

## MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Pat Colloton at 2:00 p.m. on March 11, 2009 , in Room 535-N of the Capitol.

All members were present.

## Committee staff present:

Sean Ostrow, Office of the Revisor of Statutes  
Jason Thompson, Office of the Revisor of Statutes  
Athena Andaya, Kansas Legislative Research Department  
Jerry Donaldson, Kansas Legislative Research Department  
Jackie Lunn, Committee Assistant

## Conferees appearing before the Committee:

State Representative Sharon Schwartz  
James & Tina Smith, private citizen  
Nick & Jennifer Keller, private citizens  
Jennifer Roth, Kansas Association of Criminal Defense Lawyers  
Barry Wilkerson, Kansas County and District Attorneys Association

## Others attending:

See attached list.

Chairperson Colloton opened by calling the Committee's attention to the minutes for approval.

**Representative Frownfelter moved to approve the minutes for January, 13, January 14<sup>th</sup>, January 20<sup>th</sup>, January 21<sup>st</sup>, January 22<sup>nd</sup>. Representative Dillmore seconded. Motion carried.**

**HB 2333 - Creating the crime of use of a controlled substance endangering a child.**

Chairperson Colloton opened the hearing on **HB 2333** and introduced State Senator Sharon Schwartz to give her testimony as a proponent of the bill. Representative Schwartz provided written copy of her testimony. (Attachment 1) She stated it is time that the state of Kansas passes legislation that will create a new crime that would apply to a pregnant woman who knowingly uses a controlled substance. The bill would require a pregnant woman to submit to a drug abuse examination and evaluation in either a public or private treatment facility or state institution. If determined to be a drug abuser, she would be required to enter into a drug abuse treatment program as a condition of release.

Representative Schwartz stood for questions and a discussion followed.

Chairperson Colloton introduced Jennifer Keller, a private citizen, to give her testimony as a proponent of the bill. Ms. Keller provided written copy of her testimony. (Attachment 2) Mrs. Keller stated she had first hand knowledge of the effects of a baby born to a pregnant woman who used controlled substances. She and her husband have adopted 6 children that were born to mothers who used controlled substances during their pregnancy. She reviewed all the physical challenges and medical issues of the children she and her husband have adopted because of their birth mothers use of controlled substances during pregnancy. In closing she stated they do not know the long term affects of a child born to mothers who used controlled substances while pregnant and urged the Committee to pass the bill out favorably.

Chairperson Colloton introduced Tina Smith, a private citizen, to give her testimony as a proponent of the bill. Mrs. Smith provided written copy of her testimony. (Attachment 3) She also knows first hand the affects of controlled substance abuse while pregnant. She and her husband have adopted two children that were born to a mother who abused controlled substances during her pregnancy. She told of the medical affects the controlled substances have had on her children and physical challenges they face on a daily basis. In closing, she urged the Committee to pass the bill out favorably.

A discussion followed.

## CONTINUATION SHEET

Minutes of the House Corrections and Juvenile Justice Committee at 2:00 p.m. on March 11, 2009, in Room 535-N of the Capitol.

Chairperson Colloton called on Jason Thompson, Office of the Revisor and Athena Andaya, Legislative Research, to do a memo on what the 26 states that have bills similar and bring before the Committee.

Chairperson Colloton introduced Barry Wilkerson, Kansas County & District Attorneys Association, to give his testimony as an opponent of the bill. Mr. Wilkerson provided written copy of his testimony. (Attachment 4) Mr. Wilkerson stated they have a concern with subsection (2)(1) and (a) (3). He reviewed his concerns for the Committee. In closing, he stated the issue of expectant mothers using controlled substances and alcohol has been with us for years. The issues sought to be addressed by this legislation deserve serious attention but he does not feel this legislation accomplishes that goal.

A discussion followed. During the discussion the Committee asked if Mr. Wilkerson could get with Representative Schwartz to address his issues and come to an agreement.

Chairperson Colloton announced the hearing would be continued to tomorrow with one opponent left to testify and adjourned the meeting at 3:15 p.m. with the next scheduled meeting being March 12, 2009 at 1:30 p.m. in room 535 N.

