

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:36 A.M. on March 6, 2008, in Room 123-S of the Capitol.

All members were present except:

David Haley arrived, 9:44 A.M.
Greta Goodwin arrived, 9:46 A.M.
Derek Schmidt arrived, 9:40 A.M.

Committee staff present:

Bruce Kinzie, Office of Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Hon. Sam Bruner, Kansas Judicial Council
Jane Rhys, Kansas Council on Developmental Disabilities
Jean Krahn, Kansas Guardianship Program
Erica Haas, Attorney, Governor's Grant Program
Sandy Barnett, Kansas Coalition Against Sexual and Domestic Violence
Rick Guinn, Deputy Attorney General
Rob Linderer, Midwest Transplant
Mack Smith, Executive Director, Mortuary Arts Board
Representative Annie Tietze
Gerald Goodell, Member, Board of Trustees, Mt. Hope Cemetery, Topeka

Others attending:

See attached list.

The Chairman opened the hearing on **HB 2644—Revises sections of the guardianship and conservator act concerning the procedure for appointing a guardian or conservator.**

Judge Sam Bruner appeared in support, providing a synopsis of the study by the Judicial Council and reviewed recommended changes to legislation passed in 2002 (Attachment 1).

Jane Rhys testified in support, stating **HB 2644** provides a reasonable response to concerns regarding conflict of interest and will enable the court to better perform its oversight function (Attachment 2). Ms. Rhys feels the recommendations are appropriate and encouraged enactment of the bill.

Jean Krahn appeared stating the Kansas Guardianship Program supports the proposed changes in **HB 2644**. Ms. Krahn especially supports the requirement for basic instruction regarding the duties and responsibilities of a guardian or conservator. (Attachment 3).

There being no further conferees, the hearing on **HB 2644** was closed.

The hearing on **HB 2726—Polygraph examinations prohibited for certain alleged victims** was opened.

Erica Haas appeared in support, stating the proposed bill fulfills a federal requirement that will allow Kansas to continue to receive federal funding (Attachment 4).

Sandy Barnett appeared in support of the bill stating polygraphs are not perfect (Attachment 5). Often victims are in emotional crisis and test results are likely to be extremely inaccurate, possibly causing investigators to minimize the incident. The federal government acknowledges the problem with polygraph testing of victims and prohibits the practice for states receiving federal funding.

Rick Guinn appeared in support, stating sexual assault programs rely on federal funding and he would like to see continuation of the funding (Attachment 6). Mr. Guinn indicated there was no opposition regarding

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:36 A.M. on March 6, 2008, in Room 123-S of the Capitol.

the polygraph examinations. The tests are not reliable, often victims will fail due to the emotional trauma and prosecutions are rarely based on the results of such tests.

Written testimony in support of **HB 2726** was submitted by:

Ed Klumpp, Kansas Association of Chief's of Police & Kansas Peace Officers (Attachment 7 & 8)

There being no further conferees, the hearing on **HB 2726** was closed.

The Chairman opened the hearing on **HB 2768—Dead human bodies; removal and delivery.**

Rob Linderer testified in support, indicating the bill would allow the Midwest Transplant Network to receive a dead body in a timely manner in order to recover donated tissues from deceased donors (Attachment 9). Currently, this is done in the operating room of the hospital where the death occurred; thereby delaying the recovery process and disrupting the hospital's surgery schedule.

Mack Smith spoke in support of the proposed bill (Attachment 10).

There being no further conferees, the hearing on **HB 2768** was closed.

The Chairman opened the hearing on **HB 2656—Authorizing cemetery corporations to convey real estate not platted into cemetery lots free from trust restrictions.**

Representative Annie Tietze appeared in support as sponsor of the bill (Attachment 11). The proposed bill would allow not-for-profit cemetery corporations to sell unplatted burial lots to meet maintenance requirements. Mt. Hope cemetery was founded in 1906 and is located in Topeka. The cemetery has over 160 acres restricted by a Trust Deed for 1,000 years. It is Rep. Tietze's opinion that this would be the only cemetery that would be affected under the bill.

Gerald Goodell spoke in support (Attachment 12). He serves as a voluntary board member of Mt. Hope Cemetery. Mr. Goodell feels the bill is in the best interest of the public and will not defeat the purposes of the trust deed.

There being no further conferees, the hearing on **HB 2656** was closed.

The Chairman indicated **HB 2656** was consent calendar material in the House and suggested the committee work the bill immediately.

Senator Goodwin moved, Senator Donovan seconded, to recommend **HB 2656** favorably for passage and place it on the consent calendar. Motion carried.

The meeting adjourned at 10:25 A.M. The next scheduled meeting is March 10, 2008.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Mar 6, 2008

NAME	REPRESENTING
Erica Haas	Gov. Grants Program
Julien Nash	Gov office
Sandy Barnett	KCSOU
Lei Binner	MT Hope Cemetery
Gerald L. Goodell	mt Hope Cemetery
Anne S. Teigen	NCSL
Doug Smith	MT. Hope Cemetery
Jean Krahn	KS G-ship Prog.
Ami Hyten	TLRL
Jane Rhys	ACDD
Bianna Landon	Sen Journey
Ronda A. Hani	Midwest Transplant Network
Julie Heen	MTN
Rob Lindsag.	MTN
Pam Scott	KS funeral Directors Assn
Mack Smith	KS ST BD of Mortuary Arts
Melisse Wagemann	Sec of State
Mundi Kohake	



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MEMORANDUM

TO: Senate Judiciary Committee

FROM: Kansas Judicial Council - Judge Sam Bruner

DATE: March 6, 2008

RE: 2008 HB 2644

In January 2007, Representative Lance Kinzer, as Chairman of the Special Committee on Judiciary, requested that the Judicial Council study 2005 SB 240, proposed balloon amendment version, relating to the appointment of guardians and conservators. (That bill is identical to 2007 HB 2509.) The Judicial Council assigned the study to its Guardianship and Conservatorship Advisory Committee in June 2007, and the Council approved the Committee's report in November 2007.

