Approved: 3/23/94

Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 10:00 a.m. on March 16, 1994 in Room 514-S of the Capitol.

All members were present.

Committee staff present: Mike Heim, Legislative Research Department

Jerry Donaldson, Legislative Research Department

Gordon Self, Revisor of Statutes Darlene Thomas, Committee Secretary

Conferees appearing before the committee:

Willie Martin, Sedgwick County Commission Scott Hutton, Wyandotte County Juvenile Detention Center Gary Bayens, Director of Youth Center, Shawnee County Larry Vardaman, Sedgwick County Youth Services Jeffrey Sonnich, Kansas Nebraska League of Savings Bill Caton, Consumer Credit Commission Representative Blaise Plummer Janice Lucciarini, Wichita Tom Tuttle, Security Equities Investment Kathleen Taylor, Kansas Bankers Assoc. Karen France, Kansas Associations of Realtors George Barbee, Kansas Association of Financial Services Kyle Smith, Kansas Bureau of Investigation Representative Janice Pauls Jim Clark, Kansas County and District Attorneys Kevin Fletcher, Attorney, Reno County Karen Herrman, Governor's Commission on Housing and Homelessness Robert D. Barnes, Wichita Gerry Ray, Johnson County Board of Commissioners

Others attending: See attached list

HB 2858--controlled substance

Representative Janice Pauls testified in support of <u>HB 2858</u> and provided written testimony (<u>Attachment No. 1</u>) and a fiscal note for <u>HB 2858</u> which indicates no fiscal impact for at least three years.

Jim Clark, Kansas County and District Attorneys provided written testimony for Kevin Fletcher, Reno County Attorney (<u>Attachment No. 2</u>). He said <u>HB 2858</u> provided clarification in regard to manufacturing.

Kyle Smith, Kansas Bureau of Investigation testified in support of <u>HB 2858</u> and provided written testimony (<u>Attachment No. 3</u>). He said at present Kansas has the lowest penalty for unlawful drug manufacturing.

Chairman Moran closed the hearings on <u>HB 2858</u>.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on March 16, 1994.

SB 708--controlled substance

Kyle Smith, Kansas Bureau of Investigation testified in support of <u>SB 708</u> and provided written testimony (<u>Attachment No. 4</u>). Mr Smith requested <u>SB 708</u> be amended by adding the words "or controlled substance analog" in K.S.A. 65-4159 and to include in K.S.A. 65-4127a,(f) and K.S.A. 65-4127b,5(f) "for purposes of this act the above prohibitions include controlled substance analogs as defined in K.S.A. 65-4101(bb).

A motion was made by Senator Petty seconded by Senator Emert to technically amend SB 708 with the suggestions of Kansas Bureau of Investigation (Attachment No. 4) and to further amend SB 708 into HB 2858. The motion carried.

A motion was made by Senator Petty, seconded by Senator Oleen to report HB 2858 favorably as amended. The motion carried.

HB 2992--reduced period of redemption for real estate under foreclosure

Jeff Sonnich, Kansas Nebraska League of Savings testified in support of <u>HB 2992</u> and provided written testimony (<u>Attachment No. 5</u>). He said HB 2992 would reduce from six months to three months the redemption period for individuals who have defaulted in the conditions of their mortgage before one-third of the original debt had been paid. Mr. Sonnich suggested <u>HB 2992</u> be amended by striking all language on page 5, lines 3 and 4 and all language before "and" on line 5. Then add on page 5 the following language before the "and", "has voluntarily lost such owner's employment or self-employment income after the date of sale".

Representative Blaise Plummer testified in regard to <u>HB 2992</u> and said one of the concerns with the original language in <u>HB 2992</u> was the potential problem with the violation of the equal protection of the laws and the amendment was to rectify that potential problem. He said those who could not access the petition of climate were farmers, self-employed, and retired persons who have income but no employment.

William Caton, Consumer Credit Commission testified in support of <u>HB 2992</u> and provided written testimony (<u>Attachment No. 6</u>). He said the current length of the redemption right period inhibits lenders in making loans to low and moderate income borrowers, due to the extensive losses cause by abuses of the redemptions rights and abandonment of the property. He said <u>HB 2992</u> maintains a balance of fairness.

Karen Herrman, Chairman, Governor's Commission on Housing and Homelessness, Hays, Kansas testified in regard to <u>HB 2922</u> and provided written testimony (<u>Attachment No. 7</u>).

Janice Lucciarini, Wichita, Kansas testified in opposition to <u>HB 2992</u> and provided written testimony (<u>Attachment No. 8</u>). She said <u>HB 2992</u> is a "special interest" law that would benefit only lenders and not the consumers.

Tom Tuttle, Security Equities Investments testified in opposition to <u>HB 2992</u> and provided written testimony (<u>Attachment No. 9</u>). Mr. Tuttle submitted letters of opposition to <u>HB 2922</u> to be filed with the Secretary of the Senate.

George Barbee, Kansas Association of Financial Services provided written testimony in support of <u>HB 2922</u> (<u>Attachment No. 10</u>).

Karen France, Kansas Association of Realtors provided written testimony in support of <u>HB 2922</u> (<u>Attachment No. 11</u>).

Kathleen Taylor Kansas Bankers Association provided written testimony in support of <u>HB 2922</u> (<u>Attachment No. 12</u>).

Robert Barnes, Wichita, Kansas provided written testimony in opposition to HB 2922 (Attachment No. 13).

Chairman Moran closed the hearings on HB 2922.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on March 16, 1994.

SB 829--detention of juvenile offenders, transfer from local to state care

Willie Martin, Sedgwick County Commission introduced Larry Vardaman, Sedgwick County Youth Services who testified in support of <u>SB 829</u> and provided written testimony (<u>Attachment No. 14</u>). He said <u>SB 829</u> provided the same time limits as the State's adult correctional statutes, giving the court three working days to transfer orders to the State, and three additional days for the State to remove the juvenile from the local facility.

Scott Hutton, Wyandotte County Juvenile Detention Center testified in support of <u>SB 829</u> and provided written testimony (<u>Attachment No. 15</u>). He said <u>SB 829</u> deals with three significant problems: 1) detention centers not being reimbursed for actual costs, 2) detention centers used as inappropriate placements for some juveniles and 3) juveniles being detained in detention centers for excessive periods of time.

Gary Bayens, Shawnee County Youth Center testified in support of <u>SB 829</u> and provided written testimony (<u>Attachment No. 16</u>). He said there needed to be a time frame established which mandates the movement of juvenile offenders from county to state custody.

Gerry Ray, Johnson County Board of Commissioners testified in support of <u>SB 829</u> and provided written testimony (<u>Attachment No. 17</u>). He said <u>SB 829</u> would help counties address the increasing problem of housing juvenile offenders.

Chairman Moran said Committee hearings on <u>SB 829</u> would be continued at a later date. Chairman Moran announced the Kansas Bar Association luncheon would be today at the Top of the Tower, 12:00 noon. He said there would be a report by William I. Koch, Koch Commission on Crime Reduction and Prevention in Room 313-S tonight at 7:00 p.m. The Committee was urged to attend.

The meeting adjourned at 11:00 a.m.

The next meeting is scheduled for March 16, 1994, 7:00 p.m. in the Old Supreme Court Chamber.

GUEST LIST

COMMITTEE: Suate Judiany DATE: 3/6/94

NAME (Please Print)	ADDRESS	COMPANY/ORGANIZATION
Stephanie S. Smith	Topeka	S.C.Y.CIntern
Gary Bayens	Topeka	5.C.Y.C.
Kyle Smith	11	KBT/A6
Dwain Worley	/ }	KBI
Jin Chonk	(4	KCNAA
Jan Rucciarini	Wichita, KS	Security Equities
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Tom Touch	Ser Illeadite	Seawing Englisher
alle Peth	Mr Pheron	Trustee -OJA
Scott HUTTOR)	KARSAS CIPT, MY	414.00. JOC
CARRY VARdAMAN	Sodgwich Country	Sed Co. Youth Services
The Shiveh	TROELCA	ILS LEGAL SERVICES
LARENK-RANCE	Topselle	KAR
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Manisa Carson	Topeka	KTKA
CA Paus	Hwan	Rep-DISTINIT 102
HALA TUDO	Topha	16 Banlors Low
Melissa Ness	Sapeta	Ks Children Lew Leag
Bence Likes	Laurence	WALFREA
Martin Bloom quit	topela	Shanne Co
LUDNE PARCEPS	TO BELA	KONE

GUEST LIST

MATE: 3/16/94

NAME (Please Print)	ADDRESS	COMPANY/ORGANIZATION
Bull Caton	Topelea	Consumer Cont
SYDNEY HARDMAN	Laurence	KS Action For Chelaren
Sintllan	Topel	\ <p4< td=""></p4<>
Lisa Gatal	topeka	PaB
Ower Stown		1CB#
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Podie Lacey	Japeka	The Children's Vervice Lge
Luci Miller de	The state of	& b sever
John W. 5m; th	Topeka	KDOR DUL
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J. V.	No.	

