

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Tim Owens at 9:32 a.m. on February 5, 2010, in Room 548-S of the Capitol.

All members were present except:
Senator Jean Schodorf- excused

Committee staff present:
Doug Taylor, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Conferees appearing before the Committee:
Judge Sam K. Bruner, Kansas Judicial Council
Jane Rhys, Kansas Council on Developmental Disabilities
Stephanie Wilson, Community Living Opportunities
Chris Swickard, Kansas Bar Association
Loretta Severin, Kansas Alliance for Drug Endangered Children
David Hutchings, Kansas Alliance for Drug Endangered Children
Dona Booe, Kansas Children's Service League
Ed Klumpp, Kansas Association of Chiefs of Police
Jennifer Roth, Kansas Criminal Defense Lawyers

Others attending:
See attached list.

The Chairman opened the hearing on **SB 372 - Amending the Kansas Act for Obtaining a Guardian or a Conservator, or both**. Jason Thompson, staff revisor, reviewed the bill.

Judge Sam Bruner appeared in support and provided the Committee with a review of the bill proposed by the Kansas Judicial Council Civil Code Advisory Committee following a review of 2009 SB 235 as requested by the Senate Judiciary Committee. **SB 372** is the result of the Judicial Council's recommendation and is intended to address multiple state jurisdiction; transfer of cases between states; and, recognition and enforcement of guardianship and conservatorship orders between states. (Attachment 1)

Jane Rhys testified in support, indicating recommendations made by The Kansas Council have been incorporated into the bill. Ms. Rhys provided proposed language that would provide the name and address of any entity having custody or assumed responsibility for a proposed ward or conservatee and the circumstances that caused the person to come under the entity's care be included with the petition. (Attachment 2)

Stephanie Wilson spoke in favor, and recommended the exemption of small (8 beds or less) Intermediate Care Facilities for the Mentally Retarded (ICF/MR) homes. In order for a guardian to make the decision for an individual to reside in a small ICF/MR he/she must obtain permission from the court, incurring both cost and time, which has become a barrier for individuals who have been on a waiting list. The necessary checks and balances currently exist to review a guardian's decision to place an individual into a facility. The exemption will allow individuals access to services when they become available. (Attachment 3)

There being no further conferees, the hearing on **SB 372** was closed.

The hearing on **SB 398 - Indemnification; amendments to certificate of incorporation or corporate bylaws** was opened.

Chris Swickard appeared in support, indicating **SB 398** was proposed to address issues raised by a recent Delaware court case. The Kansas Corporation Code is modeled after the Delaware Code and enactment of the bill will bring Kansas back into conformance with the Delaware Code on issues raised in the court case. (Attachment 4)

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CONTINUATION SHEET

Minutes of the Senate Judiciary Committee at 9:32 a.m. on February 5, 2010, in Room 548-S of the Capitol.

There being no further conferees, the hearing on **SB 398** was closed.

The Chairman opened the hearing on **SB 399 - Controlled substances; aggravated endangering a child; enhanced penalties for distributing on park property and distributing to a child or pregnant person.** Jason Thompson, staff revisor, reviewed the bill.

Loretta Severin appeared as a proponent, indicating the current law of aggravated endangering a child as it relates to controlled substances is only applicable in situations where the manufacture or attempted manufacture of methamphetamine has taken place. Children living in drug environments may face illness or even death by coming into contact with controlled substances and paraphernalia left carelessly within reach. **SB 399** will expand the law to protect Kansas children and encouraged enactment of the bill. (Attachment 5)

David Hutchings spoke in support, stating **SB 399** is intended to send a clear message that the children of Kansas should be free from the dangers associated with drug use, distribution, and manufacturing. It targets those violators who choose to place children in harm's way with their unlawful activities. (Attachment 6)

Dona Booe testified in support, stating the bill will broaden the definition of aggravated endangering a child. The clarifications in **SB 399** will provide protection by removing ambiguity in location descriptions, the illegal drugs included and the degree of proximity to children. (Attachment 7)

Ed Klumpp appeared in support, stating one of the most important challenges of law enforcement is protection of children. This bill will enhance current law to protect children from the hazards of drug users and dealers. Mr. Klumpp reminded the Committee of the cost of Kansas youth who later become drug users, abusers, and dealers due to exposure during their developmental years. (Attachment 8)

Jennifer Roth spoke in opposition, indicating several concerns with the bill as introduced. Ms. Roth voiced concern that language on page 1, lines 23-27 and at line 31 will lead to disproportionate sentencing. On page 6, line 15, the proposed language "park property" means any publicly owned playground, swimming pool or community center and would make distribution/possession a level 2 felony violation regardless if children are present, the park is open, etc. and will produce the same disproportionate sentencing problems. (Attachment 9)

Written testimony in support of **SB 399** was submitted by:
Ed Klumpp, Kansas Peace Officers (Attachment 10)

There being no further conferees, the hearing on **SB 399** was closed.

