Jacklyn P. Paletta

March 7, 2025

Chair Carpenter, Vice Chair Bryce, Ranking Minority Ruiz,
and Members of the House Health and Human Services Committee:

RE: S Sub for SB 29 in person testimony, Proponent

I am here in favor of amendments to chapter 65. One amendment is proposed in Senate Bill 29, while this should be considered a great first step it does not go far enough. S Sub for SB 29 changes the language in K.S.A. 65-119, however, these changes would render K.S.A. 65-119 incongruent with the rest of the chapter. You may be thinking that that we have dealt with whatever "quarantine" or "social distance" or "close contact" phenomena arose during Covid-19 and steps you take today are merely *pro forma*. Unfortunately, that is not the case. We were in court on Friday, February 28, one week ago, when a healthy, honors student from Buhler was unlawfully quarantined, and excluded from public high school for 21 days because she may have been exposed to an unconfirmed case of chicken pox. The redress afforded by §65-129c was inadequate to address the infringement on her rights under the guise §65-122. Terms like "afflicted" and "affected" contained within §65-122 and the absence of a specific appeals process within that provision caused the judge to require additional briefing on the subject. To the extent that in the interest of public health we need a mechanism to address what to do when we have an "outbreak" of a potentially life threating infectious and contagious disease, we need to be more precise than what is written in chapter 65. In the name of efficiency, the unintended consequence of the legislature allowing KDHE to write, enforce, and be the arbiter its own regulations, is that liberties of perfectly healthy children are being constrained without due process. And, as it is, KDHE is sitting in the seat of legislature and judiciary when it comes to enforcement of its self-created guidelines, which violates fundamental principles of separation of powers. We need your help to refine chapter 65.

The statutory scheme contained within chapter 65 as pertains to "quarantine" and "authority of the local health officer" and "authority of the school" should be kept in harmony with each other so that the legislative intent is clear. If the legislative intent is to afford KDHE, local health officers, and schools the power to make "recommendations" concerning social distance, isolation, exclusion, gathering size or location, then such "recommending" language should replace the compulsory authority elsewhere in the statute, like in §65-122 and §65-129b and §65-129c. Moreover, to the extent that the chapter provides the government redress against not compliant persons it should similarly provide redress against non-complaint government entities or officials abusing their power. §65-129 and §65-127 separately contain penalties for an individual who is not complying with an exclusion, isolation, or quarantine. There is not a specific section outlining the due process or redress available to a citizen who's rights are being arbitrarily

infringed. If the legislature intends to allow KDHE the extraordinary right to take action against perfectly healthy individuals, the probable cause KDHE must show should be equally extraordinary, and the statute should specify the process the constrained individual can take to appeal or object to such an action. Instead, such right to redress is narrowly constrained to a portion of §65-129c. Within the language of chapter 65 it should certainly clarify that it is not the intent of this body to limit any due process rights of the citizens.

The opponents of changes to chapter 65 have argued that it is inconvenient or impractical to carefully follow procedure and notify citizens of their due process rights. Afterall, it is potentially-life threatening, contagious diseases we are talking about here. The problem is, this authority has gone unchecked for so long that it has morphed into allowing a constraint on the liberties of perfectly healthy individuals who may have been exposed to, a non-confirmed case of, a potential disease. I'm confident that these are unintended consequences in the name of public health and protecting the public from life threatening contagions. Benjamin Franklin once said: "Those who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety."

While 65-129c provides some due process, some agencies have used other provisions of chapter 65 to weaponize "public health" through the school district and the local health department to exert self-declared, compulsory authority over perfectly healthy children where those healthy children have no powers to appeal, no mechanism to contest, no recourse or right to redress. Working together, we can ensure that "safety" or "public health" is not an excuse to claim it is inconvenient or impractical to honor the constitutionally protected fundamental rights of individuals. If the state can show that there is such a compelling government interest that warrants the infringement on the rights of healthy children, then such an interest should require no less of a showing than that required to remand an accused criminal to jail pending trial. The accuser should present the factual allegations to a judge and obtain a signature, then exclude or quarantine, subject to the right to appeal.

