

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

Held in Room 519 S, at the Statehouse at 10:00 a. m./p. m., on February 26, 19 79.

All members were present except: Senators Burke, Gaar and Mulich

The next meeting of the Committee will be held at 4:30 a. m./p. m., on February 26, 19 79.

~~These minutes of the meeting held on xxxxxxxxxxxxxxxxxxxxxxxx 19 xx were considered, corrected and approved~~


Chairman

The conferees appearing before the Committee were:

- Paul Purcell - Judicial Council of Kansas
- Sgt. David Hornbaker - Kansas Highway Patrol
- Charles K. Sayler - Kansas Association of Commerce and Industry
- Bill Morrissey - Kansas Division of Workermen's Compensation
- Leo Taylor - Department of Corrections of Kansas

Staff present:

- Art Griggs - Revisor of Statutes
- Jerry Stephens - Legislative Research Department
- Wayne Morris - Legislative Research Department

Senator Berman moved that the minutes of February 8 be approved; Senator Hess seconded the motion, and the motion carried.

The chairman announced to the committee that the eight bills scheduled today were suggested legislation submitted by the Kansas Judicial Council. Paul Purcell from the Kansas Judicial Council staff testified in support of the bills; his statement is attached hereto.

Senate Bill No. 425 - Criminal code area preempted by state.
Mr. Purcell explained the bill. Committee discussion with him followed.

Senate Bill No. 427 - Appeals from municipal court, costs of court appointed counsel. Mr. Purcell explained the reasons for the bill. Committee discussion followed.

Senate Bill No. 428 - Appeals from contempt of court proceedings.
Mr. Purcell explained that this was cleanup legislation.

senate Bill No. 426 - Form for presentence investigation reports.
Mr. Purcell explained the bill.

Leo Taylor from the Kansas Department of Corrections testified with regard to the bill. A copy of his statement is attached.

continued -

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

SB 426

He stated that the presentence investigation report is used to record and evaluate relevant information about each convicted offender. Committee discussion with him followed.

Senate Bill No. 424 - Repealing certain statutes relating to habitual traffic law violators. Mr. Purcell explained the bill. Copies of the statutes to be repealed were distributed. Committee discussion with him followed.

Sgt. David Hornbaker of the Kansas Highway Patrol testified in opposition to the bill. He testified the existing habitual violators act is important and is an added vehicle for the courts to handle habitual violators. Committee discussion followed.

Senate Bill No. 422 - Repealing certain supreme court personnel statutes. Mr. Purcell explained the bill. Committee discussion with him followed.

Senate Bill No. 423 - Workmen's compensation, appeals from district courts, interest and penalties. Mr. Purcell explained the bill.

Keith Sayler testified the bill is equally fair to both sides; there is merit in knowing exactly when and what the court has said.

Bill Morrissey testified he personally does not like the suggestion. He stated that in workmen's compensation matters, the important thing is speed and this bill will extend the time and result in delay in prosecuting appeals. Committee discussion with him followed.

Senate Bill No. 421 - Appeals from certain district court cases. Mr. Purcell explained the bill. Committee discussion with him followed.

The chairman reminded the committee of the working session at 4:30 this afternoon.

The meeting adjourned.

These minutes were read and approved
by the committee on 4-25-79.

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Paul J Purcell	Topeka	Judicial Council
Keith Frank	Topeka	KACIT
David Harshbarger	Topeka	KHP
Arland V. Hibbs	Topeka	KDOT
Frank L. Ross	Topeka	K.C.C.R.
Mike Bailey	Topeka	KCCR
ALLAN H. JONES	"	
Leon Brown	Topeka	KCDAA
Jack Swartz	Topeka	KACI
Leo T. Ray / or	Dept Corrections	
Bill Morrissey	Topeka	Kans. Div. of Workers Comp.
Judy Runnels	Topeka	Ks State Nurses Assoc



JUDICIAL MEMBERS

ALFRED G. SCHROEDER, CHAIRMAN,
TOPEKA
J. RICHARD FOTH, TOPEKA
JAMES J. NOONE, WICHITA
HERBERT W. WALTON, OLATHE

LEGISLATIVE MEMBERS

JOSEPH J. HOAGLAND, OVERLAND PARK
ELWAINE F. POMEROY, TOPEKA

LAWYER MEMBERS

JAMES D. WAUGH, SECRETARY,
TOPEKA
ROBERT H. COBEAN, WELLINGTON
JACK E. DALTON, DODGE CITY
MARVIN E. THOMPSON, RUSSELL

STAFF

RANDY M. HEARRELL
RESEARCH DIRECTOR
PAUL PURCELL
RESEARCH ASSOCIATE
NELL ANN GAUNT
FISCAL & ADMINISTRATIVE ASSISTANT

The Judicial Council of Kansas

Kansas Judicial Center
301 West Tenth Street
Topeka, Kansas 66612

(913) 296-2498

February 26, 1979

TO: Senate Judiciary Committee
FROM: Paul Purcell
RE: Judicial Council Suggestions: S.B. 421 through 428

INTRODUCTION

Senate Bills 421 through 428 are suggested legislation submitted by the Judicial Council to the Legislature via the Senate Judiciary Committee. The suggestions are submitted pursuant to K.S.A. 20-2203, a statute which makes it the continuous duty of the Judicial Council to recommend methods of (a) simplifying civil and criminal procedure (b) expediting the transaction of judicial business and eliminating unnecessary delays therein, and (c) correcting faults in the administration of justice.

With the exception noted below, the state Supreme Court has reviewed the Council's suggestions and, except in the one instance noted, the Supreme Court is in agreement with them.

Any additional information regarding these bills that is needed by the committee that I do not have today can be provided during another hearing or, if the committee desires, to the committee's staff or chairman.

THE SUGGESTIONS

S.B. 421 §1, lines 53-56 (amending K.S.A. 1978 Supp. 2-2452) is cleanup legislation. It would require that appeals from a district court decision regarding a decision of the secretary of the state board of agriculture denying, suspending, revoking or modifying the provisions of any license, registration, permit or certificate issued under the Kansas pesticide law be taken in the same manner as in other civil cases rather than directly to the Supreme Court as the statute now provides.

