Approved March 16, 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 28, 1989 in room 313-S of the Capitol.

All members were present except:

Representatives Peterson, Sebelius 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:

Chief Justice Robert Miller, Supreme Court
Chief Judge Bob Abbott, Court of Appeals
Jessica Kunan, Chief Appellate Defender
Judge Leonard Mastroni, 24th Judicial District, Rush County, LaCrosse
Jim Trast, Juvenile Offender Programs, Social and Rehabilitation Services
Matt Lynch, Judicial Council
John Wine, Assistant Secretary of State
Ron Smith, Kansas Bar Association

HEARING ON H.B. 2370 - Case directly to the Supreme Court on Appeal

Chief Justice Robert Miller testified this bill would give the Supreme Court time to take some additional civil cases. Generally in the fall their docket is much heavier with criminal cases than it is with civil cases and they would like to even it up with more important civil cases. He said he supports H.B. 2370.

In answer to Committee questions, Chief Justice Miller explained the act being amended provides for original jurisdiction direct appeal to the Supreme Court, from conviction for A and B felonies, from conviction for which a life sentence is imposed, and direct appeal to the Supreme Court from the District Courts in any case in which a statute of this state or a statute of the United States is declared by the trial court as unconstitutional. All of the criminal and civil cases, except those specified as coming direct to the Supreme Court, go direct to the Court of Appeals. The Supreme Court transfers some cases from the Court of Appeals, others they grant a petition for review and then hear the court case on appeal. He also replied all of the civil cases that are appealed would still go to the Court of Appeals. On the suggestion of the Court of Appeals, or on the suggestion of the Supreme Court, additional cases would be transferred to the Supreme Court. He said he transfers cases from the Court of Appeals when his docket is not adequately filled. The cases transferred are difficult cases that have statewide interest.

Chief Judge Bob Abbott, Court of Appeals, testified this bill did not go through the Judicial Council. He said the Court of Appeals handles 1,200 cases a year, of which 800 are civil cases and about 400 are criminal cases. There were 28 Class B felony cases last year. The Supreme Court hears primarily criminal cases and they should be hearing some difficult civil cases. The Supreme Court has not transferred any cases this year. In the past they have transferred between 100 to 125 cases. Two out of three appeal cases are civil cases.

Chief Justice Miller responded to a question that he usally assigns 4 or 5 cases per Justice per docket every 5 weeks. The load of cases per Justice varies from 1 to 6 cases per docket, depending on the cases involved.

Jessica Kunan, Chief Appellate Defender, testified in opposition to H.B. 2370. She explained the Appellate Defender Office is responsible for filing briefs on behalf of all indigent defendants appealing their felony convictions to the Appellate courts. She said Class B felonies are serious charges frequently resulting in lengthy trials, which raises numerous, complex and serious constitutional issues requiring consideration by the highest court. This bill could also result in inconsistent decisions and increase the workload of all parties involved. As alternatives she suggested putting Class A or B sentencing appeals on summary calendar, shorten oral arguments for certain cases and send all sentencing cases to the Court of Appeals, see Attachment I.

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 3:30 xxx.m./p.m. on February 28, 1989.

There being no other conferees appearing to testify on this bill, the hearing on H.B. 2370 was closed.

HEARING ON H.B. 2508 - The use of House Arrest programs

Judge Leonard Mastroni, 24th Judicial District, Rush County, testified this bill modifies four different statutes so more Judges will feel comfortable implementing House Arrest, see Attachment II. He demonstrated the visual electronic monitor used in House Arrests in Rush County. The visual monitor is hooked up to a phone line and placed in the defendant's home. The vendor, who is under contract with the court, calls the defendant at home during curfew hours. The defendant's image is transmitted over the phone lines to the vendor's office. It is recorded on video, audio tape. It can also be produced as a hard copy picture. He distributed to the Committee copies of the January/February 1989 U.S. Department of Justice, National Institute of Justice, NIJ Reports, Electronic Monitoring of Offenders Increases, see Attachment III.

Judge Mastroni stated the District Court of Rush County implemented a House Arrest program in April 1987. House arrest is used for incarceration, that is, in lieu of the defendant going to the county jail. It is also used for intensive probation supervision for juveniles or adults, and for pre-trial for a person who has been charged with a crime and has posted a bond. The Judge can order house arrest as a condition of the bond. House arrest is not for all types of defenders whether juvenile or adult. On page 2, lines 53 through 57 of the bill, language has been inserted to allow juveniles to be placed under a "House Arrest" program. He said "and amendments thereto" in line 57 should be deleted and specific statutes for the violations of the drunk driving law, the reckless driving law, and eluding police officers should be mentioned.

Judge Mastroni said Driving Under the Influence of Alcohol is not included in this bill. He would like "House Arrest" be put under the D.U.I. statute. The second and third time offenders would be required to serve the first 48 hours in the county jail and then they would be eligible for the house arrest program, if the program was available in that county.

In answer to a Committee question, Judge Mastroni said the charge for the lease of the visual electronic monitor and services is $5.50 to $8.00 a day. A computer randomly selects when the calls will be made and an operator makes the calls.

Jim Trast, Juvenile Offender Programs, S.R.S., testified in support of H.B. 2508. He submitted an amendment to line 159, following the word "program", adding the phrase "administered by the court". This would clarify that for juveniles the house arrest program would be one administered by the court, and not by the Secretary of Corrections, see Attachment IV.

The hearing was closed on H.B. 2508.

HEARING ON H.B. 2162 - Cleanup of Kansas Administrative Procedures Act

Matt Lynch, Judicial Council, distributed a letter dated April 18, 1988, from Governor Mike Hayden recommending the Kansas Administrative Procedures Act provisions be rewritten in a fashion that makes them more understandable, see Attachment V. He also distributed copies of sections that are repealed by H.B. 2168, see Attachment VI, and copies of proposed amendments to H.B. 2618 proposed by state agencies, see Attachment VII.

The hearing was closed on H.B. 2162.

HEARING ON H.B. 2433 - Corporations registered office and registered agent

John Wine, Jr., Assistant Secretary of State, testified H.B. 2433 will make it easier for corporations to reinstate if the registered office is no longer a good address or the resident agent at that address is no longer a responsible representative of that corporation, see Attachment VIII.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,

room 313-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on February 28, 1989.

A motion was made by Representative Solbach and seconded by Representative Snowbarger to report H.B. 2433 favorably for passage, and that it be placed on the consent calendar. The motion passed.

HEARING ON H.B. 2436 - Verification of documents, under penalty of perjury

John Wine, Assistant Secretary of State, testified this bill would delete the notarization requirement for corporations executing annual reports, persons assisting disabled voters and persons applying to become lobbyisits, see Attachment IX.

Ron Smith, Kansas Bar Association, testified H.B. 2436 does not amend the perjury statutes, K. S.A. 21-3805,to include a false declaration made under authority to the various sections of H.B. 2436. He recommended amending H.B. 2436 with two new sections to allow all eight current sections to take effect and bring the perjury statute into play. This could be accomplished by substituting 1987 H.B. 2082 for 1989 H.B. 2436 in a substitute bill. A copy of 1987 H.B. 2082 was attached to his testimony, see Attachment X.

The hearing on H.B. 2436 was closed.

The Committee meeting was adjourned at 5:30 p.m. The next meeting will be Wednesday, March 1, 1989, at 3:30 p.m. in room 313-S.

HB 2370 - Removal of Class B felonies from those crimes that defendants may appeal directly to the State Supreme Court.

Testimony Against the Bill - by Jessica R. Kunen, Chief Appellate Defender - (The Appellate Defender Office is responsible for filing briefs on behalf of all indigent defendants appealing their felony convictions to the appellate courts.)

REASONS FOR OPPOSING BILL:

A. Class B Felonies (rape, aggravated sodomy, second degree murder, kidnapping, aggravated robbery, aggravated arson, some enhanced drug offenses) are serious charges frequently resulting in lengthy trials, which raise numerous, complex, and serious constitutional issues requiring consideration by the highest state court.

1. The Court of Appeals hears cases in 3 person panels; frequently two of the judges are district court judges with little or no appellate experience. The Supreme Court hears all cases _en banc_ - all seven members participate.

2. Because of its workload, the Court of Appeals is forced to forego oral argument in "less important" cases. This will result in fewer oral arguments on behalf of defendants in cases incorrectly perceived as unimportant, i.e. burglary and theft cases.

3. Because of its workload, the Court of Appeals issues many opinions, frequently _per curiam_ and unpublished, written by a district court judge, whose experience in appellate matters is limited. This bill will worsen the problem.

4. The Court of Appeals already hears all appeals from habeas corpus petitions pursuant to 60-1507.

5. The Court of Appeals probably decides the majority of all felony appeals at the present time. This bill will substantially increase this caseload, necessarily making a full and complete review of each case more difficult.

B. This bill could result in inconsistent decisions.

1. It is not logical for convictions of similar crimes which involve similar issues to be decided by 2 different courts. (Example: a rape case presents issues involving rape shield statute - one case will go to one Court of Appeals panel because defendant

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received a 60 year sentence and the other case will go to State Supreme Court because a different defendant received a life sentence.)

2. Frequently, Court of Appeals' panels issue decisions inconsistent with other panels. This results in the filing of a detailed Petition for Review to the State Supreme Court, which will most likely be granted, especially in cases involving serious felonies.

C. This bill could increase the workload of all parties involved.

1. The Court of Appeals must hear substantially more cases.

2. The Appellate Defender Office must file Petitions for Review in all cases decided by the Court of Appeals, particularly in cases involving class B felonies.

3. The State Supreme Court must review all Petitions for Review.

4. Petitions for Review are frequently granted in more serious cases - resulting in two full appeals in one case.

D. Alternatives.

1. Put class A or B sentencing appeals on summary calendar (Appellate Defender Office can request oral arguments if case is important).

2. Shorten oral arguments for certain cases.

3. Send all sentencing cases to the Court of Appeals.

CONCLUSION

Class B felonies, regardless of sentence, are serious felonies. The trials often create complex, constitutional issues which should be decided in a uniform manner by one court, en banc or with all members present. Each Supreme Court judge has one clerk, frequently the best students from the local law schools who also review the case. (The Court of Appeals may rely only on the central research staff.) It is the opinion of the Appellate Defender Office that these more serious felony convictions should be directly reviewed by the State Supreme Court, the highest court in the State.

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Att I

HOUSE BILL ~~2058~~ 2508

HOUSE ARREST PRESENTATION

PRESENTED BY

JUDGE LEONARD A. MASTRONI
RUSH COUNTY DISTRICT COURT

FEBRUARY 28, 1989

House Judiciary
2/28/89
Attachment II

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 307

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.

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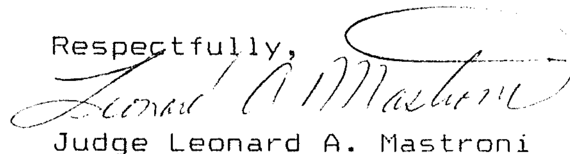
A third possibility is to use "House Arrest" under K.S.A. 8-2117 for the juvenile traffic offender that commits a misdemeanor or felony traffic offense. The present statutes currently authorizes the court to sentence the offender to not more than ten days in a juvenile detention facility. By using house 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

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Office of the Sheriff
COUNTY OF RUSH
LaCrosse, Kansas 67548

RUSH COUNTY TELEMONITORING SERVICES PROGRAM
Conditions of Agreement

I, the undersigned, have received a copy of the order placing me into the Rush County Sheriff Department's Telemonitoring Services Program, in which I voluntarily agree to participate. In order to participate in the Telemonitoring Program, I agree to abide by the following rules and conditions of the program. Furthermore, I understand that violation of these rules and conditions may result in revocation from this program and return to secure detention.

RULES AND CONDITIONS

1. I agree to obey all federal and state laws, municipal and county ordinances. If detained, questioned or arrested for any reason, I agree to notify the Sheriff's Office immediately.

2. I agree to abide by the curfew restrictions and to comply with the Court's order in every respect.

3. I agree to install and maintain a telephone system in my home. I know that it will be necessary for a monitoring device to be connected to my home telephone by officers of the Rush County Sheriff's Department. I agree to allow officers from the Sheriff's Department to enter my home to install, maintain and inspect this device at anytime. I further agree I shall not possess a "call forwarding" telephone system.

