Approved: April 27, 1994
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael O'Neal at 3:30 p.m. on February 8, 1994 in Room 313-S of the Capitol.

All members were present except:
Representative David Heinemann - Excused
Representative Candy Ruff - Excused
Representative Joan Wagnon - Excused

Committee staff present:
Jerry Ann Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:
Kyle Smith, Kansas Bureau of Investigation
Tom Hitchcock, Kansas Board of Pharmacy
Dana Killinger, Attorney for Kansas Board of Pharmacy
Representative Carol Dawson
Helen Stephens, Kansas Peace Officers Association
Jim Clark, Kansas County and District Attorneys Association
Alice Adams, Clerk of District Court - Morris County
Al Singleton, Court Administrator - Manhattan
Dianna Jones, Chief Clerk, 25th District - Garden City

Others attending: See attached list

Kyle Smith, Kansas Bureau of Investigation, appeared before the Committee with a bill request. This would amend K.S.A. 22-2802 and the Criminal Trespass Act to include that if someone remains on property in defiance of a condition of an appearance bond it would be considered trespassing.

Representative Pauls made a motion to have this bill request introduced as a committee bill. Representative Robinett seconded the motion. The motion carried.

Hearings on **HB 2604** - Treatment of diversion agreements for disciplinary actions under uniform controlled substances act, were opened.

Tom Hitchcock, Kansas Board of Pharmacy, appeared before the Committee as a proponent of the bill, as amended. The proposed bill amends K.S.A. 65-4117, which deals with reasons to prohibit the issuance of a registration and K.S.A. 65-4118 deals with the sanctioning of the registrant. Under present law, diversion agreements are not convictions. The Board of Pharmacy feels that to maintain the highest standards of professionalism they should have the right to deny licensure or impose sanctions for criminal acts involving controlled substances, (see attachment 1).

Dana Killinger, Attorney for Kansas Board of Pharmacy, appeared before the Committee as a proponent of the proposed bill. The Board feels that they should be made aware of any violation of controlled substances law by applications for licensure or registration. If the Board can withhold a license for a misdemeanor then they should be able to sanction a licensee for a misdemeanor, (see attachment 2).

Representative Carmody stated the concern was that the language equates a diversion agreement with a conviction. He questioned if they could accomplish the same thing by adding a question on the application that would ask if they are currently in a diversion situation regarding the Controlled Substance Act. Mr. Killinger responded that under the Controlled Substance Act the Board would have no power if it's not a conviction.

Representative Rock commented that a diversion is an agreement, that is nonexpungable, on file with the KBI and it can be any kind of an agreement between the prosecutor and the person who is accused. It doesn't mean that the person is guilty. If all the terms of the diversion is met then it is dismissed. One can't assume that someone is guilty just because they have entered into a diversion agreement.

Mr. Killinger stated that not every case would result in the Board revoking the license. The Board couldn't revoke a license without a due process hearing. A diversion usually occurs on a first time offense, the Board usually puts them on restriction or probation.

Representative Gregory questioned how this would be funded. Mr. Killinger replied that this is usually paid for by a fee from the license holders. 90% of cases are settled by an informal hearing. Only after one has been sanctioned several times by the Board is there formal hearings.

Representative Garner commented that with the passage of this bill there would be a shift of burden to the licensee. Mr. Killinger responded that this would happen. The Board looked and saw that if they could deny a license for a misdemeanor then there should be a sanction. He stated that Colorado doesn't call it a "diversion" but a "deferred sentence". Representative Garner commented that a deferred sentence is much different than a diversion. The deferred sentence happens after a conviction. Mr. Killinger stated that Colorado advised him that this wasn't a conviction.

Representative Mays commented that diversions are not the same as convictions and suggested that in Section 1 adding the language that upon conviction or a diversion agreement would make the bill workable.

Hearings on **HB 2604** were closed.

Hearings on **HB 2599** - Amending who can withdraw blood in a DUI, were opened.

Representative Dawson appeared before the Committee as the sponsor of the bill. She stated that this proposed bill would clarify Qualified Medical Technician for the purpose of withdrawing blood samples at the direction of a law enforcement officer for testing in DUI cases. The intent of this proposed bill was not to infringe upon the rights of others but to allow for enforcement of current statutes, (see attachment 3).

Representative Goodwin questioned what type of education a Qualified Medical Technician has. Representative Dawson replied that this is a certified person. It requires that the person train for a certain amount of hours.

Helen Stephens, Kansas Peace Officers Association, appeared before the Committee as a proponent of the bill. This bill codifies current practices in many jurisdictions and identifies that a Qualified Medical Technician is someone qualified to draw a DUI sampling, (see attachment 4).

