Approved: 4-28-93
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 10:05 a.m. on March 18, 1993 in Room 514-S of the Capitol.

All members were present except: Senators Rock and Oleen (both excused)

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

Conferees appearing before the committee:

Chip Wheelen, Kansas Medical Society
Senator Sheila Frahm
Paul Shelby, OJA
Anne Smith, Kansas Association of Counties
Dr. Lorne A. Phillips, State Registrar, KDHE
Kyle Smith, KBI
Pam Scott, Executive Director, Kansas Funeral Directors and Embalmers Association
James A. Sherman, Ph.D., Professor and Chair, Human Development & Family Life, KU
Dr. Joseph E. Spradlin, Director, Parsons Research Center
Senator Marian Reynolds
Terry R. Fuller, Attorney, Kinsley, KS

Others attending: See attached list.

HB 2008 - Duties, functions and compensation of district coroners. Re Proposal No. 13

Chip Wheelen, Kansas Medical Society, explained that HB 2008 would be a technical update of Kansas laws governing (1) unattended or suspicious deaths and (2) the duties of district coroners. In his written testimony, Mr. Wheelen outlined the nine principal features of the bill (Attachment 1). The Medical Society is concerned about the provision in the bill delegating the appointment authority of county coroners to the Boards of County Commissioners instead of the District Court Judges noting this potentially politicizes the position of coroner. Mr. Wheelen suggested an amendment to subsection (b) of Section 2 allowing the local medical society to evaluate the qualifications of physicians who may be willing to serve as District Coroner. He also requested an amendment in Section 16 by inserting "or deputy district coroner" after district coroner, thereby giving the deputy governmental employee status under the Tort Claims Act. He expressed concern that the financing arrangement in Sections 15 and 17 of the bill will not be sufficient in many cases. Finally, Mr. Wheelen requested the Committee to amend HB 2355 to require that if a vehicle or vessel accident results in death, the law enforcement official would routinely order a blood test sent to the KBI laboratory and to repeal the law in this bill that would require Coroners to draw blood from accident victims to be sent to the KBI.

Senator Sheila Frahm appeared to request an amendment to HB 2008 providing for the preservation of dental identification, including forensic dental examination consisting of charting, dental x-rays, and photography or removal and retention of the upper and lower jaws until an investigation is completed (Attachment 2).

Paul Shelby, OJA, appeared in support of HB 2008 and requested two technical amendments to the bill clarifying the language as proposed in a balloon attached to his written testimony (Attachment 3). Mr. Shelby stated the OJA does not support the requested amendment by the Kansas Medical Society allowing the local medical society to evaluate the physicians who may serve as District Coroner and make a recommendation to the County Commission.

Anne Smith, Kansas Association of Counties, appeared in support of HB 2008 and of the provisions allowing the County Commissioners to set the salaries of the district coroner, allowing a district coroner to be appointed in more than one judicial district and enacting a district coroners' fund to help defray costs of a district coroner (Attachment 4). Ms. Smith stated the Association of Counties would oppose the amendment proposed by the Kansas Medical Society on evaluation of district coroner applicants.

Dr. Lorne A. Phillips, State Registrar, KDHE, appeared in support of HB 2008 as amended by the House Committee of the Whole (Attachment 5).

Kyle Smith, KBI, appeared in support of HB 2008 and requested two amendments as explained in his written testimony pertaining to notification of the State Historical Society and requiring prints of hands and feet when determining the cause of death (Attachment 6).

Pam Scott, Executive Director, Kansas Funeral Directors and Embalmers Association, testified in support of HB 2008 as amended by the House (Attachment 7).

Chairman Moran asked the conferees proposing amendments to HB 2008 to submit them to the Committee Revisor so that they can be considered when the bill is acted upon by the Committee.

SB 384 - Power of guardian to authorize behavioral procedures or experiments.

James A. Sherman, Ph.D., Chair of the Department of Human Development and Family Life, KU, testified that SB 384 was introduced at the request of the University of Kansas to address the Kansas Probate Code which now states that any guardian may not consent to anything that may be termed an "experimental behavioral procedure" for their ward (Attachment 8). Dr. Sherman explained that much research involves making small changes in a person's environment and then observing the changes, but this is included in the prohibition under the law. The bill would provide that a guardian may not agree to biomedical or behavior experiments on behalf of a ward unless approved by an institutional review board or review committee and the experiment may not include the use of adverse stimulation. This would eliminate having to seek a court order for any behavioral experiment. Dr. Sherman submitted suggested amendments in a balloon with his testimony to SB 384 pertaining to guardianship law.

Dr. Joseph E. Spradlin, Director, Parsons Research Center, testified in support of SB 384 (Attachment 9).

George D. Vega, Commissioner, MH and MR Services, SRS, submitted written testimony on SB 384 requesting the word "experiment" be deleted on page 2, lines 31 and 32 (C) (Attachment 10).

SB 231 - Required skills for qualified interpreter for persons whose primary language is other than English.

Senator Marian Reynolds appeared in support of SB 231 explaining that the bill defines general qualifications one should possess in order to fully and accurately perform court ordered interpreting functions (Attachment 11). Senator Reynolds submitted a balloon of suggested amendments to SB 231 with her testimony.

Terry R. Fuller, Attorney, Kinsley, KS, appeared in support of SB 231 stating the bill would improve the legal system and make it more responsible to the concepts of fundamental fairness and justice to which we are pledged (Attachment 12). Mr. Fuller emphasized that thought and planning are needed when interpretation and translation services are required.

Mike Reecht, AT&T, submitted written testimony on SB 231 advising the Committee of AT&T's interpreter service by telephone called Language Line that would meet all the requirements for qualified interpreters specified in SB 231 (Attachment 13).

Eva Pereira, Executive Director, KS advisory Committee on Hispanic Affairs, submitted written testimony generally in support of SB 231, but suggested several amendments to the language of the bill (Attachment 14).

Chairman Moran appointed a subcommittee to work on SB 172 and HB 2355 regarding .08 BAC, including Senator Emert, chair, Senator Vancrum, Senator Ranson, Senator Brady and Senator Martin. The subcommittee will make its recommendation to the full Committee on Monday, March 22.

The meeting was adjourned at 11:05 a.m. The next meeting is scheduled for March 19, 1993.

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE DATE: 3-18-13

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Chip Wheelen	Topeka	KS Medical Soc.
Jim CLARK	"	KCPAA
Stephen Schiffelbein	"	SRS/Rehab Services
Rick Sholtz	Topeka	SRS/MH/DD
Kyle Smith	Topeka	KBI
Virginia Starr	Topeka	ATCT
Anne Smith	Topeka	Ks. Assoc of Counties
Pam Scott	Topeka	KS Funeral Directors Assn
Martha Hodgesmith	Topeka	KARF
Jon Vosseral	Lawrence	KU
Paul Shelley	Topeka	OJA
KEITH LANDIS	TOPEKA	CHRISTIAN SCIENCE COMM ON PUBLICATION FOR KS
Joe Spradlin	PARSONS	KU
George Wyatt	Lawrence	Intern
Karlon Cruce	Topeka	KCDHH
James A. Sherman	Lawrence	Univ. of Kansas
Joan Stauffer	Manhattan	KAPS

KANSAS MEDICAL SOCIETY
623 SW 10th Ave. • Topeka, Kansas 66612 • (913) 235-2383
WATS 800-332-0156 FAX 913-235-5114

March 18, 1993

TO: Senate Judiciary Committee

FROM: Chip Wheelen
KMS Director of Public Affairs

SUBJECT: House Bill 2008 as Amended by House

The provisions of HB 2008 are the product of a great deal of study and deliberation by the Kansas District Coroners Association, the 1992 Special Committee on Judiciary, and the House Judiciary Committee. It can best be described as a technical update of Kansas laws governing (1) unattended or suspicious deaths and (2) the duties of district coroners. For purposes of considering the various sections of the bill, it may be helpful to keep in mind that most of the existing coroner laws were enacted prior to unification of the courts. The principal features of the bill are as follows:

1. The requirement for an inquest when a suspicious death occurs would be at the discretion of the Coroner in order to avoid costly, unnecessary inquests. In addition, the obsolete laws relating to inquests would be updated and combined.

2. The required explanation to the state registrar of vital statistics when cause of death cannot be determined within a 3-day period would be amended to allow the Coroner to indicate that cause of death is pending.

3. Statutory Coroner salaries would be repealed and appointment authority would be granted to Boards of County Commissioners instead of the District Court Judges.

4. A determination as to whether an autopsy should be performed would be made by the Coroner in the district where the cause of death occurred, if known. Otherwise, the Coroner in the district where the investigation takes place would determine if an autopsy is appropriate.

5. A new subsection would be added to the statutes to protect the Coroner's records and autopsy reports from public access and legal discovery during the course of a criminal investigation.

SJ
3-18-93
Attachment 1

6. New provisions would be added to the statutes to require that any time a death certificate indicates other than a natural cause of death, the certificate must be signed by the District Coroner and cannot be modified by anyone other than the same Coroner.

7. The requirement that a Coroner take blood from victims of vehicle (air, land, water) accidents within eight hours of death and submit samples to the KBI for alcohol and drug tests would be repealed.

8. The Tort Claims Act is amended to provide liability coverage to District Coroners who are not currently defined as governmental employees because they are health care providers by definition.

9. A District Coroners Fund is created to which death certificate fees would be credited and disbursed to counties for payment of the Coroner's expenses.

We are, of course, concerned that delegation of appointment authority to Boards of County Commissioners instead of District Court Judges could politicize the position of District Coroner. As you know, candidates for the Board of County Commissioners always run on a partisan ticket, whereas, many District Court Judges are appointed and retained by a non-partisan selection process. Furthermore, District Court Judges are far more informed than anyone else as to whether an incumbent District Coroner has been performing the duties in a professional manner.

Apparently the judges have decided that they do not want the appointment responsibility and the House Committee agreed that because Coroners' compensation (like other district court costs) is financed by county general fund revenues (property taxes), that Commissioners should make the appointments as well as determine the amount of compensation. In this context, we respectfully request a minor amendment to strike the last sentence of subsection (b) of Section 2 (p. 2, lines 21-22). This would allow the local medical society to evaluate the qualifications of physicians who may be willing to serve as District Coroner. After all, the principal function of a District Coroner is the determination of cause of death, which requires medical skills as well as in depth analysis of circumstances.

