

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Bob Frey at
Chairperson

3:30 ~~xxx~~/p.m. on February 13, 1984 in room 526-S of the Capitol.

All members were present except:

Representative Blumenthal was excused. Representatives Erne and Harper were absent.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes' Office
Nedra Spingler, Secretary

Conferees appearing before the committee:

Kathryn Ramp, Associate Professor of Human Development, University of Kansas, and Co-Director
of the Achievement Place Research Project
Keith Greiner, Attorney from Emporia
Matt Lynch, Judicial Council
David Ryan, Professor, Washburn Law School
Jim Kaup, League of Municipalities

The minutes of the meeting of February 8, 1984, were approved.

Kathryn Ramp, Associate Professor of Human Development, University of Kansas, and Co-Director
of the Achievement Place Research Project, presented a proposal to be introduced as a bill.
Because of a change in the juvenile code, information that is necessary for a research pro-
ject regarding youths who have participated in group home programs is available to her group
only through court order. She requested that the code be amended to its original wording
that allows information from police files to be obtained at the discretion of the court. Ms.
Ramp's statement and suggested change in the statute is attached (Attachment No.1).

In response to questions, Ms. Ramp said her group's project had been funded since 1969 by the
National Institute of Mental Health. Although data obtained from police files is distributed
to various parties, no one affiliated with the project or those receiving the data have ac-
cess to or ever sees the names in the files. The necessary information is pulled by people
in the court system. Representative Douville moved that the proposal be introduced as a
bill, seconded by Representative Solbach. Motion carried. (HB 3049)

SB 509 - An act relating to wills probated outside of the state.

A hearing was held on the bill. Keith Greiner, an attorney from Emporia, said he requested
the bill because of a case involving this particular law that is currently in its third ap-
peal. In two former appeals, the Supreme Court ruled that wills probated in other states
were valid in Kansas only for non-residents, and wills must be signed at the end which makes
Kansas a minority in this regard with other states. He noted 1982 legislation had attempted
to clarify that valid wills probated in other states were valid in Kansas, but wills probated
prior to this act are not retroactive. SB 509 clarifies that any will admitted to probate
outside of Kansas before or after July 1, 1982, is accepted in Kansas. Mr. Greiner hoped it
would be possible to test the legislation in SB 509 when the third appeal is heard. He did
not know if his adversaries in the case knew of the bill's introduction. He knew of no
method of determining how many cases of this sort would be affected by passage of the bill.
Situations where it was never known a person had property until after their death would be
addressed by this bill.

HB 2689 - An act relating to judicial review of agency actions.

Matt Lynch, with Professor David Ryan responding to questions and discussion, reviewed the
amendments to the bill suggested by the Judicial Council (Attachment No.2).

There was discussion regarding the definition of "state agency" on page 2 and if the amend-
ment's intent was to exempt political subdivisions. Mr. Lynch said the intent was that polit-
ical subdivisions be included in the bill and only the legislature and judicial branch of
government be exempt. The question was raised as to why political subdivisions were mentioned
at all in the amendment since this was covered in the definition of "agency" (line 25). The

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,

room 526-S, Statehouse, at 3:30 ~~am~~/p.m. on February 13, 1984.

difference between "agency" and "state agency" was clarified. Representative Miller moved to exempt political subdivisions from HB 2689, seconded by Representative Solbach. Representative Miller believed the bill attempts to encompass too much too soon, and it should be tried on state agencies before local agencies and units of government become involved. His motion was a compromise in hopes of getting the bill passed. Representative Duncan said it would not be known how the bill would apply to local subdivisions unless it is tried, and citizens of the state would not be receiving equal treatment. Representative Knopp made a substitute motion to extend the effective date of July 1, 1985, as it applies to political subdivisions, to July 1, 1986, seconded by Representative Solbach. There were objections to including 4,000 units of local government, none of which had asked for the bill, representatives of local government had not been members of the group writing the bill, and no "little people", for whom the bill was supposed to be intended, had asked for it. The Chairman pointed out statements from the League of Kansas Municipalities and the Kansas Association of School Boards indicate they are neither for or against the bill. The League's concern had been a matter of additional time needed, and "little people" should have recourse if local units do wrong. How the bill would affect eminent domain, the Supreme Court decision regarding the Golden case, and decisions on zoning were discussed. Professor Ryan did not believe these would be affected by the bill.

Representative Justice believed HB 2689 would affect the "little people" the same as the Supreme Court decisions had done in civil rights cases with de novo appeals. He left the meeting in opposition to this and what he believed to be the Committee's stance in this regard.