The next meeting is scheduled for February 8, 2010.

The meeting was adjourned at 10:41 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb. 5, 2010

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Trudy Racine	KCSL
Christy Molzen	Judicial Council
SAM K. BRUNER	Judicial Council
DAVID HITCHIKS	KBI
Loretta Severin	KS Alliance for Drug Endangered Children
Ed Kwipp	KACP / KPOA / KSA
Helen Pedigo	Ks Sentencing Comm.
Juni Rose	KCSL
Dona Booe	KCSL
Patrick Woods	KSJ
Katny Wood	KOSDV
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MEMORANDUM

TO: Senate Judiciary Committee
FROM: Judicial Council – Hon. Sam K. Bruner
DATE: February 5, 2010
RE: 2010 SB 372

The Judicial Council decision to recommend 2010 SB 372 came about as a result of a study of a different bill, 2009 SB 235. Last year, Senator Tim Owens asked the Judicial Council to review SB 235, a bill that would enact the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) in Kansas. The UAGPPJA is intended to address three main problems: multiple state jurisdiction, transfer of cases between states, and recognition and enforcement of guardianship and conservatorship orders between states.

The Council assigned the study to its Guardianship and Conservatorship Advisory Committee. The members of that Committee are:

Hon. Sam K. Bruner, Chairman, retired District Court Judge, Overland Park;
Hon. Richard T. Ballinger, District Court Judge in 18th Judicial District, Derby;
Hon. Thomas H. Graber, retired District Court Judge in 30th Judicial District, Wellington;
John H. House, Attorney, Kansas Department of Social & Rehabilitative

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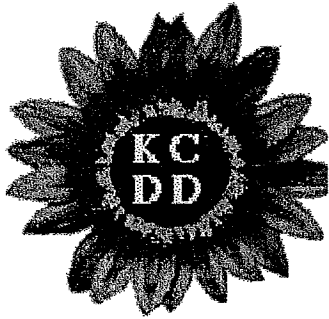
Attachment 1

Services, Topeka;
Jean Krahn, Executive Director of the Kansas Guardianship Program, Manhattan;
Hon. Philip T. Kyle, retired Magistrate Judge in 24th Judicial District, Jetmore;
H. Philip Martin, practicing attorney, Larned;
Hon. David P. Mikesic, retired District Court Judge in 29th Judicial District, Kansas City;
Robert I. Nicholson, Jr., practicing attorney, Paola; and
Dr. Jane Rhys, Executive Director of the Kansas Council on Developmental Disabilities, Topeka.

The Committee reviewed the provisions of the UAGPPJA and compared them to existing Kansas law. The Committee believes that the Kansas Guardianship Act, K.S.A. 59-3050 *et seq.*, which was recodified in 2002, adequately addresses the issues covered by the UAGPPJA. However, the Committee identified two areas where the Kansas Guardianship Act could be improved.

The Committee recognizes that some institutions may be reluctant to recognize out-of-state guardianship and conservatorship orders. Although this should be already be happening, in practice, that may not always be the case. For this reason, the Committee recommends new section 1, which would require that out-of-state guardianship or conservatorship orders be given full faith and credit in Kansas, except when doing so would be in specific violation of Kansas law. New section 1 is intended as an alternative procedure to the transfer provisions of K.S.A. 59-3061.

In addition, the Committee recommends amending the petition sections of the Kansas Guardianship Act to require that a petitioner plead where and with whom a proposed ward or conservatee has resided for the last five years. This would give judges more information enabling them to ascertain when a case might involve "granny snatching" (the unauthorized removal or retention of an elderly person in order to pursue a guardianship in another state or avoid a guardianship in the elderly person's home state). The language of the proposed amendments to the petition sections is patterned after K.S.A. 38-1356(a) of the Uniform Child Custody Jurisdiction and Enforcement Act.



Kansas Council on Developmental Disabilities

MARK PARKINSON, Governor
KRISTIN FAIRBANK, Chairperson
JANE RHYS, Ph. D., Executive Director
jrhys@kcdd.org

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"To ensure the opportunity to make choices regarding participation in society and quality of life for individuals with developmental disabilities"

SENATE JUDICIARY COMMITTEE

February 5, 2010

Testimony in Regard to S.B. 372 AN ACT concerning guardianship and conservatorship; relating to orders and petitions.

Mr. Chairman, Members of the Committee, I am appearing today on behalf of the Kansas Council on Developmental Disabilities in support of S.B. 372.

The Kansas Council is federally mandated and federally funded under the Developmental Disabilities Assistance and Bill of Rights Act of 2000, we receive no state funds. It is composed of individuals who are appointed by the Governor, including representatives of the major agencies who provide services for individuals with developmental disabilities. At least 60 percent of the membership is composed of individuals who are persons with developmental disabilities or their immediate relatives. Our mission is to advocate for individuals with developmental disabilities to receive adequate supports to make choices about where they live, work, and learn.