We also request your favorable consideration of another minor amendment in Section 16. We would insert "or deputy district coroner" after district coroner (p. 12, line 43 and p. 13, line 5) in order to grant the same governmental employee status under the Tort Claims Act to deputies who perform identical public service duties.

We are also concerned about the financing arrangement created by the House in Sections 15 and 17. It would appear that the House assumes that there exist correlations among the number of deaths in a county, the number of death certificates requested from the KDHE, and the operating expenses of the District Coroner. This is not necessarily the case. A county may experience a disproportionately high ratio of homicides and thus incur significant expenses attributable to the cost of autopsies and related Coroner functions. In that case, the amount of revenue distributed may not be sufficient to fund the Coroner's necessary expenses. For this reason we request a minor amendment in New Section 17 to clarify this issue.

Lastly we would ask you to focus on repeal of K.S.A. 1992 Supp. 22a - 237. This is a law that requires Coroners to draw blood or other samples from bodies of accident victims and send the body fluid to the KBI laboratory for analysis as to alcohol or other drug content. While there may exist a reason for desiring statistics regarding such fatalities, this law is both inappropriate and duplicative. When a car, boat, or plane accident results in injury, there are always law enforcement officials at the scene who may, and often do, order that emergency medical personnel draw blood so that a drug and alcohol test can be conducted. It is entirely unnecessary and certainly inappropriate to impose an identical requirement on the District Coroner. We would respectfully suggest that the Senate may wish to amend HB 2355 such that if a vehicle or vessel accident results in death, the law enforcement official would routinely order a blood test sent to the KBI laboratory.

Thank you for considering our concerns about HB 2008. We urge you to adopt our requested amendments (balloons attached) and recommend passage.

CW:cb

Attachment

guilty of a class B nonperson misdemeanor and upon conviction thereof shall forfeit ~~his or her~~ *the coroner's* office.

Sec. 2. K.S.A. 22a-226 is hereby amended to read as follows: 22a-226. *(a)* There is hereby established the office of district coroner in each judicial district of the state. The district coroner shall be a resident of the state of Kansas licensed to practice medicine and surgery by the state board of healing arts or shall be a resident of a military or other federal enclave within the state and shall be duly licensed to practice medicine and surgery within such enclave.

(b) The local medical society or societies in each judicial district shall nominate one or more candidates for the office of district coroner and submit the names of the persons so nominated to the ~~administrative judge of the judicial district~~ *county commissioners of a single-county judicial district or the county commissioners of the county with the largest population in multiple-county judicial districts* on or before January 1, ~~1981~~ *1995*, and every four years thereafter. The ~~administrative judge and district judges of the judicial district~~ *county commissioners of a single-county judicial district or the county commissioners of the county with the largest population in multiple-county judicial districts* shall appoint a district coroner for the district. ~~The appointee may be one of the persons nominated or some other qualified person.~~ delete

(c) The district coroner shall serve for a term of four years, which term shall begin on the second Monday in January of the year in which such coroner is appointed, and such coroner's compensation shall be as provided by law. Vacancies in the office of district coroner shall be filled in the same manner as appointments for regular terms of district coroner. Such an appointment shall be for the remainder of the regular term and shall be effective from the date the coroner is appointed and is otherwise qualified for the office.

(d) The coroner shall, before entering upon the duties of the office, take and subscribe an oath or affirmation that such coroner will faithfully, impartially and to the best of the coroner's skill and ability discharge the duties of district coroner.

(e) The district coroner, with the approval of the ~~district judges of the judicial district~~ *county commissioners of a single-county judicial district or the county commissioners of the county with the largest population in multiple-county judicial districts*, may appoint one or more deputy coroners, who shall have the qualifications of and shall have the same duties and authority as the district coroner, except that, whenever a district coroner is unable to appoint a qualified deputy, a special deputy coroner who does not possess

be fixed by rules and regulations of the secretary of health and environment except that the fee for the first copy of a birth *or death* certificate shall include a $3 surcharge and the fee for each additional copy of the same birth *or death* certificate requested at the same time shall include a $1 surcharge. The secretary of health and environment may provide by rules and regulations for exemptions from such fees.

(b) Subject to K.S.A. 65-2420 and amendments thereto, the national office of vital statistics may be furnished copies or data it requires for national statistics. The state shall be reimbursed for the cost of furnishing the data. The data shall not be used for other than statistical purposes by the national office of vital statistics unless so authorized by the state registrar of vital statistics.

(c) (1) The secretary of health and environment shall remit all moneys received by or for the secretary from fees, charges or penalties to the state treasurer at least monthly. Upon receipt of any such remittance, other than remittances for fees for birth certificates, the state treasurer shall deposit the entire amount thereof in the state treasury and the same shall be credited to the state general fund.

(2) Upon receipt of any such remittance of a fee for a birth certificate, $3 of each such fee for the first copy of a birth certificate and $1 of each such fee for each additional copy of the same birth certificate requested at the same time shall be remitted to the state treasurer who shall deposit the entire amount of each such remittance in the state treasury and credit it to the permanent families account of the family and children investment fund created by K.S.A. 1992 Supp. 38-1808, *and amendments thereto. Upon receipt of any such remittance of a fee for a death certificate, $3 of each such fee for the first copy of a death certificate and $1 of each such fee for each additional copy of the same death certificate requested at the same time shall be remitted to the state treasurer who shall deposit annually the entire amount of each such remittance in the state treasury and credit it to the district coroners fund created by section 17.* The balance of the money received for a fee for a birth certificate shall be remitted to the state treasurer who shall deposit the entire amount of each such remittance in the state treasury and the same shall be credited to the state general fund.

Sec. 16. K.S.A. 1992 Supp. 75-6115 is hereby amended to read as follows: 75-6115. (a) The Kansas tort claims act shall not be applicable to claims arising from the rendering of or failure to render professional services by a health care provider other than a charitable health care provider, *a district coroner/appointed pur-*

or deputy district coroner

suant to K.S.A. 22a-226, and amendments thereto, or a hospital owned by a municipality and the employees thereof. Claims for damages against a health care provider that is a governmental entity or an employee of a governmental entity other than a charitable health care provider, *a district coroner appointed pursuant to K.S.A. 22a-226, and amendments thereto,* or a hospital owned by a municipality and the employees thereof, arising out of the rendering of or failure to render professional services by such health care provider, may be recovered in the same manner as claims for damages against any other health care provider.

(b) As used in this section:

(1) "Charitable health care provider" shall have the meaning provided by K.S.A. 75-6102, and amendments thereto.

(2) "Health care provider" shall have the meaning provided by K.S.A. 40-3401, and amendments thereto.

(3) "Hospital" means a medical care facility as defined in K.S.A. 65-425, and amendments thereto, and includes within its meaning any clinic, school of nursing, long-term care facility, child-care facility and emergency medical or ambulance service operated in connection with the operation of the medical care facility.

New Sec. 17. (a) There is hereby established in the state treasury the district coroners fund.

(b) Moneys in the district coroners fund shall be ~~expended to the county general fund on an annual basis based on the number of deaths that occurred in such county to pay~~ the district coroner's expenses pursuant to chapter 2 of article 22a of the Kansas Statutes Annotated, and amendments thereto. [Moneys in the district coroners fund shall not be expended to the county general fund until such time as all outstanding death certificates for the previous calendar year are filed with the state registrar and such certificate contains the final cause of death.]

(c) Payments to counties under this act shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of health and environment or by a person or persons designated by the secretary of health and environment.

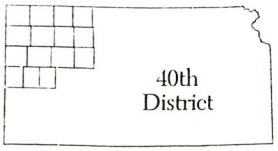
Sec. ~~14~~ 18. K.S.A. 22a-204, 22a-205, 22a-206. 22a-207, 22a-208, 22a-209, 22a-210, 22a-211, 22a-212, 22a-213, 22a-214, 22a-215, 22a-226, 22a-227, 22a-228, 22a-230, 28-111, 65-2412, 65-2414, 65-2416, 65-2418, 65-2422c, 65-2426a and 75-2749 and K.S.A. 1992 Supp. 22a-231, 22a-232, 22a-233 ~~and~~, 22a-237 and 75-6115 are hereby repealed.

or deputy district coroner

allocated and distributed to each county on March 15 of each year based on the number of recorded deaths in the county during the previous calendar year as a ratio of the total number of deaths in this state during the calendar year. Such distributions shall be credited to the county general fund to assist in paying for

KANSAS SENATE

SHEILA FRAHM



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MEMBER:
AGRICULTURE
LEGISLATIVE COORDINATING COUNCIL
ORGANIZATION, CALENDAR AND RULES
STATE FINANCE COUNCIL
VICE CHAIR:
EDUCATION

OFFICE OF THE MAJORITY LEADER

STATE CAPITOL
TOPEKA, KANSAS 66612-1504
913-296-2497

M E M O R A N D U M

TO: Chairman Moran and Members of the Senate Judiciary Committee
FROM: Senate Majority Leader Sheila Frahm
RE: Amendment to HB 2008
DATE: March 18, 1993

Thank you for the opportunity to amend HB 2008. This amendment has been requested by Dr. Thomas Krauss, D.D.S, Phillipsburg, KS.

The amendment I propose is fairly straightforward and is designed to more efficiently identify victims involved in criminal cases. As you know, in a criminal investigation, the availability of the basic evidence for review is crucial. Mistakes have been made too often in identification, and if it happens just once, it is once too many. Therefore, the amendment I am proposing is summarized below:

If there is a death in which there will be a criminal investigation, the coroner must preserve dental identification before the cremation of the body. This preservation should include forensic dental examination consisting of charting, dental x-rays, and photography, OR the upper and lower jaws should be removed and retained until the investigation is completed. This preservation may be conducted by the coroner or his agent.

This would apply to a very small number of cases; only those meeting the following conditions:

1) an unnatural death (accident, suicide, homicide and undetermined), and

2) where there will be or there is reason to believe there will be a criminal investigation, and

3) when the evidence will be destroyed by cremation. Again, this bill is intended to help eliminate a victim misidentification defense in criminal cases.

It is my belief that adoption of this amendment and ultimately, enactment of this legislation, will not place an unreasonable burden on any Kansas citizen or governmental body. For humanitarian reasons and in the interest of justice, I urge you to act favorably on this amendment.

Thank you.