S.B. 421 §2, lines 244-247 (amending K.S.A. 1978 Supp. 44-709) is cleanup legislation. It would require that appeals from a district court decision regarding a decision by the board of review under the employment security law be taken as in other civil cases rather than directly to the Supreme Court as the statute now provides.

S.B. 421 §3, lines 304-309 (amending K.S.A. 44-1011) is cleanup legislation. It would require that appeals from final orders or decrees of a district court regarding orders of the Kansas Commission on Civil Rights be taken as in other civil cases rather than directly to the Supreme Court as the statute now provides.

S.B. 422 (repealing K.S.A. 75-3122 through 75-3126) would repeal statutes relating to certain employees of the Supreme Court, the Supreme Court reporter and the reporter's employees, and the clerk of the Supreme Court and the clerk's employees. With the exception of the salaries of the law research clerks, all of the matters covered by these statutes now are governed by the Kansas Court Personnel Rules.

With regard to the salaries of the law research clerks, the compensation set by the statute makes the law research clerks the only nonjudicial personnel of the entire state court system (Supreme Court, Court of Appeals, and 105 District Courts) whose compensation is not established in accordance with the salary schedule of the Kansas Court Personnel Rules. The statute, additionally, neither establishes compensation for a third or succeeding year of service nor would it permit a cost of living increase for law research clerks if all other state employees were granted such an increase. In all other matters besides compensation, the law research clerks are governed by the Kansas Court Personnel Rules.

S.B. 423, lines 71-84 (amending K.S.A. 1978 Supp. 44-556) would (a) make uniform the time for filing appeals from a district court decision regarding a workers' compensation claim and the time required for filing appeals in a Chapter 60 civil action; and

(b) with regard to appeals pending on the effective date of the act (publication in the official state paper), clarify the phrase "after the final order of said district court" so that any appeal so pending will be deemed to have been taken within the appropriate time if it was taken within 20 days from the date of the journal entry of judgment. As the phrase is now written, and because of cases such as Dunn v. Kuhlman Diecasting Co., 203 Kan. 670 (1969) and Hensley v. Carl Graham Glass, No. 50,001 (Ks. Ct. of Appls. January 12, 1979), there are problems regarding the time within which appeal must be taken. Dunn held that the worker's compensation act is complete in itself and may not be supplemented by borrowing rules from the code of civil procedure.

Hence, without the benefit of K.S.A. 60-258 and pending legislative clarification, the phrase "after the final order of said district court" is being interpreted to mean "from the date the judge announces the decision and order from the bench" rather than from the date of the journal entry, thus excluding appeals that are filed within 20 days of the journal entry but more than 20 days from the date the decision and order are announced. There are approximately eight cases similar to Hensley pending before the Court of Appeals.

S.B. 424 (repealing K.S.A. 8-284, 8-286 through 8-289, K.S.A. 1978 Supp. 8-285 and 8-290) would repeal the statutes relating to habitual traffic law violators. The basis for the suggestion that the Legislature review the desirability of retaining these statutes is a belief that the statutory scheme permitting administrative or judicial action against traffic law violators is adequate and sufficient without the additional procedures established by the habitual traffic law violators statutes. The existing statutory scheme includes K.S.A. 8-241(Supp.), 8-245, 8-247, 8-250, 8-251, 8-252, 8-253(Supp.), 8-254, 8-255, 8-256(Supp.), 8-258, 8-259, 8-261a, 8-262, and 8-268 among others.

Also as a basis for the Council's suggestion are the questions whether K.S.A. 8-286 is used with enough frequency to justify its retention in light of the availability of other administrative or judicial action and whether K.S.A. 1978 Supp. 8-290 is used in a manner not merely duplicitous of administrative action. Statistical information regarding certification for action pursuant to K.S.A. 8-286 and certification for action pursuant to K.S.A. 1978 Supp. 8-290, however, is not available to the Council and probably can be obtained only from the division of vehicles.

S.B. 425 (new section). The actual wording of this bill has not been reviewed by the Judicial Council or the Supreme Court. The Council suggested, in general terms, state preemption of that part of the criminal law field in which the Legislature acts. The Supreme Court agreed with the suggestion.

The bill, as drafted by Art and me, would make ineffective any county resolution or city ordinance that made criminal conduct that was the same or substantially similar to conduct made criminal by a statute of this state, unless the elements of the crime defined by the resolution or ordinance were identical to the elements of a crime defined by a state statute.

I would like to suggest that the Committee solicit oral or written comments from Chief Judge Foth of the Court of Appeals before acting on this bill. Judge Foth is in Wichita today and was unable to attend the committee meeting. Judge Foth is also a member of the Judicial Council. In general, it is his belief that the language of this bill does not adequately incorporate the suggestion of the Council.

S.B. 426, lines 41-45 (amending K.S.A. 1978 Supp. 21-4604) would eliminate the statutory requirement that presentence investigation reports be in the form and contain the information prescribed by rules and regulations of the secretary of corrections.

After report forms were sent by the secretary of corrections to the administrative judges of the judicial districts in November, 1978, a number of judges indicated that this requirement cannot be met with existing manpower in light of the requirement adopted by the Sixty-seventh Legislature that there be a presentence investigation and report after nearly all felony convictions.

This suggestion came from one of the advisory committees of the Judicial Council at a time when the Council was unable to review it prior to its submission to the Legislature. The suggestion was reviewed by the chairman of the Judicial Council and by the Supreme Court. Both agreed with the suggestion.

In the event it is deemed inadvisable to strike subsection 3, language which might accommodate the needs of the department of corrections and the capabilities of the district courts could be fashioned after the following:

In all cases, presentence investigation reports shall provide as much of the information and be as similar to the form prescribed by rules and regulations of the secretary of corrections adopted in accordance with K.S.A. 77-415 et seq., and amendments thereto, as is possible under the circumstances of each case. The report shall contain such other information as the court prescribes.

S.B. 427 (new section). The subject matter comprising the suggestion underlying this bill was reviewed by the Supreme Court with no action being taken regarding agreement or disagreement with the suggestion. Thus, the bill is presented as a Judicial Council suggestion only.