# CORRECTIONS & JUVENILE JUSTICE GUEST LIST

DATE: 03-11-09

NAME	REPRESENTING
Jennifer Roth	KACDL
Chris Mecher	OJA

STATE OF KANSAS  
HOUSE OF REPRESENTATIVES

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



*State Representative*  
*106th District*  
*State Capitol, Room 161 West*  
*Topeka, Kansas 66612*  
*(785) 296-7637*

CHAIR  
Local Government Committee  
Select KPERS Committee

Testimony HB2333

March 11, 2009

Madam Chairwoman & Fellow Committee members, thank you for this opportunity to appear in support of HB 2333.

Two years ago, Nick and Jennifer Keller contacted me and asked the question, "Would you be willing to help us find a way to address the issue of a woman who uses a controlled substance while carrying an unborn child?" They gave a very convincing reason for me to pursue trying to limit this abuse. As you listen to their personal story of their experience of adopting babies whose mothers used controlled substances while pregnant, I am sure that you will agree it is time for the State of Kansas to try to pass legislation that will create a new crime that would apply to a pregnant woman who knowingly uses a controlled substance.

HB 2333 as written would require the pregnant woman to submit to a drug abuse examination and evaluation in either a public or private treatment facility or state institution. If determined to be a drug abuser, she would be required to enter into a drug abuse treatment program as a condition of release. I did introduce a bill last year that would have required incarceration or treatment. Because of the sensitiveness to the cost of incarceration, the bill didn't advance from committee.

Any physician or other licensed health care professional who reports a person for violating HB 2333 would be immune from liability for making the report, unless the report was not made in good faith.

The cost of treating a person in the present Substance Abuse Services system in Kansas is about \$3,800 per year. The cost to incarcerate the same individual is about \$25,000 per year. The cost to treat a baby who has been born addicted is hard to measure. The second benefit of

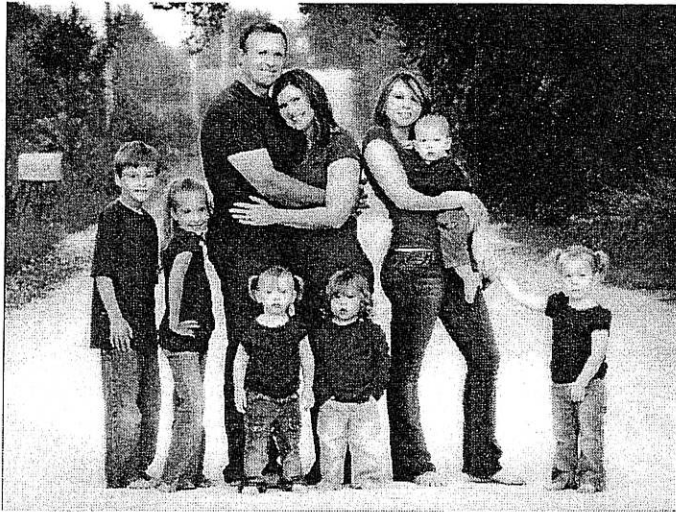
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this legislation would be the recovering mother would have the opportunity to become a productive citizen in our state.

The issue of "Substance Abuse During Pregnancy" is being considered in 26 states at this time. I am aware that three of those states have passed and signed into law legislation that addresses the subject. It is time for Kansas to make the same positive changes to protect the unborn.

Thanks for giving HB 2333 favorable consideration.





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. We have a daughter Brooke who just turned 18. I 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 Caty-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

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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 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.

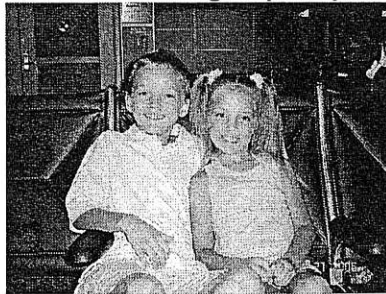
Section 2 of Alexas law changes the Kansas Criminal Code definition of person and human being also to mean an unborn child and would allow the accused to face two murder charges.

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 18 children. That makes 18 children from only 3 women and these 3 women have custody of one 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 premie 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 4<sup>th</sup> child of 5 siblings. Another victim of child abuse in the womb.





