Approved March 12, 1984
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Senator Elwaine F. Pomeroy at
Chairperson

10:00 a.m./p.m. on February 16, 1984 in room 514-S of the Capitol.

All members were present except were: Senators Pomeroy, Winter, Burke, Feleciano, Gaar, Gaines, Hein, Mulich, Steineger and Werts.

Committee staff present: Mary Torrence, Office of Revisor of Statutes
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Jim Clark, Kansas County and District Attorneys Association
John Brookens, Kansas Bar Association
Gene Olander, Shawnee County District Attorney
Representative David Heinemann

Senate Bill 690 - Statewide district attorney plan.

Senator Hein explained his bill. He stated it is important to try to keep the concept alive. Representative Barkus has a similar bill on the House side, and we hope we can do something.

Jim Clark testified in support of the bill. A copy of his testimony is attached (See Attachment No. 1). Also, attached is a 1984 Salary Survey and a copy of an ethics opinion rendered by the Kansas Bar Association's Professional Ethics Committee (See Attachments No. 2,3). Mr. Clark discussed the salary survey and stated there are many demands the county and district attorneys' job has, and it has a high turnover. Committee discussion with him followed.

John Brookens stated, from his personal knowledge, county attorneys generally are very much underpaid. Their salaries are set by county commissioners. The county attorney's job in the counties is a full time job, and, why don't they pay them a decent salary? It is not a part-time job. The workload increases each year. Some people think the county extension agent is more important than the prosecutor. Mr. Brookens stated the Kansas Bar Association favors some form of program with some local option. The attorney general's office has sent some people out to the counties to help. People don't realize the time it takes to practise law. The bar favors upgrading the prosecutorial system in the state.

Gene Olander addressed the lack of commitment by this body to the prosecution function of this state. He testified every year we come here and additional laws are passed, and you don't want to provide any funds for the new laws.

Senator Hein added this bill will help this problem

John Brookens added these are state cases we are dealing with. The bar feels this is a state responsibility.

House Bill 2585 - Real estate, barring rights under certain mortgages and deeds of trust.

Representative Heinemann appeared before the committee to explain his bill. He pointed out it is introduced every four years.

This concluded the hearings on Senate Bill 690 and House Bill 2585.

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,

room 514-S, Statehouse, at 10:00 a.m./~~p~~x on February 16, 1984

Staff distributed copies of two memoranda prepared by the research department concerning child abuse and domestic violence and material concerning peace bonds (See Attachments No. 4, 5, 6). Staff then explained the peace bond. Senator Steineger moved to introduce a bill dealing with a peace bond patterned after the old statute. Senator Mulich seconded the motion. Following committee discussion, the motion carried.

The chairman appointed a subcommittee to meet today or tomorrow and review the suggestions and recommendations regarding child abuse and domestic violence. The subcommittee is to report back to the committee which of these suggestions are proper matters for legislation. The members appointed were Senator Winter, chairman; Senator Feleciano and Senator Werts.

Senator Gaar moved to authorize introduction of a bill dealing with the Court of Appeals, being either the recommendations of the Judicial Council or of the ad hoc committee, if the ad hoc committee makes recommendations. Senator Gaines seconded the motion. The motion carried.

Senate Bill 639 - Admissibility of forensic examiner's report.

The chairman reviewed the bill. Senator Hein moved to report the bill favorably; Senator Gaines seconded the motion, and the motion carried.

House Bill 2564 - Increasing penalties for certain violations of laws relating to restraint of trade actions and hazardous waste disposal.

The chairman reviewed the bill. Senator Gaar moved to amend the bill as it was originally, in lines 92 through 96. Senator Feleciano seconded the motion. The motion carried. A committee member pointed out the language in line 144, and suggested inserting the word "deliberately" in place of willfully, wantonly or recklessly. Following committee discussion the consensus of the committee was to wait for action on House Bill 2704.

Senate Bill 142 - Gifts by conservator on behalf of incapacitated person.

The chairman reviewed the bill. Senator Gaines moved to report the bill adversely. Senator Feleciano seconded the motion, and the motion carried.

The meeting adjourned.

2-16-84

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Phil Anderson	—	BUDGET DIV
Tom Fritzlen	Lawrence	Sen. Hess
Marjorie VanBuren	Topeka	OJA
Brenda L. Hoyt	Topeka	AG
[illegible]	Topeka	AG
[illegible]	"	KCDAA
[illegible]	Topeka	Dist atty
[illegible]	"	Kan Bar Assn
[illegible]	"	KBI

Attach. #1

Kansas County & District Attorneys Association
827 S. Topeka Ave., 2nd Floor • Topeka, Kansas 66612 • (913) 357-6351
EXECUTIVE DIRECTOR • JAMES W. CLARK

TO: SENATE JUDICIARY COMMITTEE

FROM: KANSAS COUNTY & DISTRICT ATTORNEYS ASSOCIATION

RE: SENATE BILL 690

The Kansas County & District Attorneys Association has as one of its main goals the improvement of prosecution in Kansas. As part of this effort, we have supported a state-wide system of full-time, professional prosecutors since 1971. Senate Bill 690 would accomplish that goal for us.

Included in our written testimony is a 1984 Salary Survey of our members which shows the gross discrepancy in salary, experience, and (impliedly) competency among the counties. The average salary of county attorneys is $17,132.94, while the minimum education requirement is three years beyond a bachelor's degree. The average 1983 salary of superintendents of school was $36,451.09, yet many of them do not have three years of post-graduate study.

Also included with our testimony is a copy of an ethics opinion rendered by the Kansas Bar Association's Professional Ethics Committee which effectively dampens our ability to earn a significant additional income in private practice.

Certain occurences at the state level have also had a negative impact on our ability to practice privately. Recently the legislature has held hearings on the clogging of our appellate court system, some of which has been attributed to increased appeals in criminal cases.

Atch. 1

#1

For each of these criminal appeals, the State's brief and argument is presented by a county or district attorney.

The recent concern over the drunken driver has also affected our offices, and our private practices. What had been considered a rather minor misdemeanor suddenly became an intense emotional issue. A case that formerly could have been dealt with in a two-hour plea negotiation is now requiring a two-day jury trial.

There are other actions and policies taken by the state which also adversely affect the abilities of county and district attorneys. One of these is the disproportionate amount of state money spent on other aspects of the criminal justice system. For example:

1. We spend approximately $16 million/year on the Kansas Highway Patrol whose principal function is to enforce traffic laws only.

2. We spend $3.5 million/year on aid to indigent defendants charged with felony crimes.

3. Yet we spend nothing on prosecutors who must prosecute traffic, misdemeanor, felony and appeal cases, indigent or not.

We appreciate the fact that the Senate has seen fit in past years to attempt to correct the situation. Frankly, it has always been on the house side where we have had difficulty. In 1984 however, even some members of that body are showing a concern for the situation.

House Bill 2908 is also attached for your information. Of the two measures, Senate Bill 690 is preferred by our Association. We urge you to recommend it favorably for passage.

