Approved March 5, 1990
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Michael R. O'Neal, Chairperson, at 3:30 xx.m./p.m. on February 20, 1990 in room 313-S of the Capitol.

All members were present except:

Representatives Peterson and Sebelius, 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:

Attorney General Robert T. Stephan
Betty Bomar, Crime Victims Compensation Board
Representative Joan Adam
Fred Loganbill, Director, Offender/Victim Ministries' Victim-Offender Reconciliation Program, Newton, submitted testimony
James McHenry, Executive Director, Kansas Child Abuse Prevention Council, submitted testimony
Representative Barbara Lawrence
Judge Karen M. Humphreys, Wichita, submitted testimony
Barbara Schmidt, Director of Victim Offender Mediation Services, Wichita
Melissa Ness, Director of Advocacy, Kansas Children's Service League
Bruce Linhos, Kansas Child Abuse Prevention Council
Robert C. Barnum, Commissioner, Youth Services, Social and Rehabilitation Services

HEARING ON HB 2734 Crime victims' compensation board; allowing victims of hit and run accidents be compensated; allowing victims over 65 collect sums over $100; deleting household exclusion

Attorney General Robert T. Stephan testified in support of HB 2734 which will strengthen measures to assist victims of violent crimes. Victims of hit and run accidents should be allowed compensation. He also said the domestic violence exclusion now in existence should be deleted. The bill also includes a provision to waive the $100 economic loss for persons 60 years or older, see Attachment I.

Betty Bomar, Crime Victims Compensation Board, informed the Committee the three amendments to the Compensation Act in HB 2734 have been unanimously endorsed by the Victims' Rights Task Force. She said presently hit and run victims are not eligible for compensation due to the fact that the offender is not known. The amendment that deletes the "family exclusion" provision insures that the State of Kansas maintains its eligibility for federal funds under the Victims of Crime Act of 1984 and as amended in 1988. The projected loss of federal funds for fiscal year 1991, if the exclusion is not deleted, is approximately $141,000 and for fiscal year 1992, $490,000. The provision that insures persons 60 years or older would not have to meet the $100 economic loss requirement addresses the needs of those who are on fixed incomes and insures that they do not have to utilize a deductible on their insurance for the purpose of being a victim of a violent crime, see Attachment II.

Discussion was held on the language in lines 22 through 28 on page 2. Ms. Bomar said the Attorney General's office will prepare an amendment to clarify the language on these lines for the Committee to consider.

The hearing was closed on HB 2734.

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/p.m. on February 20, 1990.

HEARING ON HB 2692 Court ordered mediation for juvenile offenders

Representative Joan Adam testified HB 2692 allows the judge the discretion of requiring the juvenile offender to participate in mediation. The cost of the mediation can be paid by the county or assessed to the offender. The mediator assists the parties in developing a plan to recover losses sustained by the victim and promotes offender accountability. She stressed that the program is strictly voluntary. Attachment III

Fred Loganbill, Director, Offender/Victim Ministries' Victim-Offender Reconciliation Program, Newton submitted testimony in which he stated that victim-offender mediation plays a uniquely significant and positive role in the criminal justice system as it meets the needs of both victims and offenders, see Attachment IV.

James McHenry, Executive Director, Kansas Child Abuse Prevention Council, submitted testimony supporting HB 2692, see Attachment V.

Representative Barbara Lawrence presented the testimony of Judge Karen M. Humphreys of Wichita. Judge Humphreys stated in her testimony the benefits of mediation in the context of youthful unemployable offenders is very real and she strongly supported HB 2692, see Attachment VI

Barbara Schmidt, Director of Victim Offender Mediation Services, Wichita, testified on behalf of HB 2692 as it pertains to the use of mediation between juvenile offenders and their victims. Victim/offender mediation is designed to provide an opportunity for a juvenile offender and his victim to talk to each other about the offense and to negotitate a mutually acceptable restitution agreement, see Attachment VII.

Melissa Ness, Director of Advocacy, Kansas Children's Service League, expressed support for providing the court with the option of ordering mediation for the juvenile offender and his or her parents. The Kansas Children's Service League has a Parent-Adolescent Mediation Service Program that would be available if HB 2692 is passed, see Attachment VIII.

Roxanne Emmert-Davis, Mediation Specialist and Coordinator, Parent-Adolescent Mediation Program, Kansas Children's Service League, explained the Parent-Adolescent Mediation Program that is conducted through the Topeka District office of the Kansas Children's Service League. She said mediation and other forms of alternative dispute resolution for parents and adolescents may not currently be readily available across the state. However, the expertise exists in Kansas to support implementation of programs similar to the Parent-Adolescent Mediation Program in Topeka, see Attachment IX.

Bruce Linhos, Kansas Child Abuse Prevention Council, testified in support of HB 2692. He said the bill appears to open up some additional options for courts in dealing with juvenile offenders. Mediation and house arrest could effectively offer communities alternatives to the institutionalization of youthful offenders, see Attachment X.

Robert C. Barnum, Commissioner, Youth Services, Social and Rehabilitation Services, testified in support of HB 2692. He said the bill adds house arrest and family mediation to the choices available to the court in the disposition of juvenile offender cases. The bill also allows counties to require the parents of a juvenile offender to pay the cost of the house arrest program, see Attachment XI.