I have served on the Kansas Judicial Council's Guardianship and Conservatorship Advisory Committee since 1998. Last year we were asked to review the Kansas Guardianship and Conservatorship regarding jurisdictional issues and information to be included in the petition for guardianship and/or conservatorship. Our recommendations are incorporated in S.B. 372. Specifically, we recommend that orders establishing and governing a guardianship or conservatorship, or both, issued by a court of competent jurisdiction of any other state, regardless of the specific terminology used in that state's laws, be given full faith and credit within Kansas. The only exception would be when doing so would be in specific violation of any Kansas law.

We also recommend that the name and address of any entity having custody or assumed responsibility for a proposed ward or conservatee and the circumstances that caused the person to come under the entity's care be included with the petition. This and the information in the petition for guardianship or conservatorship about where a proposed ward or conservatee has

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lived during the previous five years, and the contact information for the persons with whom the ward or conservatee lived, are moved from subsection (b)(8) and to (b)(4) because it is logically related to the new language in (b)(3) (pleading where ward has lived for last 5 years).

We believe the above to be reasonable and would ask that you pass S.B. 372.

Thank you and I would be happy to answer any questions.

Jane Rhys, Ph.D., Executive Director
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February 5, 2010

To: Senate Judiciary Committee

RE: Guardianship- Admission to Treatment Facility

Chairman Owens and members of the committee, thank you for the opportunity to speak to you today regarding SB 372, and issues pertaining to guardianship. My name is Stephanie Wilson, and I am a Senior Administrator with CLO. CLO is an organization that serves approximately 400 adults and children with developmental disabilities in Johnson and Douglas counties, and several counties within Southeast Kansas.

CLO has an interest in adding an amendment to guardianship law that would change a guardian's ability to admit his/her ward who has a developmental disability into small community-based homes that are licensed as Intermediate Care Facilities for the Mentally Retarded (ICFs/MR). In 2002, K.S.A. 59-3077 was passed, and requires guardians to obtain court permission prior to admitting their ward to a "treatment facility." The definition of treatment facility includes all facilities licensed pursuant to K.S.A. 75-3307b. This includes large state-operated psychiatric and developmental disability hospitals, and any private psychiatric hospital or private ICF/MR. CLO is proposing that the legislature amend the definition of "treatment facility" to exempt ICFs/MR which are defined by the federal government as being "small." This includes those which have 8 or fewer beds.

There are 21 small ICFs/MR in Kansas, currently serving 113 persons. These facilities range in size from 4 to 8 beds, and are located within community settings. Over the past several years, services within these homes have come to greatly resemble other community based services for persons with developmental disabilities. Individuals choose to live within these homes to receive the supervision and support they need, but also have opportunities for employment and full participation within their communities. These are not hospital settings.

As you are probably aware, the waiting list in Kansas of persons with developmental disabilities who need services has grown to be over 2,000. Many of these individuals qualify to reside in a small ICF/MR setting within their community. However, in order for a guardian to make this decision, he or she must obtain permission from the court, and incur both the cost of time and money. This has become a barrier for individuals who have been waiting years for services, to obtain high quality services that become available to them.

CLO utilized the Kansas Developmental Disability Reform Act as a guide when determining which facilities to propose to exempt from this requirement. The DD Reform Act defines "institution" as a state operated institution or ICF/MR of 9 beds or greater. Therefore, the small-bed ICF/MR facilities do not qualify as

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being institutional settings. And, as a practical matter, they are almost identical to many other community based services for persons with developmental disabilities.

There are also checks and balances in place, other than K.S.A. 59-3077, to review a guardian's decision to place an individual into a small bed ICF/MR facility. Pursuant to K.A.R. 30-64-29 the local Community Developmental Disability Organizations are charged with completing a "gatekeeping" process anytime an individual or guardian desires placement of an individual into an ICF/MR. This process includes a review of making sure that the placement is in the best interest of the individual, and a recommendation to SRS regarding placement. In addition, K.S.A. 59-3083, requires that guardians file with the court information about significant events, when those events occur. This reporting requirement includes the placement of an individual into an ICF/MR facility.

In summary, we believe that including this exemption will more readily allow individuals with developmental disabilities access to the community services they need, when those services become available. We also believe the necessary checks and balances will continue to exist to make sure the placement is in the best interest of the individual. And finally, there is no additional cost to the state of implementing this exemption, because access to a small bed ICF/MR is dependent upon an opening becoming available. SRS is not expanding the number of available facilities or beds at this time.

I would be happy to try and answer any questions you may have.



