

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. on March 2, 1989 in room 313-S of the Capitol.

All members were present except:

Representatives Crowell, Hochhouser and Peterson, 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:

Beth Bradley, Kansas Association of Counties
Steve Wiechman, General Counsel representing Kansas Association of Counties
Linda Fincham, Marshall County Register of Deeds, Marysville

HEARING ON H.B. 2432 - Transfer of property prior to payment of personal property tax; bankruptcy

Beth Bradley, Kansas Association of Counties, introduced Steve Wiechman.

Steve Wiechman, General Counsel, Kansas Association of Counties, testified this bill was requested because the Bankruptcy Court in Wichita issued an interpretation that statute K.S.A. 1988 Supp 79-2020 does not apply to bankruptcy filings. The case was appealed from the bankruptcy court to the U.S. District Court. He filed an Amicus brief on behalf of the Association but a decision has not been issued. He said this legislation more clearly sets forth in statute, what was intended when it was originally passed in 1985, see Attachment I.

The hearing was closed on H.B. 2432.

Representative O'Neil moved conceptually that whenever the owner of personal property files for bankruptcy, after the date such property is assessed but before the taxes on such property have been paid, such filing shall cause a first and prior lien to attach to the property for the unpaid taxes. The motion was seconded and passed.

Representative Snowbarger moved to report H.B. 2432, as amended, favorably for passage. Representative Jenkins seconded the motion. The motion passed.

HEARING ON H.B. 2478 - Abandoned personal property liens may be removed from records by register of deeds

Linda Fincham, Marshall County Register of Deeds, testified the Register of Deeds Association is in favor of this bill which would allow the removal of abandoned mechanics liens that are over 5 years old. She requested the bill be amended in line 28 by addition the words "and destroy" which would allow the removal and destruction of abandoned mechanics liens that are over five years old, see Attachment II.

A motion was made by Representative Douville to amend H.B. 2478 by adding in line 29 "and destroy the lien". The motion was seconded by Representative Everhart. The motion passed.

Representative Walker moved to report H.B. 2478, as amended, favorable for passage. Representative Douville seconded the motion. The motion passed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 3:30 ~~xxx~~ a.m./p.m. on March 2, 1989.

CONSIDERATION OF BILLS:

H.B. 2198 - Criminal procedure, parole and supervised furlough

H.B. 2199 - Requiring notice to be given to victims of crime of inmate's public hearing and release of inmates; release considerations

H.B. 2200 - Crime victims, reparations & assistance

HCR 5008 - Constitutional amendment, victims rights

The Chairman presented a report of the subcommittee on H.B. 2198, H.B. 2199, H.B. 2200 and HCR 5008. The subcommittee recommended no action be taken on H.B. 2198 and HCR 5008. H.B. 2199 was recommended for passage. The Committee recommended several amendments to H.B. 2200, see Attachment III.

Representative Sebelius moved to adopt the subcommittee report. Representative Buehler seconded the motion. The motion passed.

H.B. 2200 - Crime victims, reparations & assistance

Representative Solbach moved to amend H.B. 2200 in New Sec. 31 regarding notification to any victim of the inmate's crime who is alive and whose address is known to the county or district attorney or, if the victim is deceased, to the victim's family if the family's address is known to the county or district attorney. Representative Douville seconded the motion. The motion passed.

Representative Snowbarger moved and Representative Jenkins seconded to amend the language in New Sec. 31 by removing in the second line "and informed of". The motion passed.

Representative Hochhauser moved to change the language on page 27 of the amendment, lines 472 through 474 to read "(7) Measures may be taken when necessary to provide for the safety of the victims and their families and to protect them from intimidation and retaliation." Representative Solbach seconded the motion. The motion passed.

Representative Solbach moved to leave the compensation payable to a victim and to all other claimants sustaining economic loss because of injury to or death of that victim at not to exceed \$25,000 in the aggregate. Representative Snowbarger seconded the motion. The motion passed.

Representative Jenkins moved to report H.B. 2200, as amended, favorably for passage. The motion was seconded by Representative Sebelius. The motion passed.

H.B. 2199 - Requiring notice to be given to victims of crime of inmate's public hearing and release of inmates; release considerations

A motion was made by Representative Snowbarger to report H.B. 2199 favorably for passage. The motion was seconded by Representative Lawrence. The motion passed.

H.B. 2198 - Criminal procedure, parole and supervised furlough

HCR 5008 - Constitutional amendment, victims rights

A motion was made by Representative Snowbarger and seconded by Representative Douville to table H.B. 2198 and HCR 5008. The motion passed.

H.B. 2113 - Health Care Risk Management

Representative Walker moved to remove H.B. 2113 from the table. Representative Snowbarger seconded the motion. The motion passed.

Representative Walker explained the amendments proposed by the subcommittee. The subcommittee recommended not to amend K.S.A. 1988 Supp 65-4925, see Attachment IV.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 3:30 ~~xxx~~ p.m. on March 2, 1989.

Representative Snowbarger moved to adopt the subcommittee report. Representative Whiteman seconded the motion. The motion passed.

Representative Walker moved to report H.B. 2113, as amended, favorably for passage. The motion was seconded by Representative Snowbarger. The motion passed.

H.B. 2168 - Foster care parents required to file a report on the child's adjustment, progress and condition.

Representative Walker moved to change "may" to "shall" on line 39. The motion failed for lack of a second.

A motion was made by Representative Whiteman to add in line 40 after the word "court", "on a form provided by the court". The motion was seconded by Representative Solbach. The motion failed.