Attach. #2

Kansas County and District Attorneys Association 1984 SALARY SURVEY

COUNTY	POPULATION	CA/DA SALARY	FULL-TIME	NO.OF YEARS ATTY/PROS.		NO. OF ASSTS.	SALARY RANGE ASSISTANTS	SEC-RETARY	COUNTY COUNSELOR	1984 BUDGET
Allen	15,654	23,040	y	4	4	0	---	1	---	54,600
Anderson	8,750	11,400	n	2	2	0	---	1	---	26,000 *
Atchison	18,000	20,500	n	5.5	3	0	---	1	6,000	45,000
Barber	6,500	16,898	n	3.5	2.5	0	---	.5	---	38,000
Barton	31,000	25,000	n	30	4	3	15,000	4	---	127,000
Bourbon	16,568	15,156	n	13	8	1	9,005	0	---	44,370
Brown	15,000	14,000	n	10	9	1	12,500	1	---	40,000
Butler	40,000	26,500	y	3	3	2	13,200-18,000	2	60 per hr	125,000
Chase	3,400	14,400	n	8	8	1	unpaid	unpaid	---	31,000 *
Chautauqua	5,146	12,854	n	11	4	0	---	1	---	29,000
Cherokee	25,000	19,500	y	4.5	4.5	.5	18,000	1.5	---	51,580
Cheyenne	3,853	11,082	n	5	4	0	---	0	---	18,400 *
Clark	2,900	11,000	n	10	9	0	---	0	---	13,890
Clay	9,802	15,175	n	2.5	.75	0	---	.5	---	27,900
Cloud	20,000	17,320	n	4	3	1	10,466	1	---	76,990
Coffey	9,370	17,400	n	6	.5	0	---	1	---	39,000
Comanche	2,634	12,981	n	8	6	0	---	0	---	19,270
Cowley	37,000	26,200	n	10	5	2	18,000	4	9,162	119,000
Crawford	40,000	24,000	n	3	3	2	14,000	2	---	124,403
Decatur	5,000	12,180	n	8	5	0	---	0	---	15,500
Dickinson	23,000	17,064	n	8	7	1	12,408	1.5	---	62,791 *
Doniphan	9,000	15,840	n	10	7	0	---	.75	---	28,000
Douglas	65,000	48,600	y	9.5	1.5	6	16,500-30,000	6	22,800	350,000
Edwards	4,500	11,400	n	5	3	0	---	1	---	27,000
Elk	4,000	12,600	n	24	20	0	---	.5	---	20,000
Ellis	26,000	19,409	n	6	3	1	15,450	1	---	80,566
Ellsworth	6,514	13,848	n	7	6	1	unpaid	1	---	31,070
Finney	30,000	33,100	y	10	6	2	17,500-23,500	2	---	132,413
Ford	25,000	32,000	y	7	5	2	18,000-20,000	2	---	118,800
Franklin	23,000	17,620	n	7.5	3	.5	11,000	1.5	---	65,340

* additional office allowance/** proposed budget

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COUNTY	POPULATION	CA/DA SALARY	FULL-TIME	NO.OF YEARS ATTY/PROS.		NO. OF ASSTS.	SALARY RANGE ASSISTANTS	SEC-RETARY	COUNTY COUNSELOR	1984 BUDGET
Geary	30,000	35,460	y	9	6	2	12,000-28,500	3	---	130,000
Gove	3,800	18,260	n	7.5	7	0	---	.15	---	18,260
Graham	4,000	12,833	n	8	7	0	---	1	---	27,115
Grant	7,487	31,800	n	14	6	0	---	0	---	45,000
Gray	5,138	15,060	n	8	6	0	---	1	---	28,500
Greeley	2,300	9,300	n	7	3	0	---	.25	---	19,000
Greenwood	8,925	17,624	n	2	.25	0	---	1	---	37,947
Hamilton	3,000	12,060	n	5	5	0	---	.5	---	20,000
Harper	7,740	20,000	n	7	3	0	---	1	---	33,350
Harvey	30,000	16,000	n	8	8	1	24,000	2	60 per hr	56,290
Haskell	4,000	12,678	n	9	8	1	unpaid	.5	6,000	24,875 *
Hodgeman	2,269	12,180	n	12	10	0	---	.5	---	24,000
Jackson	12,000	12,000	n	15	7	0	---	1	---	24,000
Jefferson	15,200	15,600	n	5.5	3	0	---	1	---	60,000
Jewell	5,135	12,885	n	12	7	0	---	1.5	---	32,800
Johnson	260,000	46,860	y	13	7	13	18,636-42,696	20	35,532	985,954
Kearny	3,835	18,850	n	7	7	0	---	1	---	45,300
Kingman	10,000	13,176	n	8	3	0	---	1	---	32,100
Kiowa	4,087	12,000	n	13	11	0	---	1	---	22,000
Labette	25,565	15,691	n	9	8	1	12,542	1	6,000	86,000
Lane	3,350	13,560	n	14	13	0	---	.5	---	32,000
Leavenworth	55,000	23,540	n	19	3	2	16,000-18,000	3	---	126,936
Lincoln	4,085	12,347	n	6.5	4	0	---	1	---	14,000
Linn	8,199	19,560	n	8	3	0	---	1	---	43,986
Logan	3,491	10,971	y	25	3	1	4,971	0	---	14,200
Lyon	35,000	30,000	n	6	1	2	14,500-17,700	3	---	132,300
Marion	16,592	17,136	n	7	3	0	---	1	---	38,200
Marshall	13,148	13,569	n	13	3	0	---	1	---	32,000
McPherson	26,000	20,268	n	3.5	3.5	1	19,296	1.5	8,064	72,625
Meade	5,000	15,600	n	9.5	6.5	0	---	1	---	32,000

* additional office allowance/** proposed budget

#2

#2

COUNTY	POPULATION	CA/DA SALARY	FULL-TIME	NO.OF YEARS ATTY/PROS.		NO. OF ASSTS.	SALARY RANGE ASSISTANTS	SEC-RETARY	COUNTY COUNSELOR	1984 BUDGET
Miami	21,657	21,000	y	3.33	3.33	0	---	1	---	41,848
Mitchell	8,000	14,397	n	8	7	0	---	1	---	33,000
Montgomery	41,337	23,079	y	5.5	3.5	2	15,600-19,344	2	12,000	130,103
Morris	6,500	14,980	n	3.66	3.66	0	---	1	---	30,500
Morton	3,400	16,800	n	7.5	7	0	---	.5	---	25,000
Nemaha	12,000	13,080	n	15	2	0	---	.5	---	38,500
Neosho	17,000	18,000	n	9	9	1	15,000	1.5	---	65,000
Ness	4,700	13,800	n	16	15	0	---	.75	---	22,000
Norton	6,800	12,558	n	7	4	0	---	.5	---	22,000
Osage	15,500	16,285	n	5	3	0	---	1.5	---	36,000
Osborne	5,563	15,072	n	9.5	8.5	0	---	1	---	35,467
Ottawa	5,977	13,476	n	8	7	1	unpaid	.5		25,000
Pawnee	8,000	19,080	n	3	3	0	---	1	---	46,000
Phillips	7,500	15,282	n	8.5	7	0	---	.5	---	29,500
Pottawatomie	13,379	21,120	n	6	3	1	11,400	1	15,600	56,800
Pratt	9,500	14,983	n	20	3	0	---	2	8,400	60,000
Rawlins	4,300	10,820	n	15	10	1	unpaid	0	---	20,000
Reno	70,000	34,000	y	6	4	3	18,000-19,000	2	---	128,000
Republic	9,000	16,365	n	9	8	0	---	1	---	50,000
Rice	11,931	15,077	n	8.5	3	0	---	1	---	44,060
Riley	66,000	28,500	y	10	6	2	15,000-19,000	3	15,975	130,000
Rooks	7,467	19,557	n	11	11	1	10,272	1	---	56,251
Rush	48,000	14,475	n	25	17	0	---	.66	---	36,000
Russell	9,700	17,292	n	20	3	0	---	1	---	54,500
Saline	50,000	32,642	y	9	8	2	19,106-25,591	3	---	132,132
Scott	6,000	11,500	n	10	10	0	---	.5	---	18,000
Sedgwick	371,374	46,860	y	8.5	3	26	19,682-50,843	19	54,384	1,825,719
Seward	19,000	16,049	n	5.5	4.33	1	14,849	2	12,000	81,370
Shawnee	160,000	48,735	y	21	19	12	17,000-38,000	7	34,091	645,000
Sheridan	3,544	11,400	n	15	12	0	---	1	---	15,700