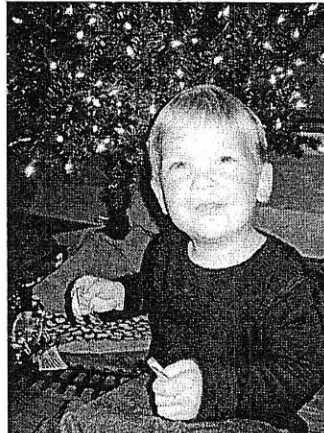
Cathryn Izabel-born with the highest content of methamphetamines in her system of all our children. Born the 7<sup>th</sup> child of her then 26 year old mother who now remains incarcerated for meth charges. Caty suffers with motor skill and speech delays, startles easily, has some sleep problems is 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 5<sup>th</sup> 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 5<sup>th</sup> 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.



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## ■ Substance Abuse During Pregnancy

**BACKGROUND:** Since the late 1980s, policymakers have debated the question of how society should deal with the problem of women's substance abuse during pregnancy. No state specifically criminalizes drug use during pregnancy. However, prosecutors have attempted to rely on a host of criminal laws already on the books to attack prenatal substance abuse. Only the South Carolina Supreme Court has upheld such a conviction, ruling in *Whitner v State* that a woman's substance abuse late in pregnancy constitutes criminal child abuse. Meanwhile, several states have expanded their civil child-welfare requirements to include prenatal substance abuse, so that prenatal drug exposure can provide grounds for terminating parental rights because of child abuse or neglect. Further, some states, under the rubric of protecting the fetus, authorize civil commitment (such as forced admission to an inpatient treatment program) of pregnant women who use drugs; these policies sometimes also apply to alcohol use or other behaviors. A number of states require health care professionals to report or test for prenatal drug exposure, which can be used as evidence in child-welfare proceedings. Finally, a number of states have placed a priority on making drug treatment more readily available to pregnant women.

### HIGHLIGHTS:

- 15 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 9 provide pregnant women with priority access to state-funded drug treatment programs.
- 4 states prohibit publicly funded drug treatment programs from discriminating against pregnant women.



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125 Maiden Lane  
New York, NY 10038  
212.248.1111  
[www.guttmacher.org](http://www.guttmacher.org)  
[info@guttmacher.org](mailto:info@guttmacher.org)

1301 Connecticut Avenue, N.W.  
Washington, DC 20036  
202.296.4012  
[www.guttmacher.org](http://www.guttmacher.org)  
[policyworks@guttmacher.org](mailto:policyworks@guttmacher.org)

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# STATE POLICIES ON SUBSTANCE ABUSE DURING PREGNANCY

STATE	SUBSTANCE ABUSE DURING PREGNANCY CONSIDERED:		WHEN ABUSE SUSPECTED, STATE REQUIRES:		DRUG TREATMENT FOR PREGNANT WOMEN		
	Child Abuse	Grounds for Civil Commitment	Reporting	Testing	Targeted Program Created	Pregnant Women Given Priority Access in General Programs	Pregnant Women Protected from Discrimination in Publicly Funded Programs
Alaska			X				
Arizona			X			X	
Arkansas	X				X		
California					X		
Colorado	X				X		
Connecticut					X		
Florida	X				X		
Georgia						X	
Illinois	X		X		X		
Indiana	X						
Iowa	X		X	X			X
Kansas						X	X
Kentucky				X	X		
Louisiana	X		X		X		
Maryland					X	X	
Massachusetts			X				
Michigan			X				
Minnesota	X	X	X	X	X		
Missouri					X	X <sup>Ω</sup>	X
Montana			X				
Nebraska					X <sup>†</sup>		
Nevada	X						
New York					X		
North Carolina					X		
North Dakota			X	X			
Ohio					X		
Oklahoma			X			X	X
Oregon					X <sup>†</sup>		
Pennsylvania					X		
Rhode Island	X		X				
South Carolina	X*						
South Dakota	X	X					
Texas	X					X	
Utah			X			X	
Virginia	X		X		X		
Washington					X		
Wisconsin	X	X				X	
<b>TOTAL</b>	<b>15</b>	<b>3</b>	<b>14</b>	<b>4</b>	<b>19</b>	<b>9</b>	<b>4</b>

\* The South Carolina Supreme Court held that a viable fetus is a "person" under the state's criminal child-endangerment statute and that "maternal acts endangering or likely to endanger the life, comfort, or health of a viable fetus" constitute criminal child abuse.

† Applies only to women and newborns eligible for Medicaid.

‡ Establishes requirements for health care providers to encourage and facilitate drug counseling.