Representative Everhart moved to report H.B. 2168 favorably for passage. Representative Fuller seconded the motion. The motion passed.

H.B. 2248 - Proceedings & hearings & arraignment & entering pleas conducted by 2 way electronic audio-video communications

Representative Snowbarger explained the proposed amendments would make it clear that the defendant would be informed of his right to be personally present in the courtroom and that exercising that right would in no way prejudice the defendant, see Attachment V.

Representative Snowbarger moved to adopt the amendments to H.B. 2248. Representative Vancrum seconded the motion. The motion passed.

Representative Snowbarger moved and Representative Lawrence seconded to report H.B. 2248, as amended, favorably for passage.

Representative Roy moved conceptually to amend H.B. 2248 to provide dedicated phone lines for confidential communications. Representative Solbach seconded the motion. The motion failed.

A vote was taken on Representative Snowbarger's motion to report the bill, as amended, favorably for passage. The motion passed.

H.B. 2162 - Clean-up of Kansas Administrative Procedures Act

Representative Solbach moved to adopt the amendments proposed by the Judicial Council. The motion was seconded by Representative Fuller. The motion passed.

A motion was made by Representative Walker and seconded by Representative Whiteman to report H.B. 2162, as amended, favorably for passage. The motion passed.

The Committee meeting was adjourned at 5:30 p.m. The next meeting will be Friday, March 3, 1989, at 7:30 a.m. in room 423-S.

Wiechman Law Office

ATTORNEYS AT LAW
1101 WEST 10TH STREET
TOPEKA, KANSAS 66604

(913) 233-8862

HOUSE JUDICIARY COMMITTEE

March 2, 1989

HOUSE BILL 2432

Mr. Chairman, Members of the Committee:

Many of you I know, but for those who do not know me, I am Steven Wiechman, appearing as General Counsel for the Kansas Association of Counties. Thank you for the opportunity to address HB 2432, which is a bill that was introduced at the Association's request.

Most of you are aware of the way laws can be interpreted by the Courts. This legislation request arises because the Bankruptcy Court, in Wichita, issued an interpretation that the statute does not apply to bankruptcy filings. The case was appealed from the bankruptcy court to the U.S. District Court. An Amicus brief was filed by myself on behalf of the Association, but a decision has not been issued. This legislation more clearly sets forth, in Statute, what was intended when it was originally passed in 1985.

Thank you for the opportunity to appear before you and present K.A.C.'s position. If you have questions, I will try to address them.

Respectfully submitted,

STEVEN R. WIECHMAN

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Attachment I*

Linda Fincham

M.SVILLE, KANSAS 66508

REGISTER OF DEEDS
MARSHALL COUNTY

913-562-3226

Good afternoon Chairman O'Neil and members of the Committee. I am Linda Fincham, Register of Deeds from Marshall County and Chairman of the Register of Deeds Legislative Committee. The Register of Deeds Association is in favor of H.B. 2478, which would give us the capability of pulling mechanics liens and removing them from our records. At this time some of the counties have mechanics liens on record for vehicles that are over 20 years old. Most of these vehicles are no longer on the road.

The present law allows that if necessary legal action is not enforced within one year after the lien was filed, it shall be deemed abandoned and shall be thereafter void. This present law does not legally allow us to remove and destroy these old records.

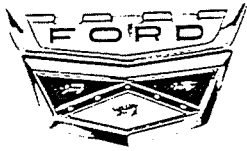
Our association would ask that on line 28 after the word remove two words be added to amend H.B. 2478. We would ask that the words and destroy be inserted on line 28. With the addition of these words the Registrars would be able to remove and also destroy all mechanics liens that were over 5 year old.

The Register of Deeds Association would appreciate your consideration and support to H.B. 2478 and the proposed amendment. This bill would allow us not only more current and up to date records, but would help us to free up space for future recordings.

If you have any questions, I would be happy to visit with you further.

Linda Fincham
Chairman Legislative Committee
Register of Deeds Association

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Attachment II



KENNEDY MOTOR CO.

Telephone BYron 2-4526

FRANKFORT, KANSAS 66427

Feb 7 1967

Register of Deeds office
County Courthouse
Marionville Kansas

We wish to file a mechanic's lien on the following vehicle:
For \$40.04

1961 Ford four door Fairlane 500

Serial # 12 42W 105705

owner ~~is~~ Ronald Thompson
Frankfort Kansas

We assume the filing fee is still 50¢ which we are enclosing.
If the fee is more please let us know.

Yours truly
Charles Wendling

H. J. 3/2/89
Att II

All claims and returned goods MUST be accompanied by this bill within 30 days.

KENNEDY MOTOR COMPANY

Telephone BY - 24526



FRANKFORT, KANSAS

1-114-1

STATE OF KANSAS
Marshall County
FILED AND RECORDED

FEB 8 1967

10:10 AM
Notary Public
Register of Deeds

CUSTOMER'S ORDER NO.

