

Approved 4/25/85
Date

MINUTES OF THE House COMMITTEE ON Judiciary

The meeting was called to order by Representative Joe Knopp at
Chairperson

3:30 ~~xxxx~~ a.m./p.m. on April 1, 1985 in room 526-S of the Capitol.

All members were present except:

Representative Luzzati was excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department

Mike Heim, Legislative Research Department

Mary Ann Torrence, Revisor of Statutes Office

Mary Hack, Revisor of Statutes Office

Becca Conrad, Secretary

Conferees appearing before the committee:

Sylvia Hoagland, Kansas Department on Aging

Barbara Sabol, Secretary of the Kansas Department of Health & Environment

Dick Hummel, Executive Director of Kansas Health Care Association

John Grace, Executive Director of Kansas Association of Homes for the Aging

Basil Covey, Kansas Retired Teachers Association

Dr. Robert Harder, Secretary of Social & Rehabilitation Services

SB 72 - Concerning mandatory reporting of incidents of abuse or neglect of residents of certain facilities.

Sylvia Hoagland, Kansas Department on Aging, made a very brief statement in support of this bill. See Attachment No. 1. She also said that Barbara Sabol, Secretary of the Kansas Department of Health and Environment, could not appear in person to testify but wanted her written testimony in support of this bill recorded which is Attachment No. 2.

Dick Hummel, Executive Director of Kansas Health Care Association, spoke from a neutral standpoint on SB 72. His testimony is Attachment No. 3.

John Grace, Executive Director of Kansas Association of Homes for the Aging, said his organization supports this bill. See Attachment No. 4.

Basil Covey, Kansas Retired Teachers Association, spoke in favor of this bill as shown in Attachment No. 5.

Dr. Robert Harder, Secretary of Social and Rehabilitation Services, said they support this legislation. His testimony and supporting documents are Attachment No. 6.

Representative Walker made a motion to report SB 72 favorably and it was seconded by Representative Fuller. The motion carried.

SB 38 - Concerning court procedure; relating to change of judge.

Representative Vancrum made a motion to eliminate the new language shown in lines 64-65, page 2 of the bill, starting with "No party". As a friendly amendment, there was a motion to reinsert the language in lines 74-77. Upon vote, this motion carried.

Representative Cloud made a motion to pass SB 72 favorably as amended. It was seconded by Representative Vancrum and carried.

SB 252 - Relating to adoption; concerning certain fees, compensation and expenses relating thereto; providing certain restrictions with regard thereto and requiring court approval thereof.

There was discussion on the economic restriction of this bill, and paying the surrogate mother before the court approves the award.

Representative Wagnon made a motion to report this bill favorably and it was seconded by Representative Solbach. The motion carried.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,
room 526-S, Statehouse, at 3:30 ~~xxx~~ a.m./p.m. on April 1, 1985.

SB 261 - Concerning stipulations for attorney fees in certain instruments.

Representative Snowbarger made a motion to delete all of section (b), lines 42 through 46, pages 1 and 2 of the bill. It was seconded by Representative Fuller.

The Chairman said the bankers associations came in with the angle of making this bill apply to commercial situations which subsection (a) would do, and the savings and loans did not want subsection (b) taken out but would rather limit (b) to the first mortgage so they would be covered too on the first-second buy-out situation. The Chairman said this is the policy question that is before the committee. Representative Snowbarger's motion would limit it just to the commercial situation and leave the first, second, and third mortgage buyers in a savings and loan situation unsatisfied.

Representative Snowbarger's motion carried by a vote of nine to five.

Representative Solbach made a motion to report SB 261 adversely and it was seconded by Representative Bideau. The motion carried by a vote of nine to seven. Representative O'Neal requested that he be recorded as voting "no".

HB 2296 - Concerning certain liens on real property; requiring certain warning statements; prohibiting certain acts by contractors and providing penalties for violations.

The Chairman announced that the interested parties were not in agreement with this bill. He said that the lumberyard people and some small suppliers are concerned about having to ascertain the intent of the purchaser as far as how they intend the material to be used.

The Chairman recommended that HB 2296 be studied in a summer interim committee.

SB 2 - Concerning juveniles; prohibiting detention in adult jails; providing exceptions; relating to development of alternatives to detention.

There was discussion on runaway shelters, the length of time juveniles can be held, the funding issue, and the "sight and sound" issue.

Representative Solbach made a motion to pass SB 2 favorably and it was seconded by Representative Whiteman. Mary Torrence pointed out that the two year effective date creates a problem. The Chairman said the conceptual amendment was accepted. After further discussion this motion carried.

SB 51 - Concerning support of certain persons; relating to orders for child support for maintenance; providing for enforcement thereof.

Representative Wagnon said there is one policy issue that the subcommittee did not agree on. The language is shown on page 2, line 66 of Attachment No. 7. She said the way it is currently drafted, if you have just an order for maintenance of a spouse but there is no support for a minor child involved, that person would be able to use this enforcement system for maintenance. Representative Wagnon said the federal law only requires a different definition to enforce maintenance when there is a child under the order of support who is living with that spouse. She said they split two to two on this issue and the committee needed to make a decision on this.

Representative Wagnon said the other changes they made are as follows: 1.) included a statement on visitation; and 2.) tried to accommodate the wage withholding problems.

Representative Shriver made a motion to adopt the language that limits support to just those situations where there is a child. It was seconded by Representative O'Neal. (Page 2 of Attachment No. 7) The motion carried.

There was discussion on Section 51, page 55 of the bill concerning the obligee being held blameless without recourse by the obligor if the employer failed to make an accurate payment.

Representative Wagnon made a motion to adopt the subcommittee's report, Attachment No. 7. It was seconded by Representative Whiteman and carried.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,
room 526-S, Statehouse, at 3:30 ~~xxx~~ p.m. on April 1, 19 85

Representative Douville made a motion to delete line 255 and put a period after \$2,500 on Attachment No. 7, page 7. Representative Cloud said he would second this motion if Representative Douville would agree to change \$2,500 to \$500.00. Representative Douville agreed to this and a division was requested.

A vote was taken on reducing the penalty from \$2,500 to \$500. This motion carried.

A vote to delete line 255 was taken and it carried.

Representative Wagon said that Art Griggs in the Department of Administration felt that the word "periodic" should be inserted on page 1. Representative Wagon made a motion to insert "periodic" after the word "other" in line 47, page 1. This was seconded by Representative Wunsch and carried.

Representative Fuller made a conceptual motion to take out the voluntary assignment portion of the bill unless agreed to by employer and employee. This is in line 167, 168 and 169 of Attachment No. 7. Representative Solbach seconded this motion and it carried.

Representative Wunsch made a motion to limit (D) on page 24 of Attachment No. 7 to those support orders established under (B). It was seconded by Representative Buehler and carried.

Representative Vancrum made a motion to delete the words "the obligee or" in line 172, page 5 of Attachment No. 7. Representative Cloud seconded this motion and it carried.

Representative Shriver made a motion to delete the sentence that starts on line 179 and ends on line 180, page 5 of Attachment No. 7. It was seconded by Representative Snowbarger and carried.

Representative Bideau made a motion that a magistrate judge not be granted the power to enter an original order in a reciprocal case. The Chairman said that his argument against that is that someone has to arbitrarily do that and he thought with the guidelines that are going to be passed down, that the magistrate is going to be able to do that the first instance as well as the district judge because it is usually an ex parte order anyway and usually a minimal kind of adversarial hearing; he thought a magistrate should do it rather than requiring a district judge to take up his time on those kind of things. Representative Bideau decided to withdraw this motion.

Representative Fuller made a motion that the \$2.00 fee be raised to \$5.00 for court orders and that not exceed \$10.00 in a 30 day period. Representative Cloud seconded this motion.

Representative Wagon said the committee discussed this thoroughly and felt that, while hearing all the concerns from Mr. Abbott at Boeing, when it costs \$25.00 to write a check that you're taking some person who has been behind, putting them on automatic wage withholding, and then you're going to hit them for \$10.00 a month in addition to that to have this taken out of their check, there's going to be some very mad constituents. She said this could cause a tremendous public relations problem and she vigorously opposed this.

Representative Cloud said that a little higher charge would be more effective as far as the wife receiving her support.

Representative Fuller said that the person is penalized for that year, but at the end of that year he is going to go off so the incentive is to stay off and not go on again.

Upon vote, this motion carried. Representative Wagon and Solbach requested that they be recorded as voting "no".

Representative Solbach made a motion to change the effective date in line 991 of the statute book to January 1, 1986. It was seconded by Representative Shriver. Representative Solbach decided to withdraw this motion.

There was discussion on the lien provisions on real and personal property of SB 51; whether the liens can be limited that are made against this property only to nonexempt property; and a judgment lien placed on a car, which is valid and not paid, being foreclosed against.

Representative Wagon made a motion to pass SB 51 as amended and it was seconded by Representative Douville. This motion carried.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,
room 526-S, Statehouse, at 3:30 ~~am~~ p.m. on April 1, 1985.

SB 267 - Concerning certain medical malpractice actions; requiring submission to the State Board of Healing Arts of certain information relating thereto.

Representative Solbach made a motion to adopt the language that the Medical Society, the Board of Healing Arts, the Health Care Stabilization Fund attorneys, and the Insurance Commissioner proposed. The Chairman said that the amendments essentially say that the Board of Healing Arts will be given expert report from attorneys handling malpractice cases as they come up. The motion was seconded by Representative Shriver and carried.

Representative Solbach said that Representative Duncan wanted him to present a technical amendment which is adding the words "State Board of Healing Arts". The Chairman said this could be included as part of Representative Solbach's previous amendment.

Representative Solbach made a motion that SB 267 be passed favorably as amended. It was seconded by Representative Adam and carried.

The Chairman announced that this was the final meeting.

The meeting adjourned at 5:40 p.m.

SB-72

The following organizations support SB-72 which will insure reporting abuse and neglect in institutions:

American Association of Retired Persons
Kansas Coalition on Aging
Kansans for Improvement of Nursing Homes
Kansas Association of Homes for the Aged
Kansas Nurses Association
Kansas Silver Haired Legislature

Kansas Department on Aging
Kansas Department of Health and Environment
Kansas Department of Social and Rehabilitation Services

We urge your support of this bill.

Attachment No. 1
House Judiciary
April 1, 1985

TESTIMONY ON SB-72
TO HOUSE JUDICIARY COMMITTEE
BY KANSAS DEPARTMENT ON AGING
APRIL 1, 1985

KDOA SUPPORTS SB-72 AS AMENDED AND URGES PASSAGE TO ENSURE REPORTING
AND TO PROTECT BOTH EMPLOYEES AND ELDERLY PEOPLE.

Bill Brief:

SB-72, as amended, provides that mandated reporters of abuse and neglect of residents in adult care facilities be expanded and that knowingly failing to report abuse or neglect of adult care facility residents by mandatory reporters is a Class B misdemeanor.

Summary Provisions:

1. A mandatory reporter would be guilty of a Class B misdemeanor only if the reporter knowingly fails to report.
2. A Class B misdemeanor is the same penalty as in the child abuse statute for failure to report.
3. Immunity of reporters from civil liability continues under K.S.A. 39-1403.