The vote on the substitute motion carried with eleven members voting in favor.

At the conclusion of the review of Attachment No.2 amendments, Representative Solbach moved that all of the amendments be adopted, seconded by Representative Duncan. Motion carried.

Jim Kaup, League of Kansas Municipalities, said, although he was not overjoyed with action taken on HB 2689, the League could live with it. However, he said he would offer, at a later meeting, an alternative amendment which addresses problems the League thinks exist. Mr. Kaup said excluding political subdivisions from the bill did not matter as they were going to start implementing administrative procedures, but they do need more time.

The meeting was adjourned at 5:10 p.m.



913-864-3446

Attachment No. 1
2-13-84

THE UNIVERSITY OF KANSAS · LAWRENCE, KANSAS · 66045

BUREAU OF CHILD RESEARCH

ACHIEVEMENT PLACE RESEARCH PROJECT

Attachment # 1

Testimony to House Judiciary Committee

February 13, 1984

For the past 10 years my colleagues and I at the University of Kansas have been conducting followup studies on youth who have participated in group home programs throughout Kansas. Our primary measures of impact have been those obtained in the court and police files. In years past we have enjoyed excellent cooperation of court and law enforcement personnel and have had no difficulty in accessing these records. In the most recent code (January 1, 1983), provisions for access to records have been made far more restrictive and as a result our kind of evaluations will be more difficult if not impossible to carry out.

Under the past code, we were able to access court and police records with the approval of the district court judge. Under the most recent code, access would require a court order. This provision might not be a problem if a study was restricted to a single jurisdiction. In our case however, we are dealing with 600 youths across all Judicial Districts, as well as 250 police departments. The difficulties and paperwork involved in obtaining court orders covering all of these juveniles in all of these jurisdictions clearly threatens the completion of our current project in a timely fashion. The restrictive nature of current access provisions also has serious implication for any future studies that might be conducted on court adjudicated juveniles. For example, under the current code, it is not clear that any type of followup evaluation could take place unless it was conducted by court or SRS personnel and only on those youths who continued to be in SRS or institutional custody.

Atch. 1

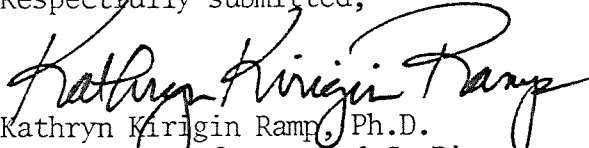
If so, this would seriously effect any attempts to determine the effectiveness of many of our social programs for youth including foster care, group homes, and institutions.

Consequently, we would like to request an amendment to the current code that would provide for legitimate evaluation activities pertaining to juveniles by allowing individual judges to permit access, without formal court order as was provided in the previous code (38-805, b(4)). For the law-enforcement files we would like to recommend that provision be included for access upon completion of non disclosure agreement as specified in the 1976 Kansas Criminal History Records Information Plan.

The Advantages of Expanded Access

1. Allows for legitimate program evaluation activities regarding juvenile offenders on a statewide basis
2. It would provide the district court judges with the same degree of discretion in determining access as with past codes.
3. It would reduce the amount of paperwork and staff time involved in preparation of court orders.

Respectfully submitted,


Kathryn Kirigin Ramp, Ph.D.
Associate Professor and Co-Director
Achievement Place Research Project.

KKR:mj

where the alleged offense was committed. When the dispositional hearing is to be held in a county other than the county where the alleged offense was committed, the adjudicating judge shall transmit the record of the adjudicatory hearing, and recommendations as to disposition, to the court where the dispositional hearing is to be held.

(c) If the adjudicatory hearing is held in a county other than the county of the juvenile's residence, the dispositional hearing may be held in the county in which the adjudicatory hearing is held if the adjudicating judge, upon motion by the complainant or any person authorized to appeal, finds that it is in the best interests of the juvenile offender and the community that the dispositional hearing be held in the county where the act was committed.

New Sec. 64. 38-1606. Right to an attorney. (a) Appointment of attorney to represent juvenile. A juvenile charged under this code is entitled to have the assistance of an attorney at every stage of the proceedings. If a juvenile appears before any court without an attorney, the court shall inform the juvenile and the juvenile's parents of the right to employ an attorney. Upon failure to retain an attorney, the court shall appoint an attorney to represent the juvenile. The expense of the appointed attorney may be assessed to the juvenile or parent, or both, as part of the expenses of the case.