Jim Clark, Kansas County & District Attorneys Association, appeared before the Committee in support of the bill. He stated in rural jurisdictions there is lack of medical personal recognized by the statutes. Many counties reply on phlebotomists to draw blood. There doesn't seem to be an overall definition in the statute of who is allowed to draw blood, (see attachment 5).

Chip Wheelen, Kansas Medical Society, appeared before the Committee as a proponent of the bill. He reminded the Committee that the Medical Society had requested the repeal of the requirement that district coroners go to an accident to draw blood for a DUI test.

Terry Maple, Kansas Highway Patrol, did not appear before the Committee but requested that his testimony be included into the Committee minutes, (see attachment 6).

Hearings on **HB 2599** were closed.

Hearings on **HB 2677** - Records of marriage license, were opened.

Alice Adams, Clerk of District Court, appeared before the Committee as a proponent of the bill. She stated that currently Clerk of District Court are required to keep a record of all marriage license applications on file, showing the name of the applicant, date of filing, and the names of the parties to the proposed marriage. They are also required to keep a copy of an endorsed license by the person performing the marriage ceremony. This proposed bill would require the clerk's office to keep a record of all marriages resulting from licenses issued by the court, (see attachment 7).

Chairman O'Neal asked what the initial public policy reason was for maintaining the marriage application as opposed to the record of marriage. Ms. Adams responded that she did not know. The Chairman questioned if anyone was collecting this data from them. Ms. Adams replied they have not had any request for the information for several years. Supreme Court Rule 108 requires that the application be kept for a period of one year.

Chairman O'Neal commented that if the application would be kept for one year, he questioned what this bill would be eliminating. Ms. Adams responded that it would be eliminating the need to log the applications into an index book.

Al Singleton, Court Administrator , Manhattan, appeared before the Committee, in behalf of Paul Shelby, Office of Judicial Administration, as a proponent of the bill. He stated that this bill eliminates the record of a marriage license application, but not the application itself, (see attachment 8).

Hearings on **HB 2677** were closed.

Hearings on **HB 2697** - Services of process, time limits, were opened.

Dianna Jones, Chief Clerk 25th District, appeared before the Committee as a proponent of the bill. This proposed bill would amend K.S.A. 61-1802 to allow for more time for service and answers. Many sheriff's departments are having trouble in effecting personal service within the prescribe times, necessitating reissuance of process which increases the cost of litigation to the parties and the workload of the sheriff's and clerks offices. This bill would change Chapter 61 cases to be set on a date determined by the court that is not less than 11 days nor more than 40 days from the date the summons is issued. This would allow the courts some latitude in scheduling to meet the courts dockets and enable them to allow more time when service is to be effected by certified mail, (see attachment 9).

Chairman O'Neal questioned why the change to 40 days. Ms. Jones responded that this allows time for return of service by certified mail. By the time the summons is issued, sent by mail to the post office and the post office gives the person three notices and then send to the sheriffs office to complete their paperwork and they send it back to the courts, it takes in excess of 21 days to get these things done. The Chairman stated that he understands that 21 days is not sufficient but why did they decide on 40 days. Ms.Jones replied that 28 is not sufficient for out of county. The 40 days would allow enough time to cover both the in-county and out-of-county services. Chairman O'Neal commented that the Kansas Collectors Association, Inc., sent testimony saying that they would support the bill if the 40 days were changed to 30 days, (see attachment 10). However, if 28 days is not sufficient then 30 probably wouldn't be either. Ms. Jones replied that they could split the difference and make it 35 days.

Al Singleton, Court Administrator, Manhattan, appeared before the Committee, on behalf of Paul Shelby, Office of Judicial Administration, as a proponent of the bill. This proposed bill would extend the answer/appearance dates from the date the summons is issued in Chapter 61 cases to allow more time for service, (see attachment 11). He stated that in Riley county there are several attorneys that file 40 to 50 summons at one time. Because of this big number there is not of time to serve all of these.

Geary County Landlords Association, Inc. could not appear before the Committee but requested that their written testimony be included in the Committee minutes, (see attachment 12).

Hearings on **HB 2677** were closed.

The Committee meeting adjourned at 5:15 p.m. The next meeting is scheduled for February 9, 1994.

GUEST LIST

HOUSE JUDICIARY COMMITTEE

DATE February 8, 1994

NAME	ADDRESS	ORGANIZATION
Al Singleton	Manhattan Riley Co. Dist Ct.	KADCCA
Diana Jones	Garden City, Ks	KADCCA
Alice Adams	Council Grove KS	KADCCA
Jan Linn	LAWRENCE	KALPCCA
Ben Coates	Topeka	KPA
Chip Wheelen	Topeka	KS Medical Soc.
Lisa Moots	"	KS Sentencing Comm'n
Jim CLARK	"	KCDAA
Helen Stephens	"	KPOA
Kyle Smith	Topeka	KBI/AG.