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

TESTIMONY ON SENATE BILL 72

PRESENTED TO THE HOUSE COMMITTEE ON JUDICIARY

APRIL 1, 1985

This is the official position taken by the Kansas Department of Health and Environment on Senate Bill 72.

BACKGROUND INFORMATION:

Senate Bill 72, as amended by Senate Committee, would add certified psychologists to the list of persons who are required to report suspected abuse or neglect of a patient or resident. More importantly, the bill adds to the statute a penalty provision for persons who are required to report suspected abuse and neglect and fail to do so.

Although we do not believe that intentional or knowing failure to report suspected abuse or neglect is widespread, we are aware of several cases where the reporting requirement was apparently violated. In one of these cases, the delay in bringing the alleged abuse to the attention of authorities prevented the criminal prosecution of the alleged perpetrator. In another case, the failure to report caused a significant delay in the provision of needed protective services.

We believe that the penalty for failing to make a required report will bring needed new emphasis to the reporting requirement.

DEPARTMENT'S POSITION:

The Department of Health and Environment strongly recommends that the committee report Senate Bill 72, as amended by the House Committee, favorably for passage.

Presented by: Barbara J. Sabol, Secretary
Kansas Department of Health
and Environment

Attachment No. 2
House Judiciary
April 1, 1985



Kansas Health Care Association

Member of



TESTIMONY PRESENTED BEFORE THE HOUSE JUDICIARY COMMITTEE

By

Dick Hummel, Executive Director Kansas Health Care Association

April 1, 1985

SENATE BILL 72 AMENDED

"AN ACT concerning mandatory reporting of incidents of abuse or neglect of residents of certain facilities."

Chairman Knopp and Committee Members:

On behalf of the Kansas Health Care Association (KHCA), a voluntary, non-profit organization representing 250 licensed adult care homes (nursing homes), both tax-paying and non-proprietary entities, individual as well as multi-facility ownership interests, thank you for this opportunity to appear.

The Senate Committee deleted from the bill what we believe to be the most unnecessary and objectionable part of it, i.e., all adult care home employees required to report suspected abuse. Retained is the Class B misdemeanor penalty against those who are now required to report but knowingly fail to do so. Although we still maintain such legislation as this is unnecessary, we would not oppose the bill in its present form but would vigorously do so if the former amendment was reinstated.

We would like to briefly review the history of this Act, the proposal before you, discuss the misdemeanor provision and the incidents of reports from the SRS records; but beforehand we respectfully request the removal of the emotional fervor and aura which has always accompanied "abuse issues" such as this (which has had numerous attempts in the past for fine-tuning, all rejected by the Legislature) in order to consider the actual facts.

ADULT CARE HOME ABUSE REPORTING ACT:

Framed in 1980; and now applies to adult care homes, state hospitals and 1-2 bed adult family homes only; mandates medically trained and qualified personnel to report suspected incidences of abuse.

Any other person working in a nursing home (aide, cook, janitor, laundry worker, etc.) or any person entering the premises of a nursing home (visitor, delivery

"We Care"

Attachment No. 3 House Judiciary

April 1, 1985

man, legislator, etc.), may file a report by calling the Department on Aging's toll-free telephone number which must be conspicuously posted in the facility.

The notice of this Act, with the SRS local number to call, must also be posted in every adult care home.

ABUSE-NEGLECT DEFINED AS:

Abuse - means neglect, willfull infliction of physical or mental injury or willful deprivation by a caretaker of services which are necessary to maintain physical or and mental health. Neglect - means the failure of a caretaker to maintain reasonable care and treatment to such an extent that the resident's health and emotional well-being is injured.

CLASS B MISDEMEANOR (\$1,000 Fine and/or Six Months Imprisonment):

The argument for the penalty provision (mistakenly promoted as analogous to the child abuse Act by proponents) has been, since 1980, that without such a "hammer" reports won't be made, that the reports being made aren't indicative of the "wide-spread resident abuse" (myth, here-say and conjecture) and that no sanctions now exist against those who fail to report.

A review of the SRS reporting records show:

SRS ADULT ABUSE/NEGLECT/EXPLOITATION REPORTING AND INVESTIGATION:

	Reports Made	Unconfirmed	Reports by Medical Personnel
FY 83 (July-June 83)	359	165	174
FY 85 (July-Nov. 84)	242	124	98

An analysis of the months in these two reporting periods reflects a 63% increase in the number of reports filed in the FY 85 five-month period compared to the 12 months in FY 83.

In response then to the major arguments for the penalty provision:

1. Reports are filed by medically trained and qualified personnel, and the number of reports have increased.
2. Reports aren't sufficiently high enough to be indicative of "wide-spread" abuse of nursing home residents.

COUNTER: Subjective argument; what quota is acceptable?

COUNTER: Actual number of reports compared to nine million days of patient care annually suggest that Kansas adult care homes are doing an excellent job of rendering safe and comfortable care.

3. No sanctions exist now for non-reporting?

COUNTER: Licensure laws exist as sanctions, if applied.

- a. Adult care home administrators. K.S.A. 65-3508(e) states that a "license may be revoked or suspended or an individual censured or reprimanded for failure to assure that nutrition, medications, and treatment of residents, including the use of restraints, are in accordance with acceptable medical practices."
- b. Nurses. K.S.A. 65-1120. License may be denied, revoked or suspended for reasons including "guilty of unprofessional conduct" and "unfit or incompetent by reasons of negligent habits or other causes."

CONCLUSION:

Reports are being filed, have increased, and licensure sanctions exist against those who fail to report.

We would now like to explain our objections to the inclusion of "all employees" under the mandatory reporting requirements:

- persons are admitted to a nursing home under a physician's direction, orders, and medical plan of care, which is executed by and the responsibility of the professional nursing home staff. If proper care isn't being rendered to the point of jeopardizing resident safety (abuse-neglect), these medically-trained and qualified persons should make the reporting determination, and if necessary, be held accountable.
- the definitions of "abuse and neglect" are broad, open to interpretation and opinion, would impose an unnecessary burden and responsibility upon all employees, and could serve to promote a wide-spread "witch-hunt" reporting mania.
- "all employees" can now report and are protected from employer reprisal under the current Act [K.S.A. 39-1403(b)].

House Judiciary Committee
April 1, 1985
SB 72 Amended
Page Four

Adult care homes are responsible providers of care to the elderly and infirmed, day-in and day-out, not an easy task. We neither condone nor accept mistreatment or abuse -- be it resident-resident, staff-resident or resident-staff. When it does occur with our employees, justice is swiftly metted out.

I've attached for your later review a pamphlet that serves to not only dispel the myth of resident abuse but also other common misperceptions about nursing home care.

I'd be happy to respond to any questions.

here's
Help!

*Myths and
Realities of
Living in a
Nursing Home*

ahca

American Health Care Association

Myths and Realities of Living in a Nursing Home

There are many myths about nursing homes. In the past decade, nursing homes—like all areas of health care—have changed radically in terms of staffing, policies and procedures, and the types of care given. Our goals are to provide both quality of care and quality of life to our residents.

Many people fear the move from their own homes to a nursing home. They know how their lives have been before but do not know what to expect at the nursing home. We understand these concerns, and we want residents and their families to know the difference between myths and realistic expectations of life in a nursing home.

Myth

A nursing home is like a hospital.

Reality

A nursing home is *not* a hospital. Many people, especially if there has been a recent hospitalization, think of the nursing home as an extension of hospital care. They expect the same kind of intensive care given in the hospital. A nursing home is different. First, it is a *home* with nursing care available as needed, 24 hours a day, seven days a week. The goals of the nursing home are to:

1. **Rehabilitate** the resident to maximum potential, hopefully returning him or her to the community;
2. **Maintain** that maximum rehabilitation as long as possible within the realities of age and disease;
3. **Prevent** any unnecessary deterioration in physical and emotional well-being; and,
4. **Support** the resident and family, physically and emotionally, should health decline to the point of death.

Myth

Everyone in a nursing home is senile.

Reality

“Senile” is probably the most misunderstood word in the vocabulary of aging. Most people slow down as they age, and this sometimes is true of their mental processes as well. Many people enter a nursing home because they are considered confused or are unable to manage their own care. In many instances, however, this process is reversible and the “spiral of senility” can be stopped by adequate nutrition, exercise, socializing, and properly controlled medication. A more realistic expectation is that a full range of people and personalities will be residents in nursing homes. Some residents will have no mental impairment, some will only be slower in mental processes, and finally, some will be confused part or all of the time. Many nursing homes offer Reality Orientation programs to help confused residents be more alert.

Myth

There is no privacy in a nursing home.

Reality

Each resident has the right to privacy. It may be true that some visitors, family members, even staff and other residents occasionally forget that a nursing home is a resident's *home*. They may forget common courtesies that are followed outside the institution, like knocking before entering a room, or if care is being given, preventing unnecessary exposure. Nursing home staff members are taught how to protect privacy, and you as resident and family are well within your rights to expect it.

Myth

Staffs of nursing homes are cruel and abusive.

Reality

You may have read horror stories of staff members who were cruel and abusive. There are such people in all walks of life: doctors, lawyers, bricklayers, writers. The vast majority of nursing home staffs care and try hard to do a good job. They try despite the fact that some things about working in a nursing home make the job difficult. For instance, the nursing assistants, who have low pay scales, some training, and little job mobility, perform tasks that are physically and emotionally exhausting. The majority give compassionate care. Remember that the very few who are abusive should not reflect on the

rest who do their jobs well. You have the right to expect good care, the privilege to complain if it is not received, and the responsibility to give praise when it is deserved.

Myth

If I enter a nursing home, I'll never go home.

Reality

Remember that the primary goal of the nursing home is to rehabilitate the resident to return to the community. In fact, 70 percent of all residents do return to the community. For those who cannot return permanently to their homes, short visits, health permitting, sometimes are possible. All Medicare or Medicaid certified nursing homes are required by law to hold a place for a resident who takes a leave of absence. The amount of time that bed will be held under those circumstances varies from state to state, but you can find out the facts by asking the nursing home administrator or by calling the Medicaid office in your state. The individual resident can and should participate in the decision about the length of stay in the home. The resident should be told of the medical facts about his or her physical and emotional state and the expectations for discharge from the home.

Myth

Nursing homes smell.

Reality

Nursing homes should not smell of urine or feces. A nursing home should smell just as your home would smell. However, in the early morning, between about seven and ten, when residents are being given their morning care, a smell sometimes may be prevalent. This is especially true in facilities that house a large number of incontinent residents. Many facilities offer bowel and bladder training programs to aid residents in regaining control of these functions. In general, barring the odd accident, a nursing home should have no noticeable smell.

Myth

At the prices I pay, staff should wait on me.

Reality

Some residents feel that because there is a charge for care that the staff should wait on them hand and foot. In fact, the resident may even treat the nursing staff like servants. In reality, though, if the nursing home is to meet the goals of rehabilitation, maintenance,

prevention and support, the resident must be encouraged to do as much for him or herself as possible. Independence is important to self-esteem. To plan and carry this out takes expertise on the part of the nursing staff, and it is that for which you are paying.

Myth

Residents are neglected in nursing homes.