(b) Continuation of representation. An attorney appointed for a juvenile shall continue to represent the juvenile at all subsequent court hearings in the proceeding under this code, including appellate proceedings, unless relieved by the court upon a showing of good cause or upon transfer of venue.

(c) Attorneys' fees. Attorneys appointed hereunder shall be allowed a reasonable fee for services, which may be assessed as an expense in the proceedings as provided in section 38-1613.

New Sec. 65. 38-1607. Court records. (a) Official file. The official file of proceedings pursuant to this code shall consist of the complaint, process, service of process, orders, writs and journal entries reflecting hearings held and judgments and decrees entered by the court. The official file shall be kept separate from other records of the court. The official file shall be open for public inspection as to any juvenile 16 or more years of age at the time any act is alleged to have been committed. The official file shall be privileged as to any juvenile less than 16 years of age at the time any act is alleged to have been committed and shall not be disclosed directly or indirectly to anyone except:

- (1) A judge of the district court and members of the staff of the court designated by the judge;
- (2) parties to the proceedings and their attorneys;

- (3) a public or private agency or institution having custody of the juvenile under court order;
- (4) law enforcement officers or county or district attorneys or their staff when necessary for the discharge of their official duties, and
- (5) any other person when authorized by a court order, subject to any conditions imposed by the order.

(b) Social file. Reports and information received by the court other than the official file shall be privileged and open to inspection only by attorneys for the parties or upon order of a judge of the district court or an appellate court. The reports shall not be further disclosed by the attorney without approval of the court or by being presented as admissible evidence.

New Sec. 66. 38-1608. Records of law enforcement officers and agencies and municipal courts concerning certain juveniles.

(a) All records of law enforcement officers and agencies and municipal courts concerning a public offense committed or alleged to have been committed by a juvenile under 16 years of age shall be kept separate from criminal and other records and shall not be disclosed to anyone except:

- (1) The judge and members of the court staff designated by the judge of a court having the juvenile before it in any proceedings;
- (2) parties to the proceedings and their attorneys;
- (3) the department of social and rehabilitation services or the officers of public institutions or agencies to whom the juvenile is committed;
- (4) law enforcement officers or county or district attorneys or their staff when necessary for the discharge of their official duties; and
- (5) any other person when authorized by a court order, subject to any conditions imposed by the order.

(b) The provisions of this section shall not apply to records concerning:

- (1) A violation, by a person 14 or more years of age, of any provision of chapter 8 of the Kansas Statutes Annotated or of any city ordinance or county resolution which relates to the regulation of traffic on the roads, highways or streets or the operation of self-propelled or nonself-propelled vehicles of any kind;
- (2) a violation, by a person 16 or more years of age, of any provision of chapter 32 of the Kansas Statutes Annotated; or
- (3) an offense for which the juvenile is prosecuted as an adult.

New Sec. 67. 38-1609. Records of diagnostic, treatment or medical facilities concerning juvenile offenders. (a) The diagnostic, treatment or medical records of any juvenile offender shall be privileged and shall not be disclosed except:

(2) any city ordinance or county resolution which relates to the regulation of traffic on the roads, highways or streets, or the operation of self-propelled or nonself-propelled vehicles of any kind, except when such ordinance or resolution violation would also constitute a violation of K.S.A. 8-262, 8-287, 8-1566, 8-1568 or 21-3405 or K.S.A. 1979 Supp. 8-1567.

(f) "Truant" means a child who, being by law required to attend school, absents himself or herself therefrom to the extent of being a truant under the provisions of K.S.A. 1979 Supp. 72-1113, and any amendments thereto.

(g) "Deprived child" means a child less than eighteen (18) years of age:

(1) Who is without proper parental care or control, subsistence, education as required by law or other care or control necessary for such child's physical, mental or emotional health, and the deprivation is not due solely to the lack of financial means of such child's parents, guardian or other custodian;

(2) who has been placed for care or adoption in violation of law;

(3) who has been abandoned or physically, mentally, emotionally abused or neglected or sexually abused by his or her parent, guardian or other custodian; or

(4) who is without a parent, guardian or legal custodian.

(h) "Parent" or "parents," when used in relation to a child or children, include guardian, conservator and every person who is by law liable to maintain, care for or support a child.

(i) "Law enforcement officer" means any person who by virtue of his or her office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

History: K.S.A. 38-802; L. 1975, ch. 33, § 7; L. 1976, ch. 207, § 2; L. 1978, ch. 158, § 1; L. 1979, ch. 122, § 2; July 1.

