

Approved: 01/18/94
Date

MINUTES OF THE HOUSE COMMITTEE ON APPROPRIATIONS.

The meeting was called to order by Chairman Rochelle Chronister at 1:30 p.m. on January 11, 1994 in Room 514-S of the Capitol.

All members were present except:

Committee staff present: Scott Rothe, Legislative Research Department
Jim Wilson, Revisor of Statutes
Jerry Cole, Committee Secretary
Sharon Schwartz, Administrative Assistant

Conferees appearing before the committee:

Patricia Henshall, Office of Judicial Administration
Jerry Beneventi, Kansas Committee for Community Mediation
Roxanne Emert Davis, Kansas Children's Service League
Jolene Grabill, Corporation for Change
John Palenz, Kansas Bar Association Alternative Dispute Resolution Committee

Others attending: See attached list

Chairman Chronister began the meeting by notifying committee members of her intention to recommend killing HBs 2146, 2156, 2212, 2216, 2247, 2329, 2347, 2348, 2361, 2309, 2346, 2350, 2351 and 2504. Those bills had been grouped into one piece of legislation (substitute for HB 2211) during the 1993 legislative session and passed from the committee.

Chairman Chronister then opened the scheduled hearing for HB 2574. Patricia Henshall, representing the Office of Judicial Administration, appeared to offer testimony in support of the bill. Henshall said the bill was a good vehicle for pursuing recommendations of alternatives to dispute resolution. (See Attachment 1). She went on to propose a number of amendments to the legislation. (See Attachment 1a).

Jerry Boneventi spoke in favor of the bill for the Kansas Committee for Community Mediation. He said that his committee offered their wholehearted and enthusiastic support calling the bill a "collaborative effort" for alternatives to dispute resolution. Boneventi said the bill brings the state up to date with nationwide efforts for ADR (Alternative Dispute Resolution) and cited a study done in California on child custody dispute costs. He told the committee that mediation in these cases only incurred approximately one-quarter of the normal costs for resolving child custody disputes. He offered his strong support for section 1b of the bill. In the area of funding, Boneventi suggested that the committee look at the Oregon Dispute Resolution Act for specific funding mechanisms.

The next conferee was Roxanne Emert Davis of the Kansas Children's Services League. She appeared before the committee voicing her support for the bill and suggested including some definitive funding mechanisms. (See Attachment 2)

Jolene Grabill, Corporation for Change, appeared in support of HB 2574. Grabill spoke to illustrate just how the bill's objective paralleled purposes inherent to the Corporation for Change-ways of helping Kansas children and families. (See Attachment 3).

Ron Smith of the Kansas Bar Association was called upon for testimony and subsequently introduced John Palenz, Kansas Bar Association Alternative Dispute Resolution Committee Chairman. Palenz appeared in support of the bill as well and suggesting areas to amend outlined in Attachment 4.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON APPROPRIATIONS, Room 514-S Statehouse, at 1:30 p.m. on January 11, 1994.

Further testimony was submitted for consideration by committee members. (See Attachment 5).

Chairman Chronister then asked for a motion to introduce the Governor's appropriation bills. Rep. Heineman made such a motion, which was then seconded by Rep. Teagarden and passed by the committee. No further business appearing before the committee, Chairman Chronister adjourned the meeting at 3:10 p.m.

The next meeting is scheduled for January 12, 1994.

1994 Appropriation Committee Guest List

1	NAME	ORGANIZATION
2	Melissa Ness - HE ^{estates}	Ks. Childrens Service League
3	Deanne Emmett-Jain	Ks Childrens Service League
4	Dodie J. Lacey	↓
5	JK Shurely	Kansas Legal Services
6	SEKKY BENEVENTI	KS COMMITTEE FOR COMMUNITY MED.
7	John Palenz	KANSAS BAR ASSN ADR Com.
8	ART THOMPSON	11
9	PATRICIA Henshall	OJA
10	Ron Smith	KBA
11	Paula M. Williams	KS Ag Mediation Services
12	John Wine	Sec of St.
13	Avery Ruth	KdS
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Tue, Jan 11, 1994



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 West 10th
Topeka, Kansas 66612-1507