The issue before the Guardianship and Conservatorship Advisory Committee (Committee) was whether K.S.A. 59-3068 and 59-3075 should be amended, and if so, how the amendments should be phrased. In addition to other amendments, 2005 SB 240, balloon amendment version, (and HB 2509) would amend K.S.A. 59-3068(b) to prohibit a court from appointing an unrelated person as guardian or conservator if that unrelated person has any kind of conflict of interest.

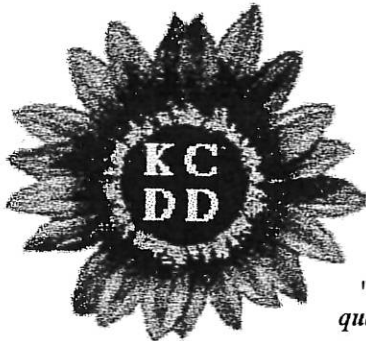
The Committee was unanimously opposed to 2005 SB 240, proposed balloon amendment version, for several reasons. The Committee's primary concerns were that the prohibitions set forth in the bill were limited to "unrelated" guardians and that the bill would absolutely prohibit many qualified, competent appointees from serving as guardians who could otherwise be appointed with proper disclosures to the court.

Senate Judiciary
3-6-08
Attachment 1

The Committee agreed that, instead of restricting judicial discretion, additional protections relating to conflicts of interest could be implemented in a less restrictive manner. First, the Committee recommends that each of the six guardianship and conservatorship petition statutes (K.S.A. 59-3056, 59-3058, 59-3059, 59-3060, 59-3061 and 59-3062) be amended to strengthen pleading requirements by requiring the petitioner to state any potential conflicts of interest as well as the age, date of birth, gender, and place of employment of the proposed guardian or conservator. The latter information will be helpful if it ever becomes necessary to issue a bench warrant for the guardian or conservator. Second, the Committee recommends that K.S.A. 59-3083 be amended to require reporting when a conflict of interest arises at any time after appointment. Third, the Committee recommends the addition of a detailed conflict of interest analysis to K.S.A. 59-3068.

Finally, the Committee believes that education and training of guardians and conservators is essential and that completion of a basic instructional program concerning the duties and responsibilities of guardians and conservators, including conflict of interest issues, should be required of all first-time guardians and conservators. Accordingly, the Committee recommends the addition of a training requirement to K.S.A. 59-3069.

The House Judiciary Committee amended HB 2644 by clarifying that, in reporting a personal or agency interest, a person must include the details of any financial, agency or other transaction between a proposed guardian and his or her ward. The Guardianship and Conservatorship Advisory Committee has no objection to this amendment.



Kansas Council on Developmental Disabilities

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SCOTT SHEPHERD, Chairperson
JANE RHYS, Ph. D., Executive Director
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"To ensure the opportunity to make choices regarding participation in society and quality of life for individuals with developmental disabilities"

HOUSE JUDICIARY COMMITTEE

Room 123-S

February 6, 2008

Mr. Chairperson, Members of the Committee, my name is Jane Rhys and I appear today on behalf of the Kansas Council on Developmental Disabilities to testify in favor of H.B. 2644 revising sections of the guardianship and conservator act concerning the procedure for appointing a guardian or conservator. The Council is federally mandated and funded – we receive no state funds. Our mission is to provide information to policymakers, promote systems change and innovation, and advocate for individuals with developmental disabilities.

I do have another role, that of member of the Kansas Judicial Council's Guardianship and Conservatorship Advisory Committee. As such I was present at the meetings in which we discussed procedures for appointments. We studied this issue in 2005 and again in 2007 so a considerable amount of time has been devoted to this topic. I am not an attorney so cannot provide a legal opinion but I can speak to some of the thoughts that went into this proposal.

Specific terminology and location of proposed changes are as follows.

On page 1, lines 26 and 27 the addition of *age, date of birth, gender and place of employment* is included as part of the information required of the person who wishes to become the guardian and/or conservator. The judges on this committee, who had many years of experience with guardians and conservators, asked for this information to aid in finding the appointed person if he or she did not file the required reports or did not adequately take care of the ward or conservatee. This is a reasonable request to ask of those applying for legal control over another individual.

Senate Judiciary

3-6-08
Attachment 2

Page 1, lines 29 - 31 involves the issue of conflict of interest. Providing information about any personal or agency interest of the proposed conservator assists the judge in determining if the proposed conservator has or might have a conflict of interest regarding this appointment. This is not to say that there is a conflict or that the person seeking appointment is not the best person to be appointed for the individual, it simply provides more checks and balances to the appointment procedure so that the judge can make a reasoned decision.

Both changes in language are repeated on page 4, lines 4-5 and lines 8-10, on page 6 lines 21-22 and lines 24-27, on page 8 lines 28-29 and lines 31-34, page 10 lines 35-36 and lines 38-41, and page 12 lines 18-19 and lines 21-23.

Page 13 lines 19 - 43 and page 14 lines 1 - 4 elaborate on the conflict of interest language and a requirement for guardians/conservators to complete a basic instructional program that is described on page 15 lines 30 - 38. "Employee" is defined on page 14 lines 10 - 12.