4. I agree to remain at my residence at all times, except for those hours agreed upon to fulfill my employment and community program responsibilities. I further agree not to use the telephone during cufew hours except for medical emergencies.

5. The only exceptions to my being away from my residence, other than for employment or community program involvement, will be due to emergency or overtime work. My supervisor will call and receive authorization for overtime prior to my working overtime. In the event of an emergency, I will first try to contact the Sheriff's Department to get permission to deviate from my established curfew hours. Also, I understand that I will be required to furnish documentation and verify any emergency that causes a departure from my curfew hours.

6. I understand that my curfew restrictions may also be monitored by telephone calls and personal visits to my residence by Sheriff Department Officers, any time of the day or night. I also agree to provide a urine sample or breath test upon request during these home visits in order to determine any substance abuse involvement.

7. I understand that the monitoring equipment used is expensive and I agree to return all equipment signed for in the same condition as received. I agree to reimburse the Sentrust Telemonitoring Services Program for all damages sustained by this equipment.

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8. In order to defray the costs of the program and monitoring equipment, I understand that I will be assessed a supervision fee to participate in this program and I agree to pay the fee, set at $ per month. It is understood that the payment of this fee is a condition of my participation in this program. Said fees should be paid to Rush County by the day of each month.

9. I understand that should I fail to return to my residence within the prescribed time or leave this address at an invalid time, such action shall be deemed an escape from custody and an escape warrant will be obtained, resulting in my immediate removal from the program and return to secure detention.

10. I understand that I will be required to report to the Sheriff's Department at the request of the program staff for purposes of being checked for substance abuse use and general counseling and program progress discussions.

11. I understand that the consumption of alcohol, in any fashion, is prohibited. Also, the possession or consumption of any unlawful drug or narcotic is prohibited.

12. I understand that if I have any questions or concerns regarding this program, I can call the Sheriff's Department for assistance any time of the day or night.

13. While employed, I shall be covered by my employee's insurance and/or Workman's Compensation. I agree that all medical expenses incurred will be my responsibility.

14. In the event that I am fired, layed off, or my employment hours changed, I will notify the Sheriff's Department immediately.

15. I further understand that a violation of any of these conditions of agreement may cause my removal from the program. I further understand I may request a hearing subject to that violation.

The hearing shall be in open Court and the State shall have the burden of establishing the violation. I shall have the right to be represented by counsel. If I am financially unable to obtain counsel, an attorney will be appointed to represent me. I shall have the right to present testimony of witnesses and other evidence on my behalf. Relevant written statements made under oath may be admitted and considered by the Court along with other evidence presented at the hearing.

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I understand if the violation is established, the Court may continue or revoke the Sentrust Telemonitoring Services Program. If the Court finds I am in violation of this agreement, I may be incarcerated in the County Jail for the balance of the sentence plus any days the phone was not answered.

The above rules and conditions have been explained or read to me, and I do hereby agree to abide by these conditions.

______________________	______________________
PARTICIPANT'S SIGNATURE	RUSH COUNTY SHERIFF'S DEPARTMENT OFFICIAL

______________________	______________________
DATE	DATE

CC: PARTICIPANT
SHERIFF
DISTRICT COURT
ATTORNEYS

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Copy

RESOLUTION

A RESOLUTION ALLOWING RUSH COUNTY, KANSAS, TO DEFRAY COSTS OF MAINTAINING INMATES IN THE COUNTY JAIL.

WHEREAS, The County of Rush, is now subject to the provisions of K.S.A. 19-1930.

WHEREAS, The Board of County Commissioners of Rush County, Kansas, find that any inmate of the county jail who participates in a work release or job training program for which the inmate receives compensation or a subsistence allowance should be required to pay to the county an amount not exceeding $10.00 per day to defray costs of maintaining such inmate in the county jail.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF RUSH COUNTY, KANSAS:

SECTION ONE. Rush County shall cause any inmate of the county jail who participates in a work release or job training program for which the inmate receives compensation or a subsistence allowance shall be required to pay to Rush County an amount not exceeding $10.00 per day to defray costs of maintaining such inmate in the county jail.

SECTION TWO. A sliding financial scale shall be adopted and approved by the county commission that provides for reduction or waiver of such amount in instances in which payment would create undue hardship for an inmate. (See attached exhibit "A")

SECTION THREE. The inmate shall pay any amount charged pursuant to this resolution, in cash, or by money order, to the Rush County Treasure, who shall deposit the entire amount in the county treasure and credit it to the county general fund. If payment is made in cash, the county treasurer shall provide the inmate with a written receipt for such payment.

SECTION FOUR. If Rush County is otherwise entitled to receive reimbursement or compensation for the maintenance of an inmate who is required to pay an amount pursuant to such resolution, the amount paid by such inmate shall be deducted from the amount of the other reimbursement or compensation to which the county is entitled.

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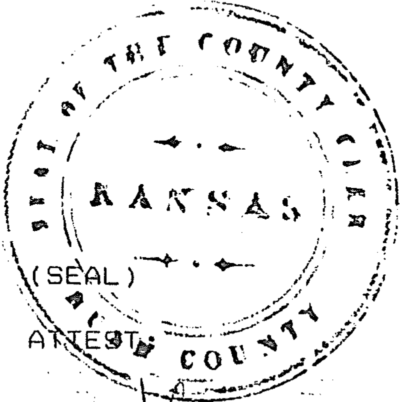
THIS RESOLUTION IS ADOPTED THIS 17th DAY OF JANUARY, 1989.

RUSH COUNTY BOARD OF COMMISSIONERS



(SEAL)

ATTEST:

Linda M. Bott, Rush County Clerk

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exhibit "A"

NUMBER OF DEPENDENTS

ANNUAL INCOME	1	2	3	4	5	6	7	8	9	10
Up to $2,000										
2,001 - 4,000	$0.50				(INDIGENT)					
4,001 - 6,000	$1.00	$0.75	$0.50							
6,001 - 8,000	$1.50	$1.25	$1.00	$0.75	$0.50					
8,001 - 10,000	$2.00	$1.75	$1.50	$1.25	$1.00	$0.75	$0.50			
10,001 - 12,000	$2.50	$2.25	$2.00	$1.75	$1.50	$1.25	$1.00	$0.75	$0.50	
12,001 - 14,000	$3.00	$2.75	$2.50	$2.25	$2.00	$1.75	$1.50	$1.25	$1.00	$0.75
14,001 - 16,000	$3.50	$3.25	$3.00	$2.75	$2.50	$2.25	$2.00	$1.75	$1.50	$1.25
16,001 - 18,000	$4.00	$3.75	$3.50	$3.25	$3.00	$2.75	$2.50	$2.25	$2.00	$1.75
18,001 - 20,000	$4.50	$4.25	$4.00	$3.75	$3.50	$3.25	$3.00	$2.75	$2.50	$2.25
20,001 - 22,000	$5.00	$4.75	$4.50	$4.25	$4.00	$3.75	$3.50	$3.25	$3.00	$2.75
22,001 - 24,000	$5.50	$5.25	$5.00	$4.75	$4.50	$4.25	$4.00	$3.75	$3.50	$3.25
24,001 - 26,000	$6.00	$5.75	$5.50	$5.25	$5.00	$4.75	$4.50	$4.25	$4.00	$3.75
26,001 - 28,000	$6.50	$6.25	$6.00	$5.75	$5.50	$5.25	$5.00	$4.75	$4.50	$4.25
28,001 - 30,000	$7.00	$6.75	$6.50	$6.25	$6.00	$5.75	$5.50	$5.25	$5.00	$4.75
30,001 - 32,000	$7.50	$7.25	$7.00	$6.75	$6.50	$6.25	$6.00	$5.75	$5.50	$5.25
32,001 - 34,000	$8.00	$7.75	$7.50	$7.25	$7.00	$6.75	$6.50	$6.25	$6.00	$5.75
34,001 - 36,000	$8.50	$8.25	$8.00	$7.75	$7.50	$7.25	$7.00	$6.75	$6.50	$6.25
36,001 -38,000	$9.00	$8.75	$8.50	$8.25	$8.00	$7.75	$7.50	$7.25	$7.00	$6.75
38,001 - 40,000	$9.50	$9.25	$9.00	$8.75	$8.50	$8.25	$8.00	$7.75	$7.50	$7.25
40,001 and above	$10.00	$10.00	$10.00	$10.00	$10.00	$9.75	$9.50	$9.25	$9.00	$8.75

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8-2116. Classification of violations; traffic infractions; misdemeanors; repeat misdemeanor offenses. (a) Every person convicted of violating any of the sections listed in the uniform fine schedule in K.S.A. 1984 Supp. 8-2118 is guilty of a traffic infraction.

(b) Except where another penalty or class of misdemeanor is provided by statute, every person convicted of violating any provision of the uniform act regulating traffic on highways designated as a misdemeanor is guilty of a class C misdemeanor, except that upon a second such offense committed within one year after the date of the first such offense, upon conviction thereof, such person is guilty of a class B misdemeanor, and upon a third or subsequent such offense committed within one year after the first such offense, upon conviction thereof, such person is guilty of a class A misdemeanor.

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U.S. Department of Justice
Office of Justice Programs
National Institute of Justice

National Institute of Justice
NIJ Reports

January/February 1989 — No. 212

Electronic Monitoring of Offenders Increases

House Judiciary
2/28/89
Attachment III

Electronic monitoring of offenders increases

by Annesley K. Schmidt

Officials in 33 States were using electronic monitoring devices to supervise nearly 2,300 offenders in 1988—about three times the number using this new approach a year earlier, according to a National Institute of Justice survey.

In 1988, most of those monitored were sentenced offenders on probation or parole, participating in a program of intensive supervision in the community. A small portion of those being monitored had been released either pretrial or while their cases were on appeal.

The first electronic monitoring program was in Palm Beach, Florida, in December 1984. Since then an increasing number of jurisdictions have adopted electronic monitoring to better control probationers, parolees, and others under the supervision of the criminal justice system.

To inform agencies considering monitoring programs, and to track the growing use of electronic monitoring, the National Institute has surveyed monitoring programs for the last 2 years. This article reports on the 1988 survey, compares the responses with those of the previous year, and sketches a contemporary picture of the use of electronic monitoring.

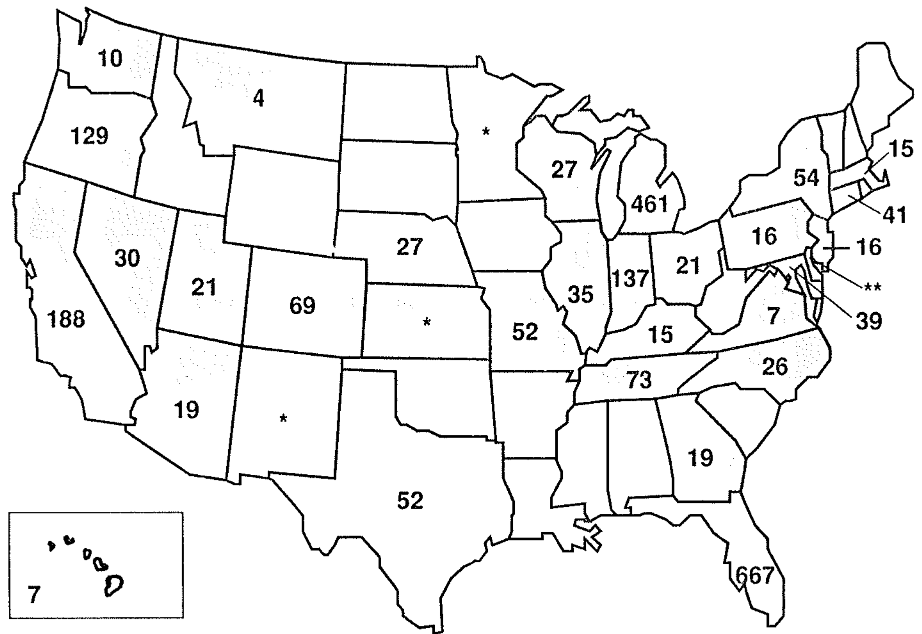
Where are the programs?

As shown in Exhibit 1, 33 States in all regions had monitoring programs, a substantial increase over the 21 States with programs in 1987.

Annesley K. Schmidt conducted the research reported in this article while she was a research analyst at the National Institute of Justice. She is currently a community programs specialist with the U.S. Bureau of Prisons.

Exhibit 1.