Kansas State Board of Pharmacy

LANDON STATE OFFICE BUILDING
900 JACKSON AVENUE, ROOM 513
TOPEKA, KANSAS 66612-1231
PHONE (913) 296-4056
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STATE OF KANSAS

JOAN FINNEY
GOVERNOR

TOM C. HITCHCOCK
EXECUTIVE SECRETARY/DIRECTOR

DANA W. KILLINGER
BOARD ATTORNEY

HOUSE BILL 2604 AS AMENDED

HOUSE JUDICIARY COMMITTEE

JANUARY 25, 1994

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS TOM HITCHCOCK AND I SERVE AS THE EXECUTIVE SECRETARY FOR THE BOARD OF PHARMACY. I APPEAR BEFORE YOU TODAY ON BEHALF OF THE BOARD IN SUPPORT OF HB 2604 AS AMENDED.

THIS BILL IS PROPOSED TO AMEND TWO STATUTES UNDER THE CONTROLLED SUBSTANCES ACT WHICH ARE K.S.A. 65-4117 AND 65-4118. THE FIRST STATUTE, IN SECTION 1 OF THE BILL, DEALS WITH REASONS TO PROHIBIT THE ISSUANCE OF A REGISTRATION WHILE THE SECOND DEALS WITH THE SANCTIONING OF THE REGISTRANT.

TWO OF THE PROPOSED THREE CHANGES ARE IDENTICAL IN CONTENT AND CAN BE FOUND ON PAGE 2, LINES 17 THROUGH 19 AND ON PAGE 3, LINES 3 THROUGH 5. THEY BOTH DESCRIBE THAT "A DIVERSION AGREEMENT SHALL BE DEEMED A CONVICTION OF THE CRIME ORIGINALLY CHARGED", FOR EITHER THE ISSUANCE OR SANCTIONING OF A REGISTRANT. UNDER PRESENT LAW, DIVERSION AGREEMENTS ARE NOT CONVICTIONS AND ALTHOUGH DIVERSION AGREEMENTS MAY BE SATISFACTORY FOR THE GENERAL PUBLIC, THE BOARD OF PHARMACY FEELS TO MAINTAIN THE HIGHEST STANDARDS OF PROFESSIONALISM, THEY SHOULD HAVE THE POWER TO DENY LICENSURE OR IMPOSE SANCTIONS FOR CRIMINAL ACTS INVOLVING CONTROLLED SUBSTANCES, WHETHER THEY RESULT IN CONVICTIONS OR DIVERSION AGREEMENTS.

THE THIRD CHANGE IS ON PAGE 2, LINE 26 THAT MAKES THIS PARAGRAPH CONSISTENT WITH SUBSECTION (a), PARAGRAPH (3) ON PAGE 1, LINES 26 AND 27. IT IS ONLY RATIONAL THAT THE BOARD BE EMPOWERED TO SANCTION FOR THE SAME REASON THEY MAY REFUSE ISSUANCE OF A REGISTRATION.

THE BOARD OF PHARMACY RESPECTFULLY REQUESTS THE FAVORABLE PASSAGE OUT OF COMMITTEE HOUSE BILL 2604 AS AMENDED.

THANK YOU.

Kansas State Board of Pharmacy

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STATE OF KANSAS

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DANA W. KILLINGER
BOARD ATTORNEY

HOUSE BILL 2604

HOUSE JUDICIARY COMMITTEE

FEBRUARY 8, 1994

Mr. Chairman, members of the Committee, my name is Dana Killinger and I am the attorney for the Board of Pharmacy. I appear before you today on behalf of the Board in support of HB 2604.

This bill is proposed to amend two statutes under the Controlled Substances Act which are K.S.A. 65-4117 and 65-4118.

1. K.S.A. 65-4117 has application only to licensees and registrants of the State Board of Pharmacy for the State of Kansas.

2. K.S.A. 65-4117(a)(3) deals only with misdemeanor or felony convictions involving controlled substances.

3. The Board feels they should be made aware of any violation of controlled substances laws by applicants for licensure or registration. If a licensee or registrant enters into a diversion program involving violations of controlled substances laws, technically, it is not a conviction and need not be divulged to the Board upon applying for a new license or registration. It is important to remember

House Judiciary
Attachment 2
2-8-94

that licensees and registrants under the Controlled Substances Act will have ready access to highly addictive substances and very little monitoring unless the Board knows in advance of issuing a license or registration.