* additional office allowance/** proposed budget

#2

COUNTY	POPULATION	CA/DA SALARY	FULL-TIME	NO.OF YEARS ATTY/PROS.		NO. OF ASSTS.	SALARY RANGE ASSISTANTS	SEC-RETARY	COUNTY COUNSELOR	1984 BUDGET
Sherman	8,000	22,200	n	8	3	0	---	1	---	39,400
Smith	6,000	12,872	n	16	16	0	---	.5	---	30,000
Stafford	5,867	13,968	n	13	3	0	---	0	---	35,917
Stanton	2,400	16,535	n	15	12	0	---	.5	---	29,085 **
Stevens	4,800	18,000	n	8	6	0	---	1	---	38,850
Sumner	25,000	15,000	n	3	3	1	12,200	1	11,163	53,450
Thomas	8,606	18,888	n	7	5	0	---	1	---	43,602
Trego	4,500	13,644	n	9	8	0	---	1	---	32,000
Wabaunsee	6,760	10,899	n	4	3	0	---	1	---	35,000
Wallace	2,300	10,800	n	7.5	6	0	---	1	---	16,200
Washington	8,084	17,000	n	6	3	0	---	.75	---	37,050 **
Wichita	3,200	12,000	n	7	3	0	---	0	---	16,400
Wilson	12,128	16,020	n	8	8	0	---	1	---	39,700
Woodson	5,000	15,324	n	6	4	1	Unpaid	.5	---	28,500
Wyandotte	180,000	49,200	y	17	17	16	21,000-33,000	14	27,195	883,083
TOTAL	2,451,711	1,953,549		978.5/622.32		122	4,971-50,843	172.81	284,364	9,564,308

Full-Time 16/Part-Time 89

Average county attorney salary $17,132.94
Average CA's years of experience Attorney 9.10/Prosecutor 5.75
Average county counselor salary $17,772.75

* additional office allowance/** proposed budget

Attach. #3

KANSAS BAR ASSOCIATION

PROFESSIONAL ETHICS COMMITTEE—
ADVISORY SECTION
William S. Mills, Chairman
Box 1244
McPherson, Kansas 67460
(316) 241-7333

83-37

December 7, 1983

You have written our committee with the following question:

Is it permissible for lawyers to engage in criminal defense work outside of their home county, when a partner (or member of their firm) is the County Attorney in their home county?

You also ask whether it is permissible for lawyers to practice in Municipal Courts throughout their county in which the County Attorney and/or their partner has no jurisdiction nor authority.

The committee feels that a County Attorney, notwithstanding the limited name of his office, is the State's attorney for and on behalf of all of the people of the State of Kansas. By this, while he may be limited to prosecuting crimes to a particular county, his duty is to protect and defend all citizens of the State of Kansas from criminal activity. By this, for example, a transient in a particular county may be robbed at gunpoint - and the County Attorney will prosecute the offender for the act which occurred in that territorial jurisdiction - even though it has affected a non-resident of his county. Thus, in a very broad sense, the County Attorney is the people's representative in each

Atch. 3

individual county for the prosecuting of criminal activity.

With this backdrop, we direct your attention to Canon 9 which states, in very broad terms, that a lawyer (the County Attorney in this case) should avoid even the appearance of professional impropriety. It would appear improper for the County Attorney to prosecute on behalf of the State of Kansas criminal activity in one county, and then to drive a few miles to another court's jurisdiction and then to represent criminal defendants. Thus, as a blanket policy, a fulltime County Attorney may not ethically represent criminal defendants in any court in which the State of Kansas is plaintiff.

Insofar as representing criminal offenders in which a city ordinance only has been violated, our Committee feels that the broad spectrum of Canon 9 would likewise apply to that situation. The County Attorney should avoid even the appearance of professional impropriety. By this, it would seem to appear improper to a layman for the chief law enforcement officer within the county (the County Attorney) to take a position which would be in direct conflict with law enforcement officers of the various municipal entities within that county. Furthermore, it would tend to diminish the relationship between the County Attorney and the various local officers. Thus, for broad principal reasons, we feel that a County Attorney is barred from representing any defendants in the county where he is County Attorney.

Our Committee further directs your attention to DR 5-105(D) which states, in essence, that if a lawyer is required to decline employment ". . . no partner or associate of his or his firm may accept or continue such employment". Thus, partners or associates of fulltime County Attorneys are likewise barred.

I trust this adequately answers your inquiry. While we realize that our stand may have difficult ramifications upon sparcely populated areas of western Kansas, we feel that broad principles of professional propriety must outweigh any purported "practical problems".

Very truly yours,

William S. Mills
Chairman, Professional Ethics Committee
Advisory Section

WSM:cs

2-16-84
Attach # 4

MEMORANDUM

February 7, 1984

TO: Senate Judiciary Committee

FROM: Kansas Legislative Research Department

RE: Legislative Recommendations Regarding Child Abuse

The following is a list of legislative suggestions made by conferees during recent hearings on the issue of child abuse. The list includes the suggestion and the person or organization making it. A separate listing is made for funding suggestions.

1. Extend the time frame for Department of Social and Rehabilitation Services (SRS) involvement in child abuse cases, -- Andrea Hickerson, Parents Anonymous.

2. Amend the Kansas Code for Care of Children in K.S.A. 38-1524(a) and K.S.A. 38-1527(b) to replace the "imminent danger" standard used by law enforcement officers to determine whether to take a child into custody to a standard of where the "safety of a child is threatened" -- Jim Baze, Topeka Area SRS Office. Brent Cain, SRS, urged clarification also. (See Attachment I.)

3. Amend K.S.A. 38-1542(c) to insure the parental rights of nonabusive parents are protected by permitting a court to place custody of an abused child with a natural parent or custodian who has legal custody of the child and who can assure the child's safety -- Jim Baze, SRS.

4. Clarify what children the state will and will not assume financial responsibility for placing in out-of-home care -- Jim Baze, SRS.

5. Permit expert testimony regarding "sexually abused child syndrome" on rebuttal where: (1) the defendant takes the stand and impeaches the victim-witness' credibility; or (2) the victim subsequently recants her testimony -- Jean Sagan, Lawrence Attorney.

