Approved: 3-4-93
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 10:05 a.m. on February 17, 1993 in Room 514-S of the Capitol.

All members were present except: Senator Rock (excused)

Committee staff present: Michael Heim, Legislative Research Department
Jerry Ann Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Sue Krische, Committee Secretary

Conferees appearing before the committee:

Brent Bengtson, Director of the Governor's Office of Drug Abuse Programs
Roger Brazier, Staff Attorney, Department of Administration
Juliene Maska, Statewide Victims' Rights Coordinator, Office of Attorney General
Sally Finney, Director, AIDS Section, KDHE
Kyle Smith, KBI

Others attending: See attached list

SB 275 - AIDS testing of juvenile sex offenders.

Brent Bengtson, Director of the Governor's Office of Drug Abuse Programs, testified that SB 275 would amend K.S.A. 22-2913 providing counseling and testing for victims of sex crimes and crimes during which bodily fluids may have been exchanged and providing for HIV testing of individuals convicted of those crimes (Attachment 1). He noted SB 275 also includes a new section creating the same rights for victims of crimes committed by juveniles. Mr. Bengtson advised that failure to pass the provisions in SB 275 by October 1, 1993 would result in the loss of approximately $461,300 in federal funding in SFY95.

Roger Brazier, Staff Attorney, Department of Administration, submitted written testimony in support of SB 275 (Attachment 2).

Juliene Maska, Statewide Victims' Rights Coordinator, Office of Attorney General, advised that Attorney General Stephan is requesting the bill include provisions for informing all crime victims of information about HIV testing (Attachment 3). In addition, Ms. Maska requested an amendment to the bill to include that the Secretary of health and environment mandate that all health care providers who administer services to victims provide them with written information concerning HIV testing and other medical procedures pertaining to the risk to which the victim may be exposed.

Sally Finney, Director, AIDS Section, Kansas Department of Health and Environment, testified that the passage of SB 275 is necessary for the state to continue receiving full funding for programs that prevent and treat the use of alcohol and other drugs (Attachment 4).

SB 291 - Law enforcement officer's use of force in making arrest.

Kyle Smith, KBI, testified that SB 291 amends the statutory language on when a law enforcement officer is justified in using lethal force (Attachment 5). The bill adopts the Supreme Court's language of "probable cause" in reference to an officer's belief that a fleeing felon has committed a felony involving great bodily harm in lieu of "reasonably believes." Senator Bond made a motion to recommend SB 291 favorably for passage. Senator Parkinson seconded. Motion carried.

SB 213 - Late payment fee charged for overdue child support.

Chairman Moran then took up subcommittee reports and possible action on SB 213. Senator Vancrum explained that SB 213 would require the assessment of a late payment fee of 6% on all child support payments that are overdue for more than 30 days. It provides that a court trustee or the Secretary of SRS have the power to waive the late payment fee upon proper showing of excusable neglect. Senator Vancrum advised that two-thirds of all late payment fees collected will be used by the federal government to reduce the amount of

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

administrative reimbursement for child support collection efforts. Senator Bond noted SRS will be providing an estimated fiscal note as a result of SB 213 and the subcommittee will bring that information back to the Committee prior to taking action on the bill. Written testimony in support of SB 213 by The Association for Children for Enforcement of Support in Johnson County is included (Attachment 6).

SB 211 - Prohibiting fees for certain requests of criminal history record information.

Senator Parkinson stated that SB 211 would prohibit the KBI from charging a fee for providing record checks to block parent programs such as the McGruff House Program. Currently a fee of $10.00 per adult per house is charged and this inhibits the initiation of block parent programs.

Kyle Smith, KBI, testified before the subcommittee in support of the bill and requested that provisions be amended into the bill whereby when commercial businesses receive record checks for licensure, they are required to pay the cost (Attachment 7).

Senator Parkinson moved that SB 211 be recommended favorably for passage. Senator Bond seconded. Motion carried. Senators Feleciano and Vancrum spoke in support of charging child-care and nursing home businesses for background checks and not making volunteer organizations bear this cost.

SB 10 - Commitment and release standards relating to persons acquitted because of insanity and committed after conviction but prior to sentencing.

Senator Emert advised that SB 10 deals with redefining the consequences of the plea or conviction of "innocence by reason of insanity." He reviewed a balloon of the subcommittee's recommended amendments to the bill (Attachment 8). Included in these minutes is a memorandum from Brenda Hagerman, SRS Legal Counsel, Larned State Hospital, providing statistics concerning patients found not guilty by reason of insanity admitted to the State Security Hospital (Attachment 9). Senator Emert moved the adoption of the subcommittee report which includes the balloon of recommended amendments to SB 10 and to recommend SB 10, as amended, favorably for passage. Senator Ranson seconded. Motion carried.

SB 125 - Liability of officers and directors of financial institutions.

The Chairman turned to final action on SB 125. Senator Emert moved to amend all three sections of SB 125 to eliminate the words "any other person" and "except that the monetary liability shall not exceed the amount of such benefit." Senator Feleciano seconded. Motion carried. Senator Feleciano moved to amend SB 125 on page 1, line 38 to read "as officer or director of a credit union 'or federal credit union.'" Senator Bond seconded. Motion carried. Senator Vancrum made a motion to amend SB 125 to exclude from limitations of liability acts by savings and loan directors when they pay dividends not authorized by law. Senator Feleciano seconded. Motion carried.

Senator Vancrum suggested that full-time bank employees and people who have control of financial institutions should be excluded from the benefit of the gross and wanton negligence standard in SB 125. Following further discussion, Chairman Moran announced the bill and this possible amendment would be considered later due to lack of time today.

The meeting was adjourned at 11:00 a.m. The next meeting is scheduled for February 18, 1993.

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE DATE: 2-17-93

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Jan Maxwell	Topeka	SRS
Kyle Smith	Topeka	KBI
Cameron Brewer	"	KTLA
Paul Shelby	"	OJA
Jerel Wright	"	KCUA.
Debra Ruse.	OCATNE	—
Brent Benyston	Topeka	Gov's Office of Drug Abuse Programs
Rogers Brazier	Topeka	DOA-Legal
Sally Finney	Topeka	KDHE-AIDS
JEFF SCHMIDT	TOPEKA	KNLSP
Jim Mazs	"	KBA
Colette S. Fry	"	Washburn
Steven Warner	Topeka	Washburn.
MARY MORGAN	Shawnee Mics	AARP
Ken Bahr	Topeka	Ks. Hospital Assn
T.C. Anderson	Topeka	KSCPA
Wesley Donson	Topeka	KBA
Dave Frankel	Lawrence	KTLA - intern
Tim Taylor	OTTAWA	Ottawa Univ.
Matt Chu	Ottawa	"
Willard K. Jantz	Prairie Village	Senior Citizen
Jon Miller	Topeka	SRS/AOAs
DON POUND	"	SRS BUDGET OFFICE
Jess Pittman	OTTAWA	Ottawa Univ.
Toni Manna	Ottawa	Ottawa University

STATE OF KANSAS

Joan Finney, *Governor*

GOVERNOR'S OFFICE
OF DRUG ABUSE PROGRAMS

112 Landon State Office Building
900 Jackson
Topeka, Kansas 66612-1220
(913) 296-2584
Fax (913) 296-0043

MEMORANDUM

TO: Senator Jerry Moran, Chairman
Senate Judiciary Committee

FROM: Brent Bengtson, Director of the Governor's
Office of Drug Abuse Programs

DATE: February 17, 1993

RE: Senate Bill 275

Thank you for the opportunity to appear before the committee today in support of Senate Bill 275.

The Governor's Office of Drug Abuse Programs is the Kansas state administrative agency for the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program of the federal Bureau of Justice Assistance.

Each year since 1987, grants have been awarded to state and local law enforcement agencies. The purpose of these grants is to assist states and units of government in carrying out specific programs which offer a high probability of improving the functioning of the criminal justice system. Special emphasis is placed on a nationwide and multilevel drug control strategy, and more recently, on violent crime intervention.

Some examples of those Kansas programs funded are: D.A.R.E. (Drug Abuse Resistance Education), multijurisdictional drug task forces, prosecutorial funds for special drug prosecutors, SCAT (Special Community Action Teams in Topeka and Wichita), crime lab equipment, KBI Strike Force, Neighborhood Crime Unit (Kansas City) and Community Corrections Day Treatment Centers.

SJ
2-17-93
Attachment 1

State allocations are based on population and compliance with guidelines issued by the Bureau of Justice Assistance. Kansas' allocation rose to a high of $4,637,000 in SFY'93. In SFY'94, Kansas was allocated $4,613,000.

A major purpose of SB275 is to insure compliance by the State of Kansas with section 1804 of the Crime Control Act of 1990, 42 USC Section 3756(f). Failure to pass by October 1, 1993, of SB275, that provides HIV testing of convicted individuals at the request of their victims, would result in a 10% loss of the Bureau of Justice Assistance's allocation to Kansas or a loss of approximately $461,300 in SFY'95. To add insult to injury, those states that become in compliance can receive increased allocations from the pooled 10% losses from those states not in compliance.

SB275 would amend KSA 22-2913 providing counseling and testing for victims of sex crimes and crimes during which bodily fluids may have been exchanged, and requiring, when requested or at the Court's discretion, HIV testing of individuals convicted of those crimes. SB275 includes a new section creating the same rights for victims of crimes committed by juveniles.

This bill has been reviewed by legal counsel from the Department of Administration, the Department of Corrections and the Department of Health and Environment. They and the Director of the AIDS program of Health and Environment support the bill.

I respectfully ask for your favorable consideration of SB275. I would be happy to answer any questions the committee may have.

STATE OF KANSAS

Joan Finney, *Governor*

DEPARTMENT OF ADMINISTRATION
LEGAL SECTION
107 Landon State Office Building
900 Jackson
Topeka, Kansas 66612-1214
(913) 296-6000
FAX #(913) 296-0043

TESTIMONY OF ROGERS L. BRAZIER, JR., STAFF ATTORNEY
DEPARTMENT OF ADMINISTRATION, LEGAL SECTION

SB 275 - Relating to testing for HIV infection under certain circumstances.

Senate Judiciary Committee

February 17, 1993, 10:00 a.m.