COMMITTEE ASSIGNMENTS

TRANSPORTATION
JOINT SENATE AND HOUSE COMMITTEE ON

ADMINISTRATIVE RULES AND REGULATIONS

Suale Jadellary 3-16-94 attachminist#1-1

LABOR AND INDUSTRY

MEMBER: JUDICIARY

JANICE L. PAULS
REPRESENTATIVE, DISTRICT 102
TOPEKA ADDRESS:
STATE CAPITOL—272-W
TOPEKA, KANSAS 66612-1504

(913) 296-7657

HUTCHINSON ADDRESS:

1634 N. BAKER HUTCHINSON, KANSAS 67501 (316) 663-8961



TOPEKA

HOUSE OF REPRESENTATIVES

Testimony before the
Senate Judiciary Committee
Regarding
House Bill 2858
by

Representative Janice L. Pauls
District 102

Mr. Chairman and members of the committee, thank you for the opportunity to present this bill to the committee. HB 2858 was introduced at the request of the Reno County Attorney's office, located in Hutchinson. Kevin Fletcher, Assistant Reno County Attorney, will follow me to present testimony.

Basically, HB 2858 raises the following penalties for a conviction of the crime of manufacturing a controlled substance:

HB 2858 Present Law

1st conviction

of Manufacturing: Level 2 (46 to 83 Months) Level 3 (14 to 51 Months)

HB 2858 Present Law

2nd Offense: Level 1 (138 to 204 Months) Level 2

3rd Offense: Level 1 (No change) Level 1

The sentence under HB 2858, while tougher than the present law, is still lower than the sentencing in effect prior to the Sentencing Guidelines. Prior to Sentencing Guidelines this was a Class B

felony, with a minimum sentence of 5 to 15 years and a maximum of 20 years to life.

The bill also adds a provision that elevates any drug manufacturing conviction to a severity Level 1 felony conviction if the manufacturing was done by a person over 18, within 1,000 feet of a school.

Further if the defendant is an unsuccessful chemist in an attempt to manufacture a controlled substance, the defendant may still be convicted under this statute with manufacturing a controlled substance.

Attached please find a copy of the Fiscal Note, which indicates no fiscal impact for this change for at least three years. The cost following that time would be between \$4,300 to \$5,500 annually if bed space were available. The Department of Corrections provided no actual numbers for an increase of inmates they would project to be added to the system through convictions under this bill.

Thank you for your attention.

Janice L. Pauls Representative District/102



DIVISION OF THE BUDGET

Room 152-E State Capitol Building Topeka, Kansas 66612-1504 (913) 296-2436 FAX (913) 296-0231

Joan Finney
Governor

Gloria M. Timmer Director

February 17, 1994

The Honorable Michael O'Neal, Chairperson House Committee on Judiciary Statehouse, Room 426-S Topeka, Kansas 66612

Dear Representative O'Neal:

SUBJECT: Fiscal Note for HB 2858 by Representative Pauls

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2858 is respectfully submitted to your committee.

HB 2858 would elevate the penalty for the first conviction of manufacturing a controlled substance from a level 3 drug offense to a level 2 drug offense. The bill would elevate the second offense from a level 2 drug offense to a level 1 drug offense. Third and subsequent offenses would remain level 1 drug offenses. The bill also has a provision that would make the penalty for conviction of manufacturing a controlled substance within 1,000 feet of school property a level 1 drug offense. In addition, the bill contains a provision that would make no distinction between a successful or a failed attempt at manufacturing a controlled substance. The bill would take effect upon publication in the statute book.

The Department of Corrections indicates that any fiscal impact resulting from this bill would not be felt for at least three years, and perhaps longer, depending on the admissions pattern for these offenses. According to the Department, if the increase in the inmate population resulting from longer lengths of stay is small and correctional facility capacity is sufficient, any additional costs would be limited to the per capita costs for basic support and health care, the total of which is estimated at \$4,300 annually. For those offenders who would participate in programs, the annual cost would increase to \$5,500 per offender.

NTY ATTORNEY
A'ny J. Chambers

ASSISTANT COUNTY ATTORNEYS
Kevin C. Fletcher
Keith E. Schroeder
David B. Kurt-Juvanila



Law Enforcement Ce 210 West First Ave Hutchinson, Kansas 67501 [316] 6942715 FAX #316-694-2807

> Victim-Witness Service (316) 694-2718 Diversion Coordinator (316) 694-2716

TESTIMONY OF KEVIN C. FLETCHER FIRST ASSISTANT RENO COUNTY ATTORNEY

before the

SENATE JUDICIARY COMMITTEE, MARCH 16, 1994 Re: House Bill 2858, K.S.A. 65-4159, Manufacturing Controlled Substances

K.S.A. 65-4159 has been seriously diminished in its severity by the 1993 Session Laws and the Sentencing Guidelines. K.S.A. 65-4159, prior to 1993, was a Class B Felony for manufacturing or attempting to manufacture. This carried a sentencing range of a minimum of five (5) years to no more than fifteen (15) years and the maximum of not less than twenty (20) years nor more than life. A person convicted under K.S.A. 65-4159 was sent to prison; probation, community corrections, and suspended sentence were not allowed.

The 1993 Session Laws, Chapter 291, Sec. 239, K.S.A. 1993 Supp., 65-4159, makes a first offense of manufacturing a level 3 offense; a second offense, a level 2 offense; and a third or subsequent offense, a Level 1 offense. These offenses are handled on the drug grid. Under the drug grid, a first offense, a level 3 would have a range of 14 months to 51 months. Second offense, 46 months to 83 months, a third or subsequent offense, 138 months to 204 months. The range depends on criminal history. If no prior

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record, the only way to get much time, requires the prosecutor to ask for departure.

This is a large decline in time in prison considering that this is such a serious offense. Manufacturing is the making of the illegal drug, not possessing. The making is done only for the intent to sell it. Manufacturing is far more serious than any possession with intent to sell or sale of a drug. The Legislature made it clear in the pre-1993 law under K.S.A. 65-4159, that you were to be treated harshly.

The Legislature still considers K.S.A. 65-4159 a serious enough offense to put it as an aggravating factor for drug grid departures, 1993 Session Laws, Chapter 291, Section 276(1). The Legislature should change the language of K.S.A. 65-1159 to read, "a first offense of manufacturing should be a level 2 offense and a second or subsequent offense a Level 1 offense."

K.S.A. 65-4159 should be modified to include an enhancement for when the location of manufacturing is in or on or within a thousand (1,000) feet of a school zone. This should be a Level 1 offense or increased amount of months in prison above the regular time for the offense when it is not within a thousand (1,000) feet of a school zone. It seems to not be very logical that we enhance the selling or possessing with intent to sell drugs within one thousand (1,000) feet of a school zone, but do not enhance manufacturing, an even more serious offense, within a thousand (1,000) feet of a school zone.

Another correction to K.S.A. 65-4159 is needed. K.S.A. 65-

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the crime. Manufacturing or attempting to manufacture were and are in the 1993 law considered the same crime. Pursuant to 1993 Session Law. Chapter 291, Section 277, attempt to commit manufacturing gives a defendant six months less time in prison than manufacturing. The 1993 law of six months less time for attempt to manufacture should not be applied to K.S.A. 65-4159 due to its peculiar statutory definition.

In conclusion, if the Kansas Legislature wishes to be consistent in its position to be harsh on drug dealers, as is shown by the presumptive prison for drug dealers under the sentencing guidelines, a person manufacturing or attempting to manufacture a drug should be treated more harshly. The reasoning of the Kansas Legislature in enacting K.S.A. 65-4159 was to treat drug manufacturers very seriously. The logic and reasoning of this position is sound. This reasoning must be followed through by amending K.S.A. 65-4159 to keep it that way. Otherwise, it is the same penalty for a criminal to manufacture as it is to sell a drug.

Once a decision has been made by a person to commit the crime of manufacturing a drug, then the consequences commensurate with the crime must follow. Rather than passing laws that <u>say</u> we are tough on drug dealers, let's pass laws that <u>are</u> tough on crime.

ROBERT B. DAVENPORT DIRECTOR

KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL STATE OF KANSAS

1620 TYLER

TOPEKA, KANSAS 66612

(913) 296-8200

FAX: 296-6781



TESTIMONY KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL KANSAS BUREAU OF INVESTIGATION BEFORE THE SENATE JUDICIARY COMMITTEE IN SUPPORT OF HOUSE BILL 2858 March 16, 1994

Mr. Chairman and Members of the Committee:

On behalf of Attorney General Robert T. Stephan and the Kansas Bureau of Investigation, I am very pleased to be here in support of HB 2858, which would reinstate penalties for illegal manufacturing of controlled substances similar to those imposed prior to the revision bill last year.

As most members on this committee will remember, clandestine manufacturing of controlled substances is an incredibly dangerous problem. Besides being an illicit trade where participants worry about being ripped off by competitors or arrested by law enforcement, the most commonly manufactured drug, methamphetamine, actually has as one of it's effects upon the person the inducement of paranoia. In addition, chemical fumes of these manufacturing operations are extremely volatile, thus creating a significant risk of explosion and fire. Finally, the way the chemicals are handled and disposed of creates a serious hazardous materials situation which necessitates seizure, cleanup and remediation be conducted in compliance with Environmental Protection Agency standards, with resulting cost of tens, if not hundreds of thousands of dollars.

For all these reasons when K.S.A. 65-4159 was originally passed, this crime was made a class B felony with no probation or parole possible in an effort to deter anyone from setting up such laboratories in Kansas.

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committee may also remember this was in keeping with the practice of other states, in particular California and Texas, which created a mandatory 20 year prison sentence for manufacturing in each of those states in an effort to drive the clandestine laboratories out of their jurisdictions.

When sentencing guidelines were promulgated, unlawful manufacture was reduced down to a level 3 felony for first offense, which can mean as little as 14 months in prison, assuming the court finds no grounds to depart. From a 20 to life sentence this is quite a reduction in and of itself and we would ask that HB 2858 be passed to appropriately deal with the seriousness of these offenses.