Atch. 4

6. Mandate a diversion program for interfamily abuse where: (1) the perpetrator's actions were nonviolent; (2) the perpetrator has no prior conviction and is not currently on diversion; (3) there is a CNC action pending; (4) the perpetrator admits and is willing to undergo intensive counseling; and (5) the victim and spouse are willing to participate in the counseling program -- Jean Sagan.

7. Amend the Code for Care of Children to give the court authority to remove the alleged perpetrator from the home where appropriate, rather than the child -- Jean Sagan.

8. Create degrees of child abuse, perhaps child abuse and aggravated child abuse. Amend the present law to include intentionally inflicting injury on a child or battery of a child by an adult -- Jean Sagan.

9. Amend the crime of endangering a child to specifically include a parent who knows or should reasonably know that physical or sexual abuse is occurring and who either fails to remove the perpetrator from the home or report the abuse to authorities -- Jean Sagan.

10. Lengthen the statute of limitations for sexual abuse to ten years. The child usually does not report the incidents until much later, and there is seldom any physical evidence to be preserved -- Jean Sagan.

11. Mandate education at the elementary school level regarding children's rights and recourses concerning their own bodies. Too often children do not know that what is being done to them is not done to everyone, and if they do, they do not know where to go or what to do. They need to know that they will be believed, too. Provide funds to implement the program, or require the school system to coordinate it through existing means -- Jean Sagan.

Brent Cain, SRS, also requested legislative support for parent and child educational programs.

12. Mandate the posting of the mandatory reporting law (38-1522) in a prominent place in all schools, hospitals, health care facilities, child care facilities, social service and law enforcement agencies, ambulance and fire stations, and other appropriate places -- Jean Sagan.

13. Require the appointment of an attorney guardian ad litem in all divorce cases where child custody is in issue -- Jean Sagan.

14. Permit law enforcement officers to take into custody and hold runaway children for 24 hours. -- Judge Mike Elwell, Lawrence. (See Attachment II.)

15. Require the filing of a copy of a birth certificate with the filing of a petition for a nonagency adoption to prevent adoption of abducted children or the concealment of an adoption from a natural parent -- Judge Elwell. (See Attachment III.)

16. Establish a central repository in the Kansas Bureau of Investigation on missing persons and unidentified deceased persons -- Judge Elwell. (See Attachment IV.)

17. Give a custody preference to relatives in the Code for Care of Children -- Suzanne Hardin, Johnson County Coalition for Prevention of Child Abuse. (See S.B. 614.)

18. Permit grandparents' visitation rights if custody is awarded to a person other than a child's parent under the Code for Care of Children -- Suzanne Hardin. (See S.B. 615.)

INCREASED FUNDING SUGGESTIONS REGARDING
CHILD ABUSE AND NEGLECT

1. Add 17 protective service positions for the Family Support Worker Program in the FY 1985 SRS budget -- Robert Barnum, Youth Services Commissioner, SRS; Jim Baze, SRS.

2. Insure FY 1984 SRS funding for out-of-home placement for abused and neglected children does not run out -- Judy Scully, Kansas Association of Licensed Child Care Agencies.

3. Support funding for crisis counseling programs, especially in the home -- Jim Baze, SRS.

MH

Attachment I

Jim Baze
Topeka cc SRS
233-6511

#4

Format for Testimony
January 31, 1984

Relating to: Child Abuse/Neglect Issues

My testimony today comes primarily from a local perspective. I am a section supervisor for the Topeka Area Office of SRS and supervise SRS Child & Family Services in Lawrence, Kansas.

My testimony will be in two parts. First a couple of recommendations for minor revisions of the Juvenile Code and second, some comments about local trends and their implications for the funding out of home care if Abused/Neglected children.

A. Code Change Recommendations

1. "Imminent Danger" KSA 1982 Supp. 38-1524(a)
KSA 1982 Supp. 38-1527(b)

I believe the words "Imminent Danger" used in the statutes cited above are too inhibiting to Law Enforcement Officers who should be encouraged and allowed by law to act prudently to assure the safety of children rather than only acting on behalf of children who are obviously in "imminent danger." For example, an officer who has just settled a violent family dispute precipitated by heavy drinking might feel the temporary placement of children out of that home would be a prudent act to assure their safety for the night. The language of the current code that states "imminent danger" must exist, however, might cause some officers to hesitate in the situation described above. I would recommend specific changes as follows:

a. In 38-1524(a), sentence one, the phrase ". . . a child in imminent danger," would be changed to ". . . the safety of a child is threatened,. . ."

b. In 38-1524(a), sentence two, the phrase ". . . child in imminent danger, . . ." becomes ". . . child's safety is at risk. . ."

c. In 38-1527(b), the phrase ". . . an imminent danger to. . ." would be replaced by ". . . a threat to the safety of . . ."

2. Dispositional Options for Ex Parte (KSA Sec. 35, 38-1542) and Temporary (KSA Sec. 36, 38-1543) Custody Orders Should be Expanded

In the course of investigating child abuse/neglect complaints, we are finding more families where divorced parents have joint custody of their children. One of these parents may commit

a serious act of abuse while the other custodial parent demonstrates no behavior that would warrant abridging their rights. Currently, if it becomes necessary for a Judge to issue an Ex parte order (and often subsequently a Temporary Order) of protective custody, he/she only has three dispositional alternatives under the current code:

(1) Some person, other than the parent. . . (2) a youth residential facility; or (3) the Secretary.

Thus the child is often put in the custody of the secretary with physical custody to the non-perpetrator parent when in fact the custody of the child should go directly to the non-perpetrator natural parent. There is no need to abridge the parental rights of the non-perpetrator parent or legal custodian.

I would recommend the specific change as follows:

a. In KSA Sec. 35, 38-1542 (c) (1) omit the phrase ", other than the parent or other person have custody,"

b. Create a new option, perhaps becoming new option #2, which states:

(2) With a natural parent or custodian who has legal custody of the child in question and who can reasonably assure the safety of the child.

B. Funding Concerns

To deal with the increasing demands on limited placement resources (92% increase in the number of children in group residential care in Lawrence, Kansas 10/82 to 1/84), we must continue to look at positive alternatives to out of home care for children.

1) We must expand funding to the family support worker program. It has proved to be an effective tool to both maintain "at risk" children in their own home as well as facilitate the early return to their natural home, of children who have been removed due to confirmed child abuse/neglect.

2) We need to support funding for programs which provide effective crisis counseling, especially those programs that provide counseling in the family home where the dynamics that lead to the abuse can be most clearly seen. (Currently medicaid will not reimburse such in-home counseling of families.)

While looking to expand prevention efforts we cannot, however, afford to immediately and concurrently place unrealistic limits on funds necessary to place the children who cannot be safety left in their natural homes.

Currently, Foster Care funds are allocated to the 17 SRS

administrative areas based on the expenditures of the previous fiscal year. The administrative expectation is that SRS management areas will stay within their allocation. SRS Administrators are evaluated, in part, based on their success in staying under budget. This is not an unusual practice, and in general, it encourages careful and ongoing examination of program expenditures.

