Approved February 15, 1989
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Representative Michael O'Neal at
Chairperson

3:30 ~~a.m.~~/p.m. on February 6, 1989 in room 313-S of the Capitol.

All members were present except:

Representatives Peterson and Shriver, who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Randy Hearrell, Kansas Judicial Council
Judge Edward Larson, Kansas Court of Appeals
Ron Smith, Kansas Bar Association

HEARING ON H.B. 2112 - Probate Clean-up

Randy Hearrell explained to the Committee the function of the Kansas Judicial Council. The Judicial Council has standing committees that study various areas of the law including criminal law, civil law and probate law. He said the Judicial Council consists of a Justice of the Supreme Court, a Judge of the Court of Appeals, two District Court Judges, two Legislators and four lawyers. They chair advisory committees that study various topics. He introduced Judge Edward Larson, a member of the Probate Law Advisory Committee.

Judge Ed Larson testified this bill proposes changes in the probate code. Section 1 of the bill, relating to the allowance to spouse and minor children, raises the allowance of not less than, from $750 to $1,500 and not more than, from $7,500 to $15,000. Section 2 amends K.S.A. 59-709 in regard to notice to creditors. Section 3 changes K.S.A. 59-2209 to K.S.A. 59-2008, which changes the notice of hearing from being published to being mailed. Section 4 adds to the publication notice to creditors (b) Actual notice required by subsection (b) of K.S.A. 59-709, and amendments thereto, may include, but not be limited to, mailing a copy of the published notice, by first class mail, to creditors within a reasonable time after their identities and addresses are ascertained. In Section 5, the language, "The person exhibiting the demand shall provide a copy of the demand, as filed, to the personal representative of the estate", was added. In Section 6 the amount of real and personal property was raised from $10,000 to $25,000. Also added was (e) Any will filed pursuant to this section within a period of six months after the death of the testator may be admitted to probate after such six month period". Section 7, amending K.S.A. 59-3030, states that "Any person having a beneficial interest in the conservatee's estate who is under legal disability or any unascertained person having an interest in the conservatee's estate may be represented by living competent members of the class to which they do or would belong, or by a guardian ad litem." Section 8 amends 59-3031 by adding "The settlement and allowance by the court of a conservator's account, after due notice or representation as provided in article 30 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, shall relieve the conservator and the conservator's sureties from liability for all acts and omissions which are fully and accurately described in the accounting, including the then investments of the conservatorship."

Ron Smith informed the Committee he was appearing for Professor John Kuether, who was unable to attend the meeting. He said Professor Kuether was also on the Judicial Advisory Committee Ron Smith questioned Section 2(b) line 66. The Kansas Bar Association recommended "(b) The personal representative of a decedent's estate shall give actual notice to all creditors reasonably ascertainable by the personal representative prior to the expiration of the non-claim period." (see Attachment I).

The hearing on H.B. 2112 was closed.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,

room 313-S, Statehouse, at 3:3- xxxx./p.m. on February 6, 1989.

BILL REQUESTS:

The Chairman stated the municipal judges have requested the Judiciary Committee introduce a bill which would provide continuing legal education and training, particularly to the non-law trained municipal judges. The proposed bill is patterned after the current educational requirements of district magistrate judges and the funding is the same as the funding of the education of district attorneys. The funding would be a $1.00 assessment as additional court costs in municipal court cases.

Representative Solbach moved and Representative Jenkins seconded to introduce the proposed legislation as a Committee bill. The motion passed.

The Chairman presented a bill request to the Committee that would clean-up a loophole in the statutes regarding probate matters that are applicable to a jury in some counties, and not in others, depending on whether there was a district magistrate judge involved, (see Attachment II.

A motion was made by Representative Jenkins and seconded by Representative Lawrence to introduce the proposed legislation as a Committee bill. The motion passed.

The Clay County Sheriff's Department requested the Judiciary Committee introduce a bill that would establish a state-wide automated wanted persons file, see Attachment III.

Representative Jenkins moved to introduce the requested legislation as a Committee bill. Representative Adam seconded the motion. The motion passed.