Number of offenders being electronically monitored on February 14, 1988



* Programs exist, but no offenders were being monitored on this date.
** No response.
Note: There are no programs in Alaska.

The level of monitoring activities varies widely. Florida and Michigan, with 667 and 461 electronically monitored offenders, respectively, account for a large proportion of the offenders—49.5 percent.

Gathering the information

As part of research in this field, the National Institute of Justice has maintained a list of electronic monitoring equipment manufacturers. The survey first asked the manufacturers to voluntarily identify State and local programs that were using their equipment.

Next, we contacted directors of the monitoring programs and asked for information on offenders being monitored on a specific day. A Sunday—February 14—was chosen because it is the day on which offenders are least likely to begin or end the program. The first NIJ survey counted offenders on Sunday, February 15, 1987. We asked about the program history, the kind of equipment used, and other information to assess the extent of electronic monitoring and how and for whom it was being used.

Many monitoring programs involve limited numbers of offenders. Responses were received from more than one locality in almost every State with such programs. Yet as exhibit 1 shows, 7 States were monitoring between 25 and 49 offenders, and 12 were monitoring fewer than 25. Two States had established programs but were not monitoring any offenders on the date information was gathered. One State's program had not quite begun by February 14, 1988.

Monitoring programs have been developed by a broad range of State and local criminal justice agencies, from departments of corrections, probation, and parole, to court systems, sheriff's offices, and police departments. Some began a few days or weeks before the survey response date. About a quarter of the programs had been operating 4 months or less. Others, like the one in Palm Beach County, were more than 3 years old. Regardless of the length of time in operation, most programs were monitoring fewer than 30 offenders.

The two States with the largest number of electronically monitored offenders structure their programs differently. In Michigan, the State Department of Corrections monitors most offenders, and local courts, sheriffs, or private agencies monitor the rest.

In contrast, the Florida Department of Corrections monitors only a little over half the participating offenders. Another quarter are monitored by city or county agencies, including sheriff's offices, local departments of corrections, and police departments. Most of the rest are monitored by one of several private agencies that offer monitoring services, and a very small number are monitored by a Federal demonstration project.

Florida is a microcosm of the country as a whole in that monitoring activities take place in all areas—large metropolitan areas, medium-sized cities, small towns, and rural areas—by all levels of government. The government may provide the service with its own staff or contract for it. These public agencies represent all elements of the criminal justice system, including police departments, sheriffs, courts, correctional systems, and probation and parole agencies.

Who is being monitored and what kinds of offenses did they commit?

The characteristics of the 2,277 offenders monitored in 1988 do not differ much from those of the 826 who were monitored in 1987. Both years, the programs monitored mostly men, with women constituting 12.7 percent of monitored offenders in 1988 and only 10.2 percent in 1987.

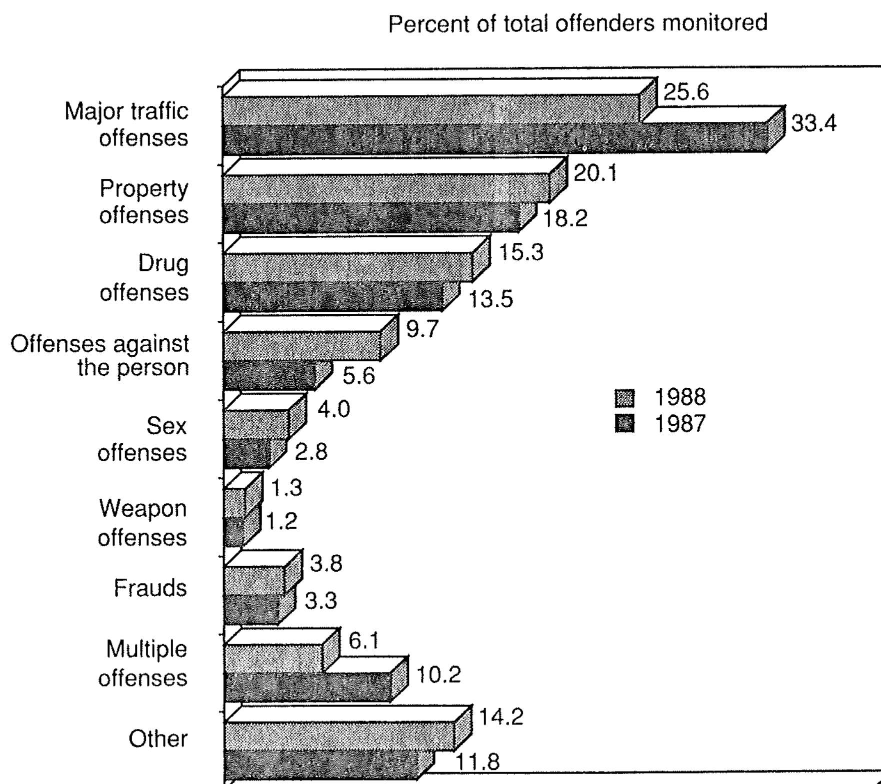
Survey results show that offenders monitored in 1988 were convicted of a wide range of criminal violations (see exhibit 2).

A quarter (25.6 percent) of offenders were charged with major traffic offenses. Most of the offenders in this group (71 percent) were charged with driving under the influence or while intoxicated. The other offenses in this category reflect primarily current or previous drunk driving convictions such as driving on a revoked or suspended permit.

In 1988, however, a smaller proportion of major traffic offenders were monitored than in 1987. This change reflects the expanding number of programs run by State departments of corrections,

Exhibit 2.

Electronically monitored offenders categorized by offense



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How electronic monitoring equipment works

Electronic monitoring equipment receives information about monitored offenders and transmits the information over the telephone lines to a computer at the monitoring agency. There are two basic types: **continuously signaling devices** that constantly monitor the presence of an offender at a particular location, and **programmed contact devices** that contact the offender periodically to verify his or her presence.

Continuously signaling devices

A continuously signaling device has three major parts: a transmitter, a receiver-dialer, and a central computer.

The transmitter, which is attached to the offender, sends out a continuous signal. The receiver-dialer, which is located in the offender's home and is attached to the telephone, detects the signals sent by the transmitter. It reports to the central computer when it stops receiving the signal and again when the signal begins.

A central computer at the monitoring agency accepts reports from the receiver-dialer over the telephone lines, compares them with the offender's curfew schedule, and alerts correctional officials about any unauthorized absences. The computer also stores information about each offender's routine entries and exits so that a report can be prepared.

Programmed contact devices

These devices use a computer programmed to telephone the offender during the monitored hours, either randomly or at specified times. The computer prepares a report on the results of the call.

Most but not all programs attempt to verify that the offender is indeed the person responding to the computer's call. Programmed contact devices can do this in several ways. One is to use voice verification technology. Another is to require the offender to wear a wristwatch device programmed to provide a unique number that appears when a special button on the watch device is pressed into a touchtone telephone in response to the computer's call.

A third system requires a black plastic module to be strapped to the offender's arm. When the computer calls, the module is inserted into a verifier box connected to the telephone. A fourth system uses visual verification at the telephone site.

Note:
Since the survey, several manufacturers have introduced a "hybrid" form of equipment. It functions like the continuously signaling devices, but when the central computer notes that the offender may have left at an unauthorized time, it telephones the offender and verifies that the person responding is the offender. If verification does not occur, notification is made of the violation.

such as Michigan and Florida. Offenders monitored by these two States generally had committed more serious offenses. These State programs included prison-bound offenders or parolees and releasees from State institutions.

Property offenders were strongly represented. They committed a few closely related offenses—burglary (28 percent), thefts or larcenies (39.6 percent), and breaking and entering (16.6 percent).

Drug law violators constituted 15.3 percent of monitored offenders, with slightly over half of these charged with possession of drugs and the rest charged with distribution.

How are the offenders monitored?

The monitoring equipment used can be roughly divided into two kinds: continuously signaling devices that constantly monitor the presence of an offender at a particular location, and programmed contact devices that contact the offender periodically to verify his or her presence (see box).

Survey results show that the continously signaling equipment was used for 56 percent of offenders nationwide. Another 42 percent were monitored by programmed contact devices that mechanically verified that the telephone was being answered by the offender, and 2 percent were monitored by programmed contact devices without mechanical verification. Continuously signaling devices were used with roughly the same proportion of offenders in 1988 as 1987.

In 1988, however, many offenders had been monitored only a short time—54.1 percent for 6 weeks or less. Only 4.1 percent had been monitored for between 6 months and a year and 1.4 percent for more than a year.

Offenders belonged to all age groups, in proportions roughly corresponding to the general population. In 1988 they ranged in age from 10 to 79, with 54.9 percent under age 30.

Program features...

Programs surveyed in 1988 varied in the way they paid for the sanction, the intensity of supervision, and failure rates.

Who pays? The survey answers show that in most programs the offenders do, with the exception of the Florida Department of Corrections. Charges are

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based on a sliding scale, with a maximum fee of $15 a day.

How often is the computer output reviewed? Some programs review it only during normal business hours (e.g., 9 to 5, Monday through Friday). Others provide continuous computer coverage and respond to the report of a violation at any time of the day or night, weekday or weekend.

How do offenders fare in these programs? Some programs reported that few participants had failed to complete the program successfully while others reported that almost half had not completed the program. Most of the failures resulted from infractions of program rules such as not abiding by curfew hours or using alcohol or drugs.

The precise reasons for the variations in program completion rates are unclear, but one factor seems to be the control of intake. Some programs can refuse to accept offenders that they deem inappropriate for the program but others cannot.

Photo by Gregg Rummel

This electronic monitoring device requires the offender to wear a wristlet called an encoder. When the computer calls, the wristlet is inserted into a verifier box connected to the telephone.

...and some problems

Survey respondents noted a variety of problems that they had for the most part resolved. Some programs, for instance, initially had difficulty gaining acceptance within their agencies for either the program or the equipment that would be used. After proper training and successful tests of the program, however, confidence grew.

Offenders had to learn to handle the equipment properly and understand what was expected of them. Their families also had to adapt to limiting their use of the telephone so the computer calls could be received.

Other problems were related to the equipment itself. In several jurisdictions, there was a "shakedown" period when operators learned to use the equipment correctly, interpret the printout, and deal with power surges and computer downtimes.

Poor telephone lines, poor wiring, and "call-waiting" features on the telephones caused other technical problems. Occasionally, an offender's home was located too close to an FM radio station or other strong radio wave broadcaster. Some difficulties were overcome by repairing lines or wires or by using radio-frequency filters.

A few program managers said they had encountered unanticipated costs—for extra telephone lines, special interconnections, underestimated long-distance charges, and supplies. Most of those surveyed, however, thought equipment manufacturers were responsive to their concerns.

The future of electronic monitoring

Electronic monitors have been available commercially for only a short time, but their use has grown rapidly. Recent discussions with manufacturers suggest the growth continues. Some existing monitoring programs have expanded, and more programs have been launched since the 1988 survey was completed.

The National Institute of Justice is following use of the sanction and supporting ongoing research that will help policymakers decide if, when, and for whom the sanction is appropriate in their own jurisdictions. Institute research is assessing how well electronic monitoring of offenders protects the community.

The National Institute invites agencies implementing electronic monitoring to share ideas and information. Please write to John Spevacek, Director, Adjudication and Corrections Division, Office of Crime Prevention and Criminal Justice Research, 633 Indiana Avenue NW., Washington, DC 20531. State and local experience with electronic monitoring offers useful information to guide other jurisdictions as they search for effective ways to control increasing numbers of offenders while minimizing risks to the community.

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DEPARTMENT OF SOCIAL & REHABILITATION SERVICES
Winston Barton, Secretary

Testimony in Support of HB-2508

AN ACT CONCERNING HOUSE ARREST; AMENDING K.S.A. 22-2802 and K.S.A. 1988 SUPP. 8-2117 AND 38-1663 AND REPEALING THE EXISTING SECTIONS.

Mr. Chairman, Members of the Committee, I appear here today in support of HB 2508. I am seeking one change in the language to clarify that for juveniles the house arrest program would be one administered by the court, and not by the Secretary of Corrections.

The concept of the court, having available to it additional community alternatives, has strong appeal. This alternative could increase the ability of courts to provide sanctions locally for youth not requiring state program intervention.

My concern for clarity is that the Juvenile Offenders Code would not be expanded to include adult disposition. Adding to line 159, following the word program, the phrase "administered by the court" would provide additional options for the court and would preserve the integrity of the Juvenile Offenders Code.