Law Review and Bar Journal References:

Mentioned in discussion of Kansas law in article on reforming juvenile justice, J. Douglas Irmen, 21 K.L.R. 177, 186, 187 (1973).

Mentioned in "Child Abuse and Neglect: The Legal Challenge," C. Joseph Pierron, 46 J.B.A.K. 167, 168, 177 (1977).

Discussed in "The Amended Kansas Juvenile Code: Can *Parens Patriae* Withstand Due Process?" 18 W.L.J. 244 (1970).

Mentioned in note concerning compulsory school attendance and free exercise of religion, 17 W.L.J. 574, 586 (1977).

Mentioned in "Survey of Kansas Law: Family Law," Camilla Klein Haviland, 27 K.L.R. 241, 252 (1979).

CASE ANNOTATIONS

7. Finding of dependent and neglected child supported by clear and convincing evidence. *In re Bachelor*, 211 K. 879, 880, 883, 508 P.2d 862.

8. Cited in dissenting opinion of case extending procedural due process to school expulsion proceeding. *Smith v. Miller*, 213 K. 1, 21, 514 P.2d 377.

9. Subsection (b) (1) mentioned in holding recourse from juvenile court's findings waiving jurisdiction is direct appeal to district court. *State v. Shepherd*, 213 K. 498, 504, 505, 516 P.2d 945.

10. Findings by court of dependency, neglect and parental unfitness upheld; permanent deprivation of parental rights. *In re Hambleton*, 2 K.A.2d 68, 73, 574 P.2d 572.

11. Minor child found dependent and neglected; 38-816 construed and applied; substantial evidence to support ruling. *In re Hamlett*, 2 K.A.2d 642, 586 P.2d 277.

12. Mere conclusions that child was dependent and neglected and parents unfit inadequate for appellate review; new hearing ordered. *In re Atwood*, 2 K.A.2d 680, 681, 587 P.2d 1.

13. Cited in holding trial court's order severing parental rights was supported by clear and convincing evidence. *In re Kerns*, 225 K. 746, 572, 594 P.2d 187.

JUVENILE FACILITIES AND COURT RECORDS

38-803.

History: K.S.A. 38-803; Repealed, L. 1976, ch. 207, § 34; Jan. 10, 1977.

38-804.

History: K.S.A. 38-804; L. 1974, ch. 176, § 1; Repealed, L. 1976, ch. 207, § 34; Jan. 10, 1977.

38-804a.

Revisor's Note:
Section transferred to 38-554.

38-804b.

History: K.S.A. 38-804b; Repealed, L. 1976, ch. 207, § 34; Jan. 10, 1977.

38-804c.

Revisor's Note:
Section transferred to 38-555.

38-804d, 38-804e.

History: K.S.A. 38-804d, 38-804e; Repealed, L. 1976, ch. 207, § 34; Jan. 10, 1977.

38-805. Court records in proceedings under juvenile code; disclosure; court to furnish certain information. (a) The record in the district court for proceedings pursuant to the Kansas juvenile code shall consist

of the petition, process and the service thereof, orders and writs, and reports and evaluations received or considered by the court. Such documents shall be recorded and kept by the court, separate from other records of the court.

(b) All records, files or other information maintained, obtained or prepared by any officer or employee of the district court in connection with proceedings under the Kansas juvenile code shall be privileged and shall not be disclosed, directly or indirectly, to anyone except:

(1) A judge of the district court and members of the staff of the court designated by a judge of the district court;

(2) parties to the proceeding and their counsel;

(3) a public or private agency or institution providing supervision or having custody of the child under court order;

(4) to any other person when authorized by a judge of the district court, subject to any conditions imposed by the judge; or

(5) a court in which such person is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, officials of penal institutions and other penal facilities to which such person is committed or a parole board considering such person's parole or discharge or exercising supervision over such person.

(c) In order to properly advise the three branches of government on the operation of the juvenile justice system, each district court shall furnish the judicial administrator such information regarding juveniles coming to the attention of the court pursuant to the Kansas juvenile code as is determined necessary by the secretary of social and rehabilitation services and the director of the governor's committee on criminal administration, on forms approved by the judicial administrator.

History: K.S.A. 38-805; L. 1976, ch. 207, § 5; L. 1978, ch. 158, § 2; L. 1979, ch. 124, § 1; July 1.