Reality

There have been cases of residents who did not receive adequate care. Occasional neglect, such as an unanswered call light, does occur and it must be reported immediately to the Director of Nurses. Why does this happen? The nursing assistant may be exhausted, the supervisor may not be aware of the problem, or there may be an emergency elsewhere in the building. All of these are correctable by having the resident or family bring the problem to the attention of the supervisor or administrator.

Myth

All residents in nursing homes are female.

Reality

It is true that women outnumber men. In fact, 80 percent of nursing home residents are female. Women outlive men. Nevertheless, there are men in nursing homes. Also, couples who enter nursing homes may share a room if they desire. The patient's bill of rights mandates that this be allowed in Medicaid and Medicare institutions. In addition, privacy must be provided for conjugal visits.

Myth

Families and friends abandon nursing home residents.

Reality

Entering a nursing home may mean moving out of the neighborhood where friends and relatives reside. It may indeed be true that the easy give and take exchange of sharing a home will be changed, but there is no reason for any resident to be abandoned. Most nursing homes have liberal visiting hours and are willing to make exceptions around those hours in special circumstances. Most facilities are located in areas with good public transportation. Family and friends should be made to feel welcome and relationships should continue as before.

Myth

The food is terrible in nursing homes.

Reality

Food is a matter of individual preference. There is nothing like home cooking. We all have certain customary dishes and styles of preparation that no one else can do quite as well. It would be unreasonable to assume that these would be possible to provide in the nursing home. However, nursing homes employ dieticians to plan menus that are palatable, attractive, and meet the nutritional needs of the individual. Some residents are on restricted or special diets as ordered by their physicians and thus have limited food choices. You should expect food that is well prepared, warm (or cold if appropriate), and well served. You should have easy access to the dietician or other appropriate individual to discuss any dietary problems you may have and you can expect reasonable attention to your problem. Most nursing homes allow family and friends to bring in favorite foods occasionally and give residents opportunities to do some cooking.

Myth

My possessions will all be stolen in a nursing home.

Reality

Before jumping to conclusions about theft, check all possibilities. If the resident is disoriented or forgetful, the items might have been misplaced. If other relatives have visited recently, they may have taken the item for laundry or mending.

Stealing, errors in sorting clothing and residents losing objects may occur in any institutional setting. This should never be condoned or accepted. In a good home, immediate dismissal and notification of proper authorities will be the action taken if an individual is apprehended for theft. This is true for staff, visitors, or other people. Many homes recommend that valuable jewelry and large amounts of cash be kept in a central safe to which the resident has access during business hours. All residents should have a drawer, closet or chest which can be locked. The home should provide keys and encourage protection of private property. Clothing and personal effects should be labeled with the resident's name.

Myth

I should be able to bring my own bed into the nursing home.

Reality

Sorry, you can't. Most nursing homes do not allow residents to bring their own beds. There are two reasons for this. First, almost all nursing homes have hospital type beds in all rooms. These beds can be raised or lowered in their distance from the floor, to help the resident get in or out of bed. The position of the bed can be changed—sitting, flat, head or feet lowered or raised. This makes providing care easier for both resident and staff. Second, nursing homes must satisfy safety and health regulations that allow only certain kinds of beds in a nursing home. Home mattresses seldom are fireproof, and it is not uncommon to find that the hygienic standards required by law have not been met with home maintenance techniques. In short, while it is perfectly understandable that you may miss your own bed, it is far better to stay within this particular nursing home regulation.

Myth

I'll be drugged in the nursing home and lose control of my thoughts and actions.

Reality

This should never happen. Every person has the right to know the medication he or she is taking and has the right to refuse any or all of these. Tranquilizers, pain relievers, sleeping pills, and mood changers all are powerful drugs and do have a profound effect on how alert one remains. Properly prescribed, these medications should help, not harm individuals. Staff, residents, and family all have a responsibility to report and take action if they suspect medications are being used improperly.

Myth

I'll be tied down in the nursing home.

Reality

Restraints (cloth bindings on chairs or beds) may be used in nursing homes on only two occasions: 1) if an individual is confused, and because of his mental state is unable to comprehend the harm he may do to himself or another and, 2) if a person is unable to maintain his position because of severe physical handicap such as paralysis. Restraints are used only for a resident's own safety. Restraints are *never* to be used without a physician's order and then only for the span of time that is absolutely necessary. People in restraints should be checked frequently, at least

every hour, with the restraining strap removed, repositioned, and the patient moved.

Myth

The nursing home will take all my money.

Reality

Nursing home care is expensive. Medicare seldom covers more than a few days and a limited number of people are eligible for Medicaid. A nursing home, however, provides far less expensive care than an acute care hospital and has the ability to provide a comprehensive set of services under one roof. Entering a nursing home should be approached with as much thought and preparation as any major life change or any major expense. You should meet with the administrator, discuss thoroughly price and any extra expenses you can expect to incur. Some homes do have an extra charge for hand feeding, incontinent care, personal laundry, or some other treatment. Obtain in writing what your basic charge will be, and understand clearly what is being said before signing a contract. In this way both you and the home will have a clear idea of price.

**KANSAS HEALTH CARE ASSOCIATION
221 SOUTHWEST 33RD
TOPEKA, KANSAS 66611**

— **Compliments of** —



The Organization of
Nonprofit Homes and
Services for the Elderly

Kansas Association of Homes for the Aging
One Townsite Plaza
Fifth and Kansas Avenue
Topeka, Kansas 66603

913-233-7443

TESTIMONY FOR HOUSE JUDICIARY COMMITTEE
Monday, April 1, 1985
RE: Senate Bill 72

by John R. Grace, Executive Director
Kansas Association of Homes for the Aging

Thank you Mr. Chairman and Members of the Committee.

The Kansas Association of Homes for the Aging is a non-profit organization that represents the community, religious, governmental and fraternal not-for-profit adult care homes, retirement communities and social services for older adults of Kansas.

Our Association supports Senate Bill 72 as amended by the Senate Public Health and Welfare Committee

The nearly 27,000 elderly residents of adult care homes of Kansas are a very frail and vulnerable group. Many of them have no family and rely upon the staff of the facility for their social support system. Because they are "at risk" more than you or I, we need reasonable, effective, and fair legal protections for them

We believe that those persons who "knowingly" fail to report instances of abuse/neglect to the appropriate state agency, should be held liable for their actions.

Our association will be working closely with the three State Departments of Social Rehabilitation Services, Health and Environment and Aging to continue educating employees of adult care homes about abuse/neglect and the reporting requirements of such instances.

Thank you.



Kansas Retired Teachers Association



1984-1985

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April 1, 1985

Members of the House Judiciary Committee:

My name is Basil Covey and I represent the Kansas Retired Teachers Association.

We support SB 72 which adds psychologists to those who must report abuse or neglect of nursing home residents and makes failure to report a crime punishable by up to six months in jail and a \$1,000 fine.

A personal note--My wife and I volunteer our services for group singing at some of the facilities. We hear of abuses of residents but we have never witnessed such action. We both, my wife and I, have had parents in rest homes and know that residents can be deprived of their dignity and personal property. The former by ridicule and sarcasm and the latter by theft.

The elderly deserve the best care possible so that they may enjoy their remaining years of life in a safe and comfortable environment with their dignity intact.

SB 72 will serve as a warning that residents deserve protection of person and property.

We urge you to give SB 72 a favorable vote.

Sincerely,

Basil Covey
Basil Covey
NRTA

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Attachment No. 5
House Judiciary
April 1, 1985

BUILDING BRIDGES FOR KRTA SERVICE:

To the local UNITS; From the state ASSOCIATION; With the NRTA DIVISION

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Statement Regarding S.B. 72

I. Title

An act concerning mandatory reporting of incidents of abuse or neglect of residents of adult care homes; adult family homes and certain medical facilities; amending K.S.A. 1983 Supp. 39-1402 and repealing the existing section.

II. Purpose

This proposed law adds certified psychologists to the professionals already required to report by the existing law. The current law makes provision for immunity of these individuals, because they will be mandated to report.

Also, the amendment adds a penalty for persons mandated to report, but do not report, putting some "teeth" into the current law.

III. Background

The current statute K.S.A. 39-1401-1410 requires only certain individuals to report, and there is no penalty for not reporting. If this proposed legislation is passed, it would make it mandatory that certified psychologists report suspected incidences of abuse or neglect. If these individuals do not report it would be a class B misdemeanor. While it cannot be validated, it is said that nursing home administrators and professional social workers have failed to report instances of abuse in their facilities. The current law makes provision for immunity of the reporter.

IV. Effect of Passage

The procedure by which area/local staff receive reports, investigate the allegations and offer needed services, when appropriate, will not be affected by the passage of this legislation. However, if the number of reports are significantly increased, additional staffing would be required in the future.

V. SRS Recommendation

SRS supports this legislation.

Robert C. Harder
Office of the Secretary
Social and Rehabilitation Services
296-3271
April 1, 1985

Attachment No. 6
House Judiciary
April 1, 1985

Department of Social and Rehabilitation Services
Adult Services

ADULT ABUSE/NEGLECT/EXPLOITATION REPORTING AND INVESTIGATION
FISCAL YEAR 1984 (July, 1983 through June, 1984)

Medical

REPORTS RECEIVED	June, 1984		Year to Date		PERPETRATORS	June, 1984		Year to Date		
	#	%	#	%		#	%	#	%	
Total	46		445		Abuse:	23		234		
Age Range	18 - 96		18 - 103		Self	1	4	4	2	
Average Age	69		65		Spouse	1	4	4	2	
	#	%	#	%	Family/Relatives	2	9	9	4	
Male	11	24	148	33	Guardian/Conservator	--	--	--	--	
Female	35	76	297	67	Other/Staff	19	83	217	93	
60 years and older	34	74	298	67	Neglect:	20		207		
INVESTIGATIVE FINDINGS					Self	3	15	23	11	
Total Reports	46		445		Family/Relatives	2	10	8	4	
Confirmed	24	52	186	42	Guardian/Conservator	--	--	5	2	
Potential Risk	5	11	38	9	Other/Staff	15	75	171	83	
Unconfirmed	17	37	221	50	Exploitation:	4		43		
ABUSE *					Self	--	--	1	2	
Total Reports	23		234		Family/Relatives	1	25	13	30	
Investigative Findings	Confirmed	13	57	104	44	Guardian/Conservator	1	25	7	16
	Pot.Risk	2	9	18	8	Other/Staff	2	50	22	51
Spouse Abuse Reports	1		4		REPORTERS					
Investigative Findings	Confirmed	1	100	3	75	Self	--	--	14	3
	Pot.Risk	--	--	--	--	Family	9	20	95	21
NEGLECT *					Neighbor/Friend	4	9	48	11	
Total Reports	20		207		Guardian/Conservator	--	--	--	--	
Investigative Findings	Confirmed	10	50	77	37	Community Agencies	--	--	4	1
	Pot.Risk	2	10	19	9	SRS Staff	5	11	20	4
EXPLOITATION *					Medical Personnel (N.H.-M.D.-Health Dept. Hospital Staff)	24	52	210	47	
Total Reports	4		43		Police	--	--	1	1	
Investigative Findings	Confirmed	--	--	17	40	Lawyer/Court Services	--	--	--	--
	Pot.Risk	1	25	4	9	Anonymous	--	--	24	5
						Other	4	9	29	7

* Some cases are reported in more than one category (abuse, neglect, exploitation)

Social and Rehabilitation Services
Adult Services Commission
October 1, 1984

1985 LEGISLATIVE ISSUES

Adult Abuse/Neglect/Exploitation in Medical Facilities

Statement of Problem or Issue

Currently the state law, K.S.A. 1983 Supp. 39-1402, does not require certified psychologists, employees of a medical facility, or law enforcement officers to report abuse or neglect in a medical facility and has no penalty for persons who have any information and fail to report.

