

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Thomas (C.) Tim Owens at 9:35 a.m. on February 5, 2009, in Room 545-N of the Capitol.

All members were present except:

Senator Derek Schmidt- excused

Committee staff present:

Doug Taylor, Office of the Revisor of Statutes

Jason Thompson, Office of the Revisor of Statutes

Athena Andaya, Kansas Legislative Research Department

Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Martha Gabehart, Executive Director, Kansas Commission on Disabilities Concerns

Brandon Myers, Chief Legal Counsel, Kansas Human Rights Commission

Ami Hyten, Topeka Independent Living

Jerry Sloan, Judicial Branch Budget & Fiscal Officer

Chief Judge Stephen Tatum, 10th Judicial District

Chief Judge James R. Fleetwood, 18th Judicial District

Chief Judge Richard M. Smith, 6th Judicial District

Others attending:

See attached list.

The Chairman opened the hearing on **SB 112 - Kansas act against discrimination amendments regarding disability.**

Martha Gabehart spoke in support indicating the proposed amendments to the Kansas Act Against Discrimination would make it consistent with the American with Disabilities Act Amendments Act effective 1 Jan 2009. The change in policy would align Kansas anti-discrimination law with federal law and eliminate the need for compliance with two different laws. (Attachment 1)

Brandon Myers testified in favor stating **SB 112** is intended to establish consistency and similarity between State and Federal law prohibiting discrimination on the basis of disability. The bill clarifies key definitions and will allow the Kansas Human Rights Commission to more-readily handle issues at the State level that might otherwise have to be taken to Federal agencies. (Attachment 2)

Ami Hyten appeared in support stating enactment would Kansas law into concert with recent changes to Federal law and would stream line enforcement efforts. The changes would support the programs Kansas has invested in to make competitive, integrated employment a reality for Kansans with disabilities and recommend passage of the bill. (Attachment 3)

Written testimony in support of **SB 112** was submitted by:

Rick Cagan, Executive Director, National Alliance on Mental Illness (Attachment 4)

Michael Byington, Blind & Visually Impaired (Attachment 5)

Melissa L. Ness, Advocacy Coordinator, St. Francis Community Services (Attachment 6)

Bruce Linhos, Executive Director, Children's Alliance (Attachment 7)

Ray Petty, Kansas Commission on Disabilities Concerns (Attachment 8)

Jennifer Schwartz, Kansas Assn. of Centers for Independent (Attachment 9)

Shannon Jones, Statewide Independent Living Council of Kansas (Attachment 10)

Jane Rhys, Kansas Council on Development Disabilities (Attachment 11)

Michelle Sweeney, Association Community Mental Health Centers of Kansas (Attachment 12)

There being no further conferees, the hearing on **SB 112** was closed.

CONTINUATION SHEET

Minutes of the Senate Judiciary Committee at 9:35 a.m. on February 5, 2009, in Room 545-N of the Capitol.

The hearing on **SB 134 - Court fees and costs; authorizing supreme court to establish additional charges for court procedures.**

Jerry Sloan testified in support stating while employees salaries are funded through the General State Fund, nearly all other operating expenses are funded by the counties. This results in a Judicial Branch State General Fund budget that overwhelmingly (97.6% in FY 2009) is dedicated to personnel costs with little flexibility in budget reduction. While hiring freezes and reduced expenditures for temporary positions have been implemented budget shortfalls will impact staffing requirements. The Emergency Surcharge has been implemented in the past to fund budget deficits and avoid furloughs of support staff and keep the courts open and functioning. Mr. Sloan requested SB 134 be amended to to be effective upon publication in the Kansas Register. (Attachment 13)

Chief Judge Stephen Tatum appeared in support, providing information on the serious condition of the 10th Judicial District and requested implementation of **SB 134**. Judge Tatum noted the emergency fund was not abused in previous years and worked to get the Judiciary through a tough economic downturn. Case loads are expected to increase and as always, indigent cases will be allowed to file without any fee. Passage will help the courts maintain the expected level of service to the community. (Attachment 14)

Chief Judge James R. Fleetwood testified in support stating the 18th Judicial District is the largest in Kansas and as a result of the existing permanent hiring freeze has experienced a 4% reduction in staff. The area continues to grow and services must be provided in a timely manner to assure justice. Judge Fleetwood encouraged enactment of **SB 134** to protect the court from further degradation of its ability to serve the community. (Attachment 15)

Chief Judge Richard M. Smith spoke in favor, stating a budget deficit requiring the furlough or termination of employees may cause the complete cessation of certain services in rural communities. Such actions could be devastating to citizens and undermine efforts to maintain dedicated and effective employees. (Attachment 16)

Due to time constraints, the hearing on **SB 134** will be continued tomorrow.

The next meeting is scheduled for February 6, 2009.

The meeting was adjourned at 10:30 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-5-09

NAME	REPRESENTING
Michael Byington	Ks. Assn. f/ + Blind and VI.
Anthony G. Fedale	State ADA Coordinator
Martha Gabehart	Ks. Commission on Disability Concerns
Pat Eakes	KCDC
Ami Hyten	Topeka Independent Living
Cedric Starks	citizen
TK Shively	KCS
Richard Simpson	Kenans Assoc.
Kathy Olson	Ks Bankers Assoc
Beth Long	SRS
Joseph Molina	Ks Bar Assoc.
Whitney Damm	Ks Bar Assn.
Audann Kirchner	Burlington High School
Jerry Sloan	Judicial Branch
Steve Tatum	Judicial Branch - 10th Jud. Dist.
James Fleetwood	18th Judicial Dist, Sedgewick Co
Lance Wilk	Judicial Branch
Richard M Smith	6th Judicial Dist KSDJA

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/5/09

NAME	REPRESENTING
Kathryn Litgen	KGC
Athy Damron	KDJJA
ERIK SARTORIUS	City of Overland PARK
KIP ELLIOT	Disability Rights Center of Kansas
Tom Kubz	KRFB
SEAN MILLER	CAPITOL STRATEGIES
Doug Switzer	KCA/KCAN
N. Zogelman	Polsinelli

Testimony in Support of SB 112

By Martha K. Gabehart

Executive Director

Thank you Mr. Chairman and members of the Committee for this opportunity to testify in support of SB 112. I am Martha Gabehart, Executive Director of the Kansas Commission on Disability Concerns (KCDC). We are a catalyst for change in government to remove barriers to Kansans with disabilities.

SB 112 makes amendments to the Kansas Act Against Discrimination which makes it consistent with the Americans with Disabilities Act (ADA) Amendments Act (ADAAA) which became law in September 2008 and is now in effect. The policy change would be to align our state antidiscrimination with this new federal law.

The option is to leave our law unchanged. This requires people to comply with two different policies.