I would be happy to stand for any questions.

#147



KANSAS BUREAU OF INVESTIGATION

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TESTIMONY KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL KANSAS BUREAU OF INVESTIGATION BEFORE THE SENATE JUDICIARY COMMITTEE IN SUPPORT OF SENATE BILL 708 March 16, 1994

Mr. Chairman and Members of the Committee:

On behalf of the Attorney General and Kansas Bureau of Investigation in support of SB 708. The provisions of this bill basically address a problem with the current system dealing with controlled substances; that being that drugs are only prohibited and illegal if they are contained in one of the five drug schedules. By way of brief background, Schedule I contains those drugs which have a very high potential for abuse and have no medicinal value. Schedule II contains those drugs that have a high potential for abuse, but have a known legitimate medicinal value. Schedule III have medicinal value and a somewhat lesser potential for abuse, with Schedules IV and V being even less dangerous.

An analog is a small change in a drug's chemical structure which changes its name, but not the impact. By restructuring the molecular chain of a drug, the name changes and the "new" drug and is now a slightly different "legal" drug even though it may have the same or worse affects as the original drug. Knowledgeable clandestine chemists have been able to thus manufacture extremely dangerous, but technically "legal" drugs by continuing to change non-essential components of the drug. SB 708 addresses this problem by including analogs of Schedule I and II drugs as prohibited substances.

Small Juddling 3-16-94 attacknable 4-1 There are several safeguards to assure protection for legitimate medicinal research and a requirement that the Board of Healing Arts initiate scheduling of the analogs on an emergency basis any time one is discovered.

Last year the largest and possibly only fentanyl laboratory in the history of the United States was discovered here in Kansas. Fentanyl is an analog of heroin, but approximately 30 times more powerful. That particular analog had already been added to the schedules, but it does illustrate that Kansas is not immune from these problems. Other analogs with names as China White or Tango and Cash, have resulted in numerous cases of death and paralysis before they were identified and controlled.

We would suggest one amendment which we think clarifies the intended purpose of this statute. Currently, K.S.A. 65-4127a&b are the statutes that contain the list of prohibited acts. We suggest in these statutes insertion of a sentence along the lines of "For purposes of this act the above prohibitions include controlled substance analogs as defined in K.S.A. 65-4101(bb)." Similarily, K.S.A. 65-4159, the subject in HB 2858 regarding manufacturing should include reference to analogs, thus making it perfectly clear to courts, attorneys and defendants that production of an analog Schedule I or II drug is also prohibited.

I will be happy to answer any questions.

#158

(3)	Fencamfamin	1760
(4)	Fenproporex	1575
(5)	Mazindol	1605
(6)	Mefénorex	1580
(7)	Pemoline (including organometallic com-/	
.,	plexes and chelates thereof)	1530
(8)	Phentermine	1640
(9)	Pipradrol	1750
(10)	SPA((-)-1-dimethylamino-1,2-	
(/	diphenylethane)	1635
	* . \	7
(a)	Linieks specifically excepted for ur	22911

Unless specifically excepted for unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following, including salts thereof:

(1) Pentazocine.

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing any of the following natcotic drylgs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit................. 9167

(2) Dextropropoxyphene (alpha-(+)-4-dimethy-lamino-1,2-diphenyl-3/

(g) Butyl nitrite and its salts, isomers, esters, ethers or their/salts.

(h) The board may except by rule and regulation any compound, mixture or preparation containing any depressant substance listed in subsection (b) from the application of all or any part of this act if the compound, mixture or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiate/the potential for abuse of the substances which have a depressant effect on the central nervous system.

History: L. 1972, ch. 234, § 11; L. 1974, ch. 25%, § 5; L. 1978, ch. 257, § 3; D. 1979, ch. 204, § 1; L. 1982, ch. 269, § 5; L.\1985, ch. 220, § 4; L. 1986, ch. 241, § 3; L. 1989, ch. 200, § 4; L. 1990, ch. 231, § 1; L. 1991, ch. '199, § 4; L. 1993, ch. 70, § 2; April 8.

65-4127a. Unlawful acts regarding opiates, opium, narcotic drugs or designated stimulants; penalties; acts within 1,000 feet of school property. (a) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to possess or have under such person's control any opiates, opium

or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107 and amendments thereto. Except as provided in subsection (c), any person who violates this subsection shall be guilty of a drug severity level 4 felony.

(b) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to sell; offer for sale or have in such person's possession with intent to sell, deliver or distribute; prescribe; administer; deliver; distribute; dispense or compound any opiates, opium or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107 and amendments thereto. Except as provided in subsections (c) and (d), any person who violates this subsection shall be guilty of a drug severity level 3 felony.

(c) If any person has a prior conviction under this section or a conviction for a substantially similar offense from another jurisdiction, then that person shall be guilty of a drug severity level 2 felony and if the person who violates this section has two or more prior convictions under this section or substantially similar offenses under the laws of another jurisdiction, then such person shall be guilty

of a drug severity level 1 felony.

(d) Notwithstanding any other provision of law, upon conviction of any person for a first offense pursuant to subsection (b), such person shall be guilty of a drug severity level 2 felony if such person is 18 or more years of age and the substances involved were possessed with intent to sell, deliver or distribute; sold or offered for sale in or on, or within 1,000 feet of any school property upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12.

Nothing in this subsection shall be construed as requiring that school be in session or that classes are actually being held at the time of the offense or that children must be present within the structure or on the property during the time of any alleged criminal act. If the structure or property meets the description above, the actual use of that structure or prop erty at the time alleged shall not be a defensto the crime charged or the sentence imposed

(e) It shall not be a defense to charges aris ing under this section that the defendant was acting in an agency relationship on behalf o

*** (f)

any other party in a transaction involving a controlled substance.

History: L. 1973, ch. 259, § 1; L. 1988, ch. 257, § 1; L. 1990, ch. 101, § 1; L. 1991, ch. 85, § 2; L. 1992, ch. 92, § 1; L. 1993, ch. 291, § 234; July 1.

Revisor's Note:

This section was also amended by both L. 1992, ch. 298, § 74 and L. 1992, ch. 239, § 281, but both such amended versions were repealed by L. 1993, ch. 261, § 6; the section was also amended by L. 1993, ch. 261, § 1, but such amended version was repealed by L. 1993, ch. 291, § 283, effective July 1, 1993.

CASE ANNOTATIONS

64. Instruction on conspiracy, testimony regarding defendant's dream, evidence of other illegal activities, reasonableness of search, multiplicity of convictions, sentence examined. State v. Tyler, 251 K. 616, 619, 840 P.2d 413 (1992).

65. Hearsay nature of certain conversations, statements, and reports of deceased confidential informant examined. State v. Rowe, 252 K. 243, 244, 843 P.2d 714 (1992).

66. Specific sentencing provisions of 21-4608(3) compared with 21-4608(8); 60-1507 issues examined where defendant returned to Wyoming on detainer. State v. Aleman, 16 K.A.2d 784, 785, 830 P.2d 64 (1992).

67. Entrapment as defense and elements of instruction thereon examined. State v. King, 17 K.A.2d 349, 838 P.2d

349 (1992).

68. State must prove underlying felony in prosecution for use of communication facility to facilitate violation of section. State v. Hill, 252 K. 637, 638, 640, 642, 645, 847 P.2d 1267 (1993).

69. Prosecution under 61-4141, based upon facilitation, requires proof of the actual commission of the underlying felony. State v. Garrison, 252 K. 929, 933, 850 P.2d 244 (1993).

65-4127b. Unlawful acts regarding depressants, stimulants or hallucinogenic drugs or other substances; penalties; acts within 1,000 feet of school property. (a) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to possess or have under such person's control:

(1) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111,

and amendments thereto;

(2) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105 and amendments thereto or designated in subsection (g) of K.S.A. 65-4107 and amendments thereto;

(4) any substance designated in subsection (g) of K.S.A. 65-4105, and amendments thereto, and designated in subsection (c), (d),

(e), (f) or (g) of K.S.A. 65-4111 and amendments thereto; or

(5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109, and amendments thereto.

Except as otherwise provided, any person who violates this subsection shall be guilty of a class A nonperson misdemeanor. If any person has a prior conviction under this section or a conviction for a substantially similar offense from another jurisdiction, then such person shall be guilty of a drug severity level 4 felony.

(b) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to sell, offer for sale or have in such person's possession with the intent to sell, deliver or distribute; cultivate; prescribe; administer; deliver; distribute; dispense or com-

pound:

(1) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(2) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105, and amendments thereto or designated in subsection (g) of K.S.A. 65-4107 and amendments thereto;

(4) any substance designated in subsection (g) of K.S.A. 65-4105, and amendments thereto, and designated in subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments thereto; or

(5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109, and amendments

thereto.

Any person who violates this subsection shall be guilty of a drug severity level 3 felony.

(c) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to possess, have under such person's control, prescribe, administer, deliver, distribute, dispense, compound, sell, offer for sale or have in such person's possession with intent to sell, deliver or distribute any controlled substance designated in K.S.A. 65-4113 and amendments thereto. Any person who violates this subsection shall be guilty of a class A nonperson misdemeanor, except that such person shall be guilty of a drug severity level 4 felony if the substance was prescribed

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****(f)For purposes of this act the above prohibitions include controlled substance analogs as defined in K.S.A. 65-4101(bb).

for or administered, delivered, distributed, dispensed, sold, offered for sale or possessed with intent to sell to a child under 18 years of age.