A bill request from Judge Leonard Mastroni which asks for additional legislation under the "house arrest" program was distributed to the Committee. The Chairman said the Committee would consider the bill request tomorrow to allow the members time to study the request. See Attachment IV

COMMITTEE CONSIDERATION OF:

H.B. 2035- Forensic examiner's report
H.B. 2069 - Acceptable into evidence cretain forensic examiner's reports

Representative Gomez moved to amend H.B. 2035 to incorporate the amendments to the existing statutory language contained in H.B. 2069. Representative Sebelius seconded the motion. The motion passed.

Representative Whiteman moved to recommend H.B. 2035, as amended, favorable for passage. Representative Douville seconded the motion. The motion passed.

The Committee meeting was adjourned at 4:45 p.m. The next meeting will be Tuesday, February 7, 1989, at 3:30 p.m. in room 313-S.

GUEST LIST

COMMITTEE: HOUSE JUDICIARY DATE: Feb 6, 1989

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Randy Hearrell	Topeka	KS. Jud. Council
Paul Shelby	Topeka	Supreme Court
Jon Bray	Topeka	Life at its Best
Ron Smith	"	Ks Bar Assoc
Brad Ambrosier	"	A-6

Dale L. Pohl, President
A.J. "Jack" Focht, President-elect
Robert W. Wise, Vice President
Linda D. Elrod, Secretary-Treasurer
Christel Marquardt, Past President

Marcia Poell, Executive Director
Ginger Brinker, Director of Administration
Dru Sampson, Continuing Legal Education Director
Patti Slider, Public Information Director
Ronald Smith, Legislative Counsel
Art Thompson, Legal Services Coordinator

HB 2112
House Judiciary Committee
February 6, 1989

Mr. Chairman, and members of the House Judiciary Committee. I am Ron Smith, Legislative Counsel, Kansas Bar Association.

Section 2 of this act was brought about by a United States Supreme Court decision which declared Oklahoma's nonclaim statute unconstitutional as denying due process. The Real Estate, Probate and Trust Law section of the Bar asked that a correction be made.

Our concern is the language of Section 2(b) at line 66. Our Section wrestled with this original language. There is a policy choice. That is, you can give the relatively unstructured statutory pronouncement that personal representatives shall give actual notice to known or reasonably ascertainable creditors, or you can specify the time period which constitutes "due process." The Real Estate, Probate and Trust Law section originally suggested giving notice either "during the running of the non-claim period," or some shorter period named by the legislature.

Our legislative committee wrestled with this problem, too, and suggested a subsection (b) that reads as follows:

> "(b) The personal representative of a decedent's estate shall give actual notice to all creditors reasonably ascertainable by the personal representative prior to the expiration of the non-claim period."

This language was adopted by KBA's Board of Governors as our policy in December.

Either the current version of Section 2(b) or this version corrects our nonclaim statute appropriately. Our version simply gives lawyers and judges some legislative direction as to what period of time complies with the Supreme Court decision. We would support either version.

1200 Harrison • P.O. Box 1037 • Topeka, Kansas 66601 • (913) 234-5696

H. J. 2/6/89
att I

BOARD OF GOVERNORS: Thomas A. Hamill, John L. Vratil, David J. Waxse, District 1 • Hon. Fred N. Six, District 2 • Tim Brazil, District 3 • Warren D. Andreas, District 4
E. Dudley Smith, Dale L. Somers, District 5 • Anne Burke Miller, District 6 • Dennis L. Gillen, Philip L. Bowman, Warren R. Southard, District 7
William B. Swearer, District 8 • Linda Trigg, District 9 • Hon. Charles E. Worden, District 10 • Thomas L. Boeding, District 11
Kim R. Martens, Young Lawyers President • John Elliott Shamberg, Association ABA Delegate • Glee S. Smith, Jr., ABA Delegate
Christel Marquardt, Association ABA Delegate • Richard C. Hite, Kansas ABA Delegate • Hon. Samuel K. Bruner, KDJA Representative.

48 JBAK 97, 102 (1979)

60.[20] Obviously, the range of evidence that can be presented is broadened somewhat now that discovery procedures and their concomitant advantages are made expressly available in probate proceedings. In fact, it may well be that the availability of the chapter 60 discovery proceedings in probate matters will be one of the most significant results of unification.