Our recommended course of action is to pass SB 112 and make the KAAD consistent with the ADAAA. This is good policy.

Our understanding is that there is no budget impact on the Kansas Human Rights Commission (KHRC). Mr. Brandon Myers with the KHRC is better able to speak to the budget impact.

As background, several disability organizations worked with the U.S. Chamber of Commerce, National Association of Manufacturers, the Society for Human Resource Management and the Human Resource Policy Association on the language in the ADAAA. Its purpose is to overturn several federal Supreme Court rulings that narrowed the protection of rights of people with disabilities.

Attached to this testimony is a summary of the changes. Many are explanations of Congress' original intent that the definitions of disability and major life activities be interpreted broadly and without regard for mitigating measures used to compensate for limitations.

Technical changes include:

1. prohibiting discrimination on the basis of disability. The original wording was "...discriminate against a qualified individual with a disability because of the disability of such individual". The new wording is "...discriminate against a qualified individual **on the basis of disability**".
2. an expanded description of what being regarded as having such an impairment means
3. a listing some major life activities and inclusion of bodily functions as major life activities, and
4. the listing of several guidelines on interpretation and description of determining whether an impairment substantially limits a major life activity.

Thank you for this opportunity to testify in support of passage of SB 112.

The Americans with Disabilities Act Amendments Act and
The Kansas Act Against Discrimination Changes
2009

The Kansas Commission on Disability Concerns (KCDC) is seeking amendments to the Kansas Act Against Discrimination (KAAD) to bring it into alignment with the Americans with Disabilities Act (ADA) Amendments Act (ADAAA). The ADAAA was signed into law by President George W. Bush on September 25, 2008. KCDC is working with the Kansas Human Rights Committee on these changes to the KAAD. They include:

1. The list of protected classes will be changed to remove the word "disability" and add the phrase, "based on disability." This is because the ADAAA changes the focus of discrimination away from the person and onto the disability. In the ADA the wording changes look like this:
 - a) No covered entity shall discriminate against a qualified individual ~~with a disability because of the disability of such individual~~ *on the basis of disability* in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.
 - b) As used in subsection (a) of this section, the term "~~discriminate~~" *"discriminate against a qualified individual on the basis of disability"* includes: (Then it lists actions that are considered discrimination.)
2. The definition of being regarded as having an impairment will be changed to state it can be being subjected to an act of discrimination when a) the person does not have a physical or mental impairment, but is regarded or treated as though such an impairment exists or b) the person has an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. Also added is the statement that minor or transitory impairments do not constitute having an impairment and that transitory means it has an expected or actual duration of six months or less. Employers do not have to accommodate people who qualify under the "regarded as" prong of the definition.
3. A definition of major life activity from the ADAAA is included in the definitions which gives examples including many bodily functions. The list includes caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.

4. In the section on construction of the act, information from the ADAAA is included that states:
- a. The definition of disability is to be interpreted broadly,
 - b. An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability
 - c. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
 - d. Determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative (improving) effects of mitigating measures such as medication, medical supplies, equipment or appliances, low-vision devices (which do not include ordinary eye glasses or contact lenses), prosthetics including limbs or devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices or oxygen therapy equipment and supplies; use of assistive technology, or reasonable accommodations or auxiliary aides or services; or learned behavioral or adaptive neurological modifications.
 - e. The improving effects of the mitigating measures ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity and shall be made without regard to the ameliorative effects of mitigating measures such as medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eye glasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies or use of assistive technology.

If you have questions about these proposed changes or any disability issue, please feel free to contact Martha K. Gabehart, Executive Director of the Kansas Commission on Disability Concerns (KCDC).

TESTIMONY ON BEHALF OF THE KANSAS HUMAN RIGHTS COMMISSION IN
SUPPORT OF S.B. 112, PROVIDED BY CHIEF LEGAL COUNSEL BRANDON L.
MYERS, EXECUTIVE DIRECTOR WILLIAM V. MINNER AND ASSISTANT
DIRECTOR RUTH GLOVER, BEFORE THE SENATE JUDICIARY COMMITTEE,
FEBRUARY 4, 2009

The Kansas Human Rights Commission (KHRC) urges the Committee to recommend passage of S.B. 112 amending disability discrimination provisions within the Kansas Act Against Discrimination (KAAD) as enforced and administered by KHRC.

KHRC recognizes the guidelines for testimony from the Committee Chair and concurs in the basic statements presented to the Committee on those points within the testimony of Martha Gabehart of KCDC.

S.B. 112 is intended as so-called “conformity” legislation. Its purpose is to establish consistency and similarity between State and Federal law prohibiting discrimination on the basis of disability. It is patterned upon the provisions of the Federal Americans with Disabilities Act Amendments Act of 2008.

Current provisions of the KAAD prohibiting discrimination by reason of disability were patterned upon definitions within the 1990 Federal Americans with Disabilities Act (ADA), and became effective within the KAAD in 1991. Those amendments changed KAAD from prohibiting discrimination due to “physical handicap” to the more expansive prohibitions against disability-based discrimination (physical and mental disability). There was strong support for the 1991 changes to the KAAD, and the changes were helpful in protecting persons with disabilities from discrimination.

Over the years the United States Supreme Court has issued several decisions restrictively interpreting ADA and its definition of “disability”. The result has been confusion, apparent changing of the coverage of ADA, and opinions that ADA’s original intent had been undercut. The U.S. Supreme Court’s rulings include what was referred to as an ADA “trilogy” of cases. These cases are: 1) Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999), holding that whether an individual has a disability must be determined with reference to any mitigating or corrective measures the individual uses to offset the effects of a physical or mental impairment. The Sutton plaintiffs were legally blind, but had corrected vision through use of eyeglasses. 2) Albertson’s Inc. v. Kirkingburg, 527 U.S. 555 (1999), holding that the mitigating measures rules of the Sutton case applied not only to artificial measures, but to “measures undertaken, whether consciously or not, with the body’s own systems[,]” so that a person’s natural ability to compensate for the effects of an impairment must be considered when deciding whether the individual had a disability. (Plaintiff had visual acuity conditions). 3) Murphy v. United Parcel Service, Inc., 527 U.S. 516 (1999) holding that Plaintiff did not have a disability because hypertension/high blood pressure was controlled by medication as a mitigating measure.

Subsequently, the U.S. Supreme Court in Toyota Motor Mfg., Kentucky, Inc. v. Williams, 534 U.S. 184 (2002) held that terminology in the ADA's definition of disability "needs to be interpreted strictly to create a demanding standard for qualifying as disabled." It further held that for a person to meet the definition of disability by being substantially limited in the major life activity of working, an individual must be precluded from a class of jobs or a broad range of jobs.