Law Review and Bar Journal References:

Cited in "Children's Liberation—Reforming Juvenile Justice," J. Douglas Irmen, 21 K.L.R. 177, 179, 185 (1973).

Mentioned in comment concerning impeachment of juvenile witness, 14 W.L.J. 345, 346 (1975).

Cited in "Practicing Law in a Unified Kansas Court System," Linda Diane Henry Elrod, 16 W.L.J. 260, 264 (1977).

CASE ANNOTATIONS

2. Privileged information extends only to records

filed in district court under code; personal testimony admitted; conviction as adult affirmed. *State v. Cox*, 225 K. 143, 145, 587 P.2d 890.

3. Cited in holding probable cause to arrest existed without evidence improperly obtained hereunder. *State v. Stewart*, 225 K. 410, 411, 412, 591 P.2d 166.

4. Applied; question of propriety of delinquency adjudication in lower court not moot; dismissal of appeal reversed. *State v. Bolden*, 2 K.A.2d 470, 472, 581 P.2d 1195.

38-805a, 38-805b.

History: L. 1974, ch. 176, §§ 2, 3; Repealed, L. 1976, ch. 207, § 34; Jan. 10, 1977.

38-805c. Records of governmental entities concerning juvenile offenses; restrictions; disclosure. (a) Neither the fingerprints nor a photograph shall be taken of any child less than eighteen (18) years of age, taken into custody for any purposes, without the consent of the judge of the district court having jurisdiction. When the judge permits the fingerprinting of any such child, the prints shall be taken as a civilian and not as a criminal record.

(b) Except as provided in subsection (c) all records of law enforcement officers or agencies, municipal courts and other governmental entities in this state concerning public offense committed or alleged to have been committed by a child less than eighteen (18) years of age, shall be kept separate from criminal or other records, and shall not be disclosed to anyone, except:

(1) The judge, and members of the court staff designated by the judge, of a district court having the child before it in any proceeding;

(2) the parties to the proceeding and their counsel;

(3) the officers of public institutions or agencies to whom the child is committed;

(4) law enforcement officers of other jurisdictions when necessary for the discharge of their official duties; or

(5) to any other person, when ordered by a judge of a district court in this state, under such conditions as the judge may prescribe.

(c) Subsections (b) and (d) shall not apply to records and files:

(1) Made in conjunction with prosecutions pursuant to the code of criminal procedure;

(2) concerning an offense for which a district court has directed prosecution pursuant to K.S.A. 1978 Supp. 38-808;

(3) concerning a traffic offense described in subsection (e) of K.S.A. 1978 Supp. 38-

HOUSE BILL No. 2689

By Joint Committee on Administrative Rules and Regulations

1-13

0016 AN ACT concerning governmental agency procedures; relating
0017 to judicial review and civil enforcement of agency actions;
0018 amending K.S.A. 60-2101 and K.S.A. 1983 Supp. 75-6207 and
0019 82a-1038 and repealing the existing sections.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 New Section 1. This act shall be known and may be cited as
0022 the act for judicial review and civil enforcement of agency
0023 actions.

0024 New Sec. 2. As used in this act:

0025 (a) "Agency" means a state agency or a political subdivision.

0026 (b) "Agency action" means:

0027 (1) The whole or a part of a rule ^{+ regulation} or an order;

0028 (2) the failure to issue a rule or an order; or

0029 (3) an agency's performance of, or failure to perform, any
0030 other duty, function or activity, discretionary or otherwise.

0031 (c) "Agency head" means an individual or body of individu-
0032 als in whom the ultimate legal authority of the agency is vested
0033 by any provision of law.

0034 (d) "License" means a franchise, permit, certification, ap-
0035 proval, registration, charter or similar form of authorization re-
0036 quired by law.

0037 (e) "Order" means an agency action of particular applicabil-
0038 ity that determines the legal rights, duties, privileges, immuni-
0039 ties or other legal interests of one or more specific persons.

0040 (f) "Party to agency proceedings," or "party" in context so
0041 indicating, means:

0042 (1) A person to whom the agency action is specifically
0043 directed; or

0044 (2) a person named as a party to any agency proceeding or

Attachment No. 2
2-13-84

Atch. 2

0045 allowed to intervene or participate as a party in the proceeding.

0046 (g) "Party to judicial review or civil enforcement proceed-
0047 ings," or "party" in context so indicating, means:

0048 (1) A person who files a petition for judicial review; or,

0049 (2) a person named as a party in a proceeding for judicial
0050 review or civil enforcement or allowed to participate as a party in
0051 the proceeding.

