Approved: 2-25-08
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on February 6, 2008 in Room 313-S of the Capitol.

All members were present except:
Annie Kuether- excused
Lance Kinzer- excused
Marti Crow- excused

Committee staff present:
Jerry Ann Donaldson, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Jason Thompson, Office of Revisor of Statutes
Cindy O'Neal, Committee Assistant

Conferees appearing before the committee:
Representative Lee Tafanelli
Angela Beckham, Citizen
Karen Dwyer - Citizen
Fawn Demasi, Citizen
Ed Brancart, Past President of Kansas County & District Attorney's Association

Ed Brancart, Kansas County & District Attorney's Association, appeared before the committee with a bill request which would close a loophole of courts granting non-prison sentences. Representative Pauls made the motion to have the request introduced as a committee bill. Representative Roth seconded the motion. The motion carried.

Representative Joe Patton requested a committee bill that relates to retention elections for judges. He made the motion to have the request introduced as a committee bill. Representative Watkins seconded the motion. The motion carried.

Representative Pauls requested a bill introduction concerning consumer protection allowing federal law to govern in several areas. She made the motion to have the request introduced as a committee bill. Representative Wolf seconded the motion. The motion carried.

The hearing on **HB 2684 - felony criminal desecration of human remains**, was opened.

Representative Lee Tafanelli explained that the proposed bill would make it a criminal felony for any type of desecration of a grave. The bill was brought to him by a constituent. The emotional harm incurred by the family seems to be shortchanged because the individuals who committed the crime were only charged with a misdemeanor. (Attachment #1)

Angela Beckham, Citizen, appeared before the committee and relayed her story. The ashes of her son, Justin, were stolen from his grave and given away. They were surprise to find out that the individuals could only be charged with a misdemeanor. She supported the change in the sentencing to a felony. Hopefully, this will make disrespectful individuals who commit such a crime to be reminded of what they did every day. (Attachment #2)

The hearing on **HB 2684** was closed.

The hearing on **HB 2674 - creating the crime of negligent homicide**, was opened.

Representative Vickrey was contacted by Ms. Dwyer who informed him of a weakness in the law with regard to negligent homicide. This is mainly to penalize someone who intentionally does not take any action when injuries are ignored.

Karen Dwyer , Citizen, appeared before the committee in support of the proposed bill. Her granddaughter was scalded over 75% of her body while in the care of her daughters boyfriend, James. He did not contact

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911 until 20 minutes after the baby was scalded. She was burned on May 28 and passed away on the 31, 2006.

Ms. Dwyer believes that he knew the severity of the injury, because he gave the baby aspirin before placing her in bed. The county prosecutor decided not to charge him with a crime, because he felt that the injury was unintentional. Ms. Dwyer suggested that James would have immediately called 911 if it was unintentional. She commented that they have requested the attorney general's office to look at the case and that there should be a decision in the next few weeks as to whether charges would be filed. (Attachment #3)

Fawn Demasi, Citizen, expressed her sadness in the way baby deaths are handled, like no one cares. People need to be held more accountable for babies and elderly individuals who are in their care.

Ed Brancart, Past President of Kansas County & District Attorney's Association, agreed that this is a horrendous tragedy. However, the Association opposed the bill today because current law already covers these types of acts. The bill is too broad and would apply to most every death that someone happens to see. (Attachment #4)

Committee was concerned that there was not a charge brought under K.S.A. 21-3608. Child endangerment has less to do with the act and more so with what happened after that. They felt there was a definite failure with investigation and the prosecutor not bring charges.

The hearing on **HB 2674** was closed.

HB 2643 - resolving a conflict between two statutes concerning service of process for garnishment on insurance companies.

Representative Pauls made the motion to report **HB 2643** favorably for passage and be placed on the consent calendar. Representative Roth seconded the motion. The motion carried.

HB 2700 - community corrections in Johnson County; adult offender program extended to July 1, 2009.

Representative Colloton made the motion to report **HB 2700** favorably for passage and be placed on the consent calendar. Representative Garcia seconded the motion. The motion carried.