4. It is also important to consider that the Federal Drug Enforcement Agency does not register pharmacists, only pharmacies, and relies to a great extent on the State Boards of Pharmacy to license and monitor pharmacists.

5. K.S.A. 65-4118 has to do with sanctioning licenses and registrants for violation of the controlled substances laws after a license or registration has been issued. The Board felt if it could deny a license or registration for a misdemeanor that it should be able to sanction a licensee or registrant for a misdemeanor after the license has been issued.

6. It is important to note that many licensees have licenses in more than one state. Should a licensee commit a felony involving controlled substances and plea bargain the offenses to misdemeanor or enter into a diversion agreement it is impractical for the Kansas Board to take any action on the licensee unless the Board in the offending state takes action. In some instances the pharmacist merely moves to Kansas and as long as the pharmacist doesn't practice in the State where the offense occurred, that Board may take no action (out of sight, out of mind).

Thank you.

Dana Killinger
1505 S.W. Harrison
Topeka, KS 66612
913/232-9616

STATE OF KANSAS

CAROL DAWSON
REPRESENTATIVE, 110TH DISTRICT
458 EAST THIRD
RUSSELL, KANSAS 67665

STATE CAPITOL
RM 182-W
TOPEKA, KANSAS 66612-1504
913-296-7637

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: COMMERCIAL AND FINANCIAL INSTITUTIONS AND INSURANCE
GOVERNMENTAL ORGANIZATION AND ELECTIONS
TRANSPORTATION
CHAIRPERSON: JOINT COMMITTEE OF HOUSE AND SENATE: ARTS AND CULTURAL RESOURCES

HB 2599 is a technical amendment that further clarifies Qualified Medical Technician for the purpose of withdrawing blood samples at the direction of a law enforcement officer for testing in DUI cases.

Currently, samples may be drawn by persons licensed to practice medicine and surgery or a person under the supervision of such licensed person, a registered nurse or licensed practical nurse or a qualified medical technician. Qualified medical technician is generally defined as "one who performs medical duties in a hospital or medical laboratory making various laboratory tests." The definition of qualified medical technician has been subject to controversy as to whether blood samples are valid since the medical personnel did not expressly fit within this definition.

The new language now states: Any qualified medical technician, including, but not limited to, an emergency medical technician-intermediate or mobile intensive care technician, as those terms are defined in K.S.A. 65-6112, and amendments thereto.

House Judiciary
Attachment 3
2-8-94

KANSAS STATE LEGISLATURE
JUDICIARY COMMITTEE
BLOOD ALCOHOL TESTING
QUALIFIED MEDICAL TECHNICIANS JANUARY 21, 1994

Russell Regional Hospital, in cooperation with area law enforcement agencies has developed policy and protocol for EMT-I and MICT personnel to draw legal blood alcohol testing. This was developed out of a necessity to provide qualified persons able and willing to draw the blood required in prosecution of DUI cases which were unable to be tested by breath or for a defendants second independent test. The reason that EMS was selected for this was that it keeps doctors, nurses and laboratory staff available for other activities. The protocol was signed and implemented without any difficulties to date. Since EMS is housed in the hospital with 24 hour staffing prompt blood draws are available without requiring the call back of laboratory personnel.

A court of appeals decision in Salina this past year defined "medical technician" in the statute of qualified persons able to draw blood as a Medical Laboratory Technician. Prior case law has also set that "a person acting under the supervision of" as stated in the statue requires direct and present supervision rather than protocol. This puts in question whether our attempts in cooperation would withstand a legal challenge. In rural areas the availability of legal blood alcohol draws in a timely manner to satisfy the restraints of statute are difficult to find. The intent of this proposed change is not to infringe on rights of others but to allow for enforcement of current statutes.

The question may be raised if all EMT-Is or MICTs in the State of Kansas want this responsibility. Obviously the answer to this question is no. Just as not all nurses in the state want this responsibility even though statute grants this ability. Matters on local issue such of this should be dealt with through policy and protocol of each individual agency as signed protocol is required for this level of care. Another question that may be raised is will this open the EMS provider to pressure from law enforcement to draw BATs on the scene of an accident. This also could be easily addressed through local policy and protocol.

We are not requesting for an expansion of the scope of practice of EMT-I or MICT since drawing of blood is a part of the current practice act. We are however asking that you allow law enforcement officers to utilize the tools available to them to enforce the current statutes. We don't view this as a statute change but a language clarification to close some legal loopholes.