(d) Notwithstanding any other provision of law, upon conviction of any person pursuant to subsection (b) for an offense in which the substances involved were possessed with intent to sell, sold or offered for sale in or on, or within 1,000 feet of any school property upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades 1 through 12 and such person is 18 or more years of age, such person shall be guilty of a drug severity level 2 felony.

Nothing in this subsection shall be construed as requiring that school be in session or that classes are actually being held at the time of the offense or that children must be present within the structure or on the property during the time of any alleged criminal act. If the structure or property meets the description above, the actual use of that structure or property at the time alleged shall not be a defense to the criminal charged or the sentence imposed

(e) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance.

History: L. 1973, ch. 259, § 2; L. 1974, ch. 258, § 9; L. 1980, ch. 100, § 3; L. 1982, ch. 269, § 8; L. 1986, ch. 241, § 4; L. 1986, ch. 243, § 1; L. 1987, ch. 244, § 4; L. 1987, ch. 245, § 1; L. 1988, ch. 257, § 2; L. 1989, ch. 200, § 5; L. 1990, ch. 101, § 2; L. 1991, ch. 85, § 3; L. 1991, ch. 89, § 6; L. 1992, ch.

.92, § 2; L. 1993, ch. 291, § 235; July 1.

Revisor's Note:

This section was also amended by both L. 1992, ch. 298, § 75 and L. 1992, ch. 239, § 282, but both such amended versions were repealed by L. 1993, ch. 261, § 6; the section was also amended by L. 1993, ch. 261, § 2, but such amended version was repealed by L. 1993, ch. 291, § 283, effective July 1, 1993.

CASE ANNOTATIONS

71. Hearsay nature of certain conversations, statements, and reports of deceased confidential informant examined. State v. Rowe, 252 K. 243, 244, 843 P.2d 714 (1992).

72. Search warrant upheld under "good faith" exception although affidavit did not establish probable cause. State v. Sidel, 16 K.A.2d 686, 694, 827 P.2d 1215 (1992).

73. Sale of marijuana in violation of subsection (b) is a lesser included offense of sale in violation of subsection

(e). State v. Josenberger, 17 K.A.2d 167, 836 P.2d 11 (1992).

74. Failure to give cautionary instruction on testimony of paid informant as reversible error examined. State v. Novotny, 17 K.A.2d 363, 367, 837 P.2d 1327 (1992).

75. Prior conviction used to enhance classification cannot also be used to enhance sentence. State v. Geddes, 17 K.A.2d 588, 594, 841 P.2d 1088 (1992).

76. Cited in finding probable cause that aiding and abetting in the sale of drugs was present; charge hereunder discussed. State v. Chapman, 252 K. 606, 609, 847 P.2d 1247 (1993).

77. State must prove underlying felony in prosecution for use of communication facility to facilitate violation of section. State v. Hill, 252 K. 637, 638, 640, 645, 847 P.2d 1267 (1993).

78. Conviction affirmed; circumstances when failure of court to give cautionary instruction on testimony of paid informant not reversible error examined. State v. Novotny, 252 K. 753, 851 P.2d 365 (1993).

65-4127e. Sentencing under 65-4127a and 65-4127b; substances and quantities; crimes committed prior to July 1, 1993. (a) For purposes of sentencing pursuant to this act, substances and quantities shall be as follows:

lows:	. 50 43 101
SUBSTANCE	gm
Alpha-Methylfentanyl	
Aipha-Mediyiientanyi	25
Amphetamine Any substance which contains any quantity	
Any substance which contains any quantity	
of a derivative of barbituric acid, or any	- 0
salt of a derivative of barbitaric acid	50
Cannabis Resin or Hashish	25
Cocaine D-Lysergic Acid Diethylamide/Lysergide/LSD	_ 25
D-Lysergic Acid\//	.2 pure or
Diethylamide/Lysergide/LSD	200 dosage
· \ /	units
Dextropropoxyphene/Propoxyphene	100
Diazanam	50
Diethyltryptamine/DET.	. 50
Dimethyltryptamine/DMT\	. 50
Fentanyl	. 10
Heroin	. 5
Heroin	. 50
Hydromorphone/Dihydromorphinone	25
Marijuana/Cannabis	1500
Marijuana/Cannabis Plant	50 plants
Meperidine/Pethidine	100
Mescaline	10
Mescaline	. 25
Methaqualone.	. 50
Morphine	. 25
Mushrooms containing Psilocin	24
and/or Psilocybin	. 100
Opium Oxycodone Pentazocine	100
Oxycodone /	. 25
Pentazocine/	. \ 50
Peyote	. \ 100
Phencyclid/ne/PCP	
Phentermine	
Phenylacetone PP	. \25
Psilocin /	. \2
Psilocybin	
•	

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***(f) For purposes of this act the above prohibitions include controlled substance analogs as defined in K.S.A. 65-4101(bb).

trolled substance in violation of the uniform controlled substances act.

(b) \ Except as provided in subsection (c), violation of this section is a class A nonperson misdenleanor.

(c) Apy person who violates this section by delivering or causing to be delivered within this state drug paraphernalia or/a simulated controlled substance to a person under 18 years of age is guilty of a nondrug selverity level 9,

nonperson felony. History: L. 1981, ch. 140 § 4; L. 1987, ch. 246, § 2; L. 1993, ch. 291, § 237; July 1.

65:4154.

History: L. 1981, ch. 140, § 5; Repealed, L. 1992, ch. 298,\\$ 97; July 1, 1993.

65.4155. Representation that noncontrolled substance is controlled substance; prohibitions; penalties (a) No person shall knowingly deliver or cause to be delivered in this state any substance which is not a controlled substance:

(1) Upon an express representation that the substance is a controlled substance or that the substance is of such nature or appearance that the recipient will be able to distribute the substance as a controlled substance; or

(2) under circumstandes which would give a reasonable person/reason/to believe that the

substance is a controlled substance.

(b) If any one/of the following factors is established, there/shall be a presumption that delivery of a substance was under circumstances which would give a reasonable person reason to believe that a substance is a controlled substance:

(1) The substance was packaged in a manner normally used for the illegal delivery of

controlled substances.

(2) The delivery of the substance included an exchange of or demand for money or other consideration for delivery of the substance, and the amount of the consideration was substantially in excess of the reasonable value of the substance.

(3) The/physical appearance of the capsule or other material containing the substance is substantially identical to a specific controlled

(c) Except as provided in subsection (d), violation of this section is a class A nonperson

misdemeanor.

(d) Any person 18 or more years of age who violates this section by delivering or causing to be/delivered in this state a substance to a

person under 18 years of age and who is at least three years older than the person under 18 years of age to whom the delivery is made is guilty of a nondrug severity level 9, nonperson felony.

History: L. 1981; ch. 140, § 6; L. 1993,

ch. 291, § 238; July 1.

65-4159. Unlawful manufacturing or attempting such of any controlled substance; penalty. Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to manufacture any controlled substance. Any person violating the provisions of this section with respect to the unlawful manufacturing or attempting to unlawfully manufacture any controlled substance, upon conviction, is guilty of a drug severity level 3 felony, except that, upon conviction for a second offense, such person shall be guilty of a drug severity level 2 felony, and upon conviction for a third or subsequent offense, such person shall be guilty of a drug severity level I felony and the sentence for which shall not be subject to statutory provisions for suspended sentence, community work service, or probation.

History: L. 1990, ch. 100, § 10; L. 1993,

ch. 291, § 239; July 1.

Article 42.—EXAMINATION, LICENSURE AND REGULATION OF MENTAL HEALTH TECHNICIANS

65.4203. Licensure of mental health technicians; application; qualifications; examination; licensure by another state, effect; temporary permits; rules and regulations. (a) Except as is hereinafter provided, an applicant for a license to practice as a mental health technician shall file with the board a written application for such license, on forms prescribed by the board, and shall submit satisfactory evidence that the applicant:

(1) Has been satisfactorily rehabilitated if the applicant has eyer been convicted of a fel-

(2) possesses a high school education or its recognized equivalent; and

(3) has satisfactorily completed an approved course of mental health technology

(b) A license to perform as a mental health technician may only be issued by the board to an applicant:

(1) Meeting the qualifications set forth in subsection (a) and who has successfully passed

or controlled substance analog

or controlled -substance analoq Kansas-Nebraska
League of
Savings

Jeffrey D. Sonnich, Vice-President

Suite 512 700 Kansas Avenue Topeka, Kansas 66603 (913) 232-8215

March 16, 1994

TO:

Senate Judiciary Committee

FROM:

Jeffrey Sonnich

RE:

H.B. 2992; Redemption of Real Estate Under Foreclosure

The Kansas-Nebraska League of Savings Institutions appreciates the opportunity to appear before the Senate Committee on Judiciary in support of H.B. 2992 which would amend K.S.A. 60-2414 to allow for a reduced period of redemption on real estate under foreclosure.

The bill would reduce from six months to three months the redemption period for individuals who have defaulted in the conditions of their mortgage before one-third of the original debt has been paid. Owners would have the ability to petition the court to extend the three month redemption to six months should they lose employment income during the redemption period. The bill would retain the twelve month redemption period for owners that have substantial equity in their homes.

This summer the Governors' Commission on Housing and Homelessness recommended to the Governor a number of legislative changes that "would allow Kansas to improve affordable housing for low to moderate income families". One of those recommendations was to reduce the redemption period on loan foreclosures. We agree with the Commission's assertion that one of the deterrents lenders face when making a marginal housing loan is the long period of redemption. A reduced period would in some cases make the difference between loan approval and loan disapproval.