Ω Priority applies to pregnant women referred for treatment.

## FOR MORE INFORMATION:

For information on state legislative and policy activity click on [Guttmacher's Monthly State Update](#) and for state level information and data on reproductive health issues, click on [Guttmacher's State Center](#).

Figdor E and Kaeser L, [Concerns mount over punitive approaches to substance abuse among pregnant women](#), *The Guttmacher Report on Public Policy*, 1998, 1(5):3-5.

Dailard C and Nash E, [State responses to substance abuse among pregnant women](#), *The Guttmacher Report on Public Policy*, 2000, 3(6):3-6.

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6.

James & Tina Smith  
212 N. Atchison  
El Dorado, KS 67042  
(316)621-0568

We come before you today to share our personal story. To share the joys, the struggles, the heartaches and unconditional love our family goes through on a daily basis. We consider ourselves an average middle class family.

My name is Tina and I was employed as a family practice clinical nurse. My husband is James and he is the Chief of Police for Douglass USD 396. We have 3 grown children. Our oldest is Joshua, is stationed at Lackland Air Force Base in Hampton, Virginia, where he resides with his wife Audra and expecting their first child in June. Our daughter Renee' is currently attending Dartmouth College in Hanover, New Hampshire and will be graduating in June. Our youngest son Jeremiah is currently in the tedious process of choosing a college to attend in the fall. We also, have 2 younger children: Jaxon is two years old, Bo his little brother is 18 months old. We are the Smith Family and this is our story.

We reluctantly started doing foster care after our two older children left home. A friend within the agency had pleaded for us to at least give it a try, so we did. Our first child arrived by a phone call one late winter afternoon, on February 18<sup>th</sup>, 2007, during an ice storm they asked us if we would take in a male five month old baby who was a "drug baby". Unsure of what to expect, and after numerous phone calls between my husband and I, we decided to say yes and take a chance.

Our youngest son was still living at home, and not knowing what to expect, I took him with me to the agencies office to pick the baby up. The worker arrived and escorted us through the back of the building and handed me a little bundle wrapped up in a blanket. My hands were shaking as I pulled the blanket down and there looking back at me were the most beautiful innocent eyes I had ever seen. I was only allowed a peek because we had to leave quickly before the biological parents arrived, so it would not cause a scene.

Due to the icy weather the worker handed this little bundle to my son, who carried him as if he was made of spun glass. He was extremely careful on the icy sidewalk and crawled into the back of the workers van and escorted the baby to our house.

So, here we were the three of us and a little baby. We carefully uncovered him and there inside was this dirty little baby looking at us. The sight of a baby that unkempt was heartbreaking to look at. I made a mad dash to the store and got clothes, diapers and all the essentials needed. I gave the baby a bath, wrapped him in a warm towel, put clean pajamas on him, held him tight and fed him a warm bottle. Then, for the first time he looked at us and smiled his eyes lit up. All of our hearts melted.

The following day we started to notice all the things this poor baby was unable to do. He could not lift his head up or roll over and all he wanted to do was watch the television. He had a small

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little body and a big head. He was malnourished and developmentally behind. When the agency worker called the next day we had numerous questions. We were not prepared for what this baby had been through.

Jaxon was born August 18<sup>th</sup>, 2006 in a local hospital. Before Jaxon's life even began his biological parents were both drug users. Their drug of choice was methamphetamine, which they did daily. The mother did not seek or receive any prenatal care and she continually used drugs throughout her pregnancy. SRS was called, but somehow they managed to be discharge from the hospital without getting caught. The system failed and this baby was allowed to go back into a drug environment. Back on the streets where they were homeless, unemployed and going between drug houses to live.

When they were finally located by authorities, the baby was living in a well known drug house from which he was removed.

Jaxon was born 3 weeks early and tested positive for methamphetamines and cannabis. He had with drawls according to the medical reports from the hospital, was premature and underweight. He had tachycardia, which is a rapid heartbeat, common with methamphetamine users. The mother at the time of delivery also tested positive for drugs. She admittedly confessed to using methamphetamine two hours before she went into the hospital to deliver.