Respectfully

Roger D. Knak RN/MICT-IC
EMS Director
Russell Regional Hospital
200 S. Main
Russell, Kansas 67665

cc. Mr. Earley RRH/CEO

Robert Balloun, Sheriff

Office of
Russell County Sheriff
Russell, Kansas 67665
Office Phone 913-483-2151 Emergency
913-483-6694 Administrative

Dear Commitee Members,

01-23-94

K.S.A. 8-1001(c) states in part:

> If a law enforcement officer requests a person to submit to a test of blood under this section, the withdrawal of blood at the direction of the officer may be performed only by: (1) A person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person; (2) a registered nurse or a licensed practical nurse; or (3) any qualified medical technician.

Although the legislature chose the title "qualified medical technician" in specifying those persons authorized to withdraw blood under 8-1003, we find no statutory or case law definition of that title.

This oversight is reflected in case #68,206, Court of Appeals of the State of Kansas: City of Salina vs Martin. In paragraph (1) of the court syllabus it is stated:

> "The term "qualified medical technician" as used in K.S.A. 8-1001(c)(3) is not defined by statute, and the question of whether a person who does not fall within one of the other categories is authorized to draw blood under subsection (3) is a question of fact to be decided by the trial court."

It is my opinion and the opinion of many of my colleagues that the language of K.S.A. 8-1001(c) should be changed to reflect the definition of "qualified medical technician."

Robert Balloun

Robert Balloun,
Russell County Sheriff

3-4

Kansas Peace Officers Association
INCORPORATED

TELEPHONE 316-722-7030
FAX 316-729-0655
P.O. BOX 2592 • WICHITA, KANSAS 67201

COMMITTEE ON JUDICIARY
HOUSE BILL 2599

February 8, 1994

Mr. Chairman and Members of the Committee:

I am Helen Stephens, representing the 3,500 members of the Kansas Peace Officers Association. We urge your support for this bill.

Blood draws are often the most critical component of a successful DUI prosecution. Too many local law enforcement agencies cannot afford expensive breath testing machines and must rely on blood samples to establish their drunk driving cases. While some officers are certified to operate breath testing devices, only a few are qualified by training and law to draw blood. Of course, even those qualified to draw blood, are, for obvious reasons, discourage from doing so in their own DUI cases.

Compounding the problem is the fact that many small jurisdictions do not have doctors and nurses available to draw blood during non-business house -- those peak times for DUI apprehension. In fact, some smaller jurisdictions are not located near hospitals, where blood draws may be readily obtained. To obtain critical blood tests, some officers are forced to transport their DUI arrestees into other cities or counties, thus decreasing the available police manpower in their jurisdiction.

Under current law, KSA 8-1001, doctors, registered nurses, LPN's and "qualified medical technicians" may draw blood for DUI chemical testing purposes. But the term "qualified medical technician" raises more questions than it answers.

HB 2599 refines and significantly improves this law. The bill specifically identifies as qualified medical technicians Emergency Medical Technicians, Intermediate, and Emergency Mobile Intensive Care Technicians. On the effective date of the bill, these technicians -- of whom are qualified by training to draw blood -- will be immediately able to conduct DUI blood sampling.

HB 2599 also codifies current practice in many jurisdictions, where law enforcement officers have relied up[on the general definition of "qualified medical technician" in requesting, and receiving, chemical testing assistance from EMT-Is and MICTs.

HB 2599 merely provides express authority for this practice and simplifies and streamlines the critical chemical testing process.

We urge your favorable consideration. I stand for questions.

House Judiciary
Attachment 4
2-8-94

CITY OF SALINA, Kansas, Appellant,

v.

Timothy Joseph MARTIN, Appellee.

No. 68206.

Court of Appeals of Kansas.

April 30, 1993.

In DUI prosecution, the Saline District Court, Gene B. Penland, J., suppressed blood-alcohol test, and city took interlocutory appeal. The Court of Appeals, Thomas H. Graber, District Judge, assigned, held that: (1) question of whether person who does not fall within one of other statutory categories is "qualified medical technician" authorized to draw blood for blood-alcohol testing in DUI prosecution is question of fact to be decided by trial court, and (2) phlebotomist was not "qualified medical technician."

Affirmed.

1. Automobiles ⇐426

Question of whether person who does not fall within one of other statutory categories is "qualified medical technician" authorized to draw blood for blood-alcohol testing in DUI prosecution is question of fact to be decided by trial court. K.S.A. 8-1001(c)(3).

2. Automobiles ⇐426
Criminal Law ⇐1153(1)

City had burden to prove admissibility of blood sample in DUI prosecution and, thus, trial court's finding that blood test results were inadmissible because phlebotomist was not "qualified medical technician" authorized to draw blood was negative finding, and standard of review on appeal was whether trial court arbitrarily disregarded undisputed evidence or whether there was some extrinsic consideration such as bias, passion or prejudice which influenced decision. K.S.A. 8-1001(c)(3), 22-3216(2).