(913) 296-2256

JANUARY 11, 1993

TO: GLORIA TIMMER
DIRECTOR OF THE BUDGET

FROM: JERRY SLOAN
BUDGET AND FISCAL OFFICER

RE: FISCAL NOTE: HOUSE BILL 2574
ACT CONCERNING DISPUTE RESOLUTION

PREPARED AND INTRODUCED BY
COMMITTEE ON APPROPRIATIONS

As presented, House Bill 2574:

- Establishes the Office of Dispute Resolution within the Office of Judicial Administration;
- Provides for the appointment of a director of the Office of Dispute Resolution;
- Provides for the appointment of the advisory council on dispute resolution;
- Establishes and defines the duties, obligations and authority of the director and the council; and
- Provides for the establishment, certification and operation of dispute resolution centers.

DISCUSSION

This bill establishes the Office of Dispute Resolution within the Office of Judicial Administration¹. In addition, the bill provides for the appointment of a director of the office. The Chief Justice of the Kansas Supreme Court shall appoint the Director. The director shall provide administrative and clerical support to the advisory council, also appointed under the bill.

Pursuant to section 6, the director shall:

- Distribute information concerning Alternative Dispute Resolution throughout the state;
- Approve centers for dispute resolution according to the bill's provisions;
- Develop and administer a uniform system of statistics;
- Develop and administer a uniform system for evaluating approved centers for dispute resolution;
- Prepare an annual budget for the Office of Dispute Resolution;
- Disburse funds to approved centers;
- Develop guidelines for a sliding scale of fees for approved centers;
- Develop and approve curricula and initiate training sessions for mediators and staff of approved centers;
- Establish and approve volunteer training and continuing education programs;
- Apply for and receive funds from public and private sources for carrying out the purposes and objectives of the Dispute Resolution Act.²

The bill also establishes a council to assist the director in administering the act. The council shall consist of members recruited from various groups and disciplines trained and knowledgeable in alternative dispute resolution. The council should gender balanced and represent the geographical and cultural diversity of Kansas.

The council will:

- Advise the Director on the administration of the Act and formulation of policy positions;
- Assist the director in providing technical assistance to centers and other entities interested in dispute resolution programs;

- Assist and advise the Director with awarding and administering grants or other financial assistance available under the act.
- Advise and assist the director with applications for approval submitted by centers and other entities according to the act; and
- Assist the director with review, supervision and evaluation of centers approved under the act.

The act focuses mainly on establishing centers throughout the state to participate in and provide alternative dispute resolution services.³ Approved centers would receive appropriations from the Office of Dispute Resolution to defray operating costs.

For example, the current appropriation to Nebraska's Office of Dispute Resolution is \$249,000. This is composed of \$230,000 from the state legislature and \$19,500 received as a grant from the National Institute for Dispute Resolution. The Director must allocate \$30,000 to each of the six centers. This provides for one paid employee and an office for each center. Any additional staff members serve voluntarily. The Director is the only paid position at the state level.

The centers could and would be encouraged to seek grants from public and private sources to defray operating expenses. Grants are available from some national organizations, such as the National Institute for Dispute Resolution and the National Legal Service Corp. Private entities such as utility companies also make small grants available. Private grants usually range in amount from \$1,000 to \$5,000.

Mediation centers may also generate income through collection of fees. Fees would be assessed according to a sliding scale developed by the director and the council. Based upon Nebraska's experience, collection of fees should not be expected to generate significant amounts of revenue. Many disputes referred to mediation are between low income individuals. The maximum amount collected for a mediation session is \$15 to \$16; more often, the amount ranges between \$9 and \$12.

Approved centers shall be : 1) a not-for-profit organization under section 501(c)(3) of the Internal Revenue Code; or 2) a court-established program that makes dispute resolution procedures available.

IMPLEMENTATION COSTS

The total cost of implementation depends upon the requirements and expectations placed upon the Director and the Committee during the first year of operation. First year costs will be less if the first year is dedicated to organization and planning. However, if the legislature

expects full operation the first year, higher costs should be expected.

Costs associated with the bill's implementation include: personnel costs, travel costs, capital outlay costs, contractual services and other operating expenses. Costs also may include appropriations to individual centers.

