

Approved March 6, 1986
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at
Chairperson

10:00 a.m. ~~pm~~ on February 26, 1986 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Frey, Hoferer, Burke, Feleciano, Gaines, Langworthy, Parrish, Steineger, Talkington, Winter and Yost.

Committee staff present:

Mary Hack, Revisor of Statutes
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Senate Bill 480 - Civil procedure amendments.

The chairman reviewed the bill. Staff passed out ballon copy of the bill indicating the proposed amendments to the bill (See Attachment I). Staff explained the proposed changes and pointed out new Section 5 that is proposed was requested by the Kansas Bar Association. Following committee discussion, Senator Gaines moved to adopt the amendments that appear on the balloon copy. Senator Steineger seconded the motion. The motion carried. Senator Gaines moved to report the bill favorably as amended. Senator Winter seconded the motion, and the motion carried.

Senate Bill 535 - Expedited process for enforcement child visitation orders.

Staff reviewed the three amendments that had been adopted at an earlier meeting. Following considerable committee discussion Senator Feleciano moved to amend the bill in subsection (e), page 7, to establish unreasonable repeated child support misuse to justify modification of child custody. Senator Gaines seconded the motion. The motion carried. Senator Feleciano moved to report the bill favorably as amended. Senator Hoferer seconded the motion, and the motion carried.

Senate Bill 564 - Unlawful discharge of a firearm.

Senator Talkington moved to report the bill favorably. Senator Gaines seconded the motion. Following committee discussion, the motion carried.

Senate Bill 570 - Theft of library material.

Following committee discussion, Senator Winter moved conceptually to amend to provide for benefit of a presumption of intent, and also the amendment would include all the libraries. Senator Talkington seconded the motion, and the motion carried. Following further committee discussion, Senator Talkington moved to report the bill favorably as amended. Senator Winter seconded the motion, and the motion carried. Senator Feleciano requested his "no" vote be recorded in the minutes

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m. ~~p.m.~~ on February 26, 1986.

Senate Bill 568 - Crime victims reparations fund; inmate payments to.

The chairman reviewed the bill. Following discussion, Senator Talkington moved to report the bill favorably. Senator Hoferer seconded the motion, and the motion carried.

The meeting adjourned.

Copy of the guest list is attached (See Attachment II).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 2-26-86

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Jo Jenkins	Topeka	KCC
PATRICIA HENSHALL	TOPEKA	: OJA
Row Calbert	NEWTON	U.I.U.
Lori Callahan	Topeka	Am. Ind. ASSN.
TERRY STEVENS	TOPEKA	TOPEKA POLICE DEPT
Karen Keim	Mission Hills	Wen Langstaff
Jim Clark	Topeka	KC PAA
Jim Turner	Topeka	KLSI

98-22-86

0195 Kansas. No action shall be dismissed on the ground that it is not
 0196 prosecuted in the name of the real party in interest until a
 0197 reasonable time has been allowed after objection for ratification
 0198 of commencement of the action by, or joinder or substitution of,
 0199 the real party in interest; and such ratification, joinder or sub-
 0200 stitution shall have the same effect as if the action had been
 0201 commenced in the name of the real party in interest.

0202 (b) Claim accruing under law of another state. Whenever a
 0203 cause of action has accrued under or by virtue of the laws of any
 0204 other state or territory, such cause of action may be sued upon in
 0205 any of the courts of this state by the person or persons who are
 0206 authorized to bring and maintain an action thereon in the state or
 0207 territory where the same arose. When the law of the state or
 0208 territory where a cause of action for death arose authorizes said
 0209 action to be prosecuted by an administrator or executor, then said
 0210 action may also be maintained in any of the courts of this state by
 0211 an administrator or executor appointed under the laws of the
 0212 state of Kansas.

0213 (c) Minors or incapacitated persons. Whenever a minor or
 0214 incapacitated person has a representative, such as a general
 0215 guardian, committee, conservator, or other like fiduciary, the
 0216 representative may sue or defend on behalf of the minor or
 0217 incapacitated person. If a minor or incapacitated person does not
 0218 have a duly appointed representative he or she the minor or
 0219 incapacitated may sue by his or her the minor or incapacitated
 0220 next friend or by a guardian *ad litem*. The court shall appoint a
 0221 guardian *ad litem* for a minor or incapacitated person not other-
 0222 wise represented in an action or shall make such other order as it
 0223 deems proper for the protection of the minor or incapacitated
 0224 person.