Background Data

The current law only requires certain professionals (any persons licensed to practice any branch of the healing arts, the chief administrative officer of a medical care facility, an adult care home administrator, an adult family home administrator, a licensed social worker, a licensed professional nurse, and a licensed practical nurse) to report instances of abuse and neglect and allow other persons (employees, volunteers, etc.) to report.

Currently, aides and non-professional help, psychologists, and law enforcement officials are not required by law to file reports. Neither are ministers or persons visiting the medical facilities required to report.

Current SRS Policy or Status

The current statute does not require the reporting, as stated above. It also does not have any teeth in it. We need to have mandatory reporting by additional persons who are aware of it. We also need to have a penalty for not reporting. While it cannot be validated, it has been said that nursing home administrators and professional social workers have failed to report instances of abuse in their facilities. Also, one verbal unofficial report was received that an administrator filed three non-professional staff persons who reported instances of abuse and neglect in his facility. Such a bill would prevent possible termination of staff because it would mandate them to report. The current law makes provision for immunity of the reporter.

Recommended Changes

Such legislation would require additional non-professional persons, certified psychologists, and law enforcement personnel to report as well as making provision for a penalty when not reported.

ADULT SERVICES

OCT 13 1984

State of Kansas
Department of Social and Rehabilitation Services
Adult Services

ADULT ABUSE/NEGLECT/EXPLOITATION REPORTING AND INVESTIGATION
FISCAL YEAR 1984 (July, 1983 through June, 1984)

Medical

REPORTS RECEIVED	June, 1984		Year to Date		PERPETRATORS	June, 1984		Year to Date		
	#	%	#	%		#	%	#	%	
Total	46		445		Abuse:	23		234		
Age Range	18 - 96		18 - 103		Self	1	4	4	2	
Average Age	69		65		Spouse	1	4	4	2	
	#	%	#	%	Family/Relatives	2	9	9	4	
Male	11	24	148	33	Guardian/Conservator	--	--	--	--	
Female	35	76	297	67	Other/Staff	19	83	217	93	
60 years and older	34	74	298	67	Neglect:	20		207		
					Self	3	15	23	11	
INVESTIGATIVE FINDINGS					Family/Relatives	2	10	8	4	
Total Reports	46		445		Guardian/Conservator	--	--	5	2	
Confirmed	24	52	186	42	Other/Staff	15	75	171	83	
Potential Risk	5	11	38	9	Exploitation:	4		43		
Unconfirmed	17	37	221	50	Self	--	--	1	2	
					Family/Relatives	1	25	13	30	
ABUSE *					Guardian/Conservator	1	25	7	16	
Total Reports	23		234		Other/Staff	2	50	22	51	
Investigative Findings	Confirmed	13	57	104	44	REPORTERS				
	Pot.Risk	2	9	18	8	Self	--	--	14	3
Spouse Abuse Reports	1		4		Family	9	20	95	21	
Investigative Findings	Confirmed	1	100	3	75	Neighbor/Friend	4	9	48	11
	Pot.Risk	--	--	--	--	Guardian/Conservator	--	--	--	--
NEGLECT *					Community Agencies	--	--	4	1	
Total Reports	20		207		SRS Staff	5	11	20	4	
Investigative Findings	Confirmed	10	50	77	37	Medical Personnel (N.H.-M.D.-Health Dept. Hospital Staff)	24	52	210	47
	Pot.Risk	2	10	19	9	Police	--	--	1	1
EXPLOITATION *					Lawyer/Court Services	--	--	--	--	
Total Reports	4		43		Anonymous	--	--	24	5	
Investigative Findings	Confirmed	--	--	17	40	Other	4	9	29	7
	Pot.Risk	1	25	4	9					

* Some cases are reported in more than one category (abuse, neglect, exploitation)

REVENUE REPORTS
 Department of Social and Rehabilitation Services
 Adult Services

ADULT ABUSE/NEGLECT/EXPLOITATION REPORTING AND INVESTIGATION
 FISCAL YEAR 1983 (July, 1982 through June, 1983)

MEDICAL

REPORTS RECEIVED		June, 1983		Year to Date		PERPETRATORS		June, 1983		Year to Date	
		#	%	#	%			#	%	#	%
Total		31		359		Abuse:		16		188	
Age Range		18-102		17-105		Self		0	0	2	1
Average Age		70		62		Spouse		1	6	4	2
		#	%	#	%	Family/Relatives		0	0	4	2
Male		10	32	118	33	Guardian/Conservator		0	0	0	0
Female		21	68	241	67	Other/ Staff		15	94	178	95
60 years and older		24	77	232	65	Neglect:		15		164	
						Self		1	7	13	8
INVESTIGATIVE FINDINGS						Family/Relatives		1	7	8	5
Total Reports		31		359		Guardian/Conservator		0	0	0	0
Confirmed		6	19	138	38	Other/Staff		13	87	143	87
Potential Risk		8	26	56	16	Exploitation:		0		25	
Unconfirmed		17	55	165	46	Self		0	0	2	8
						Family/Relatives		0	0	10	40
ABUSE *						Guardian/Conservator		0	0	4	16
Total Reports		16		188		Other/Staff		0	0	9	36
Investigative Findings	Confirmed	2	13	77	41	REPORTERS					
	Pot.Risk	8	50	32	17	Self		2	6	16	4
Spouse Abuse Reports		1		4		Family		6	19	62	18
Investigative Findings	Confirmed	0	0	1	25	Neighbor/Friend		2	6	29	8
	Pot.Risk	0	0	0	0	Guardian/Conservator		0	0	0	0
						Community Agencies		0	0	2	1
NEGLECT *						SRS Staff		1	3	27	8
Total Reports		15		164		Medical Personnel (N.H.-M.D.-Health Dept. Hospital Staff)		19	61	174	48
Investigative Findings	Confirmed	4	27	58	35	Police		0	0	1	0
	Pot.Risk	0	0	25	15	Lawyer/Court Services		0	0	0	0
						Anonymous		1	3	38	11
EXPLOITATION *						Other		0	0	10	3
Total Reports		0		25							
Investigative Findings	Confirmed	0	0	8	32						
	Pot.Risk	0	0	3	12						

* Some cases are reported in more than one category (abuse, neglect, exploitation)

Department of Social and Rehabilitation Services
Division of Children, Youth, and Adults

ADULT ABUSE/NEGLECT/EXPLOITATION REPORTING AND INVESTIGATION
FISCAL YEAR 1982 (July, 1981 through June, 1982)

MEDICAL FACILITIES

REPORTS RECEIVED	June, 1982		Year to Date		PERPETRATORS	June, 1982		Year to Date		
	#	%	#	%		#	%	#	%	
Total	24		384		Abuse:	13		200		
Age Range	18-91		17-98		Self	1	8	6	3	
Average Age	43		55		Spouse	-	-	-	-	
Male	13	54	133	35	Family/Relatives	2	15	7	4	
Female	11	46	251	65	Guardian/Conservator	-	-	-	-	
60 years and older	9	38	209	54	Other/Staff	10	77	187	93	
					Neglect:	11		171		
INVESTIGATIVE FINDINGS					Self	1	9	10	6	
Total Reports	24		384		Family/Relatives	1	9	4	2	
Confirmed	5	21	126	33	Guardian/Conservator	-	-	-	-	
Potential Risk	7	29	63	16	Other/Staff	9	82	157	92	
Unconfirmed	12	50	195	51	Exploitation:	0		38		
ABUSE *					Self	-	-	-	-	
Total Reports	13		200		Family/Relatives	-	-	14	37	
Investigative Findings	Confirmed	3	23	78	39	Guardian/Conservator	-	-	2	5
	Pot.Risk	4	31	37	19	Other / Staff	-	-	22	58
Spouse Abuse Reports	0		0		REPORTERS					
Investigative Findings	Confirmed	-	-	-	-	Self	-	-	9	2
	Pot.Risk	-	-	-	-	Family	3	13	93	24
NEGLECT *					Neighbor/Friend	2	8	22	6	
Total Reports	11		171		Guardian/Conservator	-	-	1	-	
Investigative Findings	Confirmed	2	18	45	26	Community Agencies	4	17	10	3
	Pot.Risk	3	27	21	12	SRS Staff	1	4	11	3
EXPLOITATION *					Medical Personnel (N.H.-M.D.-Health Dept. Hospital Staff)	12	50	192	50	
Total Reports	0		38		Police	-	-	4	1	
Investigative Findings	Confirmed	-	-	14	37	Lawyer/Court Services	-	-	4	1
	Pot.Risk	-	-	15	39	Anonymous	2	8	17	4
					Other	-	-	21	5	

* Some cases are reported in more than one category (abuse, neglect, exploitation)

by substantial evidence upheld. *In re White*, 227 K. 881, 883, 610 P.2d 1114.

33. Constitutionality of 21-4618 which denies probation and parole and requires mandatory minimum sentences for certain crimes is upheld. *State v. McDaniel & Owens*, 228 K. 172, 185, 612 P.2d 1231.

21-4502. Classification of misdemeanors and terms of confinement; possible disposition. (1) For the purpose of sentencing, the following classes of misdemeanors and the punishment and the terms of confinement authorized for each class are established:

(a) Class A, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one (1) year;

(b) Class B, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed six (6) months;

(c) Class C, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one (1) month;

(d) Unclassified misdemeanors, which shall include all crimes declared to be misdemeanors without specification as to class, the sentence for which shall be in accordance with the sentence specified in the statute that defines the crime; if no penalty is provided in such law, the sentence shall be the same penalty as provided herein for a class C misdemeanor.

(2) Upon conviction of a misdemeanor, a person may be punished by a fine, as provided in K.S.A. 21-4503, instead of or in addition to confinement, as provided in this section.

(3) Whenever there is evidence that the act constituting the misdemeanor was substantially related to the possession, use or ingestion of cereal malt beverage or an alcoholic beverage by such person, the court may:

(a) Order any of the dispositions authorized by this section or by article 46 of chapter 21 of the Kansas Statutes Annotated;

(b) Order such person to attend and satisfactorily complete a suitable educational or training program dealing with the effects of alcohol or other chemical substances when ingested by humans; or

(c) Any appropriate combination of subsections (a) and (b) of this subsection.

History: L. 1969, ch. 180, § 21-4502; L.

1977, ch. 117, § 2; L. 1979, ch. 90, § 4; July 1.

Revisor's Note:

For Judicial Council comment, see 21-4503.