The bill would require cities to pay the attorney of an indigent defendant who appealed from a municipal court decision in those cases where counsel is constitutionally required. The district court would fix the amount of compensation due the attorney and assess that amount against the city from which the municipal court appeal arose. The city would be able to commence a civil action against the defendant to recoup the costs.

Passage of the bill would fill a void in the law by adopting a procedure that will place the costs of such required counsel upon a city whose ordinances are the reason for the appeal. As a general rule, counties currently are paying the costs, but there is no authority for them to do so. Likewise, there is currently no authority for a city to pay these costs.

(Appeals from municipal court are heard de novo in the district court. K.S.A. 12-4602 and 22-3610. With regard to recoupment, K.S.A. 22-3611 negates the broad requirement of K.S.A. 12-4112.)

S.B. 428, lines 21-25 (amending K.S.A. 20-1205) is cleanup legislation. It would require that appeals from contempt of court convictions be taken as in other civil cases rather than directly to the Supreme Court as the statute now provides.

Chief Judge Foth suggests that the bill as written be amended in line 26 by striking "allowance of an" and inserting in lieu thereof "the filing and service of a notice of".

75-3122. Supreme court employees; salaries. The supreme court is hereby authorized to appoint two (2) bailiffs, each of whom shall receive an annual salary to be fixed by the court; and each justice of the supreme court is hereby authorized to appoint a law research clerk and a secretary who shall each receive an annual salary as provided in this section, and the law research clerk and secretary of the chief justice shall each receive an annual salary as provided in this section. The annual salary of each secretary shall be fixed by the supreme

court within the limitations of appropriations made therefor. The annual salary for each law research clerk appointed prior to the effective date of this act shall be fixed by the supreme court within the limitations of appropriations made therefor. The annual salary for each law research clerk appointed on or after the effective date of this act shall be fifteen thousand dollars (\$15,000) for the first year of service as a law research clerk and sixteen thousand dollars (\$16,000) for the second year of service as a law research clerk.

History: R.S. 1923, 75-3122; L. 1927, ch. 301, § 1; L. 1933, ch. 287, § 1; L. 1937, ch. 334, § 1; L. 1943, ch. 276, § 4; L. 1945, ch. 323, § 8; L. 1947, ch. 418, § 1; L. 1949, ch. 434, § 1; L. 1953, ch. 384, § 1; L. 1957, ch. 449, § 1; L. 1961, ch. 415, § 1; L. 1965, ch. 458, § 17; L. 1968, ch. 290, § 1; L. 1977, ch. 296, § 1; July 1.

Source or prior law:
L. 1905, ch. 488, § 19; L. 1913, ch. 1, § 6; L. 1919, ch. 284, § 35; Revised, 1923.

Research and Practice Aids:
Courts—57(2), 58.
C.J.S. Courts §§ 12, 142.

75-3123. Supreme court reporter. The supreme court reporter shall receive an annual salary to be fixed by the supreme court within the limitations of appropriations made therefor.

History: R.S. 1923, 75-3123; L. 1933, ch. 287, § 2; L. 1937, ch. 334, § 2; L. 1943, ch. 274, § 4; L. 1949, ch. 435, § 1; L. 1953, ch. 385, § 1; L. 1957, ch. 449, § 2; L. 1961, ch. 415, § 2; L. 1965, ch. 458, § 18; L. 1967, ch. 453, § 1; April 27.

Source or prior law:
L. 1864, ch. 95, § 4; L. 1867, ch. 120, § 10; G.S. 1868, ch. 27, p. 303, § 10; L. 1874, ch. 104, § 9; L. 1883, ch. 111, § 1; L. 1905, ch. 488, § 20; L. 1917, ch. 1, § 14; L. 1919, ch. 284, § 36; Revised, 1923.

75-3124. Assistant reporters. The supreme court reporter is hereby authorized to appoint, with the consent of the supreme court, a first assistant and a second assistant reporter (part time), who shall each receive an annual salary to be fixed by the court within the limitations of appropriations made therefor.

History: R.S. 1923, 75-3124; L. 1933, ch. 287, § 4; L. 1937, ch. 334, § 3; L. 1943, ch. 276, § 5; L. 1947, ch. 419, § 1; L. 1949, ch. 435, § 2; L. 1953, ch. 385, § 2; L. 1957, ch.

449, § 3; L. 1961, ch. 415, § 3; L. 1965, ch. 458, § 19; July 1.

Source or prior law:
L. 1905, ch. 488, § 20; L. 1915, ch. 3, § 6; L. 1917, ch. 1, § 14; L. 1919, ch. 284, § 36; Revised, 1923.

75-3125. Clerk of supreme court. The clerk of the supreme court shall receive an annual salary to be fixed by the supreme court within the limitations of appropriations made therefor.

History: R.S. 1923, 75-3125; L. 1933, ch. 287, § 3; L. 1937, ch. 334, § 4; L. 1943, ch. 274, § 5; L. 1949, ch. 436, § 1; L. 1953, ch. 386, § 1; L. 1957, ch. 449, § 4; L. 1961, ch. 415, § 4; L. 1965, ch. 458, § 20; L. 1967, ch. 454, § 1; April 27.

Source or prior law:
L. 1897, ch. 110, § 1; L. 1905, ch. 488, § 21; L. 1909, ch. 139, § 1; L. 1911, ch. 311, § 1; L. 1917, ch. 314, § 1; L. 1919, ch. 284, § 37; L. 1921, ch. 1, § 17; Revised, 1923.

75-3126. Employees of clerk. The clerk of the supreme court, with the consent of the court is authorized to appoint a deputy clerk, an assistant clerk, and a journal clerk and stenographer, who shall each receive an annual salary to be fixed by the supreme court within the limitations of appropriations made therefor.

History: R.S. 1923, 75-3126; L. 1931, ch. 292, § 1; L. 1933, ch. 287, § 5; L. 1937, ch. 334, § 5; L. 1939, ch. 301, § 1; L. 1943, ch. 276, § 6; L. 1947, ch. 420, § 1; L. 1949, ch. 436, § 2; L. 1953, ch. 386, § 2; L. 1957, ch. 449, § 5; L. 1961, ch. 415, § 5; L. 1965, ch. 458, § 21; L. 1968, ch. 290, § 2; March 27.