The hearing on HB 2692 was closed.

The Committee meeting was adjourned at 5:20 p.m. The next meeting will be Wednesday, February 21, 1990, at 3:30 p.m. in room 313-S.

GUEST LIST

COMMITTEE: HOUSE JUDICIARY

DATE: Feb. 20, 1990

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
KATHLEEN McMAHON	STATEHOUSE 265-E	GOV. OFFICE
Galen Davis	"	"
Wanda Stewart	609 Random	MADD ; USD 490
Stacy Hoogstraten	TOPEKA	A.G.'s VICTIM TASK FORCE MADD, KANSAS
Jo Anne Emmert-Davis	Topeka	Kansas Children's Service League - Parent-Adol. mediation
Jim Clark	Topeka	KCDAA
Barbara Schmidt	Wichita	Victim Offender Mediation Services
PATRICIA HENSHALL	TOPEKA	OJA
[illegible]	Topeka	Crime Victims Comp.
Juliene Maska	Topeka	A.G.
Rich Sand	Hays	ASK
Melissa Rolling	Lawrence	KU
Jon Miller	Topeka	SRS/ADAS
Dr. Donald L. Blazicek	Wichita	Wichita St. Univ.
RG Frey	TOPEKA	KTLA
[illegible]	"	"
Linda J. Fund	Topeka / Landon SOB	D of A / State

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
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TESTIMONY OF
ATTORNEY GENERAL ROBERT T. STEPHAN
BEFORE THE HOUSE JUDICIARY COMMITTEE
FEBRUARY 20, 1990
RE: HOUSE BILL 2734

Mr. Chairman and Members of the Committee:

In February 1988, I formed a 50-member Victims' Rights Task Force. The purpose of this Task Force was to insure that the rights and needs of Kansas crime victims are not neglected. Thanks to your efforts last year, the most comprehensive package of crime victims' rights legislation in Kansas history was enacted.

Kansas' first Crime Victims' Bill of Rights gave victims the right to appear and to be heard through the criminal justice process. The amount of victim compensation increased dramatically. In Fiscal Year 1989, $621,126 in claims were awarded, and the projected amount of claims to be issued in Fiscal Year 1990 is $1,327,500. The Crime Victims Compensation Board is projected to receive approximately 970 claims this year, compared to 555 claims received in Fiscal Year 1989. The Crime Victims' Assistance Fund provided 34 victim service organizations with a total of $333,424 in grant funds. Also, the Office of Attorney General now has a statewide Victims' Rights Coordinator and a toll-free

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Attachment I

hotline number, 1-800-828-9745, to assist crime victims with information.

My Victims' Rights Task Force continues to look at the continuing needs of crime victims. I strongly urge the Committee's support for House Bill 2734 which will strengthen measures to assist victims of violent crimes. Currently, only victims of DUI and those who have been intentionally hit by a motor vehicle are eligible for compensation. I believe victims of hit and run accidents should also be allowed compensation. Offenders of hit and run crimes may never be found but their victims should be assisted.

Also, I believe the domestic violence exclusion now in existence should be deleted. This is not only being mandated by the federal Victims of Crime Office from which the Crime Victims Compensation Board receives funds, but also because all victims of violent crime should be included to receive compensation whether or not a member of the family was the offender.

The final change includes a provision to waive the $100 economic loss for persons 60 years or older. This would address persons who are on a fixed income and would prevent them from having to use their own money because they were a crime victim.

The fiscal impact of these changes to the Crime Victims Compensation Fund would be minimal. I urge the Committee's support of these issues. (Introduce Betty Bomar, Director

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of the Crime Victims Compensation Board for more detailed information).

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Attachment I

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TESTIMONY OF
DIRECTOR BETTY BOMAR, CRIME VICTIMS COMPENSATION BOARD
ON BEHALF OF ATTORNEY GENERAL ROBERT T. STEPHAN
BEFORE THE HOUSE JUDICIARY COMMITTEE
FEBRUARY 20, 1990
RE: HOUSE BILL 2734

Mr. Chairman and Members of the Committee:

I am Betty Bomar, Director of the Crime Victims Compensation Board and appear this afternoon on behalf of the Board relative to its request for three amendments to the Compensation Act as reflected in House Bill 2734. These three amendments have been unanimously endorsed by the Victims' Rights Task Force.

<u>First, Page 2 - Line 27 - Hit and Run</u>:

This request is based on the fact that victims of hit and run incidents are presently not eligible for compensation due to the fact that the offender is not known. The present statute does compensate victims of DUI and those who have been intentionally hit by a motor vehicle. It seems logical to the Board that victims of hit and run should not be penalized due to the fact that the offender is not known to law enforcement officials, and thus, the victim is not eligible for compensation. Last year we turned down 2 applicants because they fell under this provision.

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Attachment II

Those victims who are found to be victims of an "accidental" incident would continue to be ineligible for compensation.

<u>Second, Page 3 - Lines 34 through 39 - Family Exclusion</u>:

This amendment deletes the "family exclusion" provision and insures that the State of Kansas maintains its eligibility for federal funds under the Victims of Crime Act of 1984 and as amended in 1988.