Jury Trials

Unification did not affect the rule set forth in K.S.A. 59-2212 that "trials and hearings in probate proceedings shall be by the court unless otherwise provided by law." A previous exception that permitted jury trials on a hearing for a claim against an estate when the matter was appealed or transferred from a probate court to a district court, however, was apparently unintentionally modified by the legislature in its massive effort to consolidate the judicial branch. Under the present statutory language, jury trials are now permitted on claims by creditors only in the 78 counties that have a district magistrate judge.[21]

looks like we can get a jury trial in Ellsworth County.

To determine how such an unintended result could have occurred, a review of the pre-unification statutory scheme is necessary. Prior to unification, K.S.A. 59-2402a and 2402b allowed any interested party to request a transfer of certain matters (including claims in excess of $500.00) to the district court to be heard as an appeal pursuant to K.S.A. 59-2408. K.S.A. 59-2408 only permitted jury trials on such transfers or on appeal when the issue was whether to allow or disallow a claim made against the estate.

our case has been transferred to a district judge under 59-2402a

As with many of the statutory changes to chapter 59 resulting from unification, the legislature merely amended the previous sections relating to the transfer and appeal from the probate court to the district court by substituting "district magistrate judge" for "probate court" and substituting "district judge or associate district judge" for "district court." Consequently, after January 10, 1977, K.S.A. 59-2402a and 2402b permit any interested party to request a transfer from a district magistrate judge to a district judge or associate district judge of those matters specified (including a hearing on any claim in excess of $500.00). Upon transfer, the matter is to be heard and determined as on an appeal pursuant to K.S.A. 59-2408. K.S.A. 59-2408 was amended to provide that transfers and appeals of proceedings involving the allowance or disallowance of a demand that were initially before a district magistrate judge may be tried by a jury.

In enacting these amendments, the legislature obviously forgot that while all counties previously had a probate court, not all counties would have a district magistrate judge after unification. Since K.S.A. 59-2408 requires that the right to a trial by jury on claims against the estate may only be had on an appeal or transfer from a district magistrate judge, the right to a trial by jury on such claims is literally foreclosed in the 27 counties without a district magistrate judge.

Although the Kansas Supreme Court has previously indicated that "errors plainly clerical in character, mere inadvertences of terminology, and other similar inaccuracies or deficiencies will be disregarded or corrected where the intention of the legislature is plain and unmistake-

20. K.S.A. 59-2212.

21. The 27 counties without a district magistrate judge are Barton, Butler, Cowley, Crawford, Douglas, Ellis, Finney, Ford, Franklin, Geary, Harvey, Jackson, Johnson, Labette, Leavenworth, Lyon, McPherson, Montgomery, Neosho, Reno, Riley, Saline, Sedgwick, Seward, Shawnee, Sumner, and Wyandotte. K.S.A. 1978 Supp. 20-338.

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House Judiciary 2/6/89 Attachment II

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able,"[22] it has refused to do so where the legislative error was even more obvious than the amendment to K.S.A. 59-2408.[23] Apparently, the Kansas courts will be required to determine that the contrasting rights to a jury trial, in those counties with a district magistrate judge and in those counties without a district magistrate judge, violate the federal constitutional guarantee of equal protection under the law[24] or the state constitutional requirement that all laws of a general nature shall operate uniformly throughout the state.[25] The most desirable approach, however, would be for the legislature to amend K.S.A. 59-2408 to provide that *all* hearings before a district judge or associate district judge, regarding the allowance or disallowance of a demand, may be heard by a jury. This should be done before creditors or estate representatives, who desire jury trials in the 27 counties where they are now statutorily unavailable, are unnecessarily required to go to the time and expense of obtaining a judicial determination that this legislative oversight can not be given its literal effect.[26]

Appeals

Although one aspect of appeals of contested estate matters (the right to a jury trial in appeals regarding the allowance or disallowance of a claim) has been considered in the previous section of this article, additional changes in probate appellate procedure resulted from court unification. Except as otherwise provided in K.S.A. 59-2401, *et seq.*, appeals of contested estate matters are now taken in the manner provided by chapter 60 for other civil cases.[27] Since most attorneys are probably familiar with the basic chapter 60 appellate procedure, only those matters that are of special interest in an appeal of a contested estate matter will be considered.