With this added clarity I support HB 2508.

Submitted by

Robert C. Barnum
Commissioner, Youth Services
Department of Social & Rehabilitation
Services
296-3284

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155 (B) has been adjudicated a juvenile offender as a result of having
156 committed an act which, if done by a person 18 years of age or
157 over, would constitute a class A, B or C felony as defined by the
158 Kansas criminal code.
159 *(7) Place the juvenile offender under a house arrest program* ← administered by the court,
160 pursuant to K.S.A. 21-4603b, and amendments thereto.
161 (b) (1) In addition to any other order authorized by this section,
162 the court may order the juvenile offender and the parents of the
163 juvenile offender to attend counseling sessions as the court directs.
164 (2) Upon entering an order requiring a juvenile offender's parent
165 to attend counseling sessions, the court shall give the parent notice
166 of the order. The notice shall inform the parent of the parent's right
167 to request a hearing within 10 days after entry of the order and the
168 parent's right to employ an attorney to represent the parent at the
169 hearing or, if the parent is financially unable to employ an attorney,
170 the parent's right to request the court to appoint an attorney to
171 represent the parent. If the parent does not request a hearing within
172 10 days after entry of the order, the order shall take effect at that
173 time. If the parent requests a hearing, the court shall set the matter
174 for hearing and, if requested, shall appoint an attorney to represent
175 the parent. The expense and fees of the appointed attorney may be
176 allowed and assessed as provided by K.S.A. 38-1606 and amendments
177 thereto.
178 (3) The costs of any counseling may be assessed as expenses in
179 the case. No mental health center shall charge a fee for court-ordered
180 counseling greater than that the center would have charged the
181 person receiving the counseling if the person had requested coun-
182 seling on the person's own initiative.
183 (c) Whenever a juvenile offender is placed pursuant to subsection
184 (a)(1) or (2), the court, unless it finds compelling circumstances which
185 would render a plan of restitution unworkable, shall order the ju-
186 venile offender to make restitution to persons who sustained loss by
187 reason of the offense. The restitution shall be made either by pay-
188 ment of an amount fixed by the court or by working for the persons
189 in order to compensate for the loss. If the court finds compelling
190 circumstances which would render a plan of restitution unworkable,
191 the court may order the juvenile offender to perform charitable or

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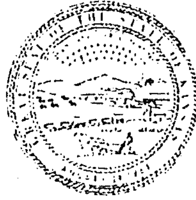
STATE OF KANSAS



OFFICE OF THE GOVERNOR
State Capitol
Topeka 66612-1590
(913) 296-3232

Iike Hayden *Governor*

House Substitute for Senate Bill No. 334

Message to the Senate of the State of Kansas:

Today I have signed House Substitute for Senate Bill No. 334. This bill provides for the expansion of the Kansas Administrative Procedures Act (K.A.P.A.) that was enacted in 1984. Under the law enacted in 1984, application of K.A.P.A. is basically limited to licensing functions of state agencies and provides a uniform procedure for revocations and suspensions of licenses.

In the past I have been supportive of simplifying and bringing a larger measure of uniformity to administrative proceedings; however, I have concerns with the bill as presented. Because this bill will not become effective until July 1, 1989, there is time to address these concerns without delaying the proposed effective date of this measure.

The Kansas Administrative Procedures Act was patterned after a model act which contained an overly broad and ill-defined description of state agency actions that would come under the uniform procedures. The 1984 legislature properly narrowed the scope of the application of K.A.P.A. to specifically defined areas. The 1988 legislature, while expanding application of K.A.P.A., continued the policy of expanding the act only to specified areas. I whole heartedly endorse this approach.

In light of this policy choice in how K.A.P.A. is to be expanded, there is now an opportunity to rewrite K.A.P.A. provisions in a fashion that makes them more

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understandable. The "model act" from which K.A.P.A. was patterned is hard to read and will make it difficult for citizens to represent themselves in administrative proceedings. As written, this act will mean greater reliance on legal counsel for both state agencies and citizens of this state. Also, the expansion of the use of depositions, interrogatories, request for admissions and other discovery procedures in administrative action is a concern.

In summary, I am willing to support an expansion of K.A.P.A. to other areas but the following items should be addressed in such an expansion:

1. The general provisions of K.A.P.A. should be rewritten in light of the policy decision on the mechanism used to expand K.A.P.A.. The general K.A.P.A. provisions can be written in a more simplified and understandable fashion.

2. The use of subpoenas, depositions, and interrogatories and similar discovery procedures appears overly broad. Even in proceedings in our state's district courts, the use of discovery procedures is more limited than permitted by K.A.P.A..

3. The application of K.A.P.A. to new areas should be clear and specific. Expansions of the act to areas defined as "orders" as is done in section 302 regarding the Department of Social and Rehabilitation Services, is overly broad and unacceptable.

I encourage the Legislature to consider and address these concerns.

4/18/88
Date

Mike Hayden
Governor

5415A

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0168 Sec. 4. K.S.A. 1987 Supp. 77-509 is hereby amended to read
0169 as follows: 77-509. (a) A state agency may provide an adjudicative
0170 proceeding at any time with respect to an order within the
0171 agency's jurisdiction.
0172 (b) A state agency shall provide *an opportunity for* an ad-
0173 judicative proceeding with respect to an order upon the written
0174 application of any person, unless:
0175 (1) The state agency lacks jurisdiction of the subject matter;
0176 (2) resolution of the matter requires the state agency to exer-
0177 cise discretion within the scope of *subsection (a) of* K.S.A. ~~1985~~
0178 *1987* Supp. 77-508 and amendments thereto;
0179 (3) a statute vests the state agency with discretion to conduct
0180 or not to conduct an adjudicative proceeding ~~before issuing an~~
~~0181~~ ~~order~~ to resolve the matter and, in the exercise of that discretion,
0182 the state agency has determined not to conduct an adjudicative
0183 proceeding;
0184 (4) resolution of the matter does not require the state agency
0185 to issue an order that determines the applicant's legal rights,
0186 duties, privileges, immunities or other legal interests;
0187 (5) the matter was not timely submitted to the state agency;
0188 or
0189 (6) the matter was not submitted in a form substantially
0190 complying with any applicable provision of law.
0191 (c) An adjudicative proceeding commences when the state
0192 agency or a presiding officer:
0193 (1) Notifies a party that a prehearing conference, hearing or
0194 other stage of an adjudicative proceeding will be conducted; or
0195 (2) begins to take action on a matter that appropriately may
0196 be determined by an adjudicative proceeding, unless this action
0197 is:
0198 (A) An investigation for the purpose of determining whether
0199 an adjudicative proceeding should be conducted; or
0200 (B) a decision which, under *subsection (a) of* K.S.A. ~~1985~~
0201 *1987* Supp. 77-508 and amendments thereto, the state agency
0202 may make without conducting an adjudicative proceeding.

77-510. Denial of proceeding. If pursuant to subsection (b) of K.S.A. 1985 Supp. 77-509, a state agency decides not to conduct an adjudicative proceeding in response to an application, the state agency shall furnish the applicant a copy of its decision in writing, with a brief statement of the state agency's reasons and of any administrative review available to the applicant.

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0048 (b) the protection of the public interest does not require the
0049 state agency to give notice and an opportunity to participate to
0050 persons other than the parties; and
0051 (c) ~~the matter is entirely within one or more categories for~~
~~0052~~ ~~which the state agency by rule and regulation has adopted this~~
~~0053~~ ~~section and K.S.A. 1985 Supp. 77-538 to 77-541, inclusive~~ *a*
0054 *hearing or the opportunity for a hearing on the matter is not*
0055 *required by any other provision of law.*
0056 Sec. 23. K.S.A. 1987 Supp. 77-538 is hereby amended to read
0057 as follows: 77-538. (a) In summary ~~adjudicative~~ proceedings, the
0058 agency head, or a person designated by the agency head, may be
0059 the presiding officer. *Unless prohibited by law, a person exer-*
0060 *cising authority over the matter is the presiding officer.*
0061 (b) The presiding officer, at the time any unfavorable action
0062 is taken, shall give each party a brief statement of findings of fact,
0063 conclusions of law and policy reasons for the decision if it is an
0064 exercise of the state agency's discretion, to justify the action, and
0065 a notice of any available administrative review.
0066 (c) The state agency shall forthwith serve each party with a
0067 copy of the order in a summary ~~adjudicative~~ proceeding in the
0068 manner prescribed by K.S.A. ~~1985~~ *1987* Supp. 77-531 *and*
0069 *amendments thereto.* The order shall include at least a statement
0070 of the state agency's action and a notice of any available admin-
0071 istrative review.
0072 *(d) Except for the provisions of K.S.A. 1987 Supp. 77-515,*
0073 *77-520 and 77-531 and amendments thereto, the provisions of*
0074 *K.S.A. 1987 Supp. 77-514 through 77-532 and amendments*
0075 *thereto shall not apply to summary proceedings.*
0076 Sec. 24. K.S.A. 1987 Supp. 77-539 is hereby amended to read
0077 as follows: 77-539. Unless prohibited by any provision of law, a
0078 state agency, on its own motion, may conduct administrative
0079 review of an order resulting from summary ~~adjudicative~~ pro-
0080 ceedings and shall conduct this review upon the written request
0081 of a party if the state agency receives the request within 15 days
0082 after service under subsection (c) of K.S.A. ~~1985~~ *1987* Supp.
0083 77-538 *and amendments thereto.*
0084 Sec. 25. K.S.A. 1987 Supp. 77-540 is hereby amended to read
0085 as follows: 77-540. (a) A state agency need not furnish notifica-
0086 tion of the pendency of administrative review of an order result-
0087 ing from summary ~~adjudicative~~ proceedings to any person who
0088 did not request the review, but the state agency may not take any
0089 action on review less favorable to any party than the original
0090 order without giving that party notice and an opportunity to
0091 explain that party's view of the matter.
0092 (b) The reviewing officer, in the discretion of the agency
0093 head, may be any person who could have presided at the sum-
0094 mary ~~adjudicative~~ proceeding, but the reviewing officer shall be
0095 one who is authorized to grant appropriate relief upon review.
0096 (c) The reviewing officer shall give each party an opportunity
0097 to explain the party's view of the matter unless the party's view is
0098 apparent from the written materials in the file submitted to the
0099 reviewing officer. The reviewing officer shall make any inquiries
0100 necessary to ascertain whether the proceeding must be con-
0101 verted to a conference ~~adjudicative~~ hearing or a formal ~~adjudi-~~
~~0102~~ ~~cative~~ hearing.
0103 (d) The reviewing officer may render an order disposing of
0104 the proceeding in any manner that was available to the presiding
0105 officer at the summary ~~adjudicative~~ proceeding or the reviewing
0106 officer may remand the matter for further proceedings, with or
0107 without conversion to a conference ~~adjudicative~~ hearing or a
0108 formal ~~adjudicative~~ hearing.
0109 (e) An order under this section shall be served on the parties
0110 in the manner prescribed by K.S.A. ~~1985~~ *1987* Supp. 77-531 *and*
0111 *amendments thereto.*
0112 (f) A request for administrative review of an order resulting
0113 from a summary ~~adjudicative~~ proceeding is deemed to have been
0114 denied if the reviewing officer does not dispose of the matter or
0115 remand it for further proceedings within 15 days after the re-
0116 quest is submitted.