0052 (h) "Person" means an individual, partnership, corporation,
0053 association, political subdivision or unit thereof, or public or
0054 private organization or entity of any character, and includes
0055 another agency.

0056 (i) "Political subdivision" means political or taxing subdivi-
0057 sions of the state, including boards, commissions, authorities,
0058 councils, committees, subcommittees and other subordinate
0059 groups or administrative units thereof, receiving or expending
0060 and supported in whole or in part by public funds.

0061 (j) "Rule and regulation" means a standard, statement of
0062 policy or general order, including amendments or revocations
0063 thereof, of general application and having the effect of law,
0064 issued or adopted by an agency to implement or interpret legis-
0065 lation enforced or administered by such agency or to govern the
0066 organization or procedure of such agency.

0067 (k) "Rulemaking" means the process for formulation and
0068 adoption of a rule and regulation.

0069 (l) "State agency" means any officer, department, bureau,
0070 division, board, authority, agency, commission or institution of
0071 this state, except the judicial and legislative branches, which is
0072 authorized by law to administer, enforce or interpret any law of
0073 this state.

0074 New Sec. 3. (a) On and after July 1, 1985, this act shall apply
0075 to all agencies and all proceedings for judicial review and civil
0076 enforcement of agency actions not specifically exempted by
0077 statute from the provisions of this act. On and after July 1, 1984,
0078 and prior to July 1, 1985, this act shall apply to all agencies and
0079 all proceedings for judicial review and civil enforcement of
0080 agency actions except to the extent that other statutes provide
0081 such procedures for such agency.

of state government and political subdivisions
of the state

0156 law.

0157 New Sec. 12. A person may file a petition for judicial review
0158 under this act only after exhausting all administrative remedies
0159 available within the agency whose action is being challenged
0160 and within any other agency authorized to exercise administra-
0161 tive review, but:

0162 (a) A petitioner for judicial review of a rule and regulation
0163 need not have participated in the rulemaking proceeding upon
0164 which that rule and regulation is based, or have petitioned for its
0165 amendment or repeal; and

0166 (b) a petitioner for judicial review need not exhaust admini-
0167 strative remedies to the extent that this act or any other statute
0168 states that exhaustion is not required.

0169 New Sec. 13. Subject to other requirements of this act or of
0170 another statute:

0171 (a) A petition for judicial review of a rule or regulation may
0172 be filed at any time, except as otherwise provided by law.

0173 (b) A petition for judicial review of an order is not timely
0174 unless filed within 30 days after service of the order, but the time
0175 is extended during the pendency of the petitioner's timely at-
0176 tempts to exhaust administrative remedies.

0177 (c) A petition for judicial review of agency action other than a
0178 rule and regulation or order is not timely unless filed within 30
0179 days after the agency action, but the time is extended:

0180 (1) During the pendency of the petitioner's timely attempts
0181 to exhaust administrative remedies; and

0182 (2) during any period that the petitioner did not know and
0183 was under no duty to discover, or did not know and was under a
0184 duty to discover but could not reasonably have discovered, that
0185 the agency had taken the action or that the agency action had a
0186 sufficient effect to confer standing upon the petitioner to obtain
0187 judicial review under this act.

0188 New Sec. 14. (a) A petition for judicial review ~~must~~ be filed
0189 with the clerk of the court.

0190 (b) A petition for judicial review ~~must~~ set forth:

0191 (1) The name and mailing address of the petitioner;

0192 (2) the name and mailing address of the agency whose action

shall

0230 action in the circumstances.

0231 (d) If subsection (c) does not apply, the court shall grant relief
0232 if it finds, in its independent judgment, that the agency's action
0233 on the application for stay or other temporary remedies was
0234 unreasonable in the circumstances.

0235 (e) If the court determines that relief should be granted from
0236 the agency's action on an application for stay or other temporary
0237 remedies, the court may remand the matter to the agency with
0238 directions to deny a stay, to grant a stay on appropriate terms or to
0239 grant other temporary remedies, or the court may issued an order
0240 denying a stay, granting a stay on appropriate terms or granting
0241 other temporary remedies. As used in this subsection, "appro-
0242 priate terms" may include requirement of a bond.