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**TESTIMONY BEFORE THE
SENATE JUDICIARY COMMITTEE
February 5, 2010
By: Chris Swickard,**

Members of the Judiciary Committee:

Thank you for the opportunity to testify in support of Senate Bill 398. Senate Bill 398 was proposed by the Kansas Bar Association Corporate Counsel Section to address issues raised by a recent Delaware court case. As you know, the Kansas Corporation Code is modeled after the Delaware Code. The proposed amendments will bring the Kansas Corporation Code back into conformance with the Delaware Code on the issues raised in the court case.

The case at issue is *Schoon et. al. v. Troy Corporation*, where the Delaware Court of Chancery determined that a company's bylaws may be amended to retroactively deprive a director or officer of indemnification rights. Specifically, the court ruled that a company could change the indemnification provisions in its bylaws *after* the conduct occurred for which indemnification was sought, so long as the bylaw is changed *before* suit is brought against the officer or director.

In the *Schoon* case, a director of Troy Corporation, a Delaware corporation, resigned. Later that year, Troy amended its bylaws to eliminate the right of *former* directors to advancement of expenses incurred to defend claims. A few months after amending the bylaws, Troy sued the director for breach of fiduciary duty. The director asked Troy to advance his defense costs. Troy declined, the director sued and lost. The Chancery Court held that while a bylaw amendment cannot rescind a vested contract right, the director's right to advancement in this case was not vested at the time of Troy's bylaw amendment because no claim had been made against the director at that time.

The Delaware General Corporation Code was amended in a manner that effectively reverses the outcome in *Schoon*. I have included a copy of the Delaware amendment for your comparison to Senate Bill 398. The Delaware amendment was effected by adding the following sentence to the end of section 145(f) of the DGCL:

"A right to indemnification or to advancement of expenses arising under a provision of the certificate of incorporation or a bylaw shall not be eliminated or impaired by an amendment to such provision after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought, unless the

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provision in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such action or omission has occurred.”

The amendment became effective on August 1, 2009.

The Kansas indemnification statute, K.S.A. 17-6305, is patterned off the Delaware statute. Senate Bill 398 adds the same language to the Kansas statute (at subsection (f) of K.S.A. 17-6305) as was added to the Delaware statute.

These changes are important because they allow Kansas-based businesses to remain competitive in the recruitment of officers and directors.

We encourage you to adopt Senate Bill 398.

Thank you.

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Testimony in Support of SB 399 before the Senate Judiciary Committee

Loretta Wyrick Severin, Certified Prevention Professional,
Kansas Alliance for Drug Endangered Children
February 5, 2010

Chairperson Owens and Members of the Committee,

I appear today on behalf of the Kansas Alliance for Drug Endangered Children. I am a Certified Prevention Professional and have worked in substance abuse prevention and on the issue of Drug Endangered Children for 5 years. The Kansas Alliance for Drug Endangered Children is a statewide, multidisciplinary organization that empowers communities to prevent, protect and serve children in drug endangered environments by providing resources, education, leadership and support.

As currently written in statute 21-3608a, aggravated endangering a child as it relates to controlled substances is only applicable in situations where methamphetamine manufacture or attempted manufacture has occurred. Children who reside in methamphetamine labs undeniably face unique and serious risks to their health and safety. However methamphetamine is not the only controlled substance which endangers children when used by caregivers. The child who inhales mold spores while living in a marijuana operation; the toddler who ingests cocaine left within her reach on a coffee table; the boy living in a home where crack is sold: each of these children is endangered as well.

Thousands of Kansas children live in homes with caregivers who abuse marijuana, cocaine, methamphetamine, heroin and other controlled substances. In FY 2009, 35% of individuals entering state-funded substance abuse treatment had children under the age of 18 in the household. That figure represents 5,806 Kansas children whose parents sought treatment for substance abuse (SRS AAPS). However, the number of Kansas children living in homes where alcohol and other drugs are abused is estimated to be much higher: 60,767 (Based on data from Office of Applied Studies and 2007 Census).

Parental substance use endangers children in many ways. Simply stated, substance use can hinder a parent's ability to function as an effective caregiver. While under the influence of controlled substances parents may exhibit poor judgment, confusion, irritability, erratic behavior, violence and/or inconsistent parenting. Families in which one or both parents abuse substances often experience a number of other co-occurring problems that affect parenting, including mental illness, unemployment, high levels of stress and impaired family functioning, all of which can put children at risk (National Center on Addiction and Substance Abuse at Columbia University, 2005).

The home life of a child whose parents use substances is often chaotic. They may lack a stable address—moving from home to home, from one school to another. The household may lack basic necessities such as food, running water or utilities. When parents are involved in the sale or distribution of controlled substances, there are often loaded weapons in the home, many times left within the reach of children. The sale and distribution of controlled substances can expose children to violence, gang activity and dangerous individuals.

A parent's use of controlled substances greatly elevates a child's risk of suffering abuse and neglect, including sexual abuse. In fact, children whose parents abuse substances are 2.7 times more likely to be physically abused, 4.2 times more likely to be neglected and significantly more likely to be abused by others (National Center on Addiction and Substance Abuse at Columbia University, 2007).