In some ways financial institutions are held hostage by the underwriting re quirements of the secondary market. Most low income and some moderate income individuals do not fall within the income and credit limits set by Fannie Mae and Fred die Mac. Lenders who are willing to make these loans expose themselves to increased risks because they are carried to maturity as an asset and not sold on the secondary market. At the same time federal regulators scrutinize any loan that falls outside of the parameters of an institutions lending policies. While little can be done about an individual's credit risk a change in the law to reduce the costs associated with those risks would be beneficial.

Notwithstanding the Governor's Commission recommendations, new federal Community Reinvestment Act (CRA) regulations have been proposed by the regulatory agencies that would significantly change the way financial institutions are evaluated in lending to low and moderate income individuals. As under current regulations, the

Smate Judiany 3-16-94 attachmint 5-1 Page 2 March 16, 1994 H.B. 2992

CRA regulatory goal is to grade each federally insured lender's record in meeting its community credit needs. Where current compliance procedures focus on Board of Director involvement and extensive documentation of community involvement these new regulations are performance based. Under these standards large institutions would be subject to three tests: a lending test, a service test and investment test. For retail lending institutions the lending test is the key factor in determining a CRA rating.

The lending test would directly evaluate an institution's percentage of low and moderate income lending in their lending area. A rating of "substantial noncom pliance" in this area could subject the institution to cease and desist orders, civil money penalties, removal and prohibition orders, and loss of federal insurance. The bottom line is that institutions will have "increased incentive" to make more loans in low and moderate income areas.

Finally a shortened redemption period would help deter the practice of equity skimming by shortening the time period an equiteer has control of the property. This is evidenced by the lack of equity skimming in states that have ninety-day redemption periods. Missouri, Nebraska and Colorado, which are all deed of trust states with not more than ninety days redemption, do not have the equiteering problem that Kansas has. The Legislature passed a law two years ago that prohibited equity skimming. Unfortunately, the law has been ineffective in stopping the practice.

Real estate lenders face substantial problems when recovering property that has been rented by an equiteer. Many times the property is in such poor condition that substantial improvements must be made before trying to resell it. This occurs, we feel, because many equiteers have no real vested interest in seeing that the property is maintained once it is rented. We also would like to point out that during the redemption period the equiteer pays no property taxes. Lenders are essentially forced into paying the property taxes in order to avoid a state imposed tax lien on the property. A reduced period of redemption would go a long way towards curtailing this practice.

The bill was amended on the House floor to change the petition section of the bill on page 5. The concern was that, as written, the original petition language would not have allowed a self-employed individual to petition for a extension. The problem, however is that the amending language is so broad that a petition for extension could become automatic. Attached is an amendment that we feel would take care of the concerns for self-employed individuals, while retaining language narrow enough to create an incentive for lenders to make low and moderate income home loans.

In closing, we would add that we recognize the right of a homeowner to redeem his/her property has been a fundamental part of Kansas Law for over 100 years. We do not support taking away that right even though very few individuals (less than 2%) ever redeem their homes. However, we do support a reduction in the redemption period with the appropriate safeguards contained in H.B. 2992. Accordingly we re spectfully request the Senate Judiciary Committee recommend favorable passage of H.B. 2992.

AMENDMENT TO H.B. 2992

ON PAGE 5 BY STRIKING ALL LANGUAGE ON LINES 3 AND 4 AND BY STRIKING ALL LANGUAGE BEFORE "AND" ON LINE 5.

ON PAGE 5 BY INSERTING THE FOLLOWING LANGUAGE BEFORE THE WORD "AND":

"has involuntarily lost such owner's employment or self-employment income after the date of sale"

The Governor's Commission on Housing and Homelessness

Joan Finney, Governor

Karen Herrman, Chairperson Noelle St. Clair, Vice-Chairperson

SENATE JUDICIARY COMMITTEE HOUSE BILL 2992 MARCH 16, 1994 Wm. F. Caton

Thank you for the opportunity to appear before you today as a member of the Governor's Commission on Housing and Homelessness. I also have an interest in this bill in my capacity as Consumer Credit Commissioner, as this bill will have an impact on consumer transactions that are secured by a second mortgage on real estate.

The Governor's Commission on Housing and Homelessness ("the Commission") has identified a need to shorten the redemption period on mortgage foreclosures. This subject was brought up many times at a statewide conference held on September 12 - 14, 1993 by housing advocates, not lenders. The redemption rights on foreclosed properties have been abused in the past by "equity skimmers" by purchasing equity rights from the borrower, who have already vacated the property, and rented or leased the property under false pretenses to a third party; meanwhile, the mortgage holder suffers economically. This situation still exists even though a bill was passed into law two years ago to curtail this problem.

When the Commission recommended this concept to be part of the Governor's legislative package for housing, she was concerned that shortening this period would unfairly harm consumers when economic conditions have caused employment layoffs. I was able to relay this concern to the financial industry who was working on a bill draft and through our combined efforts, were able to provide a bill draft that shortens the redemption period from six to three months on only those properties that have less than 1/3 of the original indebtedness paid. This has been identified by lenders as the area where most of the losses occur since problems on properties with larger amounts of equity usually are resolved long before a sheriff's sale by private sale or restructuring the debt. The redemption period for properties that have more than 1/3 equity will remain at twelve months, and a provision was included to allow a court to extend the three month redemption period an additional three months in the event of the owners loss of employment during the redemption period. The Governor's staff was pleased with this bill draft and indicated she would sign legislation if presented in the original format.

However, I believe the amendment made on the House floor to section 1(m) severely impairs the effectiveness to the bill. If the court has the ability to extend the redemption period back to six months before or after the sheriff's sale and with the latitude allowed in the amended bill, extensions by the court will become the rule rather than the exception, and the original intent of the bill would be defeated.

Senate Judiciary 3-16-94 attachment 6-1 As Consumer Credit Commissioner of the State of Kansas, I am charged by statute to provide fairness between borrowers and creditors and insure that credit is available to Kansas consumers. I believe the concept of a redemption period is important to allow borrowers a "final opportunity" to redeem their property. I also believe the current length of the redemption right period inhibits lenders in making loans to low and moderate income borrowers, due to the extensive losses caused by abuses of the redemptions rights and abandonment of the property. This bill maintains a balance of fairness, and continues to allow a twelve month redemption period to those borrowers who have accumulated significant equity in their property. The redemption period commences only after the lengthy time it takes to obtain a judgement. I interpret this bill to be favorable to consumers, and it will promote additional housing availability to low and moderate income households.

I support this bill as the Consumer Credit Commissioner and as a representative for the Governor's Commission on Housing and Homelessness.

I will be glad to answer any questions or provide any additional information you might request.

Karen Herrman 111 West 11th Street Hays, Kansas 67601

H. B. 2992

March 16, 1994

I appreciate the opportunity to appear before you as the Chairman of the Governor's Commission on Housing and Homelessness and as a representative of the housing concerns of the rural areas and small towns throughout Kansas.

The Commission, which is charged with finding solutions for housing all citizens of Kansas, recommended legislation to shorten the redemption period on mortgage foreclosures.

The support for the shorter redemption period grew as housing focus groups met throughout the state the past two years, and culminated with conclusive support from those attending the Governor's statewide housing conference in September, 1993.

Any apprehension has been dispelled by housing advocates clearly recognizing that one can rarely come up with the amount of money necessary to redeem the property. Most foreclosures are filed when the homeowner has virtually no way of meeting the payments. The costly foreclosure process may be simplified with a deed in lieu of foreclosure, in many instances. A prolonged process does not seem to do the borrower a favor.

This issue came to light when we examined the problems some homebuyers experience in qualifying for a home loan. Minor issues on creditworthiness had enormous impacts in the rejection of some loans. We constantly look at successful policies and programs in other states. We eventually discovered the barrier we have in Kansas. Lenders must be exceptionally conservative to prevent as many lengthy foreclosures as possible.

The present foreclosure/redemption laws do not seem to be helping people save their homes. They do, however, seem to be preventing many low-to-moderate-income people from obtaining home loans.

As an advocate of affordable housing for Kansas, I ask that you support this bill.

I will be happy to answer any questions.

Irrate Judiciáry 3-16-94 altribunia (* 7-1 March 16, 1994

Mr. Chairman and Members of the Committee:

My name is Janis Lucciarini of Wichita, Kansas.

I am here to ask you to Vote NO on House Bill 2992.

I have worked for over 7 years as a Special Investigator for the Consumer Protection Division of the Sedgwick County District Attorney's Office.

Vote NO on HB 2992 because it is an unnecessary "special interest" law that would benefit only lenders, not the consumers.

People in foreclosure are not dead-beats. They qualified for the majority of these loans and paid a down payment. They don't have an extra \$500-1000 dollars to pay an attorney to protect their rights or even answer a petition so they can hold their standing in their case. Therefore, they get looked over and lose the time they so dearly need to put their lives back together and get back on track. Such is my case, when unexpectedly, my husband, who had just retired from the military, had chosen to be single instead of married and raising his family, leaving me and our eight-year old daughter to fend for ourselves, like so many women are experiencing. Faced with single-parenting and 50% less income, I was losing ground on my bills. I went to my lender and tried to get them to refinance our home at the lower interest rate so I could keep my home for my daughter and me. They wouldn't refinance because I had been late on the last two payments. By this time my self-esteem was very low. I felt abandoned, not only by my husband, but the bank as well. I was overwhelmed by the mounting bills. I was still attempting to meet all of "our" obligations, but with just my income. It was the lowest point in my life. Not only was I dealing with a pending divorce, the rejection and pain my daughter was feeling, but then I was faced with the fear of foreclosure - a terrifying thought - losing your home. I remember feeling like it was all a bad dream - hoping I would wake up. However, the fear became a reality.