DATE

January 11, 1967

SOLD TO

Ronald Thompson

ADDRESS

61 Ford 1242W-105705 71743 miles

MDSE. SOLD		MDSE. RET'D		REC'D ON ACCT.-NOTE	MISC'L	PAID OUT
CASH	CHARGE	CASH	CREDIT			
	✓					

QUAN.	NUMBER	ARTICLES	PRICE	AMOUNT
1	C1A2-7137-B	Vacuum throttle control valve		5.00
1	C202-9502-C	Carburetor gaskets		.95
1	C2A2-9504-D	float valve		1.50
1	COA2-9A565-C	lemonizer valve		.80
1	COA2-9B559-A	accelerator pump		.80
1	COAE-9604-B	air cleaner filter		4.10
2	C2AE-2001-B	front brake shoes		4.00
2	C3A2-2201-A	wheel cylinder cup	40	80
1	C1AA204-A	adjusting screw		.27
1	C1A2-6731-A	spin on oil filter		3.70
		brake fluid		40
2		qts traps fluid	65	1.30
6		qts mobiloil	50	3.00
				<u>27.72</u>
		overhaul carburetor & adjust timing	6.50	6.50
		replace throttle control valve	2.00	2.00
		labor on brakes	3.50	3.50
				<u>12.00</u>
				<u>40.04</u>

60866 SALESMAN
SALES TAX
TOTAL
All claims and returned goods MUST be accompanied by this bill.

RECEIVED BY

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HOUSE BILL No. 2200

By Representatives Allen, Bowden, Amos, Barr, Borum, Brown, Bryant, Buehler, Campbell, Cates, Charlton, Chronister, Cribbs, Crowell, Douville, Eckert, Empson, Foster, Freeman, Fry, Fuller, Gatlin, Gomez, Graeber, Guldner, Harder, Jenkins, Justice, King, Kline, Lane, Lawrence, Lucas, Mead, R.D. Miller, Mollenkamp, O'Neal, Patrick, Pottorff, Roe, Roenbaugh, Roper, Russell, Sebelius, Shallenburger, Shore, Shumway, Smith, Sugh-
rue, Turnbaugh, Turnquist, Vancrum, Weimer and Williams

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AN ACT concerning victims of crime; relating to reparations and assistance thereto; changing the official designation of the crime victims reparations board and placing the board under the jurisdiction of the attorney general; establishing position of victims rights coordinator; establishing the bill of rights for victims of crime; relating to disposition of forfeitures of bonds; increasing certain fees and prescribing their disposition; amending K.S.A. 20-350, 20-362, 20-2801, 21-4610a, 23-108a, 74-7302, 74-7303, 74-7304, 74-7305, 74-7306, 74-7308, 74-7311, 74-7313, 74-7316 and 74-7325 and K.S.A. 1988 Supp. 8-2107, 28-172a, 32-155b, 60-2313, 74-7301, 74-7312, 74-7317, 74-7319, 74-7320, 74-7321 and 75-5211 and repealing the existing sections.

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

Section 1. K.S.A. 1988 Supp. 8-2107 is hereby amended to read as follows: 8-2107. (a) (1) Notwithstanding any other provisions of the uniform act regulating traffic on highways, when a person is stopped by a police officer for any of the offenses described in subsection (d) and such person is not immediately taken before a judge of the district court, the police officer may require the person stopped, subject to the provisions of subsection (c), to deposit with the officer a valid Kansas driver's license in exchange for a receipt therefor issued by such police officer, the form of which shall be approved by the division of vehicles. Such receipt shall be recognized as a valid temporary Kansas driver's license authorizing the operation

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general, technical and scientific facts within their specialized knowledge;

(i) the duty to make available for public inspection all rules and regulations, written statements of policy, interpretations formulated, adopted or used by the board in discharging its functions, and decisions and opinions of the board;

(j) the duty to publicize the availability of ~~reparations compensation~~ and information regarding the filing of claims therefor.

Sec. 14. K.S.A. 74-7305 is hereby amended to read as follows: 74-7305. (a) An application for ~~reparations compensation~~ shall be made in the manner and form prescribed by the board.

(b) ~~Reparations Compensation~~ may not be awarded unless the claim has been filed with the board within one year after the injury or death upon which the claim is based. ~~Reparations Compensation~~ may not be awarded to a claimant who was the offender or an accomplice of the offender and may not be awarded to another person if the award would unjustly benefit the offender or accomplice. Unless the board determines that the interests of justice otherwise require in a particular case, ~~reparations compensation~~ may not be awarded to the spouse of or a person living in the same household with the offender or the offender's accomplice or to the parent, child, brother or sister of the offender or the offender's accomplice.

(c) ~~Reparations Compensation~~ otherwise payable to a claimant shall be diminished:

(1) To the extent, if any, that the economic loss upon which the claimant's claim is based is recouped from other persons, including collateral sources; and

(2) to the extent, if any, that the board deems reasonable because of the contributory misconduct of the claimant or of a victim through whom the claimant claims.

(d) ~~(1)~~ ~~Reparations Compensation~~ may be awarded only if the board finds that unless the claimant is awarded ~~reparations compensation~~ the claimant will suffer financial stress as the result of economic loss otherwise reparable. A claimant suffers financial stress only if the claimant cannot maintain the claimant's customary level of health, safety and education for self and dependents without undue financial hardship. In making its determination of financial stress,

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the board shall consider all relevant factors, including:

- 82 (A) (1) The number of claimant's dependents;
- 83 (B) (2) the usual living expenses of the claimant and the claim-
- 84 ant's family;
- 85 (C) (3) the special needs of the claimant and the claimant's
- 86 dependents;
- 87 (D) (4) the claimant's income and potential earning capacity; and
- 88
- 89 (E) (5) the claimant's resources.