The Victims of Crime Act is now requiring that compensation programs must offer the same kind and levels of benefits to victims of domestic violence as it does to other victims. The same eligibility requirements applied to other victims must be used in evaluating domestic violence claims, and no special requirements not applicable to other victims can be used to deny compensation to domestic violence victims. Denials cannot be based solely on family relationship and the fact that the victim and offender share a residence, either at the time of the crime or the award. Denial can be based, however, on a determination that the offender will be unjustly enriched. The determination of what constitutes unjust enrichment must be arrived at through rules and regulations, policy guidelines or a general statement.

It is the Victim of Crime's contention that with the "family exclusion" included in the Act, there appears that a certain class of victim is categorically denied compensation. Reliance on "interest of justice" as provided in the present

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Kansas statute provides no assurance that the waiver will be used for domestic violence victims, or guidance as to circumstances in which it can be used.

The federal guidelines (a copy is attached for your information) were not published in the Federal Register until May 18, 1989. Until that time, we were of the opinion that the provision "interest of justice" would be adequate to insure that Kansas would maintain its eligibility relative to the domestic violence requirement. However, when the federal guidelines were published, we found that it was necessary to ask for the amendment reflected on page 3, lines 34 through 39.

It should further be pointed out that all claimants must continue to report the incident to law enforcement officials within 72 hours and further that they must cooperate with law enforcement officials. This continues to apply to victims of domestic violence.

The projected loss of federal funds for Fiscal Year 1991 if we do not delete this exclusion would be approximately $141,000; and for Fiscal Year 1992, $490,000. The federal funds are based on 40% of state monies paid out for claims during the federal fiscal year -- October 1 through September 30. Compliance must be met by October 1, 1990, in order for Kansas to continue to receive federal funds.

The fiscal impact of this amendment would certainly be less than what we would be losing in federal monies.

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att II

Third, Page 4 - Lines 27 and 28 - Exclusion from $100 Economic Loss for Person 60 Years of Age or Older:

This provision is to insure that persons 60 years or older would not have to meet the $100 economic loss requirement. The purpose of this amendment is to address the needs of those who are on fixed incomes, and provide that they not have to utilize a deductible on their insurance for the purpose of being a victim of a violent incident.

The fiscal impact would be minimal. The number of claimants who were 60 years of age or older during Fiscal Year 1989 comprised 1.7% of the claims awarded.

Thank you for your consideration of the Board's request. I will be glad to answer any of your questions.

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II. Program Requirements for Grants

In order to be eligible for awards under the Act, a State must submit the following information and assurances:

(1) A statement certified by the chief executive of the State, State Attorney General, or the Secretary of State, of the total amount of payments made to victims during the preceding fiscal year from State sources.

(2) The amount of such compensation paid for "property damage";

(3) The total amount and each source of revenue for the program;

(4) A certified copy of the State statute or other legal authority establishing the program.

For the purpose of requirement (1), the amount to be certified is only the amount actually spent by the program to compensate victims of crime. Amounts expended for administration of the program or other types of victim assistance are to be excluded, as are amounts appropriated or collected for the purpose of victim compensation which were not expended.

For the purpose of requirement (2), the term "property damage" is defined by the Act to exclude damage to eye-glasses, corrective lenses, dental devices, and prosthetic devices. Therefore, a State may include payments made for damage to those devices in the amount reported under requirement (1) as compensation to victims of crime. Compensation paid to reimburse crime victims for damages to, or loss of, any other real or personal property must be reported under requirement (2).

For the purpose of requirement (4), certification may be effected by the chief executive, the State Attorney General, or the clerk of the State legislature.

The requested information and assurances must be provided annually when the applicant State agency furnishes the Office for Victims of Crime with the total amount of payments to victims of criminal violence for the year requested.

III. State Grant Eligibility Requirements

State crime victims compensation programs which apply for a grant under the provisions of the Victims of Crime Act, as amended, must provide assurances of compliance with the requirements of section 1403(b) of the Act and these Guidelines. The definitions of terms used in section 1403(b) appear in section 1403(d): (New statutory language, from the 1988 amendments to the Victims of Crime Act, is italicized.)

(1) the term "property damage" does not include damage to prosthetic devices, *eyeglasses or other corrective lenses*, or dental devices;

(2) The term "medical expenses" includes, to the extent provided under the eligible crime victim compensation program, expenses for *eyeglasses and other corrective lenses*, for dental services and devices and prosthetic devices, and for services rendered in accordance with a method of healing recognized by the law of the State;

(3) the term "compensable crime" means a crime the victims of which are eligible for compensation under the eligible crime victim compensation program, and *includes driving while intoxicated and domestic violence*; and

(4) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States.

A State crime victim compensation program is eligible for a grant upon providing the necessary assurances, described in these guidelines, and documentation of compliance with the eight eligibility requirements in section 1403(b). The requirements are provided below with a discussion of each. New requirements, added by the 1988 amendments, are underlined and must be met by October 1, 1990.