3. Automobiles ⇐423

Phlebotomist was not "qualified medical technician" authorized to draw blood for blood-alcohol testing in DUI prosecution; while phlebotomist testified that she had extensive experience and was expert in drawing blood, she also testified that she was not qualified medical technician in her understanding of term and as that term was used by hospital. K.S.A. 8-1001(c)(3).

Syllabus by the Court

1. The term "qualified medical technician" as used in K.S.A. 8-1001(c)(3) is not defined by statute, and the question of whether a person who does not fall within one of the other statutory categories is authorized to draw blood under subsection (3) is a question of fact to be decided by the trial court.

2. Based upon the facts of this case, a phlebotomist is not a "qualified medical technician" pursuant to K.S.A. 8-1001(c)(3).

Gary D. Denning, Salina, for appellant.

James L. Sweet, of Sweet & Boyer, Salina, for appellee.

Before BRISCOE, C.J., GERNON, J., and THOMAS H. GRABER, District Judge, Assigned.

THOMAS H. GRABER, District Judge, Assigned:

This is an interlocutory appeal by the City of Salina, Kansas, (City) from the decision of the trial court suppressing a blood alcohol test because the person drawing the blood was not authorized under K.S.A. 8-1001(c).

The City contends that a phlebotomist with the training and experience reflected in the record was a "qualified medical technician" who can draw blood for blood alcohol testing in a DUI prosecution under the guidelines set out in K.S.A. 8-1001(c).

K.S.A. 8-1001(c) authorizes only the following persons to draw blood samples for testing in DUI cases: "(1) A person licensed to practice medicine and surgery or a person acting under the supervision of

any such licensed person; (2) a registered nurse or a licensed practical nurse; or (3) any qualified medical technician."

Timothy Martin was arrested for suspicion of driving while under the influence of alcohol. He was taken to Asbury Hospital in Salina for a blood test. The blood was drawn by Tonia Soldan, a phlebotomist. Soldan was not licensed to practice medicine and surgery, nor was she acting under the supervision of any such licensed person. She was not a registered nurse or a licensed practical nurse. Since she was not specifically qualified to take blood under K.S.A. 8-1001(c)(1) or (2), the City presented evidence in an attempt to show that she was qualified to take Martin's blood as a "qualified medical technician" under K.S.A. 8-1001(c)(3).

Soldan testified that she had extensive experience and was an expert in drawing blood. However, she also testified that she was not a qualified medical technician in her understanding of the term and as that term is used by Asbury Hospital.

After hearing all of the evidence, the trial court found that Soldan was not a "qualified medical technician" qualified to draw blood under K.S.A. 8-1001(c)(3) and granted Martin's motion to suppress the results of the test.

[1] The term "qualified medical technician" as used in K.S.A. 8-1001(c)(3) is not defined by statute, and the question of whether a person who does not fall within one of the other statutory categories is authorized to draw blood under subsection (3) is a question of fact.

[2, 3] When a defendant challenges the admissibility of evidence by filing a motion to suppress prior to trial, the prosecution has the burden of proving that the evidence is admissible. See K.S.A. 22-3216(2). Since the City had the burden of proof, the finding by the trial court that blood test results were inadmissible was a negative finding, and the standard of review on appeal is whether the trial court arbitrarily disregarded undisputed evidence or whether there was some extrinsic consideration such as bias, passion, or prejudice which influenced the decision. The City does not allege, nor did it show the court, any grounds for reversing the trial court.

The decision of the trial court, as shown by the record, was made after a careful consideration of all of the evidence, and its judgment must be affirmed.

Affirmed.

Kansas Highway Patrol
Testimony Before the
House Judiciary Committee
Regarding 1994 H. B. 2599

Presented by
Sergeant Terry L. Maple
February 8, 1994

Good afternoon Mr. Chairman and members of the Committee. My name is Sergeant Terry Maple and I appear before you today on behalf of Patrol Superintendent Lonnie McCollum to offer the Patrol's support for 1994 House Bill 2599.

HB 2599 would clarify who is authorized to draw blood in DUI cases. The amendments will clearly state that an emergency medical technician intermediate (EMTI) or mobile intensive care technician (MICT) as defined in K.S.A. 65-6112 may draw blood in DUI cases.

Troopers making DUI arrests often encounter difficulty in determining who is qualified to draw blood and these amendments should clarify the issue and reduce confusion in this regard.

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House Judiciary
Attachment 6
2-8-94

HOUSE BILL NO. 2677
HOUSE JUDICIARY COMMITTEE

Testimony of Alice Adams
Clerk of the District Court, Morris County
Member, Legislative Committee, KADCCA

Mr. Chairman and Committee Members:

I appreciate the opportunity to appear today to discuss House Bill No. 2677, which would amend marriage license procedures.