90 (2) Except in cases of rape or attempted rape, reparations
91 may not be awarded if the claimant's economic loss does not
92 exceed 10% of the claimant's net financial resources. A claim-
93 ant's net financial resources do not include the present value
94 of future earnings and shall be determined by the board by
95 deducting from the claimant's total financial resources:

- 96 (A) One year's earnings;
- 97 (B) the claimant's equity in the claimant's home, not ex-
- 98 ceeding \$30,000;
- 99 (C) one motor vehicle; and
- 100 (D) any other property which would be exempt from exe-
- 101 cution under the code of civil procedure.

102 (3) Notwithstanding paragraph (2) of this subsection:

103 (A) The board may award reparations to a claimant who
104 possesses net financial resources in excess of those allowable
105 under paragraph (2) of this subsection if, considering the claim-
106 ant's age, life expectancy, physical or mental condition and
107 expectancy of income, including future earning power, it de-
108 termines that the claimant's financial resources will become
109 exhausted during the claimant's lifetime; or

110 (B) the board may reject the claim finally or reject the claim
111 and reserve to the claimant the right to reopen the claim, when-
112 ever it appears that the exhaustion of claimant's financial re-
113 sources is probable, in which event the board may reopen the
114 claim pursuant to an application therefor if it is satisfied that
115 the resources available to the claimant from the time of denial
of an award had been prudently expended for personal or fam-
ily needs.

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118 (e) **Reparations Compensation** may not be awarded unless the
119 criminally injurious conduct resulting in injury or death was reported
120 to a law enforcement officer within 72 hours after its occurrence or
121 the board finds there was good cause for the failure to report within
122 that time.

123 (f) The board, upon finding that the claimant or victim has not
124 fully cooperated with appropriate law enforcement agencies, may
125 deny, withdraw or reduce an award of **reparations compensation**.

126 (g) Except in cases of rape or attempted rape, **reparations com-**
127 **pen-sation** may not be awarded if the economic loss is less than \$100.

128 (h) **Reparations Compensation** for work loss, replacement serv-
129 ices loss, dependent's economic loss and dependent's replacement
130 service loss may not exceed \$200 per week.

131 (i) **Reparations Compensation** payable to a victim and to all other
132 claimants sustaining economic loss because of injury to or death of
133 that victim may not exceed ~~\$10,000~~ ~~\$25,000~~ \$15,000 in the aggregate.

134 Sec. 15. K.S.A. 74-7306 is hereby amended to read as follows:
135 74-7306. Promptly upon receipt of an application for **reparations**
136 **compensation**, the board may forward a copy of the application and
137 all supporting papers to the attorney general who, if requested by
138 the board, may investigate the claim, appear in hearings on the
139 claim and present evidence in opposition to or support of an award.

140 Sec. 16. K.S.A. 74-7308 is hereby amended to read as follows:
141 74-7308. (a) There shall be no privilege, except privileges arising
142 from the attorney-client relationship, as to communications or records
143 relevant to an issue of the physical, mental or emotional conditions
144 of the claimant or victim in a proceeding under this act in which
145 such condition is an element.

146 (b) If the mental, physical or emotional condition of a victim or
147 claimant is material to a claim, the board may order the victim or
148 claimant to submit to a mental or physical examination by a physician
149 or psychologist, and may order an autopsy of a deceased victim. The
150 order may be made for good cause shown upon notice to the person
151 to be examined and to all persons who have appeared. The order
152 shall specify the time, place, manner, conditions and scope of the
153 examination or autopsy and the person by whom it is to be made;
and the order shall require the person to file with the board a

4 (c) (1) Upon the release of any inmate on parole, conditional
 415 release or expiration of the inmate's maximum sentence, the inmate
 416 shall be provided with suitable clothing and a cash payment of \$100.
 417 Any inmate who is gainfully employed under the work release pro-
 418 visions of K.S.A. 75-5267 and 75-5268, and amendments thereto, or
 419 who is gainfully employed by a private business enterprise operating
 420 on the grounds of a correctional institution under K.S.A. 75-5288
 421 and amendments thereto, or any other private business at which
 422 inmates are permitted to be gainfully employed or any inmate pa-
 423 roled to a detainer shall not be eligible to receive this cash payment.

424 (2) An inmate released on expiration of the inmate's maximum
 425 sentence shall be provided public transportation, if required, to the
 426 inmate's home, if within the state, or, if not, to the place of conviction
 427 or to some other place not more distant, as selected by the inmate.
 428 An inmate released on parole or conditional release shall be provided
 429 public transportation, if required, to the place to which the inmate
 430 was paroled or conditionally released.

431 New Sec. 27. (a) On July 1, 1989, the crime victims reparations
 432 board shall be and is hereby officially designated as the crime victims
 433 compensation board.

434 (b) On and after July 1, 1989, whenever the crime victims re-
 435 parations board, or words of like effect, is referred to or designated
 436 by a statute, contract or other document, such reference shall mean
 437 and apply to the crime victims compensation board.

438 (c) Nothing in this act shall be construed as abolishing the crime
 439 victims reparations board or as reestablishing the same.

440 New Sec. 28. (a) On July 1, 1989, the director of accounts and
 441 reports shall transfer all moneys in the crime victims reparations
 442 fund to the crime victims compensation fund. On July 1, 1989, all
 443 liabilities of the crime victims reparations fund are hereby imposed
 444 upon the crime victims compensation fund, and the crime victims
 445 reparations fund is hereby abolished.

446 (b) Whenever the crime victims reparations fund, or words of
 447 like effect, is referred to or designated by statute, contract or other
 448 document, such reference or designation shall mean and apply to
 the crime victim compensation fund.