SJ
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Attachment 2

House Bill No. 2008
Senate Judiciary Committee
March 18, 1993

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Mr. Chairman and members of the Senate Judiciary Committee, I appreciate the opportunity to discuss with you House Bill No. 2008, which relates to district coroners, their duties, functions and compensation.

The Kansas District Judges Association and the Chief Justice supports House Bill No. 2008, as amended, which allows the County Commissioners to select district coroners, set the salaries, fees, expenses and other compensation and not the Administrative Judge and district judges of the judicial district as the bill was originally drafted. Setting salaries and expenses are not judicial functions and should be delegated to the Executive Branch of local government.

However, on page 7, Section 5(n), lines 19-20 still needs further amendments. I offer this amendment to cleanup the bill.

Also on Page 8, Section 7(b) needs clarification on where to file the coroner's report. I assume it is with the Clerk of the District Court but the language is unclear.

Thank you very much for this opportunity and I would be pleased to answer any questions.

SJ
3-18-93
Attachment 3

(j) If the person charged is not present, the coroner may issue a warrant to the sheriff of the county, directing the sheriff to arrest the person and take the arrested person before a judge of a court of competent jurisdiction.

(k) The warrant of a coroner in the above case shall be of equal authority with that of a judge of a court of competent jurisdiction. When the person charged is brought before the court, the person charged shall be dealt with as a person held under a complaint in the usual form.

(l) The warrant of the coroner shall recite substantially the transaction before the coroner, and the verdict of the jury of inquest leading to the arrest. The warrant shall be a sufficient foundation for the proceeding of the court instead of a complaint.

(m) The coroner shall then return to the clerk of the district court the inquisition, the written evidence and a list of the witnesses who testified to material matters.

(n) The district coroner shall receive such compensation, in addition to other compensation provided by law for the coroner, for holding an inquest as specified by ~~the administrative judge and district judges of the judicial district~~ county commissioners of a single-county judicial district or the county commissioners of the county with the largest population in multiple-county judicial districts.

Sec. ~~5~~ 6. K.S.A. 1992 Supp. 22a-231 is hereby amended to read as follows: 22a-231. When any person dies, or human body is found dead in ~~any county of~~ the state, and the death is suspected to have been the result of violence, caused by unlawful means or by suicide, or by casualty, or suddenly when the decedent was in apparent health, or when decedent was not regularly attended by a licensed physician, or in any suspicious or unusual manner, or when in police custody, or when in a jail or correctional institution, or in any circumstances specified under K.S.A. 1992 Supp. 22a-242, *and amendments thereto,* or when the determination of the cause of a death is held to be in the public interest, the coroner or deputy coroner of the ~~county~~ *~~judicial district~~* county in which *the cause of death occurred, if known, or if not known, the coroner or deputy coroner of the ~~judicial district~~* county *in which* such ~~death occurred or~~ dead body was found, shall be notified by the physician in attendance, by any law enforcement officer, by the embalmer, by any person who is or may in the future be required to notify the coroner or by any other person.

Sec. ~~6~~ 7. K.S.A. 1992 Supp. 22a-232 is hereby amended to read as follows: 22a-232. *(a)* Upon receipt of notice pursuant to K.S.A. 22a-231, and amendments thereto, the coroner shall take charge of the dead body, make inquiries regarding the cause of death and reduce the findings to a report in writing. Such report shall be filed

KAC KANSAS ASSOCIATION OF COUNTIES

"Service to County Government"

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TO: Senate Judiciary Committee
Chairman Jerry Moran

FROM: Anne Smith
Director of Legislation

DATE: March 18, 1993

RE: HB 2008

The Kansas Association of Counties supports HB 2008.

The House Judiciary Committee made significant revisions to HB 2008 which the KAC supported. Initially, the bill had the administrative judges setting the district coroners' salaries. The committee revised the bill leaving the determination of the coroners' salaries with the county commissioners. If the coroners' salaries are to be paid out of the county general fund then the county commissioners should have the responsibility for setting those salaries.

The bill now allows a district coroner to be appointed in more than one judicial district. It was felt that this provision would help counties reduce the fiscal burden of the district coroners' salaries if a number of judicial districts could share a district coroner.

In addition, the committee established a district coroners fund to help counties with the costs associated with coroners' salaries. Every time a death certificate is filed, the fees ($3 for the first copy, $1 for each additional copy of the death certificate) shall be deposited into the district coroners fund. Moneys in the district coroners fund shall be expended to each county general fund annually based on the number of deaths that occurred in that county.

Thank you for your consideration of this bill.

SJ
3-18-93
Attachment 4

State of Kansas
Joan Finney, *Governor*

Department of Health and Environment
[redacted], *Secretary*
Robert C. Harder

Reply to:

Testimony presented to

Senate Judiciary Committee

by

The Kansas Department of Health and Environment

House Bill 2008

H.B. 2008 as amended by the House Committee of the Whole would impact on several vital statistics statutes; however, any problems with the provisions as originally drafted have been resolved by amendments. The amendments make the provisions acceptable to the Office of Vital Statistics and will not have a negative impact on the death registration process. In one instance, K.S.A. 65-2414, the revision will actually clarify the statute to alleviate existing problems by specifically authorizing a death certificate to be filed with cause of death "pending". Even though this is the current practice, the existing statute is not clear and, therefore, some physicians are uncomfortable filing the certificate as pending.

We believe the provisions of H.B. 2008 will enhance the registration process, more clearly define the coroner's responsibilities and will provide at least a partial solution to the problem of funding the work of the coroners.

We would like to note that there is a relatively small but important fiscal note related to the implementation of this legislation which was not included in the Governor's budget. Also it should be noted that while the bill proposes implementation upon publication in the statute book that there is a time lag between the effective date of a fee increase and the actual collection of the new fee.

We support H.B. 2008 as it impacts upon the vital statistics statutes.

Testimony presented by:

Dr. Lorne A. Phillips
State Registrar
Division of Information Systems
March 18, 1993

SJ

3-18-93
Attachment 5

ROBERT B. DAVENPORT
DIRECTOR

KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL
STATE OF KANSAS
1620 TYLER
TOPEKA, KANSAS 66612-1837
(913) 232-6000

ROBERT T. STEPHAN
ATTORNEY GENERAL

TESTIMONY
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
BEFORE THE SENATE JUDICIARY COMMITTEE
REGARDING HOUSE BILL 2008
MARCH 18, 1993

Mr. Chairman and Members of the Committee:

On behalf of Attorney General Robert T. Stephan, I appear here today in support of HB 2008. This bill addresses long-standing problems with our antiquated district coroner system and revamps the pertinent statutes. However, I would like to request the committee consider two changes to the bill before them.

The first request is to not make the changes found in Section 14, which amends K.S.A. 75-2749. This statute deals with notification of law enforcement and subsequent notification of coroners when human skeletal remains are located. As the bill currently reads, this section would require a law enforcement agency, upon being notified of a discovery of human skeletal remains, to always notify the State Historical Society. Further, subsection (d) states "The State Historical Society shall assume jurisdiction over the human skeletal remains..." Obviously, this would not be appropriate in the case of an actual homicide investigation. The statute currently sets out the procedure that law enforcement is to notify the coroner and if the coroner determined that it was not a suspicious death as defined by K.S.A. 22-a231, then they notify the State Historical Society. We would request that language be maintained or be redrafted to not apply to recent deaths.

SJ
3-18-93
Attachment 6

The second requested change would occur in Section 8, dealing with autopsies performed when there is a death as defined under K.S.A. 22a-231.

As shown in the balloon, we are requesting that prints of the hands and feet, when possible, be taken to insure allow subsequent identification. Obviously, there is an irreversible loss of evidence when a body is interred or cremated and we feel it is important that this minimal step be required to avoid possible miscarriages of justice.

I would be happy to stand for questions.

#101

the dead body, make inquiries regarding the cause of death and reduce the findings to a report in writing. Such report shall be filed with the clerk of the district court of the ~~county~~ *judicial district* county in which *the cause of* death occurred *if known, or if not known the report shall be filed with the clerk of the district court of the* ~~*judicial district*~~ county *in which the death occurred.* If the coroner determines that the dead body is not a body described by K.S.A. 22a-231, and amendments thereto, the coroner shall immediately notify the state historical society.

(b) If in the opinion of the coroner information is present in the coroner's report that might jeopardize a criminal investigation, the coroner ~~*may delay the filing of such report until the investigation is complete as determined by the coroner*~~ shall file the report in such county and designate such report as a criminal investigation record, pursuant to subsection (a)(10) of K.S.A. 45-221, and amendments thereto.

Sec. ~~7~~ 8. K.S.A. 1992 Supp. 22a-233 is hereby amended to read as follows: 22a-233. (a) If, in the opinion of the coroner, an autopsy should be ~~made~~ *performed*, or if an autopsy is requested in writing by the county or district attorney or if the autopsy is required under K.S.A. 1992 Supp. 22a-242, *and amendments thereto,* such autopsy shall be performed by a qualified pathologist as may be designated by the coroner. A pathologist performing an autopsy, at the request of a coroner, shall be paid a usual and reasonable fee to be allowed by the ~~board of county commissioners~~ *administrative judge and district judges of the judicial district* board of county commissioners and shall be allowed and paid the travel allowance prescribed for coroners and deputy coroners in accordance with the provisions of K.S.A. 22a-228, and amendments thereto, the same to be paid by the board of county commissioners of the ~~county~~ *judicial district* county in which the cause of death occurred except that autopsies performed under K.S.A. 1992 Supp. 22a-242, *and amendments thereto,* shall be paid for in accordance with K.S.A. 1992 Supp. 22a-242, *and amendments thereto.*

(b) The pathologist performing the autopsy shall remove and retain, for a period of three years, such specimens as appear to be necessary in the determination of the cause of death and take or cause to be taken such evidence as necessary to identify the decedent including a clear recording or print of the complete ridge structure that may be present on the hands and feet of the body.

(c) A full record and report of the facts developed by the autopsy and findings of the pathologist performing such autopsy shall be promptly made and filed with the coroner and with the clerk of the district court of the county in which decedent died. If, in any case in which this act requires that the coroner be notified, the body is buried without the permission of the coroner, it shall be the duty

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AFFILIATED WITH N.F.D.A.

THE KANSAS FUNERAL DIRECTORS AND EMBALMERS ASSOCIATION, INC.