We took Jaxon to our family doctor and he noted something unusual in Jaxon's right eye. After consulting with one of his colleagues he told me that Jaxon had a cataract. We were sent to a specialist, who verified that he indeed had a cataract. When we asked him what could be the cause he asked us if we knew the family history. Having family meetings with the biological parents we were able to ask both the maternal and paternal grandparents if this ran on either side of their family. No one had such problems. After discussing this with the specialist he told us that it was more than likely due to drug exposure. The ingredients used to make methamphetamines, is highly toxic and it is unknown what it does to the body. The doctor also dictated this in the medical documentation.

Jaxon underwent surgery for the removal of the cataract and a lens implant when he was 19 months old. Unfortunately, 7 months later the lens grew back impairing his vision, so he had to have surgery once again. During that time his doctor retired and we had to go Children's Mercy to have the surgery done and to see a specialist. We stayed at the Ronald Mc Donald House and the surgery went very well. We had to follow up every week and now it is down to once a month check ups. When Jaxon was first seen the exam room filled up with students to look at his eye, because it is rare for a child to have a cataract. The head doctor discussed with the students that Jaxon had drug exposure as a fetus and had no prior family history.

The lens of his eye may continue to grow causing him problems. The lens stops growing around their 8<sup>th</sup> birthday, so Jaxon may have to undergo several more surgeries. For his daily care he must wear an eye patch over his good eye. This will enable the brain to recognize and re-establish vision to that eye. It is a grueling and sometimes torturous process to keep a patch on a child that small. We have had to put splints on his arms to keep him from ripping his patch off. This also limits his ability to do other things. It has been hard to watch him struggle with something he does not understand. He does not recognize that this will help him.



We have since contacted and e-mailed numerous doctors researching the effects of drugs on a fetus and no one could give us any definitive answers. Research is new in this area, also there is no comprehensive way to study drug exposure on a fetus without doing harm. Due to the lack of test studies, they have to rely on collected information and data, which is inconclusive. Research has proven that anything introduced in the body of a pregnant woman is passed onto the fetus.

We know what methamphetamines do to an adult using the drug. It causes; "meth mouth", a condition that rots your teeth, hallucinations, some may cause them to pick at their skin causing open wounds and scabs, aggressive behavior, paranoia and damage to the brain. Methamphetamine is made of starting fluid, paint thinner, camp stove fuel, anhydrous ammonia, alcohol, drain cleaner, battery acid, ephedrine and the red tips of matches. The content of methamphetamine varies from the person cooking it, so it is unknown what other toxic chemicals are put into it. Upon reading the various warning labels listed on the packages it is safe to say that consumption into the body would definitely be harmful.

Still our story goes on. The court ordered the biological parents to have weekly drug testing having two consecutive negative drug urinalysis, before having visitation with Jaxon. They were also ordered numerous other conditions such as; drug and alcohol treatment, anger management classes, parenting classes, employment, transportation and housing.

In June, 2007 the biological mother was incarcerated and hoping she would be released she told them she was pregnant. The doctor assessed her condition she was in the seven month pregnancy. We received a call from the agency asking us if we would be willing to take in the sibling when it was born. Our immediate reply was yes. We were also very aware that during that time the mother had been testing positive for methamphetamines and had not received prenatal care.

Bo was born August 17<sup>th</sup>, 2007 and was small in size and weight. However, he did not test positive for drugs. The biological mother had tested positive for meth earlier that week. Everyone was aware that she was using drugs prior and up until the time of his birth. When we picked him up from the hospital he was absolutely perfect in our eyes.

The biological parents did receive drug and alcohol treatment during the time of her pregnancy. The father had been incarcerated and was put into a court ordered in-treatment facility. During that time he was clean. The mother was also put into court ordered treatment and stopped using drugs for a short period of time. They did have visitation with the boys on 8 occasions during this time. However, they began reusing drugs and the visits stopped. The reason for the court orders were related to other drug related arrests and charges not due to drug use with the boys.

We watched this go on time and time again from February, 2007 until November, 2008 when their parental rights were finally terminated. We have had Jaxon for 2 years and 1 month. Bo has been with us from the day he was dismissed from the hospital and he is now 18 months old. They do not know of the other life was supposed to have been theirs. We have always been momma and daddy to them.