Senate Bill 275 is a bill relating to the testing for HIV infection of individuals (juveniles and adults) adjudicated or convicted of offenses involving sexual acts, as well as for the victims of those crimes. In addition to HIV testing the bill provides for notification to the victim of the results of court ordered testing for the HIV infection, and for the availability of counseling to the victim.

The purpose of the bill is to ensure compliance by the State of Kansas with §1804 of the Crime Control Act of 1990, 42 U.S.C. §3756(f), in order that the State of Kansas may continue to receive full funding under the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program. A failure to pass legislation in substantially the same form as proposed in SB 275 may result in the state losing $461,300 from 1994 federal fiscal year funding.

I would appreciate your favorable consideration of SB 275.

RLB:jb
6380L

SJ
2-17-93
Attachment 2

No

concerning conduct upon which aggravated sexual abuse and attempted rape charges were based was insufficient to warrant lesser included offense instruction on criminal sexual contact; defendant entered victim's room without his pants, with a knife in his hand, climbed on top of victim, and ordered her to remove her underwear, victim felt defendant's erection and was told to tell her inquiring friend that she loved defendant, while defendant was continually using knife to cut on victim's throat. U.S. v. Dennison, C.A.10 (N.M.) 1991, 937 F.2d 559.

Abusive sexual contact was not lesser-included offense of attempted sexual abuse and attempted aggravated sexual abuse, as abusive sexual contact requires specific intent to abuse, humiliate, harass, degrade, or arouse or gratify sexual desire of any person, while such specific intent is not required for attempted sexual abuse and attempted aggravated sexual abuse. U.S. v. Sneezer, C.A.9 (Ariz.) 1990, 900 F.2d 177.

sive sexual contact is lesser included offense n aggravated sexual abuse and sexual abuse of minor. U.S. v. Demarrias, C.A.8 (S.D.) 1989, 876 F.2d 674.

2. Force, use of

Statute prohibiting abusive sexual conduct in a federal facility requires only use of "force," not significantly violent action or threats. U.S. v. Lauck, C.A.2 (N.Y.) 1990, 905 F.2d 15.

3. Attempt

Attempted sexual abuse is specific intent crime, and thus defendant was entitled to instruction on his defense of voluntary intoxication. U.S. v. Sneezer, C.A.9 (Ariz.) 1990, 900 F.2d 177.

4. Defense

Crime of sexual abuse is not specific intent crime, and thus voluntary intoxication is not a defense. U.S. v. Sneezer, C.A.9 (Ariz.) 1990, 900 F.2d 177.

5. Weight and sufficiency of evidence

Evidence concerning defendant's encounter with victim was sufficient to establish that defendant used "force" against her, as required to support conviction for abusive sexual conduct in federal facility; defendant walked alongside victim, put his arm around her and held her so that she could not continue walking, then backed her into corner and held her there for three to four minutes so that she could not get away from him. U.S. v. Lauck, C.A.2 (N.Y.) 1990, 905 F.2d 15.

6. Admissibility of evidence

Claimed pattern of sodomy and sexual molestation of witness by defendant, which ceased ten years prior to acts for which defendant was charged with aggravated sexual abuse and abusive sexual contact, was not too remote to be admissible as prior bad act evidence. U.S. v. Hadley, C.A.9 (Ariz.) 1990, 918 F.2d 848.

§ 2245. Definitions for chapter

As used in this chapter—

(1) the term "prison" means a correctional, detention, or penal facility;

(2) the term "sexual act" means—

(A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however, slight;

(B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or

(C) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; and

(3) the term "sexual contact" means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

(4) the term "serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty;

(5) the term "official detention" means—

(A) detention by a Federal officer or employee, or under the direction of a Federal officer or employee, following arrest for an offense; following surrender in lieu of arrest for an offense; following a charge or conviction of an offense, or an allegation or finding of juvenile delinquency; following commitment as a material witness; following civil commitment in lieu of criminal proceedings or pending resumption of criminal proceedings that are being held in abeyance, or pending extradition, deportation, or exclusion; or

(B) custody by a Federal officer or employee, or under the direction of a Federal officer or employee, for purposes incident to any detention described in subparagraph (A) of this paragraph, including transportation, medical diagnosis or treatment, court appearance, work, and recreation;

but does not include supervision or other control (other than custody during specified hours or days) after release on bail, probation, or parole, or after release following a finding of juvenile delinquency.

(Added Pub.L. 99-646, § 87(b), Nov. 10, 1986, 100 Stat. 3622.)

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HISTORICAL AND STATUTORY NOTES

Codification

Identical provision was enacted by Pub.L. 99-654, § 2, Nov. 14, 1986, 100 Stat. 3662.

Effective Date

Section effective 30 days after Nov. 10, 1986, see section 87(e) of Pub.L. 99-646, set out as a note under section 2241 of this title.

Legislative History

For legislative history and purpose of Pub.L. 99-646, see 1986 U.S.Code Cong. and Adm.News, p. 6139.

LIBRARY REFERENCES

Rape ⇐1, 2.
C.J.S. Rape § 1 et seq.

CHAPTER 110—SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN

HISTORICAL AND STATUTORY NOTES

1990 Amendment

Chapter Heading. Pub.L. 101-647, Title II, § 226(g)(2)(A), Nov. 29, 1990, 104 Stat. 4808, inserted "and Other Abuse" after "Exploitation".

Section Analysis. Pub.L. 101-647, Title II, § 226(g)(2)(B), Nov. 29, 1990, 104 Stat. 4808, added item 2258.

1988 Amendment

Pub.L. 100-690, Title VII, § 7512(c), Nov. 18, 1988, 102 Stat. 4487, added item 2251A.

Pub.L. 100-690, Title VII, § 7513(b), Nov. 18, 1988, 102 Stat. 4488, added item 2257.

1986 Amendment

Pub.L. 99-500, Title I, § 101(b) [Title VII, § 703(b)], Oct. 18, 1986, 100 Stat. (3) and Pub.L. 99-591, Title I, § 101(b) [Title VII, § 703(b)], Oct. 30, 1986, 100 Stat. 3341-75, added item 2255 and redesignated former item 2255 as 2256.

§ 2251. Sexual exploitation of children

(a) Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor in interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (d), if such person knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce or mailed, or if such visual depiction has actually been transported in interstate or foreign commerce or mailed.

(b) Any parent, legal guardian, or person having custody or control of a minor who knowingly permits such minor to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual depiction of such conduct shall be punished as provided under subsection (d) of this section, if such parent, legal guardian, or person knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce or mailed or if such visual depiction has actually been transported in interstate or foreign commerce or mailed.

State will provide the Service with the certified record of such a conviction within 30 days of the date of a request by the Service for such record".

Other provisions:

Application of Act Nov. 29, 1990 amendments. Act Nov. 29, 1990, P. L. 101-649, Title V, Subtitle A, § 507(b), 104 Stat. 5051, provides: "The amendment made by subsection (a) [adding subsec. (a)(11) to this section] shall apply to grants for fiscal years beginning with fiscal year 1991.".

§ 3754. [illegible]nt limitations

(a) [In[illegible]ory matter unchanged]

(1) [illegible]al year 1991 appropriations be expended for more than 75 per centum; and

(2) for any subsequent fiscal year appropriations be expended for more than 75 per centum;

[Concluding matter unchanged]

(b)-(e) [Unchanged]

(f) Except for grants awarded to State and local governments for the purpose of participating in multijurisdictional drug task forces, no funds may be awarded under this subpart to a grant recipient for a program or project for which funds have been awarded under this title [42 USCS §§ 3711 et seq.] for 4 years (in the aggregate), including any period occurring before the effective date of this subsection.

(As amended Nov. 21, 1989, P. L. 101-162, Title II, § 211, 103 Stat. 1006; Nov. 5, 1990, P. L. 101-515, Title II, § 207, 104 Stat. 2119; Nov. 29, 1990, P. L. 101-647, Title VI, Subtitle A, § 601(a), 104 Stat. 4823; Oct. 28, 1991, P. L. 102-140, Title I, §§ 108, 109, 105 Stat. 794.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1989. Act Nov. 21, 1989, in subsec. (a)(1), substituted "1990" for "1989".

1990. Act Nov. 5, 1990, in subsec. (a)(1), substituted "1991" for "1990".

Act Nov. 29, 1990, in subsec. (a)(1), purported to make the same amendment as that made by Act Nov. 5, 1990, but such amendment was already executed.

1991. Act Oct. 28, 1991, in subsec (a)(2), substituted "75 per centum" for "50 per centum"; and in subsec. (f), substituted "Except for grants awarded to State and local governments for the purpose of participating in multijurisdictional drug task forces, no" for "No".

§ 3756. Allocation and distribution of funds under formula grants

(a) Of the total amount appropriated for this part [42 USCS §§ 3750 et seq.] in any fiscal year, the amount remaining after setting aside the amount required to be reserved to carry out section 511 of this title [42 USCS § 3761] shall be set aside for section 502 [42 USCS § 3752] and allocated to States as follows:

(1) $500,000 or 0.25 percent, whichever is greater, shall be allocated to each of the partici[illegible]ng States; and

(2) [illegible]tal funds remaining after the allocation under paragraph (1), there shall be alloc[illegible] each State an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the population of such State bears to the population of all the States.

(b)-(e) [Unchanged]

(f)(1) For any fiscal year beginning more than 2 years after the effective date of this subsection—

(A) 90 percent of the funds allocated under subsection (a), taking into consideration subsection (e) but without regard to this subsection, to a State described in paragraph (2) shall be distributed by the Director to such State; and

(B) 10 percent of such amount shall be allocated equally among States that are not affected by the operation of subparagraph (A).

(2) Paragraph (1)(A) refers to a State that does not have in effect, and does not enforce, in such fiscal year, a law that requires the State at the request of the victim of a sexual act—

(A) to administer, to the defendant convicted under State law of such sexual act, a test to detect in such defendant the presence of the etiologic agent for acquired immune deficiency syndrome;

(B) to disclose the results of such test to such defendant and to the victim of such sexual act; and

(C) to provide to the victim of such sexual act counseling regarding HIV disease, HIV testing, in accordance with applicable law, and referral for appropriate health care and supp[illegible]ices.

(3) F[illegible] of this subsection—

(A[illegible] convicted" includes adjudicated under juvenile proceedings; and

(B) the term "sexual act" has the meaning given such term in subparagraph (A) or (B) of section 2245(1) of title 18, United States Code.