HB 2656 - authorizing cemetery corporations to convey real estate not plated into cemetery lots free from trust restrictions.

Representative Patton made the motion to report **HB 2656** favorably for passage and be placed on the consent calendar. Representative Watkins seconded the motion. The motion carried.

The committee meeting adjourned at 4:45 p.m. The next meeting was scheduled for February 7, 2008.

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STATE OF KANSAS

House of Representatives

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TAXATION
PUBLIC SAFETY BUDGET

Lee Tafanelli
Representative, Forty Seventh District

February 6, 2008

TESTIMONY IN SUPPORT OF HB 2684

Chariman O'Neal and Members of the Committee

Thank you for the opportunity to testify here today in support of HB 2684. HB 2684 would make it a nonperson felony for the Criminal desecration of a grave. Currently, if someone was to desecrate a grave site and the damages do not exceed $1000, the crime is only a misdemeanor. This bill would provide for a much stiffer penalty for anyone who desecrates a grave site. Under this bill, a person would have to serve at least five days imprisonment as a condition of probation.

This bill was brought to me by a constituent whose son had died. His remains were cremated and then buried in a cemetery. After the burial of the urn, a group of friends of the deceased dug up the urn and distributed the ashes between themselves. As you could imagine, this was traumatic for the family. The two things that struck me most with regard to this were, first, the emotional harm it caused the family and, second, the idea that if the desecration was less than $1000 that it was not a felony. It was very disturbing to me to find out that you could dig up a body and leave it for all to see (or for other more disturbing reasons) and since the cost of damage in digging the whole was only a couple hundred dollars it would only result in a misdemeanor conviction. If someone's home is burglarized, it is a felony. Homes may be protected by a security system; a loved one's grave is not. I think that the people should have a right to expect to have their deceased loved ones treated with the same value and respect that we would treat their homes.

Mr. Chairman, members of the Committee, thank you again for the opportunity to appear before you today and I ask for your support of HB 2684.

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Attachment # 1

Wednesday, February 6, 2008

Testimony for Desecration of a Grave
Bill Number 2684

Angela Bickham
617 Pine
Winchester, Ks 66097

On July 25, 2006 I received what I thought was the most devastating news that a parent could hear, when I learned that my son had been killed in a car wreck. I was wrong. The most devastating news came on August 15, 2006, when the Bonner Springs, Ks, Police department informed my family that my son, Justin's ashes had been stolen from the grave. To make things worse we learned that this offence was a mere misdemeanor. Meaning that the perpetrators would not sustain any type of real punishment. A few days jail time and probation doesn't seem to be justice for a family that has a lifetime to deal with the emotional trauma caused by the actions of several disrespectful individuals.

I am here today to try and balance the scales of justice. I am asking this committee to change the statue desecration of a grave from a misdemeanor to a felony, for two reasons. First and foremost, it is our hope that a felony charge will serve as a deterrent. Stop the crime before it happens. My family and I believe that the stigma of being a felon will make a person think twice before robbing a grave. In fact why not post a sign at every cemetery entrance that desecration of a grave is a felony crime. The second reason is that a felony conviction will follow a perpetrator for life. There are a lot of opportunities that

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are closed for convicted felons. Things like you can't own a firearm, can't join the military, and can't be hired to work for the government. These are a few examples that would serve as long-term punishment for convicted grave robbers. We understand that there can never be true justice for a crime like this, but we can make the punishment more fitting and have long-term effects on individuals who would decide a to commit such a devastating crime.

HOUSE BILL 2674

STATEMENT OF KAREN DWYER

SUBMITTED TO

HOUSE JUDICIARY COMMITTEE

February 6, 2008

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Attachment # 3

My name is Karen Dwyer and this is my daughter Fawn Demasi, and we are here because of the death of my granddaughter, Fawn's daughter, Janis Joelle.