There does not, however, seem to be adequate allowance made for legitimate increases in the demand on foster care funds such as that which occurred in Lawrence and Topeka during fiscal year 1984. In the face of increased demand such as that which occured in Lawrence (92% increase in children who needed placement in residential care from 10/82 to 1/84), the only concrete alternative left is to "reprioritize" which children go into or remain in placement. As we have been "reprioritizing" for the last three years there is not much fat left to trim. Thus the Topeka Area Office is left with several unpleasant options:

(a) Moving children out of placement earlier than planned risking premature return of children to their natural homes;

(b) Resisting the placement of new children in out of home placement, again increasingly running the risk of violating the standards of good child welfare practice; and

(c) Notifying providers that we cannot meet our obligations for the entire 1984 fiscal year.

There are no villians or dragons to be slain here, simply an extremely complex situation that demands a more sophisticated solution. Unlike a program with a concrete means test such as General Assistance, a child's "eligibility" for out of home placement involves a decision commonly made in a staffing with the input of many community professionals. Thus an SRS child welfare social worker or supervisor cannot unilateraly modify "eligibility standards" to match the availability of a predetermined level of foster care funding.

To oversimplify a complex solution, there are two general steps to be taken on the way to solving this problem.

(1) Clarify for <u>everyone</u> involved in making placement decisions what children the State of Kansas will and will not assume the financial responsibility for placing in out of home care. This will always be a relatively subjective decision but more can be done to develop a multi-agency standard for making placement decisions.

(2) When we get a better state wide concensus on which children should be placed in out of home care, it should then follow that funding will be provided to meet the legitimate need should a documented increase occur. If no such funds are available, changes in placement criteria should be made at a state level, not by individual child welfare social workers.

Amend #4

38-1528 Missing or Runaway Children - Duties of Officers

(a) When a report to a law enforcement agency indicates that a child is missing or a runaway and that child is subsequently located by a law enforcement officer, that officer (shall) or (is authorized) [choose one] to take said child into custody and deliver that child to a court designated shelter facility, court services officer or other person who shall immediately notify the child's parents or nearest relative, guardian, or lawful custodian to come pick up the child. The shelter facility or other person designated by the court who has custody of the child shall discharge the child not later than 24 hours after being taken into custody, unless a court has entered an order pertaining to temporary custody or release.

If, after delivery of the child to a shelter facility, the person in charge of the shelter facility at that time and the law enforcement officer determine that the child will not remain in the shelter facility, the law enforcement officer shall deliver the child to a juvenile detention facility, designated by the court, where the child shall be detained for not more than 24 hours unless a court has entered an order pertaining to temporary custody or release. It shall be the law enforcement officer's responsibility to immediately notify the child's parents or nearest relative or guardian to come pick up the child if that child is being held in a detention facility.

(b) Whenever a child reported as missing or a runaway under the age of 18 years is taken into custody by a law enforcement officer without a court order and is thereafter placed in the custody of a shelter facility, court services officer, detention facility, or other person as authorized by this code, the facility or person shall have physical custody and provide care and supervision for the child upon written application of the law enforcement officer. The application shall state:

(1) The name and address of the child, if known;

(2) the names and addresses of the child's parents or nearest relatives and persons with whom the child has been residing, if known; and

(3) the situation and circumstances of where the child was found and in whose company, if any.

(c) A copy of the application shall be furnished by the facility or person receiving the child to the county or district attorney without unnecessary delay.

(d) In absence of a court order to the contrary, the court or district attorney or the placing law enforcement agency or court services officer shall have the authority to direct release of the child at any time to the parents, relative, guardian, or lawful custodian.

Judge Elwell Attachment III

#4

ADOPTION

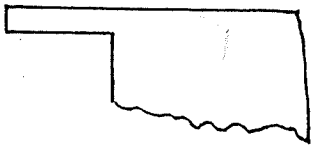
In order to prevent adoption of children who have been abducted or children whose adoption is being concealed from a natural parent it shall be required that at the time of filing a petition for a non-agency adoption that a copy of the birth certificate be attached to the petition if the child is more than 6 months old or that it be filed prior to the final order of adoption if the child is under 6 months of age and that a copy of the report of adoption be sent to the same agency as shown on the birth certificate after the adoption is finalized.

PROBLEM

A step parent or person who has custody of an abducted child may publish notice of adoption and sign an affidavit that the natural parents' whereabouts is unknown and legally adopt this child.

By requiring the birth certificate you could see if in fact a parent was unknown, also you wouldn't be able to adopt an abducted child because you would not have a birth certificate and if you got a fake one - when the Court sent in a notice confirming an adoption the state receiving it would notify you that they had no such birth certificate of record. Also it would provide a way of tracing back to the court that is hearing the adoption if the adoption was being concealed from a natural parent.

STATE OF OKLAHOMA



MISSING PERSON/UNIDENTIFIED DECEASED #4 PROGRAM

I. INTRODUCTION

The United States has an estimated one million persons reported missing each year. Thousands of these missing persons will become the nation's unidentified deceased. As of this date; no central repository for information on missing persons or unidentified deceased persons exists in Oklahoma.

The Oklahoma State Bureau of Investigation has designed a computer program that will effectively serve as the central repository for such information for Oklahoma. The program is based on data entry information received from law enforcement agencies in Oklahoma and will have two primary functions: (1) Comparison of unidentified deceased reports with missing person files. If similarities develop, the information would be forwarded to the State Medical Examiner's Office for positive identification of victim. (2) Receipt of verified missing persons reports. A systematic, standardized program on missing persons, juvenile and adult, would be available to all law enforcement agencies in Oklahoma.

On October 12, 1982, the President of the United States signed the Missing Children Act which establishes a national clearing house for identification of missing children. The Federal Bureau of Investigation was granted the authority to accept information from the parent of a missing child and enter it into the National Crime Information Center Computer. The Oklahoma State Bureau of Investigation's program will serve a secondary function by cooperating with the Federal Bureau of Investigation in exchanging information on missing children for comparison on a national level.

In order to effectuate this much needed program, the support and cooperation of Oklahoma law enforcement agencies is imperative. Through the combined efforts of us all, a missing child or adult could be located or identified.

Sincerely,

Tom Kennedy

TOM KENNEDY
Director

II. EXPLANATION OF FORMS

A. Missing Person/Unidentified Deceased Report Form

The purpose of the report is to collect information on missing persons and unidentified human remains. The information will be entered into a computer and a comparison made for any similarities. It is understood that some of the information can not be provided; however, the more data provided the possibility of a match increases.

(1) Missing Person Report---The report will be compared to unidentified deceased and also provide local law enforcement agencies with a centralized missing persons file for an immediate verification and identification on runaways and amnesia victims.

It is recommended that when the family or acquaintance reports a person missing the agency provide the form to the reporting party. When the person has been missing for fifteen (15) days the reporting party can then submit the completed report to the agency.

The dental charting should be acquired by the family from the missing person's dentist. All efforts should be made to acquire the dental information, if however, there are not any records or the records are unatainable the missing person report should still be submitted to the OSBI.

The white copy is retained by the submitting agency; remaining copies are submitted to the OSBI. Additional information or further explanations should be submitted on a plain sheet of paper. If any reports are submitted directly to the OSBI, the white copy will be forwarded to the law enforcement agency where the report should have originated.

(2) Unidentified Deceased Report---Physical and dental information should be gathered and provided by the State Medical Examiner's Office. The white copy is retained by the Medical Examiner's Office and the other copies are submitted to the OSBI.

