MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

Held in Room 522S, at the Statehouse at 3:30 P.M., on February 22, 1978, 19__.

All members were present except: Representative Hayes and Hoagland, who were excused.

The next meeting of the Committee will be held at 3:30 a. m./p. m., on February 23, 19 78.

These minutes of the meeting held on _____, 19__ were considered, corrected and approved.

Chairman

The conferees appearing before the Committee were:
Representative Whiteside
Representative Marvin Littlejohn
Mr. Frank Gentry, Kansas Hospital Association
Representative Lee Hamm
Mr. Phillip Lunt, Pratt County Bar Association
Mrs. Dwight Atkinson
Mrs. Carr, Hutchinson, Kansas
Mr. Charles Hamm,
Mr. Jack Quinlan, Kansas Motor Car Dealers Association
Mr. Bill Griffin, Attorney General's office
Mr. James Marquez, Acting Secretary of Corrections

The meeting was called to order by the Chairman who introduced Representative Whiteside to discuss House Bill 2917.

Representative Whiteside told the committee he had second thoughts concerning this bill and asked that it be stricken from the committee calendar. It was moved by Representative Ferguson and seconded by Representative Roth that the bill be reported adversely. The motion carried.

The Chairman introduced Representative Marvin Littlejohn from Phillips County to discuss House Bill 2987, and Representative Littlejohn explained he knew very little about hospital lein laws and introduced Mr. Frank Gentry of the Kansas Hospital Association to explain the ramifications of this bill. Mr. Gentry noted that the committee is extremely busy at this late hour and explained the problem addressed in this bill was brought to the attention of the Kansas Hospital Association by a firm of attorneys in Wichita, which represent hospitals there. Mr. Gentry offered a printed statement ("See exhibit.")

The Chairman stated as he understood it, this would be increasing the amount from $5,000 to $7,500 and letting it apply under the P.I.P. Act. Representative Frey stated that he is not sure about this but that he had attended a no=fault seminar last summer and the criticism of no=fault in terms of medical care was that different charges were assessed on injuries covered under no=fault as opposed to those who had no insurance coverage. He suggested if that is truly the case, such legislation would only generate more problems in this area. Mr. Gentry

responded he could not see how such items could be identifiable. Representative Frey explained he was speaking of different charges under different circumstances although he agreed he could not imagine that happening. Representative Littlejohn stated he is somewhat familiar with the number of hospitals and with the charges they make for various services because for many years he has worked in the hospital field. He stated when people seek hospital care at least in his area, no one ever asks if the patient has hospitalization insurance.

The Chairman asked Representative Augustine to make a report on the sub=committee activities concerning House Bill 2612. Representative Augustine explained the sub-committee had looked at criminal penalties in this bill and while they have some difficulties in the area they suggest no changes other than the ones discussed previously, and a few clean up amendments as shown in the exhibits. Representative Heinemann asked if this proposal would apply to all leases, and Representative Augustine stated that it only applied to written leases. It was moved by Representative Augustine and seconded by Representative Frey that House Bill 2612 as amended be recommended for passage. Upon vote, motion carried.

The Chairman called for a discussion on HouseBill 2717. Representative Ferguson, Chairman of the sub-committee, explained the new draft specifies that the original contractor would lose his lein unless he follows the warning statutes. Further, he explained this affects only residential properties for single and two family dwellings.

The Chairman noted the warning statement must be given either personally or by restricted mail prior to receipt of any billing on any contract.

The Chairman further inquired if it would be possible to avoid some costs by allowing warning to the owner. The Chairman was anxious that the property owner receive an indication about responsibilities, but was also concerned that no problems should develop which would indicate the owner should pay the sub-contractor rather than the principal contractor. Further, he was anxious that there should be no reason to create distrust between the contractor and the owner.

Representative Lorentz suggested a possible alternative which would allow the owner to withhold funds sufficient to cover any alleged amount due under the lein filed. In this way, he suggested everyone would be protected. The Chairman suggested the possibility of withhilding an amount of $500 to cover any amounts due sub-contractors. Representative Frey agreed that he understood what the Chairman was suggesting but that the message he was getting was there is a problem among contractors. He suggested there should be a way to protect both the contractor and the sub-contractor.

The Chairman expressed the wish that there was time to prepare alternate language because he would prefer not to anticipate cleaning up such legislation on the floor of the House. Representative Lorentz suggested the idea is to protect the owner, in that he feels the legislature should let him know he is entitled to withhold the funds which may be due a sub-contractor.

Representative Lorentz offered a conceptual motion to cover these matters, which motion was seconded by Representative Whitaker and carried.

Representative Stites suggested there are aspects of this proposal which distrub him, and the Chairman agreed there are some matters which distrub him also. He agreed there are always contractors who are willing to take a chance that everyone is being paid on time and everyone is satisfied, and then the owner decides not to pay the general contractor.

The Chairman suggested it might be possible to amend the bill by striking (b) which would not take away the contractors lien right. Mr. Art Griggs called attention to the language -- "may withhold the payment pending resolution of the dispute", and suggested it might need some attention.

It was moved by Representative Ferguson and seconded by Representative Whitaker that the bill as amended be recommended for passage. Representative Frey noted he would like to see some other things done with the bill. In particular, he would like to see an allowance for attorney' s fees provided.

Representative Foster stated that there are many problems in Sedgwick County in this regard but that the legislature has been working on such proposals for years and he feels this bill is no closer to the solution than they were a few years ago.

The Chairman agreed this subject has been around for a long time but that everyone is aware of problems in this area and everyone feels some sympathy toward the people who are duped when it comes to home repairs or home construction and they are involved in lien actions. There was sentiment that members did not particularly like the way this proposal is drafted but the Chairman urged time is getting very short and he feels the Committee is obligated to move on the subject this year. He suggested there could be a conceptual way to deal with this matter today. After additional discussion the motion to pass as amended was withdrawn. Thereupon, it was moved by Representative

Heinemann and seconded by Representative Martin that a conceptual amendment be drafted along the lines previously discussed. A clarification was requested on the conceptual motion and Representative Ferguson explained that motion would appear at the bottom of page one, the third line from the bottom sticking everything after the word "shall" and everything before the phase "shall give" so there would be no loss by the sub-contractor, but the criminal provision and the fraud provision would be retained. Motion was seconded by Representative Stites and upon vote, motion carried by a majority.

Thereupon, it was moved by Representative Ferguson and seconded by Representative Whitaker that the bill as amended be recommended for passage. Upon vote motion carried by a majority.

Representative Lee Hamm appeared to discuss House Bill 2823. He explained this proposal results from a pre-legislative meeting with his local bar association. He stated one of the problems was with oral depositions, which was an extra expense. He suggested, if the legislature wants to do something about the high cost of insurance this is a good place to start. He introduced Mr. Phillip Lunt who stated he was willing to answer questions. Representative Ferguson inquired if this is to protect insurance companies against the plaintiff's attorneys or against the insurance companies. Mr. Lunt stated he is representing the Pratt County Bar Association. He explained it had been the practice to take many depositions in damage actions in this process, he feels the people were deprived of justice. Representative Heinemann inquired what would happed if a court was allowed to decide when depositions should be taken. Representative Stites expressed the opinion that there is protection already present. He stated you can always bring such matters before the court. The Chairman suggested further discussion at a later date on this subject.

The Chairman called attention to House Bills 3062 and 3063. He expressed regret that Representative Hayes could not be present because the bills have a special interest for him. He introduced Mrs. Dwight Atkinson, who is a foster parent. Mrs. Carr of Hutchinson, Kansas, was introduced to discuss the problems experienced by the parents of foster children. Mrs. Carr explained she is a member of the State Association of Foster Parents. She expressed the hope that the legislature would give some authority and control to such foster parents because so many children are lost in the system under SRS control. She offered some statistical material (See exhibit).

Mrs. Carr stated it is extremely difficult to wade through most SRS forms and it takes away opportunity to work with such foster children. She stated there are presently 1015 children who have parental rights severed, and who are in the custody of SRS, and further, there are over 1000 wich such rights not severed, but who live in foster homes. Mrs. Carr offered amendments which she felt would improve the bill. (See exhibit.)

Mr. Charles Hamm representing the SRS stated they had visited with the Judges' Committee, and in Shawnee County with Judge Honeyman, and the Courts seem to take opposition to the mandated hearing as suggested by Mrs. Carr. Mr. Hamm told the committee that SRS attempts to not lose track of the children placed in foster care and a progress report is made every six months to the Court concerning those children. He stated if the legislature wants to mandate a court review that is entirely up to them but pointed out staff resources may not be up to doing this.

The Chairman called attention to HB 3205 which deals with consumer protection, and introduced Mr. Jack Quinlan who represents the Kansas Motor Car Dealers' Association. Mr. Quinlan offered some proposed amendments. (See exhibit.) Mr. Quinlan took the attitude that legislation such as this is necessary to protect dealers. There was discussion regarding a situation which occurred in Shawnee County, where enormous legal fees accrued, along with extensive court costs, and suggested there are all kinds of ramifications for suppliers of various commodities. In addition, he suggested there are many additional problems with the Consumer Protection Act. Mr. Quinlan suggested that suppliers should have 30 days, plus an additional 30 days, in order to get their information together when charges have been made against them.

Mr. Bill Griffin of the Attorney General's office testified that any amendments to the present Act would hamstring statutes which are for the benefit of the public. He stated there is no other place in the statutes which would require notice such as suggested by Mr. Quinlan. He also spoke to the situation referred to by Mr. Quinlan and suggested such proposal as this would remove remedies presently available to the public. He opposed the bill.

The Chairman reminded members about HB 2712, and stated there had been discussion with various conferees and this bill, along with several others, will continue to be discussed today in subcommittee and worked in the standing committee tomorrow.

Rep. Hurley noted there are some eleven bills in the Judiciary Committee which came out of the interim, and concern the Department of Corrections. He stated subcommittee has been working with the Secretary of Corrections; that they have incorporated a number of the bills together; have made amendments; and are prepared to offer their suggestions to the full committee at an early date.

Mr. Jim Wilson of the Revisor's office reviewed a proposed draft of HB 2712, which was prepared in accordance with directions of subcommittee and which incorporates many suggestions from the Department of Corrections, as well as deleting some matters from the original proposal. (See exhibit.)

There was discussion about the various bills and Mr. Art Griggs mentioned HB 3205 deals with aiding and abetting, but it does not go so far as to cover someone who hires another person, in which case he would be treated as the principal actor. Representative Frey inquired if this was discussed with the Judicial Administrator and Mr. Griggs explained the suggestion came from a number of District Court judges in Shawnee County. Representative Lorentz expressed the opinion that mitigating and aggravating circumstances would be brought into the Journal Entry anyway.