Law Review and Bar Journal References:

"The Kansas Habitual Criminal Act," Bruce E. Miller, 9 W.L.J. 244, 252 (1970).

Obscenity law, Michael J. Lichty, 19 K.L.R. 789, 792 (1971).

"State Control of Local Government in Kansas: Special Legislation and Home Rule," Barkley Clark, 20 K.L.R. 631, 672 (1972).

"Arrest Under the New Kansas Criminal Code," Keith G. Meyer, 20 K.L.R. 685, 718, 720 (1972).

"The Kansas Open Meeting Act: Sunshine on the Sunflower State?," Deanell R. Tacha, 25 K.L.R. 169, 197 (1977).

Constitutionality of the use of lay judges in Kansas, 25 K.L.R. 275, 276 (1977).

"Survey of Kansas Law: Criminal Law and Procedure," Keith G. Meyer, 27 K.L.R. 391, 392 (1979).

CASE ANNOTATIONS

1. Sentence under 21-4501 (e) reversed with directions to resentence hereunder; criminal damage to property. *State v. Smith*, 215 K. 865, 868, 528 P.2d 1195.

2. Resentence for lesser offense where failure to instruct on value in prosecution under 21-3701. *State v. Piland*, 217 K. 689, 693, 538 P.2d 666.

21-4503. Fines. (1) A person who has been convicted of a felony may, in addition to or instead of the imprisonment authorized by law, be sentenced to pay a fine which shall be fixed by the court as follows:

(a) For a class B or C felony, a sum not exceeding \$10,000;

(b) For a class D or E felony, a sum not exceeding \$5,000;

(2) A person who has been convicted of a misdemeanor may, in addition to or instead of the confinement authorized by law, be sentenced to pay a fine which shall be fixed by the court as follows:

(a) For a class A misdemeanor, a sum not exceeding \$2,500;

(b) For a class B misdemeanor, a sum not exceeding \$1,000;

(c) For a class C misdemeanor, a sum not exceeding \$500;

(d) For an unclassified misdemeanor, any sum authorized by the statute that defines the crime; if no penalty is provided in such law, the fine shall not exceed the fine provided herein for a class C misdemeanor;

(3) As an alternative to any of the above, the fine imposed may be fixed at any greater sum not exceeding double the pecuniary gain derived from the crime by the offender.

History: L. 1969, ch. 180, § 21-4503; L. 1979, ch. 90, § 5; July 1.

Judicial Council, 1968: By gravity within a single single statutory penalty class, the section seeks consistent system of pen are provided separately definition of criminal co may often be observed tended to eliminate tho:

The idea here implemented Penal Code, 6.06.

The following characteristic should be observed:

(a) The alternative penalty ment are retained for C murder and aggravated

(b) Other felony penalties a limits fixed by the statu

(c) In each case the maxim

(d) In the cases of Class B, shall fix the minimum vided.

(e) In its discretion the cou minimum penalty, after criteria suggested in sec defendant's history of p of the circumstances th: court in fixing the pena the convicted person, th significant part of the s period that must be serv ble for parole.

(f) Fines are authorized in imposition of fines are

(g) Maximum penalties meanors of each class. may impose any appr ment or fine or both.

(h) Unclassified crimes are made punishable in ch. act. There are more tha in virtually every chapt are mainly intended to lation and are not appr code. Hence, this revisi affect them either as to

Law Review and Bar Jou

"Constitutional Law—1 Indigent for Nonpayment 10 W.L.J. 120, 127 (1970)

Obscenity law, Michael (1971).

"State Control of Local cial Legislation and Hon K.L.R. 631, 672 (1972).

"The Kansas Open Me Sunflower State?," Deane 197 (1977).

"Decisions, Decisions, I 17 W.L.J. 26, 27 (1977).

"Survey of Kansas Law: Haviland, 27 K.L.R. 241,

CASE AN

1. Mentioned in holdit considered convicted of :

SENATE BILL No. 51

By Senators Ehrlich, Allen, Arasmith, Burke, Gordon, Harder, Hoferer, D. Kerr, F. Kerr, Langworthy, Montgomery, Morris, Salisbury, Talkington, Thiessen, Vidricksen, Walker, Werts and Winter

1-23

0024 AN ACT concerning support of certain persons; relating to
0025 orders for child support or maintenance; providing for en-
0026 forcement thereof; amending K.S.A. 23-452, 23-473, 23-475,
0027 38-1104 23-494, 23-496, 23-497, 23-499, 38-1103, 38-1104, 38-
0028 1106, 39-718a, 39-755, 60-1610, 60-1612, 60-1613, 60-2310 and
0029 75-6202 and K.S.A. 1984 Supp. 20-302b, 23-493, 38-1512,
0030 38-1616, 39-709, 39-754 and 44-718 and repealing the existing
0031 sections.

0032 Be it enacted by the Legislature of the State of Kansas:
0033 New Section 1. The purpose of sections 1 through 14 is to
0034 enhance the enforcement of all support obligations by providing
0035 a quick and effective procedure for withholding income to
0036 enforce orders of support.

0037 New Section 1 Sec. 2. As used in sections 1 through 14:
0038 (a) "Arrearage" means the total amount of unpaid support
0039 which is due and unpaid under an order of support, based upon
0040 the due date specified in the order for support or, if no specific
0041 date is stated in the order, the last day of the month in which the
0042 payment is to be made.

0043 (b) "Income" means any form of periodic payment to an
0044 individual, regardless of source, including but not limited to
0045 wages, salary, trust, royalty, commission, bonus, compensation as
0046 an independent contractor, workers' compensation, disability,
0047 annuity and retirement benefits and any other payments made
0048 by any person, private entity or federal, state or local government

and visitation

, maintenance and child visitation; concerning

, 44-718 and 60-2403

Periodic

0049 or any agency or instrumentality thereof. "Income" does not
 0050 include: (1) Any amounts required by law to be withheld, other
 0051 than creditor claims, including but not limited to federal and
 0052 state taxes, social security tax and other retirement and disability
 0053 contributions; (2) any amounts exempted by federal law; (3)
 0054 public assistance payments; and (4) unemployment insurance
 0055 benefits except to the extent otherwise provided by law. Any
 0056 other state or local laws which limit or exempt income or the
 0057 amount or percentage of income that can be withheld shall not
 0058 apply.

0059 (c) "Obligee" means the ~~individual~~ *person or entity* to whom
 0060 a duty of support is owed.

0061 (d) "Obligor" means ~~the individual~~ *any person* who owes a
 0062 duty to make payments under an order for support.

0063 (e) "Order for support" means any order of a court ~~or, or of an~~
 0064 administrative agency *of another jurisdiction*, authorized by law
 0065 to issue such an order, which provides for payment of funds for
 0066 the support of a child ~~or maintenance of a spouse or ex-spouse~~,
 0067 and includes such an order which provides for modification or
 0068 resumption of a previously existing order; payment of an ar-
 0069 rearage accrued under a previously existing order; a reimburse-
 0070 ment order, including but not limited to an order established
 0071 pursuant to K.S.A. 39-718a and amendments thereto; or an order
 0072 established pursuant to K.S.A. ~~23-475~~ *23-451 et seq.* and amend-
 0073 ments thereto.

0074 (f) "Payor" means any ~~payor of income to an~~ *person or entity*
 0075 *owing income to an obligor or any self-employed* obligor.

0076 (g) "Public office" means any elected or appointed official of
 0077 the state, or any political subdivision or agency *of the state, or*
 0078 *any subcontractor* thereof, who is or may become responsible by
 0079 law for enforcement of, or who is or may become authorized to
 0080 enforce, an order for support, including but not limited to the
 0081 department of social and rehabilitation services, court trustees
 0082 ~~and~~, county or district attorneys *and other subcontractors*.

0083 (h) "Title IV-D cases" means those cases required by part D
 0084 of title IV of the federal social security act (42 U.S.C. § 651 *et*
 0085 *seq.*), as amended, to be processed by the department of social

, or for maintenance of a spouse or ex-spouse living
 with a child for whom an order of support is also
 being enforced,

0086 and rehabilitation services under the state's plan for support
0087 enforcement.

0088 New Sec. 23. (a) ~~Upon entry of~~ Any new or modified order
0089 for support *entered* on or after January 1, 1986, ~~the court shall~~
0090 ~~issue a separate order requiring~~ *shall include a provision for* the
0091 withholding of income to enforce the order of support. Unless
0092 the order provides that ~~it shall~~ *income withholding will* take
0093 effect immediately, ~~the order withholding~~ shall take effect only
0094 upon: (1) Development of an arrearage in an amount equal to or
0095 greater than the amount of support payable for ~~one month~~ *30*
0096 *days*; and (2) compliance with the requirements of this section.

0097 (b) In any proceeding in which the court has issued an order
0098 for support but has not issued a conditional order requiring
0099 income withholding as provided by subsection (a), the obligee or
0100 a public office may apply for such an order by filing with the
0101 court an affidavit stating: (1) That an arrearage exists in an
0102 amount equal to or greater than the amount of support payable
0103 for one month; (2) that a notice of delinquency has been served
0104 on the obligor in accordance with subsection (f) and the date and
0105 type of service; (3) that the obligor has not filed a motion to stay
0106 service of the income withholding order; and (4) a percentage of
0107 the income or support order which shall be withheld by the
0108 payor to be applied toward liquidation of arrearages. Upon the
0109 filing of the affidavit, the court shall issue an order requiring the
0110 withholding of income without the requirement of a hearing,
0111 amendment of the support order or further notice to the obligor.

0112 ~~The court shall not be relieved of its duty under this subsec-~~
0113 ~~tion to issue an income withholding order if the obligor pays the~~
0114 ~~arrears subsequent to receiving the notice of delinquency.~~

0115 For purposes of this subsection, an arrearage shall be com-
0116 puted on the basis of support payments due and unpaid on the
0117 date the notice of delinquency was served on the obligor.

0118 (c) An order issued under this section shall be directed to any
0119 payor of the obligor and shall require the payor to withhold from
0120 any income due, or to become due, to the obligee *obligor* a
0121 specified amount sufficient to satisfy the order of support and to
0122 defray any arrearage, subject to the limitations set forth in section

0123 4 5. The order shall include notice of and direction to comply
0124 with the provisions of sections 3 and 4 4 and 5.

0125 (d) An order issued under this section shall be served on the
0126 payor and returned by the officer making service in the same
0127 manner as an order of attachment.

0128 (e) An income withholding order issued under this section
0129 shall be binding on any existing or future payor on whom a copy
0130 of the order is served and shall require the continued withhold-
0131 ing of income from each periodic payment of income until
0132 further order of the court. If the obligor changes employment or
0133 has a new source of income after an income withholding order is
0134 issued by the court, the new employer or income source, if
0135 known, must be served a copy of the income withholding order
0136 without the requirement of prior notice to the obligor.

