Approved 2/26/85
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by REPRESENTATIVE JOE KNOPP at
Chairperson

3:30 ~~a.m.~~/p.m. on February 5, 1985 in room 526-S of the Capitol.

All members were present except:

Representative Fuller was excused.

Committee staff present:
Jerry Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Mary Ann Torrence, Revisor of Statute's Office
Becca Conrad, Secretary

Conferees appearing before the committee:

Ron Smith, Kansas Bar Association
Elvin Perkins, Member of Kansas Bar Association's CLE Committee
Stan Lind, Kansas Association of Finance Companies
Bill Sneed, Kansas Association of Defense Counsel
Everett L. Willoughby, Executive Secretary of Kansas State Board of Pharmacy
Ron Hein, Legislative Counsel for Johnson and Johnson

Ron Smith, Kansas Bar Association, introduced Elvin Perkins, a member of the KBA's CLE Committee, who presented legislation they would like to see introduced as a bill. It deals with regulation of the circumstances under which a nonresident can probate a will in Kansas, and the types of personal representatives who can be awarded attorneys fees in certain probate matters.

Mr. Perkins referred to K.S.A. 59-2230 and 59-2229 of Attachment No. 1. He stated that these sections were designed for the specific purpose of having it so that a person who dies a resident of Kansas could have a document admitted to probate in some other state and as long as the document was signed the way it was required in that state, it could be admitted into any state in which this person had property; and if it were brought then to Kansas, Kansas would have to recognize this passage of title to the Kansas property based upon the law of the other state where this person had resided.

In K.S.A. 59-2224, he stated they believe the heirs should not be required, when there has been an administrator appointed to conserve the assets of the estate and for whom compensation would be payable for his or her counsel, to go ahead and oppose the probate. He said it shouldn't be necessary to have a separate counsel to oppose the document.

Concerning K.S.A. 59-1504, Mr. Perkins stated this would best serve the public if those persons who bring a will to the attention of the court, by virtue of the fact that they are named in the will, would be compensated and allowed their expenses only for the purpose of getting it before the court and not for the purpose of doing advocacy.

Representative Solbach made a motion and Representative Whiteman seconded it, that these amendments be introduced as a bill. The motion carried.

Ron Smith then presented the following legislation which was requested by the Wichita Bar Association: Attachment No. 2 concerning attorney's fees in domestic cases; Attachment No. 3 concerning criminal procedure and relating to advice to a defendant by the court before accepting a plea of guilty or nolo contendere; Attachment No. 4 concerning service of process by mail as relating to civil procedure; Attachment No. 5 concerning providing for discovery depositions in criminal cases as related to criminal procedure; Attachment No. 6 which deals with the informal administration of an estate; and Attachment No. 7 concerning unsworn declarations under penalty of perjury.

Representative Solbach made a motion to enter these proposed bills as requested with the exception of those amendments to K.S.A. 59-618(a) and 59-2250 which he moved they be incorporated into a bill with the other probate clean-up measures and introduced. Representative Adam seconded the motion and it carried.

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,

room 526-S, Statehouse, at 3:30 ~~a.m.~~p.m. on February 5, 1985

Stan Lind, Kansas Association of Finance Companies, made a request to amend K.S.A. 21-3707 pertaining to giving a worthless check, Attachment No. 8. Representative Wunsch moved and Representative Buehler seconded that this be introduced as a committee bill. The motion carried.

Bill Sneed, Kansas Association of Defense Counsel, presented three bills that this association would like to have introduced. The first bill is an amendment to K.S.A. 60-1904, wrongful death statute, which would allow an evidence of remarriage of a wrongful death action to be introduced at a hearing. The second bill is an amendment of K.S.A. 16-204 which is the post-judgment interest statute currently that is set at a statutory range of 15%. The proposed amendment would place an interest rate on post-judgment to the equivalent of the treasury bill. The third one they would like to have introduced is a damage bill which would provide a statutory mechanism by where if punitive damages are sought in an action there could be trial with damages tried separately. The second part of that would allow the recovery of 95% for punitive damages to go to the State General Revenue and 5% to go to the plaintiff.

Representative Solbach moved that these amendments be introduced as bills but they have the designation by request after the name of the sponsor of the committee. Representative Douville thought that all of the bills should be by request or none of them by request and there should be no distinction between bills. There was no second on Representative Solbach's motion.

Representative Douville moved, and Representative Snowbarger seconded, that they be introduced as bills. The motion carried.

HB 2066 - Amending the uniform controlled substances act; relating to scheduling of certain substances.

Everett L. Willoughby, Executive Secretary of the Kansas State Board of Pharmacy, spoke in favor of this bill as shown in Attachment No. 9.

Ron Hein, Legislative Counsel for Johnson and Johnson, spoke in support of HB 2006 and particularly in support of rescheduling provisions as stated in Attachment No. 10.

The Chairman announced that he had received correspondence from the Kansas Medical Society indicating their support of this legislation also.

Representative Duncan made a motion that HB 2066 be passed out favorably. It was seconded by Representative Harper and carried upon vote.

HB 2009 - Concerning criminal procedure; relating to appearance bond.

Representative Douville handed out correspondence, Attachment No. 11 from Lova Duncan, Chief Clerk of the District Court of Johnson County, Kansas, who opposes this bill for reasons stated in the letter.

Representative Vancrum moved to table the bill and it was seconded by Representative Bideau. After some discussion, Representative Vancrum withdrew this motion and Representative Whiteman made a substitute motion to amend lines 21 and 22. She wanted to delete the first part of the sentence starting with "The administrative" through "by rule that" and replace it with "Unless the court otherwise specified". The Chairman took a vote and the motion did not carry.

Representative Whiteman's second amendment consisted of deleting "not to exceed 25% " and replacing it with "of 10%". Representative Shriver seconded this motion. The motion did not carry.

The third amendment Representative Whiteman proposed is to add into line 27 "amounts ordered as reparation and restitution of the victims of the defendants' crime may go to the State Board of Indigent's Defense Services or the County General Fund on the defendant's behalf and available for assignment to private counsel". Representative Duncan seconded this motion and it carried.