Representative Frey suggested that if the Probation and Parole Board wants the reasons they could inquire of the judge anyway. The Chairman noted during the summer interim it was pointed out that an evaluation by KRDC would be most beneficial before sentencing. Representative Ferguson inquired if the Department sends froms to KRDC, and Acting Secretary Marquez explained they do indeed, and generally the forms show a summary by the prosecutor. Secretary Marquez stated they had thought of asking for a defense and prosecuting report because at the present time they don't get anything.

It was noted in Section 4, page 7 the amendments would mandate presentence reports. Representative Frey expressed concern about the proposed physical examination, explaining that in certain areas where little medical services are available it would put a tremendous burden on the physicians practicing in the community. Secretary Marquez stated the interim took into consideration that examinations could be done at facilities outside the local community.

Representative Hurley suggested the interim committee was mostly thinking about mental examinations. Mr. Griggs and Mr. Wilson completed their review of the proposal section by section, and explained the ramifications.

The Chairman noted among other provisions, the proposal provides for legislative review of Rules and Regulations promulgated by the Department of Corrections and the Adult Authority.

Secretary Marquez stated the special committee and the interim committee felt something was needed in the area of corrections and they were willing to submit the Rules and Regulations to legislative review. Further, he stated it was their position that most of the proposed recommendations were worthwhile. He explained they had asked for modifications in some of the bills and had tried to be cooperative and be responsive. He did state he had some problems with the separation of probation and parole because it is an extremely major policy change and it was his belief they would lose about 16 officers whom they hoped would come into the court system in a similar position.

Representative Frey inquired if there was any kind of continuing education for probation and parole officers, and Secretary Marquez stated they have their own training program and there is a bill in the Senate whereby all of their training would be done in-house, and they would be setting up more programs.

The Chairman noted there were still technical matters to be worked out in the subcommittee and that the subcommittee was continuing to work with the Department of Corrections with the expectation they could present a uniform and united program to the committee very soon.

Representative Hurley noted there are a number of items not included in HB 2712, and urged members to look at House Bills 3112, 3118, 3129, 3130, 3133, and HCR 5061.

Rep. Baker reported on HB 2929 which deals with mob violence. He explained there was at least one problem with the bill in that it does not seem proper to entirely and completely repeal a provision, and they proposed softening the proposal recognizing there was a real problem in the area. (See Exhibit.)

It was suggested by Representative Heinemann there was a need to strike "prevention or". The Chairman agreed this was probably correct. It was moved by Rep. Gillmore and seconded by Rep. Heinemann that the amended proposal be accepted as a substitute bill for HB 2929. Representative Ferguson offered a substitute motion to report the bill adversely. There was no second. Attention was directed back to the original motion, which carried by a majority.

Representative Heinemann discussed HB 3031 which deals with the problems concerning insurance benefits in divorce actions where a previous wife is named as beneficiary and the new wife finds herself without funds. It would provide that the divorce decree make reference to such insurance policy and allow the insurance company to follow the decree. He moved the bill be recommended favorably as amended. Motion was seconded by Rep. Baker, and carried.

The meeting was adjourned.

JUDICIARY COMMITTEE
2-22-78

NAME	ADDRESS	ORGANIZATION
C. Stearns	Topeka	Coop Churches of Ks
Maxine Lattyak	Home	Home
Bernard Dixon	Topeka	Dept of Corrections
Mrs. Dwight Atkinson	Rte 3, Abilene	Co-Pres. Kansas State Assoc of Foster Parents
Margy Carr	1907 N. Main Hutchinson	Reg. Chairman K.S.A.F.P. Inc.
Chas West	Topeka	Whelan Lumber Co.
Tom Lewis	"	Ks Builders Assoc.
Scott Wells	"	Legislature Aid
Greg Bazys	KC	Ks Home Builders
[illegible]	Topeka	Dept of Corr.
Ellen Richardson	Box 5314 Topeka	Ks Children's Service League
Marilyn Bradt	Lawrence	League of Women Voters of Kans.
Jack Q. Hinkley	Topeka	K.M.C.D.A.
Bill Griffin	" "	Asst. A.G.
Chuck Engel	Topeka	Ks. Motor Car Dealers.
Charles V. Hamm	State Office Bldg	Topeka - S.R.S.

KANSAS HOSPITAL ASSOCIATION 2-22

TESTIMONY
FAVORING HOUSE BILL NO. 2987

"AN ACT concerning hospitals; liens upon personal injury damages recovered by patients; notice and itemized statement of claims; amending K.S.A. 65-406 and 65-407, and repealing the existing sections."

Simply stated, House Bill 2987 would amend the present law by providing that every hospital in Kansas which furnishes emergency, medical or other service to any patient injured by reason of an accident not covered by workmen's compensation shall, if such injured patient shall assert or maintain a claim for personal injury protection benefits under a motor vehicle liability insurance policy or a certificate of self-insurance or a claim against another for damages on account of such injuries, have a lien not to exceed $7,500 (presently $5,000) upon any sums collected by the patient or by his or her heirs from such sources.

There have been instances when the $5,000 limit has been exceeded and it seems appropriate for the limit to be increased.

The need for the proposed new wording is brought about by the advent of no-fault insurance. The present wording of K.S.A. 65-407, could be interpreted as qualifying a claim subject to a lien as valid only when the entity against which the claim is brought, as being "alleged to be liable to the injured party for the injuries received". We believe the suggested new wording would retain the intent of the law.

Our attention to this problem was through a memo from the law firm of Boyer, Donaldson and Stewart of Wichita, directed to the Hospital Council of Metropolitan Wichita, on November 22, 1977. A portion of that memo is attached as a part of our testimony.

Your favorable action to resolve this problem is appreciated.

Frank L. Gentry
President, Kansas Hospital Association
February 15, 1978

M E M O R A N D U M

TO: Hospital Council of Metropolitan Wichita

FROM: Boyer, Donaldson & Stewart

RE: Amendment to Hospital Lien Law

DATE: November 22, 1977

QUESTION

Is a hospital lien, filed pursuant to K.S.A. 65-406 et seq, enforceable against benefits which have to be paid to an injured passenger, owner or driver by the no-fault insurance carrier of the owner of the vehicle in which the passenger, owner or driver was riding?

DISCUSSION

There have been no Kansas decisions interpreting the language of the hospital lien statutes. It is therefore unknown whether the statutory language will be liberally or strictly construed by the courts. This discussion will be based on the premise that the statutory language will be given a strict interpretation in deciding the question posed above.

K.S.A. 65-406 states in part:

> "Every hospital in the state of Kansas, which shall furnish emergency medical or other service to any patient injured by reason of an accident not covered by the workmen's compensation act, shall, if such injured party shall assert or maintain a claim against another for damages on account of such injuries, have a lien not to exceed five thousand dollars..." (emphasis added)

K.S.A. 65-407 states in part:

> "No such lien shall be effective unless a written notice containing an itemized statement of all claims, the anme and address of the injured person, the date of the accident, the name and location of the hospital, and the name of the persons, firm or firms, corporation or corporations alleged to be

> liable to the injured party for injuries received, shall be filed in the office of the Clerk of the District Court... (emphasis added).

K.S.A. 40-3107 provides that no-fault insurance policies

> [shall] include personal injury protection benefits to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in such motor vehicle and other persons struck by such motor vehicle and suffering bodily injury while not an occupant of a motor vehicle...

The hospital lien statutes are based on damage claims which may arise under traditional tort claim principles and systems. Prior to the enactment of the no-fault insurance statutes, a party injured in an automobile accident would usually be compensated for his damages by the insurance company of the other party. However, under a no-fault system, the injured party receives compensation for medical expenses from his own insurance company even though another party may be at fault. If the injured party later sues in tort and recovers damages, he is required to reimburse his own insurer out of the recovery for the expenses his insurer has advanced to him under the subrogation provisions of K.S.A. 40-3113.

It is possible for the statutory provisions cited above to be interpreted in such a manner so as to defeat the operation of a hospital lien that would have been valid prior to the passage of the no-fault insurance act. Hypothetical situations may be helpful to point out the potential problems.

Situation Number One

"A" is a passenger in a car owned and operated by "B" which is involved in an accident with a car driven by "C" which is caused totally by "C's" negligence. "A" suffers bodily injury and is given emergency treatment at Charity Hospital which costs $1,000.00. Charity Hospital files a hospital lien as provided by the Kansas Statutes. Does "B's" insurance company have to honor the hospital lien?

K.S.A. 65-407 states that notice of the hospital lien must be sent to the persons, firms or corporations "alleged to be liable to the injured party for injuries received." Since the accident was caused by "C's" negligence alone, neither "B" nor his insurance company will be liable to "A". Since 65-407 does not require notice of the hospital lien to be sent to "B's" insurance company, "B's" insurance company will not be liable to the hospital under 65-408 if no notice is received by the company.

Even if "B's" insurance company received notice of the lien, an argument based on statutory interpretation can be made to enable it to avoid the hospital lien. K.S.A. 60-406 provides that a lien will arise if an injured party maintains "a claim against another for damages on account of such injuries." A claim against another for damages causing injuries requiring hospitalization as the result of an automobile accident will most likely be a tort claim. Since neither "B" nor his insurance company caused "A's" damages, a lien may not even have arisen in this no-fault insurance situation. Therefore, even if "A" demands payment from "B's" company, "B's" insurance company may not have to comply with the hospital liens since "A's" claim is not one "for damages on account of such injuries." Instead, "A's" claim would be characterized as one based on the carrier's no-fault insurance contract to pay his medical bills.

Situation Number Two

"A" is the owner-driver of a car which is involved in an accident with a car driven by "B". The accident is caused by the negligence of "B". "A" suffers bodily injury and is given emergency treatment at Charity Hospital which costs $1,000.00. Charity Hospital files a lien as provided by the Kansas Statutes. Does "A's" insurance company have to comply with the hospital lien?

As in Situation Number One, "A's" injuries were caused by the other driver. Notice does not have to be sent to "A's" insurance company since "B" is the only party "alleged to be liable to the injured party for injuries received." (K.S.A. 65-407) Also, "A" will assert his tort claim for damages against "B". "A's" claim against his own insurance company will be to receive his benefits as provided for in his insurance contract and not "for damages on account of such injuries" (which he received as a result of the accident). Again, if the language in 65-406 is interpreted to mean a tort claim for personal injury damages a lien in favor of the hospital may not even exist under the no-fault system.

The two hypothetical situations described above point out just two of the possible pitfalls facing hospitals under the new no-fault insurance tort claim system. Of course, the argument can be made that since only workmen's compensation benefits are excluded in 65-406, a claim based on a no-fault insurance policy will create a hospital lien up to the sum of $5,000.00. Nevertheless, if K.S.A. 60-406 and 60-408 are construed together, there is some question as to the enforceability of a hospital lien against a no-fault insurance carrier.

To correct this situation, the following amendments to K.S.A. 65-406 and 65-407 are proposed for your consideration.