Finally, a change in the circumstance of the guardian or conservator that could result in a conflict of interest is added to the section requiring the filing of a special report or accounting to the court is described on page 16 lines 16 - 20. This will alert the court to the change and provide an opportunity for the court to review the change and determine if a new guardian/conservator should be appointed.

We believe that these changes provide a reasoned response to the concern about conflict of interest and additional information that will enable the court to better perform its oversight function. The Kansas Council on Developmental Disabilities supports these changes, as do I as a member of the Kansas Judicial Council's Guardianship and Conservatorship Advisory Committee.

I appreciate the opportunity of providing this information and would be happy to answer any questions you may have to the best of my ability.

Jane Rhys, Ph.D., Executive Director
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KANSAS GUARDIANSHIP PROGRAM

KGP

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Executive Director
M. Jean Krahn

To: Senate Judiciary Committee, Senator Vratil Chair
From: M. Jean Krahn, Executive Director
Date: March 05, 2008
Re: HB 2644 As Amended by House Committee on Judiciary

Position on HB 2644

1. The Kansas Guardianship Program supports the proposed changes to the act for obtaining a guardian or a conservator regarding conflict of interest in who may be appointed as a guardian or conservator.
2. We also support the proposed requirement for a basic instructional program regarding the duties and responsibilities of a guardian or conservator.

Agency Background Information

The Kansas Guardianship Program recruits, trains and monitors community volunteers who serve as court appointed guardians or conservators for program-eligible individuals. The individuals served have limited financial resources (Medicaid recipients) and do not have family members willing or appropriate to assume guardianship or conservatorship responsibilities. Currently the KGP serves approximately 1400 wards or conservatees through the efforts of more than 820 volunteers.

The KGP was initiated in 1979 under the administration of Kansas Advocacy and Protective Services, Inc. The 1995 Kansas Legislature established the program as a separate public instrumentality pursuant to K.S.A. 74-9601 et seq., as amended. The program is governed by a seven member board of directors, six of whom are appointed by the Governor and one appointed by the Chief Justice. The KGP is funded through State General Funds.

Persons served by the KGP are identified by SRS Adult Protective Services and State Hospital social workers. A written referral is made to the KGP requesting the matching and nomination of an approved volunteer for appointment as guardian or conservator. The abilities and interests of the ward or conservatee and those of the volunteer are considered when the nomination is made.

Following the court appointment of a volunteer as the guardian or conservator, the KGP contracts with the volunteer; requires written monthly reports of activities undertaken on behalf of the person; provides a \$30 per month stipend to offset out-of-pocket expenses; and provides ongoing monitoring, training and support to the volunteer in order to enhance the quality of life of the persons they serve.

KGP Conflict of Interest Guideline (Attached)

The KGP has followed a conflict of interest guideline for more than twenty years. The program does not initiate the nomination of a volunteer who is employed by a program, facility or an organization providing services and supports to the ward or conservatee.

KGP Volunteer Training (Training Outline Attached)

Instruction and training is provided by the KGP to volunteers serving as court appointed guardians or conservators. Each volunteer receives a copy of the Volunteer Training Handbook which mirrors the training outline. Additionally, the volunteers receive ongoing training, assistance and support while fulfilling the legal responsibilities of guardian and conservator for the ward and conservatee.

No additional agency expenditures are anticipated as a result of the proposed legislation. In the event a cost would be assessed to a potential guardian or conservator for the instructional program, the KGP would request the cost be waived for the volunteers. KGP guardians or conservators expend considerable volunteer time and personal resources in their advocacy efforts.

The KGP believes the proposed revisions represent important assurances in seeking the best interests of persons for whom a guardian or conservator is appointed.

**KANSAS GUARDIANSHIP PROGRAM
CONFLICT OF INTEREST GUIDELINE**

Introduction

The role of a guardian or conservator is to advocate for and protect the rights of the ward or conservatee. In this role, the guardian or conservator must be free of any appearance of personal or employer conflict of interest, self-serving gain, compromising influences and loyalties when advocating on behalf of the ward. The guardian and conservator must be free to challenge inappropriate or poorly delivered services and to advocate and exercise judgement solely for the benefit of the ward or conservatee.

The KGP retains the right to the decision regarding with whom the program will contract.

Definition

“Conflict of Interest” - Situations in which an individual may receive financial or material gain or business advantage from a decision made on behalf of another. Situations that create a public perception of a conflict should be handled in the same manner as situations in which an actual conflict of interest exists.” National Guardianship Association “Standards of Practice.” © Copyright, 2000, 2002, 2007.

KGP CONFLICT OF INTEREST GUIDELINE

The KGP will not initiate or bring under contract a nomination (or match) between a KGP volunteer and a possible ward or conservatee in situations when the potential for conflict of interest may occur including, but not limited to the following:

1. A KGP volunteer who *provides services and supports to the ward or conservatee, or*, is employed by a program, facility or an organization which provides services and supports to the ward or conservatee.
2. The immediate family member (defined as grandparent, parent, step-parent, grandchild, step-grandchild, sibling, step-sibling, child, stepchild, or spouse) of a person who is employed by a program, facility or an organization which provides services and supports to the ward or conservatee.

Exceptions to the immediate family member guideline

Possible exceptions to the immediate family member guideline may be considered only after justification and documentation is provided to and approved by the Executive Director.