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,

room 526-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on February 5, 1985.

Representative Vancrum made the motion and Representative Bideau seconded it to table this bill as a whole. Representative Bideau stated that he seconded this motion to table because this proposal is opposed by most law enforcement officials he has encountered and he had been contacted by the District Judge and Associate District Judge of Labette County to oppose it. Representative Douville said he supported the motion to table because he would like to hear from all the district clerks to see if it also creates problems for them.

Representative Solbach made a substitute motion to pass this bill out favorably as it is amended. Representative Shriver seconded this motion. The motion carried with 10 voting for it.

The Chairman announced the rest of the bills on today's agenda would be taken up tomorrow.

The meeting adjourned at 5:10 p.m.

59-1504. Compensation and expenses. Whenever a decedent by will makes a provision for the compensation of his or her executor, that shall be taken as such executor's full compensation, unless the executor files a written instrument, renouncing all claim to the compensation provided for in the will. Whenever any person named in a will or codicil defends it, or prosecutes any proceedings in good faith and with just cause, for the purpose of having it admitted to probate, whether successful or not, or if any person successfully opposes the probate of any will or codicil, such person shall be allowed out of the estate his or her necessary expenses and disbursements in such proceedings, together with such compensation for such person's services and those of his or her attorneys as shall be just and proper.

Any heir at law or beneficiary under a will who, in good faith and for good cause, successfully prosecutes or defends any other action for the benefit of the ultimate recipients of the estate may be allowed his or her necessary expenses, in the discretion of the court, including a reasonable attorney's fee.

History: L. 1939, ch. 180, § 115; L. 1941, ch. 284, § 16; L. 1975, ch. 299, § 11; Jan. 1, 1976.

provided, however, that a person who unsuccessfully prosecutes proceedings to have a will admitted to probate shall have allowed only those fees which were necessarily incurred to institute the proceedings and to fix a date and furnish notice of the hearing thereon.

Attachment No. 1
House Judiciary
February 5, 1985

59-2224. Hearings for probate and for determination of validity of spouse's consent; procedure. The hearing of a petition for the probate of a will and the hearing of a petition for the determination that the consent of the spouse to the will is a valid and binding consent shall be separate issues which, in the discretion of the court, may be determined in a consolidated hearing or in separate hearings. On the hearing of a petition for the probate of a will or for the determination that the consent of a spouse to a will is a valid and binding consent, unless it is an uncontested, self-proved will or consent, the testimony of at least two of the subscribing witnesses shall be taken in person, by affidavit or by deposition. Otherwise, the court may admit the testimony of other witnesses to prove the capacity of the testator or the spouse and the due execution of the will or consent and, as evidence of such execution, may admit proof of the handwriting of the testator or the spouse and of the subscribing witnesses. Any heir, devisee, or legatee may prosecute or oppose the probate of any will or the determination that the consent of the spouse to the will is a valid and binding consent. If the instrument alleged to be the will is not allowed as the last will and if the estate should be administered, the court shall grant administration to the person or persons entitled thereto.

History: L. 1939, ch. 180, § 200; L. 1963, ch. 299, § 1; L. 1975, ch. 299, § 17; L. 1977, ch. 197, § 2; L. 1981, ch. 228, § 4; July 1.

appointed executor or administrator of the decedent or

59-2229. Admission of will probated outside state. When a copy of a will executed outside this state and the probate thereof, duly authenticated, is presented by the executor or any other person interested in the will, with a petition for the probate thereof, the court shall fix the time and place for the hearing of the petition, notice of which shall be given to such persons and in such manner as the court directs. The title of any purchaser in good faith, without knowledge of the will, to any property derived from the fiduciary, heirs, devisees or legatees of the decedent shall not be defeated by the production of the will of the decedent and the petition for probate thereof after the expiration of nine months from the death of the decedent.

History: L. 1939, ch. 180, § 205; L. 1982, ch. 235, § 3; L. 1983, ch. 189, § 1; July 1.

59-2230. Admission of will probated elsewhere. (a) If, upon the hearing, it appears to the satisfaction of the court that the will of a resident or nonresident has been proved and admitted to probate outside this state and that it was executed according to the law of the place in which it was made, or in which the testator resided at the time of its execution or of the testator's death or in conformity with the laws of this state, it shall be admitted to probate with the same force and effect as the original probate of a will.

(b) The amendments to this section on July 1, 1982, and on the effective date of this act are declarations of the meaning of this section as it existed on June 30, 1982, and shall apply to any will, whether proved and admitted to probate outside this state before or after July 1, 1982, or before or after the effective date of this act.

History: L. 1939, ch. 180, § 206; L. 1982, ch. 235, § 4; L. 1984, ch. 210, § 1; March 15.

59-2229. Admission of will probated outside state. When a copy of a will executed outside this state and the probate thereof, duly authenticated, is presented by the executor or any other person interested in the will, with a petition for the probate thereof, the court shall fix the time and place for the hearing of the petition, notice of which shall be given to such persons and in such manner as the court directs. The title of any purchaser in good faith, without knowledge of the will, to any property derived from the fiduciary, heirs, devisees or legatees of the decedent shall not be defeated by the production of the will of the decedent and the petition for probate thereof after the expiration of nine months from the death of the decedent.

History: L. 1939, ch. 180, § 205; L. 1982, ch. 235, § 3; L. 1983, ch. 189, § 1; July 1.

59-2230. Admission of will probated elsewhere. (a) If, upon the hearing, it appears to the satisfaction of the court that the will of a nonresident has been proved and admitted to probate outside this state and that it was executed according to the law of the place in which the testator resided at the time of its execution or of the testator's death or in conformity with the laws of this state, it shall be admitted to probate with the same force and effect as the original probate of a will.

History: L. 1939, ch. 180, § 206; L. 1982, ch. 235, § 4; L. 1984, ch. 210, § 1; March 15.