Source or prior law:
See "Source or prior law" under 75-3125; Revised, 1923.

HABITUAL VIOLATORS

8-234. Public policy of state. It is hereby declared to be the public policy of the state of Kansas:

(a) To provide maximum safety for all persons who travel or otherwise use the public highways of the state;

(b) To deny the privilege of operating motor vehicles on such highways to persons who by their conduct, attitude and record have demonstrated their indifference to the safety and welfare of others and their disrespect for the laws of this state, the orders of its courts and the statutorily required acts of its administrative agencies; and

(c) To discourage repetition of criminal acts by individuals against the peace and dignity of this state and its political subdivisions and to impose increased and added deprivation of the privilege to operate motor vehicles upon habitual violators who have been convicted repeatedly of violations of traffic laws. [L. 1972, ch. 32, § 1; July 1.]

8-285. Definitions. As used in this act, the words and phrases defined in K.S.A. 8-234 shall have the meanings ascribed to them therein, and the term "habitual violator" shall mean any resident or nonresident person who, within the immediately preceding five (5) years, has been convicted in this or any other state:

(a) Three (3) or more times of:

(1) Vehicular homicide, as defined by K.S.A. 21-3405 or as prohibited by any law of another state which is in substantial conformity with said statute;

(2) Driving while under the influence of intoxicating liquor or drugs, as prohibited by K.S.A. 1977 Supp. 8-1567, or as prohibited by an ordinance of any city in this state or by any law of another state, which ordinance or law declares to be unlawful the acts prohibited by said statute;

(3) Driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262 or as prohibited by any law of another state which is in substantial conformity with said statute;

(4) Perjury resulting from a violation of K.S.A. 8-261a or resulting from the violation of a law of another state which is in substantial conformity with said statute;

(5) Violating the provisions of the fifth clause of K.S.A. 1977 Supp. 8-142, relating to fraudulent applications, or violating the provisions of a law of another state which is in substantial conformity with said statute;

(6) Any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(7) Failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602 to 8-1604, inclusive, or required by a law of another state which is in substantial conformity with said statutes;

(8) Violating the provisions of K.S.A. 1977 Supp. 40-3104, relating to motor vehicle liability insurance coverage after the effective date of this act; or

(b) Three (3) or more times, either singularly or in combination, of any of the offenses enumerated in subsection (a) of this section.

History: K.S.A. 8-285; L. 1976, ch. 48, § 2; L. 1977, ch. 40, § 1; July 1.

8-286. Habitual violator; certification of records to the district or county attorney; prosecution of violator; order of court prohibiting operation of vehicle filed with division. Whenever the files and records of the

division shall disclose that the record of convictions of any person is such that the person is an habitual violator, as prescribed by K. S. A. 8-285 the division forthwith shall certify a full and complete abstract of such person's record of convictions to the district or county attorney of the county where such person resides, as disclosed by the records of the division, or if such person is a nonresident, to the district attorney of Shawnee county. Upon receiving said abstract, the district or county attorney forthwith shall commence prosecution of such person in the district court of such county, alleging such person to be an habitual violator. Such court shall cause a summons to be served on the accused, ordering the accused to appear before the court at a time and date stated therein to show cause why he or she should not be convicted of being an habitual violator. At the time and date stated in the summons, the court shall hold a hearing to determine the identity of the accused and the accuracy of the abstract of such person's record of convictions.

If the court finds that such accused person is not the same person as the accused named in such records, or that the convictions are not such as to constitute the accused "an habitual violator" under this act, the prosecution shall be dismissed; but if the court finds that the accused is the same person named in the records certified by the division, the court shall find such person guilty of being "an habitual violator" of the motor vehicle laws of Kansas and shall direct such person by appropriate order not to operate a motor vehicle on the public highways in this state. The clerk of the court shall file with the division a copy of such order which shall become a part of the permanent records of the division. [L. 1972, ch. 32, § 3; L. 1973, ch. 32, § 1; July 1.]

8-287. Same; unlawful to operate vehicle when prohibited; penalties. It shall be unlawful for any person to operate any motor vehicle in this state while any court order declaring such person to be an habitual violator and prohibiting such operation remains in effect. Any person found to be an habitual violator under the provisions of this act who is thereafter convicted of operating a motor vehicle in this state, while the order of the court prohibiting such operating is in effect, shall be guilty of a class E felony. [L. 1972, ch. 32, § 4; July 1.]

8-288. Same; no license issued to convicted violator; petition for restoration of driving privileges. (a) No license to operate a motor vehicle in Kansas shall be issued to a

convicted habitual violator: (1) For a period of three (3) years from the date of the order of the court finding such person to be "an habitual violator"; and (2) until the privilege of such person to operate a motor vehicle has been restored.

(b) At the expiration of three (3) years from the date of any final order of a court finding a person to be "an habitual violator" and directing such person not to operate a motor vehicle in this state, such person may petition the court in which he or she was convicted thereof to have the privilege to operate a motor vehicle in this state restored. Upon such petition, and for good cause shown, the court, in its discretion, may restore said privilege upon such terms and conditions as the court may prescribe, subject to other provisions of law relating to the issuance of operator's or chauffeur's licenses. [L. 1972, ch. 32, § 5; July 1.]

8-289. Appeals from final orders. Any final order of a court entered pursuant to this act shall be appealable in the manner provided for appeals from other final orders of such court. [L. 1972, ch. 32, § 6; July 1.]

8-290. Conviction of ten violations in five years; certification of records to district or county attorney; order of court restricting, suspending or revoking license; filing order with division; application for restoration of driver's license; penalties for operation of vehicle when prohibited. (a) Whenever the files and records of the division shall disclose that any person who, within the immediately preceding five (5) years, has been convicted in this or any other state, ten (10) or more times of violations of statutes of this or any other state, or ordinances of cities of this state, regulating the operation of motor vehicles on the highways within their respective jurisdictions, which violations, including any of the violations enumerated in subsection (a) of K.S.A. 1977 Supp. 8-285, are required to be reported to the division, and the commission of which singularly or in combination with any other offense or

offenses, statutorily authorizes or requires the suspension of the license or privilege to operate a motor vehicle by the division, or the commission of which offenses, singularly or in combination with any other offense or offenses, authorizes a court to impose any such suspension or revocation, the division forthwith shall certify a full and complete abstract of such person's record of convictions to the district or county attorney of the county where such person resides, as disclosed by the records of the division, or if such person is a nonresident, to the district attorney of Shawnee county.