0137 (f) No sworn affidavit shall be filed with the court issuing the
0138 support order pursuant to subsection (b) unless it contains a
0139 declaration that the obligee or public office has served the
0140 obligor a written notice of delinquency because an arrearage
0141 exists in an amount equal to or greater than the amount of
0142 support payable for one month and that the notice was served on
0143 the obligor by certified mail, return receipt requested signed by
0144 the obligor, or in the manner for service of a summons pursuant
0145 to article 3 of chapter 60 of the Kansas Statutes Annotated at least
0146 40 seven days before the date the affidavit is filed. If service is by
0147 certified mail, a copy of the return receipt shall be attached to the
0148 affidavit. The notice of delinquency served on the obligor must
0149 state: (1) The terms of the support order and the total arrearage as
0150 of the date the notice of delinquency was prepared; (2) the
0151 amount of income that will be withheld; (3) that the provision for
0152 withholding applies to any current or subsequent payors; (4) the
0153 procedures available for contesting the withholding and that the
0154 only basis for contesting the withholding is a mistake of fact
0155 concerning the amount of the support order, the amount of the
0156 arrearage, the amount of income to be withheld or the proper
0157 identity of the obligor; (5) the period within which the obligor
0158 must file a motion to stay service of the income withholding
0159 order and that failure to file such motion take such action within

0160 the specified time will result in payors' being ordered to begin
0161 withholding; and (6) the action which will be taken if the obligor
0162 contests the withholding.

0163 In addition to any other penalty provided by law, the filing of
0164 an affidavit with knowledge of falsity of the declaration of notice
0165 is punishable as a contempt. The obligor may, at any time, waive
0166 in writing the notice required by this subsection.

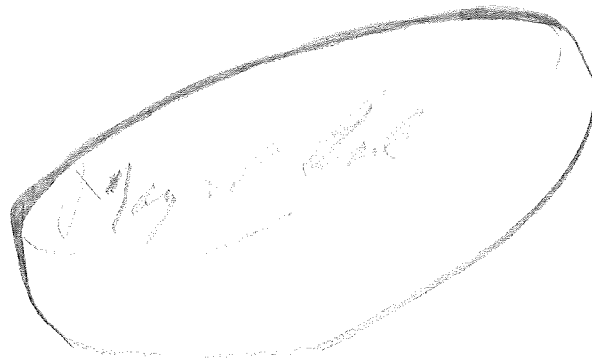
0167 (g) On request, an obligor may establish a withholding order
0168 which shall be honored by a payor regardless of whether there is
0169 an arrearage.

0170 New Sec. 3 4. (a) *It shall be the affirmative duty of any*
0171 *payor to respond within seven days to written requests for*
0172 *information presented by the ~~obligee or~~ public office concern-*

0173 *ing: (1) The full name of the obligor; (2) the current address of*
0174 *the obligor; (3) the obligor's social security number; (4) the*
0175 *obligor's work location; (5) the number of the obligor's claimed*
0176 *dependents; (6) the obligor's gross income; (7) the obligor's net*
0177 *income; (8) an itemized statement of deductions from the obli-*
0178 *gor's income; (9) the obligor's pay schedule; and (10) the obli-*
0179 *gor's health insurance coverage. This list is exemplary and not*
0180 *exclusive of the type of information the payor must provide.*

0181 (b) It shall be the duty of any payor who has been served an
0182 order for withholding under this act to deduct and pay over
0183 income as provided in this section. The payor shall deduct the
0184 amount designated in the order for withholding beginning with
0185 the next payment of income ~~which is payable to due~~ the obligor
0186 after ~~10 seven~~ days following service of the order on the payor. At
0187 the time the obligor is normally paid, the payor shall pay the
0188 amount withheld to the ~~obligee, public office or~~ clerk of court *or*
0189 *court trustee* as directed by the order for withholding and in
0190 accordance with any subsequent notification received from the
0191 public office redirecting payments.

0192 (b) (c) If the withholding is to collect current support and an
0193 arrearage, the payor shall be required to withhold an amount of
0194 income equal to the order for support plus an additional sum, set
0195 out in the affidavit provided for in subsection (b) of section 2 3 as
0196 a percentage of the amount of the ~~support order,~~ to be applied



14 - amendments made to make bill more palatable to bus. community

income owed the obligor

0197 towards liquidation of arrearages. *The payor shall withhold and*
0198 *pay over an amount sufficient to pay the current periodic*
0199 *support obligation. The additional amount to be applied toward*
0200 *liquidation of arrearages shall be withheld from each pay*
0201 *period.* If the withholding is to collect an arrearage only, the
0202 payor shall be required to withhold an amount of income equal
0203 to a percentage of income set out in the affidavit provided for in
0204 subsection (b) of section 2 3.

0205 (e) (d) The payor shall continue to withhold income to be
0206 applied toward liquidation of arrearages ~~until the amount of the~~
0207 ~~arrearsage stated in the income withholding order has been paid~~
0208 ~~in full of~~ until notice to discontinue that portion of the with-
0209 holding attributable to arrearages is received from the obligee,
0210 public office or the court. After arrearages are paid in full, a
0211 withholding order requiring withholding for current support
0212 shall continue in the amount of the support order until further
0213 order of the court.

delete

*-discontinue for calculating
but dollar compensation for*

0244 (d) (e) From income due the obligor, the payor may withhold
0215 and retain to defray the payor's costs a cost recovery fee of \$2 for
0216 each withholding of income which shall be in addition to the
0217 amount withheld as support.

0218 (e) (f) Any payor subject to withholding orders for more than
0219 one obligor may combine the withheld amounts in a single
0220 payment to each clerk of court or public office court trustee
0221 requesting the withholdings if the payor separately identifies the
0222 portion of the single payment which is attributable to each
0223 individual obligor.

, as follows: (1) For withholding requested by an obligor under subsection (g) of section 3, \$5; and (2) for any other withholding under this act, \$2

0224 (f) (g) If more than one order for withholding requires with-
0225 holding from the same source of income of a single obligor, the
0226 payor must comply on a first-come-first-served basis and must
0227 honor all withholding orders, subject to subsection (g).

the consumer credit protection act limitations as provided by subsection (h)

0228 (g) (h) The entire sum withheld by the payor, including the
0229 cost recovery fee, shall not exceed the limits provided for under
0230 section 303(b) of the consumer credit protection act (15 U.S.C.
0231 1673(b)).

An income withholding order issued pursuant to this act shall not be considered a wage garnishment as defined in subsection (b) of K.S.A. 60-2310 and amendments thereto. If amounts of earnings required to be withheld in accordance with this act are less than the maximum amount of earnings which could be withheld according to the consumer credit protection act, the payor shall honor garnishments filed by other creditors to the extent that the total amount taken from earnings does not exceed consumer credit protection act limitations.

0232 (h) (i) The payor shall promptly notify the obligee, or public
0233 office initiating the withholding order of the termination of the
party

0234 obligor's employment or other source of income and provide the
0235 obligor's last known address and the name and address of the
0236 individual's current employer, if known.

0237 (i) ~~Any payor of income to an obligor shall cooperate with and~~
0238 ~~provide relevant employment information to an obligee or public~~
0239 ~~office seeking to use the provisions of this act to establish,~~
0240 ~~maintain or reestablish an incoming withholding order.~~

0241 (j) Payment as required by an order for withholding issued
0242 under this act shall be a complete defense by the payor against
0243 any claims of the obligor or the obligor's creditors as to the sums
0244 paid.

0245 (k) ~~If a payor fails to withhold and pay over income as~~
0246 ~~required by a withholding order issued under any payor inten-~~
0247 ~~tionally violates the provisions of this act, the court shall enter a~~
0248 judgment against the payor for the total amount which should
0249 have been withheld and paid over and may enter judgment
0250 against the payor to the extent of the total arrearage owed.

0251 (l) Any payor who *intentionally* discharges, refuses to em-
0252 ploy or takes disciplinary action against an obligor ^{solely} because of a
0253 withholding order issued under this act shall be guilty of a class
0254 ~~A misdemeanor subject to a civil penalty not exceeding \$5,000~~ ^{\$2,500}
0255 *and such other equitable relief as the court considers proper.*

0256 New Sec. 45. (a) An income withholding order issued under
0257 this act shall have priority over any other legal process under
0258 state law against the same income. Withholding of income under
0259 this section shall be made without regard to any prior or sub-
0260 sequent garnishments, attachments, wage assignments or other
0261 claims of creditors.

0262 (b) Withholding of income under this section for an obligee
0263 ~~or for the department of social and rehabilitation services acting~~
0264 ~~on behalf of an obligee pursuant to K.S.A. 39-756 and amend-~~
0265 ~~ments thereto or enforcing an assignment of current support~~
0266 ~~rights pursuant to K.S.A. 39-709 and amendments thereto shall~~
0267 ~~have priority over the withholding of income for a a public office~~
0268 ~~to enforce current support shall have priority over the with-~~
0269 ~~holding of income for an obligee or public office seeking to~~
0270 collect assigned arrearages only.

solely
\$2,500 file for Class A misdemeanor

0271 (c) Except as provided by this act, any state law which limits
0272 or exempts income from legal process or the amount or percent-
0273 age of income that can be withheld shall not apply to withhold-
0274 ing income under this act.

0275 New Sec. 5 6. (a) An obligor may prevent an income with-
0276 holding order issued under this section from being served on the
0277 payor by filing with the court a motion to stay service of the
0278 withholding order and serving a copy of the motion on the
0279 obligee or public office filing the notice of delinquency within
0280 ~~10~~ *seven* days after being served with the notice of delinquency.
0281 The grounds for obtaining the stay shall be limited to a showing
0282 of a mistake of fact in the notice of delinquency concerning the
0283 amount of the order for support, the amount of the arrearage, the
0284 amount of income to be withheld or the proper identity of the
0285 obligor. If the obligor files a motion to stay service of the income
0286 withholding order, the obligor shall specify the mistake of fact
0287 alleged to be the basis for the motion. If the amount of the order
0288 for support or the amount of the arrearage is challenged, the
0289 obligor shall specify the amount of the order for support or the
0290 arrearage which is uncontested.

0291 (b) If the obligor files a motion to stay service of the with-
0292 holding order, the court, upon notice of the date, time and place
0293 of hearing to the obligor and the obligee or public office that
0294 filed the affidavit, shall hear the matter within ~~15~~ *14* days after
0295 the obligor's motion is filed with the court. The court shall enter
0296 an order granting or denying relief, amending the notice of
0297 delinquency or otherwise resolving the matter. If the court finds
0298 that an arrearage existed when the notice of delinquency was
0299 served in an amount at least equal to one month's support
0300 obligation, the court shall order immediate service of the order
0301 for withholding. If the court cannot promptly resolve any dispute
0302 over the total amount of the arrearage, the court shall order
0303 immediate service of the order for withholding if the undisputed
0304 arrearage is at least equal to the amount of one month's support
0305 obligation and may continue the hearing on ~~other disputed~~
0306 ~~amounts~~ *the disputed arrearage*. In any case, the court, within 45
0307 ~~days~~, must notify the obligor and the obligee or public office of

0308 whether or not the withholding is to occur within 45 days of the
0309 date the obligor was served the notice of delinquency. If the
0310 court upholds the issuance of a withholding order in a contested
0311 case, the court must include in its order notice of the time within
0312 which the withholding will begin and the information given to
0313 the payor as required in sections ~~3 and 4~~ *4 and 5*.