I was raised to believe that one does everything in his or her power to prevent bankruptcy and foreclosure. I couldn't believe it was happening to me. I was determined to keep my home. All those years of making payments and building a solid credit history meant nothing to the lender. I was not in a position to refinance my home. So, I tried other avenues: I ran advertisements for roommates to offset my expenses; I contacted a realtor, who told me that the market wouldn't

Smate Jaddrily 3-16-94 Attablation 8-1 bare what we had paid for the home; I even paid a local service to find a roommate for me. I was desperate and my worst fear of becoming homeless was coming true. Without warning an agent for the bank came to my home and questioned me as to why I was not making my house payments. When one is responsible and not accustomed to being questioned in that manner it's a humiliating experience. I had little control of the circumstances. Nonetheless, I felt beaten and worthless.

Going through foreclosure is very stressful for people. They have no control over the situation. They will try anything to hang on like I did. Going through foreclosure is probably one of the hardest, most unbearable things someone can go through. It's a true feeling of loss. People going through foreclosure need their 6 months redemption rights to get their lives back on track, to restructure their finances and use the time productively to get on with their lives. There is nowhere to turn for help and no one to talk to about what will happen to you during the foreclosure. Unless you have all your payments, you will be forced to leave your home.

Vote NO on HB 2992 because many people like me need time to put their lives back in order.

If even a small percentage of citizens of this state knew that this Bill was up for vote, there would be a long line waiting to speak out against it. With all my experience reviewing consumer law, I have never seen anything so unnecessary or more slanted toward one special interest group.

If this bill is passed, not only will individuals suffer but the community will suffer as well. Consider the less fortunate individual who doesn't have the means to maintain a comparable lifestyle. I may be an atypical case, since I have an education and work experience. But, what about the average working-man, who has been laid-off, trying to provide for his family. What options does he have when he can no longer make his house payments? What will happen to this family if they are forced to leave their home without having time to make arrangements for other housing. The stress of going through this process often tears families apart. This, in turn, has great impact on the community.

Shortening redemption rights will not benefit consumers. It will only benefit the lender. Please protect our rights. VOTE NO.

r. Chairman & Members of the Committee:

My name is Tom Tuttle with Security Equities Investments, Inc. located in Wichita, Kansas. I want you to vote no on House Bill 2992.

I counsel people in foreclosure. House Bill 2992 is a cruel law to enact against the citizens of this great State when **layoffs** exceed over 12,000 in Wichita alone (Boeing, Sears, Cessna, Piaggio). Vote no on HB 2992 because all it does is take Citizen's Rights away and put them on the street 3 months sooner.

The only way Homeowners will get 6 months redemption is if they spend money they don't have to hire an attorney to prove that the homeowners fit "special guide lines". Vote no on HB 2992 because homeowners elect people to office to protect their interests, they don't hire lobbyist.

Vote no on HB 2992 because passing this bill will not loosen up credit for "those marginal credit risks" as alleged. Why would you lend money to people with bad credit if you had more money? This doesn't make sense. How is putting people out in the street going to help homelessness in this State?. Why not recast the mortgages or refinance at lower rates so these loans won't be bad?

If the Lenders really want the property back sooner "to loosen up credit" they should take a Deed in Lieu, but they won't. Why won't the Lenders take a Deed in Lieu? Simply because if they did they would not be able to collect on the homeowner's **Mortgage Insurance**.

Vote no on HB 2992 because:

This law is not just shortening the Redemption on loans with less than "1/3 indebtness" as alleged, but all loans. It would take a homeowner over 15 years to pay down more than one-third on these loans. What if you put 20% down on a \$100,000. house? That is \$20,000. down, but you still would only get 3 months redemption rights.

Vote no on HB 2992 because:

The Kansas Banker's Association would have you believe that they are protecting the consumers from equiteers by taking homeowner's rights away. Laws are on the books right now to protect the consumers from being taken advantage of by equiteers. Because of laws already passed there is no more equiteering.

In 1990 Law KSA 58-2342 passed to set aside the transaction Law passed in 1992 KSA 60-1011 Equity Skimming (civil) Law passed in 1992 KSA 21-4410 Equity Skimming (criminal)

Servete Judiciary attachment 9-1 Law passed in 1992 KSA 58-3062 #36 Real Estate Law If there is equiteering the Attorney General needs to put the equiteers in jail. You have done wonderful by passing these laws. This is just a smoke screen to take away rights from consumers.

The 1992 revision of KSA 60-2414A gave Bankers the Right to Extinguish Redemption Rights.

I have here before you 6 such cases where the lender not only knew where the owners were but 5 of the 6 properties were listed with M.L.S. Brokers with "For Sale" signs in the yard. In all 6 cases the Lender filed a Motion to Extinguish Redemption Rights. One of the homes had over 1/3 of the original amount paid down and she still lost her rights.

My point being: The Lenders only interest is the Lenders and not what is good for the "little" people, the Farmers, the hardworking factory workers. The Lenders want property back the day after the Mortgage Insurance check clears and not until.

The Lender can and does in many cases take a deficiency judgement. On the flip side when the lender forecloses on a \$30,000 house with only \$5,000 against it they sell it for \$30,000 and keep the homeowner's \$25,000 worth of equity. The same falls true with the Mortgage Insurance, on a \$50,000 mortgage Mortgage Insurance will pay around \$10,000. With this and all the money in escrow plus the down payment taken, they turn around and sell the house for a profit not a loss.

Who is going to protect us from the Lenders? Vote NO on House Bill 2992 for the people of the State of Kansas.

Laws Already in Place for the Benefit of the Lender are:

- a. the right to appoint a receiver, collect rents
- b. extinguish the redemption rights altogether
- c. take a deficiency judgment (leaving large sums of money owed by the homeowner)
- d. take a deed in lieu (which would give then the property immediately)
- e. the right to sue for waste to the property

Vote NO on this Special Interest Legislation. Vote NO in the best interest for the citizens of this state.

The Kansas A sociation of Financ 1 Services

George Barbee, Executive Director Jayhawk Tower, 700 SW Jackson, Suite 702 Topeka, KS 66603-3740 Fax: 913/357-6629

913/233-0555

Statement to Senate Judiciary Committee House Bill 2992

Mr. Chairman and members of the committee my name is George Barbee appearing today on behalf of the Kansas Association of Financial Services in support of House Bill 2992. The members are finance companies familiar to most of you such as Household Finance, Beneficial Finance, Associates, Norwest, etc., with approximately 100 offices in Kansas.

This bill addresses a serious problem that arises in only a small percent of loans on real estate. It happens after the creditor has exhausted every effort to collect the delinquent amounts owed by the debtor. It happens after attempts to restructure the loan have failed. It happens after the creditor finally has to foreclose, sometimes eight to ten months after the last payment.

None of the lending institutions desire to be in the real estate business, but foreclosures do happen, and when they do the creditor still cannot gain possession of the property. They must wait a minimum of six months because the debtor is granted a six month redemption right in the Kansas statutes. During that time the debtor still has possession of the property, unless the debtor sells the redemption rights to someone else. This someone else is usually an "equiteer" who pays a small amount for the redemption rights and then rents the property out for as long as possible.

All to often the property is in diminished value when the creditor finally regains possession. Either inadvertently or intentionally, unoccupied property may have suffered from damage. This damage can include frozen and broken pipes and plumbing fixtures or unattended water leaks destroying ceilings and floors. Too often hot water heaters and other valuable plumbing and lighting fixtures are stolen.

The State Trade Association for Consumer Finance Companies Affiliated with The American Financial Services Association Founded, September, 1934

Finance companies are sensitive to each individual client's circumstances in an effort to prevent damage to property that will be in foreclosure. For example, if a couple has fallen on hard times because of the loss of employment and is delinquent on payments, the company will discuss the situation with the consumer. If they are attempting to find a new job, or have become reemployed, the company will certainly try to restructure the loan. If the borrower is trying to make payments, the finance company will certainly try to keep the loan.

But, let's look at a different scenario. A young couple has a record of being delinquent in payments. Their marriage of one year is on the rocks and they split. The property is abandoned. They both move out of the area to return to family or friends. It takes several weeks to discover all the facts and bring foreclosure action. Even after foreclosure, we must wait six months while the right of redemption runs. The property becomes a target for vandals, thieves, and weather damage. We do not have this problem with those debtors who have built equity of one third or more of the remaining balance of the mortgage. The statutes would continue to grant a twelve month redemption right to those borrowers. It is with those that have little or no equity that cause problems.

This reduced limit would make the lender more comfortable with making loans to the low to moderate income borrower. We believe the Commission on Housing and Homelessness was right on target with its recommendation which is:

Shorten redemption period on loan foreclosures - Lenders are reluctant to make marginal housing loans due to the long redemption period in Kansas. A shorter redemption period that still adequately preserves the borrowers rights would enhance the availability of low and moderate income housing needs.

On behalf of the Kansas Association of Financial Services I thank you for the opportunity to appear and urge you to act favorably on House Bill 2992.

10-2

KANSAS ASSOCIATION OF REALTO



Executive Offices: 3644 S. W. Burlingame Road Topeka, Kansas 66611-2098 Telephone 913/267-3610 Fax 913/267-1867

TO:

THE SENATE JUDICIARY COMMITTEE

FROM:

KAREN FRANCE, DIRECTOR, GOVERNMENTAL AFFAIRS

DATE:

MARCH 16, 1994

SUBJECT:

HB 2992, REDUCTION OF MORTGAGE REDEMPTION PERIOD

Thank you for this opportunity to testify. On behalf of the Kansas Association of REALTORS® I appear today support for the measure before you.