PERSONNEL COSTS

The bill requires appointment of a Director of the Office of Dispute Resolution. This position will cost \$43,519.00. In addition one Secretary II is needed as support staff, at a cost of \$19,944.00. The secretarial position will provide clerical support and assist the director in developing, collecting and administering statistics. Personnel costs will total \$63,463. Table 1 contains additional data on the requested positions.

<u>Position</u>	<u>Range</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Director	31	\$38,478	\$5,041	\$43,519
Secretary II	15	\$17,634	\$2,310	\$19,944

Table 1

TRAVEL COSTS

Calculations for travel expenses apply the Division of Accounts and Reports' allowances and guidelines. Travel costs include mileage for council members attending meetings in Topeka as required by the act. Travel costs also include some lodging expenses. The lodging rate is that prescribed by the Division of Accounts and Reports. The amount calculated for lodging is \$1,560. Because most of the council members are from outside the Topeka area, subsistence allowances are also included. The total for subsistence is \$2,484. The overall total for travel is \$7,723.

CAPITAL OUTLAY

Capital outlay expenses are primarily for office furniture and equipment. This includes office furniture, computers and software and The total for capital outlay is \$10,027. Capital outlay will be an expenditure the first year only.

CONTRACTUAL SERVICES

The bill's requirements for statistics tracking, administration, evaluation, coordination and certification of centers, training, grant processing, and budget preparation may demand a moderately complex tracking and data system. Based upon previous system development and programming, the cost may reach \$50,000.

The actual amount needed the first year depends upon the expectations and requirements of the legislature. The bill contains a lengthy list of obligations for the office of dispute resolution and the director. The legislature must address exactly what is intended by and included in the obligations. Reducing the amount the first year will require the legislature to specify exactly what the bill's provisions require and what is expected of the director's office during the first year. At a minimum, \$10,000 will be needed the first year to cover a basic programming costs and systems analysis.

Second year costs depend heavily upon the complexity of the system required to fulfill the bill's mandates. The complexity depends upon the expectations and requirements identified by the legislature. Because we anticipate a total cost of \$50,000, second year costs are estimated at \$40,000. Because developing the required data system and statistics tracking system is a single occurrence, expenditures for contractual services should be significantly less in subsequent years.

OTHER OPERATING EXPENSES

Other operating expenses include postage, printing costs, office supplies, director travel, and telephone. The total for OOE is \$19,500.

APPROPRIATIONS TO CENTERS

House Bill 2574 does not specify whether the Director and the Council will actually establish dispute resolution centers. If this is the intention of the bill and the legislature, additional appropriations will be required to assist the centers. For example, Nebraska requires \$180,000 of the appropriation to the state Office of Dispute Resolution be distributed to the six qualified centers.

If centers are established under 2574, the issue becomes whether the legislature will appropriate funds for the operating costs of the centers, salaries and wages of center employees, salaries and wages for mediators assigned by the centers, all of the above, none of the above or some of the above. This decision definitely alters the fiscal impact of this bill.

Because it is impossible at this time to predict the number of centers that may be established and receive funding, we are unable to attach a dollar amount at this time. However, for calculation purposes, we will ask for \$30,000 for each center established directly under the Office of Dispute Resolution.

RECAPITULATION

	First Year Start-Up Costs	Full Implementation
TRAVEL	\$7,723.00	\$7,723.00
PERSONNEL	\$63,463.00	\$63,463.00
CAPITAL OUTLAY	\$10,027.00	\$10,027.00
CONTRACTUAL SERVICES	\$10,000.00	\$50,000.00*
OTHER OPER'G EXPENSES	\$19,500.00	\$19,500.00
TOTAL:	\$110,713.00	\$150,713.00
APPROPRIATIONS TO CENTERS		\$30,000.00**

* *One time expenditure.*

* * *Amount per Center*

SOURCE OF FUNDING

Although some grants are available from public institutions and entities and a few private entities, grants are difficult to obtain before a program is actually established. Most grantors hesitate to award grants to start a program. Therefore, the initial financing will require an appropriation from the legislature. Grants may offset future appropriations.

Collection of fees may offset some start up costs and operating expenses. As mentioned previously, Nebraska officials warn not to rely on fees to generate much revenue.