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(add a new Sec. 5. - see attached)
 & renumber

0225 Sec. 5. K.S.A. 60-233 is hereby amended to read as follows:
 0226 60-233. (a) *Availability; procedures for use.* Any party may serve
 0227 upon any other party written interrogatories to be answered by
 0228 the party served or, if the party served is a public or private
 0229 corporation, or a partnership, or association or governmental
 0230 agency by any officer or agent, who shall furnish such informa-
 0231 tion as is available to the party. Interrogatories may, without

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Proposed Amendment to SB 480

Sec. 5. K.S.A. 60-226 is hereby amended to read as follows:
60-226. (a) Discovery methods. Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interrogation; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the court orders otherwise under subsection (c) of this section, the frequency of use of these methods is not limited.

(b) Scope of discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows: (1) In general: Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Except as permitted under paragraph (3) of this subsection, a party shall not require a deponent to produce, or submit for inspection, any writing prepared by, or under the supervision of, an attorney in preparation for trial.

(2) Insurance agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy

the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) Trial preparation: Materials. Subject to the provisions of subsection (b) (4) of this section, a party may obtain discovery of documents and tangible things otherwise discoverable under subsection (b) (1) of this section and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impression, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of K.S.A. 60-237 and amendments thereto apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the

provisions of subsection (b) (1) of this section and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (ii) Upon motion the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subsection (b) (4) (C) of this section, concerning fees and expenses as the court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in K.S.A. 60-235 and amendments thereto or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subsections (b) (4) (A) (ii) and (b) (4) (B) of this section; and (ii) with respect to discovery obtained under subsection (b) (4) (A) (ii) of this section the court may require, and with respect to discovery obtained under subsection (b) (4) (B) of this section the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(c) Protective orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on

matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (1) That the discovery not be had;
- (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
- (5) that discovery be conducted with no one present except persons designated by the court;
- (6) that a deposition after being sealed be opened only by order of the court;
- (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;
- (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of K.S.A. 60-237 and amendments thereto apply to the award of expenses incurred in relation to the motion.

(d) Sequence and timing of discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of responses. A party who has responded

to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (A) he knows that the response was incorrect when made, or (B) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

(f) At any time after commencement of an action the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes: (1) A statement of the issues as they then appear; (2) a proposed plan and schedule of discovery; (3) any limitations proposed to be placed on discovery; (4) any other proposed orders with respect to discovery; and (5) a statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion. Each party and his attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than

10 days after service of the motion.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by K.S.A. 60-216 and amendments thereto.

(g) Signing of Discovery Requests, Responses and Objections. Every request for discovery or response or objection to discovery made by a party represented by an attorney shall be signed by at least one attorney of record in such attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response or objection and state such party's address. The signature of the attorney or party constitutes a certification that he has read the request, response or objection and that to the best of such person's knowledge, information, and belief formed after reasonable inquiry (1) consistent with these statutes and warranted by existing law or good faith argument for the extension, modification or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party or person making the request, response or objection and a party shall not be obligated to take any action with respect to

it until it is signed.

If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of reasonable expenses incurred because of the violation, including a reasonable attorneys fee.

0084 (g) *Insurance companies or associations.* Service of sum-
0085 mons or other process may also be made on any insurance
0086 company or association, organized under the laws of the state of
0087 Kansas by service on the commissioner of insurance in the same
0088 manner as that provided for service on foreign insurance com-
0089 panies. All the requirements of law relating to service on foreign
0090 insurance companies so far as applicable shall also apply to
0091 domestic insurance companies.

0092 (h) *Acknowledgment or appearance.* An acknowledgment of
0093 service on the summons, or the voluntary general appearance of
0094 a defendant, is equivalent to service.

0095 (i) *Refusal to accept service.* In all cases when the person to
0096 be served, or an agent authorized by the person to accept service
0097 of summonses and petitions, refuses to receive copies thereof,
0098 the offer of the duly authorized process server to deliver copies
0099 thereof, and the refusal, shall be a sufficient service of the
0100 summons and petition. If the plaintiff or the plaintiff's agent or
0101 attorney files an affidavit that to the best of the affiant's knowl-
0102 edge and belief the defendant is a nonresident who is employed
0103 in this state, or that the place of residence of the defendant is
0104 unknown, the affiant may direct that the service of summons or
0105 other process be made by the sheriff or other duly authorized
0106 person by directing an officer, partner, managing or general
0107 agent, or the person having charge of the office or place of
0108 employment at which the defendant is employed, to make the
0109 defendant available for the purpose of permitting the sheriff or
0110 other duly authorized person to serve the summons or other
0111 process.