We are so glad they were too young to know was taking place with their young lives, but we do and it was wrong. Both boys have suffered tremendously at the hands of people that were supposed to be their parents, the people that were supposed to take care of them, to love and

protect them. They both suffer from Rapid Airway Disease that can be associated with the mother smoking during pregnancy or being around smoke. In their case we know their mother did smoke and she smoked meth. Jaxon has a cataract that can't be explained and no one can give us an answer as to what to look for or expect as they get older. What other health ailments, learning disabilities and behavior problems will they encounter?

The state knew and acknowledged that the birth mother was using drugs. They also, documented the positive drug urinalysis performed during her second pregnancy. The judge voiced his concerns of her drug use, which at the time she appeared before the judge, pregnant having just failed a drug urinalysis prior to court. This dragged on for over 2 years.

We are not people who are fighting for a good cause. We are fighting on behalf of our children, those to follow, the children who have no voice, who have yet to be born. We cannot begin to imagine what their lives or ours would have been without each other. Day by day we sat and watched as our local agency, state agency and the courts turned their heads to the fact that this woman was carrying these beautiful children and knowingly harming them. We sat across from the biological parents as they twitched, picked at the sores on their arms and listened to their promises of staying clean, getting jobs, a house and a car so they could take care of their children. We had to endure this for 2 years.

They spent two years getting arrested for numerous drug charges, partying and having a good time. We sat holding a little boy crying and screaming because he couldn't see. We get up in the middle of the night several times a night to give breathing treatments. The hours spent in the surgery waiting room, worried if everything was going to be okay. The uncountable numbers of sleepless nights to check on them to make sure they were still breathing. During their misfortune we have received unconditional love, beautiful moments that cannot be shared and we have witnessed the courage and strength of a small fragile human life to survive, overcome and thrive. What a miracle!

Through networking on the internet we have been able to talk to other families in our same situation. Not one of us can say what the future holds for the other. Many have seen developmental delays, health issues and behavior problems. As for the long term, cancer or other diseases, no one knows. We do know this could be prevented.

It is not a crime to knowingly hurt an unborn child. Why is that? We allow women to decide if they can abort a fetus as to not infringe upon her freedom of rights. Whether that is wrong or right is not the reason for this discussion. The purpose is to protect the unborn children that are being born into this world addicted and subjected to drug abuse before they even have a chance at life. The news has broadcasted videos off of You Tube showing young children, two and four year olds being given drugs, and the nation has been outraged. No one gets to see an unborn child being given drugs. What would the world think then? It outrages us that this can go on without anyone standing up for these children. Instead, the system waits for them to be born and then places them into foster care with all these issues and tries to find suitable families that are willing to take children with such a label. Unfortunately, the label "meth baby" carries an unwanted stigma that makes families wary to take in such children.

We personally have seen mothers be court ordered into treatment and have seen it fail repeatedly.

We have lived with the aftermath of their poor decisions. We have watched helplessly as our state turns their heads to what is happening. We have pleaded with various authorities to get the mother to stop using drugs. All our efforts have failed.

With the new law being passed, "Alexa's Law", we hope that the state has recognized crimes against unborn children. Drug abuse during pregnancy is child abuse. The mother should have court ordered drug treatment and mandatory in-treatment for continued drug abuse. Multiple pregnancies of the same offense should have stiffer penalties. The parental rights at the time of birth should be terminated. The mothers rights should not be fringed upon if she is found no longer with child or can continually be drug free during the rest of her pregnancy. It is not the mother we are trying to protect it is the child inside of her. You cannot separate the two as they are both connected until the time of birth.

Concerning the cost put upon the state such care should be considered as is the cost for WIC and Medicaid to a pregnant woman. Drug treatment facilities can base their pay on sliding scale fees. Most already do this. Mandatory reporting is also helpful. However most do not receive prenatal care prior to delivery, so whose responsibility it is to report is unsure. Continual testing should be required once the pregnant woman tests positive. This could be done at the local health department or doctor's office covered by Medicaid. This would be considered continuity of prenatal care. The deterring factor would be the termination of parental rights for child abuse caused by drug abuse during pregnancy. Failure to maintain negative drug screen urinalysis after completing the final drug in-treatment program can be basis for the termination. This shows compassion and leniency from the state and gives the mother the opportunity to stop using drugs. A child abuser does not get the opportunity or numerous attempts to stop abusing a child before he or she is charged with child abuse.

We can't tell you the current statistics of other states or if these laws are working, but what we can tell you is that at least they are trying.

Thank you.