When a Conflict of Interest Occurs with a KGP Guardian or Conservator

1. A potential conflict of interest occurs if a volunteer takes employment with a program, facility or an organization which provides services and supports to their ward or conservatee. It is the responsibility of the volunteer to contact the KGP immediately if this situation occurs.
2. The KGP regional staff is the responsible party in addressing the situation with the volunteer.
3. The conflict of interest may be addressed in one of the following ways:
 - a. The KGP initiates steps to identify a successor guardian or conservator. The prioritization time frame for this successor referral is balanced with whether or not the guardian or conservator is providing direct services and supports to the ward or conservatee and/or supervising staff who are providing the ward’s or conservatee’s services and supports.
 - b. In some cases the KGP volunteer guardian may continue to serve the ward privately. In those cases, the contract between the volunteer and the KGP will be terminated. If the volunteer is the court appointed conservator, a change in the bonding procedure must occur. The KGP regional staff will contact an SRS attorney to petition the court to change the bond. Upon receipt of the court order releasing the secretary of SRS as surety on the bond, the contract between the volunteer and the KGP will be terminated.

REFERENCES

- I. **Kansas Statute:** The Act for obtaining a guardian or a conservator, or both. KSA 59-3068 (b)
- II. **KGP Handbook:** Section III Responsibilities • Limitations • Decision Making Section III A.5, A.6 and E.1 Conflict of Interest
- III. **National Guardianship Association:** “Standards of Practice” © 2000, 2002, 2007

Volunteer Signature

KGP Regional Staff

Date 06.2006

3-3

Volunteer Name

KANSAS GUARDIANSHIP PROGRAM VOLUNTEER TRAINING CHECKLIST

This checklist is used with the KGP Handbook - Reference Section Numbers

CONFIDENTIALITY

_____ I will hold in the strictest confidence all personal and business information I receive or have access to regarding the ward or conservatee. Such information will be divulged only to those directly connected with the ward or conservatee, and then only on a need to know basis in the furtherance of the wishes and/or in best interest of the ward or conservatee. I will discuss these matters only with the people directly involved or who will be consulted for their professional knowledge and expertise.

ADVOCACY

_____ Review statutory language involving person in decision making as appropriate
_____ KGP Philosophy _____ Balancing risk vs benefit

SECTION
IV

COURT • LEGAL ISSUES

_____ Review terminology _____ Letters of Appointment _____ Conservator bond
_____ Review duties, responsibilities _____ Limitations _____ Decisions requiring court approval
_____ Least restrictive setting appropriate to needs of person _____ Statutory Liability Protection
_____ Court approval to admit to a "treatment facility"

SECTION
III & V

Accountability to the Court

_____ Conservator Inventory and Valuation _____ Annual Conservator Accounting
_____ Annual Guardian Report _____ Court oversight and review

INCOME • BENEFITS • FINANCIAL INFORMATION

_____ SSA Representative Payee - Filing for Social Security benefits and redeterminations
_____ Other benefits (Veterans, Railroad Retirement, pension, employment)
_____ Banking _____ Establishing accounts _____ Reconciling check register and bank statement
_____ Improper use of funds _____ No co-mingling of funds _____ No checks written to self

SECTION
III & VI & X

SOCIAL AND REHABILITATION SERVICES (SRS)

_____ Adult Protective Services, responsibilities _____ Investigate Abuse, Neglect or Exploitation
_____ Economic Assistance, responsibilities
_____ Medicaid eligibility _____ Resource limits _____ Redetermination time line

SECTION
XI

PAYMENT FOR SUPPORTS • SERVICES • MEDICAL CARE

_____ Payment for Medical Care, Medicare, Medicaid and other health insurance
_____ HCBS Waivers (Home and Community Based Services funding)

SECTION
VII & VIII

MONITORING CARE • SUPPORTS AND SERVICES

_____ Monitoring life issues _____ Visiting ward or conservatee _____ Rights issues
_____ Providing or not providing consents _____ Health care and medical decisions
_____ Participating in plan of care meetings

SECTION
IX

ABUSE • NEGLECT • EXPLOITATION (ANE)

_____ Monitoring for and reporting signs of ANE _____ Guardian or Conservator - Mandatory Reporter
_____ Guardians or Conservators as perpetrators _____ Penalties for ANE

SECTION
XII

FUNERAL • BURIAL ARRANGEMENTS

_____ Statutory authority for guardian to make arrangements _____ Preplanning and payment
_____ Guardian authority and limitations regarding cremation and donation of organs
_____ Court approval required for conservator to pay final bills and close estate after death of conservatee

SECTION
XIII

KANSAS GUARDIANSHIP PROGRAM (KGP) PROCEDURES • PAPERWORK

_____ Agency and program information _____ KGP Contract
_____ Stipend reimbursement for out of pocket expenses _____ Stipend/No Stipend Option
_____ No fee for services _____ IRS considers stipend income
_____ KGP Guardian and Conservator Monthly Reports _____ Electronic filing available
_____ Monitoring, training, support and assistance available
_____ Reviewed KGP Conflict of Interest Guideline

SECTION
I & II

Volunteer Signature

KGP Signature

Date

Rev 07.2007

3-4

Testimony of
Erica D. Haas, Attorney
Governor's Grants Program
Before the Senate Judiciary Committee
House Bill 2726
March 6, 2008

Dear Chair Vratil and Members of the Senate Judiciary:

Thank you for the opportunity to appear before you today on behalf of the Governor's Grants Program. The Governor's Grants Program administers the S. T. O. P. Violence Against Women Act (VAWA) grant program for Kansas. In 2005 the Violence Against Women Act, Public Law 109-162, was reauthorized and with the reauthorization came new state certification requirements. All states receiving VAWA funding must meet the certification requirements or risk the loss of funding. Last year, Kansas received approximately \$1.3 million in VAWA funding. These grant funds provide assistance to law enforcement agencies, prosecutor offices, courts and victim service organizations, in developing and enhancing programs that address and strengthen the criminal justice system's response to domestic violence, sexual assault and stalking crimes.