EXECUTIVE OFFICE — 1200 KANSAS AVENUE, P.O. BOX 1904
TOPEKA, KANSAS 66601
PHONE 913-232-7789 FAX 913-232-7791

Testimony Presented to

Senate Judiciary Committee

by the

Kansas Funeral Directors Association

on

House Bill No. 2008

Mr. Chairman and members of the committee, my name is Pam Scott and I am Executive Director of the Kansas Funeral Directors and Embalmers Association (KFDA).

The KFDA originally spoke in opposition to House Bill No. 2008 because it contained several amendments to the Vital Statistics Act dealing with death certificates which were objectionable to our association. These amendments were objectionable because they removed reasonable time limitations in which a coroner must complete and sign the medical certification portion of a death certificate. The KFDA believed the removal of time restrictions would be detrimental to the family because it would delay final disposition of a body and restrict a family from carrying on personal business after death.

A compromise was reached with proponents of the bill and amendments were made to the objectionable sections of the bill dealing with the Vital Statistics Act. These amendments were adopted in the House. As a result, our concerns have been eliminated and the KFDA is able to give its support to House Bill No. 2008 in its current form.

Thank you for giving us an opportunity to testify.

SJ
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James A. Sherman, Ph.D.
Professor & Chair
Human Development & Family Life
SB 384 --Senate Judiciary Committee, Room 514-S
Thursday, March 18, 1993, 10:00 a.m.

My name is Jim Sherman. I am a professor and chair of the Department of Human Development and Family Life at the University of Kansas.

The University of Kansas has a long history of research and instruction in the area of human development through the Departments of Special Education, Human Development and Family Life, Psychology and the Institute for Life Span Studies. In addition, these programs have close relationships with the University Affiliated Program, located in Lawrence, at the Medical Center in Kansas City and at Parsons State Hospital.

One of the major objectives of these research programs is to enable people with disabilities to become more independent by teaching them new skills. Strategies are also developed to allow these people, to the degree possible, to live in a situation with the minimum amount of structure and assistance. Through research, we seek to measure and evaluate many behavioral techniques.

Many of the people with disabilities have had guardians appointed under the Kansas Probate Code. These people often are in behavioral programs and experiments to evaluate techniques to eliminate inappropriate or dangerous behaviors and encourage and promote positive ones.

Wording discovered in the Kansas Probate Code we believe is having the unfortunate effect of denying these techniques to some people due to the complexities inherent in requiring a guardian to seek specific court permission for participation. This happens because 59-3018 does not allow a guardian the ability to consent to anything that may be termed an "experimental behavioral procedure."

Unfortunately, this term is so broad that it includes research which consists of nothing more than observing and categorizing behavior. Indeed, much research in this area consists of making small changes in a person's environment and then observing the changes.

Because of this, researchers located in Parsons and the Lawrence Campus have sought this legislative change. SB 384 was introduced by the Senate Ways and Means Committee at the request of the University of Kansas.

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3-18-93
Attachment 8

In the proposed change, it is important to note that any proposed procedure would have to be consented to by the guardian of the person, but in addition be specifically approved by an institutional review board. The purpose of these boards is to assure than an institution such as the University of Kansas which receives federal research resources complies with federal regulations of the Department of Health and Human Services for protection of Human Research Subjects. Those regulations are guided by the ethical principles contained in a report of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research.

Institutional Review Boards were created in response to national concerns about human rights. Their activities are fully documented and are subject to audit by HHS at anytime. It is my belief that their judgement may be more consistent, and perhaps more conservative, than the judgement of various district court judges who each have a different background and level of understanding of the issues involved in this research.

Populations of our state hospitals consist of people from across the state, necessarily increasing the number of district courts which might need contacting in these types of instances. Unfortunately, the extra time and resources which are required by the guardians to obtain approval by a district court has resulted in cases where patients cannot benefit from participation in an experimental procedure.

I know you might wonder what a "behavioral experiment" might consist of. I thought I would give you a couple of current examples.
There are a number of people with severe or profound mental retardation who cannot talk and also display various forms of self-destructive behavior. It has been suggested that their self-destructive behavior is an attempt to communicate in some sort of way, but there is little empirical evidence supporting or not supporting this notion. One example of a behavioral experiment is to teach the people to pick up or point to simple picture cards which indicate different things that the people might want, such as to go outside, or to take a break from an activity. What the experiment consists of is to see whether making the cards available and teaching the people to use them does or does not reduce the amount of self-destructive behavior the people display.

Another example of a behavioral experiment concerns developing methods to teach people with disabilities to engage in more functional activities. Some of the people with whom we work engage in very few functional activities, and instead sit most of the day sometimes preoccupied with self-stimulatory activities. Some of the methods that are being tried out to change this are to use "picture schedules" which simply are a sequence of pictures depicting the sequence of activities for the day or a particular period of the day. This picture schedule provides a visible and enduring prompt for the person to consult on what they could be doing, and avoids the problems of teachers having to constantly remind or tell the person what to do. We are trying to evaluate whether this increases the amount of time people are engaged in functional activities.

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We are particularly looking at whether having the person participate in the selection of the activities included in the picture schedule and in the sequence of the activities further helps increase engagement.

I appreciate this opportunity to appear before you on behalf of Senate Bill 384 and would be happy to take any questions.

# # #

James Sherman

Session of 1993

SENATE BILL No. 384

By Committee on Ways and Means

2-22

AN ACT concerning powers and duties of guardian; behavioral procedures or experiments; amending K.S.A. 1992 Supp. 59-3018 and repealing the existing section.

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

Section 1. K.S.A. 1992 Supp. 59-3018 is hereby amended to read as follows: 59-3018. (a) A guardian shall be subject to the control and direction of the court at all times and in all things. It is the general duty of an individual or corporation appointed to serve as a guardian to carry out diligently and in good faith the specific duties and powers assigned by the court. In carrying out these duties and powers, the guardian shall assure that personal, civil and human rights of the ward or minor whom the guardian services are protected.

(b) The guardian of a minor shall be entitled to the custody and control of the ward and shall provide for the ward's education, support and maintenance.

(c) A limited guardian shall have only such of the general duties and powers herein set out as shall be specifically set forth in the dispositional order pursuant to K.S.A. 59-3013 and amendments thereto and as shall also be specifically set forth in "Letters of Limited Guardianship" pursuant to K.S.A. 59-3014 and amendments thereto.

(d) A guardian shall have all of the general duties and powers as set out herein and as also set out in the dispositional order and in the letters of guardianship.

(e) The general powers and duties of a guardian shall be to take charge of the person of the ward and to provide for the ward's care, treatment, habilitation, education, support and maintenance and to file an annual accounting. The powers and duties shall include, but not be limited to, the following:

(1) Assuring that the ward resides in the least restrictive setting reasonably available;

(2) assuring that the ward receives medical care or nonmedical remedial care and other services that are needed;

(3) promoting and protecting the care, comfort, safety, health and welfare of the ward;

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(4) providing required consents on behalf of the ward;

(5) exercising all powers and discharging all duties necessary or proper to implement the provisions of this section.

(f) A guardian of a ward is not obligated by virtue of the guardian's appointment to use the guardian's own financial resources for the support of the ward.

(g) A guardian shall not have the power:

(1) To place a ward in a facility or institution, other than a treatment facility, unless the placement of the ward has been approved by the court.

(2) To place a ward in a treatment facility unless approved by the court, except that a ward shall not be placed in a state psychiatric hospital or state institution for the mentally retarded unless authorized by the court pursuant to K.S.A. 1992 Supp. 59-3018a.

(3) To consent, on behalf of a ward, to psychosurgery, removal of a bodily organ, or amputation of a limb unless the procedure is first approved by order of the court or is necessary, in an emergency situation, to preserve the life or prevent serious impairment of the physical health of the ward.

(4) To consent on behalf of the ward to the withholding of life-saving medical procedures, except in accordance with provisions of K.S.A. 65-28,101 through 65-28,109, and amendments thereto.

(5) To consent on behalf of a ward to the performance of any experimental biomedical or behavioral procedure or to participation in any biomedical or behavioral experiment unless:

(A) It is intended to preserve the life or prevent serious impairment of the physical health of the ward; or

(B) it is intended to assist the ward to develop or regain that person's abilities and has been approved for that person by the court; ~~or~~ and

~~(C) in the case of a behavioral procedure or experiment, the procedure or experiment has been reviewed and approved by an institutional review board under title 45, part 46 of the code of federal regulations.~~

(6) To prohibit the marriage or divorce of a ward.

(7) To consent, on behalf of a ward, to the termination of the ward's parental rights.

(8) To consent, on behalf of a ward, to sterilization of the ward, unless the procedure is first approved by order of the court after a full due process hearing where the ward is represented by a guardian *ad litem*.

(h) The guardian shall at least annually file a report concerning the personal status of the ward as provided by K.S.A. 59-3029 and

without the review and approval by an institutional review board under title 45 part 46 of the code of federal regulations, where title 45 part 46 of the code of federal regulations applies, or by a review committee where title 45 part 46 does not apply

and it does not involve the application of aversive stimulation

(B) it involves a behavioral procedure or experiment that does not involve the application of aversive stimulation;
or

(D) in the case of any procedure or experiment involving the application of aversive stimulation, the procedure or experiment has been approved by the court.

No public or private entity or agency shall require or allow a ward to perform any experimental biomedical or behavioral procedure or to participate in any biomedical or behavioral experiment without the consent of the guardian.

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amendments thereto.

Sec. 2. K.S.A. 1992 Supp. 59-3018 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Joseph E. Spradlin, Ph.D.
Director
Parsons Research Center

SB 384-- Senate Judiciary Committee, Room 514-S
Thursday, March 18, 1993, 10:00 a.m.

My name is Joe Spradlin. I am the Director of the Parsons Research Center.

The Parsons Research Center is a division of the Kansas University Bureau of Child Research. The Research Center is located on the grounds of the Parsons State Hospital and Training Center in Parsons, Kansas. We have conducted behavioral research with residents of the Parsons State Hospital and Training Center as well as with children and adults in Southeast Kansas communities for more than 35 years. That research has been directed toward: (1) Developing better procedures for evaluating the abilities of people with mental retardation, (2) Developing better procedures for teaching self-help, communication, educational, and cognitive skills, and (3) Aiding persons with retardation in overcoming problems that limit their access to educational, recreational, and occupational settings.