K.S.A. 59-2401 provides that an appeal may be taken within 30 days from the entry of any one of the 22 enumerated orders, judgments, decrees and decisions. This conforms the time for appeal under the probate code to the time allowed under chapter 60 with at least one, and possibly two, exceptions. The first exception is that while a chapter 60 notice of appeal from the decision of a district magistrate judge must be filed within 10 days after the entry of the order or decision appealed from, an appeal of an order or decision of a district magistrate judge in a proceeding under chapter 59 may be taken up to 30 days after the entry of the order appealed from.[28]

The second possible exception concerns the extension of time for an appeal by an appropriate motion. Since a motion for a new trial, a motion to alter or amend a judgment, and a motion to amend or make additional findings of fact are now available in probate proceedings[29] the question is whether such a motion will extend the time for appeal of a contested estate matter. Prior to uni-

22. *Russell v. Cogswell*, 151 Kan. 793, 795 (1940).
23. *E.g., Harris v. Shanahan*, 192 Kan. 183 (1963), involving the omission of the city of Leawood from any Kansas senatorial district under the 1963 reapportionment statute.
24. U.S. Const. Amend. XIV, §1. See *Truax v. Corrigan*, 257 U.S. 312, 42 S. Ct. 124, 66 L. Ed. 254 (1921). It is difficult to imagine a rational basis for conditioning the right of an estate creditor to obtain a jury trial upon the county of the debtor-decedent's residence.
25. Kan. Const., Art. 2, §17. See *Rambo v. Larrabee*, 67 Kan. 634 (1903).
26. A joint motion for such a judicial determination made by parties to an appeal involving this very question, after they had reached a compromise settlement, was denied by the Kansas Supreme Court. *In re Estate of Cannon*, No. 50,225.

27. K.S.A. 1978 Supp. 59-2401(c). Although the legislature initially retained the 6 month exception for appealing an order admitting or refusing to admit a will to probate, the 1978 session of the legislature eliminated this exception to the 30 day rule. *Kan. Sess. Laws*, Ch. 222, §1 (1978).
28. Prior to May 14, 1977, the same 10 day rule applied to chapter 59 and chapter 60 appeals because of the express adoption of the chapter 60 appeal procedures by K.S.A. 59-2401(a). K.S.A. 59-2401(c) now provides that chapter 60 is consulted only when a matter regarding an appeal is not otherwise provided for in K.S.A. 59-2401. Consequently, the general 30 day appeal rule is applicable to probate appeals regardless of the title of the judge whose decision is being appealed.
29. K.S.A. 60-201, 60-252(b), 60-259(a) and (f).

228 Kan 275, 613 P.2d 947 (1980)

admission of the will to probate was held on February 27, 1979, at which time the trial court admitted the will to probate and issued letters testamentary to Hazel W. Noftzger.

Appellant Stickney appealed the ruling of the district magistrate judge to the district judge on March 22, 1979. The appeal was heard de novo on May 17, 1979. Petitioner Noftzger produced the same evidence as in the previous hearing. Stickney offered no evidence and simply announced he would stand on the record. The district court ordered the will admitted to probate and issued letters testamentary to Hazel Noftzger finding the testator was of legal age, sound mind and not under any restraint when he executed the will. Stickney appealed that judgment on June 29, 1979.

Appellant argues the trial court erred in denying his demand for a jury trial. He claims K.S.A. 59-2212, enacted in 1939, has been repealed by implication because the legislature abolished probate courts in 1976. K.S.A. 59-2212 provides:

> "**Hearings and rules of evidence.** Trials and hearings in probate proceedings shall be by the court unless otherwise provided by law. The determination of any issue of fact or controverted matter on the hearing of any probate proceedings shall be in accordance with the rules of evidence provided for civil cases by the code of civil procedure, except as provided in the act entitled 'act for obtaining care or treatment for a mentally ill person' and in the act entitled 'act for obtaining a guardian or conservator, or both.' "

Appellant contends since probate courts were abolished all probate matters are now governed by the rules of civil procedure in Chapter 60 which, he contends, would provide for a jury trial. We do not agree. Although we no longer have separate probate courts, probate proceedings remain and are now tried in the district court. In *City of Salina v. Jaggers,* 228 Kan. 155, Syl. ¶ 2, 612 P.2d 618 (1980), we stated:

> "Repeal by implication is not favored and acts will not be held to have been repealed by implication unless a later enactment is so repugnant to the provisions of the first act that both cannot be given force and effect."