Kan. Const. Bill of Rts. § 20 states as follows: "This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers not herein delegated remain with the people." However, Chapter 65 violates this principal as it has granted KDHE unilateral, unremitted authority to delegate to itself additional powers in the form of regulations. §65-101 is not narrowly tailored to suit a compelling government interest without unnecessary or unchecked infringement on the liberties of the people

Kan. Const. Bill of Rts. § 1: "All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness;" and Kan. Const. Bill of Rts. § 18: All persons, for injuries suffered in person, reputation or property, shall have remedy by due course of law, and justice administered without delay," when read in harmony operate to reveal that infringement on the liberties of the people must be subjected to swift justice and due process. Chapter 65 does not embody this notion.

Instead, it allows the infringement of First Amendment rights of free speech, assembly, religion, and other rights without sufficient process in the name of public health.

We all agree that a person accused of being a child molester, murderer, or other heinous criminal is nevertheless entitled to due process. For a warrant to be issued, a probable cause affidavit has to be signed by the law enforcement officer and presented/reviewed by a judge who then signs a warrant authorizing the arrest of the accused. The accused is given an arraignment within hours of being charged. As soon as is feasible thereafter, unless waived, the accused is given a probable cause hearing. These checks and balances are essential to ensure fair play and substantial justice, and to keep secure constitutionally protected fundamental rights enshrined by the both the U.S. and Kansas Constitution.

Why then does it make sense that a non-criminal, non-accused, perfectly healthy honors student from Buhler Kansas whose only "crime" is maybe being "exposed" to chicken pox would be granted any fewer rights? Opponents may say it was a 21 day exclusion, no big deal. The United States Supreme Court would disagree:

> The Supreme Court has long held that students hold a legitimate entitlement to a public education as a property interest that is protected by the Due Process Clause, and that, "… may not be taken away […] without observing minimum procedures." *Goss v. Lopez*, 419 U.S. 565, 565, 95 S. Ct. 729, 732, 42 L. Ed. 2d 725 (1975). With regard to damages, the Supreme Court has said that the loss of individual rights, "…for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 2690, 49 L. Ed. 2d 547 (1976). Furthermore, before the state can deprive an individual of a Constitutional interest, there must be a "prior hearing of some kind." *Fuentes v. Shevin*, 407 U.S. 67, 86, 92 S. Ct. 1983, 1997, 32 L. Ed. 2d 556 (1972)

Furthermore, as in the Buhler case, the local health officer and the school admitted that they do not know the law which governs their behavior. Yet, threatened this family should they not comply. The officials knew they were "obeying" the regulations and guidelines, but didn't even know the statute. Chapter 65 should be amended to obligate any person or agency purporting to enforce its provisions, know and be compliant with the same.

> As a general rule an administrative agency may not violate or ignore its own regulations and where it fails to follow the rules which it has promulgated, its orders are unlawful. *Kansas Commission on Civil Rights v. City of Topeka Street Department*, 212 Kan. 398, 511 P.2d 253, cert. denied 414 U.S. 1066, 94 S.Ct. 573, 38 L.Ed.2d 470 (1973). *Amerine v. Bd. of Cnty. Comm'rs of Jefferson Cnty.*, 7 Kan. App. 2d 491, 492, 644 P.2d 477, 479 (1982).