Currently, at Parsons, we have research projects that are: (1) Evaluating the communication skills of persons with severe and profound retardation with the aim of developing teaching techniques that will capitalize on their existing modes of communication to develop new and more effective modes of communication, (2) Developing picture symbol materials that will allow

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3-18-93
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persons with severe retardation to read instructions and perform complex daily life tasks independently, (3) Evaluating the development and use of concepts with the goal of developing better techniques for helping persons with retardation develop concepts, and (4) Developing patterns of productive behaviors that reduce the frequency of such destructive behavior as self hitting or attacks on others. None of these studies involve aversive stimulation and all are aimed at developing techniques for increasing the chances of people with retardation leading more productive and independent lives. Most of the studies have immediate benefits for the participants.

Any of these behavioral studies must be approved by the Institutional Review Board at Parsons and the Institutional Review Board of the University of Kansas. Moreover, for any person to participate, parental or guardian consent must be obtained. As I understand the current law, if the person has a guardian appointed under the Kansas Probate Code we would need to obtain court approval in addition to guardian consent in order to include the person in any behavioral experiment.

We believe that such a procedure creates barriers to the conduct of research that is important to improving the lives of persons with retardation. For this reason we support Senate Bill 384.

I thank you for the opportunity to appear on behalf of Senate Bill 384 and I would be happy to answer any questions.

JOAN FINNEY, GOVERNOR OF THE STATE OF KANSAS

KANSAS DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

DONNA WHITEMAN, SECRETARY

Mental Health and Retardation Services
Fifth Floor North
(913) 296-3773
TDD # (913) 296-3471
FAX # (913) 296-6142

March 17, 1993

The Honorable Jerry Moran
Chairperson, Senate Judiciary Committee
State Capitol, Rm. 255-E
Topeka, KS 66612

RE: SB 384

Dear Senator Moran:

Just a note to advise you about Senate Bill 384 which is to be heard before your Committee on Thursday, March 18, at 10 AM. While we do not object to Senate Bill 384's intent and purpose, we are requesting that the word **"experiment"** as on Page 2, lines 31 and 32 (C), be deleted.

I am attaching a copy of a letter from Secretary Whiteman to Senator Bill Brady regarding our objection to the use of the word experiment.

We plan to have a representative from Mental Health & Retardation Services present at the Committee hearing but do not plan to give any testimony. I would be glad to discuss this with you if you have any questions or concerns.

Sincerely,

George D. Vega

George D. Vega
Commissioner

GDV:bd
cc: Secretary Whiteman
John Badger

915 SW HARRISON STREET, TOPEKA, KANSAS 66612

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JOAN FINNEY, GOVERNOR OF THE STATE OF KANSAS

KANSAS DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

DONNA WHITEMAN, SECRETARY

March 2, 1993

The Honorable Bill Brady
The Senate of Kansas
Statehouse
300 SW 10th Avenue, Room 140-N
Topeka, Kansas 66612-1504

RE: SB 384

Dear Senator Brady:

This is to advise you of our position on SB 384. Although I am not opposed to what this bill is attempting to accomplish I am not comfortable with the use of the term "experiment" in the proposed language. The reason the word is objectionable is due to the possible negative connotation it may have when used in connection with an institutional setting. When the bill is scheduled for hearing my recommendation will be to delete this term where it appears on page 2 in lines 31 and 32.

If you would like additional information on this, or would like to discuss it in more detail, please let me know.

Thank you for your interest in this matter of mutual concern.

Sincerely,

Donna L. Whiteman

Donna Whiteman
Secretary

DW:JB:sjk

10-2

Interpreter Testimony - March 18, 1993
Senator Marian Reynolds

I would like to thank Senator Moran and the members of the Judiciary committee for the opportunity to testify on behalf of SB 231, a bill which I authored. SB 231 attempts to more clearly define the general qualifications one should possess in order to fully and accurately perform court ordered interpreting functions. Currently, the Kansas Statutes are insufficient as to the criteria which would guide a court in choosing whom is or is not qualified to interpret in civil and criminal proceedings.

Background

In 1972, K.S.A. 75-4353 became law. K.S.A. 75-4353 defined the general qualifications of one whom might be appointed a court to interpret in either a criminal or civil proceeding.

K.S.A. 75-4353

Same; qualifications of interpreter; determination; persons disqualified. (a) No one shall be appointed to serve as an interpreter for a person pursuant to the provisions of K.S.A. 75-4351, if he or she is married to that person, related to that person within the first or second degrees of consanguninity, living with that person or is otherwise interested in the outcome of the proceeding, unless the appointing authority determines that on other qualified interpreter is available to serve.

(b) No person shall be appointed as an interpreter pursuant to the provisions of K.S.A. 75-4351, unless the appointing authority makes a preliminary determination that the interpreter is able to readily communicate with the person whose primary language is one other than English, or who is deaf or mute, or both, and is able to accurately repeat and translate the statement of said person.

The central issue relative to the current statute is that it fails to establish a complete set of criteria to guide the courts in the determination and ultimate appointment of court ordered interpreters.

Over the past few years, there has been a dramatic increase in the number of non-English speaking individuals entering our State's court system. In my district

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alone, there had been a massive increase in the number of Spanish and Vietnamese speaking individuals whom are guaranteed court provided interpretive services via State Law. The net result is that the court's in my district, and I assume across the State, have been appointing interpreters via a disjointed set of criteria. It is simply up to the discretion of the court of primary jurisdiction to set the relevant criteria through which prospective interpreters will be judged.

The primary purpose of SB 231 is to further enhance the current statue. This enhancement will result in the establishment of a new and more comprehensive set of criteria to assist the courts in their determination of whom is and is not qualified, from a functional viewpoint, to perform interpretive functions.

Rational for proposed revisions to K.S.A. 74-4353

In many courts, the determination of whether or not one is qualified or not qualified simply rests on whether or not the prospective interpreter speaks both the foreign language and English. Using this criteria as the sole basis for appointing one as a court interpreter, pursuant to the requirements of K.S.A. 75-4351, can and has led to ineffective and inefficient adjudication.

Knowing and being able to interpret the literal meaning of a phrase from one language to another is no means sufficient to qualify one as an competent interpreter.. The presence of cultural saying, such as a Southern calling a "soft-drink" a "soda" or a Midwesterner calling it a "pop," could reek havoc on a literal interpretation of the underlying meaning of the words to another language. A qualified interpreter must have a sufficient understanding, not only of the languages being interpreted, but the underlying cultural dialects and the roles of idiomatic expression. An example of the root problem with literal translation can be demonstrated by the following common English saying into a literal Russian form. The English saying: "The spirit is willing but the flesh is weak," would be literally translated to mean: "The booze is OK but the meat is rotten." This literal translation completely misses the underlying meaning of the original English saying.

This is but one of a multitude of examples that can result from a literal translation which is not tempered with a keen understanding of the underlying cultural expression and nuances of the foreign languages being translated.

In short, SB 231, with its expanded definition of whom is qualified to serve as a court ordered interpreter, visa vi that individual's understanding not only of the languages being translated, but the skills and aptitudes of translating complex thoughts and expression between languages and cultures is essential to the provisions of efficient and effective adjudication of criminal and civil actions. The State is currently required by law, K.S.A. 75-4351, to provide interpretive services to non-English or deaf parties in a variety of civil and criminal proceedings. In its purest essence, SB 231 attempts to guide the courts in "doing things right the first time," thus avoiding time and cost of appeals which are argued on the basis of flawed interpretation during the initial stages of judicial proceedings. Therefore, SB 231 simply attempts to provide non-English speaking parties sufficiently competent interpretation as mandated by K.S.A. 75-4351 and The Federal Court Interpreters' Act (1977).

My hopes are that once this bill becomes law that it will set the stage for "qualified" interpreters in our court system and reduce the preponderance of appeals. A number of people are thought ignorant because an interpreter was not accurately interpreting what was being said. One needs a qualified interpreter to get one's message across. Often there is a paranoia regarding interpreters; are the going to get the message across accurately and are they going to get the message back accurately. **A qualified interpreter makes the difference.**

Fellow Senators, I thank you for the opportunity to speak before you today. I am open to any questions relative to SB 231.

Following my testimony, there will be several individuals offering testimony relative to the importance of our State's courts using an expanded definition in the determination of whom is or is not qualified to perform court ordered interpretive functions.

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no longer warranted after approximately three months; witness was unable to specify any actual threat to family, but witness, who was boat mechanic and was not sophisticated in criminal justice system, testified that he turned down Witness Protection Program because he would not be able to have further contact with family members, to whom witness had close ties. In re Grand Jury Subpoena 87-2 (MIA) Served Upon Constant, S.D.Fla.1988, 691 F.Supp. 1400.

19. Standing

Recalcitrant grand jury witness lacks standing to challenge the composition of the grand jury or to challenge the authority of the grand jury on the theory that its investigation does not concern matters within the subject matter jurisdiction of the federal courts. In re Santiago, C.A. Puerto Rico 1976, 533 F.2d 727.

A grand jury witness had no standing to assert contention that grand jury procedures are being used illegally to conduct discovery or prepare a pending indictment for trial. Matter of Jabbar, D.C.N.Y.1983, 560 F.Supp. 186.

20. Just cause

Recalcitrant witness statute's provision that when witness refuses without just cause to comply with order of court to testify, court may summarily order witness' confinement until he is willing to give testimony or provide information would be construed to preclude fear of witness for his safety and that of others from being just cause to excuse obligation to testify, particularly to testify before grand jury. Matter of Grand Jury Investigation (Detroit Police Dept. Special Cash Fund), C.A.6 (Mich.) 1991, 922 F.2d 1266.

Showing that questioning of grand jury witness was based on illegal electronic surveillance constitutes "just cause" for refusing to testify and precludes finding of contempt of order directing testimony upon grant of immunity. Grand Jury v. Gassiraro, C.A.1 (Mass.) 1990, 918 F.2d 1013.

Inmate's claim that he might be in danger if fellow inmates could infer that he was called before grand jury was not enough to establish "just cause" for refusing to testify before grand jury. In re Grand Jury Proceedings, C.A.9 (Cal.) 1990, 914 F.2d 1372.

Defect in witness' memory, an alleged tendency to remember things that were not so due to alcohol and drug use, was not "just cause shown" for witness' refusal to comply with order of court to testify. Matter of Sinadinos, C.A.7 (Ill.) 1985, 760 F.2d 167.