2-22

Substitute for HOUSE BILL NO. 2612

By Committee on Judiciary

AN ACT relating to mobile homes; providing for a lien on certain mobile homes in favor of persons leasing space for a mobile home site; providing for notice of such lien; and providing for the disposition of such mobile home under certain circumstances.

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

PROPOSED Substitute for HOUSE BILL NO. 2612

Section 1. (a) Any person leasing or renting space for a mobile home site shall have a lien upon any mobile home situated thereon for unpaid lease or rental payments and for other unpaid charges due such lessor under the written terms and conditions of any lease or rental agreement with the lessee. Such lien shall be effective after the lessee has defaulted in payments as provided in the written rental or lease ~~agreement with the lessor.~~ Notice of such lien shall be given by lessor by causing written notice of such lien to be posted conspicuously upon such mobile home.

(b) The lien provided by this act shall not have priority over a valid perfected security interest in such mobile home unless such secured party shall have given notice of default in lessee's obligations to lessor under the terms and conditions of a written lease or rental agreement between lessee and lessor. If such secured party has been given such notice by lessor, by certified mail, return receipt requested, the lien provided by this act shall extend to and have priority over the secured party to the extent of unpaid lease, rental payments or other charges which accrue under the terms of the written lease or rental agreement between lessee and lessor, on and after the date such notice shall have been received by the secured party. Such charges may also include reasonable fees for movement and storage of the mobile home by the lessor as provided in this act.

(c) Notice to the secured party of default by lessee shall be sufficient in detail to allow the secured party to identify the lessee and the mobile home.

Sec. 2. At any time after thirty (30) days beyond the date notice is given to the lessee, or in the event that there is a secured party, at any time after thirty (30) days beyond the date notice is received by the secured party, whichever is later, the lessor may remove the mobile home from the leased or rented site and may retain such possessory lien as is provided in section 1

of this act. Upon such removal, reasonable charges for such removal and storage may be assessed against the said mobile home.

Sec. 3. Said lien may be enforced and foreclosed as security agreements are enforced under the provisions of the Uniform Commercial Code.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

2-22

7 RS 2812

Substitute for HOUSE BILL NO. 2717

By Committee on Judiciary

AN ACT relating to liens on real property for labor, equipment, material and supplies; providing for the giving of warning statements by certain lien claimants and procedures relating thereto; declaring certain acts to be a crime; establishing a rebuttable presumption under certain circumstances; amending K.S.A. 60-1102 and K.S.A. 1977 Supp. 60-1101 and repealing the existing sections.

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

Section 1. K.S.A. 1977 Supp. 60-1101 is hereby amended to read as follows: 60-1101. (a) Subject to the provisions of subsection (b), any person furnishing labor, equipment, material, or supplies used or consumed for the improvement of real property, under a contract with the owner or with the trustee, agent or spouse of the owner, shall have a lien upon the property for the labor, equipment, material or supplies furnished, and for the cost of transporting the same, and the lien shall be preferred to all other liens or encumbrances which are subsequent to the commencement of the furnishing of such labor, equipment, material or supplies at the site of the property subject to the lien. When two or more such contracts are entered into applicable to the same improvement, the liens of all claimants shall be similarly preferred to the date of the earliest unsatisfied lien of any of them.

(b) Any person who has entered into a contract on or after July 1, 1978, with the owner of residential property or with the trustee, agent or spouse of the owner of residential property shall not be able to claim the lien provided for in subsection (a) unless such person gives to one of the owners of the residential property a written warning statement in conformance

with the provisions of subsection (c).

(c) A warning statement, to be effective, must be given by the contractor to an owner either personally or by restricted mail prior to the time the contractor receives any consideration or advancement for the agreed improvements. The warning statement shall give the name and address of the contractor and shall contain substantially the following statement:

"Notice to owner: If you pay the contractor for work or equipment, material or supplies delivered without having received from the contractor a waiver of lien by all subcontractors, or other evidence of payment to all subcontractors, a lien may be filed against your property by a subcontractor. You may request from the contractor a list of all subcontractors. If you received notice of the filing of a lien statement by a subcontractor, you may discharge the lien, if the contractor fails to do so, by paying the subcontractor and crediting such payment against the amount owed the contractor."

(d) As used in this section:

(1) "Residential property" means real property used, or to be used, as a residence by an owner of the property, if such property is not used, or intended for use (A) as a residence for more than two families, or (B) for commercial purposes.

(2) "Commercial purposes" shall not include renting or leasing a portion of the property for occupancy as a residence.

(e) The failure of a contractor to give the warning statement provided by this section shall not preclude any person from claiming a lien pursuant to K.S.A. 60-1103, and any amendments thereto.

Sec. 2. K.S.A. 60-1102 is hereby amended to read as follows: 60-1102. (a) Filing. Subject to the provisions of subsection (c), any person claiming a lien on real property, under the provisions of K.S.A. 1977 Supp. 60-1101, as amended, shall file with the clerk of the district court of the county in which property is located, within four (4) months after the date material, equipment or supplies, used or consumed was last

furnished or last labor performed under the contract a verified statement showing:

(1) The name of the owner,

(2) the name of the claimant,

(3) a description of the real property,

(4) a reasonably itemized statement and the amount of the claim, but if the amount of the claim is evidenced by a written instrument, or if a promissory note has been given for the same, a copy thereof may be attached to the claim in lieu of the itemized statement.

(b) Recording. Immediately upon the receipt of such statement the clerk of the court shall enter a record in a book kept for that purpose, to be called the mechanic's lien docket, which docket shall be ruled off into separate columns, with the headings as follows: "When filed," "Name of owner," "Name of claimant," "Amount claimed," "Description of property," and "Remarks"; and the clerk shall make the proper entry in each column.

(c) A person claiming a lien on residential property, as defined by K.S.A. 1977 Supp. 60-1101, as amended, shall file with the statement provided for in subsection (a), an affidavit stating that the warning statement provided for in subsections (b) and (c) of K.S.A. 1977 Supp. 60-1101, as amended, has been given to an owner of the residential property. The provisions of this subsection shall not be applicable to persons claiming a lien pursuant to K.S.A. 60-1103, and any amendments thereto.

New Sec. 3. (a) Whenever a contractor who has entered into a contract for the improvement of residential property, as defined by K.S.A. 1977 Supp. 60-1101, as amended, and such contractor (1) willfully or wantonly fails to give a warning statement as provided in K.S.A. 1977 Supp. 60-1101, as amended, or (2) willfully or wantonly refuses to give a list of all subcontractors after a request therefor by an owner of the property, and as a result of such failure or refusal an owner of residential property pays more than the last agreed contract

price of the improvements in order to discharge subcontractors' liens, the contractor shall be deemed guilty of a class A misdemeanor.

(b) In any civil action brought by an owner of residential property against a contractor who has been convicted of the crime provided for in subsection (a), proof of such a conviction shall create a rebuttable presumption that the contractor's willful or wanton failure or refusal was committed with the intent to defraud the owner of the residential property.

Sec. 4. K.S.A. 60-1102 and K.S.A. 1977 Supp. 60-1101 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

2-22

KANSAS CHILDREN'S SERVICE LEAGUE
Established in 1893

...peka District Office
P.O. Box 5314, Topeka, KS 66605
(2053 Kansas Ave.) 913/232-0543

Central Office: Wichita

District Offices: Kansas City, Topeka, Wichita

Field Offices: Dodge City, Garden City, Hutchinson, Salina, Ulysses

STATEMENT CONCERNING HB 3063

HOUSE JUDICIARY COMMITTEE

February 22, 1978

Mr. Chairman and Representatives:

The Kansas Children's Service League is in favor of the expansion of the present provisions for adoption support and urges your favorable action on HB 3063.

Although KCSL works in a variety of ways for the children of Kansas, it has for many years been responsible for finding permanent homes for youngsters in need. The hard-to-place child has been the special concern of our Kansas City office, Black Adoption Program and Services.

We are happy to see the increased awareness on both the federal and state level of the importance of permanency for a child. The child with special needs is oftentimes the child with the greatest need for consistent and permanent care and relationships. Many of these youngsters do not qualify for support under the present statute, i.e., they are not handicapped, but they do have a need for special care. Such care is often expensive and prohibits middle-income prospective adoptive parents from accepting the responsibility for the child.

We believe that the amendment of the adoption support laws as proposed by HB 3063 will assist the efforts of all who are helping youngsters find permanent homes.

Thank you for the opportunity to express our support of this bill.

Submitted by
Ellen Richardson for KCSL

Ellen Richardson

2-22

Session of 1978

HOUSE BILL No. 3062

By Representative Hayes

1-23

AN ACT supplementing the Kansas juvenile code; providing for a hearing with regard to certain dependent and neglected children.

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

Section 1. (a) Whenever a dependent and neglected child has been committed to the ~~secretary~~ of social and rehabilitation services and has been placed ~~by the secretary~~ in the ~~custody~~ of an individual licensed pursuant to K.S.A. 1977 Supp. 65-504 and the parents of such child have not had their parental rights terminated, the court shall ~~hold a hearing to~~ review the circumstances of the child and the child's parents at least every six months. Notice thereof shall be given to the individuals ~~having custody~~, the parents of the child and the ~~secretary~~ of social and rehabilitation services. The court shall review the circumstances of the child and the child's parents and shall give due consideration to the recommendations of the staff of the department of social and rehabilitation services. If such recommendations are not accepted by the court, the court shall make written findings setting forth the reasons for not accepting such recommendations. At the conclusion of the ~~hearing~~ the court may make any order the court is empowered to make pursuant to K.S.A. 1977 Supp. 38-824.

(b) This section shall be a part of and supplemental to the Kansas juvenile code.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

2-22

AN ACT supplementing the Kansas juvenile code; providing for a court review with regard to certain dependent and neglected children.

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

Section 1. (a) Whenever a dependent and neglected child has been committed to the custody of the department of social and rehabilitation services and has been placed in the care of an individual licensed pursuant to K.S.A. 1977 Supp. 65-504 and the parents of such child have not had their parental rights terminated, the court shall review the circumstances of the child and the child's parents at least every six months. Notice thereof shall be given to the licensed individuals providing foster care (child care givers), the parents of the child and the department of social and rehabilitation services. The court shall review the circumstances of the child and the child's parents and shall give ~~ude~~ due consideration to the recommendations of the staff of the department of social and rehabilitation services, the foster care providers and any other agencies and individuals involved who are providing services to the child. If such recommendations are not accepted by the court, the court shall make written findings setting forth the reasons for not accepting such recommendations. At the conclusion of the ~~hearing~~ review the court may make any order the court is empowered to

make pursuant to K.S.A. 1977 Supp. 38-824.

(b) This section shall be a part of and supplemental to the Kansas juvenile code.