Children living in drug environments may face illness or even death by coming into contact with controlled substances. Drugs and drug paraphernalia left carelessly within the reach of children can result in accidental ingestion and subsequent poisoning. Children living in homes where drugs are administered intravenously may be accidentally pricked by needles, which could lead to diseases including HIV and Hepatitis C. Long-term health effects can occur due to exposure to second-hand smoke from marijuana or methamphetamine. Further, toxic mold spores found in marijuana grows can cause respiratory and allergic reactions.

Parental substance abuse can have deadly repercussions for children. The leading cause of trauma-related death for children under the age of 5 is child maltreatment. In 66% of these cases, the child maltreatment occurs at the hands of parents under the influence of alcohol or other drugs (National Center on Addiction and Substance Abuse at Columbia University, 2007).

Unfortunately, Kansas children living in drug environments experience these risks and hazards, as illustrated in the following cases:

- January 2010, Topeka: A one-year-old was taken to the hospital after his parents discovered he had been chewing on a plastic storage bag containing either cocaine or methamphetamine. The child was hospitalized and tested positive for cocaine.
- October 2009, Manhattan: A 12-day-old boy suffocated after sleeping in bed with his father. The father is alleged to have drunk alcohol and smoked marijuana before falling asleep holding the baby. A forensic pathologist testified that the infant died because the weight of another person caused him to have trouble breathing.
- March 2008, Kansas City: Three toddlers ingested crack cocaine after playing with a plate that was used to cut up the drug for sale. The children required hospitalization at Children's Mercy Hospital.

Do current laws adequately protect children? Is the child who inhales mold spores while living in his parent's marijuana operation adequately protected? What about the toddler who ingested the cocaine left on the coffee table by her mother? And the 6-year-old boy who lives in a home where crack is sold? Don't we owe it to these children and the thousands of others in similar environments to have laws in place that adequately address these situations?

Please help us protect all drug endangered children, not just those living in methamphetamine environments, by strengthening the child endangerment statute. Thank you.

EFFECTS ON CHILDREN LIVING IN A HOME WHERE SUBSTANCES ARE ABUSED

Risks to children may include:

- Accidental ingestion of drugs
- Exposure to paraphernalia (including needles)
- Presence of loaded weapons and other dangerous items in the home
- Physical and sexual abuse
- Exposure to high risk populations (sexual abusers, violent drug users)
- Neglect, including poor nutrition and poor living conditions
- Exposure to second-hand smoke (meth, crack, marijuana, tobacco)
- Lack of medical care, dental care and immunizations



If a pregnant woman uses substances, the baby may experience:

- Low birth weight
- Premature birth
- Inconsolability
- Central nervous system effects
- Poor growth and lack of weight gain
- Mental retardation
- Developmental delays
- Hyperactivity
- Speech/language dysfunction
- Behavior problems
- Need for special medical care

In cases where an intervention is done and the child receives appropriate services, the child may not experience any significant long-term effects.

Sources: Dr. Rizwan Shah, Iowa Child Protection Council; Dr. Ira Chasnoff, Children's Research Triangle

Children whose parents abuse substances may experience:

- Depression and anxiety
- Poor organization
- Inability to concentrate and complete tasks
- Delayed speech/language skills
- Attention problems
- Aggressive behavior
- Impulsive behavior
- Social problems
- Sensitivity to stimuli
- Hyperactivity
- Lack of boundaries

Children whose parents abuse substances are:

- 2.7 times more likely to be physically abused
- 4.2 times more likely to be neglected
- Significantly more likely to be abused by others
- 66% of child-maltreatment deaths of children under 5 occurs at the hands of parents under the influence of alcohol and other drugs

Source: Center on Addiction and Substance Abuse at Columbia University, 2007

Did you know?

- It is estimated that **4,350** Kansas children are born exposed to substances every year (Ira Chasnoff, M.D., Children's Research Triangle) at a cost of \$6.5 billion to society (Dennis Embry, Ph.D., PAXIS Institute)
- It is estimated that **60,767** Kansas children live in environments where alcohol and other drugs are abused (Office of Applied Studies, 2003; 2007 Census)



For more information, to schedule a presentation or to become involved in Drug Endangered Children efforts, contact Loretta Severin at (785) 266-8666 or lwyrick@parstopeka.com.
www.ksmethpreventionproject.org

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Kansas Bureau of Investigation

Robert E. Blecha
Director

Steve Six
Attorney General

Testimony in Support of SB 399
Before the Senate Judiciary Committee
David Hutchings, Special Agent in Charge
Kansas Bureau of Investigation
February 5, 2010

Chairman Owens and Members of the Committee,

I appear today on behalf of the Kansas Alliance for Drug Endangered Children in support of immediate passage of SB 399. The Alliance was formed with the philosophy that better solutions result from bringing individuals of varied experiences and knowledge together to address a problem. The Alliance consists of members from numerous disciplines including child advocacy centers, law enforcement agencies at all levels, prosecutors, emergency medical services, hospitals and nursing, drug prevention and rehabilitation, the schools, CASA, and SRS.