K.S.A. 23-106 presently requires the Clerk of the District Court to keep a record of all marriage license applications filed, showing the name of the applicant, the date of filing, and the names of the parties to the proposed marriage.

Additionally, K.S.A. 23-109 and K.S.A. 23-112 state that the judge or clerk must record marriages on the marriage record in each court, and that the judge or clerk shall keep a correct copy of all marriage licenses returned with the endorsement on the license by the person performing the marriage ceremony.

The Clerks of the District Court are requesting that K.S.A. 23-106 be amended to require the clerk to keep a record of all marriages resulting from licenses issued by the court. We are not eliminating the application, just the recording of it. This change would save the clerk time and eliminate duplicate records, which would be especially helpful in the urban counties, where 300 to 400 marriage license applications may be filed each month.

Thank you for your consideration.

House Judiciary
Attachment 7
2-8-94

House Bill No. 2677
House Judiciary Committee
February 8, 1994

Office of Judicial Administration

Thank you Mr. Chairman and members of the committee for allowing us to appear today to discuss House Bill No. 2677 which relates to the record of marriage license applications.

We support this proposal from the Kansas Association of District Court Clerks and Administrators. The purpose of this bill is to elimate the record of marriage license applications. It does not delete the application, just the record.

Presently, K.S.A. 23-106 requires the Clerk of the District Court to keep a record of marriage license applications which shows the name of the person applying and the date of the filing of such application and the names of the parties to the proposed marriage. In addition, K.S.A. 23-109 and K.S.A. 23-112 states that the judge or clerk must record marriages on the marriage record in each court, and that the judge or clerk shall keep a correct copy of all marriage licenses returned with the endorsement on the license by the person performing the marriage ceremony.

We are requesting an amendment to K.S.A. 23-106 which would require that <u>each district court keep a record of all marriages resulting from licenses issued by the court, which record shall show the names of the persons who were married and the date of the marriage.</u>

This change would elimate duplicate record keeping, duplicate indexing and save clerk time.

We urge the committee to favorably pass this bill.

House Judiciary
Attachment 8
2-8-94

House Bill No. 2697
House Judiciary Committee

Testimony of Diana Jones
Chief Clerk, 25th Judicial District

Mr. Chairman:

Thank you for the opportunity to appear today to discuss House Bill No. 2697 which amends the service and answer times set in the code of civil procedure for limited action cases under KSA 61-1802 et seq.

The legislature changed the statutorily prescribed preferred method of service of civil process to service by certified mail effective January 1, 1991, under Chapter 60 of the Kansas Statutes Annotated. This is incorporated by reference in Chapter 61; however, no adjustments were made to the delineated service and answer times in Chapter 61 to facilitate utilization of this method of service, and the time required to get notice back from the postal service on certified mailings is beyond the mandated service and answer parameters.

Additionally, many sheriff's departments are having difficulty in effecting personal service within the prescribed times, necessitating reissuance of process which increases the cost of litigation to the parties and the workload in the sheriffs' and clerks' offices. For example, on Chapter 61 cases Shawnee County last year issued 18,782 original summons and 11,585 alias summons (which are summons issued subsequent to the original issuance). A spot docket call check showed that, of the 558 cases set, 55% of the cases had no returns, no service, or showed time expired.

For these reasons we are asking that the answer/appearance dates on Chapter 61 cases be set on a date determined by the court that is not less than 11 days nor more than 40 days from the date the summons is issued. This will allow the courts some latitude in scheduling to meet the courts' dockets and enable them to allow more time when service is to be effected by certified mail. Rather than return of service being required within a set number of days from issuance, the return is to be made a prescribed number of days before the court date. All in-county and out-of-county differentiations are eliminated, only retaining the lesser time for return of service currently set in KSA 61-2306 for forcible entry and detainer cases.

House Judiciary
Attachment 9
2-8-94

Changes proposed to the summons form in KSA 61-2605 reflect the consolidation of parameters and eliminates the need for independent calculation of return of service dates now required to complete the forms before issuance.

We urge the committee to consider our concerns and amend the statutes as proposed.

REMARKS CONCERNING HOUSE BILL 2697

HOUSE JUDICIARY COMMITTEE

FEBRUARY 8, 1994

I am Elwaine F. Pomeroy, submitting this statement on behalf of the Kansas Collectors Association, Inc., and on behalf of the Kansas Collection Attorneys. Kansas Collectors Association, Inc. is a statewide association of collection agencies. Kansas Collection Attorneys is a group of attorneys from various parts of the state whose law practice includes considerable collection work.