CONCLUSION

House Bill 2574 would create state regulated dispute resolution centers. A director and an eleven-member council, all appointed by the Chief Justice of the Kansas Supreme Court, would administer the act. The major expenditures associated with the bill are: travel costs; capital outlay; contractual services; personnel costs, other operating expenses and possibly the

cost of operating dispute resolution centers. We are estimating a minimum cost of \$180,713 the first year.

The bill provides no funding mechanism. It does mention assessing fees for mediation services rendered. However, because it is difficult to predict the number of participants, the rate of fees charged, and the rate of fees actually collected, this provision cannot be relied upon to finance implementation. Grants are another source of funding; however, grants are difficult to obtain to cover "start-up" costs. Therefore, financing for at least the first year must be totally absorbed by legislative appropriation. The amount of the appropriation will depend upon the expectations and requirements imposed by the legislature.

Continuation costs will depend upon the success and number of centers, the popularity of mediation as a means of dispute resolution, the amount of fees collected, and the availability of grants. We, therefore, cannot predict the fiscal impact of the bill beyond the first year.

1. This bill is modeled after a similar bill adopted by the Nebraska legislature. The Office of Dispute Resolution in Nebraska has been helpful in the formulation of this fiscal note.

2. The Office of Dispute Resolution may serve as a resource guide for centers seeking grants. The Office may also be charged with applying for and distributing larger grants. Nebraska's experience has been to assist the centers in preparing their grant applications, editing applications and submitting prepared applications.

3. The bill does not establish a specific number of centers. Nor does it limit the number of centers that may be approved. Nebraska functions through six regional dispute resolution centers.

Testimony before the House Committee on Appropriations
House Bill Number 2574

January 11, 1994

Patricia Henshall
Office of Judicial Administration

The Office of Judicial Administration respectfully suggests the following amendments to House Bill No. 2574:

1. Section 3: Give the power of appointing the director of dispute resolution to the judicial administrator. The current wording of the bill conflicts with the Kansas Court Personnel Rules, which provide the head of a department is the appointing authority for the staff he or she supervises.
2. Section 4: Make the list of potential members and sources of nomination more generic. The current wording refers to organizations which may or may not continue to exist. Similar bills use classifications based on statutes and professions to achieve a similar diversity.
3. Section 10: Allow the Supreme Court to set the standards for the training of mediators based on the recommendations of the advisory council. Two major reasons underlie this suggestion. First, the training mandated by the bill is at odds with the findings of the three Kansas groups which have studied the issue during the past seven years. These groups are Heartland Mediators Association, the Kansas Bar Association, and the Kansas Supreme Court Committee on Alternative Dispute Resolution. These groups studied standards set by national mediation associations, standards set by Kansas courts using mediation, national studies, the training required by Kansas mediation programs, and the training provided by nationally recognized mediation trainers. Their research should be used in setting the standards for mediation. Second, the issue of qualifications continue to be studied nationally, and new research may tell us more about what makes a good mediator. The advisory council should be able to keep current on research in this area and keep Supreme Court standards in line with new discoveries and current practice.



Kansas
Children's
Service League

TESTIMONY BEFORE THE HOUSE COMMITTEE ON APPROPRIATIONS

Submitted by: Kansas Children's Service League
January 11, 1994

KANSAS CHILDREN'S SERVICE LEAGUE is a statewide agency whose mission is "To promote the well-being of all Kansas Children by strengthening the quality of family life through the provision of prevention, early intervention, treatment, advocacy and placement of services." ¹ As you can see, this mission exemplifies a genuine commitment to children and families and is reflected in our 100 years of service.

Kansas Children's Service League currently sponsors two programs that deal with mediation services: the Parent-Adolescent Mediation Program and a curriculum/training program, Building Conflict Solving Skills.

Thank you for the opportunity to address your Committee regarding the proposed legislation regarding alternative dispute resolution.

Kansas Children's Service League supports the proposed House Bill 2574 that establishes an office of dispute resolution and provides for dispute resolution centers in Kansas.

We applaud this effort to formally establish a foundation for the development of alternative means of dispute resolution. Our experience over the past seven years in providing mediation services for parents and adolescents has underscored the value of a service that provides a means for families to resolve differences before they escalate to the point of family dissolution or involvement of the Courts. We believe that individuals can take responsibility for designing solutions tailored to their needs and, further, that they will be more likely to adhere to solutions they have devised themselves.