Section 2. This act shall take effect and be in force from and after its publication in the statute book.

E. Approval is needed by the area C&Y supervisor when a foster child is going to move out of state with his foster family. Importation laws as well as licensing or approval requirements of the new state of residence shall be met. Use the APWA Directory for instructions as to proper routing of requests for services.

F. The child's progress in out-of-state placement shall be closely monitored.

1. Quarterly progress reports shall be obtained from the facility or supervising agency and copies submitted on a current basis to the C&Y Central Office.

2. It shall be the responsibility of the area office to request such reports if they become delinquent.

3. Copies of the annual assessment shall be sent to the C&Y Central Office.

4. If the goal is not achieved within the stated time limit, a diagnostic reassessment and revised goal and time limit shall be submitted to the C&Y Central Office requesting approval to continue the placement.

6037 Service Tasks to Insure Permanency for the Child

For each child placed out of his own home, a staffing team shall establish a plan for permanency. Within six months the staffing team shall determine the most appropriate service goal. Service goals are:

1. reintegration with own family;

2. adoption;

3. long-term foster care; and,

4. self-support and independence.

The staffing team shall: identify the barriers to achieving the goal; establish sub-goals as necessary; formulate next steps; assign tasks and identify persons responsible; and establish procedures to monitor progress.

It is the responsibility of the assigned worker to maintain a current case record. There shall be a written reassessment for all children in foster care at least each six months. One copy of the re-assessment for children with parental rights severed shall be sent to C&Y Central Office. The C&Y Central Office shall be notified of significant changes effecting children for whom the C&Y Director is guardian.

6037.1 Service Tasks Related to the Goal of Reintegration with own Family

A. Intensive goal oriented work with family to assist them to correct those conditions which led to placement.

B. Visits with family members to avoid a break in the relationship.

C. Help family to assume as much of the parental responsibility as possible (i.e. selection of clothing, providing recreational activities, financial participation whenever able, etc.).

D: The CY-833, Progress Report to the Juvenile Court, shall be sent to the court at least once in each 6 months or when there has been a significant change in the child's circumstances.

CY-833
(1-74)

KANSAS STATE DEPARTMENT OF SOCIAL & REHABILITATION SERVICES
DIVISION OF SERVICES TO CHILDREN & YOUTH

Progress Report to _____ Juvenile Court
From _____ District Office

Child's Name | Birth Date | Court Case Number

S.R.S. Worker's Name | Telephone #

Date Placed | Name and Address of Facility | Telephone #

School or Other Attendance Center | Grade placement

Social Adjustment	Health	School Adjustment	Relationship to peers	Community Activities	Adjustment to Placement Facility

Natural Parent's Participation in Plan for Child

Goal for Child

*Progress Toward Goals & Recommendations

Signed _____
Service Worker

_____
Supervisor

Date _____

Code: VG - Very good
S - Satisfactory
NS - Not satisfactory
*Use reverse side for additional space if needed.

2-22

BEFORE THE HOUSE JUDICIAL COMMITTEE

HOUSE BILL 3205

We propose the following amendments to House Bill 3205:

At line 0020 strike the word "remedies" and insert in lieu thereof the word "damages"; at line 0034 strike the period and insert a semi colon and the following language: "provided, however, the foregoing Section 1 shall not be applicable to civil action to be brought against non-resident suppliers". Then, at line 0035 insert new Section 2, "If a cause of action accrues under the Kansas Consumer Protection Act the actual time spent in making demand or demand and tender of settlement hereunder shall toll the applicable statute of limitations and shall not be computed as any part of the period within which an action must be brought under the Kansas Consumer Protection Act.

Then add Section 2 and renumber at Section 3.

Riordan

3112 - Comm Corr
3118 -
3129
3130
3133

HCR 5061

unproofed

2-22

PROPOSED Substitute for HOUSE BILL NO. 2712

For Consideration by House Judiciary

AN ACT relating to crimes; amending the Kansas criminal code and the Kansas code of criminal procedure; authorizing courts to fix the maximum term of imprisonment for certain felonies; concerning presentence investigations, conditions of probation, and parole eligibility and procedures; transferring certain functions and duties regarding probation and parole; concerning ~~administrative rules and~~ regulations of the department of corrections and the Kansas adult authority and membership on said authority; amending K.S.A. 21-4501, 21-4504, 21-4604, 21-4605, 21-4608, 22-3707, 75-5214, 75-5216, 75-5217, 75-5218, 75-5220, 75-5256, 75-5285, 77-415, 77-421 and 77-421a and K.S.A. 1977 Supp. 21-4603, 21-4610, 21-4611, 22-3717 and 38-814 and repealing the existing sections and also repealing K.S.A. 75-5215 and K.S.A. 1977 Supp. 38-551.

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

Section 1. On and after January 1, 1979, K.S.A. 21-4501 is hereby amended to read as follows: 21-4501. For the purpose of sentencing, the following classes of felonies and terms of imprisonment authorized for each class are established:

(a) Class A, the sentence for which shall be ~~death or~~ imprisonment for life~~. If there is a jury trial the jury shall determine which punishment shall be inflicted. If there is a plea of guilty or if a jury trial is waived the court shall determine which punishment shall be inflicted and in so doing shall hear evidence~~;

(b) Class B, the sentence for which shall be an indeterminate term of imprisonment, the minimum of which shall be fixed by the court at not less than five (5) years nor more than fifteen (15) years and the maximum of which shall be fixed by the

court at not less than twenty (20) years nor more than life;

(c) Class C, the sentence for which shall be an indeterminate term of imprisonment, the minimum of which shall be fixed by the court at not less than one (1) year nor more than five (5) years and the maximum of which shall be fixed by the court at not less than ten (10) years nor more than twenty (20) years;

(d) Class D, the sentence for which shall be an indeterminate term of imprisonment, the minimum of which shall be fixed by the court at not less than one (1) year nor more than three (3) years and the maximum of which shall be fixed by the court at not less than five (5) years nor more than ten (10) years;

(e) Class E, the sentence for which shall be an indeterminate term of imprisonment, the minimum of which shall be one (1) year and the maximum of which shall be fixed by the court at not less than two (2) years nor more than five (5) years;

(f) Unclassified felonies, which shall include all crimes declared to be felonies without specification as to class, the sentence for which shall be in accordance with the sentence specified in the statute that defines the crime; if no sentence is provided in such law, the offender shall be sentenced as for a class E felony.

Sec. 2. On and after January 1, 1979, K.S.A. 21-4504 is hereby amended to read as follows: 21-4504. Every person convicted a second or more time of a felony, the punishment for which is confinement in the custody of the ~~director of penal institutions~~ secretary of corrections, upon motion of the prosecuting attorney, may be by the trial judge sentenced to an increased punishment as follows:

(1) If the defendant has previously been convicted of not more than one felony:

(a) The court may fix a minimum sentence of not less than the least nor more than twice the greatest minimum sentence authorized by K.S.A. ~~1972 Supp.~~ 21-4501, as amended, for the

crime for which the defendant stands convicted; and

(b) Such court may fix a maximum sentence of not less than the least nor more than twice the greatest maximum sentence provided by K.S.A. ~~1972 Supp.~~ 21-4501, as amended, for such crime ~~nor more than twice such maximum~~.

(2) If the defendant has previously been convicted of two (2) or more felonies:

(a) The court may fix a minimum sentence of not less than the least nor more than three times the greatest minimum sentence authorized by K.S.A. ~~1972 Supp.~~ 21-4501, as amended, for the crime for which the defendant stands convicted; and

(b) Such court may fix a maximum sentence of not less than the least nor more than three times the greatest maximum ~~prescribed~~ sentence provided by K.S.A. ~~1972 Supp.~~ 21-4501, as amended, for such crime~~, nor more than life~~.

(3) Subsections (1) and (2) of this section shall be applicable only to those convicted criminals initially sentenced after ~~the effective date of this act~~ July 1, 1970. In the event that any defendant has been convicted prior to ~~the effective date of this act~~ said date and sentenced under K.S.A. 21-107a, and thereafter is for any reason returned to the court imposing the initial sentence, ~~he~~ the defendant shall be resentenced under the provisions of K.S.A. 21-107a as it existed prior to July 1, 1970.

(4) In the event that any portion of a sentence imposed under K.S.A. 21-107a, or under subsections (1) and (2) of this section, is determined to be invalid by any court because a prior felony conviction is itself invalid, upon resentencing the court may consider evidence of any other prior felony conviction that could have been utilized under K.S.A. 21-107a, or under subsections (1) and (2) of this section, at the time the original sentence was imposed, whether or not it was introduced at that time, except that if the defendant was originally sentenced as a second offender, ~~he~~ the defendant shall not be resentenced as a third offender.

(5) The provisions of this section shall not be applicable

to: (a) Any person convicted of a crime for which the punishment is confinement in the custody of the ~~director of penal institutions~~ secretary of corrections and where a prior conviction of a felony is a necessary element of such crime; or (b) any person convicted of a felony for which the punishment is confinement in the custody of the ~~director of penal institutions~~ secretary of corrections and where a prior conviction of such felony is considered in establishing the class of felony for which such person may be sentenced.

A judgment may be rendered pursuant to this section only after the court finds from competent evidence the fact of former convictions for felony committed by the prisoner, in or out of the state.

Sec. 3. On and after January 1, 1979, K.S.A. 1977 Supp. 21-4603 is hereby amended to read as follows: 21-4603. (1) Whenever any person has been found guilty of a crime ~~upon verdict or plea and a sentence of death is not imposed~~ and the court finds that an adequate presentence investigation cannot be conducted by resources available within the judicial district, including mental health centers and mental health clinics, the court may require that a presentence investigation be conducted by the Kansas state reception and diagnostic center or by the state security hospital. If such offender is sent to the Kansas state reception and diagnostic center or the state security hospital for a presentence investigation under this section, ~~the Kansas reception and diagnostic center~~ such institution or hospital may keep such person confined for a maximum of one hundred twenty (120) days or until the court calls for the return of such offender. The Kansas state reception and diagnostic center or the state security hospital shall compile a complete mental and physical evaluation of such offender and shall make its finding known to the court in the presentence report.

(2) Whenever any person has been found guilty of a crime ~~and a presentence report has been compiled and submitted to the court~~, the court may adjudge any of the following:

(a) Commit the defendant to the custody of the secretary of corrections or, if confinement is for a term less than one (1) year, to jail for the confinement for the term provided by law;

(b) Impose the fine applicable to the offense;

(c) Release the defendant on probation subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution;

(d) Suspend the imposition of the sentence subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution;

(e) Impose any appropriate combination of (a), (b), (c) and (d).

In imposing a fine the court may authorize the payment thereof in installments. In releasing a defendant on probation the court shall direct that said defendant be under the supervision of ~~the secretary of corrections or the probation or parole officer of the court or county~~ a probation officer of the district court.