The 1976 legislature changes are not repugnant to the provisions of K.S.A. 59-2212 and the statute was not repealed by implication.

Appellant next contends K.S.A. 1979 Supp. 59-2408 preserves the right to trial by jury in certain probate matters, such as allowance of a demand, when that issue is appealed from a magistrate judge's decision. That right to a jury trial is not

available in Kansas counties which do not have magistrate judges, and thus appellant contends that deprivation of rights constitutes a denial of equal protection. Appellant then attempts to make his argument applicable to this case by posing this question: Why should creditors in certain counties be entitled to a jury trial when challengers to the probate of a will are not afforded the same right? Such an analogy is inapplicable to this case. The constitutional right to trial by jury refers to that right as it existed at common law. *First Nat'l Bank of Olathe v. Clark*, 226 Kan. 619, Syl. ¶ 1, 602 P.2d 1299 (1979). We also note the discussion of trial by jury in probate matters in 3 Bartlett, Kansas Probate Law and Practice § 1582 pp. 389-390 (rev. ed. 1953):

> "Likewise on appeal to the district court from a proceeding in the probate court admitting or refusing to admit a will to probate, a jury trial of the questions involved is not a matter of right. The decisions have uniformly held that neither party has any right, constitutional or otherwise, to a jury in a proceeding of this character.
>
> "The legislature has provided that issues of fact in actions for the recovery of money or of specific real or personal property shall be tried by a jury, unless a jury trial is waived. Section 5 of the Bill of Rights has been held to cover only matters triable by jury at common law. A proceeding to contest a will does not come within any of these terms. It is a statutory proceeding, and in such proceedings the legislature is fully competent to dispense with a jury."

This case challenges the admission of a will to probate. It is irrelevant to this issue whether a creditor is entitled to a jury trial on his petition for allowance of a demand or whether that provision is uniformly applicable. Contesting the admission of a will to probate was not a matter triable by jury at common law. The proceeding is a creature of statute and K.S.A. 59-2212 does not provide for a jury trial. Appellant's issue is without merit.

With regard to appellant's argument that the testator was incompetent when he executed the will, proponents of the will offered evidence of the testator's testamentary capacity through testimony of the witnesses to the will in the trial de novo before the district judge. A prima facie case was made for admission of the will to probate. The burden to overcome that showing by clear, satisfactory and convincing evidence shifted to Stickney. *In re Estate of Perkins*, 210 Kan. 619, 624, 504 P.2d 564 (1972). Appellant cross-examined the proponents' witnesses but offered no evidence to support his charge of incompetency. He then chose to "stand on the record," which contained no evidence. The

59-2408. Appeal from a district magistrate judge; trial on appeal; pleadings; issues; evidence. Whenever an appeal has been taken from an order, judgment, decree or decision of a district magistrate judge, the district judge to which the appeal is assigned by the administrative judge, without unnecessary delay, shall proceed to hear and determine all issues in the matter *de novo* and shall allow and may require pleadings to be filed or amended. The right to file new pleadings shall not be abridged or restricted by the pleadings filed, or by failure to file pleadings, in the proceedings before the district magistrate judge; nor shall the trial or the issues to be considered by the district judge be abridged or restricted by any failure to appear or by the evidence introduced, or the absence or insufficiency thereof, in the proceedings before the district magistrate judge.

All appeals from a district magistrate judge other than those from the allowance or disallowance of a demand, adjudging or refusing to adjudge a person an incapacitated person, and the granting, or refusing to grant, of an order for care or treatment, shall be tried by the court without a jury, but the court may call a jury in an advisory capacity or in a proper case may refer the matter or part thereof to a referee.