This bill is largely a product of the experience and perspectives of the Alliance's membership and is intended to send a clear message that the children of Kansas should be free from the dangers associated with drug use, distribution, and manufacturing. It targets those violators who would choose to place our children in harm's way with their unlawful and dangerous activities.

I have been a law enforcement officer for twenty-three years. The bulk of that time has been dedicated to the investigation of controlled substance violations. Through those years, it became apparent that the most effective things that we in law enforcement accomplish with regard to drug investigations are those things that benefit a child. Whether it is removing a child from a methamphetamine lab with all of its health hazards and risk of fire or explosion, or the elimination of a drug distribution operation across the street from the school benefiting a child has the dearest and most durable results. We don't always see the lasting results of our successes, but we do see the results of our failures and we end up dealing with them over and over again as children from drug environments become adults.

With SB 399, we seek to add greater protections for our children. Our laws in this regard are good, but they can be better. We ask that you send a clear message to those who would choose to place a child into a drug environment or to deal drugs within our publicly owned parks where our children should be able to play without worry. And we want it known that if an individual deals to our children, we consider it the most serious of offenses and we are willing to address it as such.

Thank you for your time and consideration. I would be happy to answer your questions.

Senate Judiciary

2-5-10

Attachment 6



Kansas Children's Service League

Giving Kids Our Best. For Over 100 Years.

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Kansas Children's Service League is the Kansas Chapter of Prevent Child Abuse America, a member of the Child Welfare League of America and the United Way. Accredited by the Council on Accreditation.

The Honorable Tim Owens, Chair
Senate Committee on Judiciary
Room 548-S, Statehouse

February 5, 2010

Re: S.B. 399

Chair Owens and Members of the Committee:

I am Dona Booe, Vice President of Program Services for the Kansas Children's Service League. Thank you for the opportunity to provide testimony regarding S.B. 399.

This bill would broaden the definition of aggravated endangering a child to include a number of additional circumstances in which children under age 18 may be exposed to illegally possessed controlled substances.

In keeping with KCSL's mission to protect and promote the well-being of children, KCSL joined the Shawnee community coalition concerned about children who have been exposed to substance use. Through this collaborative work, the community has been able to fund the Drug Endangered Child program, which includes early identification of substance use with women who are pregnant. The program's goal is to connect those women to treatment and supportive resources within the community. Our DEC case manager has provided assessment and case management services to an average of 30 families per month from 2005 through 2009.

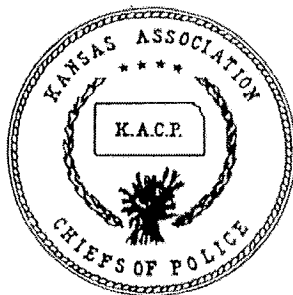
Through this program we have seen first-hand the impact of drug use, and we welcome additional steps to ensure that children who are exposed to drug production or distribution are protected. The clarifications in these proposed revisions would provide that protection by removing ambiguity in describing the locations in which illegal substances are used or abused and the proximity of children to those locations. That's important to us.

It's also important that we avoid creating any additional barriers for pregnant women who need prenatal care and treatment. We believe that, while not preventing or restricting access for women who may be seeking prenatal care and may also have a drug addiction for which they need treatment, S.B. 399 will improve law enforcement and the courts' ability to protect children who are found in these situations. KCSL supports the passage of S.B. 399.

That concludes my testimony, and I will be glad to respond to any questions you may have.



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**TESTIMONY IN SUPPORT OF SB399
TO THE SENATE JUDICIARY COMMITTEE**

February 5, 2010

Chairman Owens and Committee Members,

The Kansas Association of Chiefs of Police supports SB399. One of the most important challenges all of us face is providing protection for our children. This bill will further enhance the protection of children from the hazards of drugs and drug deals. Kansas law enforcement too often sees firsthand the hazards drug users and dealers place children in.