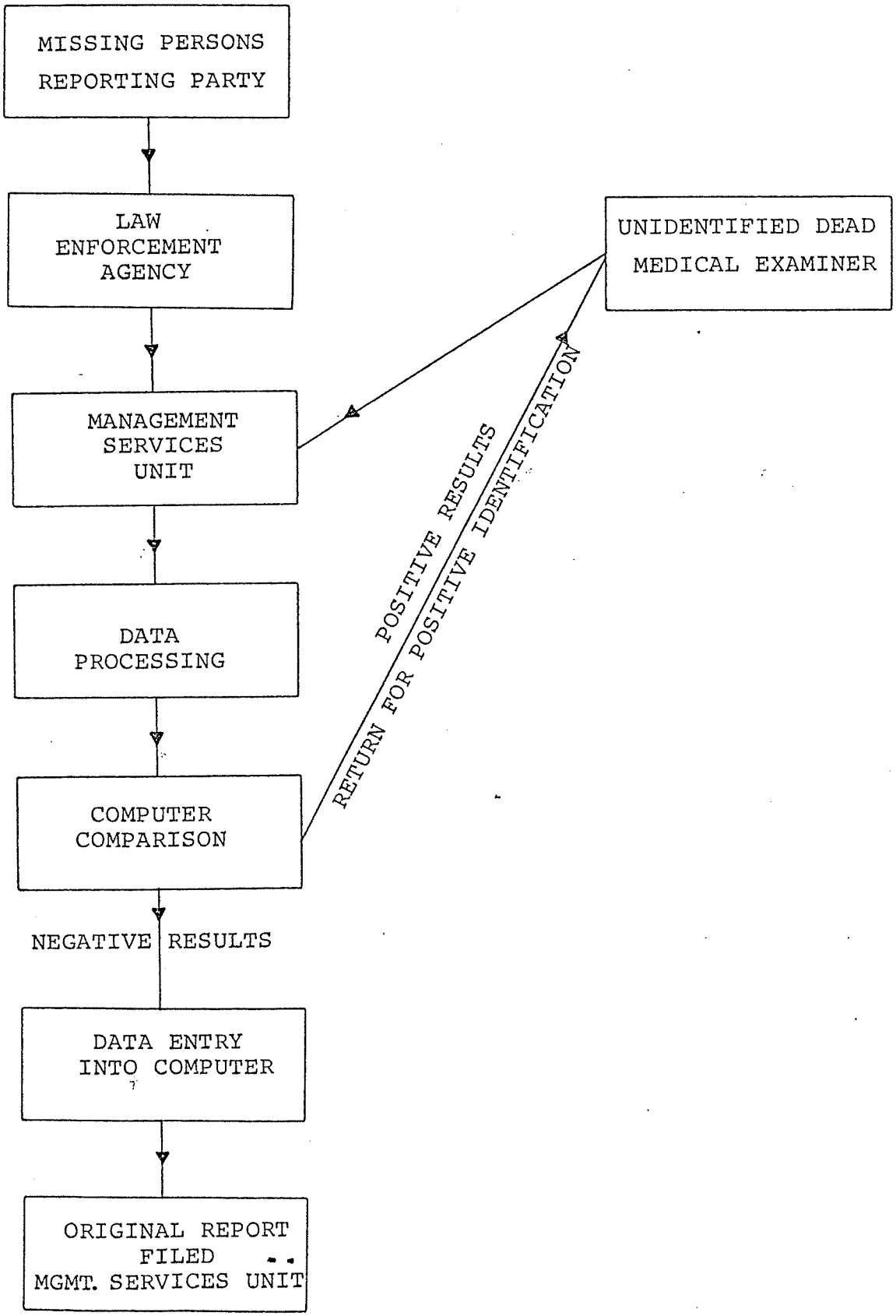
B. Request for Dental Records Form

The form is a legal release to relieve the family's dentist of his legal obligations. The form already notarized, should be presented by the family at the time of the dental information request. The white copy is retained by the dentist; the yellow copy is submitted to the OSBI.

C. Missing Person Cancellation Form

The form is to be forwarded to the OSBI by the family or the submitting law enforcement agency when a reported missing person has been located or identified. Upon notification, the OSBI will cancel the missing person with the appropriate law enforcement agencies.

III
MISSING PERSONS
and
UNIDENTIFIED DECEASED
PROCESS CHART



IV. ACKNOWLEDGEMENTS

A special thanks to Dr. Richard Glass for his encouragement and assistance in the development of the dental portion of the Unidentified Deceased Report.

A. J. Chapman, Chief Medical Examiner, State Medical Examiner's Office, Oklahoma City, Oklahoma.

Richard Corwin, D.D.S., Family Practice, Midwest City, Oklahoma.

Richard Thomas Glass, D.D.S., Ph.D., Professor and Chairman of Oral Pathology, Oklahoma University College of Dentistry, Adjunct Professor of Pathology, Oklahoma University College of Medicine, Consultant to Oklahoma Medical Examiner.

Jerry Knight, Supervisor, Data Systems, R.O.C.I.C., Memphis, Tennessee.

John Lier, Missing Persons Division, Oklahoma City Police Department

Brad Long, Network Services Coordinator, Oklahoma Department of Public Safety.

J. Paul Pane, Criminal Identification Specialist, California Department of Justice.

Lieutenant Frank Root, Criminal Investigations Bureau, Arizona Department of Public Safety.

Robert Siegel, N. D. Sperber, and Arlo Trieglaff, San Diego County Coroner's Office, for their work printed in the "Journal of Forensic Sciences", Volume 22, Number 2.

Dr. Clyde Snow, Forensic Anthropologist, currently in private practice.

Sergeant Don Spillers, Missing Persons Division, Tulsa Police Department.

Paul G. Stimson, D.D.S., University of Texas, Dental Branch.

Steve Tims, Director, O.L.E.T.S., Oklahoma Department of Public Safety.

2-16-84
Attach. # 5

MEMORANDUM

February 8, 1984

TO: Senate Judiciary Committee

FROM: Kansas Legislative Research Department

RE: Legislative Recommendations Regarding Domestic Violence

The following is a list of legislative suggestions made by conferees during recent hearings on the issue of domestic violence. The list includes the suggestion and the person or organization making it. A separate listing is made for funding suggestions.

1. Amend the arrest statute to make it easier for police officers to make arrests of persons who have committed domestic violence -- Jerry Harper, Douglas County District Attorney; and Representative Wanda Fuller. (See H.B. 2713.)

2. Clarify procedures for use of diversion in domestic violence situations -- Jerry Harper; Elizabeth Taylor, Kansas Association of Domestic Violence Programs; and Representative Joan Wagnon.

3. Establish an educational program on this issue -- Anita Favors, Commissioner of Adult Services, Department of Social and Rehabilitation Services (SRS); and Elizabeth Taylor.

4. Grant authority to some (state) agency to investigate domestic violence — Anita Favors, SRS.

5. Enact a noninstitutional elderly and disabled persons' abuse act -- Sylvia Hougland, Kansas Department on Aging. (A bill is being introduced by the Senate Public Health and Welfare Committee.)