In the case of Seaman U.S.D. No. 345 v. KCCR and Reed, 26 Kan. App. 2d 521 (1999), the Kansas Court of Appeals (review denied by the Kansas Supreme Court), adopted the U.S. Supreme Court's approach from the "trilogy" of cases cited above in interpreting the disability provisions of the KAAD. The Complainant in question had insulin-dependent/controlled diabetes and conditions related to diabetes. The Court ruled that corrective/mitigating measures should be considered in determining whether the individual was disabled. The Court upheld a ruling against Mr. Reed and affirmed no violation of the KAAD occurred in his employment. The Court found that the "KAAD is modeled after the ADA and, therefore, federal court decisions are persuasive authority." The Reed case included various issues and points. However, the Court adopted the basic standards for interpretation of the KAAD contained within the restrictive ADA rulings of the U.S. Supreme Court. As a result, under both Federal and State law, many persons claiming they were discriminated on the basis of disability are unable to proceed effectively with their claims because they can not meet the demanding standards related to the definition of "disability." This is a cause of frustration and prevents the legal and administrative system from fully assessing whether the persons were discriminated against despite being otherwise qualified, which is the real issue the laws were intended to address.

The adverse interpretations by the Federal courts prompted the Congress in 2008 to pass the Americans with Disabilities Act Amendments Act (ADAAA) which became effective January 1, 2009. ADAAA amends and replaces language within the 1990 ADA with the intent of overturning the effect of the restrictive Court decisions. Because the Kansas Courts have ruled that the meaning of relevant KAAD provisions are in accordance with those previous U.S. Supreme Court rulings, it is believed appropriate to amend the KAAD in a manner similar to the Federal ADAAA.

S.B. 112 amends KAAD to clarify key definitions. Consistent with ADAAA, it prohibits discrimination on the basis of disability, eliminates consideration of mitigating measures such as medication, assistive devices, etc. (except for ordinary eyeglasses or contact lenses), favors broad interpretation of "disability," recognizes that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active, provides a non-exhaustive list of what can be considered major life activities, provides clarification regarding the terminology about major bodily functions, provides clarification as to the "regarded as" disabled provisions, and otherwise is intended to make KAAD/ADAAA provisions similar.

Without the adoption of S.B. 112, the KAAD disability provisions will be out of sync with comparable provisions and language of the ADA as now amended, whereas the

Legislative intent in adopting the KAAD provisions in 1991 was to establish substantial conformity between the State and Federal law. Failure to pass S.B. 112 will likely prompt confusion amongst employers, individuals seeking redress and other interested parties. It contains an approach that was acceptable to businesses, employers, disability rights proponents and others at the Congressional level (where it enjoyed bipartisan, unanimous support and immediate Presidential approval), built into the similar provisions of Kansas law. S.B. 112 contains the same basic compromises reached in ADA (including clarification that accommodations need not be made as to persons merely "regarded as" disabled, that transitory/minor impairments with the expected duration of six months or less are not disabilities, allows consideration as mitigating measures using ordinary eyeglass or contact lenses in determining whether a person has a disability, etc.) These compromises are reasonable and help to clarify issues under the KAAD, as they did under ADA. Adoption of S.B. 112 will allow KHRC to more-readily handle issues at the State level that might otherwise have to be taken to Federal agencies, which is generally seen by parties to these issues as more convenient and better public policy for the State.

The U.S. Equal Employment Opportunity Commission (EEOC) has not yet made a number of issues clear, and are in the midst of conforming its procedures and rules in light of the short time it had to begin implementation of the ADA (which passed in September, 2008 to be effective January 1, 2009). However, it is reasonable to predict that in order to avoid confusion or disrupting of KHRC/EEOC worksharing arrangements for processing of cases (and resulting payment to KHRC for its investigative work), adoption of the type of provisions proposed in S.B. 112 will be helpful.

As more fully set forth in our analysis provided for the Fiscal Note on this bill, the agency sees at this point no predictable adverse fiscal impact from adoption of S.B. 112. If it prompts the filing of any additional complaints with KHRC, it is believed that quantity can be absorbed within current resources.

The bottom line is that KHRC believes that S.B. 112 would help effectuate State public policy intent underlying the adoption of the KAAD disability provisions in 1991 to have a law that allows assessment of whether qualified individuals have been denied opportunities due to stereotypes resulting from their actual or perceived physical and mental conditions. It also assists in conforming State and Federal law and provides clarification. We urge the Committee's favorable action on the bill.

The U. S. Equal Employment Opportunity Commission

Notice Concerning The Americans With Disabilities Act (ADA) Amendments Act Of 2008

ADAAA - Effective Jan. 1, 2009

On September 25, 2008, the President signed the Americans with Disabilities Act Amendments Act of 2008 ("ADA Amendments Act" or "Act"). The Act makes important changes to the definition of the term "disability" by rejecting the holdings in several Supreme Court decisions and portions of EEOC's ADA regulations. The Act retains the ADA's basic definition of "disability" as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. However, it changes the way that these statutory terms should be interpreted in several ways. Most significantly, the Act:

- directs EEOC to revise that portion of its regulations defining the term "substantially limits";
- expands the definition of "major life activities" by including two non-exhaustive lists:
 - the first list includes many activities that the EEOC has recognized (e.g., walking) as well as activities that EEOC has not specifically recognized (e.g., reading, bending, and communicating);
 - the second list includes major bodily functions (e.g., "functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions");
- states that mitigating measures other than "ordinary eyeglasses or contact lenses" shall not be considered in assessing whether an individual has a disability;
- clarifies that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active;
- provides that an individual subjected to an action prohibited by the ADA (e.g., failure to hire) because of an actual or perceived impairment will meet the "regarded as" definition of disability, unless the impairment is transitory and minor;
- provides that individuals covered only under the "regarded as" prong are not entitled to reasonable accommodation; and
- emphasizes that the definition of "disability" should be interpreted broadly.

EEOC will be evaluating the impact of these changes on its enforcement guidances and other publications addressing the ADA.

Effective Date:

The ADA Amendments Act is effective as of January 1, 2009.

This page was last modified on October 6, 2008.



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Topeka Independent Living Resource Center

785-233-4572 V/TTY • FAX 785-233-1561 • TOLL FREE 1-800-443-2207
501 SW Jackson Street • Suite 100 • Topeka, KS 66603-3300

SB 112 Testimony before the Senate Judiciary Committee
Presented by: Ami Hyten, Assistant Executive Director
February 4, 2009

The Topeka Independent Living Resource Center (TILRC) is a civil and human rights organization. Our mission is to advocate for justice, equality and essential services for a fully integrated and accessible society for all people with disabilities. TILRC has been providing cross-age, cross-disability advocacy and services for over 28 years to people across the state of Kansas.