(b) Upon receiving said abstract, the district or county attorney forthwith may commence prosecution of such person in the district court of such county, alleging that such person has been convicted ten (10) or more times in the immediately preceding five (5) years of any of the offenses specified in subsection (a) of this section. Such court shall cause a summons to be served on the accused to appear before the court at a time and date stated therein to show cause why such person's privilege of operating a motor vehicle on the highways of this state should not be restricted, suspended or revoked. At the time and date stated in the summons, the court shall hold a hearing to determine the identity of the accused and the accuracy of the abstract of such person's record of convictions.

(c) If the court finds that the information in the abstract is true and correct and that the accused is the same person named in the records certified by the division, the judge of such court shall enter an order restricting, suspending or revoking such person's privilege of operating a motor vehicle on the highways of this state. If such order places restrictions on any person's license, such person shall be required to carry a certified copy of such order any time such person is operating a motor vehicle on the highways of this state. Any such order shall prescribe the duration of the restrictions, suspension or revocation, which in no event shall be for a period of less than one (1) year nor more than three (3) years.

(d) Upon entering an order restricting, suspending or revoking such person's license hereunder, the judge shall require such person to surrender his or her driver's license to the judge who shall cause the same to be transmitted to the division of

vehicles, together with a copy of the order. In the event such order restricts such person's license, the division of vehicles shall issue without charge therefor a driver's license which shall indicate on the face thereof that restrictions have been imposed on such person's privilege of operating a motor vehicle and that a certified copy of the order imposing such restrictions is required to be carried by the person for whom the license was issued any time such person is operating a motor vehicle on the highways of this state. Said judge shall furnish to any person whose driver's license has been restricted hereunder a certified copy of the order, which shall be recognized as a valid Kansas driver's license until such time as the division shall issue the restricted license as provided herein. If the person whose license has been restricted, suspended or revoked is a nonresident, the judge shall cause a copy of the order to be transmitted to the division who shall forward a copy thereof to the motor vehicle administrator of such person's state of residence.

(e) Upon expiration of the period of time for which a license has been restricted, suspended or revoked pursuant to this subsection, the licensee may apply to the division for the return of the license previously surrendered by such licensee. In the event such licensee's license has expired, such person may apply to the division for a new license, which shall be issued forthwith by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless such person's privilege to operate a motor vehicle on the highways of this state has been otherwise suspended or revoked prior thereto. If any person whose license has been restricted hereunder shall violate any of such restrictions, such person's driver's license or privilege to operate a motor vehicle on the highways of this state shall be revoked for a period of not less than sixty (60) days nor more than one (1) year by the judge of the court in which such person is convicted of violating such restrictions. It shall be unlawful for any person to operate any motor vehicle in this state while any court order suspending or revoking such person's license pursuant to this section is in effect. Any person convicted of operating a motor vehicle in this state while such person's license is suspended or revoked pur-

suant to this section, shall be guilty of a class E felony.

History: L. 1976, ch. 48, § 3; L. 1977, ch. 41, § 1; March 30.

No. 50,001

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

IVA J. HENSLEY, Widow of
ELMER WALLACE HENSLEY, Deceased,
Appellee,

v.

CARL GRAHAM GLASS, a division of
SHERWIN-WILLIAMS, and
LIBERTY MUTUAL INSURANCE COMPANY,
Appellants.

SYLLABUS BY THE COURT

The Kansas Workmen's Compensation Act requires the notice of appeal from the district court to be filed within twenty (20) days from the date the judgment is rendered, not from the date on which the journal entry is filed.

Appeal from Sedgwick district court; PAUL L. THOMAS, associate judge. Opinion filed January 12, 1979. Appeal dismissed.

Douglas D. Johnson, of Kassebaum & Johnson, of Wichita, for the appellants.

George E. McCullough, of McCullough, Wareheim & LaBunker, of Topeka, for the appellee.

Before ABBOTT, P.J., SPENCER and PARKS, JJ.

PARKS, J.: The Liberty Mutual Insurance Company and its insured, Carl Graham Glass (a division of Sherwin-Williams), appeal a Sedgwick County district court order wherein workmen's compensation benefits were granted to the claimant, Iva J. Hensley, widow of Elmer Wallace Hensley, who was an employee of the respondent glass company.

The facts of the occurrence out of which Mrs. Hensley's claim arose need not be detailed because procedural aspects of the case preclude a determination on the merits.

The essential question is whether the notice of appeal filed on April 6, 1978, was timely.

The right to appeal is strictly statutory in nature. It may be limited by the legislature to any class or classes of cases, or in any manner, or may be withdrawn completely. Everett v. Blue Cross-Blue Shield Ass'n, 225 Kan. 63, ___ P.2d ___ (No. 48,957, decided December 9, 1978); Brinson v. School District, 223 Kan. 465, 467, 576 P.2d 602 (1978).

Workmen's compensation procedures in K.S.A. 1978 Supp. 44-556 are complete and exclusive and are not to be supplemented by rules borrowed from the Code of Civil Procedure. Krueger v. Hoch, 202 Kan. 319, Syl. ¶2, 447 P.2d 823 (1968); Magers v. Martin Marietta Corporation, 193 Kan. 137, Syl. ¶1, 392 P.2d 148 (1964); see also Brinson v. School District, 223 Kan. at 468. Section (c) of K.S.A. 44-556 has remained unchanged for more than 40 years:

"[A workmen's compensation] appeal shall be taken and perfected by the filing of a written notice of appeal with the clerk of the district court within

twenty (20) days after the final order of said district court, and thereafter such appeal shall be prosecuted in like manner as other appeals in civil cases. . . ."