ATTORNEY'S FEES IN DOMESTIC CASES

AN ACT concerning domestic relations; relating to expenses and attorney's fees in proceedings to enforce orders and judgments entered pursuant to K.S.A. 60-1607, 60-1610, and 60-1616, and repealing K.S.A. 1984 Supp. 60-1616

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

Section 1. In a proceeding to enforce an order, decree, or judgment of the court entered pursuant to K.S.A. 60-1607, 60-1610, and 1984 Supp. 60-1616, the court shall make an award of expenses, including a reasonable attorney's fee, to the prevailing party, unless the court finds that the failure to comply with the court's order, decree, or judgment was substantially justified or that other circumstances make an award of expenses unjust. If both parties to the proceeding prevail in part, the court may apportion the expenses incurred in relation to the proceeding among the parties in a just manner.

Section 2. A proceeding to enforce an order, decree, or judgment of the court shall include a contempt proceeding under K.S.A. 20-1204a, but shall exclude an execution, garnishment, or attachment.

Section 3. K.S.A. 1984 Supp. 60-1616 is hereby amended to read as follows:

60-1616. Decree; authorized orders. *Visitation.* (a) *Parents.* A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral or emotional health.

(b) *Grandparents and stepparents.* Grandparents and stepparents may be granted visitation rights.

(c) *Modification.* The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child.

~~(d) *Costs of enforcing rights.* The court shall award reasonable attorney fees and costs of any proceeding to enforce visitation rights against a parent who unreasonably denies or interferes with the other parent's visitation rights.~~

Attachment No. 2
House Judiciary
February 5, 1985

Section 4. K.S.A. 1984 Supp. 60-1616 is hereby repealed.

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

ADVICE OF CONSEQUENCES BILL

AN ACT concerning criminal procedure; relating to advice to a defendant by the court before accepting a plea of guilty or nolo contrendere; amending K.S.A. 1984 Supp. 22-3210( ).

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

Section 1. K.S.A. 1984 Supp. 22-3210 is hereby amended to read as follows:

22-3210. Plea of guilty or nolo contendere. (a) Before or during trial a plea of guilty or *nolo contendere* may be accepted when:

(1) The defendant or counsel for the defendant enters such plea in open court; and

(2) in felony cases the court has informed the defendant of the consequences of the plea, including that if the defendant is not a citizen of the United States, conviction of a crime may result in deportation, exclusion from admission to the United States, or denial of naturalization, and of the maximum penalty provided by law which may be imposed upon acceptance of such plea; and

(3) in felony cases the court has addressed the defendant personally and determined that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea; and

(4) the court is satisfied that there is a factual basis for the plea.

(b) In felony cases the defendant must appear and plead personally and a verbatim record of all proceedings at the plea and entry of judgment thereon shall be made.

(c) In traffic infraction and misdemeanor cases the court may allow the defendant to appear and plead by counsel.

(d) A plea of guilty or *nolo contendere*, for good cause shown and within the discretion of the court, may be withdrawn at any time before sentence is adjudged. To correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw the plea.

Section 2. K.S.A. 1984 Supp. 22-3210( ) is hereby repealed.

Section 3. This act shall take effect and be in force from and after its publication in the statute book.

Attachment No. 3
House Judiciary
February 5, 1985

SERVICE OF PROCESS BY MAIL BILL

AN ACT relating to civil procedure; concerning service of process by mail; amending K.S.A. 61-1806.

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

New Section 1. (a) Notwithstanding any other method of serving the summons and petition upon a defendant, a summons and petition may be served upon a defendant of any class referred to in subsections (a) and (e) of K.S.A. 60-304 by mailing a copy of the summons and of the petition (by first-class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgemnt of receipt of summons and petition and a return envelope, postage prepaid, addressed to the sender. If the acknowledgement of receipt of summons and petition is not received by the sender within twenty days after the date of mailing, service of such summons and petition shall be made in any other appropriate manner for obtaining service.

(b) Unless good cause is shown for not doing so, the court shall order the payment of the costs of the action pursuant to K.S.A. 60-2001, or of the costs of obtaining personal service by the person served, if such person does not complete and return within twenty days after mailing, the notice and acknowledgement of receipt of summons and petition.

(c) If service is made under subsection (a), return shall be made by the sender filing with the court the acknowledgement of receipt of summons and petition. Failure to make a proof of service does not affect the validity of the service.

(d) Service of process shall be considered obtained under K.S.A. 60-203 upon the execution of the acknowledgement of receipt of summons and petition. The sender need not file with the court the acknowledgement of receipt of summons and petition in order for an action to be deemed commenced.

(e) The notice and acknowledgement of receipt of summons and petition referred to in subsection (a) shall be substantially in the following form:

Attachment No. 4
House Judiciary
February 5, 1985

(Name of Court)

_____, Plaintiff,

vs.

_____, Defendant

Notice

To: _____

The enclosed summons and petition are served pursuant to K.S.A. _____.

You must complete the acknowledgement part of this form and return one copy of the completed form to the sender within twenty days.

You must sign and date the acknowledgement. If you are served on behalf of a corporation, unincorporated association (including a partnership), or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

If you do not complete and return the form to the sender within twenty days you (or the party on whose behalf you are being served) shall be required to pay costs under K.S.A. 60-2001 or any expenses incurred in serving a summons and petition in another manner permitted by law, unless good cause be shown.

If you do complete and return this form, you (or the party on whose behalf you are being served) must answer the petition within twenty days if the notice and acknowledgement is received within the State of Kansas, and within thirty days if the notice and acknowledgement is received outside the State of Kansas. If you fail to do so, judgment by default will be taken against you for the relief demanded in the petition.

I declare, under penalty of perjury, that this Notice and Acknowledgement of Receipt of Summons and Petition was mailed first-class mail, postage prepaid, on the ___ day of _____, _____.

_____

Signature

_____

Date of Signature

ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND PETITION

I declare, under penalty of perjury, that I received a copy of the summons and petition in the above-captioned matter at _____.