Janis Joelle was 8-1/2 months old at the time of her death. The person responsible for this fatal injury was not held accountable for her death and set free to possibly harm a child again. I am providing you a copy of the petition explaining the circumstances of my granddaughter's death and I feel certain that, through this petition, you will come to see why I am so appalled at the lack of a law to hold someone accountable for the death of a child or infant and, what seems to me, an all too common occurrence.

I want to know how a person who burns an infant so severely and then does not call 911 immediately (or at all), look at this tiny baby and not know that the burns are so severe that she needs emergency medical care immediately? I have brought pictures of Janis' that were taken at Children's Mercy Hospital so you too can see what this man saw when he failed to get medical care for Janis. How many times has this happened where a person inflicted, intentionally or negligently, severe injuries on a child and did nothing?...through the research I have done, I can tell you the answer is *too many.*

How can this person not be held accountable for this little baby's death, when immediate emergency care may have given her the chance of survival and ultimately her life would possibly have been spared - 1 hour and 38 minutes lapsed after the incident before he even called her mother at work to tell her what happened!

Why didn't he call 911 immediately, considering the severity of the burns he witnessed. A man and a father of a son himself, left Janis alone in her crib for approximately 20 minutes and left the apartment stating that he needed to find a phone. Why did he wait so long to call? Why was he gone so long? The phone he used was 2 doors away. How heartless, how cruel can someone be to burn a child over approximately 75% of her body and do nothing, allowing her to suffer for so long and obviously in extreme pain, with no comfort at all, left in a crib to suffer

through this alone. "Accident" he says, if it was an accident I would think that he would have called 911 immediately instead of waiting so long? So why was he not held accountable? He was the sole cause of the injury that lead to her death?

This law would serve to inform adults, parents and care givers alike, that their common sense all to often is obviously not informing them - that preventative measures must be taken to protect children in their care, and that if they do not take these preventative measures and a child dies, they will be held accountable for that child's death.

If your child or a child under your care were to fall down the stairs and get hurt and complained of pain in their neck or their head hurts, would you not take that child to the doctor to be sure no serious injury occurred? If, in a case such as that, you ignored the child's complaints of pain and it turned out that the child did indeed fall hard enough to create a brain injury, wouldn't you feel that you were negligent in not getting medical care?

An infant, much less one that has passed away, cannot testify that the adult involved was withholding care with intent or malice. Withholding care should automatically make him or her responsible regardless of how the injury occurred. The key word is negligence, which is the failure to provide a reasonable level of care. Even if a child or infant is injured accidentally and it leads to their death because the care giver failed to get medical help they should be held accountable for that child's death.

When will it not be acceptable to harm a child/infant and not be held responsible? When will people stop harming children just because they are bigger and stronger and think they can get away with it?

I would like this Negligent Homicide statute to be enacted into law and request that you increase the Severity Level of this person felony, because I feel that people, adults especially, should be held accountable when their negligence causes the death of a child or infant.

Children and infants are defenseless against adults. If an adult harms them, they are at the adult's mercy regarding medical care, comfort, all the things that an adult should responsibly provide. Babies have no voice. They cannot get up and go to the phone, they cannot even speak; their reliance upon an adult is 100%.

Using my granddaughter's case as an example, though I am sure, there are hundreds of cases that are similar to that of my granddaughter, wherein no one was held accountable for the maiming or death of a child or infant. It is estimated that there were 1400 child fatalities in 2002, though many researchers and practitioners believe the child fatalities due to abuse and neglect are under reported. Very young children (ages 3 and under) are the most frequent victims of child fatalities. The National Child Abuse and Neglect Data System data for 2002 demonstrated children under the age of 1 accounted for 41 percent of the fatalities. Studies also suggest that 50-60% of deaths resulting from abuse or neglect are not recorded. If it was not for my call to SRS and the Sheriff's Department, I believe that this case would have been another unrecorded infant fatality as the hospitals never contacted SRS (though SRS never did a formal investigation, they never even spoke to my daughter) or the police. This action, I thought was mandatory at a medical facility when a child presents in the ER with such severe injuries.