The language in House Bill 2726 as amended by the House Judiciary Committee and passed by the House patterns the language that Kansas is required to certify in order to maintain VAWA funding. This certification language is codified at 42 U.S.C 3796gg-8.

SEC. 2013. POLYGRAPH TESTING PROHIBITION.

“(a) IN GENERAL.—In order to be eligible for grants under this part, a State, Indian tribal government, territorial government, or unit of local government shall certify that, not later than 3 years after the date of enactment of this section, their laws, policies, or practices will ensure that no law enforcement officer, prosecuting officer or other government official shall ask or require an adult, youth, or child victim of an alleged sex offense as defined under Federal, tribal, State, territorial, or local law to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation of such an offense.”

House Bill 2726 prohibits law enforcement, governmental officials and prosecutors from either requesting or requiring any alleged victim of a sexual assault crime to submit to a polygraph examination or other similar truth telling device as a method or condition for proceeding with an investigation, or charging, or prosecuting such offense.

Thank you for your favorable consideration of the bill.

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Senate Judiciary Committee
March 6, 2008

HB 2726

Senator Vratil and Members of the Committee;

The practice of using polygraph examinations on victims reporting sexual assaults occurs with some frequency across Kansas. Often the request is made during the early stages of investigation and is meant to short cut other investigative practices. At best, such a practice is intended to preserve investigative and prosecutorial resources.

Nonetheless, because the science surrounding polygraphs is so imperfect, the decision to proceed with an investigation and prosecution of a crime as serious as sexual assault and rape should never be made based on the results of a polygraph test. In addition to the “scientific” questions, the flaws are heightened, I believe, because of the circumstances that often surround crimes of sexual violence.

Factors known to influence the validity of a polygraph include:
(Reid, J.E. & Inbau, 1977)¹

- Extreme emotional tension or stress
- Over anxiety
- Anger
- Concern over neglect of duty or responsibility that makes possible the commission of the offense by someone else
- Involvement in other similar acts or offenses
- Physical discomfort during the exam
- Adrenal exhaustion
- Psychological abnormalities

Many of these factors will exist for a victim of sexual assault.

- Self-blame and guilt by the victim tends to increase when the perpetrator is known to or a close acquaintance of the victim. Often that self-blame is expressed in statements such as “I shouldn’t have gone out that night; I had other things I was supposed to do,” or “I told my parents I was in place x, but I went to ...”

- Many victims of sexual assault remain in emotional crisis over a prolonged period of time. Their normal coping skills and mechanisms simply do not work for this traumatic and life-altering event. This emotional crisis may also be related to, the result of, or exacerbated by adrenal exhaustion.
- Anxiety and anger come and go over a long period of time for victims of sexual assault.

So, you can see the parallels between Reid's factors and the realities of being a victim of sexual violence.

Even if we suppose the best intent in administering a polygraph examination, the results are likely to be so inaccurate that rather than saving investigative or prosecutorial resources, officers may in fact be overlooking or minimizing an incident of sexual violence that will leave the victim and the community in further danger.

It is a travesty that we would ever tacitly and silently approve the use of such a method to determine the truthfulness of a claim of sexual violence. Study after study indicates that false reporting of sex crimes occurs at rates similar to that of any other crime (approximately 5%) – there is no valid reason to use polygraph examinations to determine if an investigation or prosecution is warranted.

Joanne Archambault (2006), a retired law enforcement officer and national trainer on the investigation of sex crimes, states:

"It is therefore recommended that polygraph should never be used with victims of sexual assault during the course of an investigation – even when the victim requests it. A competent evidence-based investigation will most likely reveal the truth much more effectively than these interrogation tactics."

It can only be assumed that Congress was so appalled by this practice that they required states to certify that there is a prohibition of this practice when they passed the Violence Against Women Act, 2005.

KCSDV urges this committee to pass out HB 2726.

Respectfully Submitted,

Sandy Barnett
Executive Director

¹ Reid, J.E. & Inbau, F.E (1977). Truth and Deception: The Polygraph ("Lie Detector") Technique. Baltimore, MD: Williams & Wilkins Co. As cited in the Sexual Assault Training Institute e-News; January 2006



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Senate Judiciary Committee

HB 2726

Deputy Attorney General Rick Guinn
Office of Attorney General Stephen N. Six

March 6, 2008

Mr. Chairman and members of the committee, thank you for allowing me to testify today.

House Bill 2726 would restrict the use of polygraph examinations by law enforcement on alleged victims of sex crimes. Passage of this legislation would bring the State of Kansas into compliance with victims' rights legislation at the federal level. Kansas currently receives 1.3 million dollars of Violence Against Women Act (VOWA) funds from the federal government which would be eliminated if this legislation were not passed into law.

I am the deputy attorney general responsible for overseeing the criminal division of the Attorney General's Office. I have been a prosecutor in the State of Kansas for almost my entire professional career. I have had numerous occasions to weigh and assess the significance of polygraph examinations in determining whether to go forward with the prosecution of a case. It is important to note that my testimony today relates strictly to my experiences with polygraph examinations as a prosecutor.