There are actually six enhancements proposed in this bill:

1. Enhancing child endangerment by adding the exposure of children to illegal drugs and certain drug paraphernalia (page 1, lines 23-27).
2. Enhancing child endangerment by requiring the sentence to run consecutive with any other sentence imposed. (page 1, line 43—page 2, line 2).
3. Presence of a minor (page 6, lines 30-37; page 7, line 41—page 8, line 1; page 9, lines 13-15; and page 10, line 9).
4. On any park property (page 6, lines 15-20; page 7, line 43; page 9, lines 14-15 and lines 24-25; page 10, line 9)
5. To a child under 18 (page 7, line 39; page 9, line 10 and line 20)
6. To a woman the offender knows is pregnant (page 7, line 40; page 9, line 11 and line 21)

I itemize those for the purpose of demonstrating any one of these can stand on its own as a reasonable amendment to the law. However, as much as it pains us to establish law based on bed space and cost rather than public safety enhancement, as public administrators we are painfully aware of the reality of those limits and the difficulty of balancing the public good to the public cost. But we remind the committee of the cost of Kansas youth who later become drug users, abusers, and dealers due to this exposure during the developmental years. While each of the six components are worthy additions, if the committee is troubled by the collective impact of these laws, we strongly suggest you examine the impact of each component and enhance the law with those provisions within the current fiscal limits.

We support each of these provisions as enhancements to the safety of our children. And we strongly encourage the committee to move this bill forward favorably.

Ed Klumpp
Legislative Committee Chair
eklumpp@cox.net
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Senate Judiciary Committee
February 5, 2010
Testimony of the Kansas Association of Criminal Defense Lawyers
Opponent of Senate Bill 399

The Kansas Association of Criminal Defense Lawyers is a 300-member organization dedicated to justice and due process for people accused of crimes. KACDL opposes **Senate Bill 399** for several reasons, including:

1. **The additions to aggravated endangering a child.** The first change (found on page 1 starting at line 23) is to add the following to K.S.A. 21-3608a:

(3) causing or permitting a child under the age of 18 years to be in an environment where such child has access to: (A) Any illegally possessed controlled substance, as defined in this section; or (b) any hypodermic syringes, needles or other objects used or intended for use in parenterally injecting any illegally possessed controlled substances . . .

This proposed change 1) is vague; 2) is unnecessary in light of K.S.A. 21-3608a(a)(1), (2) and (4), which covers the conduct proposed in (3); 3) would result in disproportionate sentencing since environments with paraphernalia, substances and manufacturing would all be punished the same; and 4) is contrary to the public policy course our Legislature has thoughtfully taken.

The second set of changes (found on page 1 starting at line 31) is to K.S.A. 21-3608a(a)(4). This section currently targets environments where a person is distributing/possessing with intent to distribute methamphetamine or is manufacturing/attempting to manufacture methamphetamine. The proposal is to add "cultivate" and "attempt to cultivate" and any "controlled substance." Consequently, the statute would include environments where marijuana is grown. All (a)(4) violations would be punished at the same level. This proposal would result in disproportionate sentencing in that manufacturing methamphetamine is more dangerous than growing marijuana plants. The Legislature acknowledged this by making manufacturing methamphetamine a severity level 1 drug felony and cultivating marijuana a severity level 3.

2. **The definition of "presence of a minor".** SB 399 proposes use of "presence of a minor" in the distribution/possession with intent to distribute and paraphernalia statutes. The proposed language (found on page 6 starting at line 30) is:

"Presence of a minor" means:

- (1) A minor is within close proximity to the illegal activity;
- (2) the illegal activity is conducted in a place where minors can reasonably be expected to be present; or
- (3) in the minor's dwelling.

This definition shall not be construed as requiring that a defendant actually be aware of the presence of a minor or a minor actually be aware of the illegal activity.

Currently the law provides that possession with intent to distribute within 1,000 feet of a school is a severity level 2 drug felony (in the absence of the school element, intent to distribute is a severity level 3). Both the Kansas Sentencing Commission Proportionality Subcommittee and the Kansas Criminal Code Recodification Commission considered realities that "much of the

cities and towns of the state are within radius of school property” and that often controlled buys (i.e. arranged by law enforcement) are arranged within the radius to ensure the enhancement. (KCCRC meeting minutes, 4/16/08, p. 3).

This definition of “presence of a minor” was put forth by the Proportionality Subcommittee in 2009 HB 2332 in order to try to deal with these problems and more appropriately target the enhancement. However, this definition fails to do that. The proposed definition 1) is vague; 2) will lead to the same problems and abuses that plague the current 1,000 feet law as recognized by the Commissions; and 3) will foster disproportionate punishment in that two-thirds of the definition does not even require a minor to be present or proximate. Furthermore, SB 399 does not eliminate the 1,000 feet provision and thus compounds the problem.

3. **The definition and inclusion of “park property”.** The proposed language (found on page 6 starting at line 15) is:

(o) “Park property” means any publicly owned playground, swimming pool or community center and any other publicly owned property set aside for any recreational use. If the property meets the above definition at the time of any alleged criminal act, the actual use of that property at the time alleged shall not be a defense to the crime charged or the sentence imposed.

SB 399 would make distribution/possession with intent to distribute a severity level 2 drug felony if the violation occurs “on any park property,” regardless of whether children are present, whether the park is open, etc. (The bill also adds this language to the distribution of paraphernalia statute.) This proposal 1) will produce the same problems and abuses that the Commissions recognized with the 1,000 feet law; 2) will foster disproportionate punishment in that children do not have to be present; and 3) conflicts with sentencing guidelines relating to the purpose of the guidelines, judicial discretion, etc.