In grand jury proceedings wherein witness was held in contempt for refusing to testify with regard to her mother and stepfather's involvement in homicide under investigation by grand jury, refusal to testify could not be justified on basis of "parent-child" privilege. In re Grand Jury Proceedings, C.A.Tex.1981, 647 F.2d 511.

Since this section allows contemnor to refuse to testify for "just cause," court in summary civil contempt proceeding must allow that person the opportunity to present reason for refusal to testify. U.S. v. Powers, C.A.Ariz.1980, 629 F.2d 619.

In light of judge's and government's assurances that neither would seek to prosecute grand jury witness for perjury in his prior testimony on basis of his requested grand jury testimony, as well as

Reynolds

protections afforded witness under U.S.C.A. Const. Amend. 5 and grand of immunity, witness lacked "just cause" for his refusal to testify before the federal grand jury, and could properly be adjudged to be in civil contempt. In re Grand Jury Proceedings, Horak, C.A.Neb.1980, 625 F.2d 767, certiorari denied 101 S.Ct. 117, 449 U.S. 840, 66 L.Ed.2d 47.

While a court will not countenance the government's impermissible use of a grand jury, such as calling a witness for the sole purpose of extracting perjury for which to indict him, or subjecting a witness to repetitious questioning to coax him into the commission of perjury or contempt, there was no indication in the instant case of such an abuse of the grand jury process. In re Poutre, C.A.Mass.1979, 602 F.2d 1004.

Under statutes effectively requiring trial courts to disregard U.S.C.A. Const. Amend. 5 whenever United States attorney certifies that witness' testimony is necessary to public interest and providing imprisonment for contempt if recalcitrant witness does not testify, police officers' privilege not to give evidence against themselves did not amount to "just cause" for refusal of officers to testify before grand jury as ordered by court; thus officers were in contempt and must be confined for 90 days or until indication was given in writing that each was willing to give evidences called for by grand jury subpoena. In re Grand Jury Proceedings, D.C.N.C.1977, 432 F.Supp. 1278.

If questions posed to grand jury witness or requests for other information or materials have been based on information derived from illegal electronic surveillance, "just cause" for witness not to answer or respond exists. U.S. v. Weiner, D.C.Pa.1976, 418 F.Supp. 941.

21. State prisoners

This section governing confinement for civil contempt cannot serve to justify a federal court's interruption of a preexisting state-imposed criminal sentence during the period of confinement on the contempt adjudication and, under principles of comity, federal district court had no inherent authority to interrupt the state sentence. In re Liberatore, C.A.Conn.1978, 574 F.2d 78.

Proper methods for coercing testimony in grand jury or court proceeding of a witness who is already serving a state sentence would be adjudication for criminal contempt with imposition of sentence postponed or with imposition of sentence of definite duration coupled with promise to consider subsequent compliance in ruling on any motion for a reduction of sentence. Id.

22. Stay of prior sentence

Where defendant, after commencement of sentence on federal narcotics charge, was held in contempt for refusing to answer questions before grand jury notwithstanding a grant of immunity, order providing that he would be immediately committed and would receive no credit towards his criminal sentence for time served under the civil contempt sentence was proper, because if confinements were to be concurrent with a prisoner's sentence for other crimes the coercive purpose of civil contempt would not be served. U.S. v. Chacon, C.A.S.C.1981, 663 F.2d 494.

District court, on confining contemnee for civil contempt, was vested with power to stay running of contemnee's prior criminal sentence for period of confinement of civil contempt. U.S. v. Dien, C.A.N.Y.1979, 598 F.2d 743.

23. Suspension of confinement

Because of complex legal issues presented by case, and with approval of counsel for both parties, and in light of this section, which requires disposition of appeal within 30 days of date appeal was filed, execution of confinement of witness held in contempt for refusing to testify before federal grand jury despite grant of immunity would be suspended after 30 days from the filing of appeal, and suspension would remain in effect until court of appeals filed its opinion in the case and further order issued. In re Grand Jury Proceedings, Horak, C.A.Neb.1980, 625 F.2d 767, certiorari denied 101 S.Ct. 117.

Humane considerations did not justify termination of civil contempt order requiring that contemnor be held in custody until she provided handwriting exemplars and hair samples to grand jury, in view of fact that it was completely within her power to eliminate any hardship which her contempt had caused herself or her family. In re Fula, D.C.N.Y.1983, 558 F.Supp. 50.

24. Habeas corpus

Failure of grand jury witnesses to seek and be denied habeas corpus does not bar appeals by them from orders of civil contempt. Matter of a Witness Before Special Oct. 1981 Grand Jury, C.A.Ill.1983, 722 F.2d 349.

25. Proceedings applicable

Pretrial deposition hearing is manifestly ancillary to court for purposes of Recalcitrant Witness Act, and thus, where witness' refusal was present refusal to testify at proceeding itself, use of contempt powers was not "anticipatory contempt," whether or not witness, whose attorney advised court that witness refused to testify, voiced any response to Government's questions. U.S. v. Johnson, C.A.Mich.1985, 752 F.2d 206.

26. Mandamus

Mandamus may be sought requiring appellate court to decide appeal from order holding witness in contempt for refusing to testify in a timely fashion. In re Scaled Case, 1986, 794 F.2d 749, 254 U.S.App.D.C. 40, certiorari denied 107 S.Ct. 679, 479 U.S. 1021, 93 L.Ed.2d 729.

§ 1827. Interpreters in courts of the United States

(a) The Director of the Administrative Office of the United States Courts shall establish a program to facilitate the use of certified and otherwise qualified interpreters in judicial proceedings instituted by the United States.

(b)(1) The Director shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters, when the Director considers

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certification of interpreters to be merited, for the hearing impaired (whether or not also speech impaired) and persons who speak only or primarily a language other than the English language, in judicial proceedings instituted by the United States. The Director may certify interpreters for any language if the Director determines that there is a need for certified interpreters in that language. Upon the request of the Judicial Conference of the United States for certified interpreters in a language, the Director shall certify interpreters in that language. Upon such a request from the judicial council of a circuit and the approval of the Judicial Conference, the Director shall certify interpreters for that circuit in the language requested. The judicial council of a circuit shall identify and evaluate the needs of the districts within a circuit. The Director shall certify interpreters based on the results of criterion-referenced performance examinations. The Director shall issue regulations to carry out this paragraph within 1 year after the date of the enactment of the Judicial Improvements and Access to Justice Act.

(2) Only in a case in which no certified interpreter is reasonably available as provided in subsection (d) of this section, including a case in which certification of interpreters is not provided under paragraph (1) in a particular language, may the services of otherwise qualified interpreters be used. The Director shall provide guidelines to the courts for the selection of otherwise qualified interpreters, in order to ensure that the highest standards of accuracy are maintained in all judicial proceedings subject to the provisions of this chapter.

(3) The Director shall maintain a current master list of all certified interpreters and otherwise qualified interpreters and shall report periodically on the use and performance of both certified and otherwise qualified interpreters in judicial proceedings instituted by the United States and on the languages for which interpreters have been certified. The Director shall prescribe, subject to periodic review, a schedule of reasonable fees for services rendered by interpreters, certified or otherwise, used in proceedings instituted by the United States, and in doing so shall consider the prevailing rate of compensation for comparable service in other governmental entities.

(c)(1) Each United States district court shall maintain on file in the office of the clerk, and each United States attorney shall maintain on file, a list of all persons who have been certified as interpreters by the Director in accordance with subsection (b) of this section. The clerk shall make the list of certified interpreters for judicial proceeding available upon request.

(2) The clerk of the court, or other court employee designated by the chief judge, shall be responsible for securing the services of certified interpreters and otherwise qualified interpreters required for proceedings initiated by the United States, except that the United States attorney is responsible for securing the services of such interpreters for governmental witnesses.

(d)(1) The presiding judicial officer, with the assistance of the Director of the Administrative Office of the United States Courts, shall utilize the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise qualified interpreter, in judicial proceedings instituted by the United States, if the presiding judicial officer determines on such officer's own motion or on the motion of a party that such party (including a defendant in a criminal case), or a witness who may present testimony in such judicial proceedings—

(A) speaks only or primarily a language other than the English language; or

(B) suffers from a hearing impairment (whether or not suffering also from a speech impairment)

so as to inhibit such party's comprehension of the proceedings or communication with counsel or the presiding judicial officer, or so as to inhibit such witness' comprehension of questions and the presentation of such testimony.

(2) Upon the motion of a party, the presiding judicial officer shall determine whether to require the electronic sound recording of a judicial proceeding in which an interpreter is used under this section. In making this determination, the presiding judicial officer shall consider, among other things, the qualifications of the interpreter and prior experience in interpretation of court proceedings; whether the language to be interpreted is not one of the languages for which the Director has certified interpreters, and the complexity or length of the proceeding. In a gra

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jury proceeding, upon the motion of the accused, the presiding judicial officer shall require the electronic sound recording of the portion of the proceeding in which an interpreter is used.

(e)(1) If any interpreter is unable to communicate effectively with the presiding judicial officer, the United States attorney, a party (including a defendant in a criminal case), or a witness, the presiding judicial officer shall dismiss such interpreter and obtain the services of another interpreter in accordance with this section.

(2) In any judicial proceedings instituted by the United States, if the presiding judicial officer does not appoint an interpreter under subsection (d) of this section, an individual requiring the services of an interpreter may seek assistance of the clerk of court or the Director of the Administrative Office of the United States Courts in obtaining the assistance of a certified interpreter.

(f)(1) Any individual other than a witness who is entitled to interpretation under subsection (d) of this section may waive such interpretation in whole or in part. Such a waiver shall be effective only if approved by the presiding judicial officer and made expressly by such individual on the record after opportunity to consult with counsel and after the presiding judicial officer has explained to such individual, utilizing the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise competent interpreter, the nature and effect of the waiver.

(2) An individual who waives under paragraph (1) of this subsection the right to an interpreter may utilize the services of a noncertified interpreter of such individual's choice whose fees, expenses, and costs shall be paid in the manner provided for the payment of such fees, expenses, and costs of an interpreter appointed under subsection (d) of this section.

(g)(1) There are authorized to be appropriated to the Federal judiciary, and to be paid by the Director of the Administrative Office of the United States Courts, such sums as may be necessary to establish a program to facilitate the use of certified and otherwise qualified interpreters, and otherwise fulfill the provisions of this section and the Judicial Improvements and Access to Justice Act, except as provided in paragraph (3).