If there are no laws to hold someone accountable for the injury they inflicted or had knowledge of and show depraved indifference to the life of that child or infant tells me that people are not held to a moral obligation by the justice system to get help for a child/infant, this creates a blindered outlook that may encourage the murder of young children.

This crime upon my granddaughter, I believe, should have resulted in multiple Class A felonies. Any act of willful negligence on the part of a caretaker which results in injury or death to a child should be prosecuted to the fullest extent of the law.

As we know, an 8 1/2 month old child is completely helpless. That's why we have babysitters, so there is someone there who can help them when they are in need. Babysitters can be parents, grandparents, someone you hire, a boyfriend, a girlfriend, etc., but their responsibilities do not change if they aren't blood-related. It is their responsibility to protect the child from danger or harm. Accidents do happen, and if

they happen, it's the care giver's responsibility to take immediate action to minimize the pain and suffering.

The care giver, in our instance, hasn't suffered at all. He is not facing child endangerment charges, or negligent homicide charges, he is free to walk the streets and possibly repeat these actions. How is that fair to the child or infant who suffered through the painful injury to their death?

**Citing a case here in Kansas, a 20-month old baby was murdered and her killer served only 22 months in jail; you get longer time in jail for abusing animals. What's wrong with this picture.

**In St. Louis, Missouri, there was a case of scalding a mentally retarded patient (mentally retarded is the mind of a child) when they bathed him, it was ruled a homicide. One of the things cited in this case that led to the homicide charge was the fact that the workers put this man to bed even though he was screaming in pain. They waited an hour before they called a private ambulance service, not 911 and he was left to suffer for an hour. It was stated that if they would have gotten this man medical care immediately, he may have survived.

I truly feel that people have no fear of the justice system when it comes to child abuse/neglect that leads to death. It just seems that the penalties, most times, do not fit the crime.

This law I ask for would make people realize that they can not get away with this type of abuse— "accidental death" abuse. I am sure there are more cases here in Kansas when someone says the injury was an accident and the child or infant has died. Maybe it would discourage the abusers to not have or be a care provider for children. Withholding care should automatically make that person responsible regardless of how the injury occurred.

In closing, I would like to recommend that when the new law is penned into the statute books that it be named "Janis' Law" considering that it was her life that was taken so tragically with extreme pain and suffering and to know that her death stands for something. To make a law to hold people accountable for their actions and inactions. Let this law speak for the child/infant who has died. With this law a person would be held accountable for their lack of action in obtaining medical care immediately, if a child dies in their care. I also believe that if a child is accidentally injured the person would not have anything to hide and call for help immediately. If you inflict injury upon a child or have knowledge of an injury to a child and you do nothing to help that child and he/she dies, then you should be held accountable whether it was accidental or not.

When does an accident not become an accident?— When no action is taken and a young life is taken from their family; in my mind it becomes intentional.

We need the law...children need to be given the legal priority status they deserve

I appreciate your time and attention. Let's get Janis' Law enacted!

Karen Dwyer

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February 6, 2008

The Hon. Michael O'Neal, Chairman
The Hon. Janice Pauls, Ranking Minority Member
Judiciary Committee
Kansas House of Representatives
Kansas State Capitol
300 SW 10th St.
Topeka, KS 66612

RE: KCDAA Opposition to HB 2674

Dear Chairman O'Neal, Representative Pauls, and Members of the Judiciary Committee:

The Kansas County and District Attorney's Association opposes HB 2674 on a variety of grounds.

Kansas law already covers the conduct contemplated by HB 2674. Another statute is not needed, and if it is passed will serve to complicate matters even more. It will not help. It will hurt.

This proposed legislation is the result of a tragic circumstance, and the KCDAA sympathizes, as we are sure do the members of the judiciary committee, with the surviving family members of eight-month-old Baby Janis, of Miami County. We understand a grieving grandmother trying to make sense of a situation that makes no sense wants action, but the proposed statute will make matters worse than they are at present – and it will not provide meaningful comfort to the Dwyer family in Louisburg or those like them who will experience similar situations in the future.