4. **The proposed language of K.S.A. 21-36a05(c)(1)(A).** This part of SB 399 (found on page 7 starting at line 37) provides that “[v]iolation of subsection (a) is a drug severity level 1 felony if the substance was distributed to or possessed with intent to distribute to a child under 18 years of age or to a person whom the offender knew or reasonably should have known to be pregnant.”

First, this language would make it a drug severity level 1 for one minor to sell to another minor or a minor to sell to a pregnant person, because (c)(1)(A) as proposed does not contain the language found in proposed (c)(1)(B) (i.e. “if that person is 18 or more years of age”, assuming “that person” means the offender, since that is what it means in K.S.A. 21-36a10(e)(3)). Second, the “reasonably should have known to be pregnant” language is problematic.

Thank you for your consideration in this matter.

Respectfully submitted,


Jennifer Roth

Chair, KACDL Legislative Committee

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Testimony in Support of SB 399 Before the Senate Judiciary Committee Douglas S. Murphy, Chief of Police Harper Police Department

February 5, 2010

Chairman Owens and Members of the Committee,

I appreciate the opportunity to provide support to this committee today on behalf of the Kansas Peace Officers Association for SB 399 which would greatly expand the ability of law enforcement and prosecutors to combat the exposure of the young people of Kansas from the dangers of drug trafficking and drug manufacturing.

Together, you as the enactors of laws and we as the enforcers and prosecutors of laws are charged with providing a service that both protects the citizens of Kansas and which provides a safe environment for them to live in. Especially those persons unable to protect themselves or who are unable to chose the environment in which they live.

Several years ago the legislature enacted the concept of the "drug free school zone" which provided for enhanced sentencing in regards to the sale, distribution and trafficking of controlled substances within 1000 feet of any Kansas school. This enhancement greatly improved the ability of Kansas law enforcement and Kansas prosecutors in attempting to make buffer zones around Kansas schools from drug dealers or, if they continued to deal their within those buffers, the ability to more aggressively prosecute them.

While the previously enacted provisions have helped, we have found that the enhancements are not as all-encompassing as they should be.

SB 399 will provide another tool in the effort to combat drug addiction and trafficking at least in the presence of children and areas children commonly frequent - schools and parks.

As you consider the proposed amendments of SB 399 consider that the bill adds the enhancements of when *"the violation occurs in the presence of a minor, on any park property or on or within 1,000 feet of any school"* or *"if the substance was distributed to or possessed with intent to distribute to a child under 18 years of age or to a person whom the offender knew or reasonably should have known to be pregnant."*

There is not a law enforcement officer in Kansas who has conducted drug investigations who cannot attest to the overwhelming number of children who are exposed to the dangers of drug trafficking or manufacturing. I have conducted drug investigations where controlled purchases of drugs were made on school property, and at day care centers, public parks and playgrounds and

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while children were present. All places where children are commonly present. Places where children should be expected to be. To not enact the provisions of SB 399 would be to send the message to Kansans and Kansas children that they should avoid places they are normally entitled or expected to be.

Some personal cases that come to mind are:

We were purchasing marihuana and meth from a husband and wife whose two year old daughter was present. As the money and drugs were being passed back and forth, the two year old was reaching for them. What kind of life can this toddler be expected to grow into?

A husband and wife are manufacturing methamphetamine and storing the chemicals and precursors in their home in common areas which their 10 and 12 year old grandchildren have access to. What kind of life can these young people be expected to grow into? What toxins are they being exposed to and what effects will these toxins have on their health and safety?

The husband of a licensed day care operator was dealing both meth and marihuana from the home-based day care center, both during the hours of operation and after hours. What dangers are the children, both the operator's children and those entrusted to the care of the operator? What kind of life can these children be expected to grow into?

One of the major issues facing you as the governing body of our state is the budget and the impact of any statutory changes on the fiscal standing of the state. At first glance and consideration, the proposed amendments would appear to have a potential negative impact on the state's budget by requiring more prison beds. As has been stated previously, dollars - or the lack of - should not dictate policy.

However, while from a statutory standpoint these amendments would appear to have a potential negative impact on the state's budget by requiring more prison beds, in the real world and in practice there would be little impact on the prison bed situation. As you are aware, most people are convicted of lesser crimes because of plea negotiations. The requested enhancements would have more of an effect from the standpoint that they will provide law enforcement and prosecutors with a better stance - a heavier "hammer" if you will - in negotiating pleas with the offenders. Much the same as the current limited wording of "1000 feet of a school" does.

In closing, I would ask that the committee consider that the proposed enhancements will provide for a safer Kansas and a better quality of life for all of our young people.

Thank you for your time and any consideration you may give to this issue.