As a federally-recognized Center for Independent Living, our agency supports people with disabilities by offering information and referral services, providing independent living skills training, connecting through peer counseling, advocating for individuals and systems, and supporting transitions from institutions into community-based living.

Our agency has been involved on a public policy level in the development of programs, supports and services to promote competitive, integrated employment for people with disabilities in our state. The Working Healthy and Work Opportunities Reward Kansans (WORK) programs in our state are model programs for supporting people with disabilities in the workplace.

Having programs in our state to support people with disabilities in employment is of little help if the anti-discrimination laws in our state do not protect people with disabilities from employment discrimination. For years, the Kansas Human Rights Commission has been limited in their ability to pursue employment discrimination claims on behalf of people with disabilities because of very limited court interpretations of what a qualified individual with a disability was under federal law. This past summer, Congress passed new language intended to clarify the definition of who is a qualified individual with a disability; President Bush signed the Americans with Disabilities Act Amendments Act into law on September 25, 2008.

The language proposed in SB 112 would bring Kansas' law into concert with these changes to the federal law. As an administrative matter, this change would streamline enforcement efforts. As a public policy matter, this change would meet the purpose behind the Kansas Act Against Discrimination. As a practical matter, this change would support the programs our state has invested in to make competitive, integrated employment a reality for Kansans with disabilities.

We appreciate your consideration of SB 112 and respectfully request this Committee's endorsement.

Advocacy and services provided by and for people with disabilities

Senate Judiciary

2-5-09

Attachment 3



Senate Judiciary Committee

February 4, 2009

Presented by:
Rick Cagan
Executive Director

Mr. Chairman and members of the Committee, my name is Rick Cagan. I am the Executive Director of NAMI Kansas, the National Alliance on Mental Illness. NAMI Kansas is a statewide grassroots membership organization dedicated to improving the lives of individuals with mental illness. Our members are individuals who are living with mental illnesses and the family members who provide care and support.

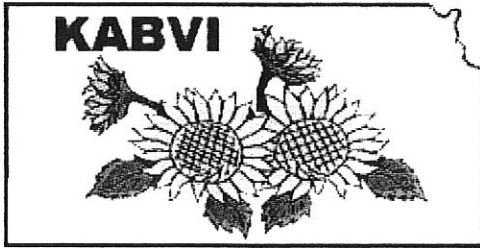
As a member of the Big Tent Coalition, NAMI Kansas joins with other disability constituencies to support SB 112. We believe that it is important for Kansas to maintain consistency with federal disability law, in particular the recent amendments to the Americans with Disabilities Act. The adoption of SB 112 creates one standard for Kansas employers and citizens to follow. This helps to avoid much confusion for all parties in the future.

We believe that SB 112 affirms the right of individuals with disabilities to be treated with respect and dignity and to be afforded their full rights under the law.

Thank you for the opportunity to register our support with the Committee.

112 SW 6th Street, PO Box 675, Topeka, KS 66601
785-233-0755 – 785-233-4804 (fax) – 800-539-2660
namikansas@nami.org – www.namikansas.org

Senate Judiciary
2-5-09
Attachment 4



Kansas Association for the Blind And Visually Impaired

603 S. W. Topeka Blvd.
Suite 304-B
Topeka, Kansas 66603
785-235-8990 – voice
800-799-1499 – toll free
785-233-2539 – FAX
www.kabvi.org
kabvi@att.net

February 3, 2009

**TO: Senate Judiciary Committee
Kansas Senate**

FROM: Michael Byington, C.E.O. (Voluntary)

A handwritten signature in dark ink, appearing to read 'MB', is written over the name 'Michael Byington' in the 'FROM' line.

SUBJECT: Support for SB 112

Our organization supports this Legislation. For the sake of legal efficiency and consistency, it makes sense that State civil rights statutes are generally in line with federal. This is the intent of this Legislation.

For the population KABVI represents, those Kansas citizens who are blind and visually impaired, it is particularly significant that it is made clear in this legislation that ameliorative effects of mitigating measures do not eliminate civil rights protections. Many of our Organization's members and associates can engage in gainful, productive employment, and/or make use of public accommodations through use of such measures as assistive technology, auxiliary aids and services such as low vision

Senate Judiciary

2-5-09

Attachment 5

devices, etc., but these factors do not always afford such individuals equal opportunities to obtain employment for which they are otherwise well qualified or to gain access to public accommodations. This is why federal Rehabilitation Services Administration statistics estimate that 65% to 70% of working aged Kansans who are blind or severely visually impaired are unemployed. This statistic documents the need for the Legislation, and documents that even with the best in mitigating measures, equal treatment for people who are blind and visually impaired is still an unmet dream.



**Saint Francis
Community Services**

Serving Children and Families Since 1945

2009 LEGISLATIVE SESSION~

**Testimony in Support of SB 112
Senate Judiciary Committee
February 4, 2009**

2009 POLICY AGENDA~

**SERVING A RURAL
POPULATION**

The needs, perspectives and culture of our rural and frontier population shall be reflected in decisions and policies that shape services to children and families at all levels.

**MENTAL HEALTH AND
BEHAVIORAL SERVICES**

All children in the child welfare system will have access to quality, and timely mental health and behavioral health services designed to sustain and reunite families.

**MANAGING POSITIVE
SYSTEMS CHANGE**

System changes that impact children and families must be adequately funded, accompanied by plans to build system capacity, and have a process for monitoring and evaluating performance against outcomes.

For more information contact
mlness@connections-unlimited.net

The system serving children and families will reflect regional differences, ensure access to critical services and effectively manage change

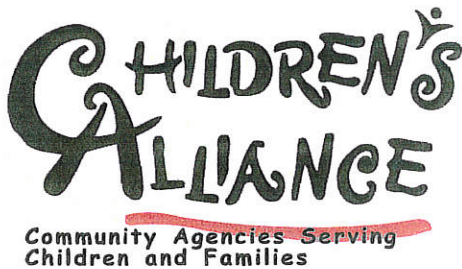
Saint Francis has a rich history of serving troubled youths and their families for over 60 years. We provide a range of services from family preservation, reintegration/ foster care, drug and alcohol services, foster care homes, residential services and community supports. *Through those programs we serve over 2000 children and families, in 53 rural and frontier counties, with 12 offices and over 600 full and part time employees.*

As an agency serving children and families, many of whom have disabilities that impact the stability of that family we want to register our support for the amendments to the Kansas Act Against Discrimination as set out in SB 112. Codification of these amendments so that the KAAD is consistent and parallels the Americans with Disabilities Act is not unusual for national policy and practice legislation of this magnitude.