The court in committing a defendant to the custody of the secretary of corrections shall ~~not~~ fix a maximum term of confinement~~, but the maximum term~~ within the limits provided by law ~~shall apply in each case~~. In those cases where the law does not fix a maximum term of confinement for the crime for which the defendant was convicted, the court shall fix the maximum term of such confinement. In all cases where the defendant is committed to the custody of the secretary of corrections, the court shall fix the minimum term within the limits provided by law.

Any time within one hundred twenty (120) days after a sentence is imposed or within one hundred twenty (120) days after probation has been revoked, the court may modify such sentence or revocation of probation by directing that a less severe penalty be imposed in lieu of that originally adjudged within statutory limits. If an appeal is taken and determined adversely to the defendant, such sentence may be modified within one hundred twenty (120) days after the receipt by the clerk of the district

court of the mandate from the supreme court or court of appeals. The court may reduce the minimum term of confinement at any time before the expiration thereof when such reduction is recommended by the secretary of corrections and the court is satisfied that the best interests of the public will not be jeopardized and that the welfare of the inmate will be served by such reduction. The power here conferred upon the court includes the power to reduce such minimum below the statutory limit on the minimum term prescribed for the crime of which the inmate has been convicted. The recommendation of the secretary of corrections and the order of reduction shall be made in open court.

Dispositions which do not involve commitment to the custody of the secretary of corrections and commitments which are revoked within one hundred twenty (120) days shall not entail the loss by the defendant of any civil rights.

(3) At the time of committing an offender to the custody of the secretary of corrections the court shall ~~submit to said officer~~ state in the order of commitment the reasons for imposing the sentence as ordered, which may include a description of aggravating or mitigating circumstances the court took into consideration when ordering the commitment. Whenever a defendant has been convicted of a class A, B or C felony by reason of aiding, abetting, advising or counsling another to commit a crime or by reason of the principle provided for in subsection (2) of K.S.A. 21-3205, and any amendments thereto, the court shall state such fact in the order of commitment. In the commitment order the court also may include recommendations on a program of rehabilitation for said offender, based on presentence investigation reports~~, medical and psychiatric evaluations~~ and any other information available. Such recommendations ~~shall~~ may include desirable treatment for correction of physical deformities or disfigurement that may, if possible, be corrected by medical or surgical procedures or by prosthesis. The court may recommend further evaluation at the Kansas state reception and diagnostic center, even though defendant was committed for

presentence ~~evaluation~~ investigation.

(4) This section shall not deprive the court of any authority conferred by any other section of Kansas Statutes Annotated to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty as a result of conviction of crime.

(5) An application for or acceptance of probation or suspended sentence shall not constitute an acquiescence in the judgment for purpose of appeal, and any convicted person may appeal from such conviction, as provided by law, without regard to whether such person has applied for probation or suspended sentence.

Sec. 4. On and after January 1, 1979, K.S.A. 21-4604 is hereby amended to read as follows: 21-4604. (1) Whenever a defendant is convicted of a ~~crime or offense~~ misdemeanor, the court before whom the conviction is had may request a presentence investigation by a probation officer. Whenever a defendant is convicted of a felony, the court shall require that a presentence investigation be conducted by a probation officer or in accordance with K.S.A. 1977 Supp. 21-4603, as amended, unless the court finds that adequate and current information is available in a previous presentence investigation report or from other sources.

(2) Whenever an investigation is requested, the probation officer shall promptly inquire into the circumstances of the offense; the attitude of the complainant or victim, and of the victim's immediate family, where possible, in cases of homicide; and the criminal record, social history, and present condition of the defendant. Except where specifically prohibited by law, all local governmental and state ~~police~~ agencies shall furnish to the ~~probation~~ officer conducting the presentence investigation such ~~criminal~~ records as ~~the probation~~ such officer may request. ~~Where in the opinion of the court it is desirable,~~ The presentence investigation shall include a physical and mental examination of the defendant, unless the court finds that a physical examination

or mental examination of the defendant is not necessary for an adequate presentence investigation. ~~If a defendant is committed to any institution, the investigating agency shall send a report of its investigation to the institution at the time of commitment.~~

(3) In all cases, presentence investigation reports shall be in the form and contain the information prescribed by rules and regulations of the secretary of corrections adopted in accordance with K.S.A. 77-415 et seq., and amendments thereto, and shall contain such other information as may be prescribed by the court.

Sec. 5. On and after January 1, 1979, K.S.A. 21-4605 is hereby amended to read as follows: 21-4605. (1) The judge shall make available the presentence report, any report that may be received from the Kansas state diagnostic center or the state security hosital, and other diagnostic reports to the attorney for the state and to the counsel for the defendant when requested by them, or either of them. Such reports shall be part of the record but shall be sealed and opened only on order of the court.

(2) If a defendant is committed ~~to a state institution or~~ to the custody of the secretary of corrections such reports shall be sent to the secretary of corrections and, in accordance with K.S.A. 75-5220, as amended, to the ~~superintendent of such~~ director of the state correctional institution to which the defendant is conveyed.

Sec. 6. On and after January 1, 1979, K.S.A. 21-4608 is hereby amended to read as follows: 21-4608. (1) When separate sentences of imprisonment for different crimes are imposed on a defendant on the same date, including sentences for crimes for which suspended sentences or probation have been revoked, such sentences shall run concurrently or consecutively as the court directs. Whenever the record is silent as to the manner in which two or more sentences imposed at the same time shall be served, they shall be served concurrently.

(2) Any person who commits a crime while on parole or

conditional release and is convicted and sentenced therefor, shall serve such sentence concurrently or consecutively with the term or terms under which ~~he~~ such person was released, as the court directs.

(3) The provisions of this subsection relating to parole eligibility shall be applicable to persons convicted of crimes committed prior to January 1, 1979, but shall be applicable to persons convicted of crimes committed on or after such date only to the extent that the terms of this subsection are not in conflict with the provisions of subsection (2) of K.S.A. 1977 Supp. 22-3717, as amended. In calculating the time to be served on concurrent and consecutive sentences, the following rules shall apply:

(a) When indeterminate terms run concurrently, the shorter minimum terms merge in and are satisfied by serving the longest minimum term and the shorter maximum terms merge in and are satisfied by conditional release or discharge on the longest maximum term if such terms are imposed on the same date.

(b) When concurrent terms are imposed on different dates computation will be made to determine which term or terms require the longest period of incarceration to reach parole eligibility, conditional release and net maximum dates, and that sentence will be considered the controlling sentence. The parole eligibility date may be computed and projected on one sentence and the conditional release date and net maximum may be computed and projected from another to determine the controlling sentence.

(c) When indeterminate terms imposed on the same date are to be served consecutively, the minimum terms are added to arrive at an aggregate minimum to be served equal to the sum of all minimum terms and the maximum terms are added to arrive at an aggregate maximum equal to the sum of all maximum terms.

(d) When indeterminate sentences are imposed to be served consecutively to sentences previously imposed in any other court, or the sentencing court, the aggregated minimums and maximums shall be computed from the date of the earliest sentence and

commitment to which additional sentences are imposed as consecutive for the purpose of determining the sentence begins date, parole eligibility, conditional release and net maximum dates.

(e) When consecutive sentences are imposed which are to be served consecutive to sentences for which a prisoner has been on probation, parole or conditional release, the parole eligibility, conditional release and net maximum dates shall be adjusted by the amount of time served on probation, parole or conditional release.

(4) When a definite and an indefinite term run consecutively, the period of the definite term is added to both the minimum and maximum of the indeterminate term and both sentences are satisfied by serving the indeterminate term.

(5) When a defendant is sentenced in a state court and is also under sentence from a federal court or is subject to sentence in a federal court for an offense committed prior to ~~his~~ the defendant's sentence in state court, the court may direct that custody of the defendant may be relinquished to federal authorities and that such state sentences as are imposed may run concurrently with any federal sentence imposed.

Sec. 7. On and after January 1, 1979, K.S.A. 1977 Supp. 21-4610 is hereby amended to read as follows: 21-4610. ~~The Kansas adult authority may adopt general rules and regulations concerning the conditions of probation or suspension of sentence. The conditions shall apply in the absence of any inconsistent conditions imposed by the court.~~ (1) Nothing herein contained shall limit the authority of the court to impose or modify any general or specific conditions of probation or suspension of sentence.

(2) The probation officer may recommend and by order duly entered by the court may impose and at any time may modify any conditions of probation or suspension of sentence. Due notice shall be given to the probation officer before any such conditions are modified and said officer shall be given an

opportunity to be heard thereon. The court shall cause a copy of any such order to be delivered to the probation officer and the probationer.

(3) The court may include among the conditions of probation or suspension of sentence the following and any other conditions that it deems proper:

The defendant shall

(a) Avoid injurious or vicious habits;

(b) Avoid persons or places of disreputable or harmful character;

(c) Report to the probation officer as directed;

(d) Permit the probation officer to visit said defendant at home or elsewhere;

(e) Work faithfully at suitable employment insofar as possible;

(f) Remain within a specified area;

(g) Pay a fine or costs, applicable to the offense, in one or several sums and in the manner as directed by the court;

(h) Make reparation or restitution to the aggrieved party for the damage or loss caused by the offense in an amount and in the manner to be determined by the court;

(i) Support said defendant's dependents;

(j) Obey the laws of the United States, the state of Kansas or any other jurisdiction to whose laws said defendant may be subject;

(k) Reimburse the aid to indigent defendants fund for counsel and other defense service expenditures, in one or several sums as directed by the court.

(l) Reside in a residential facility located in the community and participate in educational, counseling, work and other correctional or rehabilitative programs;

(m) Perform community or public service work for local governmental agencies, private corporations organized not for profit, or charitable or social service organizations performing services for the community;

(n) Perform services under a system of day fines whereby the defendant is required to satisfy monetary fines or costs or reparation or restitution obligations by performing services for a period of days determined by the court on the basis of ability to pay, standard of living, support obligations and other factors.

Sec. 8. On and after January 1, 1979, K.S.A. 1977 Supp. 21-4611 is hereby amended to read as follows: 21-4611. (1) The period of suspension of sentence or probation fixed by the court shall not exceed five (5) years in felony cases or two (2) years in misdemeanor cases, subject to renewal and extension for additional fixed periods not exceeding five (5) years in felony cases, nor two (2) years in misdemeanor cases~~, but~~. In no event shall the total period of probation or suspension of sentence for a felony exceed the greatest maximum term provided by law for the crime, except that where the defendant is convicted of nonsupport of a child, the period may be continued as long as the responsibility for support continues. Probation or suspension of sentence may be terminated by the court at any time and upon such termination or upon termination by expiration of the term of probation or suspension of sentence, an order to this effect shall be entered by the court.