0243 New Sec. 17. A person may obtain judicial review of an issue
0244 that was not raised before the agency, only to the extent that:

0245 (a) The agency did not have jurisdiction to grant an adequate
0246 remedy based on a determination of the issue;

0247 (b) the agency action subject to judicial review is an order
0248 and the person was not notified of the adjudicative proceeding ~~in~~
0249 ~~substantial compliance with this act;~~ or

0250 (c) the interests of justice would be served by judicial reso-
0251 lution of an issue arising from:

0252 (1) A change in controlling law occurring after the agency
0253 action; or

0254 (2) agency action occurring after the person exhausted the
0255 last feasible opportunity for seeking relief from the agency.

0256 New Sec. 18. Judicial review of disputed issues of fact ~~must~~
0257 be confined to the agency record for judicial review as ~~defined in~~
0258 ~~this act,~~ supplemented by additional evidence taken pursuant to
0259 this act.

0260 New Sec. 19. (a) The court may receive evidence, in addi-
0261 tion to that contained in the agency record for judicial review,
0262 only if it relates to the validity of the agency action at the time it
0263 was taken and is needed to decide disputed issues regarding:

0264 (1) Improper constitution as a decision-making body; or im-
0265 proper motive or grounds for disqualification, of those taking the
0266 agency action; or

_____ shall

0267 (2) unlawfulness of procedure or of decision-making process.
 0268 (b) The court may remand a matter to the agency, before final
 0269 disposition of a petition for judicial review, with directions that
 0270 the agency conduct fact-finding and other proceedings the court
 0271 considers necessary and that the agency take such further action
 0272 on the basis thereof as the court directs, if:

0273 (1) The agency was required ~~by this act or any other provi-~~
 0274 ~~sion of law~~ to base its action exclusively on a record of a type
 0275 reasonably suitable for judicial review, but the agency failed to
 0276 prepare or preserve an adequate record;

0277 (2) the court finds that (A) new evidence has become avail-
 0278 able that relates to the validity of the agency action at the time it
 0279 was taken, that one or more of the parties did not know and was
 0280 under no duty to discover, or did not know and was under a duty
 0281 to discover but could not reasonably have discovered until after
 0282 the agency action, and (B) the interests of justice would be
 0283 served by remand to the agency;

0284 (3) the agency improperly excluded or omitted evidence
 0285 from the record; or

0286 (4) a relevant provision of law changed after the agency
 0287 action and the court determines that the new provision may
 0288 control the outcome.

0289 New Sec. 20. (a) Within 30 days after service of the petition
 0290 for judicial review, or within further time allowed by the court or
 0291 by other provision of law, the agency shall transmit to the court
 0292 the original or a certified copy of the agency record for judicial
 0293 review of the agency action, consisting of any agency documents
 0294 expressing the agency action, other documents identified by the
 0295 agency as having been considered by it before its action and
 0296 used as a basis for its action and any other material ~~described in~~
 0297 ~~this act~~ as the agency record for the type of agency action at issue,
 0298 subject to the provisions of this section.

0299 (b) If part of the record has been preserved without a tran-
 0300 script, the agency shall prepare a transcript for inclusion in the
 0301 record transmitted to the court, except for portions that the
 0302 parties stipulate to omit in accordance with subsection (c).

0303 (c) By stipulation of all parties to the judicial review pro-

required by law

0304 ceedings, the record may be shortened, summarized or orga-
0305 nized.

0306 (d) The court may tax the cost of preparing transcripts and
0307 copies for the record against a party who unreasonably refuses to
0308 stipulate to shorten, summarize or organize the record.

0309 (e) Additions to the record pursuant to section 19 ~~must~~ be
0310 made as ordered by the court.

0311 (f) The court may require or permit subsequent corrections or
0312 additions to the record.

0313 New Sec. 21. (a) Except to the extent that this act or another
0314 statute provides otherwise:

0315 (1) The burden of proving the invalidity of agency action is
0316 on the party asserting invalidity; and

0317 (2) the validity of agency action ~~must~~ be determined in ac-
0318 cordance with the standards of judicial review provided in this
0319 section, as applied to the agency action at the time it was taken.

0320 (b) The court shall make a separate and distinct ruling on
0321 each material issue on which the court's decision is based.