Eligibility Requirements:

1. Such program is operated by a State and offers compensation to victims and survivors of victims of criminal violence, including drunk driving and domestic violence for

(A) Medical expenses attributable to a physical injury resulting from compensable crime, including expenses for mental health counseling and care;

(B) Loss of wages attributable to a physical injury resulting from a compensable crime; and

(C) Funeral expenses attributable to a death resulting from a compensable crime.

Discussion: The fundamental criterion of eligibility is an operational State-administered crime victim compensation program. Although an authorized program that has not actually paid out compensation benefits would be technically eligible under subsection 1403(b)(1), the program would not be entitled to any Federal funds because it had not awarded any benefits that the Federal government could match under subsection 1403(a)(1). Federal funds may not be used as "start-up" funds for a new State program.

The 1988 amendments require, as a new condition of eligibility, effective October 1, 1990, that a State must specifically include two categories of crime victims to those eligible for crime victims compensation. These two categories are victims of drunk driving and domestic violence. Exclusion of victims in these two categories will not be allowable in FY 1991. Victims of drunk driving and domestic violence, including spouse abuse, child abuse, and elder abuse, must be considered for crime victims compensation on the same basis or criteria as other victims of criminal violence.

Some States include the two categories of victims identified above as eligible applicants for compensation but within one or both of the categories the State statute provides specific exceptions, conditions, or limitations which serve to eliminate some victims of drunk driving and domestic violence from compensation awards. Some of the exceptions are indicated below:

- Payments of some but not all compensable expenses available to other victims;
- Denial of compensation to relatives of the perpetrator;
- Denial of compensation to victims living with the perpetrator;
- Requiring, in all drunk driving cases, that a conviction of the offender precede the awarding of compensation.

This short list is not exhaustive. It only serves to identify *some* of the exceptions. The exceptions, or any other specific exceptions, which have the effect of establishing a categorical exclusion for the two types of victims specifically mentioned in the amendments (domestic violence and drunk driving) will not be allowable effective October 1, 1990.

This does not mean that State discretion in determining whether to make an award, has been eliminated. It only means that a denial of compensation to any victim of drunk driving or domestic violence cannot be made solely on the basis of the type of crime, the category of benefits requested, the living arrangement of the offender and victim, or the fact that victim and perpetrator are related.

Domestic Violence

In considering awards of compensation to victims of domestic violence, States should apply the same standards that are applied to claims from victims of other violent crimes, regardless of the familial relationship of the offender and the victim or the fact that they share a residence. This means that the same level of benefits available to other victims should be available to domestic violence victims, and that the same eligibility requirements, such as timely reporting and cooperation with law enforcement, shall apply.

Subsection 1403(b)(7), another new provision of the Act effective October 1,

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1990, prohibits State programs from denying compensation because of the living arrangements of victim and perpetrator: "Such program does not, except pursuant to rules issued by the program to prevent unjust enrichment of the offender, deny compensation to any victim because of that victim's familial relationship to the offender, or because of the sharing of a residency by the victim and the offender; * * *" This means that unjust enrichment, as the basis for denying crime victims compensation must be based upon written rules issued by the State crime victims compensation program. Such rules cannot have the effect of denying most domestic violence victims of compensation. The rules relating to unjust enrichment should be applicable to all claims for compensation although it is recognized that domestic violence cases may have the greatest potential for unjust enrichment.

In general, programs must balance the goals of making compensation benefits available to domestic violence victims and preventing unjust enrichment of offenders. State programs are strongly encouraged to work with domestic violence coalitions and representatives to this end.

In developing rules, the States should consider the following:

A. Legal responsibilities of the offender to the victim under the laws of the state, and collateral resources available to the victim from the offender. For example, legal responsibilities may include court-ordered restitution or requirements for spouse and/or family support under the domestic or marital property laws of the State. Collateral resources may include insurance or pension benefits available to the offender to cover the costs incurred by the victim as a result of the crime. As with other crimes, victims of domestic violence should not be penalized when collateral sources of payment are not viable. For example, when the offender refuses to or cannot pay restitution or other civil judgments within a reasonable period of time or when the offender otherwise impedes direct or third party (i.e. insurance) reimbursements.

B. The extent to which the payment will substitute for money that the offender otherwise normally would expend for the benefit of the household or its members. Payments to victims of domestic violence which benefit offenders in only a minimal or inconsequential manner would not be considered unjust enrichment. To deny payments, in some instances, could serve to further victimize the claimant.

C. Consultation with social services and other concerned governmental entities, as well as with private organizations that support and advocate on behalf of domestic violence victims, is again encouraged.

Drunk Driving

Victims of drunk driving is the second category of victims specifically named in the 1988 amendment to section 1403(b)(1). Effective October 1, 1990, State programs will be required to offer compensation to victims and survivors of victims of "drunk driving."

Section 1403(d) defines the term "compensable crime" to include victims of those "driving while intoxicated." In these Guidelines, the Office for Victims of Crime does not make a distinction between the terms "drunk driving" and "driving while intoxicated." By using both terms in the amendments to section 1403 of the Victims of Crime Act, Congress signaled its interest in the inclusion of victims of drunk driving and driving under the influence of other intoxicants. States use these two terms, and others, in their statutes to denote offenses associated with the operation of a motor vehicle while chemically impaired. In addition, the specific classification of offenses is contingent upon the results of appropriate tests to determine intoxication or the influence of drugs or alcohol.