At first blush the Bill seeks to create a duty to rescue on the part of every person, and then criminalizes failing to perceive that duty and act to safeguard any person about to be injured or killed. That is a tall order, indeed.

Our experience with the development of the criminal law in our state helps us to know that the proposed language will face, and likely fall to, a constitutional challenge that it is too vague. It does not put citizens on sufficient notice of what act is prohibited.

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The prohibited act is failing to perceive. Concepts of due process are offended by indistinct, unclear, absentminded prohibitions of failing to act.

The criminal law generally requires proof beyond a reasonable doubt of actus reus and simultaneous mens rea. By meeting this burden the state is justified and authorized in denying a defendant life, liberty, and/or property. Society, and the state supreme court, will not approve of felony convictions with prison sentences for unspecified failures of action.

The bill is too broad, it applies to almost every death of a human being. There is no end to the possible situations to which this law would apply – and the unintended consequences would be much more troubling than the case in Miami County. For example:

No special relationships in which the law would operate are defined. It applies to everybody at all times. It places a duty to act on everybody in Kansas. This is simultaneously groundbreaking and monumentally unreasonable. Even the civil law – the criminal law's less precise cousin – does not create a general duty to rescue and safeguard. The civil law exception being in the case of defined special relationship such as parent to child.

Will a citizen who drives past a fist fight, failing to summon police, be prosecuted when a combatant dies from injuries sustained in the beating?

Will firemen who fail to recognize an explosion is about to happen be held to account for unsuccessfully removing all persons from proximity to the danger, and who are then killed as a result?

Will police who are notified of ongoing dangers from violent battles involving spouses and ex-spouses be subject to prosecution for failing to perceive and act to safeguard?

Doctor – patient relationships might be utilized to support charging a physician with negligent homicide when a grieving family presses a local, friendly prosecutor.

Will a person dining in a restaurant who notices that the man at the next table is choking be held to account for failing to administer the Heimlich maneuver?

What will result, in terms of prison bed space, from every single nursing

home death, hospital in-patient fatality, and jail suicide when grieving family members press for prosecution on the ground of negligent homicide?

Will prosecutions of dog owners increase where any dog brings about the death of a person? Presently, such prosecutions are brought in court but generally only upon an owner's actual knowledge of the dangerousness or viciousness of his/her dog. With negligent homicide the threshold will be perception of a risk.

Will the old doper face prosecution when he/she fails while high to call an ambulance when a buddy doper lapses into a coma and dies from voluntarily ingesting on his own too strong a drug?

Will this charge be trotted out when a school superintendent fails to call off school during an ice storm and a student dies from a slip and fall head injury?

As you contemplate HB 2674, ask yourselves, 'will anybody ever agree to be a babysitter, again, if this is the law?' What will you be doing to those parents who can no longer find anybody willing to take the risk of babysitting for fear of being prosecuted for a mishap involving the child to be watched over?

How will this statute treat the person who perceives the risk and acts on it but fails? Must the rescue effort be successful? How much rescue effort must be put forth? Must the rescuer risk his/her own life in order prevent the death of another? Implicitly that is called for in this Bill.

Since this legislation follows the enactment of K.S.A. 21-3219 (Stand and defend), will it be deemed a modification of the Legislature's position on the use of force laws. Self-defense is almost always a battle over the user-of-force's perception at the time he/she used the force. Does HB 2674 create a higher standard for the user of force?

The punishment prescribed in the Bill for a person convicted of negligent manslaughter is minimal...and it creates a number of problems.

Our experience with manslaughter and other lower forms of homicide teaches that surviving family members are not satisfied with the criminal law's response to the homicidal death of their beloved and departed relative. Survivors know the enormity of their loss, and they cannot reconcile the thundering silence coming from the place where once their deceased family member expressed all the vital signs of life. The dearly departed is just as dead as if killed in a full-fledged first degree murder. The nearly universal demand from overwrought survivors: 'Why should the killer be rewarded with a minimal sentence?'