(2) The district court having jurisdiction of the offender may parole any misdemeanant sentenced to confinement in the county jail ~~or in the Kansas correctional institution for women~~. The period of such parole shall be fixed by the court and shall not exceed two (2) years and shall be terminated in the manner provided for termination of suspended sentence and probation.

Sec. 9. On and after January 1, 1979, K.S.A. 22-3707 is hereby amended to read as follows: 22-3707. (a) The Kansas adult authority shall consist of five (5) members to be appointed by the governor with the advice and consent of the senate. ~~After January 1, 1975,~~ No more than three (3) members of such authority shall be members of the same political party. ~~At least two (2)~~ To the extent feasible, members of the Kansas adult authority shall

be chosen by the governor from among the following: Psychiatrists, psychologists, sociologists ~~or,~~ persons licensed to practice medicine and surgery. ~~At least one (1) member shall be a person,~~ and persons admitted to practice law before the supreme court of Kansas. The term of office of the members of the authority shall be four (4) years. In case of a vacancy in the membership of the authority occurring before the expiration of the term of office a successor shall be appointed in like manner as original appointments are made, for the remainder of the unexpired term. Each member of the Kansas adult authority shall devote his or her full time to the duties of membership on the authority.

~~Members serving on the state board of probation and parole on the effective date of this act shall be and remain the members of the authority created by this section and shall hold their respective offices until their terms expire and their respective successors are appointed and qualified or until a vacancy occurs. Of the two (2) members added by this act, one (1) shall be appointed for an initial term of three (3) years and one (1) for a term of four (4) years, commencing July 1, 1974.~~

(b) The governor may not remove any member of the authority except for disability, inefficiency, neglect of duty or malfeasance in office. Before such removal, ~~he will~~ the governor shall give the member a written copy of the charges against ~~him~~ the member and shall fix the time when ~~he~~ the member can be heard in his or her defense at a public hearing, which shall not be less than ten (10) days thereafter. Upon removal, the governor shall file in the office of the secretary of state a complete statement of all charges made against the member and the findings thereupon, with a complete record of the proceedings.

Sec. 10. On and after January 1, 1979, K.S.A. 1977 Supp. 22-3717 is hereby amended to read as follows: 22-3717. (1) Subject to the provisions of this section, the Kansas adult authority shall have power to release on parole those persons confined in institutions who are eligible for parole when, in the

opinion of the authority, there is reasonable probability that such persons can be released without detriment to the community or to themselves.

(2) ~~After expiration of one hundred twenty (120) days from the date of sentence, the Kansas adult authority is hereby granted the authority to place upon intensive supervised parole any inmate classified in the lowest minimum security classification who has achieved such status under rules and regulations promulgated by the secretary of corrections, except in the case where a death sentence or life imprisonment has been imposed as the minimum sentence or where the minimum sentence imposed aggregates more than fifteen (15) years, after deduction of work and good behavior credits. Persons confined in institutions shall be eligible for parole after fifteen (15) years if sentenced to life imprisonment or to a minimum term which, after deduction of work and good behavior credits, aggregates more than fifteen (15) years.~~ The Kansas adult authority shall hold a parole hearing for any inmate who achieves eligibility for a parole hearing in accordance with this subsection (2).

(A) The following inmates shall be eligible for a parole hearing before the Kansas adult authority after fifteen (15) calendar years of confinement: (i) Any inmate sentenced to imprisonment for conviction of a class A felony; (ii) any inmate sentenced to a minimum term of twenty-nine (29) years or more.

(B) Any inmate sentenced to imprisonment for a class B or C felony shall be eligible for a parole hearing after serving the entire minimum term imposed by the court, less good time credits established by rule and regulation of the Kansas adult authority and awarded by the secretary of corrections on an earned basis pursuant to rules and regulations adopted by the secretary of corrections. Except when the defendant has been sentenced for a second or more felony pursuant to K.S.A. 21-4504, as amended, the Kansas adult authority may grant a parole hearing for a defendant convicted of a class B or C felony at any time after the court no

longer has jurisdiction to modify the sentence on its own initiative if such hearing is requested by the secretary of corrections for good cause.

(C) Except as otherwise provided in paragraphs (D) or (E) of this subsection (2), any inmate sentenced to imprisonment for a class D or E felony may be certified as parole eligible by the secretary of corrections at any time after the court no longer has jurisdiction to modify the sentence on its own initiative. Unless a parole hearing has already been held or a date established therefor, the Kansas adult authority shall hold a parole hearing when any such inmate has served the entire minimum sentence, less good time credits established by rule and regulation of the Kansas adult authority and awarded by the secretary of corrections on an earned basis pursuant to rules and regulations adopted by the secretary of corrections.

(D) Notwithstanding the provisions of paragraphs (A), (B), (C) or (E) of this subsection (2), any inmate sentenced to a mandatory term of imprisonment for the commission of a crime in which a firearm was used, as provided in K.S.A. 1977 Supp. 21-4618, shall be eligible for a parole hearing after serving the entire minimum sentence imposed by the court.

(E) Subject to the limitations of paragraph (D) of this subsection (2), any inmate sentenced for a second or more felony conviction pursuant to K.S.A. 21-4504, as amended, for a class D or E felony shall be eligible for a parole hearing after serving the entire minimum sentence imposed by the court, less good time credits established by rule and regulation of the Kansas adult authority and awarded by the secretary of corrections on an earned basis pursuant to rules and regulations adopted by the secretary of corrections.

(F) Consecutive sentences shall be computed as follows for purposes of computing the date when an inmate is eligible for a parole hearing:

(i) When an inmate receives consecutive sentences imposed on the same date, the date when the inmate shall be eligible for

a parole hearing shall be computed by adding together the terms of imprisonment required to be served by an inmate before being eligible for a parole hearing for each applicable provision of paragraphs (A) to (E), inclusive, and paragraph (G) of this subsection (2).

(ii) When indeterminate sentences are imposed on different dates to be served consecutively to sentences previously imposed, the date when the inmate shall be eligible for a parole hearing shall be computed from the commencing date of the subsequent sentence in the same manner as provided in paragraph (i) above of this subsection (2)(F), but shall be reduced by the amount of time that the inmate served for the earlier imposed sentence, including any time spent on probation or parole, if any, up to a maximum reduction that is equal to the minimum term imposed for the earlier sentence.

(G) Notwithstanding the provisions of paragraphs (A) and (B) of this subsection (2), an inmate that has been convicted of a class A, B or C felony by reason of aiding, abetting, advising or counseling another to commit a crime or by reason of the principle provided for in subsection (2) of K.S.A. 21-3205, and any amendments thereto, may be certified as parole eligible by the secretary of corrections at any time after the court no longer has jurisdiction to modify the sentence on its own initiative. Unless a parole hearing has already been held or a date established therefor, the Kansas adult authority shall hold a parole hearing after the inmate has served one year imprisonment, less good time credits established by rules and regulations of the Kansas adult authority and awarded by the secretary of corrections on an earned basis pursuant to rules and regulations adopted by the secretary of corrections.

(3) ~~Within one year after the admission of each inmate and~~ Prior to each parole hearing and if parole is not granted at such intervals thereafter as it may determine by its rules and regulations the Kansas adult authority shall consider all pertinent information regarding each inmate, including the

circumstances of the offense of the inmate; the presentence report; the previous social history and criminal record of the inmate; the conduct, employment, and attitude of the inmate in prison; and the reports of such physical and mental examinations as have been made. Within a reasonable time after a defendant is committed to the custody of the secretary of corrections, which time shall not exceed sixty (60) days after the court's jurisdiction to modify the sentence has passed, the Kansas adult authority or a member of the authority, shall hold an initial hearing which each such defendant in order to inform the inmate of the date when he or she will be eligible for a parole hearing.

(4) Before ordering the parole of any inmate, the Kansas adult authority shall have the inmate appear before it and shall interview the inmate unless impractical because of the inmate's physical or mental condition or absence from the institution. A parole shall be ordered only for the best interest of the inmate and not as an award of clemency. Parole shall not be considered a reduction of sentence or a pardon. An inmate shall be placed on parole only when the Kansas adult authority believes that the inmate is able and willing to fulfill the obligations of a law-abiding citizen or that the inmate should be released for hospitalization, deportation or to answer the warrant or other process of a court. Every inmate while on parole shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary. Whenever the Kansas adult authority formally considers placing an inmate on parole and does not grant the parole, the authority shall notify the inmate in writing of the reasons for not granting the parole.

(5) Any parolee may be placed on intensive supervised parole. Any such parolee shall have a direct meeting at least once each week with an intensive supervising parole officer. Such parolee may be removed from intensive supervised parole when it is determined by the secretary of corrections that such removal will not jeopardize public safety and will be beneficial to the interests of the parolee.

(6) The Kansas adult authority ~~may~~ shall adopt rules and regulations in accordance with K.S.A. 77-415 et seq., and amendments thereto. not inconsistent with the law and as it may deem proper or necessary, with respect to the eligibility of inmates for parole, the conduct of parole hearings, ~~or~~ orders of restitution and other conditions to be imposed upon parolees. Whenever an order for parole is issued it shall recite the conditions thereof.

~~(7) As used in this section, the term "minimum security" shall be defined by rules and regulations of the secretary of corrections.~~

~~(8) Notwithstanding any other provision of this section, any person sentenced pursuant to K.S.A. 1976 Supp. 21-4618 shall not be eligible for parole therefrom prior to serving the entire minimum sentence imposed, except that in the case of a person convicted of a class A felony and sentenced pursuant to K.S.A. 1976 Supp. 21-4618 shall not be eligible for parole prior to serving fifteen (15) years of the sentence imposed.~~ The provisions of this section relating to eligibility dates for a parole hearing shall be applicable to all inmates sentenced for crimes committed on or after January 1, 1979.

New Sec. 11. (a) On and after January 1, 1979, the department of corrections shall cease its functions and duties with regard to providing probation officers for the supervision of persons placed on probation by the district courts of this state. On and after said date the department of corrections shall continue its functions and duties with regard to providing parole officers for felons placed on parole by the Kansas adult authority but shall not provide parole officers for the supervision of misdemeanants placed on parole by the district courts of this state. The department of corrections shall provide the visitation, supervision and other services regarding probationers and parolees which are required under the uniform act for out-of-state parolee supervision.

(b) On and after January 1, 1979, all probation officers

supervising adults and juveniles placed on probation by the district courts of this state and all parole officers supervising misdemeanants placed on parole by the district courts of this state shall be appointed by the district courts as provided by law. The supreme court shall prescribe the qualifications required of persons appointed as parole or probation officers of the district courts. The compensation of such officers shall be paid by the state either in accordance with a compensation plan adopted by the supreme court or as may be otherwise specifically provided by law.