In FY 1991, States will be required to offer crime victims compensation to victims and survivors of victims of vehicular crashes attributable to drunk or intoxicated driving. Consistent with the practice of awarding compensation to all other victims of criminal violence on the basis of a law enforcement officer's investigation report establishing the commission of a crime, victims of drunk driving crashes should be considered for compensation on the same basis. It is acknowledged that occasionally a police report may not be sufficient to establish that a crime took place. With drunk driving cases, as with other cases, individual decisions will have to be made on the basis of available documentation.

2. Such program promotes victim cooperation with the reasonable requests of law enforcement authorities;

Discussion: This criterion requires that a State program promote victim cooperation with the reasonable requests of law enforcement authorities. The States may impose such reasonable requirements as they see fit, but must, at a minimum, require a victim to report the crime to the appropriate criminal justice agency and assist in the identification of the suspect.

3. Such State certifies that grants received under this section will not be used to supplant State funds otherwise available to provide crime victim compensation;

Discussion: The Act prohibits States from using the Federal funds made available under the Act to supplant State funds otherwise available for crime victim compensation. Section 1403(b)(3).

The nonsupplantation provision is fundamentally intended to assure that the States use the Federal funds provided under the Act to augment, not replace, otherwise available State funding for victim compensation. More specifically, the States may not decrease their financial commitment to crime victim compensation solely because they are receiving Federal funds for the same purpose.

4. Such program, as to compensable crimes occurring within the State, makes compensation awards to victims who are nonresidents of the State on the basis of the same criteria used to make awards to victims who are residents of such State;

Discussion: This provision is intended to assure that nonresidents of a State who are victimized in a State that has an eligible compensation program are provided the opportunity to apply for and receive the same compensation benefits that are available to residents of the State. The maintenance of reciprocal agreements with certain other States, or foreign compensation programs will not suffice to meet this criterion. Eligibilty for Federal funding will require the program to extend its coverage to all nonresidents victimized in the State.

5. Such program provides compensation to victims of Federal crimes occurring within the State on the same basis that such program provides compensation to victims of State crimes;

Discussion: This does not constitute a new eligibility requirement, rather it is a rewording of the requirement in a

STATE OF KANSAS

JOAN ADAM
REPRESENTATIVE, FORTY-EIGHTH DISTRICT
305 NORTH TERRACE
ATCHISON, KANSAS 66002-2526

COMMITTEE ASSIGNMENTS
MEMBER: ASSESSMENT AND TAXATION
JUDICIARY
TRANSPORTATION
RANKING MINORITY MEMBER: LEGISLATIVE, JUDICIAL, AND CONGRESSIONAL APPORTIONMENT

TOPEKA

HOUSE OF REPRESENTATIVES

TO: Chairman O'Neal and Members of the Judiciary Committee

I appreciate the opportunity to testify today on HB2692. I should first mention that the language in lines 1 to 3 on page 2 of this bill and lines 37 to 43 on page 3 is clean up language and not a part of the policy change I'll be discussing.

HB2692 proposes a change to the juvenile code which will allow the judge the discretion of requiring the juvenile offender to participate in mediation.

At the present time, at the dispositional hearing, the judge has some of the options listed on page 1 and the top of page 2--options such as SRS custody, probation, custody with a parent, or youth center placement. The judge may also order counseling. HB2692 will allow the court the option of requiring the juvenile to participate in mediation. As you see in line 23 of page 2, - the costs of the mediation would be assessed as counseling or any other court costs are assessed. They can be paid by the county or assessed to the offender.

Victim-offender mediation is a relatively new concept in dispute resolution. It involves a face to face meeting between the victim and offender in the presence of a trained mediator. Each session provides the opportunity for discussion of facts and feelings related to the criminal act and a reconciliation of differences. Most importantly the mediator assists the parties in developing a plan to recover losses sustained by the victim and promotes offender accountability.

One of the reasons the use of victim-offender mediation has been increasing is that it has positive results for both the victim and offender. The victim confronts the offender directly and receives his or her "pound of flesh". The offender is faced with the results of the crime he's committed: his crime is no longer an abstraction. Follow up studies have shown that both victim and offender have very positive responses to the mediation process.

I believe HB2692 will provide a small but very positive change to our juvenile system. I urge your favorable support.

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H. Jud Com.
Attachment III

OFFENDER / VICTIM MINISTRIES, Inc.

726 North Main
Newton, KS 67114
(316) 283-2038

Director: Ha . Regier
Program Associates:
Albert M. Gaeddert
Erwin C. Goering
Fred Loganbill
Lela Mae Sawatzky

TO: Members of the 1990 Session of the House Judiciary Committee

RE: House Bill #2692 Concerning Court-Ordered Mediation for Juvenile Offenders

Thank you, for this opportunity to speak in strong favor of this bill that would further provide for the use of victim-offender mediation in our Kansas courts, and in particular for cases involving juvenile offenders.