With no previous criminal history, a defendant convicted of negligent

homicide will be sentenced to probation. Telling a surviving family member that the person who killed their dear relative is getting probation is pouring both salt and acid in an open wound.

Next, there is in the criminal law a mandate that where two laws prohibit the same conduct the defendant convicted of either is to be sentenced only to the lesser of the two severities of punishment. This has been a particular nagging problem in drafting sufficient laws relating to the manufacture of methamphetamine. The state supreme court and the appellate defender are well tuned-in to the concept. Assume for a moment that a defendant is convicted of a severity level 5 involuntary manslaughter, but the facts would also support a conviction for the proposed negligent homicide. The most severe punishment that could be applied would be the lower one from severity level 7. Meanwhile, the jury and the facts and other legislative enactments would view the crime as being much more severe.

This severity level discussion would be incomplete without mentioning that involuntary manslaughter while DUI is a severity level 4 person felony. If you enact HB 2674, and a drunk driver with no prior criminal history who caused a traffic-related death and who would ordinarily face a 41 month sentence to be served in prison is then only sentenced to probation, you might consider whether any special interest group will get 'mad' and launch an assault on the Legislature.

As a matter of trial procedure, if you enact HB 2674 you will no doubt affect in an adverse way the prosecution of homicide across the state. We speak of the requirement of lesser included offense instructions during trial. This will be yet another lesser included instruction, and it weakens criminal justice by allowing jurors to convict at severity levels far below what would be expected by the actual criminal conduct of the defendant.

It has been said that many states have such a law and that Kansas should have it, too. This reasoning-bubble was burst by our parents many times over and long ago – if little Johnny wants to jump off a cliff does that mean you should do it, too? Of course, not.

A good number of the states with negligent homicide on their books do so in confined relation to traffic collisions. Kansas already prohibits vehicular homicide where the deviation from ordinary care is the threshold. Kansas, however, unlike those other states, also has involuntary manslaughter, involuntary manslaughter while DUI, and in some extreme cases unintentional murder in the second degree—all of which have been used often and successfully in prosecuting egregious traffic fatalities. Depending on the circumstances any one of these laws may apply to any homicide.

At least one state, Wisconsin, does not prohibit the crime of an unintentional homicide. Conversely, Wisconsin does prohibit several forms of negligent homicide[1]. It is misleading to say, 'Look, Wisconsin has a crime of negligent homicide, but Kansas does not, so Kansas is not protecting its citizens, therefore Kansas needs a negligent homicide statute, too.'

It is misleading to do so because Kansas has a stronger law in the area of homicide. Kansas has both voluntary and involuntary manslaughter – neither of which are codified in Wisconsin. Our laws already cover the conduct prohibited in Wisconsin's negligent homicide statutes. If you add negligent homicide to Kansas law, you will be adding a lesser, lower level of homicide than the ones you already have in place. You will not be filing a gap. We don't have a gap.

Other states may have negligent homicide statutes that are not as strong as the entire homicide scheme in Kansas law.

The Uniform Code of Military Justice prohibits negligent homicide. This, too, has been advanced as a reason for Kansas to jump from the cliff. Consider, however, that the military has an ability to compel behaviors and conduct from its personnel that does not exist in civilian life. In other words, the military is authorized to saddle its personnel with duties that are not within the prerogative of civilian policy makers. The elements of a charge of negligent homicide under Article 134 of the UCMJ include that the act or failure to act which caused the death amounted to simple negligence. Simple negligence is then defined as an act or omission of a person who is under a duty to use due care which exhibits a lack of that degree of care of the safety of others which a reasonably careful person would have exercised under the same or similar circumstances. Simple negligence, explains the Code, is a lesser degree of carelessness than culpable negligence.

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[1] Wisconsin Statutes.