History: L. 1939, ch. 180, § 276; L. 1945, ch. 237, § 5; L. 1965, ch. 346, § 49; L. 1976, ch. 242, § 63; L. 1977, ch. 112, § 23; L. 1978, ch. 222, § 2; L. 1986, ch. 115, § 89; Jan. 12, 1987.

Article 26.—MISCELLANEOUS

59-2602.

CASE ANNOTATIONS

15. Royalty and mineral interests distinguished; intent of will provisions versus rule against perpetuities determined. Drach v. Ely, Department of Human Resources, 10 K.A.2d 149, 150, 694 P.2d 1310 (1985).

Article 28.—SPECIAL PERSONAL REPRESENTATIVES

59-2804. Bond; accountings; removal. The court, in its discretion at the time of the appointment or subsequently, may require the personal representative to execute and file a bond to assure the faithful performance of the duties required. An accounting by the personal representative shall be made within such period of time as shall be established by rule of the supreme court and either the court or the county department of social welfare may require additional accountings at such intervals as it considers necessary. Failure to render such accounts and to account satisfactorily for all proceeds received shall be sufficient cause for the dismissal of the personal representative, and the personal representative so appointed may be removed by the court upon the petition of such representative and another representative appointed.

History: L. 1963, ch. 256, § 4; L. 1985, ch. 191, § 54; July 1.

Article 29.—CARE AND TREATMENT FOR MENTALLY ILL PERSONS

Law Review and Bar Journal References:

"Torts—Liability of Psychiatrists for Violent Acts Committed by Dangerous Patients—*Durflinger v. Artiles*," Matthew D. Bunker, 33 K.L.R. 403 (1985).

59-2901. Name and citation of act. This act shall be known and may be cited as the treatment act for mentally ill persons.

History: L. 1965, ch. 348, § 1; L. 1976, ch. 243, § 1; L. 1986, ch. 211, § 1; July 1.

59-2902. Definitions. When used in this act:

(a) "Conditional release" means release of a patient who has not been discharged but who is permitted by the head of the treatment facility to live apart from the treatment facility pursuant to K.S.A. 59-2924 and amendments thereto.

(b) "Discharge" means the final and complete release from treatment, by either an order of a court pursuant to K.S.A. 59-2923 and amendments thereto or a treatment facility.

(c) "Head of the treatment facility" means the administrative director of a treatment facility or such person's designee.

(d) "Involuntary patient" means a mentally ill person who is receiving treatment under order of a court of competent jurisdiction.

(e) "Lacks capacity to make an informed decision concerning treatment" means that the person, by reason of the person's mental disorder or condition, is unable, despite conscientious efforts at explanation, to understand basically the nature and effects of hospitalization or treatment or is unable to engage in a rational decision-making process regarding hospitalization or treatment, as evidenced by inability to weigh the possible risks and benefits.

Clay County Sheriff Department

Gary F. Caldwell, Sheriff

Law Enforcement Center

Box 115 Phone (913) 632-5601 Clay Center, Kansas 67432

RECEIVED

January 3, 1989

James Braden
1122 5th
Clay Center, Kansas 67432

Dear Jim:

During the past year police and sheriff departments across the state have again been working on establishing a state-wide automated wanted persons file. The system would work in conjunction with the existing federal system called N.C.I.C. (National Crime Information Center).

A majority of outstanding arrest warrants do not qualify for the federal system because the agency must be willing to extradite the fugitive across state lines. In Kansas many thousand warrants for worthless checks, failure to appear for driving under the influence and other crimes are going unserved.

As state chairman of the group representing local law enforcement agencies on the state communications network I recently conducted a survey of agencies.

A total of 53 agencies participated representing a good sampling of the state's law enforcement agencies from the very smallest to the largest. The results will be outlined for each question on the survey.

1. Total number of warrants held by the 53 agencies which do not qualify for NCIC and could be entered into a Kansas file was 45,387. The very smallest counties indicated an average of 50-100 warrants. The medium size counties averaged about 1,000 warrants while the large metropolitan areas had from 10,000 to 20,000 warrants. Based on the number of respondents it could easily be assumed that there are well over 100,000 warrants sitting around agencies.