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H. B. 2162 2/28/89

Amendments to Specific Agency Statutes Recommended by Administrative Procedure Advisory Committee

[ ] indicate deletions

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0202 Sec. 149. K.S.A. 44-1005 is hereby amended to read as fol-
0203 lows: 44-1005. (a) Any person claiming to be aggrieved by an
0204 alleged unlawful employment practice or by an alleged unlawful
0205 discriminatory practice may, personally or by an attorney-at-law,
0206 make, sign and file with the commission a verified complaint in
0207 writing which shall state the name and address of the person,
0208 employer, labor organization or employment agency alleged to
0209 have committed the unlawful employment practice complained
0210 of or the name and address of the person alleged to have com-
0211 mitted the unlawful discriminatory practice complained of, and
0212 which shall set forth the particulars thereof and contain such
0213 other information as may be required by the commission.
0214 (b) The commission upon its own initiative or the attorney
0215 general may, in like manner, make, sign and file such complaint.
0216 Whenever the attorney general has sufficient reason to believe
0217 that any person as herein defined is engaged in a practice of
0218 discrimination, segregation or separation in violation of this act,
0219 the attorney general may make, sign and file a complaint. Any
0220 employer whose employees or some of whom, refuse or threaten
0221 to refuse to cooperate with the provisions of this act, may file
0222 with the commission a verified complaint asking for assistance
0223 by conciliation or other remedial action.
0224 (c) Whenever any problem of discrimination because of race,
0225 religion, color, sex, physical handicap, national origin or ancestry
0226 arises, or whenever the commission has, in its own judgment,
0227 reason to believe that any person has engaged in an unlawful
0228 employment practice or an unlawful discriminatory practice in
0229 violation of this act, or has engaged in a pattern or practice of
0230 discrimination, the commission may conduct an investigation
0231 without filing a complaint and shall have the same powers

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0232 during such investigation as provided for the investigation of
0233 complaints. The person to be investigated shall be advised of the
0234 nature and scope of such investigation prior to its commence-
0235 ment. The purpose of the investigation shall be to resolve any
0236 such problems promptly. In the event such problems cannot be
0237 resolved within a reasonable time, the commission may issue a
0238 complaint whenever the investigation has revealed a violation of
0239 the Kansas act against discrimination has occurred. The infor-
0240 mation gathered in the course of the first investigation may be
0241 used in processing the complaint.

0242 (d) After the filing of any complaint by an aggrieved individ-
0243 ual, by the commission, or by the attorney general, the commis-
0244 sion shall, within seven days after the filing of the complaint,
0245 serve a copy on each of the parties alleged to have violated this
0246 act, and shall designate one of the commissioners to make, with
0247 the assistance of the commission's staff, prompt investigation of
0248 the alleged act of discrimination. If the commissioner shall
0249 determine after such investigation that no probable cause exists
0250 for crediting the allegations of the complaint, such commis-
0251 sioner, within 10 business days from such determination, shall
0252 cause to be issued and served upon the complainant and re-
0253 spondent written notice of such determination.

0254 (e) If such commissioner after such investigation, shall de-
0255 termine that probable cause exists for crediting the allegations
0256 for the complaint, the commissioner or such other commissioner
0257 as the commission may designate, shall immediately endeavor to
0258 eliminate the unlawful employment practice or the unlawful
0259 discriminatory practice complained of by conference and con-
0260 ciliation. The complainant, respondent and commission shall
0261 have 45 days from the date respondent is notified in writing of a
0262 finding of probable cause to enter into a conciliation agreement
0263 signed by all parties in interest. The parties may amend a
0264 conciliation agreement at any time prior to the date of entering
0265 into such agreement. Upon agreement by the parties the time for
0266 entering into such agreement may be extended. The members of
0267 the commission and its staff shall not disclose what has tran-
0268 spired in the course of such endeavors.

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0269 (f) In case of failure to eliminate such practices by conference
0270 and conciliation, or in advance thereof, if in the judgment of the
0271 commissioner or the commission circumstances so warrant, the
0272 commissioner or the commission shall ~~cause to be issued and~~
0273 ~~served in the name of the commission, a written notice, together~~
0274 ~~with a copy of such complaint, as the same may have been~~
0275 ~~amended, requiring~~ *commence a hearing in accordance with the*
0276 *provisions of the Kansas administrative procedure act naming*
0277 *as parties the complainant and* the person, employer, labor
0278 organization, employment agency, realtor or financial institution
0279 named in such complaint, hereinafter referred to as respondent~~,~~
0280 ~~to answer the charges of such complaint at a hearing before at~~
0281 ~~least four commissioners, hereinafter referred to as hearing~~
0282 ~~commissioners or before a staff hearing examiner, at a time not~~
0283 ~~less than 10 business days after the service of the notice unless~~
0284 ~~the respondent requests in writing and is granted a continuance~~.
0285 *A copy of the complaint shall be served on the respondent. At*
0286 *least four commissioners or a staff hearing examiner shall be*
0287 *designated as the presiding officer.* The place of such hearing
0288 shall be in the county where respondent is doing business and
0289 the acts complained of occurred.
0290 (g) The complainant or respondent may apply to the ~~com-~~
0291 ~~mission~~ *presiding officer* for the issuance of a subpoena for the
0292 attendance of any person or the production or examination of any
0293 books, records or documents pertinent to the proceeding at the
0294 hearing. Upon such application the ~~commission~~ *presiding officer*
0295 shall issue such subpoena.
0296 (h) The case in support of the complaint shall be presented
0297 before the ~~hearing commissioners or hearing examiner~~ *presiding*
0298 *officer* by one of the commission's attorneys or agents, or by
0299 private counsel, if any, of the complainant, and the commissioner
0300 who shall have previously made the investigation shall not
0301 participate in the hearing except as a witness. Any endeavors at
0302 conciliation shall not be received in evidence.
0303 (i) Any complaint filed pursuant to this act must be so filed
0304 within six months after the alleged act of discrimination, unless
0305 the act complained of constitutes a continuing pattern or practice

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0306 of discrimination in which event it will be from the last act of
0307 discrimination.
0308 (j) The respondent may file a written verified answer to the
0309 complaint and appear at such hearing in person or otherwise,
0310 with or without counsel, and submit testimony. The complainant
0311 shall appear at such hearing in person, with or without counsel,
0312 and submit testimony. The ~~hearing commissioners, hearing ex-~~
~~0313~~ ~~aminer,~~ *presiding officer* or the complainant shall have the
0314 power reasonably and fairly to amend any complaint, and the
0315 respondent shall have like power to amend ~~his or her~~ *such*
0316 *respondent's* answer. ~~The hearing commissioners and hearing~~
~~0317 examiners shall be bound by the rules of evidence prevailing in~~
~~0318 courts of law or equity, and only relevant evidence of reasonable~~
~~0319 probative value shall be received.~~ ~~Reasonable examination and~~
~~0320 cross-examination shall be permitted.~~ ~~All parties shall be af-~~
~~0321 forded opportunity to submit briefs prior to adjudication.~~ ~~The~~
~~0322 testimony taken at the hearing shall be under oath and be~~
~~0323 transcribed.~~

The presiding officer shall be bound by the rules of evidence prevailing in courts of law or equity, and only relevant evidence of reasonable probative value shall be received.

0324 (k) If~~, upon all the evidence in the hearing, the hearing~~
~~0325 commissioners or hearing examiner find~~ *the presiding officer*
0326 *finds* a respondent has engaged in or is engaging in any unlawful
0327 employment practice or unlawful discriminatory practice as de-
0328 fined in this act, the ~~hearing commissioners or hearing examiner~~
~~0329 shall state the findings of fact and shall issue and cause to be~~
~~0330 served on such respondent~~ *presiding officer shall render* an
0331 order requiring such respondent to cease and desist from such
0332 unlawful employment practice or such unlawful discriminatory
0333 practice and to take such affirmative action, including but not
0334 limited to the hiring, reinstatement, or upgrading of employees,
0335 with or without back pay, and the admission or restoration to
0336 membership in any respondent labor organizations; the admis-
0337 sion to and full and equal enjoyment of the goods, services,
0338 facilities, and accommodations offered by any respondent place
0339 of public accommodation denied in violation of this act, as, in the
0340 judgment of the ~~hearing commissioners or hearing examiner~~
0341 *presiding officer*, will effectuate the purposes of this act, and
0342 including a requirement for report of the manner of compliance.

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0343 Such order may also include an award of damages for pain,
0344 suffering and humiliation which are incidental to the act of
0345 discrimination, except that an award for such pain, suffering and
0346 humiliation shall in no event exceed the sum of $2,000.
~~0347~~ ~~(l) The findings of fact and order of the hearing examiner or~~
~~0348~~ ~~hearing commissioner shall be submitted to the commission for~~
~~0349~~ ~~approval, rejection or modification, in whole or in part, before~~
~~0350~~ ~~being issued. Such findings of fact and orders as approved or~~
~~0351~~ ~~modified in whole or in part, by the commission shall be, when~~
~~0352~~ ~~issued, the findings of fact and orders of the commission.~~
~~0353~~ ~~(m)~~ *(l)* Any state, county or municipal agency may pay a
0354 complainant back pay if it has entered into a conciliation agree-
0355 ment for such purposes with the commission, and may pay such
0356 back pay if it is ordered to do so by the commission.
~~0357~~ ~~(n)~~ *(m)* If~~, upon all the evidence, the hearing commissioners~~
~~0358~~ ~~or hearing examiner shall find~~ *the presiding officer finds* that a
0359 respondent has not engaged in any such unlawful employment
0360 practice, or any such unlawful discriminatory practice, the ~~hear-~~
~~0361~~ ~~ing commissioners or hearing examiner shall state their findings~~
~~0362~~ ~~of fact and shall issue and cause to be served on both the~~
~~0363~~ ~~complainant and the respondent~~ *presiding officer shall render*
0364 an order dismissing the complaint as to such respondent. ~~Such~~
~~0365~~ ~~findings of fact and such order of dismissal of the hearing~~
~~0366~~ ~~examiner or hearing commissioner shall be submitted to the~~
~~0367~~ ~~commission for approval, rejection or modification, in whole or~~
~~0368~~ ~~in part, before being issued. Such findings of fact and orders as~~
~~0369~~ ~~approved or modified in whole or in part, by the commission~~
~~0370~~ ~~shall be, when issued, the findings of fact and orders of the~~
~~0371~~ ~~commission.~~
~~0372~~ ~~(o) A copy of the order shall be delivered by certified mail~~
~~0373~~ ~~return receipt requested in all cases by the commission to the~~
~~0374~~ ~~complainant, to the respondent, to the attorney general and to~~
~~0375~~ ~~such other public officers as the commission may deem proper.~~
0376 (n) The commission shall review an initial order rendered
0377 under subsection (k) or (m). In addition to the parties, a copy of
0378 any final order shall be served on the attorney general and such
0379 other public officers as the commission may deem proper.

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0380 ~~(p)~~ *(o)* The commission shall, except as otherwise provided,
0381 establish rules of practice to govern, expedite and effectuate the
0382 foregoing procedure and its own actions thereunder. The rules of
0383 practice shall be available, upon written request, within 30 days
0384 after the date of adoption.

0370 Sec. 237. K.S.A. 66-1,117 is hereby amended to read as fol-
0371 lows: 66-1,117. The corporation commission shall prescribe
0372 forms of applications for certificates, permits, and licenses for the
0373 use of prospective applicants and shall make regulations for the
0374 filing thereof. The commission may designate one of its attorneys
0375 ~~to take evidence at~~ *as a presiding officer for* the hearing of any
0376 application for a certificate or license and ~~submit findings of fact~~
0377 ~~to the commission~~ [*the commission shall review any order ren-*
0378 *dered by such a presiding officer*]

the presiding officer shall make written findings and recommendations to the commission

0200 Sec. 273. K.S.A. 72-4416 is hereby amended to read as fol-
0201 lows: 72-4416. (a) Subject to the provisions of subsection (b), any
0202 board may present a plan to the state board for the establishment
0203 and operation of an area vocational school. The plan may specify
0204 that the area vocational school is to be a department or a division
0205 of a school district or a community college or a state educational
0206 institution under the state board of regents or a municipal uni-
0207 versity. The plan shall be prepared in such form as is prescribed
0208 by the state board.
0209 Information included in support of the plan shall include, but
0210 not be limited to the following:
0211 (1) Concentration of population within a reasonable service
0212 area;
0213 (2) total enrollments in the elementary and secondary
0214 schools within the area, separately;
0215 (3) number of persons graduating from high school within the
0216 area;
0217 (4) probability of growth in elementary and secondary school
0218 enrollments within the area;
0219 (5) identification of vocational education services needed
0220 within the area;