The ADA and the KAAD have been the type of landmark legislation that not only promotes but protects the rights of individuals with disabilities. For those of us working in the child welfare system, one overarching tenant is to support a system that can foster as much of a sense of normalcy as possible for those individuals and families who must rely on that system for support. The goal behind these proposed amendments honors the intent of this legislation. Essentially, to ensure a level playing field and sense of inclusion and normalcy for the population of individuals it was designed to protect.

We ask for the committee's support in passing SB 112.

Respectfully submitted,
Melissa L. Ness JD, MSW
Advocacy Coordinator, St. Francis Community Services



Testimony on SB 112
Senate Judiciary Committee

February 4, 2009

The Children's Alliance is the association of private child welfare agencies. Our members provide services to children, youth and their families. The services include; adoption, foster care, family preservation, emergency shelter services as well different forms of residential care. Many of the children we serve or their families experience some form of disability.

We believe that this legislation will simplify the definition of disability by codifying the language contained in the federal legislation rather than having to deal with separate federal and state definitions of disabilities and disabling conditions. This will increase the consistency and equity with which services, access and accommodations are provided.

For youth with disabilities transitioning out the foster care system, this bill would provide better assurances that these youth would receive the necessary services and supports to allow them a better chance to achieve independence. Moving from the child welfare system to living on your own is daunting at best. We feel this bill will improve their likelihood for success.

We hope that in these difficult economic times legislation, like this, that can assist individuals with disabilities and carries no fiscal note (according to the Kansas Human Rights Commission) is a bill we hope this judiciary committee will give favorable consideration to.

Bruce Linhos

Executive Director

Senate Judiciary

2-5-09

Attachment 7

February 3, 2009

Senator Owens, Chairman, Senate Judiciary Committee
c/o Kansas Statehouse, Room 536-N
Topeka, Kansas 66612

Dear Sir:

I am writing in favor of amendments to the Kansas Acts Against Discrimination contained in Senate Bill 112. Having been involved in the passage of the Americans with Disabilities Act in 1990 and professionally since then as a consultant providing training and technical assistance on the ADA for cities and counties, places of public accommodation, community organizations, advocates, and people with disabilities – this suggested language addresses the mistakes made by the U.S. Supreme Court in interpreting Congressional intent when the ADA was passed into law and signed by George H. W. Bush.

Since 1990, court-narrowed interpretations of who is substantially limited in a major life activity gave way to challenges to rightful claims of discrimination in employment. People who had been treated unfairly were barred from their day in court via summary judgments when defense counsel challenged their credentials in terms of coverage as a person with a disability. One Kansas case example shows the trend: in *Murphy v. United Parcel Service*, a mechanic with high blood pressure was dismissed from his job because he couldn't obtain a commercial driver's license (CDL) due to his high blood pressure. [It makes sense that untreated high BP is potentially dangerous for over-the-road truckers, but not for a mechanic whose job requires him to drive the vehicle "around the block" to make sure it is ready to be returned to service].

Here, not only is the CDL as an essential job requirement silly, the company being allowed to dismiss him by arguing that when he takes his medicine, his blood pressure is under control, and therefore he is not a person with a disability, is patently absurd. That is perhaps as good an example of Catch-22 as Joseph Heller ever imagined!

Since I favor settling such employment disputes as close to home as possible – preferably with alternative dispute resolution procedures such as mediation – but in any case without "making a federal case" of it, this essentially conforming language to the federal ADA Amendments Act signed into law by George W. Bush last year, should also be amended into Kansas law. This way, there is no misunderstanding within Kansas as to what nondiscrimination on the basis of disability means and the Kansas Judicial System will be the preferred court when administrative procedures within the KHRC are unable to settle such disputes.

In a nutshell, this bill brings Kansas law into alignment with the most up-to-date federal anti-discrimination law pertaining to people with disabilities, thus establishing in our state a consistent legal understanding of how employers are expected to comply with the law and what people with disabilities can expect in terms of reasonable accommodation. I cannot imagine this having a budgetary impact on the KHRC.

Here are 2 web links which explain Murphy:
<http://supct.law.cornell.edu/supct/html/97-1992.ZS.html> and
<http://supct.law.cornell.edu/supct/pdf/97-1992P.ZO>

Sincerely,

Ray Petty, Kansas Coordinator
Great Plains ADA Center
Lawrence, KS 66046
raypetty@aol.com

Senate Judiciary

2-5-09

Attachment 8



Jennifer Schwartz
Executive Director

Member Agencies:

Center for Independent Living for Southwest Kansas
Garden City, KS
620/276-1900 Voice

Coalition for Independence
Kansas City, KS
913/321-5140 Voice/TT

Independent Living Resource Center
Wichita, KS
316/942-6300 Voice/TT

Independence, Inc.
Lawrence, KS
785/841-0333 Voice
785/841-1046 TT

Independent Connection/OCCK
Salina, KS
785/827-9383 Voice/TT

LINK, Inc.
Hays, KS
785/625-6942 Voice/TT

Prairie Independent Living Resource Center
Hutchinson, KS
620/663-3989 Voice

Resource Center for Independent Living, Inc.
Osage City, KS
785/528-3105 Voice

Southeast Kansas Independent Living, Inc.
Parsons, KS
620/421-5502 Voice
620/421-6551 TT

The Whole Person, Inc.
Kansas City, MO
816/561-0304 Voice
816/627-2201 TT

Three Rivers ILC
Wamego, KS
785/456-9915 Voice

SENATE JUDICIARY COMMITTEE
Senator Owens, Chair
SB 112
February 4, 2009

Thank you for the opportunity to provide written testimony today in support of SB 112, the Kansas act against discrimination. I am Jennifer Schwartz, director of the Kansas Association of Centers for Independent Living (KACIL). KACIL represents Centers for Independent Living (CILs) across Kansas. Our organization is driven by the following mission statement: *KACIL provides a powerful framework so that member Centers excel in advocacy and services ensuring that all Kansans with disabilities have opportunities for independent living and enjoy their civil and human rights.*

Centers for Independent Living provide services to people with any disability, of all ages. CILs provide information and assistance to businesses and other entities in the community to increase opportunities for people with disabilities to living, work and play in all aspects of community life.

KACIL and each of its individual members have a long history of advocating for the American's with Disabilities Act and we have long supported this civil rights legislation for people with disabilities across our country.

KACIL stands in support of SB 112, which would bring the Kansas act against discrimination into alignment with the Americans with Disabilities Amendment Act (ADAAA). SB 112 simply brings our Kansas statute in line with current federal law.

This legislation is important to bring Kansas statute in alignment with federal statute; this is beneficial to both individuals with disabilities and employers in the fact that it will make it necessary to learn only one set of discrimination prohibitions and rights protections.