6. Reenact a peace bond statute -- Senator Jack Steineger.

FUNDING SUGGESTIONS FOR DOMESTIC VIOLENCE PROGRAMS

1. Provide state funding for shelter facilities -- Jerry Harper; Representative Joan Wagnon; Barb Smith, Lawrence Shelter; and Aileen Whitfill, SRS.

   Senator Wint Winter, II has requested a Senate Judiciary Committee bill to raise marriage license fees to fund shelter facilities.

2. Permit the Crime Victims Reparations Board to administer a state funding program for shelter facilities — Ken Barr, Crime Victims Reparations Board.

84-25/MH

Atch. 5

Attach. # 6

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

Room 545-N - State House

Phone 296-3181

Date March 23, 1982

TO: [redacted] Office No. 272-W

RE: PEACE BONDS

Enclosed is a copy of 12 Am Jur 2d Breach of Peace, Etc. §41-§51 dealing with peace bonds. Enclosed also is a copy of what used to be K.S.A. 62-201 et seq. relating to peace bonds. This statutory provision was repealed in 1970 as part of a revision of the criminal code which went into effect July 1, 1970.

The revised criminal code was a result of recommendations of the Kansas Judicial Council. Chief Justice Richard Foth of the Court of Appeals who served on the Judicial Council Study Committee at that time, recalled that the peace bond provisions were repealed since the procedures were thought to be antiquated, infrequently imposed and time consuming when requested for the Judicial Branch. He said the use of restraining orders and contempt of court procedures were felt to render the peace bond procedure obsolete.

I am also enclosing a copy of an old Kansas Supreme Court case, In Re Fenske 148 Kan 161, (1938), which discussed in detail this statutory provision.

I hope this is useful.

Mike Heim
Principal Analyst

MH/pa

Enclosures

Atch. 6

#6

CASE ANNOTATIONS

1. Cited; liquor sales off licensed premises and on Sunday are misdemeanors. State v. Merklinger, 180 K. 283, 285, 303 P. 2d 152.

Article 2.—PROCEEDINGS TO PREVENT THE COMMISSION OF OFFENSES

Cross References to Related Sections:
Issuance of process, see 62-601.

62-201. Jurisdiction. The following magistrates shall have power to cause to be kept all laws made for the preservation of the public peace, and, in the execution of that power, to require persons to give security to keep the peace, in the manner provided in this article: The judges of the supreme court, throughout the state; judges of the district court, throughout their respective districts; justices of the peace, in their respective counties; the mayors and police magistrates or judges of incorporated cities and towns, within the limits of such corporation. [G. S. 1868, ch. 82, § 7; Oct. 31; R. S. 1923, 62-201.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 1, § 1; Terr. L. 1859, ch. 27, § 1.

Research and Practice Aids:
Breach of the Peace⇐19; Criminal Law⇐86, 90(1).
Hatcher's Digest, Criminal Law §§ 20 to 26.
C. J. S. Breach of the Peace § 20; Criminal Law §§ 122, 125(1).
Procedural steps, Kansas Practice Methods § 1823.

CASE ANNOTATIONS

1. Police judge has no jurisdiction in violations of state laws. The State v. Davis, 26 K. 205, 207.
2. No appeal lies from refusal of judge to issue warrant. The State v. Forbriger, 34 K. 1, 5, 7 P. 631.
3. Any magistrate designated may serve as examining magistrate. Hancock v. Nye, 118 K. 384, 388, 234 P. 945.
4. Cited in dissenting opinion on question of amendment of preliminary transcript. State v. Miner, 120 K. 187, 191, 243 P. 318.
5. Cited in determining authority of justice to transfer hearing. King v. McKnight, 120 K. 692, 696, 245 P. 105.
6. Preliminary examination is not judicial; may be vested in mayor. State v. Badders, 141 K. 683, 685, 42 P. 2d 943.
7. Failure to give bond; entitled to be discharged on habeas corpus, when. *In re* Fenske, 148 K. 161, 79 P. 2d 829.
8. Preliminary hearing by district judge; order discharging accused not appealable. State v. McCombs, 164 K. 334, 336, 337, 188 P. 2d 922.
9. District judge, as magistrate, conducting preliminary hearing; not error. State v. Williams, 182 K. 468, 470, 322 P. 2d 726.

62-202. Complaint and warrant. Whenever complaint shall be made, in writing and upon oath, to any such magistrate, that any person has threatened or is about to commit any offense against the person or property of another, and it appear upon such examination that there is reason to fear the commission of any such offense by the person complained of, it shall be the duty of the magistrate to issue a warrant, under his hand, with or without seal, commanding the officer to whom it is directed forthwith to apprehend the person so complained of, and bring him before such magistrate. [G. S. 1868, ch. 82, § 8; Oct. 31; R. S. 1923, 62-202.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 1, §§ 2, 3; Terr. L. 1859, ch. 27, §§ 2, 3.

Research and Practice Aids:
Criminal Law⇐252(1).
C. J. S. Criminal Law § 374.
Complaint of threat to commit offense, Vernon's Kansas Forms §§ 8251, 8252.

CASE ANNOTATIONS

1. Complaining witness not liable for costs in proceedings hereunder. The State v. Menhart, 9 K. 98; The State v. Dean, 24 K. 53, 54.
2. No appeal from order adjudging costs against defendant. The State v. Arnold, 56 K. 307, 43 P. 267.

62-203. Examination of witnesses; recognizance to appear before district court and to keep the peace. Upon such person being brought before such magistrate it shall be the duty of the magistrate to examine all witnesses which either party may require to be examined; and if it shall appear to the satisfaction of such magistrate that there is reason to fear the commission of such offense, he shall require the party complained of to enter into a recognizance in such sum, not exceeding five thousand dollars, as such magistrate shall direct, with one or more sufficient securities, to appear before the district court on the first day of the next term, and not depart the same without leave; and in the meanwhile to keep the peace toward the people of this state, and particularly toward the complainant. [G. S. 1868, ch. 82, § 9; Oct. 31; R. S. 1923, 62-203.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 1, § 4; Terr. L. 1859, ch. 27, § 4.

Research and Practice Aids:
Breach of the Peace⇐19.
C. J. S. Breach of the Peace § 20.
Recognizance on arrest for threat to commit offense, Vernon's Kansas Forms § 8253.

CASE ANNOTATIONS

1. Bond to keep peace; assault in another state, bond not violated. The State v. Stanley, 104 K. 475, 179 P. 361.

#6

2. Failure to give bond; entitled to be discharged on habeas corpus, when. *In re* Fenske, 148 K. 161, 162, 79 P. 2d 829.

62-204. Discharge when recognizance given; commitment if party fail or refuse to find surety. If such recognizance be given, the party complained of shall be discharged; but if he fail or refuse to find surety, it shall be the duty of the magistrate to commit him to prison until he find the same, specifying in the warrant the cause of commitment and the sum in which security was required. [G. S. 1868, ch. 82, § 10; Oct. 31; R. S. 1923, 62-204.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 1, § 5; Terr. L. 1859, ch. 27, § 5.

Research and Practice Aids:

Commitment for failure to give recognizance to keep the peace, Vernon's Kansas Forms §§ 8254, 8255.

CASE ANNOTATIONS

1. Failure to give bond; entitled to be discharged on habeas corpus, when. *In re* Fenske, 148 K. 161, 163, 79 P. 2d 829.