It has long been the rule in this state that where an appeal from the district court in a workmen's compensation case is not taken and perfected within 20 days, appellate courts have no jurisdiction to consider it and the appeal must be dismissed. The time in which such an appeal may be taken begins to run from the day the judgment is rendered, not from the date on which the journal entry of judgment is filed. Brower v. Sedgwick County Comm'rs, 142 Kan. 7, Syl. ¶1 and ¶2, 45 P.2d 835 (1935).

Here the notice of appeal shows on its face that the appeal was not timely filed:

"Notice is hereby given that Carl Graham Glass, a division of Sherwin-Williams, respondent, and Liberty Mutual Insurance Company, insurance carrier, appeal from the judgment of this court entered on the 21st day of February, 1978, and filed on the 20th day of March, 1978, to the Court of Appeals of the State of Kansas."

The 20-day appeal period began running on February 21, 1978, and elapsed before the respondents filed their notice of appeal on April 6, 1978. Accordingly, we have no jurisdiction.

The appeal is dismissed.

REPEALED BY S.B. 424

HABITUAL VIOLATORS

8-284. Public policy of state. It is hereby declared to be the public policy of the state of Kansas:

(a) To provide maximum safety for all persons who travel or otherwise use the public highways of the state;

(b) To deny the privilege of operating motor vehicles on such highways to persons who by their conduct, attitude and record have demonstrated their indifference to the safety and welfare of others and their disrespect for the laws of this state, the orders of its courts and the statutorily required acts of its administrative agencies; and

(c) To discourage repetition of criminal acts by individuals against the peace and dignity of this state and its political subdivisions and to impose increased and added deprivation of the privilege to operate motor vehicles upon habitual violators who have been convicted repeatedly of violations of traffic laws. [L. 1972, ch. 32, § 1; July 1.]

8-285. Definitions. As used in this act, the words and phrases defined in K.S.A. 8-234 shall have the meanings ascribed to them therein, and the term "habitual violator" shall mean any resident or nonresident person who, within the immediately preceding five (5) years, has been convicted in this or any other state:

(a) Three (3) or more times of:

(1) Vehicular homicide, as defined by K.S.A. 21-3405 or as prohibited by any law of another state which is in substantial conformity with said statute;

(2) Driving while under the influence of intoxicating liquor or drugs, as prohibited by K.S.A. 1977 Supp. 8-1567, or as prohibited by an ordinance of any city in this state or by any law of another state, which ordinance or law declares to be unlawful the acts prohibited by said statute;

(3) Driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262 or as prohibited by any law of another state which is in substantial conformity with said statute;

(4) Perjury resulting from a violation of K.S.A. 8-261a or resulting from the violation of a law of another state which is in substantial conformity with said statute;

(5) Violating the provisions of the fifth clause of K.S.A. 1977 Supp. 8-142, relating to fraudulent applications, or violating the provisions of a law of another state which is in substantial conformity with said statute;

(6) Any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(7) Failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602 to 8-1604, inclusive, or required by a law of another state which is in substantial conformity with said statutes;

(8) Violating the provisions of K.S.A. 1977 Supp. 40-3104, relating to motor vehicle liability insurance coverage after the effective date of this act; or

(b) Three (3) or more times, either singularly or in combination, of any of the offenses enumerated in subsection (a) of this section.

History: K.S.A. 8-285; L. 1976, ch. 48, § 2; L. 1977, ch. 40, § 1; July 1.

8-286. Habitual violator; certification of records to the district or county attorney; prosecution of violator; order of court prohibiting operation of vehicle filed with division. Whenever the files and records of the

division shall disclose that the record of convictions of any person is such that the person is an habitual violator, as prescribed by K. S. A. 8-285 the division forthwith shall certify a full and complete abstract of such person's record of convictions to the district or county attorney of the county where such person resides, as disclosed by the records of the division, or if such person is a nonresident, to the district attorney of Shawnee county. Upon receiving said abstract, the district or county attorney forthwith shall commence prosecution of such person in the district court of such county, alleging such person to be an habitual violator. Such court shall cause a summons to be served on the accused, ordering the accused to appear before the court at a time and date stated therein to show cause why he or she should not be convicted of being an habitual violator. At the time and date stated in the summons, the court shall hold a hearing to determine the identity of the accused and the accuracy of the abstract of such person's record of convictions.

If the court finds that such accused person is not the same person as the accused named in such records, or that the convictions are not such as to constitute the accused "an habitual violator" under this act, the prosecution shall be dismissed; but if the court finds that the accused is the same person named in the records certified by the division, the court shall find such person guilty of being "an habitual violator" of the motor vehicle laws of Kansas and shall direct such person by appropriate order not to operate a motor vehicle on the public highways in this state. The clerk of the court shall file with the division a copy of such order which shall become a part of the permanent records of the division. [L. 1972, ch. 32, § 3; L. 1973, ch. 32, § 1; July 1.]

8-287. Same; unlawful to operate vehicle when prohibited; penalties. It shall be unlawful for any person to operate any motor vehicle in this state while any court order declaring such person to be an habitual violator and prohibiting such operation remains in effect. Any person found to be an habitual violator under the provisions of this act who is thereafter convicted of operating a motor vehicle in this state, while the order of the court prohibiting such operating is in effect, shall be guilty of a class E felony. [L. 1972, ch. 32, § 4; July 1.]

8-288. Same; no license issued to convicted violator; petition for restoration of driving privileges. (a) No license to operate a motor vehicle in Kansas shall be issued to a

convicted habitual violator: (1) For a period of three (3) years from the date of the order of the court finding such person to be "an habitual violator"; and (2) until the privilege of such person to operate a motor vehicle has been restored.

(b) At the expiration of three (3) years from the date of any final order of a court finding a person to be "an habitual violator" and directing such person not to operate a motor vehicle in this state, such person may petition the court in which he or she was convicted thereof to have the privilege to operate a motor vehicle in this state restored. Upon such petition, and for good cause shown, the court, in its discretion, may restore said privilege upon such terms and conditions as the court may prescribe, subject to other provisions of law relating to the issuance of operator's or chauffeur's licenses. [L. 1972, ch. 32, § 5; July 1.]

