

- Refined psychoactive drugs are so strong that they imprint the emotion associated with the subsequent euphoria or pain relief more deeply than almost all natural memories (Inaba & Cohen, 2000).
- Drugs of abuse release 2 to 10 times the amount of dopamine than natural rewards do, with effects often lasting much longer.
- The effects on the brain's pleasure circuit dwarfs those produced by naturally rewarding behaviors such as eating and sex, which motivates people to do drugs again and again.
- The more intense the reward, the more ingrained the memory and so the more likely the action will be repeated (Wicklegreen, 1998).
- Chronic exposure to drugs-of-abuse disrupts the way critical brain structures interact to control behavior.
- The limbic or survival area of the brain eventually short-circuits the rational, logical neo cortex and the addict becomes a stimulus response machine, primarily reacting to cues to seek and do drugs.
- Brain imaging studies of addicted individuals show physical changes in areas of the brain that are critical to judgment, decision-making, learning and memory, and behavioral control. Scientists believe that these changes alter the way the brain works, and may help explain the compulsive and destructive behaviors of addiction.
- Addicted individuals often have to be involuntarily removed from their environment to some level of incapacitation in order to break the destructive cycle and lifestyle of addiction.
- Incapacitation begins to restore some level of chemical balance to break the compulsive drug use mode.
- However, most physiological and psychological benefits of treating addiction through incapacitation are attained in a relatively short period of time.
- Drug addiction is relative to the offender and drug. Recent research confirms that withdrawal from heavy marijuana use is about as harsh as nicotine addiction. (Johns Hopkins School of Medicine, 2008).

Psychological and Social Aspects of Addiction

- Patients often begin using drugs through experimentation and curiosity, and too often find that they produce intense feelings of pleasure with varying effects relative to the drug.
- People take drugs to make them feel better, and they often become maladaptive coping mechanism to solve or escape their emotional or interpersonal problems and struggles in life.
- People often initially use drugs to gain some level of social acceptance, although they are outside of social norms.
- People do not practice behaviors that are outside of societal norms, or incongruent with family and/or personal values, without creating belief systems to justify them.
- The larger the discrepancy between values and behaviors, the greater the belief system must be to manage the internal conflict between use and addiction, and their values.
- People who use drugs create “addictive beliefs” to justify their usage, (in part due to their inability to control their cravings and impulses to use drugs created by the imprint and chemical imbalance in the brain.)

Treatment and Recovery from Addiction

- ❖ The good news is that addiction is a treatable disease, and can be successfully managed through holistic multifaceted treatment that addresses the biopsychosocio aspects of a person life.
- ❖ Recovery from addiction often includes addressing medical, psychological, social, vocational, and legal needs of the patient.
- ❖ Treatment enables people to counteract addictions powerful disruptive effects on brain and behavior and regain control of their lives.
- ❖ However, relapse is often part of getting well because treatment of chronic diseases involves changing chemical structures, and in the case of addiction, deeply imbedded behaviors.
- ❖ Treatment is a combination of education to gain awareness about effects of drugs, as well as skills that help the patient identify triggers and cravings to use drugs or alcohol
- ❖ Treatment is designed to consciously engage the prefrontal cortex in the conscious decision-making process, and not react to cravings, and help the client implement thought-stopping techniques coupled with action-plans that alter addiction-related thoughts and actions.
- ❖ Ultimately, this disease is best treated in the environments where it is most exposed and viable. Recovery involves immediately engaging the conscious decision making process of the prefrontal cortex when it is challenged so that it is not overridden by the stronger limbic-reward/pleasure center of the brain.
- ❖ Immediate positive reinforcement for good behaviors, as well as immediate consequences for poor choices, are vital to treatment outcomes, in large part because of the connection to the reward-pleasure centers, and other areas of the brain.

Treatment is more effective in community-based treatment settings than outside facilities removed from the substance abusers community of origin for a variety of biopsychosocio reasons:

- Addicts have to learn to manage their addictions and lives without resorting to using drugs and alcohol in the environments where they live and work.
- Addiction is not viable and activated until it is exposed to the actual anecdote, or drug.
- The strength of the rewards and consequences are much greater when they are realistically felt, (such as spending time with children or family, or not being able to).
- Intermediate community-based sanctions generally produce an average 10 percent reduction in recidivism when delivered in conjunction with treatment, than can be delivered in a prison-treatment setting (Marlowe, Treatment Research Institute, 2003)
- The patient must be presented with the opportunity to practice the tools and skills gained to manage their cravings and obstacles with the support of intensive ongoing cognitive-based treatment in conjunction with incentive-based graduated sanctions that allow the offender to slowly integrate back into their community.
- The approach that has shown the most consistent promise for reducing drug use and criminal recidivism is an integrated public health-public safety strategy that combines community-based drug treatment with ongoing criminal supervision in the respective communities of origin of the offenders.
- Compulsively addicted drug and alcohol abusers must be exposed to a seamless continuity of services in conjunction with graduated sanctions that slowly integrate the offender back into the community, (or jail or prison) with the support of ongoing therapy, family, employment, housing, and quite possibly social services, such as mental health treatment.
- Recovery is a process that has to be holistic. Many, if not all, of these essential elements to recovery are missing in a prison treatment setting, especially in an isolated location.
- Cognitive behavioral therapy is most often used to treat addiction in the community because it helps patients recognize, avoid, and cope with the situations in which they are most likely to abuse drugs.
- Techniques like motivational interviewing create internally motivated behavior changes, which are many times more effective for long-term abstinence than external motivators like jail or prison.
- Drug, DUI, and Mental Health Courts are specialty courts that have proven most effective at treating these types of criminal justice-involved offenders with a broad-based treatment team that often includes the judge, prosecutor, defense counsel, drug and alcohol counselor, social worker, police and probation officers, and others.
- Specialty courts can serve justice and help chronic repeat dui and drug offenders who consistently have a much greater likelihood of a mental disorder than the general population (Shafer, Nelso, Palante, LaBrie, & Albanes. 2007).