500 New Sec. 29. (a) In order to ensure the fair and compassionate

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451 treatment of victims of crime and to increase the effectiveness of
452 the criminal justice system by affording victims of crime certain basic
453 rights and considerations, victims of crime shall have the following
454 rights:

455 (1) Victims should be treated with courtesy, compassion and with
456 respect for their dignity and privacy and should suffer the minimum
457 of necessary inconvenience from their involvement with the criminal
458 justice system.

459 (2) Victims should receive, through formal and informal proce-
460 dures, prompt and fair redress for the harm which they have suffered.

461 (3) Information regarding remedies and the mechanisms to obtain
462 ~~them~~ should be made available to victims.

the availability of criminal restitution, recovery of damages in a civil
cause of action, the crimes victim compensation fund and other

463 (4) Information should be made available to victims about their
464 participation in criminal proceedings and the scheduling, progress
465 and ultimate disposition of the proceedings.

such remedies

466 (5) The views and concerns of victims should be ascertained and
467 the appropriate assistance provided throughout the criminal process.

468 (6) When the personal interests of victims are affected, the views
469 or concerns of the victim should, when appropriate and consistent
470 with criminal law and procedure, be brought to the attention of the
471 court.

472 (7) Measures ~~should~~ be taken when necessary to ~~ensure the safety~~
473 ~~of victims and their families and to protect them from intimidation~~
474 and retaliation.

may
~~provide for~~

to protect
and to protect them from

475 (8) Enhanced training should be made available to sensitize crim-
476 inal justice personnel to the needs and concerns of victims and
477 guidelines should be developed for this purpose.

478 (9) Victims should be informed of the availability of health and
479 social services and other relevant assistance that they might continue
480 to receive the necessary medical, psychological and social assistance
481 through existing programs and services.

482 (10) Victims should report the crime and cooperate with law
483 enforcement authorities.

484 (b) As used in this act, "victim" means any person who suffers
485 direct or threatened physical, emotional or financial harm as the
486 result of the commission or attempted commission of a crime against
487 such person.

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(c) Nothing in this act shall be construed as creating a cause of action on behalf of any person against the state, a county, a municipality or any of their agencies, instrumentalities or employees responsible for the enforcement of rights as provided in this act.

(d) This section shall be known and may be cited as the bill of rights for victims of crime act.

New Sec. 30. (a) There is hereby created in the state treasury the crime victims assistance fund. All moneys credited to the fund shall be used for the purpose of supporting the operation of state agency programs which provide services to the victims of crime and making grants to programs providing services to the victims of crime.

(b) All expenditures from the crime victims assistance fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or by a person or persons designated by the attorney general.

(c) The attorney general may apply for, receive and accept moneys from any source for the purposes for which moneys in the crime victims assistance fund may be expended. Upon receipt of any such moneys, the attorney general shall remit the entire amount at least monthly to the state treasurer, who shall deposit it in the state treasury and credit it to the crime victims assistance fund.

(d) The attorney general shall adopt rules and regulations establishing standards for eligibility and accountability for grants made pursuant to this section.

New Sec. 31. (a) At least monthly the clerk of the district court shall remit all moneys payable, as provided in subsection (c)(1), to the state treasurer from forfeitures of appearance bonds as provided in K.S.A. 22-2807 and amendments thereto, to the state treasurer. The state treasurer shall deposit such moneys in the state treasury as provided in subsection (c)(2).

(b) At least monthly the clerk of the district court shall remit all moneys from forfeitures of appearance bonds as provided in K.S.A. 22-2807 and amendments thereto, which are payable, as provided in subsection (c)(1), to the county treasurer of the county in which such forfeiture took place, to such county treasurer. Such county treasurer shall deposit such moneys as provided in subsection (c)(3).

New Sec. 31. (a) The victim of a crime or the victims' family shall be notified of and informed of the right to be present at any public hearing where the accused or the convicted person has the right to appear and be heard.

(b) As used in this section: (1) "Public hearing" means any court proceeding or administrative hearing which is required to be open to the public and shall include but not be limited to the:

- (A) Preliminary hearing;
- (B) trial;
- (C) sentencing;
- (D) sentencing modification;
- (E) parole hearings, pursuant to K.S.A. 22-3717 and 22-3718, and amendments thereto; and
- (F) expungement hearing.

(2) "Victims' family" means a spouse, surviving spouse, children or parents.

(c) Notification shall be made by the county or district attorney to the last known address of the victim or victims' family.

(d) Costs of transportation for the victim to appear shall be borne by the victim unless the appearance is required pursuant to a subpoena or other order of the court.

Renumber the remaining sections

25 (c) (1) Moneys from forfeitures of appearance bonds as provided
526 in this section shall be remitted by the clerk of the district court as
527 follows: (A) Seventy-five percent to the state treasurer; and (B)
528 twenty-five percent to the county treasurer of the county in which
529 such forfeiture took place.

530 (2) The state treasurer shall deposit $\frac{2}{3}$ of such moneys as provided
531 in subsection (c)(1) to the credit of the crime victims reparations
532 fund and $\frac{1}{3}$ of such moneys to the credit of the crime victims
533 assistance fund.

534 (3) The county treasurer shall deposit such moneys as provided
535 in subsection (c)(1) to the credit of a special fund created for use by
536 the county attorney or district attorney in establishing and main-
537 taining programs to aid witnesses and victims of crime.

538 New Sec. 32. The attorney general shall appoint a victims rights
539 coordinator. It shall be the duty of the victims rights coordinator
540 to:

541 (1) Create, coordinate and assist in the operation of local victim-
542 witness programs throughout the state;

543 (2) respond to a statewide victims rights telephone hotline; and

544 (3) administer the Kansas crime victims assistance fund.