0112 Sec. 14. K.S.A. 60-308 is hereby amended to read as follows:

0113 60-308. (a) *Proof and effect.* (1) ~~Personal~~ Service of summons
0114 may be made upon any party outside the state. If upon a person
0115 domiciled in this state or upon a person who has submitted to the
0116 jurisdiction of the courts of this state, it shall have the force and
0117 effect of personal service of summons within this state; other-
0118 wise it shall have the force and effect of service by publication.

0119 (2) The service of summons shall be made (A) in the same
0120 manner as service within this state, by any officer authorized to

make service of summons in the state where the defendant is
0122 served or (B) by sending a copy of the summons and of the
0123 petition to the person to be served ~~by restricted mail~~. No order of
0124 a court is required. An affidavit of the server shall be filed stating
0125 the time, manner and place of service to which shall be attached
0126 the return receipt in the case of service by restricted mail. The
0127 court may consider the affidavit, or any other competent proofs,
0128 in determining whether service has been properly made. Service
0129 ~~of summons by restricted mail shall be deemed complete on the~~
0130 ~~date of delivery as shown on the return receipt.~~

0131 (3) No default shall be entered until the expiration of at least
0132 30 days after service. A default judgment rendered on service
0133 outside this state may be set aside only on a showing which
0134 would be timely and sufficient to set aside a default judgment
0135 rendered on personal service within this state.

0136 (b) *Submitting to jurisdiction — process.* Any person,
0137 whether or not a citizen or resident of this state, who in person or
0138 through an agent or instrumentality does any of the acts herein-
0139 after enumerated, thereby submits the person and, if an individ-
0140 ual, the individual's personal representative, to the jurisdiction
0141 of the courts of this state as to any cause of action arising from the
0142 doing of any of these acts:

0143 (1) Transaction of any business within this state;

0144 (2) commission of a tortious act within this state;

0145 (3) ownership, use or possession of any real estate situated in
0146 this state;

0147 (4) contracting to insure any person, property or risk located
0148 within this state at the time of contracting;

0149 (5) entering into an express or implied contract, by mail or
0150 otherwise, with a resident of this state to be performed in whole
0151 or in part by either party in this state;

0152 (6) acting within this state as director, manager, trustee or
0153 other officer of any corporation organized under the laws of or
0154 having a place of business within this state or acting as executor
0155 or administrator of any estate within this state;

0156 (7) causing to persons or property within this state any injury
0157 arising out of an act or omission outside of this state by the

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in the manner provided in K.S.A. 1985 Supp. 60-314 and amendments thereto

032 Sec. 16. K.S.A. 61-1805 is hereby amended to read as fol-
0233 lows: 61-1805. (a) The summons and petition shall be served
0234 together, and the plaintiff shall furnish the clerk of the court such
0235 copies of the petition as are necessary. In actions where all the
0236 defendants may be served personally in the county where the
0237 action is commenced, service shall be effected within not more
0238 than seven days from the date the summons is issued. When all
0239 the defendants cannot be so served, and service is required in
0240 another county or in another state, service shall be effected
0241 within not more than 15 days from the date of the summons.
0242 Service shall be as follows:

0243 (1) Service upon an individual other than a minor or an
0244 incapacitated person shall be made (A) by delivering a copy of
0245 the summons and of the petition to such individual personally;
0246 or, (B) by leaving copies thereof at such individual's ~~dwelling~~
0247 ~~house or~~ usual place of ~~residence abode~~ residence with some person of
0248 suitable age and discretion then residing therein; or, (C) by
0249 delivering a copy of the summons and of the petition to an agent
0250 authorized by appointment or by law to receive service of
0251 process, but if the agent is one designated by statute to receive
0252 service, such further notice as the statute requires shall be given;
0253 or (D) if service cannot be made in accordance with (A), (B) or
0254 (C), by leaving a copy of the summons and petition at the
0255 individual's usual place of residence and mailing a copy of the
0256 summons and petition to the individual by first-class mail.
0257 Personal Service upon an individual outside the state shall be
0258 made in substantial compliance with the applicable provisions of
0259 K.S.A. 60-308 and amendments thereto.

0260 (2) Service upon a minor, incapacitated person, foreign or
0261 domestic corporations, partnerships or insurance companies or
0262 associations shall be made in accordance with the applicable
0263 provisions of K.S.A. 60-304 and amendments thereto.

0264 (3) Service upon a governmental entity shall be made in
0265 accordance with the applicable provisions of K.S.A. 60-304 and
0266 amendments thereto.

0267 (b) An acknowledgment of service on the summons, or the
0268 voluntary general appearance of a defendant, is equivalent to