_____
Signature

_____
Printed Name

_____
Relationship to Entity/
Authority to Receive Service
of Process

_____
Date of Signature

Section 2. K.S.A. 61-1806 is hereby amended to read as follows:

61-1806. Service by mail or publication. Service of process by mail or by publication may be made pursuant to the provisions of K.S.A. 60-307 or Section 1 of this act which are not inconsistent or in conflict with this act.

History: L. 1969, ch. 290, § 61-1806; Jan. 1, 1970.

Sec. 3. K.S.A. 61-1806 is hereby repealed.

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

CRIMINAL DISCOVERY DEPOSITIONS BILL

AN ACT relating to criminal procedure; providing for discovery depositions in criminal cases.

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

Section 1. (a) Any defendant charged by complaint with a felony offense who waives the statutory right of the defendant to a preliminary examination may take the deposition on oral examination of any person who may have information relevant to the offense charged. Except as provided in this section, the Kansas code of civil procedure shall govern the taking of discovery depositions in criminal cases.

(b) The deposition shall be taken in the courthouse where the action is pending, such other place on which the parties agree or where the court may designate by order on the application of a party. The defendant taking the deposition shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. For cause shown, the court may extend or shorten the time for taking the deposition. The attendance of witnesses may be compelled by the use of subpoenas as provided in K.S.A. 60-245. If a subpoena duces tecum is to be served on the person to be examined, a designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(c) The parties may stipulate in writing or the court may on motion order that the testimony at a deposition be recorded by other than stenographic means, in which event the stipulation or order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving and filing the deposition and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at the party's expense. Any objection under K.S.A. 60-230(c), any changes made by the witness, the signature identifying the deposition as that of the witness or the statement of the officer that is required if the witness does not sign, as provided in K.S.A. 60-230(e), and the certification of the officer required by K.S.A. 60-230(f) shall be set forth in writing to accompany a deposition recorded by nonstenographic means.

(d) A discovery deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness at the trial or on any hearing. A deposition to perpetuate testimony shall be taken in accordance with the provisions of K.S.A. 22-3211.

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

Attachment No. 5
House Judiciary
February 5, 1985

)-618a. Will not required t[illegible] probated, when. (a) Whenever a decedent dies testate, any person possessing the decedent's will may file in the district court of the county of the decedent's last residence the decedent's will and an affidavit which complies with subsection (b).

(b) An affidavit filed pursuant to this section shall state: (1) The names, addresses and relationship of all the decedent's heirs, legatees and devisees which are known to the affiant after a diligent search and inquiry; (2) the name and address of any trustee of any trust established under the will; (3) the property left by the decedent and its approximate valuation; (4) the approximate amount and nature of any demands enumerated in K.S.A. 59-1301 and amendments thereto which were outstanding against the decedent's estate upon the decedent's death; and (5) that the will is being filed with the district court for the purpose of preserving it for record in the event that formal probate proceedings are later required.

(c) The fee for filing a will and affidavit pursuant to this section shall be $35.

(d) Upon receipt of a will and affidavit filed pursuant to this section, the court shall file the will and affidavit in its records and shall give notice thereof to all heirs, legatees, devisees and trustees named in the affidavit.

(e) If, within nine months after the filing of a will and affidavit pursuant to this section, no person has petitioned for the probate of the will, the heirs, legatees and devisees named in the will and any trustee of any trust established under the will may by unanimous written agreement declare the will void. In such case the court shall distribute the assets of the estate under the terms of a settlement agreement or by proceedings to determine descent as provided in K.S.A. 59-2250 and amendments thereto.

History: L. 1977, ch. 196, § 1; L. 1982, ch. 235, § 1; L. 1984, ch. 147, § 12; July 1.

(f) Any will filed pursuant to this section within six months after the death of the testator may be admitted to probate after such six month period.

59-2250. Proceedings to determine descent. Whenever any person has been dead for more than nine (9) months and has left property, or any interest therein, and no petition has been filed for the probate of a will nor administration commenced in this state, or in which administration has been had without a determination of the descent of such property, any person interested in the estate, or claiming an interest in such property, may petition the district court of the county of the decedent's residence, or of any county wherein real estate of the decedent is situated, to determine its descent.

History: L. 1939, ch. 180, § 226; L. 1941, ch. 284, § 11; L. 1972, ch. 215, § 18; L. 1976, ch. 242, § 40; Jan. 10, 1977.

no will has been filed under K.S.A. 1984 Supp. 59-618a and amendments thereto within six months after death,

Attachment No. 6
House Judiciary
February 5, 1985

UNSWORN DECLARATIONS BILL

AN ACT concerning unsworn declarations under penalty of perjury; relating to perjury; amending K.S.A. 1983 Supp. 21-3805 and repealing the existing section.

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

Section One. Except as provided in section two, wherever, under any law of the State of Kansas or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved in the State of Kansas by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same, such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by the person, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed outside the State of Kansas: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the State of Kansas that the foregoing is true and correct. Executed on (date).

(Signature)"

(2) If executed in the State of Kansas: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)"

Section Two. The provisions of section one shall not apply to the following oaths:

(1) An oath of office.

(2) An oath required to be taken before a specified official other than a notary public.

(3) An oath of a testator or witnesses as required for wills, codicils, revocations of wills and codicils, and republications of wills and codicils.

Section Three. A notarial act performed prior to the effective date of this act is not affected by this act. Nothing in this act diminishes or invalidates the recognition accorded to notarial acts by other laws or regulations of this state.

Attachment No. 7
House Judiciary
February 5, 1985

Sec. 4. K.S.A. 21-3805 is hereby amended to read as follows:

21-3805. Perjury. (a) Perjury is willfully, knowingly and falsely swearing, testifying, affirming, declaring or subscribing to any material fact upon any oath or affirmation legally administered in any cause, matter or proceeding before any court, tribunal, public body, notary public or other officer authorized to administer oaths.

(b) Perjury is a class D felony if the false statement is made upon the trial of a felony. Perjury is a class E felony if the false statement is made in a cause, matter or proceeding other than the trial of a felony charge.