0221 (6) local interest and attitudes toward the program;
0222 (7) ability to contribute to the financial support of the pro-
0223 gram; and
0224 (8) consideration of the area in relation to other programs or
0225 requests for programs of vocational education to prevent, as
0226 nearly as is practicable, overlapping or duplication of educa-
0227 tional services.
0228 Upon receipt and examination of a plan, the state board shall
0229 conduct hearings and make such investigations related to the
0230 plan as it deems appropriate. If the plan submitted is approved,
0231 or approved after amendment, the state board shall issue an
0232 order authorizing the establishment of an area vocational school.
0233 *Hearings under this section shall be conducted in accordance*
0234 *with the provisions of the Kansas administrative procedure act.*
0235 (b) The state board shall not approve any plan submitted to it
0236 under subsection (a) after the effective date of this act until this
0237 subsection is amended by or repealed from law.
0238 Sec. 274. K.S.A. 1987 Supp. 72-4418 is hereby amended to
0239 read as follows: 72-4418. (a) Consonant with the provisions of
0240 subsection (b), the state board of education shall adopt rules and
0241 regulations relating to enrollment procedures for students in
0242 vocational education courses or programs.
0243 (b) Any person may apply to the board of education of the
0244 school district in which the person is enrolled for admittance to a
0245 vocational education course or program conducted in another
0246 school district. The application shall be approved by the board of
0247 education subject to the following conditions:
0248 (1) The person is approved for admittance by the board
0249 administering the vocational education course or program.
0250 (2) The course or program applied for is not offered in the
0251 vocational education department of the school district in which
0252 the student is enrolled, nor in a program which is available to
0253 residents of the school district in which the applicant is enrolled
0254 under the terms of an agreement made under K.S.A. 72-4421, and
0255 amendments thereto.
0256 (3) The person applying is capable of benefiting from the
0257 instruction.

such public

0258 (c) Any eligible person may apply for admittance as a post-
0259 secondary student to a vocational education course or program of
0260 a school, as defined by subsection (k) of K.S.A. 72-4430, and
0261 amendments thereto, and shall be approved for admittance in
0262 accordance with rules adopted by the board of the school to
0263 which application is made.
0264 (d) Any person may apply for admittance to a vocational
0265 education course or program of a community college and shall be
0266 approved for admittance in accordance with rules adopted by the
0267 community college to which application is made.
0268 (e) Any person admitted to any vocational education course
0269 or program shall meet such requirements of minimum age as are
0270 provided by law for the specific occupation or training courses or
0271 programs in which the person is enrolled.
0272 (f) Any person who duly makes application for ~~admission~~ to a
0273 vocational education course or program, ~~and~~ whose application
0274 is denied for any reason, may appeal the denial to the state board
0275 of education in accordance with rules and regulations of the state
0276 board. Determination of any such appeal by the state board of
0277 education shall be *made in accordance with the provisions of*
0278 *the Kansas administrative procedure act and shall be* final and
0279 conclusive.

request a review of

by

K.S.A. 1987 Supp. 77-527, as amended by section 14 of chapter 356 of the laws of 1988

0305 Sec. 276. K.S.A. 72-4929 is hereby amended to read as fol-
0306 lows: 72-4929. (a) The state board may revoke certificate of
0307 approval or place reasonable conditions upon the continued
0308 approval represented by a certificate. Prior to revocation or
0309 imposition of conditions upon a certificate of approval, the state
0310 board shall notify the holder of the certificate in writing of the
0311 impending action setting forth the grounds for the action con-
0312 templated to be taken and affording a hearing on a date within
0313 ~~thirty (30)~~ *30* days ~~but not sooner than seven (7) days~~ after the
0314 date of such notice, at which the holder of the certificate may
0315 respond to allegations of noncompliance with the provisions of
0316 this act *in accordance with the provisions of the Kansas admin-*
0317 *istrative procedure act.*
0318 (b) A certificate of approval may be revoked or conditioned if
0319 the state board has reasonable cause to believe that the school is
0320 guilty of a violation of this act or of any rules and regulations
0321 adopted hereunder.

. Hearings under this section shall be conducted

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0322 ~~(e) The state board shall render a determination in writing to~~
0323 ~~the school regarding the denial or imposition of conditions on its~~
0324 ~~certificate of approval within thirty (30) days from date of hear-~~
0325 ~~ing.~~

0435 Sec. 280. K.S.A. 72-7108 is hereby amended to read as fol-
0436 lows: 72-7108. (a) After May 1, 1965, transfers of territory from
0437 one ~~(1)~~ unified district to another unified district shall be made
0438 only as follows: (1) Upon the written agreement of any two ~~(2)~~
0439 boards approved by the state board of education, or (2) upon
0440 order of the state board after petition therefor by one board and — a public
0441 hearing thereon conducted ~~by the state board of education or a~~
0442 ~~hearing officer designated by it for the purpose~~ *in accordance*
0443 *with the provisions of the Kansas administrative procedure act*. — by the state board of education
0444 The effective date of any such transfer shall be the date of
0445 approval thereof or order therefor issued by the state board of
0446 education or the July 1 following. *In addition to notice to the*
0447 *parties,* notice of hearing on such a petition shall be given by — the public
0448 publication by the state board of education for two ~~(2)~~ consecu-
0449 tive weeks in a newspaper of general circulation in the unified
0450 district from which territory is to be transferred, the last publi-
0451 cation to be not more than ~~ten (10)~~ *10* nor less than three ~~(3)~~ days
0452 prior to the date of the hearing. The notice shall state the time
0453 and place of the hearing and shall give a summary description of

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0454 the territory proposed to be transferred. Within ~~ninety (90)~~ *90* public

0455 days after receiving an ~~agreement or holding a hearing hereun-~~

0456 ~~der~~, *if a hearing is held, within the time prescribed in K.S.A.* 90 days after the hearing

0457 *1987 Supp. 77-526 and amendments thereto*, the state board of

0458 education shall issue its order either approving or disapproving

0459 such transfer petition or agreement, or approving the same with

0460 such amendments as it deems appropriate. Whenever a petition

0461 for transfer of territory has been denied by the state board of

0462 education, no petition for transfer of substantially the same

0463 territory shall be received or considered by the state board of

0464 education for a period of two ~~(2)~~ years.

0465 (b) No transfer shall be made under authority of this section

0466 which causes any unified district to have territory which is not

0467 contiguous to the other territory of such unified district. For the

0468 purpose of the school unification acts, territory of a unified

0469 district is contiguous if all of the parts thereof touch and adjoin at

0470 more than one point~~: Provided~~, *except that* no unified district

0471 which has noncontiguous territory shall be invalidated by this

0472 provision. The restrictions on transfer of territory imposed by

0473 this subsection (b) shall not apply if the net effect of the transfer

0474 is not violative of such restrictions considering all territory

0475 transferred in the same order or agreement.

0476 Sec. 281. K.S.A. 72-7307 is hereby amended to read as fol-

0477 lows: 72-7307. For the purpose of affording a hearing upon any

0478 matter provided in this act to be determined by the state board of

0479 education when such determination requires exercise of sub-

0480 stantial discretion by the state board of education, the state board

0481 of education may appoint one or more hearing officers. Any such

0482 hearing officer shall be an officer or employee of the state

0483 department of education. Any such appointment shall apply to a

0484 particular hearing or to a set or class of hearings as specified by

0485 the state board of education in making such appointment.

0486 Whenever a hearing officer appointed under the authority of this

0487 act hears any matter, ~~he~~ *such hearing officer* shall, after hearing

0488 the same, prepare a written report thereon to the state board of

0489 education. After receiving such report the state board of educa-

0490 tion shall determine the matter with or without additional hear-

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0491 ing. Nothing in this section shall be deemed to require a hearing
0492 to be held on any matter determined by the state board of
0493 educatio[n]
0494 *Notwithstanding the foregoing provisions of this section, if a*
0495 *hearing is required on an order, as defined in subsection (d) of*
0496 *K.S.A. 1987 Supp. 77-502 and amendments thereto, the hearing*
0497 *shall be conducted in accordance with the provisions of the*
0498 *Kansas administrative procedure act.*
0499 Sec. 282. K.S.A. 1987 Supp. 72-7520 is hereby amended to
0500 read as follows: 72-7520. Whenever a hearing officer appointed
0501 under authority of K.S.A. 72-7519, and amendments thereto,
0502 hears any appeal, case or other matter, the hearing officer, after
0503 hearing the same, shall ~~prepare a written report thereon to~~
0504 *render an initial order which shall be reviewed by* the state
0505 board of education. ~~After receiving any such report, the state~~
0506 ~~board of education shall determine the case, appeal or other~~
0507 ~~matter with or without additional hearing.~~ Any matter deter-
0508 mined by the state board of education in accordance with this
0509 section shall be valid to the same extent as if the matter were
0510 fully heard by the state board of education without a hearing
0511 officer.
0512 Sec. 283. K.S.A. 72-8506 is hereby amended to read as fol-
0513 lows: 72-8506. The professional practices commission shall ex-
0514 ercise disciplinary and advisory functions and shall hear cases
0515 arising under rules and regulations adopted under subsection (a)
0516 of K.S.A. 72-8505, and amendments thereto, involving the is-
0517 suance, continuance, suspension, revocation, or reinstatement of
0518 teachers' and school administrators' certificates and ~~make rec-~~
0519 ~~ommendations to the state board of education~~ *render initial*
0520 *orders* for disposition thereof, and the state board of education
0521 shall ~~determine such cases, with or without additional hearing~~
0522 *review such initial orders.* The practices commission may con-
0523 duct, upon request and at the direction of the state board of
0524 education, investigations of departures from the code of profes-
0525 sional responsibility and competency which may be adopted by
0526 the state board of education upon recommendation made under
0527 subsection (b) of K.S.A. 72-8505, and amendments thereto, and

subject to review

by the state board of education

in accordance with the provisions of
K.S.A. 1987 Supp. 77-527, as amended
by section 14 of chapter 356 of the
laws of 1988

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0528 report findings thereon to the state board.
0529 Sec. 284. K.S.A. 72-8507 is hereby amended to read as fol-
0530 lows: 72-8507. (a) The professional practices commission shall
0531 have responsibility, power and authority to investigate problems
0532 relating to the matters specified in K.S.A. 72-8506, and amend-
0533 ments thereto. Nothing in this section shall be construed to
0534 preclude the state board of education from initiating and adopt-
0535 ing rules and regulations on matters relating to the professions of
0536 teaching and school administration, irrespective of any action or
0537 lack thereof by the professional practices commission.
0538 (b) The practices commission shall have, upon request by
0539 and at the direction of the state board of education, the respon-
0540 sibility, power and authority to conduct hearings relating to any
0541 case arising under this act, or the act of which this act is amend-
0542 atory, or [the] rules and regulations adopted [pursuant thereto] — by the state board of education
0543 (c) ~~Rules and regulations relating to hearings by the practices~~
0544 ~~commission shall be developed and recommended by the pro-~~
0545 ~~fessional practices commission for adoption, or amendment and~~
0546 ~~adoption, by the state board of education. Nothing in this section~~
0547 ~~shall be construed to preclude the state board of education from~~
0548 ~~initiating and adopting rules and regulations on the matters~~
0549 ~~specified in this section, irrespective of any action or lack thereof~~
0550 ~~by the practices commission. The rules and regulations shall~~
0551 ~~provide for a reasonable notice.~~ For the purpose of any inves-
0552 tigation ~~or hearing~~ which the professional practices commission
0553 conducts, the commission shall have power to conduct such
0554 ~~hearing~~ *investigation*, administer oaths, take depositions, and by
0555 order of the state board of education, to issue subpoenas to
0556 compel the attendance of witnesses and the production of books,
0557 papers, documents and testimony. If any person refuses to obey
0558 any subpoena so issued, or refuses to testify or produce any
0559 books, papers, or documents, the state board of education, or any
0560 member thereof, may present a petition to the district court of the
0561 judicial district in which any ~~hearing or~~ investigation is being
0562 conducted, setting forth the facts, and thereupon the court shall,
0563 in a proper case, issue its subpoena to such person, requiring
0564 attendance before the court and there to testify or to produce