In conclusion KACIL stands strongly in support of SB 112 to bring the Kansas act against discrimination in alignment with the federal Americans with Disabilities Act Amendments Act of 2008. We would ask the committees thoughtful consideration to favorably pass this important legislation.

Please feel free to contact us for additional information or with questions you may have.

Testimony To
Senate Judiciary Committee

In Support of SB 122

February 4, 2009

On behalf of the Statewide Independent Living Council of Kansas (SILCK), I am Shannon Jones, executive director of the SILCK. I offer the SILCK's written testimony in strong support for SB 112.

The SILCK has long been an advocate for civil rights protections for people with disabilities. The state of Kansas has also had long history of supporting the civil rights of people with disabilities. When the Americans with Disabilities Act first passed in 1990, the Kansas legislature was quick to act and amended the Kansas Act Against Discrimination as to align it with the federal act.

Now once again, the legislature is called upon to ensure that the state of Kansas is in line with the recently passed federal legislation; the Americans with Disabilities Amendment Act (ADAA).

The SILCK urges this committee to favorably pass SB 112, in order that Kansans with disabilities will have the civil rights protections that are consistent with federal policy



Kansas Council on Developmental Disabilities

KATHLEEN SEBELIUS, Governor
SCOTT SHEPHERD, Chairperson
JANE RHYS, Ph. D., Executive Director
jrhys@alltel.net

Docking State Off. Bldg., Rm 141,
915 SW Harrison Topeka, KS 66612
785/296-2608, FAX 785/296-2861
http://kcdd.org

"To ensure the opportunity to make choices regarding participation in society and quality of life for individuals with developmental disabilities"

SENATE JUDICIARY COMMITTEE

February 4, 2009

Testimony in Regard to Senate Bill 112

Mr. Chairman, Members of the Committee, I am providing this testimony on behalf of the Kansas Council on Developmental Disabilities in support of increased funding for Developmental Disabilities services.

The Kansas Council is federally mandated and funded under the Developmental Disabilities Assistance and Bill of Rights Act of 2000. Members are appointed by the Governor and include primary consumers, immediate family, and representatives of the major agencies who provide services for individuals with developmental disabilities. Our mission is to advocate for individuals with developmental disabilities to receive adequate supports to make choices about where they live, work, and learn.

A Developmental Disability occurs before age 22, is lifelong, and results in major substantial functional limitation in three or more areas of major life activity such as self-care, mobility, and economic self-sufficiency. These disabilities require lifelong support.

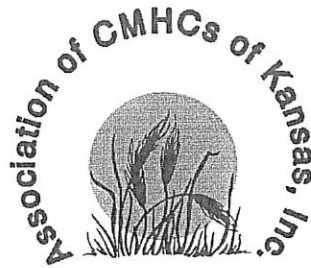
The Council provided information to our Congressional delegation regarding the amendments for the Americans with Disabilities Act (ADA) Amendments Act (ADAAA) passed by Congress during their last Session. We urge you to pass SB 112, making the Kansas Act Against discrimination (KAAD) consistent with federal law.

Thank you for your time and I would be happy to answer any questions. My contact information is provided below.

Jane Rhys, Ph.D., Executive Director
Kansas Council on Developmental Disabilities
Docking State Office Building, Room 141
915 SW Harrison
Topeka, KS 66612-1570
785 296-2608
jrhys@alltel.net

Senate Judiciary

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Attachment 11



Association of Community Mental Health Centers of Kansas, Inc
720 SW Jackson, Suite 203, Topeka, Kansas 66603
Telephone: 785-234-4773 / Fax: 785-234-3189
Web Site: www.acmhck.org

Senate Judiciary Committee

**Testimony on
Senate Bill 112**

February 4, 2009

Presented by:

Michelle Sweeney, Policy Analyst
Association of CMHCs of Kansas, Inc.

Senate Judiciary

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Attachment 12

Mister Chairman and members of the Committee, my name is Michelle Sweeney, I am the Policy Analyst for the Association Community Mental Health Centers of Kansas, Inc. The Association represents the 27 licensed Community Mental Health Centers (CMHCs) in Kansas who provide home and community-based, as well as outpatient mental health services in all 105 counties in Kansas, 24-hours a day, seven days a week. In Kansas, CMHCs are the local Mental Health Authorities coordinating the delivery of publicly funded community-based mental health services. The CMHC system is state and county funded and locally administered. Consequently, service delivery decisions are made at the community level, closest to the residents that require mental health treatment. Each CMHC has a defined and discrete geographical service area. With a collective staff of over 4,500 professionals, the CMHCs provide services to Kansans of all ages with a diverse range of presenting problems.

Together, this system of 27 licensed CMHCs form an integral part of the total mental health system in Kansas. As part of licensing regulations, CMHCs are required to provide services to all Kansans needing them, regardless of their ability to pay. This makes the community mental health system the "safety net" for Kansans with mental health needs, collectively serving over 123,000 Kansans with mental illness. I stand before you today to discuss Senate Bill 112, which, if passed, would align the Kansas Act Against Discrimination with the Americans With Disabilities Act (ADA) reauthorization passed by Congress and signed by the President in 2008.

It is important to note that One in four adults—approximately 57.7 million Americans—experience a mental health disorder in a given year.¹ Five of the top ten leading causes of disability world wide are mental disorders—such as depression, schizophrenia, bipolar disorders, alcohol use and obsessive compulsive disorders.²

The reauthorization of the of the ADA sent a message to all Americans who have a psychiatric or other disability, that discrimination in employment based solely on a disability or perceived disability is not acceptable.

Please consider adoption of the language in SB 112, which will make Kansas statute consistent with federal law. This legislation will ensure that Kansas employers only have to be familiar with one set of standards around employment discrimination practices and prohibitions for those with disabilities.

The adoption of SB 112 appears to have no cost impact to employers. Senate Bill 112 would ensure that those Kansans living with a disability are afforded the same protections under the Kansas Act Against Discrimination as the Americans with Disability Act affords to all Americans. The Association supports adoption of the language in Senate Bill 112, to bring Kansas in line with federal statute.

Thank you for your support of mental health care and treatment for all Kansas, and the adoption of Senate Bill 112. Thank you for allowing me to appear before you today.

¹ U.S. Department of Health and Human Services. *Mental Health: A Report of the Surgeon General*. Rockville, MD: U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Mental Health Services, 1999, pp. 408, 409, 411.

² *Regional Strategy for Mental Health*, World Health Organization Western Pacific Region, 7 August 2001; Read at <http://www.wpro.who.int/NR/rdonlyres/02421D66-3336-4C76-8D59-6ADA8B53D208/0/RC5214.pdf> on 2-2-09.