(As amended Nov. 21, 1989, P. L. 101-162, Title II, § 212, 103 Stat. 998, 1006; May 25, 1990, P. L. 101-302, Title III, § 320(c)(1), 104 Stat. 248; Nov. 29, 1990, P. L. 101-647, Title XVIII, § 1804, 104 Stat. 4851.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

The effective date of this subsection, referred to in subsec. (f), is probably a reference to the date of enactment of such subsec., that is Nov. 29, 1990.

Amendments:

1989. Act Nov. 21, 1989, in subsec. (a)(1), inserted "or 0.25 percent, whichever is greater,". Section 212 of such Act further substituted subsec. (a) for one which read:

"(a) Of the total amount appropriated for this part in any fiscal year, the amount remaining after setting aside the amount required to be reserved to carry out section 511 of this title shall be set aside for section 502 and allocated to States as follows:

"(1) $500,000 or 0.25 percent, whichever is greater, shall be allocated to each of the participating States; and

"(2) of the total funds remaining after the allocation under paragraph (1), there shall be allocated to each State an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the population of such State bears to the population of all the States.".

1990. Act May 25, 1990, in subsec. (a), in the introductory matter, inserted "required", and, in para. (1), substituted "$500,000 or 0.25 percent, whichever is greater," for "0.4 percent".

Act Nov. 29, 1990 purported to amend subsec. (a)(1) by substituting "subsections (c) and (f)" for "subsection (c)" and by redesignating subsec. (f) as subsec. (g); however, such amendments could not be executed. Additionally, subsec. (f) was added.

§ 3759. Improvement of criminal justice records

(a) Subject to subsection (d), each State which receives funds under section 506 [42 USCS § 3756] in a fiscal year shall allocate not less than 5 percent of such funds to the improvement of criminal justice records.

(b) The improvement referred to in subsection (a) shall include—

(1) the completion of criminal histories to include the final dispositions of all arrests for felony offenses;

(2) the full automation of all criminal justice histories and fingerprint records; and

(3) the frequency and quality of criminal history reports to the Federal Bureau of Investigation.

(c) The Director, in consultation with the Director of the Bureau of Justice Statistics, shall establish guidelines for the fulfillment of the requirements specified in subsections (a) and (b) of this section.

(d) In accordance with such guidelines as the Director shall issue and on the request of a State, the Director may—

(1) waive compliance with subsection (a) by such State; or

(2) authorize such State to reduce the minimum amount such State is required to allocate under subsection (a);

if the Director, in the discretion of the Director, finds that the quality of the State's criminal justice records does not warrant expending the amount allocated under subsection (a).

(June 19, 1968, P. L. 90-351, Title I, Part E, Subpart 1, § 509, as added Nov. 29, 1990, P. L. 101-647, Title XVIII, § 1803(a), 104 Stat. 4850.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 3759 (Act June 19, 1968, P. L. 90-351, Title I, Part F [E], § 511, 82 Stat. 206; Aug. 6, 1973, P. L. 93-83, § 2, 87 Stat. 212) was omitted in the general revision of this chapter by Act Dec. 27, 1979, P. L. 96-157, 93 Stat. 1167. Such section provided for judicial review.

A prior § 509 of Act June 19, 1968, P. L. 90-351, Title I, Part F [E], 82 Stat. 206, as amended, was omitted in the general revision of this chapter by Act Dec. 27, 1979, P. L. 96-157, 93 Stat. 1167. Such § 509 appeared as 42 USCS § 3757 and provided for withholding of payments for noncompliance with certain requirements and for notice and hearing on such withholding.

Other provisions:

Application of section. Act Nov. 29, 1990, P. L. 101-647, Title XVIII, § 1803(c), 104 Stat. 4851, provides: "The amendments made by this section [adding this section] shall not apply with respect to any fiscal year beginning before the date of the enactment of this Act".

U.S. Department of Justice

Office of Justice Programs

Bureau of Justice Assistance

Washington, D.C. 20531

April 17, 1992

Mr. Brent Bengston
Governor's Office of Drug Abuse Programs
112 Landon State Office Building
900 Jackson
Topeka, Kansas 66612-1214

Dear Mr. Bengston:

As you know, the Crime Control Act of 1990 included provision for a ten percent (10%) decrease in formula grant awards beginning in FY 1994 for states which do not have in place laws related to HIV testing of certain convicted offenders. Specifically, the Act requires each state to have in place a statute(s) requiring, at the request of the crime victim, testing for the presence of the human immunodeficiency virus (HIV) in persons convicted under state law of a "sexual act" as that term is defined in 18 U.S.C. Sec. 2245 (2).

The State and Local Assistance Division (SLAD) has been working with the Office of Justice Programs' Office of General Counsel (OGC) for some time to arrive at legal and feasible means to assure all states are apprised of what is necessary to be in compliance with this requirement. During the course of this consultation, we have become aware of the complexity of this requirement and the necessity for each state to determine on their own if they are in compliance, prior to any BJA or OGC review.

Thus, while we had expected a simple review and approval process for the laws and pending bills submitted by states, we now find it necessary to ask you to consult your legal advisors and first determine if your laws and related regulations meet the several elements noted in the Act. To assist you in this, OGC has prepared the enclosed Guidance document and worksheet.

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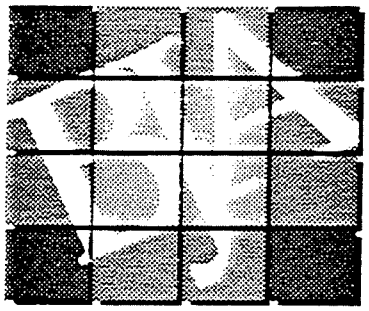
Please review this document closely and call your SLAD Branch Chief or staff contact if you have questions. We appreciate your concern about this matter and will try to assist your agency during this process in any way possible.

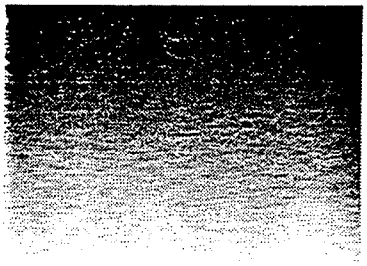
Sincerely,

BUTCH

C.H. Straub II, Director
State and Local Assistance Division

U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Assistance

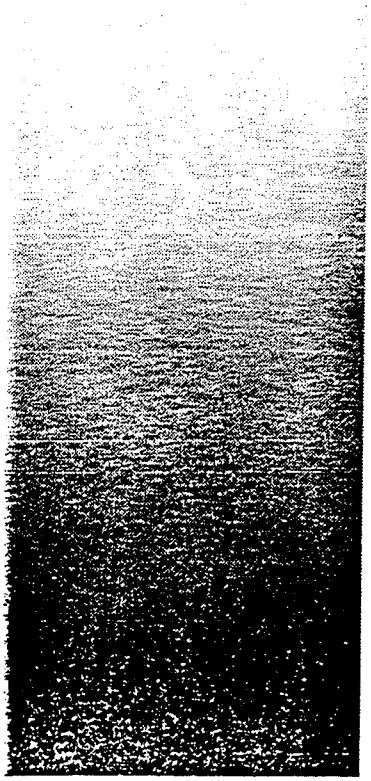




Bureau of Justice Assistance

Testing Certain Offenders for Human Immunodeficiency Virus

Guidance for States on Section 1804 Requirements



April 1992

2-6

Testing Certain Offenders for Human Immunodeficiency Virus:

Guidance for the States on Section 1804 Requirements

I. Introduction

This information is compiled and distributed by the Bureau of Justice Assistance (BJA), Office of Justice Programs, in order to provide guidance to the States, Territories, and other jurisdictional units (all hereafter referred to as States) in meeting their obligations to require testing programs for detecting the human immunodeficiency virus (HIV) in certain sex offenders. Under a provision enacted by the 101st Congress, State statutes must be enacted and enforced providing for such testing if States are to continue to receive full Federal funding under the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program in Fiscal Year 1994.

The Federal statute decreasing the amount of the formula grant for those States not observing a statutory HIV testing requirement is meant to set a minimum standard. Obviously, States may have broader requirements than set out in the Federal statute shown below, without jeopardizing their continued full funding. However, States will want to be certain that their statutes at least meet all the required elements of the Federal legislation, particularly those States whose testing acts antedate the Federal provision.

II. Background

With the frightening spread of acquired immune deficiency syndrome (AIDS) and its HIV precursor, transmitted as they are by sexual contact, another often terrifying concern has been introduced into the lives of victims of the crimes of sexual abuse or rape.

In an effort to eliminate at least part of the traumatic aftermath of such a crime upon its victims, a number of State legislatures in recent years have enacted statutes which generally require that persons convicted of sexual abuse offenses (as rape is now often denominated) must undergo HIV testing in order that their victims can at least know that they have not been exposed to the deadly virus, or if, tragically, they have been so exposed, they can seek medical treatment and take steps to protect others from the further spread of the epidemic.

By the end of 1990, about one-third of the States had enacted such statutes. Individual provisions, however, varied in form and detail. For example in some cases, the testing process was mandatory for all persons convicted of sexual abuse. In others, it was triggered only at the request of a victim. In some States, only the person convicted and the victim were entitled to the test results, while in others spouses of the victim and the convicted defendant, if any, also received the findings.

In 1990, Congress decided that the States without this legislation should be persuaded to adopt mandatory HIV testing in instances of criminal sexual abuse. In the words of the House sponsor of the measure, Congresswoman Martin of Illinois, the provision was offered "because rape victims should not have to live in fear about exposure to the AIDS virus. . . . [A]ll States should make it possible for rape victims to find out if they have been placed at risk. They have the right to know. . . . We can. . .demonstrate our compassion by preventing further traumatization of these victims who also face the possibility of exposure to the AIDS virus."