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0565 such books, papers and documents as may be deemed necessary
0566 and pertinent by the practices commission or any member of it.
0567 Any person failing or refusing to obey the subpoena or order ~~of~~
0568 the district court may be proceeded against for ~~contempt~~ in the
0569 same manner as for refusal to ~~obey any~~ other subpoena or order
0570 of the court. *Hearings [of] the practices commission, [including]* — and any
0571 *review of orders of the practices commission by the state board,*
0572 *shall be conducted in accordance with the provisions of the*
0573 *Kansas administrative procedure act.*

before

0403 Sec. 298. K.S.A. 75-2318 is hereby amended to read as fol-
0404 lows: 75-2318. Upon receiving an application under K.S.A. 75-
0405 2317 *and amendments thereto*, the state board of education shall
0406 set the application for hearing in Topeka if the application is for
0407 authority to vote bonds to an amount not exceeding ~~eighteen~~
0408 ~~percent (18%)~~ *18%* of the assessed valuation of tangible taxable
0409 property within the school district unless the board of education
0410 of the school district requests that the hearing be held in the
0411 school district. If the application is for authority to vote bonds to
0412 an amount exceeding ~~eighteen percent (18%)~~ *18%* of the as-
0413 sessed valuation of tangible taxable property within the school
0414 district, the state board of education shall set the application for
0415 hearing in the school district. After the hearing, the state board of
0416 education shall issue an order either granting or denying the
0417 application. If the application is approved, the applicant board of
0418 education shall request the county election officer to hold an
0419 election to vote upon the question of issuing the increased
0420 amount of bonds in the manner provided by law.
0421 [*Hearings under this section shall be conducted in accordance*
0422 *with the provisions of the Kansas administrative procedure act.*]

a public

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0464 Sec. 300. K.S.A. 1987 Supp. 75-2929d is hereby amended to
0465 read as follows: 75-2929d. (a) The state civil service board shall
0466 hear appeals taken to it pursuant to: (1) K.S.A. 75-2940, 75-2949
0467 and 75-3747 and amendments thereto concerning demotion,
0468 dismissal or suspension of a permanent employee in the clas-
0469 sified service, or concerning refusal to examine an applicant or to
0470 certify a person as eligible for a job class, and (2) K.S.A. 75-2973
0471 and amendments thereto concerning disciplinary action in vio-
0472 lation of that statute.
0473 (b) When an appeal is taken to the board, the board shall
0474 establish a time and a place for the hearing which shall be held
0475 within 45 days after receipt of request for the appeal. The board
0476 shall notify the person bringing the appeal and the appointing
0477 authority or other person whose action is being reviewed of the
0478 time and the place of the hearing~~,~~ at least 14 days prior to such
0479 hearing~~, by certified mail, return receipt requested~~. Each party at
0480 the hearing shall have the right ~~to be heard,~~ to be represented by
0481 a person of the party's own choice~~, to present evidence and to~~
0482 ~~cross-examine witnesses~~. *Hearings shall be conducted in ac-*
0483 *cordance with the provisions of the Kansas administrative pro-*
0484 *cedure act. For purposes of the administrative procedure act,*
0485 *the state civil service board shall be deemed the agency head.*
0486 (c) The board, or the director of personnel services when
0487 authorized by majority vote of the board, may take deposition of
0488 ✓ witnesses. Either party to a hearing may depose witnesses [with
0489 ✓ the approval of the other parties]. ~~The board may issue subpoenas~~
0490 ~~to compel the attendance of witnesses at such place as may be~~
0491 ~~designated in this state and to compel the production of books~~
0492 ~~and papers pertinent to any inquiry or investigation authorized~~
0493 ~~by this act. Subpoenas may be issued at the request of the parties~~
0494 ~~to the proceedings other than the board and the director.~~ If books
0495 and papers are required to be produced in advance of a hearing
0496 date, the person or agency producing the books and papers shall
0497 be entitled to receive reasonable compensation to recover all
0498 costs of such production from the person or agency for which
0499 they are produced. ~~The board, any member thereof, any hearing~~
0500 ~~examiner designated or appointed under K.S.A. 75-2929f and~~
0501 ~~amendments thereto, or the director when authorized by the~~
0502 ~~board, may administer oaths and take testimony.~~ The board, any

in accordance with the Kansas administrative procedure act

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0503 ~~such hearing examiner~~ *presiding officer* or the director may
0504 examine such public records as may be required in relation to
0505 any matter which the board has authority to investigate. ~~All~~
0506 ~~officers and other persons shall attend and testify when required~~
0507 ~~to do so by the board, or by the director when authorized by the~~
0508 ~~board.~~

0509 ~~(d) In case of the refusal of any person to comply with any~~
0510 ~~subpoena issued under this section or to testify to any matter~~
0511 ~~regarding which the person may be lawfully interrogated, the~~
0512 ~~district court of any county, on application of any one of the~~
0513 ~~members of the board, or on application of the director when~~
0514 ~~authorized by the board, may issue an order requiring such~~
0515 ~~person to comply with the subpoena and to testify, and any~~
0516 ~~failure to obey the order of the court may be punished by the~~
0517 ~~court as a contempt thereof. Unless incapacitated, the person~~
0518 ~~placing a claim or defending a privilege before the board shall~~
0519 ~~appear in person and may not be excused from answering ques-~~
0520 ~~tions and supplying information, except in accordance with such~~
0521 ~~person's constitutional rights and lawful privileges.~~

0522 ~~(e)~~ *(d)* Each person not in the classified or unclassified ser-
0523 vice who appears before the board or the director by order shall
0524 receive for such person's attendance the fees and mileage pro-
0525 vided for witnesses in civil actions in the district court, which
0526 fees and mileage shall be audited and paid by the state upon
0527 presentation of proper vouchers. Each witness subpoenaed at
0528 the request of parties other than the board or the director shall be
0529 entitled to compensation from the state for attendance or travel
0530 only if the board certifies that the testimony of such witness was
0531 relevant and material to the matter investigated or, if such
0532 witness is not called to testify, the board determines and certifies
0533 that such compensation should be paid.

0534 ~~(f) The board and the director, in conducting hearings and~~
0535 ~~investigations in accordance with the provisions of this act, shall~~
0536 ~~not be bound by the technical rules of evidence.~~

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0647 Sec. 302. K.S.A. 75-3306 is hereby amended to read as fol-
0648 lows: 75-3306. (a) The secretary of social and rehabilitation
0649 services, *except as set forth in the Kansas administrative pro-*
0650 *cedure act and subsection (f)* shall provide a fair hearing for any
0651 person who is ~~an applicant, client, inmate, other interested~~
0652 ~~person or taxpayer who appeals from the decision or final action~~
0653 ~~of~~ *subject to an order, as defined in K.S.A. 1987 Supp. 77-502*
0654 *and amendments thereto, issued by* any agent or employee of the
0655 secretary *and who appeals such order*. The hearing shall be
0656 conducted ~~by an employee or employees of the secretary of~~
0657 ~~social and rehabilitation services to be designated by the secre-~~
0658 ~~tary as an appeals referee or committee. The secretary of social~~
0659 ~~and rehabilitation services shall prescribe the procedure for~~
0660 ~~hearing all appeals~~ *in accordance with the provisions of the*
0661 *Kansas administrative procedure act.*

0662 It shall be the duty of the secretary of social and rehabilitation
0663 services to have available in all intake offices, during all office
0664 hours, forms for filing complaints for hearings, and appeal forms
0665 with which to appeal from the decision of the agent or employee
0666 of the secretary. The forms shall be prescribed by the secretary of
0667 social and rehabilitation services and shall have printed on or as
0668 a part of them the basic ~~rules and regulations~~ *procedure* for
0669 hearings and appeals prescribed by state law and the secretary of
0670 social and rehabilitation services.

0671 (b) The secretary of social and rehabilitation services shall
0672 have authority to investigate (1) any claims and vouchers and
0673 persons or businesses who provide services to the secretary of
0674 social and rehabilitation services or to welfare recipients, (2) the
0675 eligibility of persons to receive assistance and (3) the eligibility

subsections (f), (g), (h) and (i)

an applicant, client, inmate, other interested person or taxpayer who appeals from the decision or final action of

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0010 of providers of services.
0011 ~~(c) The secretary of social and rehabilitation services shall~~
0012 ~~have authority, when hearing appeals or conducting investiga-~~
0013 ~~tions as provided for in this section, to issue subpoenas; compel~~
0014 ~~the attendance of witnesses at the place designated in this state;~~
0015 ~~compel the production of any records, books, papers or other~~
0016 ~~documents considered necessary; administer oaths; take testi-~~
0017 ~~mony; and render decisions. A copy of each decision shall be~~
0018 ~~delivered to the appellant, provider of services or agent or~~
0019 ~~employee of the secretary, as the case may be, who shall comply~~
0020 ~~with the decision. If a person refuses to comply with any sub-~~
0021 ~~poena issued under this section or to testify to any matter~~
0022 ~~regarding which the person may lawfully be questioned, the~~
0023 ~~district court of any county, on application of the secretary, may~~
0024 ~~issue an order requiring the person to comply with the subpoena~~
0025 ~~and to testify, and any failure to obey the order of the court may~~
0026 ~~be punished by the court as a contempt of court. Unless inca-~~
0027 ~~pacitated, the person placing a claim or defending a privilege~~
0028 ~~before the secretary shall appear in person and may not be~~
0029 ~~excused from answering questions and supplying information,~~
0030 ~~except in accordance with the person's constitutional rights and~~
0031 ~~lawful privileges.~~
0032 *(c) The secretary of social and rehabilitation services shall*
0033 *have authority, when conducting investigations as provided for*
0034 *in this section, to issue subpoenas; compel the attendance of*
0035 *witnesses at the place designated in this state; compel the*
0036 *production of any records, books, papers or other documents*
0037 *considered necessary; administer oaths; take testimony; and*
0038 *render decisions. If a person refuses to comply with any sub-*
0039 *poena issued under this section or to testify to any matter*
0040 *regarding which the person may lawfully be questioned, the*
0041 *district court of any county, on application of the secretary, may*
0042 *issue an order requiring the person to comply with the subpoena*
0043 *and to testify, and any failure to obey the order of the court may*
0044 *be punished by the court as a contempt of court. Unless inca-*
0045 *pacitated, the person placing a claim or defending a privilege*
0046 *before the secretary shall appear in person* [or by authorized representative] *and may not be*

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0047 *excused from answering questions and supplying information,*
0048 *except in accordance with the person's constitutional rights and*
0049 *lawful privileges.*
0050 *(d) The presiding officer may close any portion of a hearing*
0051 *conducted under the Kansas administrative procedure act when*
0052 *matters made confidential, pursuant to federal or state law or*
0053 *regulation are under consideration.*
0054 *(e) Except as provided in subsection [(c)] of K.S.A. 1987 Supp.*
0055 *77-511 and amendments thereto and notwithstanding the other*
0056 *provisions of the Kansas administrative procedure act, the sec-*
0057 *retary may enforce any order issued pursuant to subsection (b)*
0058 *of K.S.A. 1987 Supp. 77-508 and amendments thereto, prior to*
0059 *the disposition of a person's application for an adjudicative*
0060 *proceeding unless prohibited from such action by federal or*
0061 *state statute, regulation or court order.*
0062 *(f) Decisions relating to the administration of the support*
0063 *enforcement program set forth in K.S.A. 39-753 et seq. and*
0064 *amendments thereto except for federal debt set-off activities*
0065 *shall be exempt from the provisions of the Kansas administra-*
0066 *tive procedure act and subsection (a) of this section.*

(d)

(g) Decisions relating to administrative disqualification hearings shall be exempt from the provisions of the Kansas administrative procedure act and subsection (a) of this section.

(h) The department of social and rehabilitation services shall not have jurisdiction to determine the facial validity of a state or federal statute. The administrative hearings section of the department of social and rehabilitation services shall not have jurisdiction to determine the facial validity of an agency rule and regulation.

(i) The department of social and rehabilitation services shall not be required to provide a hearing if: (1) The department of social and rehabilitation services lacks jurisdiction of the subject matter; (2) resolution of the matter does not require the department of social and rehabilitation services to issue an order that determines the applicant's legal rights, duties, privileges, immunities or other legal interests; (3) the matter was not timely submitted to the department of social and rehabilitation services pursuant to regulation or other provision of law; or (4) the matter was not submitted in a form substantially complying with any applicable provision of law.

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Bill Graves
Secretary of State

2nd Floor, State Capitol
Topeka, KS 66612-1594
(913) 296-2236

STATE OF KANSAS

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE

February 28, 1989

House Bill No. 2433

Every year approximately 5,000 corporations fail to file their Kansas corporate annual reports and are forfeited. Approximately 1,800 of those corporations choose to reinstate. This bill would make it much easier to do so.

Many of the corporations were forfeited because the registered office is no longer a good address or the resident agent at that address is no longer a responsible representative of the corporation. But, in order to change the registered office or resident agent, the corporate code now requires the corporation to first reinstate using the old address and agent.

Forty percent of the corporations who reinstate must now file a separate document and pay an additional $20 filing fee for what could have been done with a few keystrokes during the time of reinstatement. This bill would end that nonsense.