0314 New Sec. ~~6~~ *7*. (a) At any time, an obligor, obligee or public
0315 office may petition the court to: (1) Modify; ~~suspend~~ or terminate
0316 the order for withholding because of a modification; ~~suspension~~
0317 or termination of the underlying order for support; or (2) modify
0318 the amount of income withheld to reflect payment in full of the
0319 arrearage by income withholding or otherwise; ~~or~~ (3) ~~suspend~~
0320 ~~the order for withholding because of the inability to deliver~~
0321 ~~income withheld to the obligee or children for a period of three~~
0322 ~~months due to the obligee's failure to provide a mailing address~~
0323 ~~or other means of delivery. If the withholding is suspended~~
0324 ~~because payment is undeliverable, all undeliverable payments~~
0325 ~~shall be returned to the obligor. If support payments are un-~~
0326 ~~deliverable to the obligee, any such payments shall be held in~~
0327 *trust by the court until the payments can be delivered.*

0328 (b) The obligor may petition the court to terminate the with-
0329 holding of income because payments pursuant to the order for
0330 withholding have been made for at least ~~three years~~ *[12 months]*
0331 and all arrearages have been paid. Upon receipt of a petition
0332 under this subsection, the court may suspend the order for
0333 withholding unless it finds good cause for denying the petition
0334 because of the obligor's payment history or otherwise. If a
0335 withholding order is terminated for any reason and the obligor
0336 subsequently becomes delinquent in the payment of the order
0337 for support, the obligee or public office may obtain another order
0338 for withholding by complying with all requirements for notice
0339 and service pursuant to this act.

0340 (c) The clerk of court shall ~~serve~~ *cause to be served* on the
0341 payor a copy of any order entered pursuant to this section that
0342 affects the duties of the payor.

0343 New Sec. ~~7~~ *8*. If the court determines that income has been
0344 improperly withheld, the court may order the ~~payor, the obligee,~~

0345 the clerk of court or the public office, depending on *person o*
 0346 *public office* who has possession of the income or who ultimate
 0347 received it, to promptly refund the improperly withheld amoun
 0348 to the obligor *or, in the case of the obligee, to credit the amoun*
 0349 *against the next regular support payment.*

0350 New Sec. 8 9. (a) If an obligee is receiving income with
 0351 holding payments under this act, the obligee shall give written
 0352 notice of any change of address, within seven days after th
 0353 change to the payor, if the obligee receives the payments directl
 0354 from the payor or the public office or clerk of the district cou
 0355 through which the obligee receives the payments.

0356 (b) ~~An obligee who is or has been a recipient of aid t~~
 0357 ~~dependent children assistance or whose child is or has been i~~
 0358 ~~the custody of the secretary of social and rehabilitation service~~
 0359 ~~pursuant to K.S.A. 1984 Supp. 38-1501 et seq. or 38-1601 et seq~~
 0360 ~~and amendments thereto, If support rights are assigned to th~~
 0361 ~~secretary of social and rehabilitation services pursuant to K.S.A~~
 0362 ~~39-709 and amendments thereto, the obligee shall serve a copy c~~
 0363 any notice of delinquency filed pursuant to this act on th
 0364 secretary of social and rehabilitation services. If current suppor
 0365 or all or a part of the arrearage remains assigned to the secretar
 0366 of social and rehabilitation services pursuant to K.S.A. 39-70
 0367 and amendments thereto *and subject to K.S.A. 60-2403 an*
 0368 *amendments thereto* and the secretary has on file with the court
 0369 notice of assignment as provided for in K.S.A. 39-754 an
 0370 amendments thereto, payments from the payor shall be dis
 0371 bursed as the notice of assignment directs. When the secretary c
 0372 social and rehabilitation services is no longer authorized t
 0373 receive payments for the obligee, the secretary shall provid
 0374 written notice to the payor, or the clerk of the court disbursin
 0375 the payments, to redirect all or part of the payments to th
 0376 obligee.

0377 (c) The obligee or public office shall provide written notice *court trustee or*
 0378 to the ~~payor and~~ clerk of the court of any other support payment
 0379 made, including but not limited to a setoff under federal or stat
 0380 law, a collection of unemployment compensation pursuant to
 0381 K.S.A. 44-718 *and amendments thereto* or a direct payment from

0382 the obligor. The clerk of the court issuing the support order or
0383 other designated person shall record the amounts reported in
0384 such notices as if the payment had been made through the court.

0385 (d) Any public office and clerk of court which collects, dis-
0386 burse or receives payments pursuant to orders for withholding
0387 shall maintain complete, accurate and clear records of all pay-
0388 ments and their disbursement. Certified copies of payment rec-
0389 ords maintained by a public office or clerk of court shall, without
0390 further proof, be admitted into evidence in any legal proceedings
0391 ~~under this act~~ *which concern the issue of support.*

0392 New Sec. 9 10. An obligor whose income is being withheld
0393 or who has been served with a notice of delinquency under this
0394 act shall provide written notice to the obligee, the public office,
0395 or the clerk of court of any new payor or change of address,
0396 within seven days of the change.

0397 New Sec. 40 11. If an obligor derives income from self-
0398 employment, receives income from some source not subject to
0399 the jurisdiction of the court or receives income by any other
0400 method which makes the application of this act impracticable,
0401 the court may require the obligor to post security or bond or give
0402 some other guarantee to secure the payment of current and
0403 overdue support. *If the obligor fails to pay support as ordered,*
0404 *the court may collect on the bond or may declare a forfeiture of*
0405 *all or a portion of the security or other guarantee and apply the*
0406 *amounts collected as payment on the support arrearage. An*
0407 *obligor who derives income from self-employment shall be sub-*
0408 *ject to the provisions of this act as a payor of income to the*
0409 *obligor's self.*

0410 New Sec. 44 12. (a) Nothing in this act shall limit the au-
0411 thority of an obligee or public office to use any and all civil and
0412 criminal remedies in addition to withholding to enforce an order
0413 for support including but not limited to the setoff provisions of
0414 K.S.A. 75-6201 *et seq.*, and amendments thereto, and section 46-1
0415 of part D of title IV of the federal social security act.

0416 (b) Nothing in this act shall limit the filing of any action to
0417 modify the support order by the obligor.

0418 (c) The rights, remedies, duties and penalties created by this

0419 act are in addition to and not in substitution for any other rights,
0420 remedies, duties and penalties created by any other law.

0421 (d) Nothing in this act shall be construed as invalidating any
0422 assignment of income executed prior to January 1, 1986, despite
0423 the priority status given to withholding orders under this act.

0424 New Sec. ~~42~~ 13. (a) The judicial administrator and the sec-
0425 retary of social and rehabilitation services shall cooperate to
0426 design suggested legal forms and informational materials which
0427 describe procedures and remedies under this act for distribution
0428 to all parties in support actions.

0429 (b) *The judicial administrator of the courts and the secretary*
0430 *of social and rehabilitation services shall enter into a contract to*
0431 *develop and maintain an automated management information*
0432 *system which will monitor support payments, maintain accurate*
0433 *records of support payments and permit prompt notice of ar-*
0434 *rearages in support payments. District courts, including court*
0435 *trustees, shall be subcontractors in the management information*
0436 *system and payments for their services shall be disbursed as*
0437 *directed by the judicial administrator. Unless good cause is*
0438 *shown, the secretary of social and rehabilitation services shall*
0439 *contract with court trustees for enforcement services. Subcon-*
0440 *tractor employees determined necessary to the performance of*
0441 *the contract by the judicial administrator shall be state em-*
0442 *ployees paid by county general funds. The provisions of K.S.A.*
0443 *20-358 and 20-359, and amendments thereto, shall apply.*
0444 *County expenditures for compensation of subcontractor em-*
0445 *ployees may be paid during any budget year even though the*
0446 *expenditures were not included in the budget for that year.*
0447 *County general funds shall be promptly reimbursed for subcon-*
0448 *tractor employee compensation cost from the subcontractor's*
0449 *payment plus a reasonable administrative fee for the county for*
0450 *acting as fiscal and reporting agent as determined necessary by*
0451 *the judicial administrator. The provisions of the Kansas court*
0452 *personnel rules, except for pay and classification plans, shall*
0453 *apply to subcontractor employees.*

0454 New Sec. 43 14. The department of social and rehabilitation
0455 services is designated as the state income withholding agency for

0456 the purpose of keeping adequate records to document, track and
0457 monitor support payments in title IV-D cases and to initiate the
0458 income withholding process in such cases in title IV-D cases.
0459 For the purpose of keeping adequate records to document, track
0460 and monitor support payments in title IV-D cases and for the
0461 purpose of initiating the income withholding process in such
0462 cases, the department may contract for the performance of all or
0463 a portion of the withholding agency function with existing title
0464 IV-D contractors or any newly created entity capable of pro-
0465 viding such services.

0466 New Sec. 44 15. The purpose of sections 44 through 26 15
0467 through 27 is to enhance the enforcement of support obligations
0468 in cases being processed pursuant to title IV, part D, of the
0469 federal social security act (42 U.S.C. § 651 *et seq.*, as amended,
0470 by providing a quick and effective procedure for the withholding
0471 of income derived in this jurisdiction to enforce support orders of
0472 other jurisdictions and by requiring that income withholding to
0473 enforce the support orders of this jurisdiction be sought in other
0474 jurisdictions. Sections 44 through 26 shall be construed liberally
0475 to effect that purpose.

0476 New Sec. 45 16. As used in sections 44 through 26 15
0477 through 27:

0478 (a) "Agency" means the state department of social and rela-
0479 bilitation services or its contractors and, when the context re-
0480 quires, either the court or agency of any other jurisdiction with
0481 functions similar to those defined in sections 44 through 26 15
0482 through 27, including the issuance and enforcement of support
0483 orders.


0484 (b) "Child" means any child, whether older or younger than
0485 the age of majority, with respect to whom a support order exists.

0486 (c) "Court" means the district court of this state and, when
0487 the context requires, either the court or agency of any other
0488 jurisdiction with functions similar to those defined in sections 44
0489 through 26 15 through 27, including the issuance and enforce-
0490 ment of support orders.

0491 (d) "Income" means income as defined in section 4 2.

0492 (e) "Income derived in this jurisdiction" means any income,

0826 person designated by the secretary shall be filed with the notice
0827 and shall state that there is an arrearage in an amount equal to or
0828 greater than the amount of support payable for one month and
0829 that a copy of the notice of lien has been sent by first-class mail to
0830 the obligor at the obligor's last known address.

0831 Upon the filing of the notice of lien in accordance with this
0832 subsection (a)(2) and payment of a fee of \$5, the notice of lien
0833 shall be retained by the office where filed and may be enforced
0834 and foreclosed in the same manner as a security agreement
0835 under the provisions of the uniform commercial code. 

0836 (b) As used in this section:

0837 (1) "Aircraft" has the meaning provided by K.S.A. 3-201 and
0838 amendments thereto.

0839 (2) "Vehicle" has the meaning provided by K.S.A. 8-126 and
0840 amendments thereto.

0841 (3) "Vessel" has the meaning provided by K.S.A. 82a-801 and
0842 amendments thereto.

0843 (4) "Arrearage," "obligee," "obligor" and "order for support"
0844 have the meanings provided by section ~~4~~ 2.