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 SW 10th

Topeka, Kansas 66612-1507

(785) 296-2256

Senate Judiciary

Thursday, February 5, 2009

Comments on SB 134

Jerry Sloan, Judicial Branch Budget and Fiscal Officer

Thank you for the opportunity to testify in favor of SB 134. This bill would remove the prohibition of the Supreme Court establishing a surcharge if funding were reduced to the extent that the Judicial Branch could no longer perform its constitutional and statutory responsibilities.

First, I'd like to give a little background. The Kansas Judicial Branch is unique in state government. While all employees and judges of the district courts are state employees and their salaries are funded primarily from the State General Fund, nearly all other operating expenses of the district courts are funded by the counties. This results in a Judicial Branch State General Fund budget that overwhelmingly (97.67% in FY 2009) is dedicated to personnel costs. Thus, nearly any budget reduction of any significance must impact staffing.

Of course, we will continue to be as frugal as possible with operating expenses. However, it is interesting to note that, based on FY 2008 expenditures, about one-half of the amount budgeted for other operating expenses was spent either for the travel of district judges to hear cases, which was necessary in multi-county districts, or was paid to state agencies for such things as phones, computer services, printing, and fees. That leaves very little flexibility.

There are also limitations on the amount of savings that can be generated from personnel costs. Thirty-four and sixty-five one hundredths of one percent (34.65%) of the State General Fund budget dedicated to personnel costs pays for judicial salaries. Judges are statutory, elected officials and there are statutory provisions for filling vacancies and constitutional prohibitions against reducing salaries. Therefore, salary expenditures for these positions cannot be reduced through management.

These limitations leave 63.83% of the State General Fund appropriated for nonjudicial salaries to bear any required budget savings.

To achieve budget savings, we implemented a hiring freeze at the beginning of the fiscal year and we have reduced expenditures for temporary positions. However, from our past experience in taking these measures, we know that we cannot expect savings of more than about 1.5% of our total budget. A hiring freeze takes some time to realize its full savings potential. In

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FY 2001 and FY 2002, we faced underfunding of \$1.2 million and \$2.0 million. Supplemental appropriations of \$300,000 in FY 2001 and \$600,000 in FY 2002 were required at the end of the year to avoid furloughs. The approved budget for the following year, FY 2003, was \$3.5 million below our maintenance budget requirements. You may recall that the Supreme Court initiated the Emergency Surcharge in order to fund the budget that year. This bill would allow a similar response if the need arises.

The Emergency Surcharge was a fee that was charged in addition to the statutory docket fee when cases were filed. The revenue generated from the Emergency Surcharge kept Kansas courts open and operating at a level in which citizens deserved. The Emergency Surcharge was in effect April 1, 2002 through fiscal year 2006. At that time, the state's fiscal situation had improved and the Legislature was able to fully fund the courts. Therefore, during the 2006 legislative session SB 180 was enacted which stated that docket fees would be set by the Legislature and no other fee would be charged. Given the current fiscal crisis the state is experiencing, it is time to revisit the idea of an Emergency Surcharge. Reinstitution of a surcharge will allow the Legislature to use funds that otherwise would be appropriated to the Judicial Branch for other necessary expenditures while keeping the courts open and functioning.

Due to the delay in receiving any money from a surcharge, we respectfully request that SB 134 be amended to be effective upon publication in the *Kansas Register*. If it is necessary to implement for FY 2010, this amendment would allow funding to be available shortly after the fiscal year begins.

I appreciate your consideration of recommending SB 134 favorably for passage.

Testimony in Support of SB 134

Senate Judiciary Committee
Thursday, February 5, 2009

Chief Judge Stephen R. Tatum, 10th Judicial District (Johnson County)
Court Administrator Mike McLain, 10th Judicial District (Johnson County)

As you are aware, more than 97% of the state's annual budget for the Judicial Branch goes for personnel salaries.

This year to date in Johnson County, we have lost 30% of what remained of our temporary hour allocation. These positions have been critical for our district court's effort to become a paperless operation. They have also assisted in filling in for long term absences. Locally they have taken on the name "fire fighters" because they were deployed where we have the most critical need.

Additionally, a hiring freeze has already claimed two positions- a Computer Programmer II and Court Services Officer I. These are both professional positions that work in areas that are vitally important to our technology efforts, public safety, and services to families and youths.

Further reductions in the judicial budget can only be addressed by adjustments in workforce. The available options become reduced to layoffs or furloughs. In a judicial district that continues to experience workload growth, personnel reductions are particularly harmful. This year, our judicial district requested and received approval from the Supreme Court for two additional judgeships to address the growing number of case filings. While funding of these positions is unlikely during the current budget crises, the documented need certainly speaks to the workload of this district. In the past three years we have a 32% increase in civil case filings, 35% increase in traffic offenses, and continue to have the highest number of criminal and juvenile cases of any judicial district in Kansas.

Clearly sacrifices are required of all branches and levels of government. We are currently examining what are our essential duties, responsibilities, and expenditures. We are making plans to cut out non-essential, non-critical activities to address the shortfall from our county funded operations. The work activities of our state funded personnel rarely stray from essential duties. Johnson County anticipates substantial reductions in its 2010 budget. The district court is in a

Testimony in Support of SB 134
February 5, 2009
Page 2

unique position of having its personnel funded through the State of Kansas, but its operations funded by county government. In a difficult year, we are making adjustments in both areas.

The emergency action of the Kansas Supreme Court in prior years by implementing the surcharge proved to be a very effective approach to the fiscal crises. At the district court level, the surcharge had virtually no adverse impact on litigation. Case filings continued to increase which suggest no effect on the use of the district court to resolve conflicts. It would appear to me that maintenance of our workforce is critical, and reductions in our operational expenses would be extremely beneficial to our community's interest in the short term. As always, persons who are indigent will be allowed to file their cases without any fee.

In a time when the economy is down, and persons are experiencing tough times, the courts see increases in cases. As businesses fail and foreclosures increase, etc., the courts are essential in resolving legal issues fairly for its citizens. Please consider allowing use of a surcharge to help the courts maintain a high level of service to the community.

Thank you for your consideration.