My name is Fred Loganbill and I am the director of Offender/Victim Ministries' Victim-Offender Reconciliation Program in Newton. Since 1982 it has been our program's experience in Harvey County of the Kansas Ninth Judiciary District, that victim-offender mediation plays, for appropriate cases, a uniquely significant and positive role in the criminal justice system as it meets the needs of both victims and offenders.

Through victim-offender mediation, offenders have the important opportunity to be accountable for their actions directly to the ones they have hurt--the victims. In meeting their victim face-to-face, offenders better understand the human consequences of their criminal actions. Offenders also have a chance to be heard themselves and to ask questions.

A recent offender, after hearing a victim wonder if the graffiti sprayed on his building had been directed at him in particular, felt better that he could say to the victim that though it was wrong and he was sorry, that it wasn't aimed at the victim or anyone personally.

And offenders have an opportunity to make up the losses with an agreement that they themselves can help shape. Mediation provides a way for offenders to be held geniunely accountable, experience justice, and also be invested in the outcome of their future.

For the victim, victim-offender mediation provides the chance to ask questions, share feelings and seek restoration--to the degree possible--of the losses they have experienced. After going through a mediation meeting, a recent victim remarked, "Now I can see why you have this program." The woman had asked questions, and had experienced a lessening of tensions because she had received more information about what happened and now felt greater closure to the event.

Speaking specifically to the bill before you, I wish to raise only one suggestion for clarification. It is that in reference to Section 1, (c), [Line 32-34 of page 2], a statement be included indicating the bill's intent that in court-ordered mediation, victim and offender be given the opportunity to negotiate, rather than the court first prescribe, the amount and kind of restitution to be ordered in the case. We have found in our experience this procedure works very well and is the most preferable for assisting the participants in creating satisfying outcomes and provide incentive for their involvement.

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Thank you for your attention, and I would be happy to speak to any questions or comments you may have.

Attachment IV

Kansas Child Abuse Prevention Council

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James McHenry, Ph.D.

February 12, 1990

Representative Joan Adam
Room 284-W
Statehouse
Topeka, Ks. 66612

Dear Representative Adam:

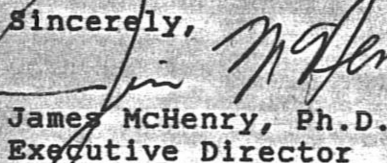
I would like to indicate KCAPC's interest in HB 2692, an act concerning juvenile offenders and relating to court-ordered mediation. The bill appears to open up some options to the courts for dealing with juvenile offenders and their parents. We believe the options suggested merit serious consideration.

We are aware that the Kansas Children's Service League has been operating a mediation program in Shawnee County for the past several years. Reports reaching us suggest the program has been well-received and that interest in it has been growing in other parts of the state. We have discussed including presentations by the program's director, Roxanne Emmert-Davis, in the regional meetings we conduct each year for our local coalitions and Parents Anonymous Chapters.

Since mediation programs usually need well-qualified volunteers in addition to program staff, we may be able to assist communities wishing to increase their understanding of volunteer recruitment, screening and training techniques. We do have practical experience in these areas, and we would be glad to be helpful in the event HB 2692 receives a favorable reception.

Thank you for bringing this important initiative to our attention. Please feel free to share this letter with your co-sponsors and members of the House Judiciary Committee.

Sincerely,



James McHenry, Ph.D.
Executive Director

cc. Helen Cochran
John Wine

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Attachment V

DISTRICT COURT
EIGHTEENTH JUDICIAL DISTRICT
SEDGWICK COUNTY COURTHOUSE
WICHITA, KANSAS
67203-3775

KAREN M. HUMPHREYS
JUDGE
DIVISION NUMBER FOURTEEN

February 19, 1990

The Honorable Michael R. O'Neal
Chairman of House Judiciary Committee
Kansas House of Representatives
State Capitol
Topeka, KS 66612

RE: House Bill No. 2692

Dear Chairman O'Neal and Committee Members:

I regret that the combination of weather and schedule conflicts prevents me from appearing before the Judiciary Committe to express my support for HB 2692. Please accept this letter in lieu of my appearance.

I had an opportunity to serve as a judge assigned to the juvenile department from January, 1988 through July, 1989. During that year and a half I utilized the provisions of KSA 38-1663 on a daily basis and numerous times in the course of each day's docket. A significant percentage of all adjudications (approximately 50%) of juvenile offenders fell into the age range of 10 through 14. As you well understand these youth are virtually without job skills and unlikely to be employed.

Nonetheless they are often adjudicated for offenses involving extensive damage and loss to property. Orders imposing restitution as conditions of probation are useless in many cases due to age, poverty and lack of job skills.

A very viable alternative in those circumstances was referral to the Victim Offender Mediation Service which involves direct interaction between victims and offenders. The participants, with appropriate supervision of a mediator, can share their positions and concerns and work toward a mutally acceptable resolution of the damage and loss. This agreement, in the form of a contract, then becomes part of the offender's probation condition. If noncompliance occurs, probation can be revoked.

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FEB 20 '90 11:07 FROM SEDGWICK CNTY KANSAS PAGE.002/003

The benefits of mediation in the context of youthful unemployable offenders are very real. The opportunity to listen to a victim's story and personally meet a victim is crucial to any meaningful program of changing attitudes and behavior on the part of offenders.