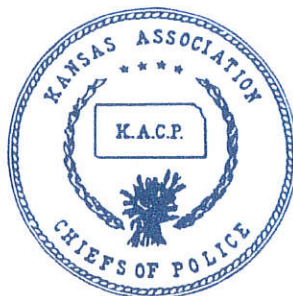
Polygraph examinations are inadmissible in Kansas courts as well as throughout the country due to their unreliability. Individuals who have committed crimes have been known to pass polygraph examinations. Innocent victims of crimes have been known to fail polygraph examinations. For these reasons, decisions regarding whether to prosecute a case were rarely, if ever, based on the results of a polygraph examination.

Thank you for your time and I look forward to answering any questions.

Senate Judiciary

3-6-08

Attachment 6



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TESTIMONY TO THE SENATE JUDICIARY COMMITTEE IN SUPPORT OF HB2726 Presented by Ed Klumpp On behalf of the Kansas Association of Chiefs of Police

March 6, 2008

The Kansas Association of Chiefs of Police supports HB2726. This bill causes us to carefully balance our sincere desire to provide quality victim services with federally mandated limitations on valid investigative techniques. In this case, it is clear the ability to fund victim services programs in Kansas is more important than the mandated limitations.

Without this bill, Kansas victim services programs will not be eligible for federal grant money under the VAWA 05 grant programs. The funding by the federal government has already been greatly reduced for these grant programs making competition across the country intense. The mandate under the VAWA 05 grant program requires the applicants to certify the state has a law or policy in place forbidding law enforcement or prosecutors to ask or require a victim of certain sex crimes to submit to a polygraph or other truth detection test to determine if the investigation or prosecution will continue.

Our dilemma is a choice between losing grant funding or yielding to a federal mandate that we don't entirely agree with. Certainly requesting a polygraph of any crime victim should not be taken lightly. However, law enforcement has the responsibility to the truth during an investigation. Most of the time victims are truthful with law enforcement, but on some occasions they are not for various reasons. Law enforcement has a responsibility to seek the truth not just for the victim, but also for those suspected of committing a crime. The polygraph is a tool to lead to the truth. It is not used as an absolute determining factor of the truth. When properly used, a polygraph can assist a good interviewer in reaching the truth. This is not accomplished just from polygraph results, but from the interview surrounding those results. Any tool can be overused. The use of polygraph

testing with any crime victim is applied very judiciously in criminal investigations. It should always be the exception applied only when the investigation brings the accuracy of the victim's accusations into question and all other attempts to resolve that question are exhausted. But saying any investigative tool should never be used in a certain type of investigation is not the best case scenario.

However, at the end of the day, our commitment to the victims must be firm. It is clear in this case it is in the best interest of Kansas crime victims to accept this federal mandate and support this bill. The victims deserve nothing less than our strongest support to help them heal from these most tragic, repulsive, and emotionally damaging crimes.

We encourage you to recommend this bill favorably to pass.



Ed Klumpp
Chief of Police-Retired, Topeka Police Department

Legislative Committee Chair
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Phone: (785) 235-5619
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Kansas Peace Officers' Association

INCORPORATED

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TESTIMONY TO THE SENATE JUDICIARY COMMITTEE IN SUPPORT OF HB 2726

Presented by Ed Klumpp

March 6, 2008

This bill is more about supporting statewide victim assistance programs than about whether the use of a polygraph should be forbidden in certain cases. The Kansas Peace Officers' Association strongly supports providing services to the crime victims of Kansas. The Association also supports treating victims with great respect. However, law enforcement has a responsibility to both the accuser and the accused. That responsibility is to find the truth and to do so in a manner consistent with the laws while respecting the dignity of the parties.

While the polygraph can be used as a valuable investigative tool there are other methods to pursue the truth. And this bill would not prohibit providing a polygraph to a victim who initiates the request for testing.

The provisions of this bill are simply necessary to continue to be eligible for the federal VAWA05 grant funds. These funds are a significant source of funding for many victim assistance programs across our state. In supporting these victim oriented programs we find ourselves at odds with federal mandates associated with the funding.

As we look at the larger picture, the appropriate use of the polygraph for persons reporting these crimes is very limited and not as important as the funding to provide these critical services. Therefore, we support this bill and encourage you to recommend it to pass.

Handwritten signature of Ed Klumpp in blue ink.

Ed Klumpp
Legislative Committee Chair
Home: (785)235-5619
Cell: (785)640-1102
E-mail: eklumpp@cox.net

Senate Judiciary

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In Unity There Is Strength

**TESTIMONY OF THE MIDWEST TRANSPLANT NETWORK,
BY ROB LINDERER, CHIEF EXECUTIVE OFFICER
BEFORE THE SENATE JUDICIARY COMMITTEE**

THURSDAY, MARCH 6th, 2008

IN SUPPORT OF HB 2768

**AN ACT CONCERNING PUBLIC HEALTH AND RELATING TO THE
REMOVAL OF DEAD BODIES**

Mr. Chairman and members of the Judiciary Committee, thank you for allowing me to testify in support of HB 2768. Midwest Transplant Network is a non-profit, federally certified organ procurement organization (OPO) designated to serve the state of Kansas and western Missouri. We provide organ and tissue procurement services to over 230 hospitals. We are members of United Network for Organ Sharing (UNOS) which is the organization under federal contract to operate the National Organ Procurement and Transplant Network (OPTN). In addition, we provide tissue and eye recovery services under agreements with multiple FDA-regulated processors and eye banks.

Tissue donation includes eye, cornea, skin, bone, tendons, connective tissues, blood vessels, and heart valves that are routinely used to save lives of patients in burn units, repair sports injuries, rebuild devastating injuries caused by trauma, stabilize fractured spines, replace cancerous bone, and many other applications. Over 80 patients can be helped by tissue recovered from a single donor. Tissue processors we work with returned over 4,000 individual pieces of tissue to Kansas hospitals in 2006 and a larger number last year.