III. The Statute

Accordingly, in Sec. 1804 of the Crime Control Act of 1990 (hereafter referred to as Section 1804), Congress amended Sec. 506 of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, hereafter referred to as the Act, by adding a subsection (f), as follows:

> **(f)(1) For any fiscal year beginning more than 2 years after the effective date of this subsection-**
>
> > **(A) 90 percent of the funds allocated under subsection (a)[1], taking into consideration subsection (e)[2] but without regard to this subsection, to a State described in paragraph (2) shall be distributed by the Director to such State; and**
> >
> > **(B) 10 percent of such amount shall be allocated equally among States that are not affected by the operation of subparagraph (A).**
>
> **(2) Paragraph (1)(A) refers to a State that does not have in effect, and does not enforce, in such fiscal year, a law that requires the State at the request of the victim of a sexual act-**
>
> > **(A) to administer, to the defendant convicted under State law of such sexual act, a test to detect in such defendant the presence of the etiologic agent for acquired immune deficiency syndrome;**

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[1]Sec 506(a) of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3756(a), sets out the formula for determining the sums to be distributed to the States under the formula grant provisions of the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs.

[2]Section 506(e) of Title I of the Act, 42 U.S.C. § 3756(e), refers to funds allocated to the States, but not distributed to them, which thus become available for the discretionary grant program as provided in Sec. 510 - 518 of the Act, 42 U.S.C. § 3760-3764.

(B) to disclose the results of such test to such defendant and to the victim of such sexual act; and

(C) to provide to the victim of such sexual act counseling regarding HIV disease, HIV testing, in accordance with applicable law, and referral for appropriate health care and support services.

(3) For purposes of this subsection-

(A) the term "convicted" includes adjudicated under juvenile proceedings; and

(B) the term "sexual act" has the meaning given such term in subparagraph (A) or (B) of section 2245(1) [sic[3]] of title 18, United States Code.

Section 1804 was codified as 42 U.S.C. § 3756(f).

IV. Effective Date

Section 1804 became effective on November 29, 1990, with the enactment of the Crime Control Act of 1990. Thus, in order for a State to receive its full formula amount for the fiscal year beginning two years after passage of the 1990 Act, its HIV testing statute incorporating the Section 1804 standards must be in place for Fiscal Year 1994[4], which begins October 1, 1993.

V. The Financial Effect of Sec. 1804

Section 1804 thus requires that 10% of a State's formula grant be withheld and transferred elsewhere if that State by the Fiscal Year 1994 deadline has failed to place in effect, as well as actually enforce, the elements of the HIV testing standards created by Section 1804.

There is no waiver procedure incorporated within the statute. Consequently, BJA will be unable to waive or postpone to a later year the 10% reduction in funds for any State which should fail to comply.

Any Federal funds which must be withheld from the States because of noncompliance with the Section 1804 mandate must be allocated equally among States which have complied. Thus in addition to qualifying for continued full formula grant funding under the Act, States which enact and enforce their own statute meeting the Section 1804 standards, become eligible to share equally with other complying States in the accumulated monies withheld from States which have failed to comply.

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[3]See the comment in Paragraph 7 of Division VI, "Definition of the Term 'Sexual Act.' "

[4]Fiscal Year 1994 is the first full "fiscal year beginning more than two years after the effective date of" Section 1804. See §506(f)(1) of title I of the Act, 42 U.S.C. § 3756(f)(1).

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VI. The Section 1804 Standards

As set out above, the State statutes now in place or to be adopted must meet the minimum standards required by Section 1804. Of course, the States may enact and enforce broader requirements or standards.

However, States should regard each element of the Section 1804 standards as being required for inclusion in their State statute in order to maintain their full funding. These elements are:

1. Victim Request.

The State statute must require that the State make mandatory the testing process at the request of any victim of a sexual act (as defined below) for which the person to be tested was convicted in State court.

If the State statute requires all persons so convicted to be tested *without exception* (regardless of the absence of a victim request), then this element may be regarded as being met, since it is broader, or more inclusive in nature than Section 1804 requires. However, the requirement would not be met if the State statute would allow the person otherwise to be tested to avoid the testing process, even though the victim requested it.

2. Administration of the Test.

The State statute must provide for an agency of the State to direct the test to be administered, although the actual physical testing may be delegated to another, such as a physician, laboratory, etc. Typically, the State statute would provide for the sentencing judge to order the testing either before sentencing (perhaps as part of the order for a pre-sentence investigation) or as part of the sentencing order itself.

The State statute must direct that the procedure itself specifically test for the presence of the etiologic agent for AIDS, or HIV.

3. The Person to be Tested.

Congress required in Section 1804 that the State statute must provide that any person "convicted under State law" of a sexual act is obliged to be tested for AIDS or its HIV precursor at the victim's request. This includes persons entering pleas of guilty to a criminal sexual act (as hereafter defined), as well as those being found guilty following a jury trial or a trial to the court. It also includes juveniles thus adjudicated (see paragraph 6 below).

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4. Disclosure of the Test Results.

The State statute must provide for the disclosure, at the request of the victim, of the test results to both the victim and the person convicted. Some States have chosen to provide the test results to others as well, such as the spouses, if any, of the victim and the defendant.

5. Victim Services.

Congress required in Section 1804 that the State statutes include a provision for making certain services available to the victims of these sexual acts at their request. These services are:

1. counseling regarding HIV disease;
2. HIV testing in accordance with applicable law; and
3. referral for appropriate health care and support services.

If the language of a State statute does not incorporate the specific language of Section 1804, it must at least be so broad as to make it clear that these victims are entitled as a matter of right to request and receive the counseling, testing, and referral services specified by Congress.

Section 1804 implies that these services are to be provided at the expense of State or local governments, rather than at the victim's expense. State offices administering the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program should be prepared to inform BJA as to the sources of the funds to pay for these services and the authority therefore.

6. Definition of the Term "Convicted" as Including Juveniles.

In paragraph (3)(A) of Section 1804, Congress provided that "the term 'convicted' includes adjudicated under juvenile proceedings".

Thus, in order to be in compliance with Section 1804, State HIV testing statutes must provide that not only adult defendants convicted of defined sexual acts are required to be tested by the State at the request of the victim, but that juveniles similarly adjudicated are also required to be so tested.

7. Definition of the Term "Sexual Act."

In paragraph (3)(B) of Section 1804, Congress defined the term "sexual act" as the meaning given such term in 18 U.S.C. § 2245*(1)*(A) or (B). Clearly Congress intended to define "sexual act" as that meaning given the term in 18 U.S.C. § 2245(2)(A) or (B), which provides:

(2) the term "sexual act" means-

> (A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however, [sic] slight;
>
> (B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; . . . .

The language of the State HIV testing statute should, where possible, incorporate these definitions. However, since Section 1804 requires that the person tested must be "convicted under State law", if State statutory criminal law defines the term "sexual act" in a less inclusive manner, we do not believe this fact would automatically mean that a State is in non-compliance, because it does not appear from the language of Section 1804 or its statutory history, that Congress intended to require States to change their definitions of substantive criminal acts in order to receive their full formula grant.

VII. State Determination of Compliance with Section 1804

All State Offices should promptly review their State's statutory provisions regarding required HIV testing for sex offenders together with any other pertinent State statutory and case law. These materials should be compared with Section 1804 as set out in Division III above and as explained in Division VI immediately above. BJA suggests that this review be conducted by those providing legal advice to the State Office.

It is the responsibility of each State Office to conduct this review and comparison and to make a determination that State statutory law either is now in compliance or is not yet in compliance with the Section 1804 standards.

For those States whose legislatures have not yet enacted a mandatory HIV testing statute for sex offenders, State Office legal advisors will no doubt wish to review any bills which may be pending, making the same comparisons. Should it appear that a proposed bill does not include all elements of the Section 1804 standards, the State Office will want to make that fact known to the appropriate State legislative committees or individual legislators.

Finally, for those States without any existing or proposed legislation complying with Section 1804, BJA suggests that the State Offices make the appropriate legislative committees and/or legislators aware of the Section 1804 requirements promptly.

To assist the States in assessing the degree of their Section 1804 compliance, a worksheet is included as an Appendix to these materials. BJA believes that the worksheet will serve as a useful tool in that endeavor and suggests that each State Office make use of it in arriving at its own determination as to Section 1804 compliance.

If, after conducting its own review, a State Office still has a question as to whether State law is in compliance with the Section 1804 standards, it may request BJA to review

its enacted statutory materials. However, a State should not request a BJA review un... after conducting its own study based on the information contained in these materials. Nor should a State request a BJA review if it is apparent from a completed worksheet that it does not yet comply with all of the elements of the Section 1804 standards.

Appendix

Worksheet

For Fiscal Year 1994, States and other Jurisdictions (for convenience hereafter referred to as States) must be in compliance with the HIV mandatory testing standards for certain offenders established by Sec. 1804 of the Crime Control Act of 1990, 42 U.S.C. § 3756(f) (hereafter referred to as Section 1804) in order to receive continued full funding under the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program.

The purpose of this worksheet is to assist the States in providing a self-assessment of their compliance with Section 1804. It need not be returned.

1. Victim Request.

Does the State statute require an HIV testing procedure at the request of any victim of a sexual act for which the person to be tested was convicted in State court (or make such a test mandatory for *all* persons thus convicted regardless of victim request)?

_____Yes _____No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

2. Administration of the Test.

Does the State statute require an agency of the State (such as a court, health department, correctional authority, etc.) to direct that a test be administered in such cases?

_____Yes _____No

Does the State statute specifically require testing in these cases for the presence of acquired immune deficiency syndrome (AIDS) or its precursor, human immunodeficiency virus (HIV).

_____Yes _____No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

3. The Person to be Tested.

Does the State statute require persons to be tested who have been convicted under State law of a defined sexual act?

_____Yes, in all cases _____Yes, but only at the request of a victim _____ No

Does this either specifically or by definitional inclusion encompass persons found guilty of the offense by a jury or court, as well as those entering a pleas of guilty? *(Note: Because Question 6 below concerns the definition of juveniles as persons "convicted," please disregard that issue for Question 3).*

_____Yes _____No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

4. Disclosure of the Test Results.

Does the State statute provide for disclosure of the test results to the both the victim and the person tested?

_____Yes _____No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

5. Victim Services.

Does the State statute provide for making the following services available to the victims of these sexual acts at their request:

1. Counseling regarding HIV disease?
   _____Yes _____No

2. HIV testing in accordance with applicable law?
   _____Yes _____No

3. Referral for appropriate health care and support services?
   _____Yes _____No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

What are the sources of the funds to pay for these services?

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

6. Definition of the term "convicted" as including Juveniles.

Does the State statute require HIV testing for juveniles who have been adjudicated under State law of committing sexual acts as it does with adults?