(1)

or, (2) willfully, knowingly and falsely subscribing as true and correct any material matter in any declaration, certificate, verification, or statement under penalty of perjury as permitted by Section 1 of this act.

any declaration, certificate, verification, or statement made under penalty of perjury as permitted by Section 1 of this act or in

Sec. 5. K.S.A. 1984 Supp. 21-3805 is hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute books.

21-3707. Giving a worthless check. (1) Giving a worthless check is the making, drawing, issuing or delivering or causing or directing the making, drawing, issuing or delivering of any check, order or draft on any bank, credit union, savings and loan association or depository for the payment of money or its equivalent with intent to defraud and knowing, at the time of the making, drawing, issuing or delivering of such check, order or draft, that the maker or drawer has no deposit in or credits with the drawee or has not sufficient funds in, or credits with, the drawee for the payment of such check, order or draft in full upon its presentation.

(2) In any prosecution against the maker or drawer of a check, order or draft payment, of which has been refused by the drawee on account of insufficient funds, the making, drawing, issuing or delivering of such check shall be prima facie evidence of intent to defraud and of knowledge of insufficient funds in, or on deposit with, the drawee unless the maker or drawer pays the holder thereof the amount due thereon and a service charge not exceeding ~~$3~~ $10 for each check, within seven days after notice has been given to the maker or drawer that such check, draft or order has not been paid by the drawee. As used in this section, "notice" includes oral or written notice to the person entitled thereto. Written notice shall be presumed to have been given when deposited as restricted matter in the United States mail, addressed to the person to be given notice at such person's address as it appears on such check, draft or order.

(3) It shall be a defense to a prosecution under this section that the check, draft or order upon which such prosecution is based:

(a) Was postdated, or

(b) was given to a payee who had knowledge or had been informed, when the payee accepted such check, draft or order, that the maker did not have sufficient funds in the hands of the drawee to pay such check, draft or order upon presentation.

(4) The holder of a check, draft or order which has been returned by the drawee because of insufficient funds shall not be required to file a complaint with a prosecuting officer before serving a notice demanding payment of the insufficient check, draft or order and a service fee not exceeding $10.

~~(4)~~ Giving a worthless check is a class E felony if the check, draft or order is drawn for $50 or more. Giving a worthless check is a class A misdemeanor if the check, draft or order is drawn for less than $50.

(5)

Attachment No. 8
House Judiciary
February 5, 1985

Kansas State Board of Pharmacy

503 KANSAS AVENUE, SUITE 328
P.O. BOX 1007
TOPEKA, KANSAS 66601
PHONE (913) 296-4056

STATE OF KANSAS

JOHN CARLIN
GOVERNOR

EVERETT L. WILLOUGHBY
EXECUTIVE SECRETARY

ROBERT E. DAVIS
BOARD ATTORNEY

TO: Members of the House Committee on Judiciary

DATE: February 5, 1985

RE: House Bill 2066

Chairman Knopp, Members of the Committee, my name is Everett Willoughby, Executive Secretary of the Kansas State Board of Pharmacy. I wish to thank the Committee for allowing me to appear to present evidence that House Bill 2066 is in the interest of the public health and welfare, and to urge its passing.

HB 2066 is a bill requested by the Board of Pharmacy, which, if enacted, will permit the Board to be in compliance with Kansas Statute Annotated 65-4102, a copy of which is in your file. The rescheduling of controlled substances is a yearly occurance to insure that controlled substances are placed in the correct schedule, as defined by the Federal Drug Enforcement Administration.

Controlled substances are placed in different schedules according to their potential for abuse. A Schedule I drug has a high potential for abuse and no accepted medical use. A Schedule II drug has a high potential for abuse but does have an accepted medical use. Schedule III has an accepted medical use with a lower potential for abuse than a Schedule II drug, and so on down through Schedule IV and V. The higher the assigned number, the lower the potential for abuse.

The Board of Pharmacy is charged with the responsibility of administering the Uniform Controlled Substances Act; therefore, to insure compliance with the statute and to fulfill our obligation of administering the Act, it is necessary that we monitor and enforce the same list of controlled substances as the Federal Drug Enforcement Administration.

The fiscal impact would be negligible, and the passage of House Bill 2066 is in the best interest of the public health and welfare.

ELW:arb

Attachment No. 9
House Judiciary
February 5, 1985

6. Construction of worf "sale"; possession for heroin sale. State v. Collazo, 1 K.A.2d 654, 658, 574 P.2d 214.

7. Conviction hereunder reversed; rights under warrantless clause of Fourth Amendment violated. State v. Dean, 2 K.A.2d 64, 574 P.2d 572.

8. Contention statute unconstitutional without merit; conviction of possession of marihuana with intent to sell sustained. State v. Luginbill, 223 K. 15, 21, 574 P.2d 140.

65-4102. Board of pharmacy to administer act; authority to control; report to chairmen of judiciary committees. (a) The board shall administer this act and may adopt rules and regulations relating to the registration and control of the manufacture, distribution and dispensing of controlled substances within this state. All rules and regulations of the board shall be adopted in conformance with article 4 of chapter 77 of the Kansas Statutes Annotated and the procedures prescribed by this act.

(b) Annually, the board shall submit to the speaker of the house of representatives and the president of the senate a report on substances proposed by the board for scheduling, rescheduling or deletion by the legislature with respect to any one of the schedules as set forth in this act, and reasons for the proposal shall be submitted by the board therewith. In making a determination regarding the proposal to schedule, reschedule or delete a substance, the board shall consider the following:

(1) The actual or relative potential for abuse;

(2) the scientific evidence of its pharmacological effect, if known;

(3) the state of current scientific knowledge regarding the substance;

(4) the history and current pattern of abuse;

(5) the scope, duration and significance of abuse;

(6) the risk to the public health;

(7) the potential of the substance to produce psychological or physiological dependence liability; and

(8) whether the substance is an immediate precursor of a substance already controlled under this article.

(c) The board shall not include any nonnarcotic substance within a schedule if such substance may be lawfully sold over the counter without a prescription under the federal food, drug and cosmetic act.

(d) Authority to control under this section does not extend to distilled spirits, wine, malt beverages or tobacco.