My experience with successfully mediated contracts for restitution convinced me that it served the best interests of all concerned; the victim, the offender, the parents. The ends of justice were also enhanced.

Mediation serves multiple purposes - none of which are negative. I strongly support the proposed amendments to KSA 38-1663 and urge your favorable passage of HB 2692.

Thank you for your consideration of these comments.

Very truly yours,

Karen M. Humphreys
District Judge

KMH/dlc

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Att VI

PREPARED FOR THE HOUSE JUDICIARY COMMITTEE

February 20, 1990

HOUSE BILL NO. 2692

I am Barbara Schmidt, Director of Victim Offender Mediation Services (VOMS) in Wichita from 1981 until last October when the program's services were temporarily suspended due to inadequate funding, despite the assistance received from Sedgwick County and numerous private sources. I am here today to testify in behalf of H.B. 2692 as it pertains to the use of mediation between juvenile offenders and their victims. I would like to first tell you briefly about victim/offender mediation, and then read several short excerpts from statements written by program participants.

(I will refer to the juvenile offenders as "he" throughout instead of he/she, not because I am being sexist, but because almost all of the offenders referred to VOMS were male.)

Victim/offender mediation is designed primarily to provide an opportunity for a juvenile offender and his victim to talk with each other about their offense and to negotiate a mutually acceptable restitution agreement. The agreement could include monetary repayment, direct work for his victim, community service, or some behavioral agreement. The face-to-face meeting is facilitated by a trained volunteer or staff member. The basic idea of victim/offender mediation is based on the concept that crime is the violation of one person by another person, not only the violation of a statute. Because it involves both parties, both are given an opportunity to take part in the resolution of the conflict.

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As I am sure you are aware, all-too-often juvenile property offenders assume that their illegal activities are of no significance to a "real person(s)". (Most referrals for victim/offender mediation involve property offenders although increasingly many personal injury cases are being referred to programs throughout the country and are being successfully resolved: Some of VOMS' most meaningful mediation sessions involved personal injuries, especially when they involved conflicts between two adolescents.) Property offenders often rationalize that no one was really hurt, that the victim could easily afford to replace whatever was stolen or damaged, or that his/her insurance would cover any monetary damages and/or loss. Other needs, if considered at all, are thought to be inconsequential. However, when face-to-face with his victim, an offender is made aware of his personal responsibility for his illegal behavior and the problems he created. He is also made aware that even in a property offense someone was really hurt--even if not physically. In a personal injury case, he learns of the emotional, as well as the physical, injury incurred.

In addition to becoming personally responsible for the problems created, he is given an opportunity to do whatever he is able to make things "more right". He is able to apologize, if he so desires, as well as help determine the amount and type of restitution that he should be responsible for. Through the apology, acceptance of the apology, and the restitution, an offender's self concept is often enhanced. As Judge Robert Morrison stated in the February, 1988 Centre City News:

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The offender gets a different perspective. He sees that this is a real live warm body that he has ripped off. Hopefully, they come away a better citizen later. If that occurs, the community reaps the benefit. . . They (the victim and offender) both feel a whole lot better after these meetings. . . A lot of these kids have low self-esteem , they feel like losers. Often they'll come away with higher self-esteem and the community reaps the benefit from the future conduct of that individual.

Victims also derive other benefits from victim/offender mediation in addition to having direct input regarding an appropriate type and amount of restitution. Too often, they feel twice victimized: First by an offender and then by the criminal/juvenile justice system they see as uncaring. (Representatives of the systems are busy dealing with offenders, and often are not able to provide enough services to victims, not because they do not want to, but because they do not have the time.) Victims are often not advised as adequately as they would like regarding the status of their cases and usually have questions regarding the offense that no one, except the perpetrator, can answer. Often, having a chance to ask questions such as "Why did you choose my house?" or "What would you have done had we come home when you were in our house?" enables a victim to achieve closure and put the offense behind him/herself. Victim/offender mediation assists in addressing these, and other, needs of victims.

Referrals can be made for victim/offender mediation at several different points in the criminal/juvenile justice system: as a diversion, between adjudication and disposition, or at the dispositional hearing. Most cases were referred to VOMS between the time a youth was adjudicated, or found responsible for the offense, and the dispositional or sentencing hearing. A representative of the program talked personally with the offender and his parent(s), as well as with the victim, to explain the program and determine if all parties were

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interested in meeting. (It is recognized that an offender is under considerable pressure to agree to meet if court officials so recommend; however, participation must be completely optional for victims. They must not be victimized again through coercion.) Assuming all agree to meet, a mediation session is arranged and facilitated by a trained volunteer or staff member. During the meeting, facts and feelings pertaining to the offense were discussed and a mutually acceptable restitution agreement, negotiated. Following the mediation session, a summary of VOMS' involvement in the case and the restitution agreement were sent to the court for review and approval. Compliance with the terms of the agreement became a major part of the terms of probation. (Compliance with agreements involving community service or direct work for victims were monitored carefully by VOMS, and the court advised of progress. Monetary payments were made through the court.) Lack of compliance with the terms of an agreement were considered probation violation and were handled accordingly by court officials.