_____Yes _____No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

7. Definition of the term "Sexual Act."

Does the State statute define "sexual act" as having the meaning (either literal or approximate) as that given the term in 18 U.S.C. § 2245(2)(A) or (B)? (See Division 7 of the "Guide for the States").

_____Yes _____No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

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Worksheet

For Fiscal Year 1994, States and other Jurisdictions (for convenience hereafter referred to as States) must be in compliance with the HIV mandatory testing standards for certain offenders established by Sec. 1804 of the Crime Control Act of 1990, 42 U.S.C. § 3756(f) (hereafter referred to as Section 1804) in order to receive continued full funding under the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program.

The purpose of this worksheet is to assist the States in providing a self-assessment of their compliance with Section 1804. It need not be returned.

1. Victim Request.

Does the State statute require an HIV testing procedure at the request of any victim of a sexual act for which the person to be tested was convicted in State court (or make such a test mandatory for *all* persons thus convicted regardless of victim request)?

__X__ Yes _____ No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority? Pursuant to Senate Bill No. 275, §§ 1 and 2 the above question may be answered in the affirmative. SB275 is attached.

2. Administration of the Test.

Does the State statute require an agency of the State (such as a court, health department, correctional authority, etc.) to direct that a test be administered in such cases?

__X__ Yes _____ No

Does the State statute specifically require testing in these cases for the presence of acquired immune deficiency syndrome (AIDS) or its precursor, human immunodeficiency virus (HIV).

__X__ Yes _____ No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

Qa: SB 275, ss 1(d) (victims of juvenile offenders or felons) and 2(d) (victims of convicted adults)

Qb: SB 275, §§ 1(a) (4) (definitions) and 2(a) (4) (definitions)

3. The Person to be Tested.

Does the State statute require persons to be tested who have been convicted under State law of a defined sexual act?

_____Yes, in all cases __X__Yes, but only at the request of a victim _____ No

Does this either specifically or by definitional inclusion encompass persons found guilty of the offense by a jury or court, as well as those entering a pleas of guilty? *(Note: Because Question 6 below concerns the definition of juveniles as persons "convicted," please disregard that issue for Question 3).*

__X__Yes _____No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?
Qa: SB275, §2(c)
Qb: SB275, §2(a)(1)

4. Disclosure of the Test Results.

Does the State statute provide for disclosure of the test results to the both the victim and the person tested?

__X__Yes _____No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority? SB275, §§ 1(d) and 2(d)

5. Victim Services.

Does the State statute provide for making the following services available to the victims of these sexual acts at their request:

1. Counseling regarding HIV disease?
__X__Yes _____No

2. HIV testing in accordance with applicable law?
__X__Yes _____No

3. Referral for appropriate health care and support services?
__X__Yes _____No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?
SB275, §§ 1(d) and 2(d)

2-18

What are the sources of the funds to pay for these services?
State funds appropriated to the Kansas Department of Health and Environment.

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority? SB 275, §§ 1(e) and 2(e)

6. Definition of the term "convicted" as including Juveniles.

Does the State statute require HIV testing for juveniles who have been adjudicated under State law of committing sexual acts as it does with adults?

__x__ Yes _____ No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority? SB 275, §1

7. Definition of the term "Sexual Act."

Does the State statute define "sexual act" as having the meaning (either literal or approximate) as that given the term in 18 U.S.C. § 2245(2)(A) or (B)? (See Division 7 of the "Guide for the States").

__x__ Yes _____ No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority? SB 275, §§ 1(a)(3) and 2(a)(3)

STATE OF KANSAS

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TESTIMONY OF
JULIENE A. MASKA
STATEWIDE VICTIMS' RIGHTS COORDINATOR
BEFORE THE SENATE JUDICIARY COMMITTEE
RE: SENATE BILL 275
FEBRUARY 17, 1993

On behalf of Attorney General Bob Stephan, I ask for your support of Senate Bill 275. This bill will assist crime victims in asking the court to have a convicted offender of a crime, where bodily fluids have been exchanged, to submit to an HIV test.

Attorney General Stephan believes it is very important that all crime victims who have been exposed to bodily fluids of the offender be able to ask the court for testing. In New Section 1 of the bill, the juvenile offender of only sex crimes would possibly be tested. In Section 2 of the bill where there is an adult offender, it not only includes sex crimes but also crimes where there has been transmission of body fluids. It would make sense to be consistent in both sections.

(over)

SJ
2-17-93
Attachment 3

Another concern of General Stephan's is that all crime victims where there has been the transmission of body fluids be informed of information about HIV testing. It is his understanding that testing is done after six months have passed since being exposed. A trial could take longer than six months and every victim who has the potential of being infected should know the risks and information on how to be tested. Also, the victim should understand by the time a defendant may be ordered to submit to testing and possibly test positive, it does not mean that the defendant was positive at the time the crime was committed against the victim.

General Stephan would also like to see the bill amended to include that the secretary of health and environment mandate that all health care providers who administer services to victims provide victims with written information concerning HIV testing or other medical procedures which would be available to fully inform the victim of any risk to which they may be exposed. This would be a very crucial step in assuring that victims of crime receive pertinent information about the risk of possible exposure and availability of testing.

State of Kansas
Joan Finney, *Governor*

Department of Health and Environment

[redacted]
Robert C. Harder, Secretary Reply to:

Testimony presented to

Senate Judiciary Committee

by

The Kansas Department of Health and Environment

SB 275

I am here today to speak in favor of SB 275. Passage of this legislation is necessary for the state to continue receiving full funding for programs that prevent and treat the use of alcohol and other drugs.

As Director of the AIDS Section of the Kansas Department of Health and Environment, I have seen studies that consistently document the linkage between the spread of the Human Immunodeficiency Virus (HIV) and the use of alcohol and other drugs. Fourteen percent of all Kansas AIDS cases have been in persons who self report a history of sharing injection drug paraphernalia. Other forms of drugs, alcohol and cocaine in particular, are playing a significant role in the spread of sexually transmitted diseases (including HIV infection) among Kansans. KDHE estimates that alcohol plays a role in the transmission of syphilis for 70% of persons diagnosed through local health department clinics, alcohol plays a role in their becoming infected. Cocaine is believed to be a factor in 100% of these cases.

Individuals under the influence of drugs are frequently unable to make choices consistent with maintaining good health. They may have unprotected sexual intercourse with an unknown partner who may be at-risk for a sexually transmitted disease. If the substance involved is an illicit one, the user may also trade unprotected sex for drugs or for money to buy drugs.

Drug prevention and treatment programs are crucial if we are to reduce the incidence of sexually transmitted diseases. These programs are important in our efforts to break the linkage between substance use and these diseases.

I ask your support of SB 275 so that Kansas can continue to receive funds to support drug programs in the state.

Testimony presented by: Sally Finney
Director, AIDS Section
Bureau of Disease Control
February 17, 1993

SJ

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2-17-93
Attachment 4

KANSAS BUREAU OF INVESTIGATION

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TESTIMONY
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
BEFORE THE SENATE JUDICIARY COMMITTEE
IN SUPPORT OF SENATE BILL 291
FEBRUARY 17, 1993

Mr. Chairman and Members of the Committee:

I appear today in support of Senate Bill 291 which is primarily a clean-up bill clarifying statutory language on when a law enforcement officer is justified in using lethal force.

In the 1985 U.S. Supreme Court case Tennessee v. Garner, it was held that lethal force may not be utilized to stop a fleeing felon unless the officer had probable cause to believe that the person had committed a felony involving great bodily harm. The statute was amended in an effort to come into compliance with that decision, however, rather than use the court's language of "probable cause" the term "reasonably believes" was used.

The Kansas Law Enforcement Training Center (KLETC) has requested that I attempt to correct this difference in language. Their concern is that "reasonably believes" is quite similar to "reasonable suspicion" a term of art in the field of criminal justice which is substantially lower than probable cause. As such, they are afraid that some law enforcement officer or law enforcement agency might read the statute and not realize or apply the proper standard.

This bill does not change the law, but merely correctly reflects it. I would be happy to answer any questions.

#092

SJ
2-17-93
Attachment 5

February 12,1993

Testimony before the Senate Judiciary Sub-Committee
on Family Law
SB 213

Since the inception of ACES, The Association for Children for Enforcement of Support, in Johnson County, we have strived to attain timely collection of court ordered child support for our children. This has not been an easy task but we have seen some improvement and fortunately, some of our members are starting to realize financial support from the absent parent. Payments are not always made in accordance with the court order, there are times when the child support is not paid for extended periods of time. It is our belief that all available means of collection should be used, as mandated by federal and state laws.

When we proposed the idea for this piece of legislation, we did so with the knowledge that the majority of non-payors hate to part with their money, even when this money has a direct impact on the children. Absent parents realize that non-payment does not pose much of a threat to their livelihood or lifestyle. The possibility of serving jail time for contempt or criminal non support is remote, and the absent parent is aware of this.

After divorce the average family may count on 6 months of compliance with the child support order. When this 6 month timeframe passes, the majority of absent parents start paying late, several months later they start skipping payments. This results into a pattern that is difficult to break, and we end up with children whom are owed tremendous amounts of money. We do have a Johnson County case in which 3 children are owed in excess of $90,000.00 accumulated over ten years.

A majority of the custodial parents that ACES deals with are only one pay check away from the welfare rolls. When the child support is late the family often times is unable to pay their bills in a timely fashion. When the check finally does arrive, the bills are paid, with an additional fee to cover late charges. These late fees are not often waived and non payment could cause the family to lose use of a utility, health care provider, etc. The family cannot afford, however minor, these additional expenses.

The recipients of child support, our children, should be treated as all other creditors that exist. It is our sincere hope that this late fee will encourage stricter compliance with the court orders by the absent parent.

Please, we need your support on SB 213, the children of Kansas are counting on you to put more teeth into the crime of non support for a child.

SJ
2-17-93
Attachment 6

KANSAS BUREAU OF INVESTIGATION

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TESTIMONY
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
BEFORE THE SENATE JUDICIARY FAMILY LAW SUB-COMMITTEE
REGARDING SENATE BILL 211
FEBRUARY 12, 1993

Mr. Chairman and Members of the Sub-Committee:

My name is Kyle Smith. I am an Assistant Attorney General assigned to the Kansas Bureau of Investigation (KBI). I am here today to testify as a proponent of Senate Bill 211.