The proposed legislation outlined in HB 2574 should provide the means for making alternative forms of dispute resolution more readily available on a statewide basis.

We would propose but one recommendation: that a definitive funding mechanism be included in the proposed legislation to ensure the establishment of the office of dispute resolution and dispute resolution centers in Kansas.

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Presented by: Roxanne Emmert-Davis, Case Work Supervisor

¹ The League is a Charter member of the Child Welfare League of America, is accredited by the Council on Accreditation of Services for Children and Families, a member of the Association of Licensed Private Child Care Agencies, the Coalition for America's Children and one of the founding members of the Children's Coalition.

THE CORPORATION FOR CHANGE

A Partnership for Investing in The Future of Kansas Children and Families

Testimony Before the House Appropriations Committee

House Bill 2574
January 11, 1994

by Jolene M. Grabill, Executive Director

The Corporation for Change is a non-profit corporation organized by the State of Kansas to coordinate and implement reform of children's services in Kansas. To accomplish this mission, the Corporation builds and provides support to a partnership between government, business, parents, children's advocacy and service groups to develop a comprehensive and coordinated strategy for investing in the future of Kansas children and families. Our major role is to see connections, test out what works and what doesn't work, experiment with new strategies, and to develop the consensus to reinvest our resources in more comprehensive strategies that do achieve the outcomes we all desire for children and families.

I appear today to support HB 2574 and to briefly discuss the connections between the strategies addressed by the bill and the work of the Corporation for Change. The first major connection is with the work of our family court advisory committee and legislation resulting from their work to create several pilot projects testing family departments in the district courts of Kansas. (That bill should be introduced this week.) The issue addressed by HB 2574 fits squarely with one of the basic principles endorsed by our committee to create a comprehensive family department for the district courts of Kansas: "to maximize the use of non-adversarial methods of dispute resolution in family matters."

A side-by-side comparison of the two bills reveals two common approaches that make the bills quite compatible and supportive of each other. Looking first at the types of cases accepted, there are several similarities. The largest common caseloads would be in the area of resolution of family disputes and juvenile matters. Secondly, both bills will create some form of advisory committee to be appointed by the Chief Justice. He, or she, might find it possible to merge these two functions into one body as they are likely to have similar roles and advisory capacities, particularly in the areas of technical assistance and the development of evaluation components and criteria.

I would also like to ask the committee to expand the boundaries of your thinking about this legislation and consider an additional role for alternative dispute resolution centers. Again, this connection comes out of the work of the Corporation for Change.

EXECUTIVE DIRECTOR
Jolene M. Grabill

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Dept. of Social &
Rehab. Services
Topeka

In summary then I encourage the committee to pass this legislation out favorably and to embrace two major advantages to the general public that will result from this alternative form of dispute resolution. Alternative dispute resolution offers individuals and small companies an alternative to court proceedings. For government and parents attempting to access services from government, it offers a solution not otherwise available. Both uses of alternative dispute resolution would improve the quality and appropriateness of the response to the immediate problem at hand.

HOUSE COMMITTEE ON APPROPRIATIONS
OF THE LEGISLATURE OF THE STATE OF KANSAS
REPRESENTATIVE ROCHELLE CHRONISTER, CHAIR

Hearing, House Bill No. 2574
Alternative Dispute Resolution, mediation
January 11, 1994

Testimony: John A. Palenz, Attorney at Law
107 North Market, Suite 412
Wichita, Kansas 67202-1806
(316) 267-2360

My name is John Palenz. I am an attorney engaged in the solo, private practice of law in Wichita, Kansas. Members of the Kansas Bar Association Alternative Dispute Resolution (ADR) Committee asked me to speak with you today about the pending dispute resolution legislation. In addition to membership on this state bar committee, I also chair the Wichita Bar Association ADR Committee and I am a director, and the immediate past president, of the Wichita Neighborhood Justice Center, Inc., a non-profit provider of public and private mediation services. I have also served as a judge pro temp in a small claims court that uses mediation.