History: L. 1972, ch. 234, § 2; L. 1974, ch. 258, § 2, July 1.

65-4103. Nomenclature. The controlled substances listed or to be listed in the schedules in section 5, 7, 9, 11 and 13 [65-4105, 65-4107, 65-4109, 65-4111 and 65-4113] are included by whatever official, common, usual, chemical, or trade name designated. [L. 1972, ch. 234, § 3; July 1.]

65-4104. Substances included in schedule I; tests for determining. The board shall place a substance in schedule I if it finds that the substance: (1) Has high potential for abuse; and

(2) has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision. [L. 1972, ch. 234, § 4; July 1.]

65-4105. Substances included in schedule I. (a) The controlled substances listed in this section are included in schedule I and the number set forth opposite each drug or substance is the DEA controlled

U.S. Department of Justice

Drug Enforcement Administration

Washington, D.C. 20537

OCT 11 1984

Mr. Everett L. Willoughby
Executive Director
Kansas Board of Pharmacy
503 Kansas Avenue, Suite 328
P.O. Box 1007
Topeka, KS 66601

Dear Mr. Willoughby:

The United States Attorney General is responsible for administering the U.S. Controlled Substances Act (Public Law 91-513). This responsibility has been delegated to the Administrator of the Drug Enforcement Administration (DEA), an agency within the Department of Justice. The Controlled Substances Act requires that its schedules of drugs be maintained in accordance with drug control actions taken by DEA.

The control action taken by the enclosed Federal Register announcement is required in order for the United States to be in compliance with its obligation under the Convention on Psychotropic Substances. The substances being temporarily controlled, twenty-one benzodiazepines, have no accepted medical use in treatment and are not currently marketed in this country. Some of these compounds may be undergoing investigation for marketing in the future. A reevaluation of the control status may be necessary if one of these drugs is approved for medical use in this country.

I hope this information is useful to you.

Sincerely,

Howard McClain Jr.

Howard McClain, Jr., Chief
Drug Control Section
(202) 633-1366

Enclosure

LAW OFFICES
HIATT & CARPENTER, CHARTERED
627 S. TOPEKA AVENUE
TOPEKA, KANSAS 66603-3294

EUGENE W. HIATT
EDWIN P. CARPENTER
RONALD R. HEIN
DAVID C. CARPENTER
STEPHEN P. WEIR

TELEPHONE
AREA CODE (913)
232-7263

PRESENTATION TO
HOUSE JUDICIARY COMMITTEE
FEBRUARY 5, 1985
RE: H.B. 2066

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for Johnson and Johnson. I appear today to speak in support of H.B. 2066, and specifically in support of those provisions rescheduling the drug Sufentanil from Schedule I to Schedule II.

Sufentanil, is marketed by Janssen Pharmaceutica as the brand name drug SUFENTA*. On March 20, 1984, the Drug Enforcement Administration of the Dept. of Justice proposed rescheduling Sufentanil from Schedule I to Schedule II, and on May 25, 1984, Sufentanil was so rescheduled. (See Attachment A)

Such rescheduling at the Federal level keeps Sufentanil classified as a narcotic substance subject to the stringent controls provided for Schedule II drugs, but permits the use of the drug pursuant to the Controlled Substances Act since its medical uses have now been clearly documented and demonstrated.

Sufentanil is a primary anesthetic agent and is also used as an anesthetic adjunct. It is injected intravenously, and, like many anesthetics, should be administered only by persons specifically trained in the use of intravenous anesthetics and management of the respiratory effects of this and other such drugs.

The State Board of Pharmacy does not have the power to reschedule this or other drugs during the time that the Legislature is not in session. Although this drug has been legalized for marketing as a Schedule II drug at the Federal level, it is not currently legal to market the drug in the State of Kansas due to the Schedule I classification still in effect here.

SUFENTA has been able to be marketed for almost a year in most of the other states in the nation, but the patients, pharmacists, and physicians in the State of Kansas have been denied access to this new anesthetic agent during that time. We are not here today to argue the merits or demerits of forcing Kansas citizens to be denied access to new medical treatments and discoveries until such time as the Legislature has had an opportunity to meet and change the law.

* Registered trademark of Janssen Pharmaceutica, Inc.

Attachment No. 10
House Judiciary
February 5, 1985

However, this is certainly a matter that requires expeditious action on the part of the Legislature. I would urge your support of H.B. 2066 and would further urge that the Legislature act quickly on this matter. Thank you very much for hearing my comments today.

Sincerely,

HIATT & CARPENTER, CHARTERED

Ronald R. Hein
Legislative Counsel
Johnson & Johnson

RRH:lc

ATTACHMENT A

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Proposed Rescheduling of Sufentanil From Schedule I to Schedule II of the Controlled Substances Act

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Administrator of the Drug Enforcement Administration (DEA) proposes to reschedule the Schedule I narcotic drug, sufentanil, to Schedule II of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*). This action is initiated upon DEA's receipt of a letter from the Assistant Secretary for Health, Department of Health and Human Services (DHHS), recommending that sufentanil be rescheduled from Schedule I to Schedule II. According to the Food and Drug Administration, sufentanil is a narcotic drug with a high potential for abuse and a New Drug Application for sufentanil will be approved in the near future. DEA's final decision concerning the relative abuse potential of sufentanil will take account of the Assistant Secretary's recommendation and any information received in response to this proposal. The effects of this rule would be to require that the manufacture, distribution, dispensing, security, registration, recordkeeping, inventory, exportation and importation of this drug be subject to controls for Schedule II narcotic substances.

DATE: Comments and objections must be received on or before April 19, 1984.

ADDRESS: Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, 1405 I Street NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, D C 20537 Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION:

List of Subjects on 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

By Federal Register final rule (45 FR 64571; September 30, 1980), sufentanil was controlled under Schedule I of the CSA, effective December 1, 1980. On February 22, 1984, the Assistant Secretary for Health, on behalf of the Secretary, Department of Health and Human Services, sent to the Administrator of the Drug Enforcement Administration a letter recommending that sufentanil be rescheduled into Schedule II once it is approved for marketing and that sufentanil continue to be defined as a narcotic. Enclosed with the letter was a document entitled "Basis for the Rescheduling of Sufentanil From Schedule I to Schedule II of the Controlled Substances Act." The document contained the factors which the CSA requires the Secretary to consider and the summarized considerations of the Secretary in recommending rescheduling of sufentanil.