Senate Bill 211 would specifically prohibit the KBI from charging a fee for providing record checks to block parent programs such as the McGruff House Program. The block parent program not only provides a meaningful social service, but is basically operated by volunteer participants, so a fee would discourage such programs.

However, it is the KBI's position that where a record check is part of a licensure requirement in a commercial venture, it is appropriate that the person operating the business and receiving the benefit of the record check bear the cost rather than the taxpayers at large. Last year we requested Senate Bill 776 which clarified the procedures for rendering criminal history record information and provided that, where appropriate, licensing fees would cover reimbursement for the cost of running KBI record checks. At that time Senator Parkinson's exemption for block parent programs was added on as an amendment to that bill.

This year I am here to ask that bill be added on as an amendment to Senator Parkinson's. I have provided copies of SB 776 and would ask that the language contained in section 1 be incorporated into SB 211 to provide clear guidance as to the dissemination of record checks and making those who benefit from the record checks bear the cost of it.

I would be happy to answer any questions.

#087

SJ
2-17-93
Attachment 7

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 1992

SENATE BILL No. 776

By Committee on Ways and Means

3-23

AN ACT concerning criminal procedure; relating to criminal history record information; establishment of fee schedule; payment and reimbursement[; amending K.S.A. 22-4707 and repealing the existing section].

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) The director shall, by rule and regulation establish a fee schedule for criminal history record information which is disseminated pursuant to this act or any other provision of law. Such fees shall be paid to the Kansas bureau of investigation by all requestors of criminal history record information if such information is intended for a noncriminal ~~investigation~~ justice purpose. ~~Information~~ Except as provided further, information requests for employment, licensing, registration or other administrative purposes shall not be considered criminal investigations. The director may deny a request for such information if payment of the established fee does not accompany the request.

(b) A state agency requesting such information in carrying out its regulatory functions shall require payment or reimbursement of such costs by any entity or person so regulated by that agency. A state agency requesting such information for employment purposes may require payment or reimbursement of such costs by applicants for employment. Payment or reimbursement may be provided for through licensing fees, payment to the agency for the direct costs of acquiring the information or direct payment to the Kansas bureau of investigation.

(c) In establishing fees, the director shall seek to recover part or all of the direct and indirect costs associated with the collection, maintenance and retrieval of criminal history record information. All fees received by the director under this section shall be deposited in the state treasury and credited to the criminal history record check fees fund. ~~Expenditures~~ Subject to the provisions of appropriation acts, expenditures from this fund shall be made only for

operating costs directly or indirectly related to collection, maintenance and retrieval of criminal history records.

(d) Information requests for the purpose of participating in a block parent program, including but not limited to the McGruff house program, shall not be charged a fee.

(e) This section shall be part of and supplemental to the criminal history record information act, K.S.A. 22-4701 *et seq.*

[Sec. 2. K.S.A. 22-4707 is hereby amended to read as follows: 22-4707. (a) A criminal justice agency and the central repository may not disseminate criminal history record information except in strict accordance with laws including applicable rules and regulations adopted pursuant to this act. A criminal justice agency may not request such information from the central repository or another criminal justice agency unless it has a legitimate need for the information.

[(b) Noncriminal justice persons and agencies may receive criminal history record information for such purposes and under such conditions as may be authorized by law, including rules and regulations adopted pursuant to this act. *Any criminal history record information disseminated to a noncriminal justice person or agency shall only include information resulting in a conviction.*

[(c) The central repository or a criminal justice agency may not subvert the requirements of this section by merely confirming or denying the existence or nonexistence of criminal history record information relating to a person.

[(d) In addition to any other remedy or penalty authorized by law, any individual violating or causing a violation of the provisions of this section shall be deemed guilty of a class A misdemeanor. If the person is employed or licensed by a state or local government agency, a conviction shall constitute good cause to terminate employment or to revoke or suspend a license.

[Sec. 3. K.S.A. 22-4707 is hereby repealed.]

Sec. 2 [4]. This act shall take effect and be in force from and after its publication in the statute book.

Session of 1993

SENATE BILL No. 10

By Special Committee on Judiciary

Re Proposal No. 25

12-18

AN ACT concerning criminal procedure; relating to commitment and release of persons acquitted because of insanity and persons committed after conviction but prior to sentence; requiring a finding of mental illness to continue commitment; amending K.S.A. 22-3431 and K.S.A. 1992 Supp. 22-3428 ~~and~~, 22-3428a and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1992 Supp. 22-3428 is hereby amended to read as follows: 22-3428. (1) *(a)* When a ~~person~~ *defendant* is acquitted on the ground that the ~~person~~ *defendant* was insane at the time of the commission of the alleged crime, the verdict shall be not guilty because of insanity and the ~~person~~ *defendant* shall be committed to the state security hospital for safekeeping and treatment. A finding of not guilty by reason of insanity shall constitute a finding that the acquitted ~~person~~ *defendant* committed an act constituting the offense charged or an act constituting a lesser included crime, except that the ~~person~~ *defendant* did not possess the requisite criminal intent. A finding of not guilty because of insanity shall be prima facie evidence that the acquitted ~~person~~ *defendant* is presently likely to cause harm to self or others.

(b) Within 90 days of the defendant's admission, the chief medical officer of the state security hospital shall send to the court a written evaluation report. Upon receipt of the report, the court shall set a hearing to determine whether or not the defendant is currently a mentally ill person. The hearing shall be held within 30 days after the receipt by the court of the chief medical officer's report.

(c) The court shall give notice of the hearing to the chief medical officer of the state security hospital, the district or county attorney, the defendant and the defendant's attorney. The defendant shall remain at the state security hospital pending the hearing.

(d) At the hearing, the defendant shall have the right to present evidence and cross examine witnesses. At the conclusion of the hearing, if the court finds by clear and convincing evidence that the

Attachment 8

Recommended Subcommittee Amendments to S.B. No. 10

limitations on plea bargains; assessment of cost of care and treatment

22-3219,

and 22-3430

The court shall inform the defendant that such defendant is entitled to counsel and that counsel will be appointed to represent the defendant if the defendant is not financially able to employ an attorney.

defendant is not currently a mentally ill person, the court shall dismiss the criminal proceeding and discharge the defendant. ~~*If the court finds by clear and convincing evidence that the defendant is currently a mentally ill person, then*~~ *the court may commit the defendant to the state security hospital for treatment or may place the defendant on conditional release pursuant to subsection (4).*

(2) Subject to the provisions of subsection (3):

(a) Whenever it appears to the chief medical officer of the state security hospital that a person committed under ~~this section~~ *subsection (1)(d)* is not ~~dangerous~~ *likely to cause harm* to other persons *in a less restrictive hospital environment*, the officer may transfer the person to any state hospital, subject to the provisions of subsection ~~(4)~~ *(3)*. At any time subsequent thereto during which such person is still committed to a state hospital, if the chief medical officer of that hospital finds that the person may ~~again be dangerous to other persons~~ *be likely to cause harm or has caused harm, to others*, such officer may transfer the person back to the state security hospital.

(b) Any person committed under ~~this section~~ *subsection (1)(d)* may be granted conditional release or discharge as an involuntary patient.

(3) Before transfer of a person from the state security hospital pursuant to subsection (2)(a) or conditional release or discharge of a person pursuant to subsection (2)(b), the chief medical officer of the state security hospital or the state hospital where the patient is under commitment shall give notice to the district court of the county from which the person was committed that transfer of the patient is proposed or that the patient is ready for ~~such~~ proposed *conditional* release or discharge. Such notice shall include, but not be limited to: (a) Identification of the patient; (b) the course of treatment; (c) a current assessment of ~~whether the patient is likely to cause harm to self or others if released or discharged~~ *the defendant's mental illness*; (d) recommendations for future treatment, if any; and (e) recommendations regarding conditional release or discharge, if any. Upon receiving ~~such~~ notice, the district court shall order that a hearing be held on the proposed transfer, *conditional* release or discharge. The court shall give notice of the hearing to the state hospital or state security hospital where the patient is under commitment and to the district or county attorney ~~and sheriff~~ of the county from which the person was originally ordered committed and shall order the involuntary patient to undergo a mental evaluation by a person designated by the court. A copy of all orders of the court shall be sent to the involuntary patient and the patient's at-

, otherwise

torney. The report of the court ordered mental evaluation shall be given to the district or county attorney, the involuntary patient and the patient's attorney at least five days prior to the hearing. The hearing shall be held within 30 days after the receipt by the court of the chief medical officer's notice. The involuntary patient shall remain in the state hospital or state security hospital where the patient is under commitment until the hearing on the proposed transfer, *conditional* release or discharge is to be held. At the hearing, the court shall receive all relevant evidence, including the written findings and recommendations of the chief medical officer of the state security hospital or the state hospital where the patient is under commitment, and shall determine whether the patient ~~will be likely to cause harm to self or others if transferred,~~ *shall be transferred to a less restrictive hospital environment or whether the patient shall be conditionally* released or discharged. The patient shall have the right to present evidence at such hearing and to cross-examine any witnesses called by the district or county attorney. At the conclusion of the hearing, if the court finds by clear and convincing evidence that the patient will not be likely to cause harm to self or others if transferred~~, released or discharged~~ *to a less restrictive hospital environment*, the court shall order the patient transferred~~, discharged or conditionally released,~~ ~~otherwise~~. *If the court finds by clear and convincing evidence that the patient is not currently a mentally ill person, the court shall order the patient discharged or conditionally released.* ~~*If the court finds by clear and convincing evidence the patient continues to be a mentally ill person,*~~ , otherwise the court shall order the patient to remain in the state security hospital or state hospital where the patient is under commitment. ~~If conditional release or discharge of the patient is proposed and the court finds by clear and convincing evidence presented at the hearing that upon release or discharge the patient will not be likely to cause harm to self or others if the patient continues to take preseribed medication or to receive periodic psychiatric or psychological treatment, the court may order the patient conditionally released in accordance with subsection (4).~~ If the court orders the conditional release of the patient *in accordance with subsection (4)*, the court may order as an additional condition to the release that the patient continue to take prescribed medication and report as directed to a person licensed to practice medicine and surgery to determine whether or not the patient is taking the medication or that the patient continue to receive periodic psychiatric or psychological treatment.