2. The total amount of money outstanding from fines and court costs was tabbed at $3,312,394. This is probably low even for the 53 agencies since many said it only included court costs as they did not estimate fines. I will not try to multiply this amount to estimate what it would be if all agencies had responded.

House Judiciary
2/6/89
Attachment III

3. Most agencies feel their officers have been placed in danger from contacting wanted people without knowing of the warrant. Results: 46 agencies felt a danger had occurred; just 4 said no danger.

4. Most agencies also know of instances where a person was contacted who was not listed as wanted by NCIC but the agency found later that there was in fact an active warrant. The results: 39 had the experience; 10 had not that they knew.

5. Of those 39 agencies who had the experience of finding out late about a warrant, 14 felt their officers had been in danger; 21 felt no danger.

6. The survey provided five choices as to the need for an intrastate wanted person file. The results:

vital	32 or 60%
important	18 or 34%
nice	2 or 4%
marginal	1 or 2%
not needed	0

The Kansas Bureau of Investigation is including money in its 1990 budget to establish such a file. While local agencies feel strongly about having such a tool it does not seem appropriate to support a specific budget item within a state agency.

I thought the proper way to support such action would be to support changes in the central repository statute. Present law requires the central repository (which is the KBI) to maintain a record of arrest warrants. K.S.A. 22-4705 could be amended to simply require in a general way an automated file of these warrants. I am enclosing a copy of this proposal.

I would be interested in hearing your thoughts on this matter and any ideas you might have in accomplishing our goal. If you feel you could help I am sure all in law enforcement would appreciate it.

Sincerely,

Phil Taylor
Undersheriff

K.S.A. 22-4705 is hereby amended to read as follows:

Reportable events; establishment of the criminal justice information system central repository; reports; method of reporting.

(a) The following events are reportable events under this act:

(1) Issuance of an arrest warrant;

(2) an arrest;

(3) release of a person after arrest without the filing of a charge;

(4) dismissal or quashing of an indictment or criminal information;

(5) an acquittal, conviction or other disposition at or following trial, including a finding of probation before judgment;

(6) imposition of a sentence;

(7) commitment to a correctional facility, whether state or locally operated;

(8) release from detention or confinement;

(9) an escape from confinement;

(10) a pardon, reprieve, commutation of sentence or other change in a sentence, including a change ordered by a court;

(11) judgment of an appellate court that modified or reserves the lower court decision;

(12) order of a court in a collateral proceeding that affects a person's conviction, sentence or confinement, including any expungement or annulment of arrests or convictions pursuant to state statute; and

(13) any other event arising out of or occurring during the course of criminal justice proceedings declared to be reportable by rule or regulation of the director.

(b) There is hereby established a criminal justice information system central repository for the collection, storage, and dissemination of criminal history record information. The central repository shall be operated by the Kansas bureau of investigation under the administrative control of the director.

(c) <u>The central repository shall establish and maintain a computerized file of outstanding warrants reported to it under section</u>

(a). The file will be available for access from criminal justice agencies through the law enforcement and civil defense communications network and other means as determined by the director.

(d) Except as otherwise provided by this subsection, every criminal justice agency shall report criminal history record information, whether collected manually or by means of an automated system, to the central repository, in accordance with rules and regulations adopted pursuant to this act. A criminal justice agency shall report to the central repository those reportable events involving a violation of a county resolution or city ordinance only when required by rules and regulations adopted by the director.

(e) Reporting methods may include:

(1) Submittal of criminal history record information by a criminal justice agency directly tot he central repository;

(2) if the information can readily be collected and reported through the court system, submittal to the central repository by the administrative office of the courts; or

(3) if the information can readily be collected and reported through criminal justice agencies that are part of a geographically based information system, submittal to the central repository by the agencies.

(f) Nothing in this section shall prevent a criminal justice agency from maintaining more detailed information than is required to be reported to the central repository. However, the dissemination of that criminal history record information is governed by the provisions of this act.

(g) The director may determine, by rule and regulation, the reportable events to be reported by each criminal justice agency, in order to avoid duplication in reporting.