The factors considered by the Secretary concerning sufentanil were:

(1) Its actual or relative potential for abuse;

(2) Scientific evidence of its pharmacological effect;

(3) The state of current knowledge regarding the substance;

(4) Its history and current pattern of abuse;

(5) The scope, duration and significance of abuse;

(6) What, if any, risk there is to the public health;

(7) Psychic or psychological dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled.

Based on the scientific and medical evaluation and the recommendation of the Secretary, Department of Health and Human Services, with respect to sufentanil, received in accordance with Section 201(b) of the CSA (21 U.S.C. 811(b)), and under the authority vested in the Attorney General by Section 201(a) of the CSA (21 U.S.C. 811(a)) and delegated to the Administrator by regulations of the Department of Justice (28 CFR 0.100), the Administrator hereby proposes that 21 CFR 1308.11(b)(44) be redesignated as 1308.12(c)(23) to read as follows:

PART 1308—[AMENDED]

§ 1308.12 Schedule II.

* * * * *

(c) * * *

(23) Sufentanil	9740

* * * * *

§ 1308.11 [Amended]

21 CFR 1308.11(b) (45)–(46) is redesignated as 21 CFR 1308.11(b) (44)–(45).

All interested persons are invited to submit their comments or objections in writing regarding this proposal. If a person believes that one or more issues raised by him warrant a hearing, he should so state and summarize the reasons for his belief. Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, 1405 I Street NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds, in his sole discretion, warrant a hearing, the Administrator will publish in the Federal Register an order for a public hearing which will summarize the issues to be heard and set the time for the hearing that will not be less than 30 days after the date of the order.

Pursuant to Title 5, United States Code, Section 605(b), the Administrator certifies that the rescheduling of sufentanil, as proposed herein, will not have a significant impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). Many of the regulatory requirements imposed on Schedule II substances are similar to those imposed on Schedule I substances. Additionally, substances in Schedule II may be used in medical treatment in the United States.

In accordance with the provisions of 21 U.S.C. 811(a), this proposal to reschedule sufentanil from Schedule I to Schedule II is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and as such have been exempted from the consultation requirements of Executive Order 12291 (46 FR 13193).

Dated: March 13, 1984.

Francis M. Mullen, Jr.,

Administrator, Drug Enforcement Administration.

[FR Doc. 84-7457 Filed 3-19-84; 8:45 am]

BILLING CODE 4410-09-M

ATTACHMENT A

diagnosis, treatment, and control of parasitism.

Effective date May 25, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: May 18, 1984.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 84-14022 Filed 5-24-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Rescheduling of Sufentanil into Schedule II

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This is a final rule removing sufentanil from Schedule I of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*) and placing it into Schedule II. Sufentanil remains classified as a narcotic substance. As a result of this rule, sufentanil is subject to Schedule II narcotic controls, the majority of which are identical to those of Schedule I narcotics. In addition, sufentanil may be prescribed according to the CSA controls for Schedule II narcotic substances.

EFFECTIVE DATE: May 25, 1984.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: A notice was published in the Federal Register on Tuesday March 20, 1984 (49 FR 10274), proposing that sufentanil, a narcotic substance, be transferred from Schedule I to Schedule II of the Controlled Substances Act. Interested persons were given until April 19, 1984, to submit comments or objections regarding the proposal. No comments or objections were received in response to the proposal; nor were there any requests for a hearing. In addition, according to a May 4, 1984 letter from Robert J. Temple, M.D., Acting Director, Office of Drug Research and Review, Center for Drugs and Biologics, Food and Drug Administration (FDA) of the Department of Health and Human Services, the New Drug Application (NDA) for sufentanil is approved; sufentanil is therefore safe and effective for use in medical treatment in the United States, as recommended by the FDA.

Based on the scientific and medical evaluation and recommendation of the Assistant Secretary for Health, on behalf of the Secretary, Department of Health and Human Services, sent on February 22, 1984 in accordance with section 201(b) of the CSA (21 U.S.C. 811(b)), the Administrator of the Drug Enforcement Administration, pursuant to Sections 201 (a) and (b) of the CSA (21 U.S.C. 811 (a) and (b)) finds that:

(1) Sufentanil has a high potential for abuse.

(2) Sufentanil has a currently accepted medical use in treatment in the United States.

(3) Abuse of sufentanil may lead to severe psychological or physical dependence.

The above findings are consistent with placement of sufentanil into Schedule II of the CSA. Most of the regulations (for registration, security, labeling and packaging, quotas, inventory, records, reports, order forms, importation, exportation, and criminal liability) for Schedule II narcotic substances are the same as for Schedule I narcotic substances. Regulations that are effective on May 25, 1984 and imposed on sufentanil by this order are as follows:

1. *Registration.* Any person who manufactures, distributes, engages in research, imports or exports sufentanil or who proposes to engage in sufentanil's manufacture, distribution, importation, exportation, or research shall obtain a registration to conduct that activity by (date of publication), pursuant to Part 1301 of Title 21 of the Code of Federal Regulations.

2. *Security.* Sufentanil must be manufactured, distributed and stored in accordance with §§ 1301.71, 1301.72(a)(c)(d), 1301.73, 1301.74, 1301.75(b)(c) and 1301.76 of Title 21 of the Code of Federal Regulations.

3. *Labeling and packaging.* All labels on commercial containers of, and all labeling of, sufentanil which is packaged after (date of publication) shall comply with the requirements of §§ 1302.03-1302.05 and 1302.07-1302.08 of Title 21 of the Code of Federal Regulations.

4. *Quotas.* Quotas for sufentanil are established pursuant to Part 1303 of Title 21 of the Code of Federal Regulations.