(c) The supreme court shall provide by rule for the appointment as probation officers by the district courts of those probation and parole officers of the department of corrections who are terminated from service as officers and employees of said department because of the transfer of functions and duties from said department to the district courts under this section and who are deemed necessary to assist in the performance of such functions and duties of the district courts. Any such officers and employees who are appointed as probation officers of the district courts shall retain all retirement benefits and, to the extent feasible and compatible with the provisions of the judicial personnel system relating to nonjudicial employees of the district courts, such appointments shall be deemed to be transfers with all rights of civil service which had accrued to such officers and employees prior to January 1, 1979, and the service of each such officer and employee so appropriated and transferred shall be deemed to have been continuous.

Sec. 12. On and after January 1, 1979, K.S.A. 1977 Supp. 38-814 is hereby amended to read as follows: 38-814. ~~The administrative judge of each judicial district may appoint such~~ (a) Juvenile probation officers and investigators ~~as are necessary. Such probation officers and investigators shall receive such compensation, payable from the county, as is prescribed by the judges of the district court, within the limits of the budget for district court operations payable by the~~

~~county. In addition to their compensation, such probation officers and investigators~~ shall receive mileage at the rate prescribed pursuant to K.S.A. 75-3203a, and amendments thereto, for each mile actually and necessarily traveled in the performance of their duties, when such travel is authorized by a judge of the district court or such monthly car allowance as may be authorized by the administrative judge within the limits of the district court budget.

~~Juvenile probation officers and investigators shall furnish the court with any information that may be obtained and render any assistance requested by the court in any proceeding pursuant to the juvenile code, which may be helpful to the court or the child.~~

(b) Under the direction of the court, a juvenile probation officer shall take possession and custody of any child under the court's jurisdiction and make such arrangements for the temporary care of any child as directed by the court.

Sec. 13. On and after January 1, 1979, K.S.A. 75-5214 is hereby amended to read as follows: 75-5214. The secretary of corrections shall appoint ~~probation and~~ parole officers in a number sufficient to administer the provisions of this act. ~~Such probation and parole officers shall be within the classified service of the Kansas civil service act. All probation and parole officers employed by the state director of probation and parole with the approval of the board of probation and parole under the provisions of K.S.A. 1972 Supp. 22-3713, immediately prior to the effective date of this act shall be employed in the same or comparable positions by the secretary of corrections and shall retain all rights and status acquired under the provisions of the Kansas civil service act. Nothing contained in this section shall be construed to alter or change the retirement plan or retirement status of the employees who under the provisions of this section are placed under the control of the secretary. Probation or~~ Parole officers appointed by the secretary of corrections shall have and exercise police powers to the same extent as other law

enforcement officers and such powers may be exercised by them anywhere within the state. ~~Probation--and~~ Such parole officers shall, in addition to their regular compensation, receive their actual and necessary traveling and other expenses incurred in the performance of their official duties.

Sec. 14. On and after January 1, 1979, K.S.A. 75-5216 is hereby amended to read as follows: 75-5216. ~~Probation-and~~ Parole officers shall investigate all persons referred to them for investigation by the secretary ~~or by any court in which they are authorized to serve~~ of corrections. They shall furnish to each person released under their supervision a written statement of the conditions of ~~probation or~~ parole and shall ~~instruct him or her~~ give instructions regarding these conditions. They shall keep informed of ~~his or her~~ the parolee's conduct and condition and use all suitable methods to aid ~~and~~, encourage ~~him or her~~ and ~~to~~ bring about improvement in ~~his or her~~ the parolee's conduct and condition. ~~Probation and~~ Parole officers shall keep detailed records of their work~~,~~ and shall make such reports in writing and perform such other duties as may be incidental to those above enumerated or as the ~~court or~~ secretary may require. They shall coordinate their work with that of social welfare agencies.

Sec. 15. On and after January 1, 1979, K.S.A. 75-5217 is hereby amended to read as follows: 75-5217. (a) At any time during release on parole or conditional release the secretary of corrections may issue a warrant for the arrest of a released inmate for violation of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be served personally upon the released inmate. The warrant shall authorize all officers named therein to deliver the released inmate to a place designated by the secretary. Any parole ~~or probation~~ officer may arrest such released inmate without a warrant, or may deputize any other officer with power of arrest to do so by giving such officer a written statement setting forth that the released inmate has, in the judgment of the parole ~~or~~ ~~probation~~ officer, violated the conditions of his

or her release. The written statement delivered with the released inmate by the arresting officer to the official in charge of the institution or place to which the released inmate is brought for detention shall be sufficient warrant for detaining said inmate. After making an arrest the parole ~~or probation~~ officer shall present to the detaining authorities a similar statement of the circumstances of violation. Pending hearing, as hereinafter provided, upon any charge of violation the released inmate shall remain incarcerated in the institution.

(b) Upon such arrest and detention, the parole ~~or probation~~ officer shall immediately notify the secretary of corrections and shall submit in writing a report showing in what manner the released inmate had violated the conditions of release. Thereupon, or upon an arrest by warrant as herein provided, the secretary shall cause the released inmate to be brought before the Kansas adult authority, its designee or designees, for a hearing on the violation charged, under such rules and regulations as the authority may adopt. Relevant written statements made under oath shall be admitted and considered by the Kansas adult authority, its designee or designees, along with other evidence presented at the hearing. If the violation is established to the satisfaction of the Kansas adult authority, the authority may continue or revoke the parole or conditional release, or enter such other order as the authority may see fit.

(c) A released inmate for whose return a warrant has been issued by the secretary of corrections shall, if it is found that the warrant cannot be served, be deemed to be a fugitive from justice or to have fled from justice. If it shall appear that such fugitive has violated the provisions of his or her release, the time from the violation of such provisions to the date of his or her arrest shall not be counted as time served under the sentence. The secretary may issue a warrant for the arrest of a released inmate for violation of any of the conditions of release and may direct that all reasonable means to serve the warrant and detain such fugitive be employed including but not limited to

notifying the federal bureau of investigation of such violation and issuance of warrant and requesting from the federal bureau of investigation any pertinent information it may possess concerning the whereabouts of such fugitive.

Sec. 16. On and after January 1, 1979, K.S.A. 75-5218 is hereby amended to read as follows: 75-5218. (a) When any person is sentenced to the custody of the secretary of corrections pursuant to the provisions of K.S.A. 1977 Supp. 21-4609, the clerk of the court ~~wherein said conviction was had~~ which imposed such sentence shall within three (3) days notify the secretary of corrections.

(b) Together with the order of commitment to the custody of the secretary of corrections said clerk shall ~~also~~ deliver to the officer having said offender in charge a record containing (1) a copy of the indictment or information, (2) the verdict of the jury, (3) the name and residence of the officer before whom the preliminary trial was had, the judge presiding at the trial, and of the witnesses sworn on said trial, ~~together with the commitment to the Kansas reception and diagnostic center; which~~ and (4) a copy of all presentence investigation reports and other diagnostic reports on the offender received by the district court, including any reports received from the Kansas state reception and diagnostic center or the state security hospital. This record shall be delivered to the officers conveying said offender to the Kansas state reception and diagnostic center or such other correctional institution prescribed by K.S.A. 75-5220, as amended, or by the secretary of corrections in accordance with said statute. ~~Any female offender sentenced according to the provisions of K.S.A. 75-5229 shall not be committed to the Kansas reception and diagnostic center but shall be conveyed directly to the Kansas correctional institution for women.~~

Sec. 17. On and after January 1, 1979, K.S.A. 75-5220 is hereby amended to read as follows: 75-5220. (a) Within three (3) days of receipt of the notice provided for in K.S.A. 75-5218, as amended, the secretary of corrections shall notify the sheriff

having such offender in his or her custody to convey said offender forthwith to the Kansas state reception and diagnostic center or if space is not available at such center, then to some other state correctional institution until space at the center is available, except that, in the case of first offenders who are conveyed to a state correctional institution other than the Kansas state reception and diagnostic center, such offenders shall be segregated from the inmates of such correctional institution who are not being held in custody at such institution pending transfer to the Kansas state reception and diagnostic center when space is available therein. ~~Any offender conveyed to a state correctional institution pursuant to this section shall be accompanied by the record of such offender's trial and conviction as made up by the clerk.~~ The expenses of any such conveyance shall be charged against and paid out of the general fund of the county whose sheriff shall convey said offender to the institution as herein provided.

(b) Any female offender sentenced according to the provisions of K.S.A. 75-5229 shall not be conveyed to the Kansas state reception and diagnostic center but shall be conveyed by the sheriff having such offender in his or her custody directly to the Kansas correctional institution for women. The expenses of such conveyance to the Kansas correctional institution for women shall be charged against and paid out of the general fund of the county whose sheriff shall convey such female offender to such institution.

(c) Each offender conveyed to a state correctional institution pursuant to this section shall be accompanied by the record of such offender's trial and conviction as prepared by the clerk of the district court in accordance with K.S.A. 75-5218, as amended.

Sec. 18. K.S.A. 75-5256 is hereby amended to read as follows: 75-5256. (a) The director of each correctional institution may ~~make and~~ issue ~~such general and special~~ orders ~~and rules, not inconsistent with law~~ subject to the provisions of

and the rules ~~established~~ and regulations adopted by the secretary of corrections, as ~~he or she~~ such director may deem necessary for the government of the correctional institution and the enforcement of discipline therein~~; and~~.

(b) All rules and regulations or orders for the government of ~~the~~ a correctional institution and the enforcement of discipline therein ~~made~~ adopted or issued by the secretary ~~or~~ of corrections and all orders issued by the director of the institution shall be published and made available to all inmates. Every such ~~rule or~~ order ~~promulgated~~ issued by the director shall be effective until rescinded or amended by ~~him or her~~ such director or until disapproved by the secretary.

Sec. 19. On and after January 1, 1979, K.S.A. 75-5285 is hereby amended to read as follows: 75-5285. (a) Whenever the board of probation and parole, or words of like effect, is referred to or designated by statute, contract or other document, such reference or designation shall be deemed to apply to the Kansas adult authority created by this act.

(b) Whenever probation and parole officers under the jurisdiction of the state board of probation and parole, or words of like effect, is referred to or designated by statute, contract or other document, such reference or designation shall be deemed to apply to ~~probation and~~ parole officers under the jurisdiction of the secretary of corrections.

New Sec. 20. (a) On or before December 31, 1978, and, except as otherwise provided by this section, in accordance with the provisions of K.S.A. 77-416 and 77-418, and amendments thereto: (1) The secretary of corrections shall prepare and file with the revisor of statutes a complete compilation of all rules and regulations of the secretary of corrections and the directors of the state correctional institutions, and (2) the Kansas adult authority shall prepare and file with the revisor of statutes a complete compilation of all rules and regulations of the Kansas adult authority. The rules and regulations compiled and filed under this subsection (a) shall not be required to be accompanied

by fiscal or financial effect or impact statements under K.S.A. 77-416, and amendments thereto.