Our association has always been protective of the right of redemption. We have viewed it as one of the private property rights which Kansans enjoy. However, we also know what can happen to a property during a redemption period and what happens to the value of the properties which surround a property which is in redemption when a homeowner has less than one-third equity in the property. More often than not, properties which are in redemption deteriorate in condition and become an eyesore to the neighborhood. The benefits of having a longer redemption period do not outweigh the degradation of property values and the surrounding community.

We believe this bill proposes a relatively limited adjustment to the redemption rights in Kansas. We see it as a method for addressing the problems we see in the market today without severely damaging the redemption rights which Kansans have come to expect. We urge your support for the bill.

Inste Judillay
3-16-94



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March 16, 1994

TO: Senate Committee on Judiciary

FROM: Kathleen A. Taylor, Associate General Counsel

Kansas Bankers Association

RE: HB 2992: Redemption Period

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear in support of **HB 2992** which amends KSA 60-2414(m).

That section of law determines the redemption period for those real estate loans that go into default before one-third of the original debt secured by the mortgage has been paid. This bill would reduce from 6 months, to 3 months that period of redemption.

In addition, the original language of the bill would have allowed a court to award an additional 3 months of redemption time if the debtor has involuntarily lost employment after the date of the foreclosure sale and prior to the expiration of the 3 month redemption period.

An amendment placed on the floor of the House would expand this provision to allow an additional 3 months to a debtor who has suffered a loss of income due to adverse economic conditions beyond the control of the debtor - which loss could have occurred before or after the date of the foreclosure sale.

The KBA fully supports the efforts to amend the statute so as to partially relieve the risk involved in real estate lending - and especially as that affects borrowers in the marginal credit risk category.

Real estate loans are generally thought to be fairly low-risk loans because of the stability of the collateral backing the debt. In other words, compared to a loan where the collateral is crops or livestock, which have values that fluctuate more frequently, loans backed by real estate are categorized as less risky. But in fact, the risk involved in real estate loans is not due to the type of collateral, but because the collateral is not easily liquidated when the loan goes into default. From the time of the default, until the property can clearly be sold to a willing purchaser, the lender is at risk. There is the risk that the property's value may deteriorate due to misuse of the defendant owner or another who purchases the redemption rights. The value of that property to the lender is also subject to property taxes that must be kept current; insurance, and other costs of maintaining the property. These things will soon eat up the equity that has been accumulated in the property.

Office of Executive Vice President • 1500 Merchants National Building Eighth and Jackson • Topeka, Kansas 66612 • (913) 232-3444 FAX (913) 232-3484

HB 2992, cont. February 21, 1994 Page Two

While this bill would help the lender by allowing the property to be sold to a willing buyer three months sooner than is allowed today in most cases, this does not mean that the defendant owner will be ousted from his property three months after the first default on the loan. There are many months spent prior to the sheriff's sale (after which the redemption period begins to run) which the lender attempts to put in motion the procedures used to collect the funds it has loaned.

For example, I asked several of our KBA Real Estate Committee members to give me an idea, on a time line, of the process a loan takes in reaching the point of the sheriff's sale. Their response was as follows:

- 1. The default is called. Typically this does not occur until the loan is already three months in arrears (that is three months that the borrower has not paid as agreed).
- 2. The bank will send a demand letter in which a time period is given in which to cure the default. Typically this time period is no less than 30 days (another month).
- 3. If the cure is not made, the bank must contact their attorney to start proceedings. This usually means the attorney will first make a title search and do some other background work before actually filing the petition with the court (usually another 30 days).
- 4. The Court then has to serve the summons which in some areas takes one to two weeks. The borrower has 20 days to answer, but most request a 30 day extension, which is almost always granted (at least another month to a month and a half).
- 5. Then a trial date is set. Depending on the court's docket, this is usually at least 30 more days. After trial, judgment is rendered. If the bank's motion is granted, it can start thinking about the sheriff's sale.
- 6. Once the date of the sheriff's sale is set, the lender must publish the particulars about the sale in the newspaper for three consecutive weeks. After this time, the sheriff's sale occurs, and **now** the redemption period starts.

From the date of the first default until the date of the sheriff's sale, the borrower has been able to stay on the property for approximately eight months, in most cases. It is at that time that the redemption period starts to run. In those cases where less than one third of the original indebtedness had been paid in, it would appear that the borrower is able to live out almost a year's worth of equity, taking into account the time taken in the loan collection procedure plus the redemption period. All this time, the borrower has not made a payment and has had no reason to maintain the property.

We believe that this bill contains sufficient protection to the borrowers who have not accumulated much equity, while allowing the lender to liquidate that property a little faster so the bank can recoup its investment, and so the property does not stand idle longer than is fair for all parties involved.

We would respectively ask for your favorable consideration of **HB 2992**. Thank you.

Ladies and Gentlemen,

I am writing a statement instead of appearing before you in person due to a pressing business committment.

The proposed legislation before you regarding the reduction of the period of time that a homeowner has to redeem a mortgage that has fallen into arrears, requires that I respond.

Paying down a mortgage so that one third of the principal is retired occurs in approximately the fifteenth year of a typical thirty year mortgage. If a person encounters any kind of financial difficulty in the first fifteen years of a mortgage and reaches the point that they are three monthly installments behind, they and their family are homeless.

I personally have gone through a period of unemployment recently and was three monthly installments behind.

I found a job, and solved the problem, but with the proposed legislation in effect, I and my family would be on the street. It makes no sense to make it more profitable for the bankers to collect on my mortgage insurance than to work with me and people like me to solve a problem that is temporary in nature.

Since most people trade homes every five to seven years, many people will not be in the position of haveing paid down one third on a mortgage untill they reach retirement age.

Servete Gudeling 3-16-94 attachement 13-1 What kind of people can get three months behind on their mortgages?

Self-employed persons, experienceing difficulty with cash flow due to market conditions beyond their control.

Salaried or hourly employees, who experience temporary lay-offs from their employment, or whose jobs are permanently lost. This is particularly common in Wichita among the aircraft employees.

Two income families that experience the loss of a job of either partner for an extended period of time.

Families with no health insurance that suffer substantial medical costs.

Government workers losing their jobs to budget cut backs.

In short, nearly everyone can suffer a financial reversal that takes more than three months to correct. Let us not throw out the baby with the bath in trying to protect the banking industry from losses. The protection that the banks are seeking would theoretically allow them to loosen credit policies and permit more new loans, I question the likelihood of this scenario. In fact it seems to me that this reduced redemption period will increase the number of foreclosures and generate statistics indicating a need for tougher credit policies.

Make no mistake about this bank sponsored legislation it will, and is intended to increase the bottom line of the banks at the expense of the citizens of this state. The banking industry in Kansas is very healthy, and is posting very substantial profits. This legislation is unwarranted and unnecessary.

I and other citizens of this state implore you not to reduce by half the rights to work our way out of a temporary financial difficulty. Please gentlmen do not lessen the protection afforded the citizens of your state from financial ruin and homelessness.

Barnes

Robert D. Barnes

5454 E. 29th North

Wichita, Kansas 67220

316-687-0029

TO: SENATE JUDICIARY COMMITTEE

FROM: LARRY VARDAMAN, DIRECTOR

SEDGWICK COUNTY YOUTH SERVICES

DATE: MARCH 16, 1994

SUBJ: SENATE BILL 829

Chairman Moran and members of the Committee, I am Larry Vardaman Director of Youth Services for Sedgwick County. We would like to thank Chairman Moran for his assistance in the introduction of Senate Bill 829 and the Committee for this opportunity to testify in support of the bill.

Juvenile detention facilities are struggling to provide a safe environment for those they care for as well as their employees. In providing a safe and satisfactory detention environment, studies have shown no other factor as important as overcrowding.

As of last week the detention facilities in the State's four major urban areas were all over their licensed capacities. There were 146 youths in detention facilities licensed for 121 beds. Unfortunately these figures escalate on weekends, as youths brought in by law enforcement, wait judicial action on Monday or Tuesday.

Of the 146 youths detained last Friday, 77, or 64 percent were in detention waiting placement at a State rehabilitation program. This left 44 detention beds available for utilization by courts in urban areas having a combined population of over one million.

Within the criminal justice system, of all the methods of incarceration, only juvenile detention stresses its temporary nature. The goal of the juvenile justice system is rehabilitation, therefore, long-term removal of a juvenile from home is coupled with rehabilitation efforts. It is recognized that these efforts are not possible or effective within a secure juvenile detention environment. Some youths are detained for only a few days or even hours, but for those offenders who stay longer, it is impossible to determine and provide an effective treatment program within the constrained and ever-changing environment of a youth detention facility.

The temporary nature of youth detention facilities has been lost. Urban detention facilities report the average time it takes for a youth to be placed into a rehabilitation facility after the final court hearing is now well over 30 days. Last Friday, one youth had already waited 110 days after being placed in State custody.

With a majority of beds taken by juveniles waiting State placement, and pressure not to over-crowd youth detention facilities, there has been a growing tendency to place juveniles at home pending hearing. These circumstances make questionable the ability of urban detention facilities to carry out the mission of protecting

Servete Judicing 3-16-94 attachment 14-1 the community. With so few beds available to courts, community safety factors are in jeopardy.