5. *Inventory.* Registrants possessing sufentanil are required to take inventories pursuant to § 1304.04 and §§ 1304.11-1304.19 of Title 21 of the Code of Federal Regulations.

6. *Records.* All registrants must keep records pursuant to § 1304.04 and §§ 1304.21-1304.23 of Title 21 of the Code of Federal Regulations.

7. *Reports.* All registrants are required to file reports pursuant to §§ 1304.31-1304.41 of Title 21 of the Code of Federal Regulations.

8. *Order Forms.* Each distribution of sufentanil requires the use of an order form pursuant to Part 1305 of Title 21 of the Code of Federal Regulations.

9. *Prescriptions.* As sufentanil has been approved by the Food and Drug Administration for use in medical treatment, the drug may be dispensed by prescription. Prescriptions for sufentanil are to be issued pursuant to §§ 1306.01-1306.07 and §§ 1306.11-1306.15.

10. *Importation and Exportation.* All importation and exportation of sufentanil shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

11. *Criminal Liability.* Any activity with sufentanil not authorized by or in violation of the Controlled Substances Act or the Controlled Substances Import and Export Act continues to be unlawful. The applicable penalties before (date of publication) shall be those of a Schedule I narcotic controlled substance. On May 25, 1984, sufentanil for the purposes of criminal liability shall be treated as a Schedule II narcotic controlled substance. The penalties of Schedule I or II narcotic controlled substances are the same. The only effect of the transfer may be for pleading purposes.

12. *Other.* In all other respects, this order is effective on May 25, 1984.

Pursuant to Title 5, United States Code, Section 605(b), the Administrator certifies that the rescheduling of sufentanil, as ordered herein, will not have a significant impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96-354). Most of the regulatory requirements imposed on Schedule II substances are the same as those imposed on Schedule I substances. Additionally, substances in Schedule II may be used in medical treatment in the United States.

In accordance with the provisions of section 201(a) of the CSA (21 U.S.C. 811(a)), this scheduling action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, have been exempted from the consultation requirements of Executive Order 12291 (46 FR 13193).

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by Section 201(a) of the CSA (21 U.S.C. 811(a)) and delegated to the Administrator of the Drug Enforcement Administration by regulations of the Department of Justice (28 CFR Part 0.100), the Administrator hereby orders that Part 1308, Title 21, Code of Federal Regulations (CFR) be amended as follows:

PART 1308—[AMENDED]

(1) By removing sufentanil as item (44) of § 1308.11(b) and renumbering items (45) tilidine and (46) trimeperidine as items (44) and (45), respectively; and

(2) By amending paragraph (c) of § 1308.12 Title 21, Code of Federal Regulations (CFR), to include sufentanil therein as item (23), to read as follows:

§ 1308.12 Schedule II

• • • • •

(c) • • •

(23) Sufentanil.....9740

• • • • •

Dated: May 18, 1984

Francis M. Mullen, Jr.,

Administrator, Drug Enforcement Administration.

[FR Doc. 84-14083 Filed 5-24-84; 8:45 am]

BILLING CODE 4410-09-M

THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CHIEF CLERK OF THE DISTRICT COURT
10TH JUDICIAL DISTRICT
COURTHOUSE
OLATHE, KANSAS 66061

LOVA DUNCAN
CHIEF CLERK

913-782-5000

January 23, 1985

Kansas House of Representatives:

Representative Vincent Snowbarger
Representative Robert J. Vancrum
Representative Stephen R. Cloud
Representative Arthur Douville ✓

RE: HB 2009

The above numbered bill has come to my attention. I would like to go on record as opposing it. My reasons for doing this are as follows:

As the Clerk of the District Court, I feel it could have a sizeable impact on my office should it become law and the administrative judge elect to use such a system in this district. The impact would be noticeable in the after-hours bond work. Now, I must have someone on call to take cash bonds daily after business hours, on holidays and on week-ends. If all bonds would become cash bonds then those now being written by bondsmen would become the Clerk's responsibility. There is no way we could handle this volume without several additional personnel. We would not only need the additional personnel for the after-hours work but it would increase the in-office work in the area of writing bonds and handling the bookkeeping responsibility that would come about as a result of the bill.

No doubt you realize the problems that would arise from such a bill, due to the fact Johnson County is located adjacent to a large city. The criminal element that we deal with are professionals and once they had deposited a small sum of money with the courts they would not bother to return to answer their charges. What provision is made for searching for and returning those defendants to Johnson County for prosecution?

continued to page 2

Attachment No. 11
House Judiciary
February 5, 1985

Under our present law, a judge, if he feels a defendant should be released, can do so by letting him sign a personal recognizance.

I would be glad to discuss my concerns in more detail and answer any questions you might have in regard to HB 2009. You may contact me in my office at 782-5000, Ext. 580 or at my home, 913-884-7386. I have appreciated your assistance in the past and look forward to working with you this legislative session.

Lova Duncan

Lova Duncan
Chief Clerk

LD:jp
enc.

Session of 1985

HOUSE BILL No. 2009

By Special Committee on Judiciary

Re Proposal No. 25

12-18

AN ACT concerning criminal procedure; relating to appearance bond.

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

Section 1. The administrative judge of any judicial district may provide by rule that a criminal defendant, instead of executing an appearance bond with sureties or a cash bail bond, may deposit with the clerk of the court a cash sum not to exceed 25% of the amount of the appearance bond. If the defendant makes such a cash deposit, 90% of the deposit shall be returned to the defendant upon performance of all required appearances. The remainder of the deposit and any interest thereon shall be retained by the clerk of the court in a separate fund to be used as directed by the administrative judge of the judicial district for the exclusive purpose of paying the expenses of the cash deposit program authorized by this section, including the costs of assuring the appearance of criminal defendants released under the program. Before the end of each fiscal year, the administrative judge of the judicial district shall determine the amount which will be necessary to pay the expenses of the cash deposit program during the following fiscal year. Within 30 days after determination of the amount necessary, the clerk of the district court shall remit to the state treasurer any moneys in the fund in excess of that amount. Upon receipt of the remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the state general fund.

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