This bill would add my organization as an establishment to which a dead body can be transported from the location of death. This change will enable us to utilize a free-standing facility for the surgical recovery of donated tissues from deceased donors. Traditionally, these recoveries have been done in the operating room at the hospital where the death occurred, which can be disruptive to the hospital's surgery schedule and cause delays in the recovery process. Even worse, viable tissues can be lost when

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3-6-08
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recovery time limits are exceeded and time delays create a significant inconvenience for the donor family and funeral home planning final arrangements.

A free-standing facility will enable Midwest Transplant Network to transfer deceased donors out of hospitals to minimize these problems and delays. The only change this represents in the current procedure is the location where tissues are removed. After a patient is pronounced dead and the initial donor approval and consent is obtained from the family and ME/Coroner, the funeral home or transport service will be called to transfer the body to Midwest Transplant Network's facility which is located near KU Medical Center. With our centralized staff preparing for the arrival of donors, we will gain efficiencies in case set up and surgical recovery and minimize the travel time for our teams of 3 – 4 technicians. We believe this will improve the quality of our services and satisfaction of the donor family, hospital, funeral homes, Medical Examiners/Coroners and other stakeholders involved in my organization's mission.

We know this approach can be successful because of our experience with the medical examiner/coroner offices in Sedgwick and Shawnee County. In both of these locations we have facilities to recover non hospital deaths under the jurisdiction of ME/Coroner. We also transfer deceased donors from hospitals to these facilities when it is the only way to complete the recovery. Organizations similar to ours in other parts of the country have established free standing facilities and report improvements in quality, processes and outcomes as well as a reduction in operating costs.

Thank you for your time and I will be happy to answer any questions you may have.

*The Kansas State
Board of Mortuary Art*

Created August 1, 1907

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Thursday, March 6, 2008

The Honorable Senator John Vratil, Chairperson
Senate Committee on Judiciary
Statehouse, Room 123-S
Topeka, Kansas 66612

Dear Chairman Vratil and Members of the Judiciary Committee:

My name is Mack Smith, and I am the executive secretary to the Kansas State Board of Mortuary Arts. I thank you for the opportunity to testify before the Committee today in support of House Bill 2768.

The current bill would add the following language: "... federally certified organ procurement organizations serving the state ..." to the list of approved locations to transport a dead human body from the location of death as well as language from the statute which designates the order of priority. At the time this statute was enacted, July 1, 2004, no such facility existed. I believe you will find that concerns regarding coroner/medical examiner cases are addressed with current language in the statute stating: "... applicable legal requirements ..."

Thank you again for the opportunity to testify before you today in favor of the bill. I will do my best to answer any questions of the committee.

Sincerely,



Mack Smith, Executive Secretary
Kansas State Board of Mortuary Arts

MS

copy: Rob Linderer, CEO, Midwest Transplant Network

[N:\Mack\Legislature\HB 2768 Senate Testimony.wpd & a:\HB 2768 Senate Testimony .wpd-2008 Legislative disk

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ANNIE TIETZE
56TH DISTRICT

Testimony before Judiciary
March 6, 2008
HB 2656
Rep. Annie Tietze

This bill will allow not-for-profit cemetery corporations to sell land which has not been platted into burial plots and is not necessary for future cemetery purposes. It will allow them to meet maintenance and reserve requirements.

I became involved in this issue because Mt. Hope cemetery is in my district. This cemetery has existed since 1906 when Mr. and Mrs. A.B. Whiting planned and donated it as a last resting place for the dead and as a source of perpetual support of Christian education for the living. Income from this property is used for operation, beautification, and maintenance of the cemetery in addition to support of Washburn University, the Topeka YWCA, and the Topeka YMCA.

I have a personal interest in Mt. Hope because my father, step-mother, and paternal grandparents are buried there. Having been designed by landscape architect E.F.A. Reinisch, well known for the Reinisch Rose Garden in Gage Park, it is a place where family and friends can truly honor their dead. This bill is necessary to continue providing such a place.

Senate Judiciary

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House Bill No. 2656
(by Committee on Judiciary)

An Act relating to cemetery corporations; authorizing certain cemetery corporations to convey real estate not platted into cemetery lots free from trust restrictions.

Mister Chairman and members of the Judiciary Committee:

My name is Gerald L. Goodell, I am an attorney and a member of the voluntary board of trustees of Mount Hope Cemetery Company, a non-profit cemetery corporation that request you to adopt the above bill. This bill is also supported by Washburn Endowment Association, the YWCA and the YMCA who are the sole beneficiaries of the Mount Hope Cemetery Trust created by a Trust Deed dated April 4, 1907. We have met with the Attorney General and the Secretary of State and their staff to discuss this bill and their involvement. At the request of the Attorney General staff, we have added several suggested additions to the bill to require a reasonable buffer zone between any new improvements to be constructed on the excess land and the remaining platted cemetery lots. Both the Attorney General and the Secretary of State have expressed support of this bill.

Please consider the following in support of this bill and the purpose and necessity for this bill.

1. Mount Hope is a non-profit Kansas corporation formed by Articles of Incorporation filed with the Kansas Secretary of State on August 15, 1906 for a term of 1,000 years. Mount Hope is now a Kansas cemetery corporation subject to all regulations and restrictions contained in K.S.A. 16-301 through 16-334 and K.S.A. 17-1302 through 17-1372 and all amendments thereto. Mount Hope is also exempt from federal income taxes under Section 501(c)(13) of the Internal Revenue Code and has not been classified as a private foundation. We believe, currently Mount Hope would be the only cemetery that could qualify under this bill to be allowed to sell some of its excess land now restricted to only cemetery use.