940.01 First-degree intentional homicide.
940.02 First-degree reckless homicide.
940.03 Felony murder.
940.04 Abortion.
940.05 Second-degree intentional homicide.
940.06 Second-degree reckless homicide.
940.07 Homicide resulting from negligent control of vicious animal.
940.08 Homicide by negligent handling of dangerous weapon, explosives or fire.
940.09 Homicide by intoxicated use of vehicle or firearm.
940.10 Homicide by negligent operation of vehicle.
940.11 Mutilating or hiding a corpse.
940.12 Assisting suicide.
940.13 Abortion exception.
940.15 Abortion.
940.16 Partial-birth abortion.

Would you really want to criminalize non-culpable, simple negligence? Like the UCMJ, House Bill 2674 makes a crime out of a simple mistake in civil society.

HB 2674 expresses no duties. The State of Kansas cannot reasonably legislate of its occupants duties of rescue or duties of personal care and enforce the same under penalty of imprisonment.

Even in the civil law where the burden of proof is less than that in the criminal law, negligence is often not proved by the occurrence of a one-time event. Things that happen once are given the benefit of newness, of not holding one accountable for their happening.

Let's return to the unfortunate death of Baby Janis.

It has often been said that the devil is in the details. A review of just some of the details surrounding Baby Janis' death are illuminating. A prosecutor's challenge is to view, interpret, and weigh facts dispassionately and apply the law to those facts. The prosecutor must do so because that is the legal expectation of jurors in this state.

This essay will not include all relevant facts, as the charging decision has not yet been made final. But suffice it to say that there is no evidence that the spilling of the boiling liquid was anything other than a one-time event. There is no evidence that the burn was the result of anything other than an accident. Prosecutors deal with affirmative evidence, not speculation in the gap where evidence does not exist.

There is some evidence that the babysitter did some things to comfort the baby; although there was indeed some delay in taking the care giving to a higher level. There was apparently no telephone in the home, and the babysitter did go to a nearby phone to call the baby's mother who worked only a few minutes from the house. Thereafter the babysitter did assist in taking the baby for advanced care. Several life-flights later the baby was in a burn hospital where it died two days later.

The legal question focuses on the delay in obtaining care – and perhaps on the severity of the accidental burns from the outset. A distraught grandmother might never accept that anything that was done by the babysitter was enough. 'Too little, too late,' would be the response. What an upset grandmother knows in her heart of hearts, and what a law enforcement agency is able to prove with evidence may differ dramatically.

Would a jury of non-grandmothers-of-scalded-grandchildren wrestle over the question? The answer is not nearly as clear. The prosecutor in Miami County is an experienced prosecutor. He serves on a state ethics panel. He is a past president of the KCDAA. He has held public office for many years. His reluctance to prosecute with the evidence gathered by investigating law enforcement officers is not something that can be

chalked up to inexperience or lack of proper perspective. His considerations are those of a reasonable person. This is a situation where reasonable people disagree. This is not a situation crying out for a new law.

To his credit, the Miami County prosecuting attorney recognized many months ago that his way may not be the only way of looking at the case. He packed up the case file and submitted it to the Office of the Attorney General for review by the attorneys in the criminal division, along with a request that if they deemed the case prosecutable that an assistant attorney general be assigned to do just that.

The evidence now under review may be insufficient to warrant any charge. Prosecutors are, after all, vested with discretion and expected to seek justice. It may well be the call of all prosecutors that the evidence in support of conviction is simply non-existent, in which case a different ethical duty kicks in that tells us not to file charges.

However, the evidence may support charges of abuse of a child, child endangerment, involuntary manslaughter, or reckless aggravated battery. The surviving family members have at their disposal yet more options including civil suit against the babysitter.

The bottom line is this: there are ample and powerful criminal laws in place to address any wrong associated with the terrible death of Baby Janis—using them depends on the sufficiency of lawfully collected evidence. Negligent homicide as proposed in HB 2674 would amount to bad public policy. Avoid the temptation to comfort a grieving family by passing a law that would make things worse rather than better.

We urge you not to pass HB 2674 out of committee.

Respectfully,

The Board of Directors
KCDAA

By: _____

Edmond Brancart
Immediate Past President, KCDAA
Deputy District Attorney
Wyandotte County District Attorney Office