0322 (c) The court shall grant relief only if it determines any one or
0323 more of the following:

0324 (1) The agency action, or the statute or rule and regulation on
0325 which the agency action is based, is unconstitutional on its face
0326 or as applied;

0327 (2) the agency has acted beyond the jurisdiction conferred by
0328 any provision of law;

0329 (3) the agency has not decided an issue requiring resolution;

0330 (4) the agency has erroneously interpreted or applied the
0331 law;

0332 (5) the agency has engaged in an unlawful procedure or has
0333 failed to follow prescribed procedure;

0334 (6) the persons taking the agency action were improperly
0335 constituted as a decision-making body or subject to disqualifica-
0336 tion;

0337 (7) the agency action is based on a determination of fact,
0338 made or implied by the agency, that is not supported by evi-
0339 dence that is substantial when viewed in light of the record as a
0340 whole, which includes the agency record for judicial review,

shall

shall

, ordinance, resolution,

0341 supplemented by any additional evidence received by the court
0342 under this act; or

0343 (8) the agency action is otherwise unreasonable, arbitrary or
0344 capricious.

0345 (d) In making the foregoing determinations, due account
0346 shall be taken by the court of the rule of harmless error.

0347 New Sec. 22. (a) The court may award damages or compen-
0348 sation only to the extent expressly authorized by another provi-
0349 sion of law.

0350 (b) The court may grant other appropriate relief, whether
0351 mandatory, injunctive or declaratory: preliminary or final; tem-
0352 porary or permanent; equitable or legal. In granting relief, the
0353 court may order agency action required by law, order agency
0354 exercise of discretion required by law, set aside or modify
0355 agency action, enjoin or stay the effectiveness of agency action,
0356 remand the matter for further proceedings, render a declaratory
0357 judgment or take any other action that is authorized and appro-
0358 priate.

0359 (c) The court may also grant necessary ancillary relief to
0360 redress the effects of official action wrongfully taken or withheld,
0361 but the court may award attorney's fees or witness fees only to
0362 the extent expressly authorized by other law.

0363 (d) If the court sets aside or modifies agency action or re-
0364 mands the matter to the agency for further proceedings, the court
0365 may make any interlocutory order it finds necessary to preserve
0366 the interests of the parties and the public pending further pro-
0367 ceedings or agency action.

0368 New Sec. 23. Decisions on petitions for judicial review of
0369 agency action are reviewable by the appellate courts as in other
0370 civil cases.

0371 New Sec. 24. (a) In addition to other remedies provided by
0372 law, an agency may seek enforcement of its rule or order by filing
0373 a petition for civil enforcement in the district court.

0374 (b) The petition shall name, as defendants, each alleged
0375 violator against whom the agency seeks to obtain civil enforce-
0376 ment.

0377 (c) Venue shall be determined as in other civil cases.

and regulation

0375 (d) A petition for civil enforcement filed by an agency may
0379 request, and the court may grant, declaratory relief, temporary or
0380 permanent injunctive relief, any other civil remedy provided by
0381 law or any combination of the foregoing.

0382 New Sec. 25. A defendant may assert, in a proceeding for
0383 civil enforcement, any of the following defenses on which the
0384 court, to the extent necessary for the determination of the matter,
0385 may consider new issues or take new evidence:

0386 (a) The rule and regulation or order does not apply to the
0387 party:

0388 (b) the party has not violated the rule or order;

0389 (c) the party has violated the rule and regulation or order but
0390 has subsequently complied, but a party who establishes this
0391 defense is not necessarily relieved from any sanction provided
0392 by law for past violations; or

0393 (d) any other defense allowed by law.

0394 New Sec. 26. Proceedings for civil enforcement shall be
0395 governed by the provisions of section 20 as modified where
0396 necessary to adapt them to those proceedings.

0397 New Sec. 27. Decisions on petitions for civil enforcement
0398 are reviewable by the appellate ~~court~~ as in other civil cases.

0399 Sec. 28. K.S.A. 60-2101 is hereby amended to read as fol-
0400 lows: 60-2101. (a) The court of appeals shall have jurisdiction to
0401 hear appeals from district courts, except in those cases review-
0402 able by law in the district court and in those cases where a direct
0403 appeal to the supreme court is required by law. The court of
0404 appeals also shall have jurisdiction to hear appeals from admin-
0405 istrative decisions where a statute specifically authorizes an
0406 appeal directly to the court of appeals from an administrative
0407 body or office. In any case properly before it, the court of appeals
0408 shall have jurisdiction to correct, modify, vacate or reverse any
0409 act, order or judgment of a district court to assure that any such
0410 act, order or judgment is just, legal and free of abuse. Appeals
0411 from the district court to the court of appeals in criminal cases
0412 shall be subject to the provisions of K.S.A. 22-3601 and 22-3602,
0413 and any amendments thereto, and appeals from the district court
0414 to the court of appeals in civil actions shall be subject to the

courts