We want you to know of our support for your interest in alternative approaches to dispute resolution, represented in part by House Bill No. 2574. We favor the concept of mediation and other forms of ADR having a greater role in the Kansas justice system. My remarks are intended to provide this committee and the legislature with just a few guidelines to consider when evaluating any dispute resolution legislation. To begin, please keep in mind three bench marks.

1. Court connected Any state sanctioned dispute resolution system should be court connected. The judiciary is charged with dispensing justice. Confusion arising from proliferation of competing or parallel systems should be avoided. Judges are, or should be, best able to direct cases to a variety of dispute resolution methods; cases inappropriate for ADR would remain with the court. Local judges, subject to general direction from the supreme court, should be able to determine what kind of system works best in their area.
2. Flexible Any legislation or rule should be sufficiently flexible to allow for differing circumstances across Kansas, and flexible to meet the evolving needs of a variety of individual program approaches and standards, of various dispute resolution methods and of the broad range of potential problems. Supreme court rule might well provide the greatest flexibility for keeping abreast of developmental changes.
3. Funded Stable, full funding is an essential to any successful ADR program, especially for any degree of court supervision and for non-profit, volunteer service providers. A central supreme court OJA staff to coordinate efforts, disseminate information and gather data need not mean adding a large court bureaucracy overall. The court, working with private individuals and organizations, is the central focus for developing the system and making referrals. Funding sources could be the state general fund, general filing fee increase or local option filing fee increase.

If the legislature favors funding a supreme court staff ADR coordinator position, it needs to decide whether legislation beyond the appropriation is desirable should the court be prepared to adopt a broad rule covering ADR.

If the legislature decides to adopt legislation beyond the appropriation, here are a few very brief comments encouraging refinement of House Bill No. 2574.

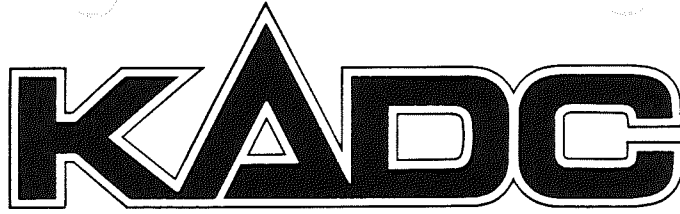
- Having a preamble, modeled along the lines of that found in the Nebraska legislation, would chart a direction and mission for any Kansas legislation.
- Work with and let the court decide the requirements for court-annexed ADR as much as possible in order to preserve the greatest flexibility in adapting an evolving ADR system to changing times without needing to involve future legislatures in decisions regarding center approval requirements and standards; mediator qualifications, training hours, experience and/or education; whether only non-profit organizations should be approved; whether non-approved centers are eligible for court referrals; whether any forms of ADR other than mediation are acceptable; how the office of dispute resolution should be structured and run or who is eligible to be considered for appointment to the advisory council; the type of cases that can be accepted for ADR; requiring written agreements; and more.
- Do not require mediators to "be aware of and recommend outside resources to the parties whenever appropriate" or to give any advice. Page. 8 Sec. 11 (d).
- Afford clearer and broader liability protection to mediators and providers, particularly for volunteers acting in good faith. Consider distinguishing between volunteers and paid professionals as well as lawyers and non-lawyers.

For many years, the Kansas Bar Association, through its ADR committee, has encouraged the courts, the bar and the public to utilize a variety of appropriate ADR methods in both litigated and non-litigated matters but the lack of state funding has slowed court ADR coordination and development.

House Bill No. 2574 represents a legislative reexamination of alternative methods for settling some disputes. It is an area that continues to develop and we see this legislation as a spring board for affording our supreme court to coordinate and lead these developments where Kansas justice is concerned.

Thank you for listening and considering the ideas presented.

John A. Palenz
KBA ADR COM
January 11, 1994



January 11, 1994

House Appropriations Committee
State House
Topeka, Kansas 66612

Re: House Bill No. 2574; Alternative Dispute Resolution

Dear Committee Members:

This is to advise you that the Kansas Association of Defense Counsel has no objection to this Bill as it has been introduced.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, reading 'Tom Buchanan', is written over a horizontal line.

Thomas R. Buchanan
Legislative Chairman

TRB/mbj