James & Tina Smith

212 N. Atchison

El Dorado, KS 67042



Kansas County & District Attorneys Association

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

TO: The Honorable Representatives of the Committee on Corrections and Juvenile Justice

FROM: Thomas R. Stanton  
Deputy Reno County District Attorney  
President, KCDA

Barry Wilkerson  
Riley County Attorney  
KCDA Board of Directors

DATE: March 11, 2009

RE: House Bill 2333

Chairman Colloton and Members of the Committee:

Thank you for giving us the opportunity to testify regarding House Bill 2333. The Kansas County and District Attorneys Association opposes this legislation.

As prosecutors, we fully understand the public safety concerns underlying the proposal of this legislation. We agree that the administration of controlled substances to a female known to be pregnant is a repugnant act, and the person administering such drugs should be held accountable. When reviewing subsection (a)(1), we presume that the legislation is intended to create consequences for those who would supply a pregnant female with drugs such as methamphetamine, cocaine and addictive prescription medication such as hydrocodone. However, the bill does not criminalize the distribution of controlled substances to a pregnant woman; it only criminalizes the actual administration of a controlled substance to a pregnant female. The legislation would only apply to a person who actually injected or otherwise introduced a controlled substance into the pregnant female's body. General distribution to the pregnant woman is not covered by the act. Subsection (a)(2) makes it a crime for the female to use controlled substances knowing she is pregnant.

Our opposition is to subsection (a)(1) of the statute is two-fold. First, the penalty is an unclassified misdemeanor, which is clearly a penalty that is not proportional to the nature of the

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act. Administering controlled substances to a pregnant woman should clearly be a high level felony. Secondly, the act of administering a controlled substances to a pregnant woman by someone other than the woman herself would fall into the definition of distribution of a controlled substance. That crime is currently a level three drug felony. This legislation would take what should be considered an aggravating factor, i.e. administering the drug to a woman carrying a child, and reducing the crime to an unclassified misdemeanor. While this is not the intent of the bill, it would be its practical result.

A prosecution under section (a)(2) carries with it some of the same problems inherent in subsection (a)(1). Currently, Kansas case law forbids a prosecution for possession of a controlled substance when the only evidence possessed by the prosecution is the presence of a controlled substance within the human body. While this can certainly be used as a fact show possession, there must be other evidence present, such as the possession of drug paraphernalia, to support the possession charge. Possession of a controlled substance is currently a class A misdemeanor for drugs such as marijuana (first offense) and diazepam (valium). The possession of drugs such as methamphetamine, cocaine and hydrocodone are level four drug felonies. Even the possession of drug paraphernalia is classified as a class A misdemeanor. Thus, many of the circumstances surrounding the use of drugs sufficient to prove the pregnant female used controlled substances would result in penalties in excess of those being suggested by this bill.

Subsection (a)(3) causes us the same concerns, and it has some unique issues. First, the concerns upon which this section is based are currently covered by the endangering a child and aggravated endangering a child statutes. Violations of these statutes are, at a minimum, class A person misdemeanors. We certainly do not wish to see these types of crimes reduced to unclassified misdemeanors. Intentionally causing a child to use a controlled substance would, again, be classified as a distribution of the controlled substances, punishable under the uniform controlled substances act as a level three drug felony. We certainly do not wish to reduce the penalty of anyone who might cause a child to use or consume a controlled substance.

It should be remembered that responses to the prohibited acts defined in this legislation are currently available. Prosecution under the appropriate provision of the uniform controlled substances act can be undertaken, and the judge may order drug treatment for the offender at any time during the prosecution. Prosecution can also be pursued under the endangering a child sections. The judge also has the power to require drug or alcohol treatment in these cases. Finally, child in need of care petitions may be filed any time a child is placed in a circumstance where ingestion of controlled substances occurs. Juvenile court judges are in a good position to require drug treatment of any adult under their authority in a CINC action.

The issue of expectant mothers using controlled substances and alcohol has been with us for years. We will not solve the problem by assigning a penalty consistent with an unclassified misdemeanor, and expect that policy will address problem. We especially will not solve this problem by creating a new law based on the use of controlled substances by expectant mothers, then exempting physicians from any duty to report the activity. The issues sought to be addressed by this legislation deserve serious attention. Unfortunately, the legislation does not accomplish that goal.