(4) In order to insure the safety and welfare of a patient who is

to be conditionally released and the citizenry of the state, the court may allow the patient to remain in custody at a facility under the supervision of the secretary of social and rehabilitation services for a period of time not to exceed 30 days in order to permit sufficient time for the secretary to prepare recommendations to the court for a suitable reentry program for the patient. The reentry program shall be specifically designed to facilitate the return of the patient to the community as a functioning, self-supporting citizen, and may include appropriate supportive provisions for assistance in establishing residency, securing gainful employment, undergoing needed vocational rehabilitation, receiving marital and family counseling, and such other outpatient services that appear beneficial. If a patient who is to be conditionally released will be residing in a county other than the county where the district court that ordered the conditional release is located, the court shall transfer venue of the case to the district court of the other county and send a copy of all of the court's records of the proceedings to the other court. In all cases of conditional release the court shall: (a) Order that the patient be placed under the temporary supervision of state parole and probation services, district court probation and parole services, *community treatment facility* or any appropriate private agency; and (b) require as a condition precedent to the release that the patient agree in writing to waive extradition in the event a warrant is issued pursuant to K.S.A. 22-3428b and amendments thereto.

(5) At any time during the conditional release period, a conditionally released patient, through the patient's attorney, or the county or district attorney of the county in which the district court having venue is located may file a motion for modification of the conditions of release, and the court shall hold an evidentiary hearing on the motion within 15 days of its filing. The court shall give notice of the time for the hearing to the patient and the county or district attorney. If the court finds from the evidence at the hearing that the conditional provisions of release should be modified or vacated, it shall so order. If at any time during the transitional period the designated medical officer or supervisory personnel or the treatment facility informs the court that the patient is not satisfactorily complying with the provisions of the conditional release, the court, after a hearing for which notice has been given to the county or district attorney and the patient, may make orders: (a) For additional conditions of release designed to effect the ends of the reentry program, (b) requiring the county or district attorney to file an application to determine whether the patient is a mentally ill person as provided in K.S.A. 59-2913 and amendments thereto, or (c) requiring that

the patient be committed to the state security hospital or any state hospital. In cases where an application is ordered to be filed, the court shall proceed to hear and determine the application pursuant to the treatment act for mentally ill persons and that act shall apply to all subsequent proceedings. The costs of all proceedings, the mental evaluation and the reentry program authorized by this section shall be paid by the county from which the person was committed.

(6) In any case in which the defense of insanity is relied on, the court shall instruct the jury on the substance of this section.

(7) As used in this section and K.S.A. 22-3428a and amendments thereto, ~~"likely to cause harm to self or others" has~~, *"mentally ill persons" and "treatment facility" have* ~~the meaning provided by K.S.A. 59-2902 and amendments thereto~~: (a) "Likely to cause harm to self or others" means that the person is likely, in the reasonably foreseeable future, to cause substantial physical injury or physical abuse to self or others or substantial damage to another's property, or evidenced by behavior causing, attempting or threatening such injury, abuse or neglect.

(b) "Mentally ill person" means any person who:

(1) Is suffering from a severe mental disorder to the extent that such person is in need of treatment; and

(2) is likely to cause harm to self or others.

(c) "Treatment facility" means any mental health center or clinic, psychiatric unit of a medical care facility, psychologist, physician or other institution or individual authorized or licensed by law to provide either inpatient or outpatient treatment to any patient.

Sec. 2. K.S.A. 1992 Supp. 22-3428a is hereby amended to read as follows: 22-3428a. (1) Any person found not guilty because of insanity who remains in the state security hospital or a state hospital for over one year pursuant to a commitment under K.S.A. 22-3428 and amendments thereto shall be entitled annually to request a hearing to determine whether or not the person ~~will be likely to cause harm to self or others if discharged~~ *continues to be a mentally ill person*. The request shall be made in writing to the district court of the county where the person is hospitalized and shall be signed by the committed person or the person's counsel. When the request is filed, the court shall give notice of the request to: (a) The county or district attorney of the county in which the person was originally ordered committed, and (b) the chief medical officer of the state security hospital or state hospital where the person is committed. The chief medical officer receiving the notice, or the officer's designee, shall conduct a mental examination of the person and shall send to the district court of the county where the person is hospitalized and to the county or district attorney of the county in which the person was originally ordered committed a report of the examination within 20 days from the date when notice from the court was received. Within ~~five~~ *10* days after receiving the report of the examination, the county or district attorney receiving it may file a motion with the district court that gave the notice, requesting the court to change the venue of the hearing to the district court of the county in which the person was originally committed, or the court that gave the notice on its own motion may change the venue of the hearing to the district court of the county in which the person was originally committed. Upon receipt of that motion and the report of the mental examination or upon the court's own motion, the court shall transfer the hearing to the district court specified in the motion

and send a copy of the court's records of the proceedings to that court.

(2) After the time in which a change of venue may be requested has elapsed, the court having venue shall set a date for the hearing, giving notice thereof to the county or district attorney of the county, the committed person and the person's counsel. If there is no counsel of record, the court shall appoint a counsel for the committed person. The committed person shall have the right to procure, at the person's own expense, a mental examination by a physician or licensed psychologist of the person's own choosing. If a committed person is financially unable to procure such an examination, the aid to indigent defendants provisions of article 45 of chapter 22 of the Kansas Statutes Annotated shall be applicable to that person. A committed person requesting a mental examination pursuant to K.S.A. 22-4508 and amendments thereto may request a physician or licensed psychologist of the person's own choosing and the court shall request the physician or licensed psychologist to provide an estimate of the cost of the examination. If the physician or licensed psychologist agrees to accept compensation in an amount in accordance with the compensation standards set by the board of supervisors of panels to aid indigent defendants, the judge shall appoint the requested physician or licensed psychologist; otherwise, the court shall designate a physician or licensed psychologist to conduct the examination. Copies of each mental examination of the committed person shall be filed with the court at least five days prior to the hearing and shall be supplied to the county or district attorney receiving notice pursuant to this section and the committed person's counsel.

(3) At the hearing the committed person shall have the right to present evidence and cross-examine the witnesses. The court shall receive all relevant evidence, including the written findings and recommendations of the chief medical officer of the state security hospital or state hospital where the person is under commitment, and shall determine whether the committed person ~~will be likely to cause harm to self or others if discharged~~ *continues to be a mentally ill person*. At the hearing the court may make any order that a court is empowered to make pursuant to subsections (3), (4) and (5) of K.S.A. 22-3428 and amendments thereto. If the court finds by clear and convincing evidence the committed person ~~will not be likely to cause harm to self or others if discharged~~ *is not a mentally ill person*, the court shall order the person discharged; otherwise, the person shall remain committed or be conditionally released.

(4) Costs of a hearing held pursuant to this section shall be

assessed against and paid by the county in which the person was originally ordered committed.

Sec. 3. K.S.A. 22-3431 is hereby amended to read as follows: 22-3431. *(1)* Whenever it appears to the chief medical officer of the institution to which a ~~person~~ *defendant* has been committed under K.S.A. 22-3430 and amendments thereto, that ~~such person is not dangerous to self or others and that such person~~ *the defendant* will not be improved by further detention in such institution, ~~such person shall be returned to the court where convicted and~~ *the chief medical officer shall give written notice thereof to the district court where the defendant was convicted. Such notice shall include, but not be limited to: (a) Identification of the patient; (b) the course of treatment; (c) a current assessment of the defendant's psychiatric condition; (d) recommendations for future treatment, if any; and (e) recommendations regarding discharge, if any.*

(2) Upon receiving such notice, the district court shall order that a hearing be held. The court shall give notice of the hearing to: (a) The state hospital or state security hospital where the defendant is under commitment; (b) the district or county attorney of the county from which the defendant was originally committed; (c) the defendant; and (d) the defendant's attorney. The hearing shall be held within 30 days after the receipt by the court of the chief medical officer's notice.

(3) At the hearing, the defendant shall be sentenced, committed, granted probation, assigned to a community correctional services program or discharged as the court deems best under the circumstance. The time spent in a state or county institution pursuant to a commitment under K.S.A. 22-3430 and amendments thereto shall be credited against any sentence, confinement or imprisonment imposed on the defendant.

Sec. 4. K.S.A. 22-3431 and K.S.A. 1992 Supp. 22-3428 ~~and~~, 22-3428a, are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the Kansas register.

The court shall inform the defendant that such defendant is entitled to counsel and that counsel will be appointed to represent the defendant if the defendant is not financially able to employ an attorney.

Insert Sec. 4. and Sec. 5 attached and renumber remaining sections

22-3219,

,

and 22-3430

Sec. 4. K.S.A. 1992 Supp. 22-3219 is hereby amended to read as follows: 22-3219. (1) Evidence of mental disease or defect excluding criminal responsibility is not admissible upon a trial unless the defendant serves upon the prosecuting attorney and files with the court a written notice of such defendant's intention to assert the defense of insanity or other defense involving the presence of mental disease or defect. Such notice must be served and filed before trial and not more than ~~thirty~~ 30 days after entry of the plea of not guilty to the information or indictment. For good cause shown the court may permit notice at a later date.

(2) A defendant who files a notice of intention to assert the defense of insanity or other defense involving the presence of mental disease or defect thereby submits and consents to abide by such further orders as the court may make requiring the mental examination of the defendant and designating the place of examination and the physician or ~~physicians~~ licensed psychologist by whom such examination shall be made. No order of the court respecting a mental examination shall preclude the defendant from procuring at such defendant's own expense an examination by a physician or licensed psychologist of such defendant's own choosing. A defendant requesting a mental examination pursuant to K.S.A. 22-4508 and amendments thereto may request a physician or licensed psychologist of such defendant's own choosing. The judge shall inquire as to the estimated cost for such examination and shall appoint the requested physician or licensed psychologist if such physician or licensed psychologist agrees to accept compensation in an amount in accordance with the compensation standards set by the board of supervisors of panels to aid indigent defendants. A report of each mental examination of the defendant shall be filed in the court and copies thereof

shall be supplied to the defendant and the prosecuting attorney.

(3) The court shall not accept a plea bargain where the defendant enters a plea of not guilty by reason of insanity unless there is prima facia evidence confirming the existence of the insanity. Such prima facia evidence shall consist of, but not be limited to, an examination conducted by a physician or licensed psychologist which concludes the defendant was legally insane at the time of the commission of the crime.