The bill would not only benefit corporations, but the clerks in our office who must spend time correcting and filing paperwork for the approximately 720 corporations who face this problem each year.

We urge you to favorably recommend House Bill No. 2433.

JOHN R. WINE, JR.
Assistant Secretary of State

House Judiciary
2/28/89
Attachment VIII

Bill Graves
Secretary of State

2nd Floor, State Capitol
Topeka, KS 66612-1594
(913) 296-2236

STATE OF KANSAS

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE

February 28, 1989

House Bill No. 2436

This bill would delete the notarization requirement in three different cases. It would delete the requirement for corporations executing annual reports; persons assisting disabled voters; and persons applying to become lobbyists.

A notary often serves an important purpose. The identity of the person signing is important in documents such as deeds. And, since a knowing false statement under oath constitutes a felony, it also serves as a warning to consider carefully the truthfulness of what is being said in affidavits.

However, in the following three instances, the presence of a notary does not seem necessary:

Sections 1-4 and 7-8 deal with corporate and limited partnership annual franchise tax reports. Tax preparers understand that it is a serious crime to lie on government tax forms. It is not necessary to involve a notary to provide warning of the obvious.

Section 5 deals with persons assisting disabled voters. Since a false statement on any election form already constitutes the crime of election perjury, a felony, there is no need for a notary.

Section 6 deals with lobbyist applications. It is already a separate, specific crime for a person who applies to become a lobbyist to make a false statement.

Because notarization doesn't serve a purpose in these cases, we urge you to favorably recommend House Bill No. 2436.

JOHN R. WINE, JR.
Assistant Secretary of State

House Judiciary
2/28/89
Attachment IX

KANSAS BAR ASSOCIATION

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 2436
House Judiciary Committee
February 28, 1989

Mr. Chairman, Members of the Judiciary committee. The KBA has no problems with HB 2436. Our concern, and the concern of the Wichita Bar Association, is that HB 2436 is such a good idea it should be expanded.

Perjury is ordinarily a Class "E" felony, except when the perjury occurs in a felony prosecution, when it becomes a "D" felony. If the intent of HB 2436 is to make a false signing under Sections 1 through 8 subject to the perjury law, the bill is fatally flawed.

Merely declaring that something is subject to the penalty of perjury is insufficient to make it a crime unless the perjury statute says so. HB 2436 does not amend the perjury statute, K.S.A. 21-3805, to include a false declaration made under authority of the various sections of HB 2436. Perjury now covers only false swearings before any "court, tribunal, public body, notary public or other officer authorized to administer oaths." Filing a false annual report is not named in the statute. Nowhere in HB 2436 does it say that an unsworn declaration subject to perjury is a crime. So while you clearly intend a false swearing to be subject to the perjury statute, you haven't made it so.

In feudal England where notary publics first flourished, and even 19th Century America many people were illiterate. Notaries were needed to swear that the person they saw sign a document was indeed the person he claimed to be. These signings were called "acknowledgments or oaths."

A prosecutor cannot charge Ron Smith with perjury for claiming to be Bill Graves unless that false swearing comes in a courtroom under oath. If I do it in a document outside of a court, you might charge me with making a false writing, but not perjury. The two new sections we suggest to you will not change the need for notaries to make acknowledgments.

This means that several documents in everyday use, such as the unsworn declaration on the state income tax forms, and certain monthly forms by employers as to wages withheld are meaningless if a prosecu-

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

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Christel Marquardt, Association ABA Delegate • Richard C. Hite, Kansas ABA Delegate • Hon. Samuel K. Bruner, KDJA Representative.

House Judiciary
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Attachment X

tor wanted to charge perjury. The current use of unsworn declarations will not invoke the perjury law. Indeed, last year's state census form required people to swear under penalty of perjury to the information they put on the census form. But you couldn't prosecute for perjury if someone lied. Again the crime might be making a false writing but it is far from clear on that account.

KBA and the Wichita Bar Association believe HB 2436 can be amended with two new sections to allow all eight current sections to take effect and bring the perjury statute into play. That is accomplished by substituting 1987 HB 2082 for HB 2436 in a substitute bill. HB 2082 is attached.

By making these amendments not only do we make the perjury penalty applicable but we also validate future documents in which there is a declaration, verification, certificate or statement without having to amend future laws. Further, we would validate the perjury penalty for future false swearings on state income tax forms, the monthly employer validation form on withholding, and a host of other areas.

The Secretary of State's Office will object to Section 1 of the attached bill. They believe we ought to separately identify each public policy issue that should be handled as an unsworn declaration, such as the first eight sections of HB 2436. If that is the case, Mr. Chairman, I'll offer the attached bundle of statutes as a recommended amendment to HB 2436 and suggest you change the title to "an act concerning unsworn declarations," then include HB 2436 plus all these other policy statements in a substitute bill so this committee can look at each policy individually.

Or, we can take the same short cut that the Federal government took in 28 USC §1746. That is essentially Section 1 and 2 of the attached bill.

New Section 1 of HB 2082 changes only the way verified documents, such as affidavits, are handled. These are not acknowledgments or oaths. Affidavits and other verified documents have information in them that the affiant is saying is true. Annual reports of professional corporations (Sec. 1), Annual reports of domestic corporations (sec. 2), nonprofit annual reports (Sec. 3), lobbyist registration forms -- etc. -- all contain elements of information permitted to be supported at law by sworn written "declarations, verifications, certificate, statements oaths or affidavits."

By contrast, a warranty deed is an acknowledgement, that this person appeared in person and signed the document. Deeds would still require a notary. A mechanics lien is an affidavit, a sworn written declaration concerning certain information going on file with the clerk of the court. These would be allowed to use an unsworn declaration in lieu of a notary under our new section. And the perjury statute would apply.

If you adopt HB 2082's provisions in lieu of Sections 1 through 8 of HB 2436, the people making the declarations in these corporations could choose either form -- an unsworn declaration, or a verified notary statement. Either method would comply with the law and the perjury statute would apply. HB 2082 allows permissive use of the unsworn declaration, not mandatory. It is flexible.

The federal government has thousands of statutes that allow or require verification or affidavits. When they wanted to begin using unsworn declarations the didn't amend each statute. They short circuited that problem in 28 USC §1746. U.S. citizens now have two options available to them: they can use the unsworn declaration, or they can verify using affidavits and notaries. Either has the force and effect of law, and the United States perjury statute could be invoked. We simply think Kansas should have the same flexibility.

Fiscal note. There might be fewer notary publics. I doubt it. Even if so, to my knowledge no one makes a living as a notary. Second, HB 2082 does not prohibit the use of a notary if they so desire. HB 2082 simply puts teeth into some activities of state government forms that use unsworn declarations.

The Secretary of State's office may -- and I stress may -- lose some fee income from the notaries. But that is no excuse to keep Kansas continually laboring in the law of feudal England. When the federal government passed 28 USC §1746, I saw no mass layoff of notary publics. Fee income to the Secretary of State will not significantly change.

Exceptions. Our recommended statute has three exceptions, found in lines 42 through 49 of the attached bill. They are:

1. oaths of office;
2. oaths required to be taken before other specified officials other than a notary, such as a legislative investigating committee; and
3. Anything concerning publication or republication of wills and codicils (later amendments) to existing wills.

State law covers the creation of valid wills and codicils. It was felt they should be listed separately and still require verification before a notary.

Another reason for these exemptions, especially #3, is that there is an element of "capacity" to sign a document involved with the signature, especially in wills and codicils. Wills and codicils must be verified by independent witnesses who must see the testator sign the will in their presence. They also testify later as to whether the testator was alert and knew what he or she was doing. Logically, wills and codicils should be handled like they currently are handled.

Retroactivity. There is none. HB 2082 is prospective in application, applying only to documents to be made after the effective date of the act. Lines 50-54 of the attached bill prevent retroactivity.

Further, if other states require a document's legality to turn on a notary signing it, then in order to enforce the document in Kansas, it will have to comply with the other state's requirements. This is nothing more than the full faith and credit clause of the constitution at work.

Interchange between Verification and Unsworn Declarations. The jurat of a notary and the unsworn declaration are not interchangeable. In other words, if a notary signature is proven invalid (perhaps because the notary did not swear the witness on oath before witnessing the signature, a minor technicality, but one which has invalidated more than one document), the fact the right person signed a document will not make it valid as an unsworn declaration. To become an unsworn declaration it must comply with lines 32 through 41 of the attached bill. You can't have an unsworn declaration by implication.

Forgeries and False Writings. This legislation will not cure forgeries or making false writings. It's not meant to. Notaries are not cops. Forgeries and conspiracies to make false documents will still occur, and are separately punishable.

Conclusion

The Secretary of State's office prefers that, one by one, the policy areas be examined. Or, you can simply adopt conforming legislation with the way the federal government allows unsworn declarations. The documents will still be legal and accomplishing this change will be less costly than printing a larger bill and amending hundreds of statutes.

If unsworn declarations under penalty of perjury are good enough to be used in corporate offices and for documents concerning partnerships and lobbyists, they are good enough to be used elsewhere in the law where affidavits or other forms of verifications are otherwise required by law. It provides an alternative method of doing the same thing that a notary's verification provides. It will not have a substantial impact on revenue to the Secretary of State's office because there was no impact when the federal government made a change.

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Session of 1987

HOUSE BILL No. 2082

By Committee on Judiciary

1-22

0017 AN ACT concerning certain unsworn declarations; permitting
0018 such declarations under penalty of perjury in certain in-
0019 stances; amending K.S.A. 1986 Supp. 21-3805 and repealing
0020 the existing section.

0021 *Be it enacted by the Legislature of the State of Kansas:*
0022 New Section 1. (a) Except as provided by subsection (b),
0023 whenever a law of this state or any rules and regulations, order or
0024 requirement adopted or issued thereunder requires or permits a
0025 matter to be supported, evidenced, established or proved by the
0026 sworn written declaration, verification, certificate, statement,
0027 oath or affidavit of a person, such matter may be supported,
0028 evidenced, established or proved with the same force and effect
0029 by the unsworn written declaration, verification, certificate or
0030 statement dated and subscribed by the person as true, under
0031 penalty of perjury, in substantially the following form:
0032 (1) If executed outside this state: "I declare (or verify, certify
0033 or state) under penalty of perjury under the laws of the state of
0034 Kansas that the foregoing is true and correct. Executed on (date).
0035 ______________________
0036 (Signature)"
0037 (2) If executed in this state: "I declare (or verify, certify or
0038 state) under penalty of perjury that the foregoing is true and
0039 correct. Executed on (date).
0040 ______________________
0041 (Signature)"
0042 (b) The provisions of subsection (a) do not apply to the
0043 following oaths:
0044 (1) An oath of office.
0045 (2) An oath required to be taken before a specified official
0046 other than a notary public.

0047 (3) An oath of a testator or witnesses as required for wills,
0048 codicils, revocations of wills and codicils and republications of
0049 wills and codicils.
0050 (c) A notarial act performed prior to the effective date of this
0051 act is not affected by this act. Nothing in this act diminishes or
0052 invalidates the recognition accorded to notarial acts by other
0053 laws of this state or rules and regulations adopted thereunder.
0054 Sec. 2. K.S.A. 1986 Supp. 21-3805 is hereby amended to read
0055 as follows: 21-3805. (a) Perjury is willfully, knowingly and
0056 falsely*:*
0057 *(1)* Swearing, testifying, affirming, declaring or subscribing
0058 to any material fact upon any oath or affirmation legally admin-
0059 istered in any cause, matter or proceeding before any court,
0060 tribunal, public body, notary public or other officer authorized to
0061 administer oaths*; or*
0062 *(2) subscribing as true and correct under penalty of perjury*
0063 *any material matter in any declaration, verification, certificate*
0064 *or statement as permitted by section 1.*
0065 (b) Perjury is a class D felony if the false statement is made
0066 upon the trial of a felony. Perjury is a class E felony if the false
0067 statement is made in a cause, matter or proceeding other than the
0068 trial of a felony charge *or is made under penalty of perjury in any*
0069 *declaration, verification, certificate or statement as permitted*
0070 *by section 1.*
0071 Sec. 3. K.S.A. 1986 Supp. 21-3805 is hereby repealed.
0072 Sec. 4. This act shall take effect and be in force from and
0073 after its publication in the statute book.