62-205. Person so committed discharged upon giving surety required. Any person committed for not finding surety of the peace as above provided may be discharged by any magistrate authorized to bind to the peace, within the county, upon giving such security as was originally required of such person. [G. S. 1868, ch. 82, § 11; Oct. 31; R. S. 1923, 62-205.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 1, § 6; Terr. L. 1859, ch. 27, § 6.

62-206. Transmittal of recognizance to clerk of district court. Every recognizance to keep the peace, taken by any magistrate pursuant to the foregoing provisions or pursuant to any other statute, shall be forthwith transmitted by such magistrate to the clerk of the district court of the county. [G. S. 1868, ch. 82, § 12; Oct. 31; R. S. 1923, 62-206.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 1, § 7; Terr. L. 1859, ch. 27, § 7.

62-207. Offenses committed in presence of magistrate; recognizance; commitment. Every person who, in the presence of any magistrate above specified, or of any court of record, shall make any affray, or threaten to kill or beat another, or to commit any offense against his person or property, and all persons who in the presence of such court or magistrate shall contend with hot and angry words, may be ordered by such magistrate or court, without any other proof, to give such security as above specified; and in case of failure or refusal so to do he may be committed in like manner as above provided. [G. S. 1868, ch. 82, § 13; Oct. 31; R. S. 1923, 62-207.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 1, § 8; Terr. L. 1859, ch. 27, § 8.

62-208. Appearance before district court; forfeiture of recognizance. Every person who shall have entered into a recognizance to keep the peace shall appear before the district court of the county at the next term; and if he fail to appear, the court shall forfeit his recognizance and order it to be prosecuted, unless reasonable excuse for the default be shown. [G. S. 1868, ch. 82, § 14; Oct. 31; R. S. 1923, 62-208.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 1, § 9; Terr. L. 1859, ch. 27, § 9.

CASE ANNOTATIONS

1. Cited in determining procedure when no bond given after hearings held. *In re* Fenske, 148 K. 161, 168, 79 P. 2d 829.

62-209. Discharge where complainant does not appear. When any person shall have been bound to keep the peace, on the complaint of another, and the complainant shall not appear, the party recognized shall be discharged, unless good cause to the contrary be shown. [G. S. 1868, ch. 82, § 15; Oct. 31; R. S. 1923, 62-209.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 1, § 10; Terr. L. 1859, ch. 27, § 10.

62-210. Court to examine evidence and discharge recognizance or require new recognizance; costs. Upon the appearance of the respective parties, and in cases where there is no complaint, the court shall examine the evidence, and may either discharge the recognizance taken or require a new recognizance, as the circumstances of the case may require, for such time as shall appear necessary, not exceeding one year; and in such cases costs shall be adjudged according to the discretion of the court, including all costs made before the justice of the peace. [G. S. 1868, ch. 82, § 16; L. 1907, ch. 265, § 1; May 27; R. S. 1923, 62-210.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 1, § 11; Terr. L. 1859, ch. 27, § 11.

CASE ANNOTATIONS

Annotations to G. S. 1868, ch. 82, § 16:

1. Court has no authority to adjudge costs against complaining witness. The State v. Menhart, 9 K. 98; The State v. Dean, 24 K. 53, 54.

#6

2. Court cannot, by imprisonment, enforce payment of costs by defendant. *In re* Mitchell, *Petitioner*, 39 K. 762, 19 P. 1.

Annotation to L. 1907, ch. 265, § 1:

3. Failure to give bond; entitled to be discharged on habeas corpus, when. *In re* Fenske, 148 K. 161, 162, 163, 164, 79 P. 2d 829.

62-211. When recognizance deemed broken. No recognizance to keep the peace shall be deemed to be broken, except in the case of a failure to appear, as hereinbefore provided, unless the principal in such recognizance be convicted of some offense amounting, in judgment of law, to a breach of such recognizance. [G. S. 1868, ch. 82, § 17; Oct. 31; R. S. 1923, 62-211.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 1, § 12; Terr. L. 1859, ch. 27, § 12.

CASE ANNOTATIONS

1. Bond to keep peace; assault in another state; bond not violated. The State v. Stanley, 104 K. 475, 476, 179 P. 361.

62-212. Forfeiture of recognizance; prosecution. Whenever evidence of such conviction shall be produced to the court in which such recognizance is filed or taken, it shall be the duty of the court to declare such recognizance forfeited, and to order the same to be prosecuted, and the attorney prosecuting for the county shall proceed thereon accordingly. [G. S. 1868, ch. 82, § 18; Oct. 31; R. S. 1923, 62-212.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 1, § 13; Terr. L. 1859, ch. 27, § 13.

62-213. Same; record of conviction as evidence. In the action on such recognizance, the offense stated in the record of conviction may be assigned as a breach, and such record shall be conclusive evidence of the matters therein stated. [G. S. 1868, ch. 82, § 19; Oct. 31; R. S. 1923, 62-213.]

Source or prior law: Terr. Stat. 1855, ch. 129, art. 1, § 14; Terr. L. 1859, ch. 27, § 14.

Article 3.—INQUISITIONS IN CRIMINAL CASES

Cross References to Related Sections:

Fugitives from justice, see ch. 62, art. 7.
Combinations in restraint of trade, see 50-109, 50-110, 50-153 to 50-156.

62-301. Inquisitions; subpoena of witnesses; penalty for disobedience; immunity of witnesses. If a county attorney, attorney general, or assistant attorney general shall be notified by any officer or other person, or shall have knowledge of any violation of any law of this state relating to gambling, intoxicating liquors, or of any violation of any law where the accused is a fugitive from justice, it shall be his duty forthwith diligently to inquire into the facts of such offense, and for that purpose he is hereby authorized to issue subpoenas for such persons as he shall have any reason to believe have any information concerning, or knowledge of such offense, to appear before him, at a time and place to be designated in the subpoena, then and there to testify concerning any offense against the laws of the state; or said county attorney, attorney general or assistant attorney general may file with the judge of the district court, a judge of the city court, or with some justice of the peace of the county, a written statement signed by him, alleging any offense against the laws of this state and such judge or justice of the peace shall, on the written praecipe of the county attorney, attorney general or assistant attorney general, issue a subpoena for the witnesses named in such praecipe, commanding such witnesses to be and appear before such judge or justice of the peace at the time stated in such subpoena, to testify concerning any offense against the laws of the state. Such subpoena may be served by the sheriff or any constable of the county, or by any other person, a citizen of the county, and shall be served and returned to such county attorney, attorney general, assistant attorney general, judge or justice of the peace, in the same manner subpoenas are served and returned when issued by justices of the peace.

Each witness shall be sworn, true answers to make to all questions propounded to him touching the matter of information, and the testimony of each witness shall be reduced to writing and signed by the witness; for the purpose herein the county attorney, attorney general and assistant attorney general are authorized and empowered to administer oaths and affirmations to such witnesses. Any disobedience to the subpoena of the county attorney, attorney general, assistant attorney general, judge or justice of the peace, or any refusal to be sworn as a witness or to sign the testimony given by him, or any refusal to answer any proper questions propounded by the county attorney, attorney general or assistant attorney general, in such inquiry, shall be a misdemeanor and shall be punished by a fine of not more than $300 or be imprisoned in the county jail for not more than ninety