Senate Judiciary

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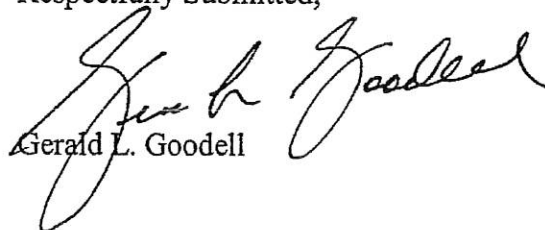
2. By a Trust Deed dated April 4, 1907, Mount Hope received title to 160 acres of unimproved real estate located between what is now Huntoon, Seventeenth and Fairlawn Streets at Topeka, Kansas. By the terms of this Trust Deed, the entire 160 acres is restricted for the sole purpose of "establishing, conducting and maintaining a cemetery or burial place ..." for the benefit of Washburn College (now Washburn Endowment Association), Young Mens Christian Association and Young Womens Christian Association (the trust beneficiaries). There is at least 25 acres of this real estate that will never be needed for cemetery or burial purposes.

3. The Board of Trustees of Mount Hope has recently determined that it is necessary and in the best interest of the general public, the trust beneficiaries and owners of lots now platted for cemetery purposes for Mount Hope to sell certain excess real estate located near the intersection of Huntoon and Fairlawn Streets for its fair market value for uses other than cemetery purposes free of the 1907 Trust Deed cemetery use restriction. Under this bill, if adopted, all proceeds will be used to meet applicable statutory maintenance and reserve obligations of Mount Hope and its obligations to the beneficiaries of this Charitable Trust.

4. Under current Kansas statutory and case law, real estate restricted to cemetery purposes cannot be sold and used for any other purpose. *Lower v. Board of Directors of Haskell County Cemetery District*, 274 Kan. 735 (56 P.3d 235) at page 742, the opinion further states "We conclude that the legislature has spoken on the subject and limits the use of a cemetery lot to burial purposes. If the law is to be changed, the legislature must change it ...". The purpose of the enclosed bill is to allow the Kansas Legislature to change this law under very restrictive and limited circumstances.

5. We have prepared the enclosed bill for the purpose of allowing the Kansas Legislature to change the current law and allow the Mount Hope to sell excess land restricted for cemetery purposes under terms approved by the Mount Hope Trustees, the trust beneficiaries, the Kansas Attorney General and the Shawnee County District Court. We believe adoption of this bill allows such sale and is in the public interest and will not defeat the purposes of the 1907 Trust Deed.

Respectfully Submitted,


Gerald L. Goodell

GLG/ag





October 19, 2007

Gerald L. Goodell, Esq.
Goodell, Stratton, Edmonds & Palmer, LLP
515 South Kansas Avenue
Topeka, Kansas 66603

Re: Proposed Mount Hope Cemetery Legislation

Dear Jerry:

Thank you for taking time last week to explain to the Mount Hope Cemetery charitable beneficiaries the necessity for legislation to permit sale of real estate the Cemetery owns at the corner of Fairlawn Road and Huntoon in Topeka. Specifically the legislation would permit the fair market value sale of the real estate free of the cemetery restriction imposed by the 1907 Trust Deed upon the written consent of the three beneficiaries and approval of the Kansas Attorney General and the Shawnee County District Court.

While we have not received a copy of the proposed legislation, based on your explanation of its elements, the Washburn Endowment Association supports the legislation, reserving the right to withdraw this support whenever it would be in the best interest of the Association to do so.

Sincerely yours,

A handwritten signature in cursive script that reads "JuliAnn Mazachek".

JuliAnn Mazachek, Ph.D.
President

12-4

Eliminating racism empowering women

ywca

January 25, 2008

YWCA Topeka
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Topeka, KS 66612
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www.ywca.org

Gerald L. Goodell
Goodell, Stratton, Edmonds & Palmer
515 South Kansas Avenue
Topeka, Kansas 66603-3999

Re: 2008 H.B. 2656


Dear Mr. Goodell:

After reviewing the above-referenced bill that includes the addition of a "reasonable buffer zone" between the burial plots and proposed improvements for excess real estate that would be the subject of a sales contract, we continue to support this legislation which would authorize Mount Hope to sell certain excess cemetery property free of the trust restrictions provided certain enumerated conditions are met. Those conditions include approval of the sale by all beneficiaries, the Attorney General, and the district court.

As indicated in our previous correspondence with you, the YWCA is supportive of H.B. 2656 in its current form. However, should this bill be amended materially such that the YWCA's interests may be adversely affected, we reserve the right to withdraw our support and notify the appropriate legislators.

We appreciate your efforts in this matter. Please keep us apprized as the bill proceeds through the legislature.

Sincerely,



Joyce Martin
Interim Chief Executive Officer

cc: Charlie Lord
JuliAnn Mazachek
Charles Engel
Douglas Smith

12-5



January 29, 2008

Mr. Gerald L. Goodell
Goodell, Stratton, et. al.
515 South Kansas Avenue
Topeka, Kansas 66603-3999

Re: 2008 H. B. 2656

Dear Mr. Goodell:

The YMCA of Topeka continues to support the bill referenced above.

This legislation authorizes Mount Hope Cemetery to sell certain excess cemetery property.

We realize there has been a change in the language, but we continue to support this bill.

Sincerely,

Charles Lord
President/CEO
YMCA of Topeka

12-6