(2) Implementation of the provisions of this section is contingent upon the availability of appropriated funds to carry out the purposes of this section.

(3) Such salaries, fees, expenses, and costs that are incurred with respect to Government witnesses (including for grand jury proceedings) shall, unless direction is made under paragraph (4), be paid by the Attorney General from sums appropriated to the Department of Justice.

(4) Upon the request of any person in any action for which interpreting services established pursuant to subsection (d) are not otherwise provided, the clerk of the court, or other court employee designated by the chief judge, upon the request of the presiding judicial officer, shall, where possible, make such services available to that person on a cost-reimbursable basis, but the judicial officer may also require the prepayment of the estimated expenses of providing such services.

(5) Any moneys collected under this subsection may be used to reimburse the appropriations obligated and disbursed in payment for such services.

(h) The presiding judicial officer shall approve the compensation and expenses payable to interpreters, pursuant to the schedule of fees prescribed by the Director under subsection (b)(3).

(i) The term "presiding judicial officer" as used in this section refers to any judge of a United States district court, including a bankruptcy judge, a United States magistrate, and in the case of grand jury proceedings conducted under the auspices of the United States attorney, a United States attorney.

(j) The term "judicial proceedings instituted by the United States" as used in this section refers to all proceedings, whether criminal or civil, including pretrial and grand jury proceedings (as well as proceedings upon a petition for a writ of habeas corpus initiated in the name of the United States by a relator) conducted in, or pursuant to the lawful authority and jurisdiction of a United States district court. The term "United States district court" as used in this subsection includes any court

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which is created by an Act of Congress in a territory and is invested with any jurisdiction of a district court established by chapter 5 of this title.

(k) The interpretation provided by certified or otherwise qualified interpreters pursuant to this section shall be in the simultaneous mode for any party to a judicial proceeding instituted by the United States and in the consecutive mode for witnesses, except that the presiding judicial officer, sua sponte or on the motion of a party, may authorize a simultaneous, or consecutive interpretation when such officer determines after a hearing on the record that such interpretation will aid in the efficient administration of justice. The presiding judicial officer, on such officer's motion or on the motion of a party, may order that special interpretation services as authorized in section 1828 of this title be provided if such officer determines that the provision of such services will aid in the efficient administration of justice.

(Added Pub.L. 95–539, § 2(a), Oct. 28, 1978, 92 Stat. 2040, and amended Pub.L. 100–702, Title VII, §§ 702–710, Nov. 19, 1988, 102 Stat. 4654–4657.)

HISTORICAL AND STATUTORY NOTES

References in Text

The date of the enactment of the Judicial Improvements and Access to Justice Act, referred to in subsec. (b)(1), is the date of enactment of Pub.L. 100–702, which was approved Nov. 19, 1988.

The Judicial Improvements and Access to Justice Act, referred to in subsec. (g)(1), is Pub.L. 100–702, Nov. 19, 1988, 102 Stat. 4642. For complete classification of this Act to the Code, see Short Title note set out under section 1 of this title and Tables.

1988 Amendment

Subsec. (a). Pub.L. 100–702, § 702, substituted "the use of certified and otherwise qualified interpreters in judicial proceedings instituted by the United States" for "the use of interpreters in courts of the United States".

Subsec. (b)(1). Pub.L. 100–702, § 703, added par. (1), incorporating in part provision of former first sentence which read: "The director shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters in courts of the United States in bilingual proceedings involving the hearing impaired (whether or not also speech impaired), and in so doing, the Director shall consider the education, training, and experience of those persons."

Subsec. (b)(2). Pub.L. 100–702, § 703, added par. (2).

Subsec. (b)(3). Pub.L. 100–702, § 703, added par. (3), incorporating in part provisions of former second and third sentences which read: "The Director shall maintain a current master list of all interpreters certified by the Director and shall report annually on the frequency of requests for, and the use and effectiveness of interpreters. The Director shall prescribe a schedule of fees for services rendered by interpreters."

Subsec. (c)(1). Pub.L. 100–702, § 704, added par. (1), incorporating in part provision of former first sentence which read: "Each United States district court shall maintain on file in the office of the clerk of court a list of all persons who have been certified as interpreters, including bilingual interpreters and oral or manual interpreters for the hearing impaired (whether or not also speech impaired), by the Director of the Administrative Office of the United States Courts in accordance with the certification program established pursuant to subsection (b) of this section."

Subsec. (c)(2). Pub.L. 100–702, § 704, added par. (2).

Subsec. (d)(1). Pub.L. 100–702, §§ 705(2), 710(a)(1)–(3), designated existing provisions as par. (1); and substituted "qualified interpreter", "judicial proceedings instituted by the United States" and "such judicial proceedings" for "competent interpreter", "any criminal or civil action initiated by the United States in a United States district court (including a petition for a writ of habeas corpus initiated in the name of the United States by a relator)", and "such action", respectively.

Subsec. (d)(1)(A), (B). Pub.L. 100–702, § 705(1), redesignated as subpars. (A) and (B) former par. (1) and (2) designations.

Subsec. (d)(2). Pub.L. 100–702, § 705(3), added par. (2).

Subsec. (e)(2). Pub.L. 100–702, § 710(b), substituted "judicial proceedings instituted by the United States" for "criminal or civil action in United States district court".

Subsec. (g)(1). Pub.L. 100–702, § 706(a), added par. (1), incorporating in part provisions of former par. (1), which read: "Except as otherwise provided in this subsection or section 1828 of this title, the salaries, fees, expenses, and costs incident to providing the services of interpreters under subsection (d) of this section shall be paid by the Director of the Administrative Office of the United States Courts from sums appropriated to the Federal judiciary."

Subsec. (g)(2). Pub.L. 100–702, § 706(a), added par. (2). Former par. (2) redesignated

Subsec. (g)(3). Pub.L. 100–702, § 706(a), designated par. (2) as (3); inserted the parenthetical phrase "(including for grand jury proceedings)"; substituted "paragraph (4)" for "paragraph (3) of this subsection"; and struck former par. (3), which read: "The presiding judicial officer may in such officer's discretion direct that all or part of such salaries, fees, expenses, and costs shall be apportioned between or among the parties or shall be taxed as costs in a civil action."

Subsec. (g)(4). Pub.L. 100–702, § 706(a), added par. (4). Former par. (4) redesignated

Subsec. (g)(5). Pub.L. 100–702, § 706(a), designated par. (4) as (5).

Subsec. (h). Pub.L. 100–702, § 707, struck out subsec. (h) which provided that in any action in a

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the United States where the presiding judicial officer establishes, fixes, or approves the compensation and expenses payable to an interpreter from funds appropriated to the Federal judiciary, the presiding judicial officer not establish, fix, or approve compensation and expenses in excess of the maximum allowable under the schedule of fees for services prescribed pursuant to subsection (b) of this section.

Subsec. (i). Pub.L. 100–702, § 708, substituted "the term 'presiding judicial officer' as used in this section refers to any judge of a United States district court, including a bankruptcy judge, a United States magistrate, and in the case of grand jury proceedings conducted under the auspices of the United States attorney, a United States attorney." for "The term 'presiding judicial officer' as used in this section and section 1828 of this title includes a judge of a United States district court, a United States magistrate, and a referee in bankruptcy.".

Subsec. (j). Pub.L. 100–702, § 708, inserted the definition of the term "judicial proceedings instituted by the United States"; and substituted "The term 'United States district court' as used in this subsection includes any court which is created by an Act of Congress in a territory and is invested with any jurisdiction of a district court established by chapter 5 of this title." for "The term 'United States district court' as used in this section and section 1828 of this title includes any court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States established by section 132 of this title.".

Subsec. (k). Pub.L. 100–702, § 709, substituted the sentence "The interpretation provided by certified or otherwise qualified interpreters pursuant to this section shall be in the simultaneous mode for any party to a judicial proceeding instituted by the United States and in the consecutive mode for witnesses, except that the presiding judicial officer, sua sponte or on the motion of a party, may authorize a simultaneous, or consecutive interpretation when such officer determines after a hearing on the record that such interpretation will aid in the efficient administration of justice." for previous provision, which read: "The interpretation provided by certified interpreters pursuant to this section shall be in the consecutive mode except that the presiding judicial officer, with the approval of all interested parties, may authorize a simultaneous or summary interpretation when such officer determines that such interpretation will aid in the efficient administration of justice."; and inserted commas for text to read ", on such officer's motion or on the motion of a party,".

Change of Name

United States magistrate appointed under section 631 of this title to be known as United States magistrate judge after Dec. 1, 1990, with any reference to United States magistrate or magistrate in this title, in any other Federal statute, etc., deemed a reference to United States magistrate judge appointed under section 631 of this title, see section 321 of Pub.L. 101–650, set out as a note under section 631 of this title.

Effective Date of 1988 Amendment

Section 712 of Pub.L. 100–702 provided that: "This title [amending subsecs. (a) to (e) and (g) to (k) of this section and enacting provisions set out as notes under section 1 of this title and this section] shall become effective upon the date of enactment [Nov. 19, 1988]."

Effective Date

Section effective 90 days after Oct. 28, 1978, see section 10(b) of Pub.L. 95–539, set out as a note under section 602 of this title.

Short Title of 1978 Amendment

For Short Title of Pub.L. 95–539 as "Court Interpreters Act", see section 1 of Pub.L. 95–539, set out as a note under section 1 of this title.

Impact on Existing Programs

Section 711 of Pub.L. 100–702 provided that: "Nothing in this title [amending subsecs. (a) to (e) and (g) to (k) of this section and enacting provisions set out as notes under section 1 of this title and this section] shall be construed to terminate or diminish existing programs for the certification of interpreters."

Legislative History

For legislative history and purpose of Pub.L. 95–539, see 1978 U.S. Code Cong. and Adm. News, p. 4652. See, also, Pub.L. 100–702, 1988 U.S.Code Cong. and Adm. News, p. 5982.

WEST'S FEDERAL FORMS

Taxation of costs, see §§ 4612 to 4632.

CODE OF FEDERAL REGULATIONS

Witnesses, fees and allowances, see 28 CFR 21.1 et seq.

LAW REVIEW COMMENTARIES

Language barriers in trial courts. Charles M. Grabau and David-Ross Williamson (1985) 70 Mass.L.Rev. 108.

"Official English": Federal limits on efforts to curtail bilingual services in the states. 100 Harvard L.Rev. 1345 (1987).