It is impossible under these circumstances to define who is responsible for these juveniles. Unlike statutes governing adult corrections, a time limit is not given for the transfer of an offender from local to state care. A determination as to who is responsible for those 77 youth a day, who wait from 30 to over 90 days for state placement has to be defined. Until a time limit is set, neither the State nor Counties can accurately determine the number of beds that are needed in their respective systems.

Senate Bill 829 establishes this much needed time limit for the State transfer of juveniles from local detention facilities. It provides the same time limits as the State's adult correctional statutes, giving the court three working days to transfer orders to the State, and three additional days for the State to remove the juvenile from the local facility.

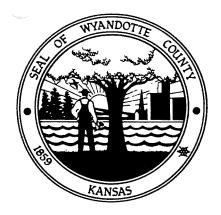
As the statutes which deal with adult offenders this bill provides for reimbursement to Counties at actual costs for offender care.

The other changes in Senate Bill 829 are for clarification of current practices.

The grave responsibility of addressing juvenile crime can not only be accomplished with broad comprehensive legislation. Sometimes partial solutions are positive changes made to the system which exits.

We respectfully request your support of Senate Bill 829

SCOTT D. HUTTON
ADMINISTRATOR



OFFICE OF JUVENILE DETENTION CENTER YANDOTTE COUNTY JUSTICE COMP

WYANDOTTE COUNTY JUSTICE COMPLEX
710 NORTH 7TH STREET
KANSAS CITY, KANSAS 66101
PHONE: (913) 573-2900
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Testimony pertaining to Senate Bill 829

Presented by

Scott D. Hutton
Administrator of Juvenile Services
Wyandotte County Juvenile Detention Center
710 N. 7th Street
Kansas City, Kansas 66101

Senate Judiciary Committee March 16, 1994

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My name is Scott D. Hutton and I am the Administrator of the Wyandotte County Juvenile Detention Center. I am here to offer testimony in support of Senate Bill 829.

I have heard the comments made by Mr. Larry Vardamen, Director of the Sedgwick County Juvenile Services. I strongly endorse his comments in general and specifically support the following sections of Senate Bill 829:

- 1. Section 1. (a)(4)(b)(4) ".... further expenses for the care and custody of the juvenile from the county general fund shall be reimbursed from the state social welfare fund in an amount equal to that provided by the county for maintenance of juvenile offenders." This section, if enacted, will generate needed income for the individual counties budgets to operate their Juvenile Detention Center. The current rate that SRS pays is less than the actual amount that it costs to house juvenile offenders.
- 2. Section 2. (a)(8) "Place the juvenile in a juvenile detention facility when imposing subsections (3), (4) or (6) of this section pursuant to subsection (e) of K.S.A. 38-1632 and amendments thereto."

 Too often juvenile detention centers have been used as a place to house juvenile offenders until an opening occurs in a less secure placement. This section would clearly define the types of juvenile offenders that should be placed in detention while waiting placement.
- 3. Section 3. (c) "The secretary shall not permit the juvenile offender to remain detained in any juvenile detention facility for more than 72 hours, excluding Saturdays, Sundays and legal holidays, after the secretary has received the written order of the court placing the

juvenile offender in the custody of the secretary." Once a juvenile is placed in detention, there appears to be a tendency to let the juvenile stay in detention and not expeditiously seek to have the juvenile placed in their court ordered dispositional placement. This section would help to expedite the juveniles through the system and into an appropriate placement. Additionally, the length of stay and average daily population would decrease with the enactment of this section.

Once I became aware that this bill was pending, I randomly picked two days to see what impact if any, this bill if it was already law, would have on the Wyandotte County Juvenile Detention Center. The two days that were picked were 11-19-93 and 3-10-94. On the two aforementioned dates, we had a total of 131 juveniles in custody with 49 of those juveniles being in SRS custody for longer than 72 hours. This means that 37% of our total population was being inappropriately detained by definition of Senate Bill 829. If Senate Bill 829 was law, we would have had an average daily population for those two days of 41. However, our average daily population was 65.5 for those two days, which far exceeds our licensed capacity of 48.

Secondly, the fiscal impact was as follows: For the 49 SRS custody juveniles on those two dates, we were reimbursed \$2,435.30. However, at our most recent audit by SRS, we were informed that the actual cost of housing a juvenile in our facility is approximately \$62.50 per day. That means that we would have been paid a total of \$3,062.50 for those 49 juveniles.

In conclusion, I think that this particular bill highlights three significant problems that plague the current system: 1. Detention

Centers not being reimbursed for actual costs, 2. Detention Centers being used as inappropriate placements for some juveniles, and 3.

Juveniles being detained in Detention Centers for excessive periods of time. I do not intend to assess blame to any particular agency.

However, I do suggest that the aforementioned problems are real, state wide and need addressed immediately before the situation worsens. On behalf of the Wyandotte County Juvenile Detention Center, I strongly encourage the passage of Senate Bill 829.

March 16, 1994

Kansas State Senate Judiciary Committee Senator Jerry Moran, Chairperson

RE: Senate Bill No. 829

Testimony by Gary Bayens, Director of Shawnee County Youth Center in support of Senate Bill No. 829

Dear Senator Moran and other distinguished members of the Senate Judiciary Committee:

The Shawnee County Youth Center is a juvenile detention facility with a licensed capacity of 17 male residents and 5 female residents. Unfortunately, the facility has consistently operated in excess of the licensed capacity. The overcrowded situation is a result of several problems within the Juvenile Justice System. However, the one component that is central to the overcrowding problem is S.R.S. Specifically, S.R.S. does an inadequate job of expediting youth to appropriate placements. Consequently, many of our youth are detained unjustly, are mixed in with violent juvenile offenders and are unnecessarily subjected to security practices of detention facilities.

On nearly a daily basis, the Shawnee County Youth Center receives a violation report because we exceed our licensed capacity. In the past year, two (2) notices of non-compliances have been filed by K.D.H.E. against the Shawnee County Youth Center because of overcrowding. The most recent case, number 93-NNC-727 was filed in December, 1993, and has now progressed to the imposition a \$500 civil fine against Shawnee County because of the overcrowding.

I have attached a profile of the population at the Shawnee County Youth Center for the week, March 5-11, 1994. The information includes the number of residents in the detention facility, length of stay, and current status. In short, the Shawnee County Youth Center is overcrowded because there are 17 residents who have yet to be moved by S.R.S.

I am in support of Senate Bill No. 829 because there needs to be a time frame established which mandates the movement of juvenile offenders from county to state custody. Once a disposition is established by juvenile court and the youth is placed in S.R.S.'s care and custody, the placement of the youth should be expedited by the State, so that the county detention centers are not in the business of warehousing kids.

Your attention to this matter is greatly appreciated. I would be glad to respond to any questions you may have regarding this matter.

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POPULATION PROFILE: Shawnee County Juvenile Detention Center March 5-11, 1994

Resident Population (Licensed capacity of 17 males and 5 females). 1.

```
March 5, 1994
March 6, 1994
March 7, 1994
March 8, 1994
March 9, 1994
March 10, 1994
                            27 males
                                              4 females
                            28 males
                                              4 females
                            29 males
                                              4 females
                            27 males
                                              4 females
                            29 males
                                              4 females
                                              3 females
                            27 males
March 11, 1994
                            28 males
                                              3 females
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Length of Stay at the Juvenile Detention Center for the 28 males and 3 females who were being detained on March 11, 1994.

Male	######################################	137 120 117 114 92 86 83 70 65 55	days a da	at at at at at at at at at at	SCYC SCYC SCYC SCYC SCYC SCYC SCYC SCYC	Male	#17 #189 #221 #223 #234 #2567 #28	29 26 25 23 19 15 11 8 4 2	days days days days days days days days	attattattat atattat	SCYC SCYC SCYC SCYC SCYC SCYC SCYC SCYC
	#12 #13		days a				#28	2	days	at	SCYC
	#14 #15 #16	46 39	days a days a	at at	SCYC SCYC	Female	#1 #2 #3	17	days days days	at	SCYC

Status of the Resident Population on March 11, 1994. 3.

Residents awaiting adjudication by the juvenile court: 8 males.

Residents adjudicated but awaiting disposition by court: 5 males 1 female.

15 males Residents with disposition but awaiting placement by S.R.S.:

2 females.

Residents awaiting placement by S.R.S. on March 11, 1994. 4.

Males 7 males awaiting opening at Y.C.A.T.

8 males awaiting opening in less restrictive environment.

Females 1 female awaiting opening at Y.C.A.B.

1 female awaiting opening in less restrictive environment.

16-2

March 16, 1994

TO: Senate Judiciary Committee

FROM: Johnson County Board of Commissioners

SUBJ: Senate Bill 829 - Juvenile Detention Centers

The Johnson County Board of Commissioners supports SB 829 for the following reasons:

... A limitation would set on the number of days juveniles are allowed to be held in county juvenile detention facility. The bill specifies juveniles are not permitted to remain in a county facility for more than 72 hours (excluding Saturdays, Sundays and legal holidays), consistent with the limit placed on adult corrections. Local officials would be better able to plan the utilization of the juvenile facilities if they were insured that the movement of juveniles under the supervision of the state would be expedited.

... SRS would be required to reimburse the county at the level paid for juvenile offenders when county facilities are used by the state. This would assist the county with the expenses that are incurred in housing the juveniles under the supervision of the state.

Johnson County feels these provisions would help counties to address the increasing problem of housing juvenile offenders, particularly in light of the impact that can be expected if the package of juvenile crime bills passes the legislature this year.

The Johnson County Commissioners would urge you to recommend SB 829 favorable for passage.

Mall Jallery (913)764-8484 (5500)