0845 *Sec. 30. K.S.A. 1984 Supp. 20-302b is hereby amended to*
0846 *read as follows: 20-302b. (a) A district magistrate judge shall*
0847 *have the jurisdiction, power and duty, in any case in which a*
0848 *violation of the laws of the state is charged, to conduct the trial*
0849 *of traffic infractions or misdemeanor charges and the prelimi-*
0850 *nary examination of felony charges. In civil cases, a district*
0851 *magistrate judge shall have concurrent jurisdiction, powers and*
0852 *duties with a district judge, except that, unless otherwise spe-*
0853 *cifically provided in subsection (b), a district magistrate judge*
0854 *shall not have jurisdiction or cognizance over the following*
0855 *actions:*

0856 (1) *Any action in which the amount in controversy, exclusive*
0857 *of interests and costs, exceeds \$5,000, except that in actions of*
0858 *replevin, the affidavit in replevin or the verified petition fixing*
0859 *the value of the property shall govern the jurisdiction; nothing*
0860 *in this paragraph shall be construed as limiting the power of a*
0861 *district magistrate judge to hear any action pursuant to the*
0862 *Kansas probate code;*

0863 (2) actions against any officers of the state, or any subdivi-
0864 sions thereof, for misconduct in office;

0865 (3) actions for specific performance of contracts for real
0866 estate;

0867 (4) actions in which title to real estate is sought to be re-
0868 covered or in which an interest in real estate, either legal or
0869 equitable, is sought to be established, except that nothing in this
0870 paragraph shall be construed as limiting the right to bring an
0871 action for forcible detainer as provided in the acts contained in
0872 article 23 of chapter 61 of the Kansas Statutes Annotated, and
0873 any acts amendatory thereof or supplemental thereto; and
0874 nothing in this paragraph shall be construed as limiting the
0875 power of a district magistrate judge to hear any action pursuant
0876 to the Kansas probate code;

0877 (5) actions to foreclose real estate mortgages or to establish
0878 and foreclose liens on real estate as provided in the acts con-
0879 tained in article 11 of chapter 60 of the Kansas Statutes Anno-
0880 tated, and any acts amendatory thereof or supplemental thereto;

0881 (6) actions for divorce, separate maintenance or custody of
0882 minor children, except that nothing in this paragraph shall be
0883 construed as limiting the power of a district magistrate judge to
0884 (A) hear any action pursuant to the Kansas code for care of
0885 children or the Kansas juvenile offenders code ~~or (B) establish,~~
0886 ~~enforce or modify support obligations under K.S.A. 23-451 et~~
0887 ~~seq., 38-1101 et seq., 39-718a, 39-755 or 60-1610, K.S.A. 1984~~
0888 ~~Supp. 38-1542, 38-1543 or 38-1563 or sections 1 through 27, and~~
0889 ~~amendments thereto;~~

0890 (7) habeas corpus;

0891 (8) receiverships;

0892 (9) change of name;

0893 (10) declaratory judgments;

0894 (11) mandamus and quo warranto;

0895 (12) injunctions;

0896 (13) class actions;

0897 (14) rights of majority; and

0898 (15) actions pursuant to the protection from abuse act.

0899 (b) Notwithstanding the provisions of subsection (a), in th

; (B) establish support orders pursuant to K.S.A. 38-1101 et seq., 39-718a or 39-755 or K.S.A. 1984 Supp. 38-1542, 38-1543 or 38-1563, and amendments thereto; (C) enforce any child support or maintenance order; (D) modify any child support order; (E) establish and enforce support orders in interstate cases pursuant to K.S.A. 23-451 et seq. and sections 15 through 27, and amendments thereto; or (F) enforce orders granting a parent visitation rights to the parent's child

0900 *absence, disability or disqualification of a district judge or associate*
0901 *district judge, a district magistrate judge may:*

0902 (1) *Grant a restraining order, as provided in K.S.A. 60-902*
0903 *and amendments thereto;*

0904 (2) *appoint a receiver, as provided in K.S.A. 60-1301 and*
0905 *amendments thereto;*

0906 (3) *make any order authorized by K.S.A. 60-1607 and*
0907 *amendments thereto; and*

0908 (4) *grant any order authorized by the protection from abuse*
0909 *act.*

0910 (c) *In accordance with the limitations and procedures pre-*
0911 *scribed by law, and subject to any rules of the supreme court*
0912 *relating thereto, any appeal permitted to be taken from an order*
0913 *or final decision of a district magistrate judge shall be tried and*
0914 *determined de novo by a district judge or an associate district*
0915 *judge, except that in civil cases where a record was made of the*
0916 *action or proceeding before the district magistrate judge, the*
0917 *appeal shall be tried and determined on the record by a district*
0918 *judge or an associate district judge.*

0919 Sec. 29 31. K.S.A. 23-452 is hereby amended to read as
0920 follows: 23-452. (a) "Court" means the district court of this state
0921 and when the context requires means the court of any other state
0922 as defined in a substantially similar reciprocal law.

0923 (b) "Duty of support" means a duty of support whether
0924 imposed or imposable by law or by order, decree, or judgment of
0925 any court, whether interlocutory or final or whether incidental to
0926 an action for divorce, separation, separate maintenance, annul-
0927 ment, adoption or custody and includes the duty to pay ar-
0928 rearages of support past due and unpaid from the date of the
0929 order of support entered in the responding state *as well as*
0930 *arrearages which have accrued on the basis of another state's*
0931 *support order.*

0932 (c) "Governor" includes any person performing the functions
0933 of governor or the executive authority of any state covered by this
0934 act.

0935 (d) "Initiating state" means a state in which a proceeding
0936 pursuant to this or a substantially similar reciprocal law is com-

0787 porated in the decree, other than matters pertaining to the
 0788 custody, support or education of the minor children, shall not be
 0789 subject to subsequent modification by the court except: (A) As
 0790 prescribed by the agreement or (B) as subsequently consented to
 0791 by the parties.

0792 (4) *Costs and fees.* Costs and attorney fees may be awarded to
 0793 either party as justice and equity require. The court may order
 0794 that the amount be paid directly to the attorney, who may enforce
 0795 the order in the attorney's name in the same case.

0796 (c) *Miscellaneous matters.* (1) *Restoration of name.* Upon the
 0797 request of a spouse, the court shall order the restoration of that
 0798 spouse's maiden or former name.

0799 (2) *Effective date as to remarriage.* Any marriage contracted
 0800 by a party, within or outside this state, with any other person
 0801 before a judgment of divorce becomes final shall be voidable
 0802 until the decree of divorce becomes final. An agreement which
 0803 waives the right of appeal from the granting of the divorce and
 0804 which is incorporated into the decree or signed by the parties
 0805 and filed in the case shall be effective to shorten the period of
 0806 time during which the remarriage is voidable.

0807 ~~[(d) The supreme court shall establish by rule an expedited~~
 0808 ~~judicial process which shall be used in the establishment of~~
 0809 ~~support orders pursuant to K.S.A. 38-1101 et seq., 39-718a or~~
 0810 ~~39-755 or K.S.A. 1981 Supp. 38-1542, 38-1543 or 38-1563, and~~
 0811 ~~amendments thereto; the enforcement of any child support and~~
 0812 ~~maintenance order; the modification of any child support order;~~
 0813 ~~and the establishment and enforcement of support orders in~~
 0814 ~~interstate cases pursuant to K.S.A. 23-451 et seq. and section 15~~
 0815 ~~through 27, and amendments thereto.]~~

- delete

0816 Sec. 50. K.S.A. 60-1612 is hereby amended to read as fol-
 0817 lows: 60-1612. (a) If a party fails to comply with a provision of a
 0818 decree, temporary order or injunction issued under this article
 0819 K.S.A. 60-1601 et seq., the obligation of the other party to make
 0820 payments for support or maintenance or to permit visitation is
 0821 not suspended, but the other party may request by motion that
 0822 the court grant an appropriate order.

0823 (b) *Motions to modify visitation or custody in proceedings*

0972 through final setoff against a debtor's earnings, refund or other
0973 payment due from the state or any state agency minus any
0974 collection assistance fee charged by the director of accounts and
0975 reports of the department of administration.

0976 (e) "State agency" means any state office, officer, depart-
0977 ment, board, commission, institution, bureau, agency or author-
0978 ity or any division or unit thereof.

0979 (f) "Person" means an individual, proprietorship, partner-
0980 ship, limited partnership, association, trust, estate, business
0981 trust, corporation, other entity or a governmental agency, unit or
0982 subdivision.

0983 (g) "Director" means the director of accounts and reports of
0984 the department of administration.

Insert §§ 54-56, attached

0985 ~~Sec. 44-54~~ K.S.A. 23-452, 23-473, 23-475, ~~38-1104 23-494~~, 57

0986 ~~23-496, 23-497, 23-499, 38-1103, 38-1104, 38-1106~~, 39-718a, 39-
0987 755, 60-1610, ~~60-1612~~, 60-1613, 60-2310 and 75-6202 and K.S.A.

0988 1984 Supp. ~~20-302b, 23-493~~, 38-1512, 38-1616, 39-709, 39-754
0989 ~~and 44-718~~ are hereby repealed. 58

, 44-718 and 60-2403

0990 Sec. ~~45 55~~ This act shall take effect and be in force from and
0991 after its publication in the statute book.

New Sec. 54. (a) The supreme court shall establish by rule an expedited judicial process which shall be used in the establishment of support orders pursuant to K.S.A. 38-1101 et seq., 39-718a or 39-755 or K.S.A. 1984 Supp. 38-1542, 38-1543 or 38-1563, and amendments thereto; the enforcement of any child support and maintenance order; the modification of any child support order; and the establishment and enforcement of support orders in interstate cases pursuant to K.S.A. 23-451 et seq. and sections 15 through 27, and amendments thereto.

(b) The supreme court shall establish by rule an expedited judicial process for the enforcement of court orders granting a parent visitation rights to the parent's child.

Sec. 55. K.S.A. 1984 Supp. 60-2403 is hereby amended to read as follows: 60-2403. If execution, including any garnishment proceeding ~~and any~~, income withholding proceeding or proceeding in aid of execution, is not issued within five years from the date of any judgment rendered in any court of record in this state, including judgments in favor of the state or any municipality in the state, or within five years from the date of any order reviving such judgment or, if five years have intervened between the date of the last execution issued on such judgment and the time of issuing another writ of execution on it, such judgment, including court costs and fees therein shall become dormant, and shall cease to operate as a lien on the estate of the judgment debtor. When a judgment becomes and remains dormant for a period of two years, it shall be the duty of the clerk of the court to release the judgment of record when requested to do so.

New Sec. 56. (a) The secretary of social and rehabilitation

services is hereby directed to establish a system for disseminating information and advice to and making referrals of persons seeking to enforce child support orders, whether or not the person or child is receiving public assistance. The system shall be designed to permit any person in the state at any time to place a toll-free call into the system and receive information, advice and referrals relating to enforcement of child support orders.

(b) The secretary of social and rehabilitation services is directed to publicize the system throughout the state.

(c) Notice of the existence of the system established pursuant to this section shall be displayed prominently in the office of each clerk of the district court of this state.