(b) Until January 1, 1979, and notwithstanding any provisions of K.S.A. 77-415 to 77-436, inclusive, and amendments thereto, all rules and regulations of the secretary of corrections, the directors of the state correctional institutions and the Kansas adult authority which are in force and effect prior to July 1, 1978, shall continue in full force and effect and may be amended, revived or revoked in the manner provided by the law in effect prior to July 1, 1978. On January 1, 1979, all rules and regulations of the secretary of corrections, the directors of the state correctional institutions and the Kansas adult authority in force and effect prior to said date shall be null and void.

(c) On January 1, 1979, the rules and regulations of the secretary of corrections, the directors of the state correctional institutions which are compiled and filed with the revisor of statutes on or before December 31, 1978, in accordance with this section by the secretary of corrections, shall take effect and be in force and shall be the duly adopted temporary rules and regulations of the secretary of corrections. All such temporary rules and regulations of the secretary of corrections and the Kansas adult authority shall be numbered in accordance with the numbering arrangement approved by the revisor of statutes for temporary rules and regulations but shall not be published by the revisor of statutes. On and after January 1, 1979, all temporary and permanent rules and regulations of the secretary of corrections and the Kansas adult authority shall be subject to all of the provisions of K.S.A. 77-415 to 77-436, inclusive, and amendments thereto.

Sec. 21. K.S.A. 77-415 is hereby amended to read as follows: 77-415. As used in ~~this act~~ K.S.A. 77-415 to 77-436, inclusive, and amendments thereto, and section 20, unless the context clearly requires otherwise:

(1) "State agency" means any officer, department, bureau,

division, board, authority, agency, commission, or institution of this state, except the judicial and the legislative branches, which is authorized by law to promulgate rules and regulations concerning the administration, enforcement or interpretation of any law of this state.

(2) "Person" means firm, association, organization, partnership, business trust, corporation or company.

(3) "Board" means the state rules and regulations board established under the provisions of K.S.A. 77-423 and any amendments thereto.

(4) "Rule and regulation," "rule," "regulation" and words of like effect mean a standard, statement of policy or general order, including amendments or revocations thereof, of general application and having the effect of law, issued or adopted by a state agency to implement or interpret legislation enforced or administered by such state agency or to govern the organization or procedure of such state agency. Every rule and regulation adopted by a state agency to govern its enforcement or administration of legislation shall be adopted by the state agency and filed as a rule and regulation as provided in this act. The fact that a statement of policy or an interpretation of a statute is made in the decision of a case or in a state agency decision upon or disposition of a particular matter as applied to a specific set of facts does not render the same a rule or regulation within the meaning of the foregoing definition, nor shall it constitute specific adoption thereof by the state agency so as to be required to be filed. A rule and regulation as herein defined shall not include any rule and regulation which: (a) Relates to the internal management or organization of the agency and does not affect private rights or interest; (b) is an order directed to specifically named persons or to a group which does not constitute a general class and the order is served on the person or persons to whom it is directed by appropriate means. The fact that the named person serves a group of unnamed persons who will be affected does not make such an order a rule or

regulation; (c) relates to the use of highways and is made known to the public by means of signs or signals; (d) relates to the construction and maintenance of highways or bridges or the laying out or relocation of a highway; (e) relates to the curriculum of public educational institutions or to the administration, conduct, discipline, or graduation of students from such institutions; ~~(f) relates to the management, discipline, or release of persons committed to penal or correctional institutions or persons who are placed on probation; (g)~~ (f) relates to the use of facilities by public libraries; ~~(h)~~ (g) relates to military or naval affairs; ~~(i)~~ (h) relates to the form and content of reports, records, or accounts of state, county, or municipal officers, institutions, or agencies; ~~(j)~~ (i) relates to expenditures by state agencies the purchase of materials, equipment, or supplies by or for state agencies, or the printing or duplicating of materials for state agencies; ~~(k)~~ (j) establishes personnel standards, job classifications, or job ranges for state employees who are in the classified civil service; ~~(l)~~ (k) fixes or approves rates, prices, or charges, or rates, joint rates, fares, tolls, charges, rules, regulations, classifications or schedules of common carriers or public utilities subject to the jurisdiction of the state corporation commission, except when a statute specifically requires the same to be fixed by a rule or regulation; ~~(m)~~ (l) determines the valuation of securities held by insurance companies; ~~(n)~~ (m) is a statistical plan relating to the administration of rate regulation laws applicable to casualty insurance or to fire and allied lines insurance; ~~(o)~~ (n) is a form, the content or substantive requirements of which are prescribed by regulation or statute; ~~(p)~~ (o) relates to the exploration for or to the production, conservation or sale of crude oil or natural gas, or to the injection of air, gas, water or other fluid under pressure into oil or gas producing sands, strata or formations for the purpose of recovering the oil and gas contained therein, or to the disposal of oil-field or gas-field brines, mineralized waters

and wastes; or ~~(q)~~ (p) is a pamphlet or other explanatory material not intended or designed as interpretation of legislation enforced or adopted by a state agency but is merely informational in nature.

Sec. 22. K.S.A. 77-421 is hereby amended to read as follows: 77-421. (a) Prior to the adoption of any permanent rule and regulation or any temporary rule and regulation which is required to be adopted as a temporary rule and regulation in order to comply with the requirements of the statute authorizing the same and after any such rule and regulation has been approved by the secretary of administration and the attorney general, the adopting state agency shall give at least fifteen (15) days' notice of its intended action to all parties of interest known to the state agency, to all persons making timely request to the state agency and to the revisor of statutes. The parties to be noticed, in each case, shall be subject to the approval of the attorney general. The notice shall be mailed to the revisor of statutes and to all parties so approved and shall contain a statement of the terms, or the substance of the proposed rules and regulations or a description of the subjects and issues involved. Such notice shall state the time and place of the public hearing to be held thereon and the manner in which interested parties may present their views thereon. Such notice shall be accompanied by a copy of the fiscal or financial impact statement applicable to all proposed rules and regulations which will be considered at such public hearing. On the date of the hearing, all interested parties shall be given reasonable opportunity to present their views or arguments on adoption of the rule and regulation, either orally or in writing. When requested to do so, the state agency shall prepare a concise statement of the principal reasons for adopting the rule and regulation or amendment thereto. The failure of any party to receive notice of a hearing on a proposed rule and regulation shall not invalidate any such rule and regulation subsequently adopted. Whenever a state agency is required by any other

statute to give notice and hold a hearing before adopting, amending, reviving, or revoking a rule and regulation, the state agency may, in lieu of following the requirements or statutory procedure set out in such other law, give notice and hold hearings on proposed rules and regulations in the manner prescribed by this act. Notwithstanding the other provisions of this section, the Kansas adult authority and the secretary of corrections may, but shall not be required to, give notice or an opportunity to be heard to any inmate in the custody of the secretary of corrections with regard to the adoption of any rule and regulation.

(b) No rule and regulation shall be adopted except at a meeting which is open to the public+ and notwithstanding any other provision of law to the contrary, no rule and regulation shall be adopted unless it shall receive approval by roll call vote of a majority of the total membership of the adopting board, commission, authority or other similar body.

Sec. 23. K.S.A. 77-421a is hereby amended to read as follows: 77-421a. Whenever any officer, department, bureau, division, board, authority, agency, commission or institution of this state, except the judicial and the legislative branches, is authorized by law to promulgate rules and regulations concerning the administration, enforcement or interpretation of any law of this state, and such rules and regulations are exempt from the requirements of K.S.A. 77-415 et seq., and amendments thereto, by virtue of the definition of "rule or regulation" in subsection (4) of K.S.A. 77-415, as amended, such rules and regulations shall be adopted in the manner prescribed by K.S.A. 77-421, as amended. This section shall not apply to orders issued by directors of correctional institutions under K.S.A. 75-5256, as amended.

Sec. 24. K.S.A. 75-5256, 77-415, 77-421 and 77-421a are hereby repealed.

Sec. 25. On and after January 1, 1979, K.S.A. 21-4501, 21-4504, 21-4604, 21-4605, 21-4608, 22-3707, 75-5214, 75-5215,

75-5216, 75-5217, 75-5218, 75-5220 and 75-5285 and K.S.A. 1977 Supp. 21-4603, 21-4610, 21-4611, 22-3717, 38-814 and 38-551 are hereby repealed.

Sec. 26. This act shall take effect and be in force from and after its publication in the statute book.

12-203. Mob action; city liability and defenses. A city shall be liable in damages for injuries to persons or property caused by the action of a mob within the corporate limits of the city if the city police or other proper authorities of the city have knowledge of the existence of the mob and have not exercised reasonable care or diligence in the ~~prevention or~~ suppression of such a mob. The city shall have all of the defenses in such action that are available to parties in tort actions. [L. 1967, ch. 80, § 1; July 1.]

may prescribe and dividing the proceeds of such sale.

(d) *Maintenance.* The decree may award to either party an allowance for future support denominated as alimony, in such amount as the court shall find to be fair, just and equitable under all of the circumstances. The decree may make the future payments conditional or terminable under circumstances prescribed therein. The allowance may be in a lump sum or in periodic payments or on a percentage of earnings or on any other basis. At any time, on a hearing with reasonable notice to the party affected, the court may modify the amounts or other conditions for the payment of any portion of the alimony originally awarded that have not already become due, but no modification shall be made, without the consent of the party liable for the alimony, if it has the effect of increasing or accelerating the liability for the unpaid alimony beyond what was prescribed in the original decree.

(e) *Separation agreement.* If the parties have entered into a separation agreement which the court finds to be valid, just, and equitable, it shall be incorporated in the decree; and the provisions thereof on all matters settled thereby shall be confirmed in the decree except that any provisions for the custody, support, or education of the minor children shall be subject to the control of the court in accordance with all other provisions of this article. Matters, settled by such an agreement, other than matters pertaining to the custody, support, or education of the minor children, shall not be subject to subsequent modification by the court except as the agreement itself may prescribe or the parties may subsequently consent.

(f) Life insurance. The decree shall make provisions for disposition of any life insurance policy or contract ~~of the parties, not~~ disposed of ~~at the commencement of the action, whether owned~~ by either spouse prior to marriage, acquired by either spouse in his or her own right after marriage, or acquired by their joint efforts, in a just and reasonable manner. ~~Such decree shall require strict compliance with conditions of the life insurance policy or contract regarding the endorsement of the insured, and strict compliance by the insurer with conditions respecting change of beneficiary.~~

2-22

22.2

rights arising from any

over which the parties have incidents of ownership

~~date of decree~~

acquired

After receiving a certified copy of the decree, the insurer shall make any changes necessitated by the decree and in so doing shall be fully protected. Prior to actual receipt of said copy, the insurer shall be fully protected as to any payments made pursuant to the policy in normal course of business.