House Committee on Federal and State Affairs
February 13, 2008

Kansas Association of Criminal Defense Lawyers
Opponent of House Bill 2602

The Kansas Association of Criminal Defense Lawyers (KACDL) has over 275 members across the state. HB 2602 would create the crime of “use of a controlled substance endangering a child,” a severity level 9 person felony. KACDL opposes HB 2602:

Casts too wide a net: Parents who “knowingly permit” their child to introduce a controlled substance into his/her body can be prosecuted for a person felony. What does “knowingly” mean? What does “permit” mean? The situations in which parents could be facing criminal prosecution are endless.

Prescription drug users or parents of prescription drug users will suffer: While HB 2602 excludes prosecution for controlled substances legally used by a pregnant woman or child, the reality is people who take prescription drugs will suffer. The bill gives no guidance as to when or how a person will be tested. That in and of itself is ripe for abuse. Furthermore, some prescription drugs yield a positive result on a drug screen. For example, millions of people - many under 18 - take medicine for ADD/ADHD. Those prescription drugs can yield a positive result for illegal stimulants. So can certain pain medicines and over-the-counter drugs. It does not matter if those people are never charged or convicted – many negative consequences occur at arrest: names appear in the paper, bond costs are incurred and people lose jobs and housing.

Conflicts with other goals of the Legislature: Over the last few years, the Legislature has passed measures with regard to substance abuse. For example, SB 123 (2003) resulted in thousands of people getting treatment and supervision instead of prison. SB 14 (2007) resulted in good time credits for people who avail themselves of drug treatment in prison. The Legislature recognized that overcoming substance abuse can be a long process – people often need different levels of treatment and relapses are often part of recovery. HB 2602 would not only undo part of the Legislature’s work, it is contrary to the Legislature’s position that people need treatment, not person felonies and incarceration.

Fiscal impact: We cannot find a fiscal note to this bill. However, the costs involved would be substantial. Costs would include: 1) increase in prison beds; 2) increase in prenatal and birthing medical expenses by jails and prisons; 3) increase in drug testing costs; 4) increase in work for an already overworked KBI lab; 5) increase in costs in litigating these cases; 6) increase in drug treatment costs and supervision; and 7) increase in resources necessary to do the drug evaluation required by this bill in every case.

Sincerely,



Jennifer Roth
Legislative Committee Chairperson, KACDL
rothjennifer@yahoo.com

House Federal & State Committee
February 13, 2008

F

Attachment

6

A



Kansas County & District Attorneys Association

1200 SW 10th Avenue
Topeka, KS 66604
(785) 232-5822 Fax: (785) 234-2433
www.kcdaa.org

MEMORANDUM

TO: House Committee on Federal and State Affairs
FROM: Kansas County and District Attorneys Association – Tom Stanton, President
DATE: February 13, 2008
RE: Written Testimony on HB 2602 - Neutral

Chairman Siegfroid and committee members:

Thank you for the opportunity to present written testimony on House Bill 2602 relating to creating the crime of use of a controlled endangering a child.

The Kansas County and District Attorneys Association would like to express concerns on the proposed new section one, subsection 3 providing "for any person to knowingly permit or intentionally cause a child to use, consume, ingest, inhale or otherwise introduce a controlled substance into the human body". We believe the intentional acts contemplated by the section are covered by current law. More specifically, causing a child to use a controlled substance would be a distribution crime with much harsher penalties under K.S.A. 65-4161 and 65-4163.

In terms of public policy the new legislation would not be punished severely enough. For example, under current law the act of causing a child to possess cocaine is currently a severity level 7 person felony. Under the provisions of this bill, causing a child to consume cocaine would be a lesser penalty of a severity level 9 person felony.

Encouraging a child to use a controlled substance is also covered under K.S.A. 21-3612(a)(5). Making it a crime to "permit" the use of a controlled substance by a child may be difficult to enforce because the person would need only to allege he/she advised the child not to use the controlled substance for the permissive standard to be defeated.

We appreciate the opportunity to provide informational testimony on HB 2602 and urge your consideration of our testimony. The Association would be happy to answer any questions upon request.

House Fed and State Committee
February 13, 2008

Attachment

7