NOTES OF DECISIONS

Session of 1993

SENATE BILL No. 231

By Senators Reynolds, Bond, Brady, Burke, Emert, Harris, Moran, Morris, Parkinson, Petty, Rock and Vancrum

2-5

AN ACT concerning qualified interpreters appointed for persons whose primary language is other than English in certain proceedings; amending K.S.A. 75-4353 and repealing the existing section.

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

Section 1. K.S.A. 75-4353 is hereby amended to read as follows: 75-4353. (a) No one shall be appointed to serve as an interpreter for a person pursuant to the provisions of K.S.A. 75-4351 *et seq., and amendments thereto,* if ~~he or she~~ *such interpreter* is married to that person, related to that person within the first or second degrees of consanguinity, living with that person or is otherwise interested in the outcome of the proceeding, unless the appointing authority determines that no other qualified interpreter is available to serve.

(b) No person shall be appointed as an interpreter pursuant to the provisions of K.S.A. 75-4351 *et seq., and amendments thereto,* unless the appointing authority makes a preliminary determination that the interpreter is able to readily communicate with the person whose primary language is one other than English, or who is deaf or mute, or both, and is able to accurately repeat and translate the statement of ~~said~~ *such* person.

(c) In appointing a qualified interpreter for a person whose primary language is other than English pursuant to the provisions of K.S.A. 75-4351 et seq., and amendments thereto, the appointing authority should appoint a qualified interpreter possessing the following skills:

(1) A general understanding of ~~the culture expressed in the qualified interpreter's foreign language~~, including the foreign language's varieties and accents;

(2) ~~the skill of making another person's ideas the qualified interpreter's own ideas and expressing the ideas, as if the ideas were the qualified interpreter's own ideas, in a different cultural setting; and~~

*~~(3)~~ sound skills in written and oral communication between Eng-

Proposed Amendments to Senate Bill No. 231

including a technology-based, telecommunicationns interpretation service available on a 24 hour basis

cultural concepts, usage and expressions of the foreign language being interpreted

, dialects

the ability to interpret and translate in a manner which reflects the educational level and understanding of the person whose primary language is other than English;

(3) basic knowledge of legal rights of persons involved in law enforceme investigations, administrative matters and co proceedings and procedures, as the case may be; and

(4)

lish and the foreign language being translated, including the qualified interpreter's ability to translate complex questions, answers and concepts in a timely, coherent and accurate manner.

Sec. 2. K.S.A. 75-4353 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

TO: Members of the
Judiciary Committee

Thank you for the opportunity to address Senate Bill No. 231 pertaining to qualifications of interpreters.

My experience is as an attorney in legal matters involving non-English speaking, mostly Hispanic, persons. The Committee is certainly aware that throughout Kansas there are many thousands of Hispanic persons working in agricultural, manufacturing, and service industries and small businesses. Many of these persons have educational training which is roughly 4th, 5th, or 6th grade. As such, many of these persons have difficulties within their language especially written concepts and they find formal English and the complexities of our legal system unfathomable. Through work environment and day to day living in the U.S.A. they will gain some understanding of informal English usage and phrases, but it seems unlikely even after several years that they would be able to grasp formal English, written concepts, and legalities.

The present statutory scheme presented by K.S.A. 75-4351 et seq. pays lip service to a concept that persons whose rights and responsibilities are being adjudicated should have knowledge and understanding of the proceedings which may impact their liberty. The way it works is sometimes different. In many court cases, someone who happens to be available who knows more English than the Defendant will be asked to interpret. If a truly qualified interpreter is wanted but not available, then cases get continued mostly to the detriment of the Defendant, especially if he is sitting in jail.

SJ
3-18-93
Attachment 12

Law Enforcement interrogations also present barriers to non-English speaking persons. Most law enforcement agencies have Hispanic speaking officers available to come in to assist other officers when a confession is wanted. In these situations, police training basically runs counter to the need of the Defendant to know and understand. Please also remember that the statute already contemplates that an interpreter should be disinterested. As such a non-English person faces a substantially greater risk of being manipulated than you or I in an identical situation.

The amendments proposed in Senate Bill 231 are requested to improve the legal system and to make it more responsible to the concepts of fundamental fairness and justice to which we are pledged. They are intended to suggest that thought and planning are needed when interpretation and translation services are required.

EXAMPLES:

Miranda Warning

1st Degree Murder and lesser offense concept

Plea Requirements

Target Shooting

Workers Compensation

Divorce - Child Custody, Support

I would be happy to address questions from the Committee.

Thank you.

Terry R. Fuller
Attorney at Law

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Mike Reecht
State Director
Government Affairs
Kansas

Capitol Tower
400 SW 8th Street, Suite 301
Topeka, KS 66603
Phone (913) 232-2128

COMMENTS ON BEHALF OF AT&T
BEFORE THE SENATE JUDICIARY COMMITTEE
MIKE REECHT
SENATE BILL 231
MARCH 18, 1993

Mr. Chairman and members of the Committee:

My name is Mike Reecht. I am Director-State Government Affairs for AT&T in Kansas. I offer the following written comments on SB 231.

AT&T supports SB 231 but would take the opportunity to make the Committee aware of a service that is currently under contract with the State of Kansas that provides 24 hour/day, 7 days/week professional telecommunications technology based interpretation services. This service, called Language Line, meets all the requirements for qualified interpreters specified in SB 231.

Language Line is accessed via an 800 number. Individual agencies are identified by an authorization number which is assigned by the Division of Information Systems and Computers (DISC). The service is available from any telephone that is not restricted from 800 number dialing.

Other states are examining the advantages of utilizing telecommunications technology-based interpretation services in their court systems for non-juried proceedings.

Under the state contract, local and municipal agencies can access telecommunications-based interpreters which affords the users the benefit of aggregated volume discounts.

I have attached a proposed amendment for the Committee's consideration which would allow the courts to utilize not only in person interpreters but also professional telecommunications technology-based interpretation services.

SJ
3-18-93
Attachment 13

Session of 1993

SENATE BILL No. 231

By Senators Reynolds, Bond, Brady, Burke, Emert, Harris, Moran, Morris, Parkinson, Petty, Rock and Vancrum

2-5

AN ACT concerning qualified interpreters appointed for persons whose primary language is other than English in certain proceedings; amending K.S.A. 75-4353 and repealing the existing section.

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

Section 1. K.S.A. 75-4353 is hereby amended to read as follows: 75-4353. (a) No one shall be appointed to serve as an interpreter for a person pursuant to the provisions of K.S.A. 75-4351 *et seq., and amendments thereto,* if ~~he or she~~ *such interpreter* is married to that person, related to that person within the first or second degrees of consanguinity, living with that person or is otherwise interested in the outcome of the proceeding, unless the appointing authority determines that no other qualified interpreter is available to serve.

(b) No person shall be appointed as an interpreter pursuant to the provisions of K.S.A. 75-4351 *et seq., and amendments thereto,* unless the appointing authority makes a preliminary determination that the interpreter is able to readily communicate with the person whose primary language is one other than English, or who is deaf or mute, or both, and is able to accurately repeat and translate the statement of ~~said~~ *such* person.

(c) In appointing a qualified interpreter for a person whose primary language is other than English pursuant to the provisions of K.S.A. 75-4351 et seq., and amendments thereto, the appointing authority should appoint a qualified interpreter possessing the following skills:

(1) A general understanding of the culture expressed in the qualified interpreter's foreign language, including the foreign language's varieties and accents;

(2) the skill of making another person's ideas the qualified interpreter's own ideas and expressing the ideas, as if the ideas were the qualified interpreter's own ideas, in a different cultural setting; and

(3) sound skills in written and oral communication between Eng-

including a professional telecommunications technology based interpretation service available on a 24 hour basis

or interpreted

lish and the foreign language being translated, including the qualified interpreter's ability to translate complex questions, answers and concepts in a timely, coherent and accurate manner.

Sec. 2. K.S.A. 75-4353 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Kansas Department of Human Resources

Joan Finney, Governor
Joe Dick, Secretary

Kansas Advisory Committee on Hispanic Affairs
1321 S.W. Topeka Boulevard, Topeka, Kansas 66612-1816
913-296-3465 --- 913-296-5112 (Fax)

S. B. 2 3 1

I would like to thank the Judiciary Committee for the opportunity to offer testimony regarding S.B. 231, on behalf of the Kansas Advisory Committee of Hispanic Affairs, which is primarily concerned with protecting the rights of Spanish-speaking Kansans who cannot communicate in English.

We strongly support the bill's primary purpose of establishing explicit criteria to be used in appointing language interpreters, not only in court ordered cases, but also in the case of proceedings before boards, commissions or agencies as stated in K.S.A. 75-4351 and its amendments.

In its current form, S.B. 231 appears to indicate that it is up to each judge, or in the case of an agency, the presiding executive, to make the determination of interpreter qualification on an ad hoc basis.

The Kansas Advisory Committee on Hispanic Affairs suggests that a state-wide centralized agency or commission able to certify and maintain a pool of readily available qualified interpreters, would facilitate the delivery of interpreter services to the courts or state boards who use those services.

KACHA is statutorily authorized under K.S.A. 74-6504 to coordinate with the efforts of other state agencies to serve the needs of Hispanics. Currently, my office receives approximately 3 to 5 weekly requests for Spanish language interpreters.

I suggest this office could initially serve as a state-wide certifying office for Spanish language interpreters, using the proposed criteria established by SB 231.

Additionally, I suggest that the bill's proposed terminology in K.S.A. 75-4353(c) for "a general understanding of" the foreign language by an interpreter, would not accomplish the primary purpose of the bill. That language appears to leave it up to each appointing authority's discretion just how much understanding is "a general understanding" of that foreign language.

SJ
3-18-93
Attachment 14

The KACHA office would offer to provide technical assistance in formulating some type of questionnaire to be used by an appointing authority in determining if a potential interpreter had the requisite level of understanding of the Spanish language.

Perhaps the addition of a designated or certifiable level of education to the required qualifications for a potential interpreter could serve as a universal manifestation of the appropriate skill level.

Such a requirement, of state-wide applicability, would also guarantee the potential interpreter possessed the basic knowledge of "legal rights, etc." required by Sect.(c)(3) of the proposed bill.

I feel these adjustments might decrease the ambiguity which, if left unaddressed, would hinder the effectiveness of this proposed legislation.

I thank you for the opportunity to express these suggestions before you today.