545 Sec. 33. K.S.A. 20-350, 20-362, 20-2801, 21-4610a, 23-108a, 74-
546 7302, 74-7303, 74-7304, 74-7305, 74-7306, 74-7308, 74-7311, 74-7313,
547 74-7316 and 74-7325 and K.S.A. 1988 Supp. 8-2107, 28-172a, 32-
548 155b, 60-2313, 74-7301, 74-7312, 74-7317, 74-7319, 74-7320, 74-7321
549 and 75-5211 are hereby repealed.

550 Sec. 34. This act shall take effect and be in force from and after
551 its publication in the statute book.

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Table
2-16-89

HOUSE BILL No. 2113

By Committee on Judiciary

1-25

House Judiciary
3/2/89
Attachment IV

15
16 AN ACT concerning health care risk management; amending K.S.A.
17 1988 Supp. 65-4922 and ~~65-4925~~ and repealing the existing
18 ~~sections.~~ section

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

20 Section 1. K.S.A. 1988 Supp. 65-4922 is hereby amended to read
21 as follows: 65-4922. (a) Each medical care facility shall establish and
22 maintain an internal risk management program which shall consist
23 of:

24 (1) A system for investigation and analysis of the frequency and
25 causes of reportable incidents within the facility;

26 (2) measures to minimize the occurrence of reportable incidents
27 and the resulting injuries within the facility; and

28 (3) a reporting system based upon the duty of all health care
29 providers staffing the facility and all agents and employees of the
30 facility directly involved in the delivery of health care services to
31 report reportable incidents to the chief of the medical staff, chief
32 administrative officer or risk manager of the facility.

33 (b) Not less than 60 days before the time for renewal of its license
34 in 1987, each medical care facility shall submit to the department
35 its plan for establishing and implementing an internal risk manage-
36 ment program. Such plan may rely upon policies and procedures
37 adopted by the medical care facility and its departments and com-
38 mittees. Failure to submit such a plan shall result in denial of the
39 renewal of the facility's license.

40 (c) *The department shall make or cause to be made such in-*
41 *spections and investigations as it deems necessary to reasonably as-*
sure that each medical care facility is implementing the internal risk
management program required by this section. In making such in-

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44 *spections and investigations, the department may review and copy*
45 *the reports and records of all executive committees designated to*
46 *investigate reportable incidents under this act as well as all other*
47 *records specified in subsection (e) of K.S.A. 1988 Supp. 65-4925,*
48 *and amendments thereto.*

49 (d) Upon review of a plan submitted pursuant to subsection (b),
50 the department shall determine whether the plan meets criteria of
51 this section. If the plan does not meet such criteria, the department
52 shall disapprove the plan and return it to the facility, along with the
53 reasons for disapproval. Within 60 days, the facility shall submit to
54 the department a revised plan which meets the requirements of this
55 section and any rules and regulations adopted hereunder. No medical
56 care facility shall be granted renewal of its license in 1988 unless
57 its plan has been approved by the department.

58 ~~(d)~~ (e) A medical care facility shall not be liable for compliance
59 with or failure to comply with the provisions of this section or any
60 rules and regulations adopted hereunder, except as provided in
61 K.S.A. 65-430 and amendments thereto.

62 ~~(e)~~ (f) The secretary shall adopt such rules and regulations as
63 necessary to administer and enforce the provisions of this section.

64 (g) *Any reports and records reviewed or obtained by the de-*
65 *partment shall be confidential and privileged and not subject to*
66 *discovery, subpoena or legal compulsion for their release to any*
67 *person or entity, nor shall they be admissible in any civil or ad-*
68 *ministrative action other than a disciplinary proceeding by the*
69 *department.*

and in the department's possession, pursuant to
subsection (a) of K.S.A. 1988 Supp. 65-4925, and
amendments thereto,

70 ~~Sec. 2.~~ K.S.A. 1988 Supp. 65-4925 is hereby amended to read
71 as follows: 65-4925. (a) The reports and records made pursuant to
72 K.S.A. ~~1986~~ 1988 Supp. 65-4923 or 65-4924, and amendments
73 thereto, shall be confidential and privileged, including:

- 74 (1) Reports and records of executive or review committees of
- 75 medical care facilities or of a professional society or organization;
- 76 (2) reports and records of the chief of the medical staff, chief
- 77 administrative officer or risk manager of a medical care facility;
- (3) reports and records of any state licensing agency or impaired
provider committee of a professional society or organization; and
- 80 ~~(4)~~ reports made pursuant to this act to or by a medical care

81 facility risk manager, any committee, the board of directors, admin-
82 istrative officer or any consultant.

83 Such reports and records shall not be subject to discovery, sub-
84 poena or other means of legal compulsion for their release to any
85 person or entity and shall not be admissible in any civil or admin-
86 istrative action other than a disciplinary proceeding by the appro-
87 priate state licensing agency.

88 (b) No person in attendance at any meeting of an executive or
89 review committee of a medical care facility or of a professional society
90 or organization while such committee is engaged in the duties im-
91 posed by K.S.A. 1986 1988 Supp. 65-4923, and amendments thereto,
92 shall be compelled to testify in any civil, criminal or administrative
93 action, other than a disciplinary proceeding by the appropriate li-
94 censing agency, as to any committee discussions or proceedings.