While it is not my intention to provide you with a legal brief, I just wanted to deliver some context for the conversation. Along those lines, I would like to direct your attention

to a Kansas Supreme Court case, *Moser v. State, Dep't of Revenue*, 289 Kan. 513, 516, 213 P.3d 1061, 1064 (2009). There the court held:

> Issues of statutory interpretation raise pure questions of law and are subject to this court's unlimited review. *Martin v. Kansas Dept. of Revenue*, 285 Kan. 625, 629, 176 P.3d 938 (2008). "[S]tatutory interpretation begins with the language selected by the legislature. If that language is clear, if it is unambiguous, then statutory interpretation ends there as well." 285 Kan. at 629, 176 P.3d 938. Ordinary words should be given their ordinary meaning. *State v. Stallings*, 284 Kan. 741, 742, 163 P.3d 1232 (2007). Courts should not focus on an isolated part of a legislative act but are required, if possible, to consider and construe together all parts of the act *in pari materia*. *McIntosh v. Sedgwick County*, 282 Kan. 636, 642, 147 P.3d 869 (2006).

You may be thinking that any confusion over applicability or enforceability in this chapter ought to be cleared up by a judge interpreting the same. This only works if the legislative intent is clear. Unfortunately, there are conflicting ideas within chapter 65 that only become more convoluted when read in conjunction with the unilateral regulations and guidelines KDHE created. We really need your help.

I have provided an Appendix to illustrate some of the problems with allowing an agency to write it and enforce its own rules. Theres an email from KDHE purporting to "recommend" however, attached within that email was Annex-A---Background-on-Isolation-and-Quarantine-Law-in-Kansas-PDF, and directions for how to serve what was ultimately deemed to be an unlawful order. This email from KDHE lead the recipient to believe that following the "recommendation" was actually required, and yet in following the recommendation the conduct was unlawful.

I also provided a link to some "guidelines" promulgated by KDHE. I took the liberty of excising a couple portions regarding "outbreak" to highlight some confusion. Is an "outbreak" greater than or equal to one case or five cases?

Thank you for your consideration as we all do our part to facilitate a health Kansas while still protecting the liberties of Kansans. I would be happy to stand for questions and will make myself available for any further discussions with legislators.

Respectfully Submitted,

Jacklyn Paletta, ESQ

District 5

PALETTA: APPENDIX

Tobias Harkins

From: Sierrah Haas <Sierrah.Haas@ks.gov>
Sent: Sunday, February 23, 2025 9:30 AM
To: Tobias Harkins
Subject: Delivery of Order Conversation

Sending you over an email with the details of our conversation:

Annex-A---Background-on-Isolation-and-Quarantine-Law-in-Kansas-PDF

After consultation with my senior support, Justin Blanding, we recommended that the order be delivered via LHD staff barring concern of hostility, but ultimately in ordinary circumstances would hope that County Attorney could offer their support. For the question of if the order can be left at the place of residence if no contact with the resident is made, based on interpretation of the regulation referenced above, we believe that leaving at the door of the residence would be fine.

Thank you!

Sierrah Haas, MPH
Western KS Field Epidemiologist
Infectious Disease Epidemiology and Response
Kansas Department of Health and Environment
1000 SW Jackson St, Suite 510
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24/7 Epidemiology Hotline: 877-427-7317
www.kdhe.ks.gov/DiseaseReporting

Kansas
Department of Health and Environment

https://www.kdhe.ks.gov/DocumentCenter/View/44055/Annex-A---Background-on-Isolation-and-Quarantine-Law-in-Kansas-PDF

https://www.kdhe.ks.gov/DocumentCenter/View/7386/Varicella-Investigation-Guideline-PDF

- *Epidemiologic Linkage Criteria*

  Confirmatory Epidemiologic Linkage Evidence
  - Exposure to or contact with a laboratory confirmed varicella case, **OR**
  - Can be linked to a varicella cluster or outbreak containing ≥1 laboratory confirmed case, **OR**
  - Exposure to or contact with a person with herpes zoster (regardless of laboratory confirmation).

- If an outbreak is suspected, notify KDHE immediately, 1-877-427-7317.
  - **Outbreak definitio**n: five or more cases in a specific setting that are epidemiologically linked.

MANAGING SPECIAL SITUATIONS

Outbreak Investigation

1) Outbreak definition: five or more cases in a specific setting that are epidemiologically linked.