Leonard A. Mastroni
Judge of the District Court

District Court of Kansas

24th Judicial District
Rush County Courthouse — La Crosse, Kansas 67548

Phone 913-222-3417
Box 387

January 31, 1989

State Capitol Building
House of Representatives
Honorable Michael O'Neil
State Representative
104th District
Topeka, Kansas

Dear Representative O'Neil;

I would like to thank you for the opportunity to visit with you last week in regards to the new "House Arrest" law that was past in the 1988 Legislative Session. The District Court of Rush County implemented a "House Arrest" program that has been in existence since April of 1987. The court has used the program for a wide range of offenders, including: misdemeanor crimes, misdemeanor traffic offenders, juvenile offenders and intense probation supervision. During this time the Rush County House Arrest Program has been modified to conform with the present house arrest law. Also, during this time the court has experienced other ways to use house arrest even though its use in these areas are not explicit in the statutes. Because of this experience I would like to present several ideas to clarify and expand the use of house arrest in different statutes.

In K.S.A. 8-1567 (Driving under the Influence or Alcohol) it is clear that there is mandatory jail sentences that require the imprisonment of the offender for the second and third time conviction. It is also clear that house arrest can be implemented to satisfy the mandatory sentencing requirements. However, what seems to be somewhat confusing is the talk on the Federal level that they would like to see the second and third time offender serve the first 48 hours behind bars before being placed on "House Arrest". This talk seems to be conflicting with what the U.S. Supreme Court and the Kansas Supreme Court says in the State v. Babcock, 226 Ks. 356 and State v. Meredith, 236 Ks. 866. Some type of clarification would be beneficial to the courts addressing "House Arrest" in this particular statute.

A second use for electronic monitoring could be beneficial in K.S.A. 22-2802 (Release Prior to Trial). The statute presently addresses placing different kinds of conditions on the bond the defendant must comply with for his release. A condition that the defendant be monitored electronically would be beneficial, not only to the working defendant, but also to the overcrowding facility that has a abundance of pretrial detainees. This type of procedure is not a new one for the states that utilize electronic monitoring. Several of the states have massive pretrial release programs to keep their jail facility open to the more violent offender. Several examples that I'm aware of at this time is the State of Maryland, New Jersey, New York, Virginia, Indiana and I believe Utah.

House Judiciary
2/6/89
Attachment IV

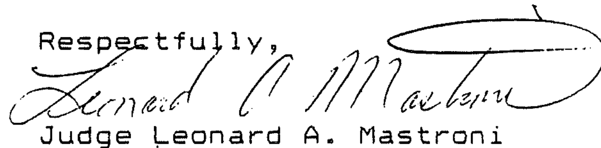
A third possibility is to use "House Arrest" under K.S.A. 8-2117 for the juvenile traffic offender that commits a misdemeanor or felony traffic offense. The present statutes currently authorizes the court to sentence the offender to not more than ten days in a juvenile detention facility. By using house arrest the offender could be sentenced to the same term of sentence and similar sanctions as the adult offender as currently provided for in the "House Arrest" law.

Another possibility is to use "House Arrest" in the Juvenile Offender Code as a "Dispositional Alternative", under K.S.A. 38-1663. The statute is broad enough where I feel the court can order it as a condition of probation. The Rush County District Court is presently using the system for juvenile offenders that may be bordering placement with the S.R.S. This system becomes particularly useful with the offender that roams the street late at night looking for something to do and does not have a strong enough structural setting at home to keep him there.

In closing I would like to bring up an idea for paying the costs of "House Arrest" as a condition of probation for the juvenile. The last legislative session H.B. 2666 was enacted that allowed the county to implement a resolution to charge inmates up to ten dollars a day to defray the costs of their expense. I propose something similar for the juvenile offender that would also allow the county to implement a resolution, based on a sliding financial scale, that would require the parents to pay for any "House Arrest" costs. With Rush Counties present juvenile offender the court has ordered this as costs and based it on a sliding financial scale used for adult offenders.

In closing I look forward to visiting with you in the near future and hope these ideas may become beneficial to develop the "House Arrest" law into even a more useful tool for the courts.

Respectfully,



Judge Leonard A. Mastroni

c.c. Senator Jerry Moran
Representative Robert D. Miller
Judge J. Russell Jennings-Leg. Chair. KDMJA
Judge C. Fred Lorentz-Leg. Chair. KDJA