95 (c) No person in attendance at any meeting of an impaired prov-
96 ider committee shall be required to testify, nor shall the testimony
97 of such person be admitted into evidence, in any civil, criminal or
98 administrative action, other than a disciplinary proceeding by the
99 appropriate state licensing agency, as to any committee discussions
100 or proceedings.

101 (d) Any person or committee performing any duty pursuant to
102 this act shall be designated a peer review committee or officer pur-
103 suant to K.S.A. 65-4915 and amendments thereto.

104 (e) *Nothing in this section shall limit the authority of state li-*
105 *censing agencies to review and copy when necessary the reports and*
106 *records of executive review committees designated to investigate re-*
107 *portable incidents under this act, and all such reports and records*
108 *shall be confidential and privileged and not subject to discovery,*
109 *subpoena or legal compulsion for their release to any person or*
110 *entity nor shall they be admissible in any civil or administrative*
111 *action other than a disciplinary proceeding by the appropriate state*
112 *licensing agency. In the event that a disciplinary action by a state*
113 *licensing agency is initiated, reports and records obtained by the*
114 *agency will not be subject to discovery, subpoena or legal compulsion*
115 *for their release to any person or entity except as they may be*
116 *needed by the agency or affected licensee of the agency. For purposes*
117 *of this act, reports and records subject to the privilege shall include*

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8 ~~But not be limited to, the minutes of all executive or other committees~~
 119 ~~and individuals designated to investigate reportable incidents and~~
 120 ~~otherwise improve the standards and quality of care in the facility,~~
 121 ~~organization or profession; investigative reports prepared for or re-~~
 122 ~~viewed by such committees; facility incident reports; patient records;~~
 123 ~~and any and all other reports and records prepared or reviewed~~
 124 ~~for purposes of improving the quality of patient care or investigating~~
 125 ~~reportable incidents pursuant to this act.~~

126 Sec. 3. K.S.A. 1988 Supp. 65-4922 ~~and 65-4925 are~~ hereby ^{is}
 127 repealed.

128 Sec. 4. This act shall take effect and be in force from and after
 129 its publication in the Kansas register.

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HOUSE BILL No. 2248

By Representative Snowbarger

2-7

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AN ACT concerning criminal procedure; relating to certain proceedings and hearings and arraignment and entering pleas conducted by two-way electronic audio-video communications; amending K.S.A. 22-2802, 22-3205, ~~22-3208 and 22-3210~~ and repealing the existing sections. and

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

Section 1. K.S.A. 22-2802 is hereby amended to read as follows: 22-2802. (1) Any person charged with a crime shall, at the persons's first appearance before a magistrate, be ordered released pending preliminary examination or trial upon the execution of an appearance bond in an amount specified by the magistrate and sufficient to assure the appearance of such person before the magistrate when ordered and to assure the public safety. If the person is being bound over for a felony, the bond shall also be conditioned on the person's appearance in the district court or by way of a two-way electronic audio-video communication as provided in K.S.A. 22-3205 and amendments thereto at the time required by the court to answer the charge against such person and at any time thereafter that the court requires. The magistrate may impose such of the following additional conditions of release as will reasonably assure the appearance of the person for preliminary examination or trial:

- (a) Place the person in the custody of a designated person or organization agreeing to supervise such person;
- (b) place restrictions on the travel, association or place of abode of the person during the period of release;
- (c) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody during specified hours.

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45 sureties who are residents of the state of Kansas, unless the mag-
46 istrate determines, in the exercise of such magistrate's discretion,
47 that requiring sureties is not necessary to assure the appearance of
48 the person at the time ordered.

49 (3) A deposit of cash in the amount of the bond may be made
50 in lieu of the execution of the bond by sureties.

51 (4) In determining which conditions of release will reasonably
52 assure appearance and the public safety, the magistrate shall, on the
53 basis of available information, take into account the nature and cir-
54 cumstances of the crime charged; the weight of the evidence against
55 the defendant; the defendant's family ties, employment, financial
56 resources, character, mental condition, length of residence in the
57 community, record of convictions, record of appearance or failure to
58 appear at court proceedings or of flight to avoid prosecution; the
59 likelihood or propensity of the defendant to commit crimes while
60 on release, including whether the defendant will be likely to
61 threaten, harass or cause injury to the victim of the crime or any
62 witnesses thereto; and whether the defendant is on probation o
63 parole from a previous offense at the time of the alleged commission
64 of the subsequent offense.

65 (5) The appearance bond shall set forth all of the conditions of
66 release.

67 (6) A person for whom conditions of release are imposed and
68 who continues to be detained as a result of the person's inability to
69 meet the conditions of release shall be entitled, upon application,
70 to have the conditions reviewed without unnecessary delay by the
71 magistrate who imposed them. If the magistrate who imposed con-
72 ditions of release is not available, any other magistrate in the county
73 may review such conditions.

74 (7) A magistrate ordering the release of a person on any con-
75 ditions specified in this section may at any time amend the order
76 to impose additional or different conditions of release. If the im-
77 position of additional or different conditions results in the detention
of the person, the provisions of subsection (6) shall apply.

(8) Statements or information offered in determining the condi-

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82 shall be received as evidence in any subsequent proceeding against
83 the defendant.

84 (9) The appearance bond and any security required as a condition
85 of the defendant's release shall be deposited in the office of the
86 magistrate or the clerk of the court where the release is ordered.
87 If the defendant is bound to appear before a magistrate or court
88 other than the one ordering the release, the order of release, together
89 with the bond and security shall be transmitted to the magistrate
90 or clerk of the court before whom the defendant is bound to appear.