Sec. 5. K.S.A. 1992 Supp. 22-3430 is hereby amended to read as follows: 22-3430. (a) If the report of the examination authorized by K.S.A. 22-3429 and amendments thereto shows that the defendant is in need of psychiatric care and treatment, that such treatment may materially aid in the defendant's rehabilitation and that the defendant and society are not likely to be endangered by permitting the defendant to receive such psychiatric care and treatment, in lieu of confinement or imprisonment, the trial judge shall have power to commit such defendant to: (1) The state security hospital or any county institution provided for the reception, care, treatment and maintenance of mentally ill persons, if the defendant is convicted of a felony; or (2) any state or county institution provided for the reception, care, treatment and maintenance of mentally ill persons, if the defendant is convicted of a misdemeanor. The court may direct that the defendant be detained in such hospital or institution until further order of the court or until the defendant is discharged under K.S.A. 22-3431 and amendments thereto. No period of detention under this section shall exceed the maximum term provided by law for the crime of which the defendant has been convicted. ~~The trial judge shall, at the time of such commitment, make an order imposing liability upon the defendant, or such person or persons responsible for the support of the defendant, or upon the county or the state, as may be proper in such case, for the cost of admission, care and discharge of such defendant~~ The cost of care and treatment provided by a state institution shall be assessed in accordance

with K.S.A. 59-2006 and amendments thereto.

(b) No defendant committed to the state security hospital pursuant to this section upon conviction of a felony shall be transferred or released from such hospital except on recommendation of the staff of such hospital.

(c) The defendant may appeal from any order of commitment made pursuant to this section in the same manner and with like effect as if sentence to a jail, or to the custody of the director of penal institutions had been imposed in this case.

LARNED STATE HOSPITAL

MEMO TO: Senator Tim Emert

FROM: Brenda West Hagerman, SRS Legal Counsel BWH/srm

SUBJECT: Statistics concerning patients found not guilty by reason of insanity admitted to State Security Hospital

DATE: February 5, 1993

Please find enclosed detailed information on the number of insanity acquittees admitted to State Security Hospital pursuant to K.S.A. 22-3428 since FY'89. A breakdown of this information reveals the following:

1. Insanity Admissions to State Security Hospital:

	Admissions	Discharges
admitted prior to FY'89 with continuous hospitalization	9	
FY'89	3	0
FY'90	8	3
FY'91	7	4
FY'92	8	2
FY'93 to date	4	4
	39	13

2. Insanity Acquittees at State Security Hospital on February 4, 1993 - 26

3. Median Length of Stay - 319.5 days
Average Length of Stay- 441 days
(information supplied by Medical Records)

4. Cases which were decided by:

Plea Bargain 35
Jury 4

5. Cases where M'Naghten evaluations were performed prior to finding/plea of insanity:

Evaluations by SSH - 11 (7 positive and 4 negative findings)

Evaluations by other mental health professionals - 13

SJ
2-17-93
Attachment 9

6. Potential number of court ordered discharges/conditional releases pursuant to Foucha - 7

7. Summary of charges of 39 patients:

Murder	12
Attempted 1st Degree Murder	5
Aggravated Assault/Battery	27
Rape	3
Kidnapping	2
Robbery	2

Please call my office at 316-285-4595 if I can provide any clarification of this information.

BWH:wm
Enc.
cc: Walter Menninger, M.D.
Randy Proctor
John Badger

BWH:wm

HER

STATE SECURITY HOSPITAL, Larned, Kansas

Date of Adm.	Date of Disch.	Length of Stay in days	County	Crimes	M'Naghten Eval./Results	Plea Bargain/ Jury Trial
2/16/73	HERE		Reno	Murder (1 count)	Menninger Foundation - Positive	Plea
3/20/74	HERE		Wyandotte	1st Deg. Murder	Dr. Wm. McNally - KU	Jury
5/6/75	HERE		Sedgwick	1st Deg. Murder		Plea
10/31/77	HERE		Saline	Rape Agg. Battery	Hertzler Clinic	Jury
5/19/82 (2nd)	HERE		Sedgwick	Agg. Battery		Plea
2/24/86 (2nd)	HERE		Miami	Agg. Sexual Battery Simple Battery	SSH - #1 - No opinion #2 - Positive	Plea
12/2/87	HERE Cond.Release to LSH		Pawnee	Agg. Battery Terroristic Threat		Plea

STATE SECURITY HOSPITAL, Larned, Kansas

HER (pg.2)

Date of Aom.	Date of Disch.	Length of Stay in days	County	Crimes	M'Naghten Eval./Results	Plea Bargain/ Jury Trial
3/4/88	HERE		Sedgwick	1st Deg. Murder (1 count) Attempt. 1st Deg. Murder (3 cnts)		Plea
12/16/85 (13th)	HERE		Sedgwick	Agg. Kidnap. (1 cnt) Rape (1 cnt)		Plea

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STATE SECURITY HOSPITAL, Larned, Kansas

1 '89 Date of Adm.	Date of Disch.	Length of Stay in days	County	Crimes	M'Naghten Eval./Results	Plea Bargain/ Jury Trial
2/25/83 8/15/85 10/13/86 12/2/88	12/7/83 7/25/86 7/21/87 5/3/91 Cond.Release to Sedg.Co.	782	Sedgwick	1st Degree Murder		Jury Trial
5/30/89	10/24/89 Cond. Reles. to Topeka VA	147	Shawnee	Battery (misd)		Plea
6/4/89	1/30/90 Transferred to OSH)	230	Montgomery	Agg. Battery Criminal Damage to Property		Plea

GHEEL

Feb 5,93 11:32 No.001 P.07

'90

STATE SECURITY HOSPITAL, Larned, Kansas

Date of Adm.	Date of Disch.	Length of Stay in days	County	Crimes	M'Naghten Eval./Results	Plea Bargain/ Jury Trial
7/20/89	5/9/90 Transferred to TSH	293	Douglas	Criminal Trespass (misd)		Plea
9/8/89	8/29/90 Transferred to TSH	345	Sedgwick	Theft Battery of Law Enforcement Off.	Report by Dr. Brodsky	Plea
10/17/89	HERE		Shawnee	Misd. Battery		Plea
3/6/90	10/10/90 Transferred to TSH	218	Dickinson	Terroristic Threat		Plea
3/9/90 (1st)	HERE		Sedgwick	Agg. Assault (3 cnts); Attmpt. Agg. Battery (2 cnts); Agg.Battery (7 cnts); 1st Deg. Murder (1 cnt)	SSH - Positive	Plea
3/23/90 (4th)	HERE		Shawnee	Abuse of Child; Agg. Kidnap.; Rape; Agg. Battery; Theft; Robbery (1 cnt of each)	R. E. Schulman, M.D. Alan Felthous, M.D.	Plea
10/6/89 (6th)	HERE		Saline	Agg. Battery Law Enf. Officer(1cnt) Assault Law Enf. Officer (1 cnt) Obstruct Legal Process (1 cnt)	SSH - Positive	Plea
6/4/90	8/5/92 Disch. to brother	813	Dickinson	1st Deg. Murder Attempted 1st Deg. Murder	Menninger Foundation	Plea

GHEEL

Feb 5,93 11:33 No.001 P.08

STATE SECURITY HOSPITAL, Larned, Kansas

Date of Adm.	Date of Disch.	Length of Stay in days	County	Crimes	M'Naghten Eval./Results	Plea Bargain/ Jury Trial
7/18/90	5/2/91 Transfer to OSH	288	Wyandotte	Agg. Battery Agg. Battery Law Enf. Officer	SSH - Positive	Plea
8/2/90	HERE Cond. Releas to LSH 1/25/93		Shawnee	Agg. Battery		Plea
11/13/90 5/5/92	10/23/91 HERE	342	Douglas	Agg. Battery (1 cnt)	R. E. Schulman, M.D.	Plea
12/19/90	HERE		Chautauqua	Agg. Battery (1 cnt)	SSH-Not able to form an opinion Vijaya Reddy, M.D.	Jury
1/23/92	HERE		Geary	Agg.Assault Law Enf. Off. (1 cnt) Theft (1 cnt)Felony; Theft (1cnt) misd); Criminal Damage (1cnt); Reckless (1 cnt)	SSH-Not able to form opinion	Plea
3/5/91	11/15/91	253	Johnson	Agg. Battery	Report by Michael M. Burgess, Ph.D.	Plea
5/20/91	3/10/92 Transfer to OSH	295	Leavenworth	Agg. Assault	SSH - Negative	Plea

GHEEL

'92

STATE SECURITY HOSPITAL, Larned, Kansas

Date of Adm.	Date of Disch.	Length of Stay in days	County	Crimes	M'Naghten Eval./Results	Plea Bargain/ Jury Trial
8/8/91	HERE		Sedgwick	1st Deg. Murder Attempt. 1st Deg. Murder	M. Roach, M.D.	Plea
8/21/91	HERE		Greenwood	Misd. Theft		Plea
9/18/91	HERE		Wyandotte	1st. Deg. Murder (1 cnt) Attempt. 1st Deg. Murder (1 cnt)	SSH- Positive	Plea
1/9/92	HERE		Wyandotte	2nd Deg. Murder Agg. Battery	SSH - Negative	Plea
6/11/92	HERE		Wyandotte	2nd Deg. Murder	SSH - Positive	Plea
6/25/92	1/29/93	218	Johnson	Agg. Battery	Bill Logan, M.D.	Plea
5/15/92 (3rd)	HERE		Morris	Agg. Assault Law Enf. Officer Attempt. 1st Deg. Murder		Plea
7/11/91	12/31/92	99	Leavenworth	1st Deg. Murder	SSH - Positive	Plea

'93

STATE SECURITY HOSPITAL, Larned, Kansas

Date of Adm.	Date of Disch.	Length of Stay in days	County	Crimes	M'Naghten Eval./Results	Plea Bargain/ Jury Trial
7/9/92	HERE		Shawnee	Attempt. Interference with Parental Custody		Plea
10/2/92 (1st)	HERE		Sumner	Arson (1 cnt); Agg. Burg. (1 cnt); Burglary (2 cnt); Misd. Theft (1cnt Agg. Arson (1 cnt)		Plea
11/19/92	HERE		Wyandotte	Agg. Robbery	Expert psychiatric report	Plea
2/9/93	HERE		Marshall	Battery (1 count)		Plea