The Kansas Collectors Association, Inc. and the Kansas Collection Attorneys agree that there should be an extension of time for service of process, and the corresponding change in section 1 of the bill setting the time for the defendant to either appear or plead to the petition. However, we feel that on page 1, in line 30, extending the days to 30 days rather than 40 days should be a sufficient extension of time.

We would urge the committee to amend the bill, on page 1, line 30, by striking "40" and inserting in its place "30". With this amendment, we would support the bill.

Elwaine F. Pomeroy
For Kansas Collectors Association, Inc. and
Kansas Collection Attorneys

House Judiciary
Attachment 10
2-8-94

House Bill No. 2697
House Judiciary Committee
February 8, 1994

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Thank you Mr. Chairman and members of the committee for allowing us to appear today to discuss House Bill No. 2697 which relates to Chapter 61 process of service.

We support this proposal from the Kansas Association of District Court Clerks and Administrators. The purpose of this bill is to extend the answer/appearance dates, from the date the summons is issued in Chapter 61 cases, to allow more time for service.

In Fiscal Year 1993, which ended June 30, 1993, we had 80,404 limited action cases filed in the district courts. In our medium and large jurisdictions, the Sheriff is unable to completely serve all process timely in Chapter 61 cases which requires reissuance of process which increases the cost of litigation to the parties and the workload in the sheriffs' and clerks' offices. The majority of returns are marked "Unable to Serve" which causes an Alias Summons to be issued and served. We have the same problem with certified mailings.

We are requesting that the answer/appearance dates on Chapter 61 cases be set on a date determined by the court that is not less than 11 days nor more than 40 days from the date the summons is issued. We are also making in-county and out-of-county the same. We are also requesting a change in the return of service being required within a set number of days from issuance, the return is to be made in 5 days in all cases before the date stated in the summons for the defendant to either appear to plead to the petition. The exeption is K.S.A. 61-2306, forcible entry and detainer cases which remain the same.

We are also requesting amendments to Form 1 of K.S.A. 1993 Supp. 61-2605 to comply with these changes.

We urge the committee to favorably pass this bill.

House Judiciary
Attachment 11
2-8-94

GEARY COUNTY LANDLORDS ASSOCIATION. INC.
364 Grant Avenue
Junction City, Kansas 66441-4244
931/238-1894

House Bill 2697 - Concerning civil procedure for limited actions; relating to process.

I regret that I cannot appear in person before you today, however, I do appreciate the opportunity to send written testimony.

Many landlords in Geary County use the forcible detainer under limited actions in the eviction process. Many times we have appeared in court only to discover the defendant has not been served or the return has not been delivered to the court. HB 2697 will help by setting specific time limits for delivery and will eliminate taking valuable court time on a case that cannot be heard, having to refile and go through the process again.

We do have one objection to the bill - page 1, line 30 - the changing of the days to appear in court.

In the eviction process we give the tenant so many days to pay rent, usually 3 days. If the rent is not paid, a Notice to Quit for Non-Payment of Rent is issued giving the tenant 72 hours to pay or move. Upon return of the notice and the 72 hours has expired and the tenant has not paid rent or moved, a forcible detainer action is filed in district court under limited actions.

Under present law the court has up to 21 days to hear the case. The judge usually gives the tenant another 10 days to move from the premises. Then if they don't move, the Sheriff can take another 10 days to move the tenants out. This may take as much as 50 days to remove the tenant from the home.

Some utility companies have made the landlord responsible for the utility bills if the tenant does not pay, and many times in an eviction the tenant will not pay the utilities as well. The utilities may be cut off for non-payment or the tenant may still owe for the utilities at the time of the eviction and just not pay them. In some cases the landlord must pay the utility bill before the next tenant may have utilities.

So during the eviction process, the debts add up and in many cases so are the damages, as some tenants will deliberately cause damages to the home in retaliation to the eviction. By the time the Sheriff serves the writ of execution to remove the tenant, the tenant may already owe for another months rent as well.

If the time limit is changed to as much as 40 days to respond, the tenant may be able to reside in the home for as much as 70 days without paying rent.

Landlording is a business for profit, however, the losses incurred during an eviction process must be added into the rents charged to make up for the losses. As rents are increased to made up these losses, the affordability of housing changes, making the homes less affordable.

We are asking that you not change the time limits on page 1, line 30.

Again, thank you for the opportunity to send testimony. I have enclosed my office and home phone numbers if you should have any questions.

Ann Elliott
Legislative Chairperson
Geary County Landlords Assn., Inc.
Office - 913/238-1894
Home - 913/238-6916

House Judiciary
Attachment 12
2-8-94