91 (10) *Proceedings before a magistrate as provided in this section*
92 *to determine the release conditions of a person charged with a crime*
93 *including release upon execution of an appearance bond may be*
94 *conducted by two-way electronic audio-video communication between*
95 *the defendant and the courtroom in lieu of personal presence of the*
96 *defendant or defendant's counsel in the courtroom in the discretion*
97 *of the court. The defendant may be accompanied by the defendant's*
98 *counsel. The defendant shall ~~have the~~ right to be personally present*
99 *in the courtroom during such proceeding if the defendant so requests.*

_____ be informed of the defendant's
Exercising
→ The right to be present shall in no way
prejudice the defendant.

100 Sec. 2. K.S.A. 22-3205 is hereby amended to read as follows:
101 22-3205. (a) Arraignment shall be conducted in open court and shall
102 consist of reading the complaint, information or indictment to the
103 defendant or stating to ~~him~~ *the defendant* the substance of the charge
104 and calling upon ~~him~~ *the defendant* to plead thereto. ~~He~~ *The de-*
105 *fendant* shall be given a copy of the indictment or information before
106 ~~he~~ *the defendant* is called upon to plead. *Except as provided in*
107 *subsection (b), if the crime charged is a felony, the defendant must*
108 *be personally present for arraignment; if a misdemeanor, he may*
109 *with the approval of the court, the defendant may* appear by counsel.
110 The court may direct any officer who has custody of the defendant
111 to bring ~~him~~ *the defendant* before the court to be arraigned.

112 (b) *Arraignment may be conducted by two-way electronic audio-*
113 *video communication between the defendant and the courtroom in*
114 *lieu of personal presence of the defendant or the defendant's counsel*
115 *in the courtroom in the discretion of the court. The defendant may*
116 *be accompanied by the defendant's counsel, ~~and may enter a plea,~~*

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entering a plea if the defendant so requests.

Sec. 3. K.S.A. 22-3208 is hereby amended to read as follows:

(1) Pleadings in criminal proceedings shall be the complaint, information or indictment, the bill of particulars when ordered, and the pleas of not guilty, guilty or with the consent of the court, *nolo contendere*. All other pleas, demurrers and motions to quash are abolished and defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief.

(2) Any defense or objection which is capable of determination without the trial of the general issue may be raised before trial by motion.

(3) Defenses and objections based on defects in the institution of the prosecution or in the complaint, information or indictment other than that it fails to show jurisdiction in the court or to charge a crime may be raised only by motion before trial. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. Lack of jurisdiction or the failure of the complaint, information or indictment to charge a crime shall be noticed by the court at any time during the pendency of the proceeding.

(4) The motion to dismiss shall be made at any time prior to arraignment or within 20 days after the plea is entered. The period for filing such motion may be enlarged by the court when it shall find that the grounds therefor were not known to the defendant and could not with reasonable diligence have been discovered by ~~him~~ *the defendant* within the period specified herein. A plea of guilty or a consent to trial upon a complaint, information or indictment shall constitute a waiver of defenses and objections based upon the institution of the prosecution or defects in the complaint, information or indictment other than it fails to show jurisdiction in the court or to charge a crime.

(5) A motion before trial raising defenses or objections to prosecution shall be determined before trial unless the court orders that

Exercising
The right to be present shall in no way prejudice the defendant.

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156 (6) If a motion is determined adversely to the defendant he, *such*
157 *defendant* shall then plead if he *such defendant* had not previously
158 pleaded. A plea previously entered shall stand. If the court grants
159 a motion based on a defect in the institution of the prosecution or
160 in the complaint, information or indictment, it may also order that
161 the defendant be held in custody or that his *the defendant's* ap-
162 pearance bond be continued for a specified time not exceeding one
163 day pending the filing of a new complaint, information or indictment.

164 (7) Any hearing conducted by the court to determine the merits
165 of any motion may be conducted by two-way electronic audio-video
166 communication between the defendant and defendant's counsel in
167 lieu of personal presence of the defendant and defendant's counsel
168 in the courtroom in the discretion of the court. The defendant shall
169 ~~have the right to be personally present in the courtroom during~~
170 ~~such hearing if the defendant so requests~~

be informed of the defendant's
Exercising
The right to be present shall in no way
prejudice the defendant.

171 Sec. 4. K.S.A. 22-3210 is hereby amended to read as follows:
172 22-3210. (a) Before or during trial a plea of guilty or *nolo contendere*
173 may be accepted when.

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

176 (2) in felony cases the court has informed the defendant of the
177 consequences of the plea and of the maximum penalty provided by
178 law which may be imposed upon acceptance of such plea; and

179 (3) in felony cases the court has addressed the defendant per-
180 sonally, *or addressed the defendant by two-way electronic audio-*
181 *video communication as provided in K.S.A. 22-3205 and amendments*
182 *thereto* and determined that the plea is made voluntarily with un-
183 derstanding of the nature of the charge and the consequences of the
184 plea; and

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

186 (b) In felony cases the defendant must appear and plead per-
187 sonally, *or plead by two-way electronic audio-video communication*
188 *as provided in K.S.A. 22-3205 and amendments thereto* and a ver-
189 batim record of all proceedings at the plea and entry of judgment

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

198 Sec. 5. K.S.A. 22-2802, 22-3205, ~~22-3208 and 22-3210~~ are hereby and
199 repealed.

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

H. J. 3/2/89
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