HOUSE COMMITTEE ON JUDICIARY

Hon. Thomas (Tim) Owens, Chair
Hon. Derrick Schmidt, Vice Chair
Hon. David Haley, Ranking Minority Member

February 5, 2009
9:30 pm
Room 545-N

Chief Judge James R. Fleetwood
Eighteenth Judicial District
525 N. Main, Wichita, KS. 67203
jfleetwo@dc18.org

TESTIMONY IN SUPPORT OF SENATE BILL 134

My name is James R. Fleetwood. I am the Chief Judge of the 18th Judicial District. I would like to thank this honorable committee for allowing me the opportunity to speak in favor of Senate Bill 134. I appear on behalf of my district which consists of 28 district judges, one hearing officer and several judges pro tem who serve as specific demand requires in areas such as Protection From Abuse and Protection From Stalking cases as well as child support hearings, and other family law matters. The 18th judicial district presently has 99 clerks, 62 court officers, 24 court reporters, 4 IT personnel, 27 administrative assistants and 5 administrative staff. While these numbers may seem substantial, it should be remembered that we serve the largest judicial district in the State and are presently operating under a significant handicap. Taking into consideration the existing permanent hiring freeze, these numbers constitute more than a 4% reduction in our allocated staff which has created a significant challenge in meeting the needs of Sedgwick County citizens. Our employees are dedicated to providing quality service to the citizens of Sedgwick County and with our reduced staff I have observed many individuals working through lunch hours and weekends to meet the demands of the workload. While I appreciate their commitment, under our present personnel rules I must discourage them from making such efforts when we have no way to compensate them. A sampling of our regular docket shows that there are 508 domestic cases, 266 civil cases, 1851 limited action cases, 725 criminal

cases and 795 traffic cases that come up for hearing or consideration in one fashion or another on a weekly basis. All of which must be addressed in some way by court employees. In these cases litigants, attorneys and others expect immediate and professional services in the courthouse to insure justice is available and provided in a timely manner.

As you know the judicial budget allocation from the State in any district is 100% personnel. There are no maintenance projects or capital improvement projects that can be deferred from the State judicial budget allocation for each district. For all intents and purposes the district court's sole method of meeting necessary budget cuts is by reducing court services to attorneys and the public. Where services are statutorily or constitutionally mandated timeliness must be sacrificed.

Rather than wait until we are over-run by circumstances as in New Hampshire, where state courts were forced to suspend all jury trials for a month due to a lack of funds and resources (LA Times Dec 8, 2008), or require financial sacrifices from the employees of the court and their families, we would propose that the court be allowed to take temporary measures to at least spread the cost of operations to those that presently make the most use of its resources.

A recent survey of 18th Judicial District employees showed that 1/3 of them presently work a second job to make ends meet. Suggesting that a couple of furloughed days would have no significant effect on these families would ignore the efforts they are now making to meet their financial demands. Obviously, furloughs would be less painful for the individual than complete layoffs. However, further loss of staff would have a significant effect on the quality and timeliness of services provided to the public. These services include Protection From Abuse orders, civil restraining orders, collection actions and writs of execution that cannot be obtained elsewhere but must be provided in a timely manner to assure justice. Even without layoffs or furloughs we can anticipate further loss of staff through normal attrition. It is my hope that we can be in a position to protect the court from further degradation of its ability to serve the community.

The benefits arising from temporary surcharges are proven by past experiences. Previous efforts to meet the court's budget demands through minimal surcharges in Sedgwick County alone raised \$650,000 per year. An amount equal to two day's personnel costs for the entire State judiciary.

The greatest concern for such surcharges would be whether or not they create a barrier to justice. Would the extra cost of filing motions, petitions and other prayers for relief deter individuals from accessing the court system? Past experience would say no. During the period from 2002 to 2006 when surcharges were last assessed there was no decrease in filings in the 18th Judicial District. Furthermore, the judges would retain the ability to take into consideration the financial circumstances of the individual and waive such charges if appropriate. Also a recent review of standard filing fees across the nation shows that even with the addition of surcharges filing fees in Kansas would remain less than, or comparable to, a significant majority of other states.

In closing, with the greatest respect for this committee and the challenges you face I would ask you to allow the imposition of surcharges to benefit the ongoing work of the state court system, its employees and officers.

Sincerely,

James R. Fleetwood
Chief Judge
18th Judicial District
State of Kansas

SENATE COMMITTEE ON JUDICIARY

Hon. Thomas (Tim) Owens, Chairman
Hon. Derek Schmidt, Vice Chairman
Hon. David Haley, R.M. Member

February 5, 2009
9:30 a.m.
Room 545-N

Chief Judge Richard M. Smith
Sixth Judicial District
P.O. Box 350
Mound City, Kansas 66056-0350
judgeIndc@earthlink.net

TESTIMONY ON BEHALF OF **KANSAS DISTRICT JUDGE'S ASSOCIATION** **IN SUPPORT OF SENATE BILL 134**

I wish to thank this honorable committee for extending the opportunity to appear and present testimony in support of SB 134. My name is Richard M. Smith, I am the Chief Judge of the Sixth Judicial District (Miami, Linn and Bourbon Counties) and am the legislative chairman and treasurer of the Kansas District Judge's Association. I appear on behalf of the District Judge's Association to request this committee recommend passage of SB 134 [thereby restoring the Supreme Court's ability to consider a docket fee surcharge in times of financial emergency.] I am confident the dire financial circumstances of the state are so well known by you I need not spend any time reciting the financial problems faced by our state or the necessitous circumstances which confront the Judicial Branch.

The importance of this legislation as it relates to urban districts has been well stated by Chief Judges Fleetwood and Tatum. The KDJA Executive Committee is in unanimous support of this legislation and I would like to briefly mention the need for this legislation as it relates to more rural counties and districts.

If the lack of needed resources forces the Judicial Branch to furlough or layoff employees the impact in rural districts may be the complete cessation of certain services while the employees are furloughed.

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- Many rural courts have just a handful of employees who by necessity are specialized. Provisions of these services may be halted or at least delayed while certain employees are laid off.
- Examples of some services being unavailable during the furlough period might include: Delays in restitution payments to crime victims, delays in reports to the KDOR will affect drivers license renewals and suspensions, the processing of time sensitive court matters ranging from abused and neglected children to cases involving the removal of problem tenants, the issuance of marriage licenses and other vital matters affecting the public.
- Some courts have only one or two probation officers such that furloughs will affect the supervision of probationers creating potential risks to the public.
- Overall in rural areas furloughs will delay various essential services to the detriment of the public.

In summary I respectfully ask this committee to remember that adequate funding of the court system is not just necessary to keep valuable trained employees at work. It is also an absolute necessity to ensure the provision of vital services to the citizens of our state. Last year the Kansas Legislature recognized the need for the Judicial Branch to maintain long term top notch workers. Furloughs of our employees will undermine our recent efforts to keep dedicated and effective employees. More importantly, in the long run it will be even more devastating to our attempts to provide consistent access of our citizens to the court system and to justice. It is my concern as Chief Judge that without the passage of SB 134 that ultimately the residents of this state will suffer the most.

Respectfully submitted:
Richard M. Smith
Chief Judge of the 6th Jud. District
913.795.2622 – Linn Co Chambers
judgeIndc@earthlink.net