8-289. Appeals from final orders. Any final order of a court entered pursuant to this act shall be appealable in the manner provided for appeals from other final orders of such court. [L. 1972, ch. 32, § 6; July 1.]

8-290. Conviction of ten violations in five years; certification of records to district or county attorney; order of court restricting, suspending or revoking license; filing order with division; application for restoration of driver's license; penalties for operation of vehicle when prohibited. (a) Whenever the files and records of the division shall disclose that any person who, within the immediately preceding five (5) years, has been convicted in this or any other state, ten (10) or more times of violations of statutes of this or any other state, or ordinances of cities of this state, regulating the operation of motor vehicles on the highways within their respective jurisdictions, which violations, including any of the violations enumerated in subsection (a) of K.S.A. 1977 Supp. 8-285, are required to be reported to the division, and the commission of which singularly or in combination with any other offense or

offenses, statutorily authorizes or requires the suspension of the license or privilege to operate a motor vehicle by the division, or the commission of which offenses, singularly or in combination with any other offense or offenses, authorizes a court to impose any such suspension or revocation, the division forthwith shall certify a full and complete abstract of such person's record of convictions to the district or county attorney of the county where such person resides, as disclosed by the records of the division, or if such person is a nonresident, to the district attorney of Shawnee county.

(b) Upon receiving said abstract, the district or county attorney forthwith may commence prosecution of such person in the district court of such county, alleging that such person has been convicted ten (10) or more times in the immediately preceding five (5) years of any of the offenses specified in subsection (a) of this section. Such court shall cause a summons to be served on the accused to appear before the court at a time and date stated therein to show cause why such person's privilege of operating a motor vehicle on the highways of this state should not be restricted, suspended or revoked. At the time and date stated in the summons, the court shall hold a hearing to determine the identity of the accused and the accuracy of the abstract of such person's record of convictions.

(c) If the court finds that the information in the abstract is true and correct and that the accused is the same person named in the records certified by the division, the judge of such court shall enter an order restricting, suspending or revoking such person's privilege of operating a motor vehicle on the highways of this state. If such order places restrictions on any person's license, such person shall be required to carry a certified copy of such order any time such person is operating a motor vehicle on the highways of this state. Any such order shall prescribe the duration of the restrictions, suspension or revocation, which in no event shall be for a period of less than one (1) year nor more than three (3) years.

(d) Upon entering an order restricting, suspending or revoking such person's license hereunder, the judge shall require such person to surrender his or her driver's license to the judge who shall cause the same to be transmitted to the division of

vehicles, together with a copy of the order. In the event such order restricts such person's license, the division of vehicles shall issue without charge therefor a driver's license which shall indicate on the face thereof that restrictions have been imposed on such person's privilege of operating a motor vehicle and that a certified copy of the order imposing such restrictions is required to be carried by the person for whom the license was issued any time such person is operating a motor vehicle on the highways of this state. Said judge shall furnish to any person whose driver's license has been restricted hereunder a certified copy of the order, which shall be recognized as a valid Kansas driver's license until such time as the division shall issue the restricted license as provided herein. If the person whose license has been restricted, suspended or revoked is a nonresident, the judge shall cause a copy of the order to be transmitted to the division who shall forward a copy thereof to the motor vehicle administrator of such person's state of residence.

(e) Upon expiration of the period of time for which a license has been restricted, suspended or revoked pursuant to this subsection, the licensee may apply to the division for the return of the license previously surrendered by such licensee. In the event such licensee has expired, such person may apply to the division for a new license, which shall be issued forthwith by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless such person's privilege to operate a motor vehicle on the highways of this state has been otherwise suspended or revoked prior thereto. If any person whose license has been restricted hereunder shall violate any of such restrictions, such person's driver's license or privilege to operate a motor vehicle on the highways of this state shall be revoked for a period of not less than sixty (60) days nor more than one (1) year by the judge of the court in which such person is convicted of violating such restrictions. It shall be unlawful for any person to operate any motor vehicle in this state while any court order suspending or revoking such person's license pursuant to this section is in effect. Any person convicted of operating a motor vehicle in this state while such person's license is suspended or revoked pur-

suant to this section, shall be guilty of a class E felony.

History: L. 1976, ch. 48, § 3; L. 1977, ch. 41, § 1; March 30.

Department of Corrections

State of Kansas



XXXXXXXXXXXXXXXXXXXX

CARL W. TRAMEL, ACTING SECRETARY

535 Kansas Avenue - Suite 200
Topeka, Kansas 66603
(913) 296-3317

February 26, 1979

TO: Senate Judiciary Committee

FROM: Leo Taylor, ~~Deputy Secretary~~, Division of Community Correctional Services

REFERENCE: Proposed Amendment to Senate Bill 426 Concerning Pre-Sentence Investigation Reports, Amending K.S.A. 1978 Supp. 21-4604

The Pre-Sentence Investigation Report is used to record and evaluate relevant information about each convicted offender. It performs the following functions:

- To aid the Court in determining appropriate sentence.
- To aid the Probation Officer in the rehabilitative efforts during the offender's probation period.
- To assist the Department of Corrections' institutions in their classification, treatment programs, and, in release planning.
- To furnish the Kansas Adult Authority with information pertinent to its consideration of parole.
- To serve as a source of pertinent information for systematic research.

The primary objective of the Pre-Sentence Investigation Report is to focus light on the character and personality of the offender, to offer insight into his problems and needs, to learn about his relationships with people, and to discover those salient factors that underlie his specific offense and his conduct in general.

Senate Bill 426 would, in essence, place primary determination regarding both form and content of the pre-sentence investigation report with the sentencing court. Although basic minimum content requirements, as set forth in Section 1, Subsection 2 (Lines 0030 - 0035 inclusive), would still be incumbent to such pre-sentence investigations, consistency of report format in minimum form and content requirements of the Secretary of Corrections are not maintained.

In regard to the impact this legislation would have upon the Department of Corrections, it would appear that the passage of this bill would have the following effects:

- The authority of the Secretary to control consistency in format and content of presentence investigations would be defeated.
- Adequate information concerning community resources available to, and community relationships established by, offenders remanded to the custody

of the Secretary of Corrections would not be guaranteed as available under such a discretionary pre-sentence investigation report format.

- Prior community involvement as regards attempt at intervention with specific offenders might not be related under such discretionary formats.

In summary, it would appear that the best interest of the individual, the courts and the Department of Corrections would be served by retention of the Secretary of Corrections' authority in matters pertaining to the dictation of form and content involved in pre-sentence investigation reports.

For your information and consideration.

DEPARTMENT OF CORRECTIONS
Division of Community Correctional Services
Probation and Parole

PRE-SENTENCE REPORT

NAME:

ADDRESS:

AGE:

DATE OF BIRTH:

S.S.#:

SEX:

RACE:

HEIGHT:

WEIGHT:

CITIZENSHIP:

EDUCATION:

TYPE OF EMPLOYMENT:

MARITAL STATUS:

NO. OF DEPENDENTS:

OFFENSE:

CASE NO.:

JUDGE:

PROSECUTING ATTORNEY:

DEFENSE ATTORNEY:

PRE-SENTENCE INVESTIGATOR:

CO-DEFENDANTS:

DATE OF CONVICTION:

DATE OF SENTENCING:

COPY TO PROSECUTING ATTORNEY:

_____ Date

DEPARTMENT OF CORRECTIONS
Division of Community Correctional Services
MAJOR PRE-SENTENCE INVESTIGATION OUTLINE

PRESENT OFFENSE: (OFFICIAL VERSION)

Describe in non-legal language what happened--date of offense, accomplices, and disposition of charges. (Do not repeat formal charge--use your own words.)

(CLIENT'S STATEMENT) Give this special attention, if it differs from above. If it does not differ, give client's story briefly, either as told to you (if you are able to interview) or to institution social worker (quote it as it appears on institution Fact Sheet or other institution material). Client's statement may show significant factors in attitude.

VICTIM'S STATEMENT: (IF APPLICABLE)

Report the victim's story as told to you or obtained by you from reliable collateral sources. This information could be representative of community sentiment toward the offense.

PRIOR RECORD: (NARRATIVE REVIEW)

List date and disposition of offenses as obtained from local law enforcement sources. Include FBI report, if applicable. (Misdemeanors, too numerous to list chronologically may be described by the general category with the approximate number and span of years indicated. Misdemeanor charges are not always indicative of actual behavior which took place, and these should be checked, if possible, for significant information.)

FAMILY CONSTELLATION: FATHER - MOTHER (NATURAL)

Age, D.O.B., place of birth, education, employment history, intrafamily relationship, social attitudes and conditioning. Statement of health (physical and emotional) and personal problems (i.e. alcoholism, etc.).

OTHER SIGNIFICANT PERSON(S) i.e. relatives, friends that might have influenced offender's life-style.

SIBLINGS: (IF APPLICABLE)

List brothers and sisters in chronological order. Give age, D.O.B., school attainment, status, and any significant information as to personality, behavior, and health problems.

FAMILY UNIT DEVELOPMENT:

History of parents' marriage (date, place), religious affiliations, practices and attitudes, intrafamily relationships (include information as to which parent is dominant and disciplinary, personal conflicts, and sibling rivalry), history of suicides, mental illness, alcoholism, economic sufficiency, and their impact on the family unit. Give appraisal as to attitude of family toward client's offense and commitment. Comment on others who have had a significant part in the development of the family.

PERSONAL HISTORY:

Significant problems in the early development stages should be noted, if applicable.

HEALTH: (SHORT SUMMARY OF PSY. REPORT, VARIED SOURCES)

Underscore health situations which need immediate attention. State history of any long, unusual, or severe illnesses, convulsions, accidents, and operations. Note any social implications resulting therefrom.

EDUCATION:

Schools attended (institutions sometimes obtain grade transcript directly). While adequate information is not always obtainable on older adults, it is usually available on young adults. Emphasize positive or negative factors in school adjustment (attitude toward attendance, teachers, and peer group, academic ability and achievements, extra-curricular interests and achievements). If available, give information as to dates and results of any psychological testing.

EMPLOYMENT:

Dates of employment, reason for leaving jobs, appraisal of work record, job preference, aptitude and work attitudes. Work history can be summarized to show usual type of work, job skills, job stability, etc., and it is very important to know how employers see him/her as a worker and whether or not employment is available if he/she returns to the community within a reasonable time.

PERSONAL ADJUSTMENT:

Current habits of positive or negative nature such as personal hygiene, orderliness, compulsive tendencies, daily routines, excesses, promiscuity, drug addiction, etc. Current attitude and adjustment with and toward peer group; present attitude and adjustment with and toward the opposite sex. Note recreational interests and adjustment. How is leisure time utilized? State avocational interests and aptitudes such as hobbies, music, etc.

ECONOMIC STATUS:

Assets and liabilities; ability to manage own finances. Statement as to source of income other than employment (welfare, VA, Social Security, etc.).

MARITAL: (IF APPLICABLE)

If married, give dates and place of marriage (or indicate if common-law), length of courtship, appraisal of spouse (include age, education, health, religion, social conditioning and attitude toward client and commitment). In describing history of marriage, point up successes and failures, if any. Describe attitudes of client and spouse toward their children. Record and identify children or stepchildren, state their status and situation. If divorced, record divorces (give date, court findings, and any pertinent information). If unmarried, use this space for information on fiancé, if applicable and available. If female client is illegitimately pregnant or

an unwed mother, give any available information on alleged father.

SUMMARY:

Give an overall picture as to the kind of person the individual appears to be. Make a brief subjective analysis and interpretation of how client's personal endowment, environmental factors, social experiences, and his/her reactions thereto have interplayed to produce his/her present situation. State the problems and needs that seem apparent. Avoid the use of psychiatric terminology. Include the attitude of the community toward subject.

RECOMMENDATION:

In some instances, judges do not request recommendations relative to sentencing. However, if such a request is made, suggest basic goals for community readjustment. State Parole Officer's plan for community correctional services for the client and his/her family.

NOTE:

All significant statements relative to the offender should, when possible, be verified. Use the letter "v" for verification after each statement. Use the letters "u.v." for statement that is unverified.