Client satisfaction with the mediation process reinforced its importance. VOMS administered pre- and post-mediation session questionnaires to both victims and offenders. An analysis of several of the items revealed the following:

1. After talking individually with a mediator, 87% of both victims and offenders stated that they expected the mediation session would be helpful.

2. Following the mediation session, 92% of the victims and 93% of the offenders stated that the session was helpful.

3. Fifty-four percent of the victims and 89% of the offenders stated that they understood the crime better from the other person's perspective than before the mediation session.

4. Ninety-four percent of the victims and 84% of the offenders stated that, under similar circumstances, they would again agree to meet face-to-face with their victim/offender.

To further illustrate participants' opinions, I would like to read several excerpts from statements or letters. The first is from an elderly victim; the second, a young "VOMS graduate"; and the third, an offender's mother.

> When I first heard about the program, I felt angry that the criminal was being pampered, but I was wrong, for they also like to see justice done. These people know their job and . . . do exceptionally well. The one boy I didn't know, but the other was my next door neighbor. . . his family and mine were very good friends. I hope these young men found out early enough in life the "do's and don'ts" so their lives. . . at a later date, won't be ruined before they begin. Thank you for your time, and your concern to help make things better for all of us. A VICTIM.

> I thought that what I was doing was a quick way to have fun. It was never my intention to hurt anyone. . . As I progressed through the sessions I discovered that there were actually people behind my crime, and in one instance, I had come too close to actually hurting an innocent victim's son. I learned a lot about how to deal with society. . . A JUVENILE OFFENDER.

> Last October my son got into trouble. It was an extremely emotional time in our family. Through the court system, VOM contacted us and explained their program. Throughout this upsetting ordeal - VOM was a blessing - the workers are kind, considerate, and very much professional in what they say and do. They worked with the victim as well as with my son the offender and never once treated my son as a criminal. They were as concerned with his outcome as well as the outcome of the victim. I recommend this program highly. . . I only pray I won't ever need their services again. THE MOTHER OF A JUVENILE OFFENDER.

Victim/offender mediation is not only beneficial to its direct clients, but to us as tax paying community members as well. Although in most cases victim/offender mediation is not a substitute for incarceration, several juveniles referred to VOMS would have been sent to a residential facility had a referral to VOMS not been an option. Others, as alluded to in Judge Morrison's statement, may have commited additional offenses resulting in subsequent confinement had they not participated in a meeting with their victims. Each of the budgets

for most of the victim/offender mediation programs throughout the country are less than the amount of money required to confine two juvenile offenders in a state institution for the same period of time. Victim/offender mediation is not only humane, but is cost efficient.

However, victim/offender mediation is neither a panacea nor for all cases, victims, and offenders although it has been found to be helpful and to be greatly appreciated by numerous victims and offenders in over one hundred programs throughout the United States and Canada. The residents of Kansas deserve to have it promoted and programs available in jurisdictions throughout the state. Passage of House Bill 2692 could help make this a reality.

ANSAS CHILDREN'S SERVICE LEAGUE

...to protect and promote the well-being of children ...to strengthen the quality of family life
—since 1893

Wichita District & Central Office
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Topeka, KS 66605
(913) 232-0543

Western Kansas District Office
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Garden City, KS 67846
(316) 276-3232

Field Offices

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Manhattan, KS 66502
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Emporia
417 Commercial
P.O. Box 724
Emporia, KS 66801
(316) 342-8429

Testimony Before House Judiciary

RE: HB 2692 Relating to Court Ordered Mediation

By: Melissa Ness, Director of Advocacy/General Counsel

Kansas Children's Service League is a statewide not-for-profit community based service organization. The services we provide incorporate a broad array of child welfare services with primary emphasis on identifying and improving services to children and families which conserve the home.

We are here today to express our support for HB 2692 specifically, providing the court with the option of ordering mediation for the juvenile offender and his or her parents.

Kansas Children's Service League has a statewide base with District offices in Topeka, Wichita, Garden City and Kansas City in addition to satellite offices. In 1988 we served a total of 15,558 children, youth, and families. Our programs and services reflect community need and so vary in some instances from place to place. Those services include foster care, adoption services, juvenile assessment and intake, head start, pregnancy counseling, respite care, youth crisis center and family counseling.

The program we would like to highlight today however, is our Parent-Adolescent Mediation Service delivered through the Topeka office. This program will be one of the resources available should the change in HB 2692 go into effect.

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Member Child Welfare League of America
Accredited by The Council on Accreditation of Services for Families & Children

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Roxanne Emmert-Davis, LMSW
Mediation Specialist and Coordinator,
Parent-Adolescent Mediation Program
Kansas Children's Service League

Mediation is a voluntary method of dispute settlement that involves the use of neutral third parties to assist disputants in discussing their differences and reaching a mutually satisfactory settlement. The factors that make mediation unique are:

1. The mediators are neutral: they do not make decisions for disputants or tell them what to do;
2. Mediation helps disputants identify their problems and find the solutions that work for them;
3. Mediation focuses on the future and ways to prevent problems from recurring; and
4. Mediation can help people communicate in a positive way.

Mediation is not counseling, nor does it replace traditional counseling/therapy services. In the case of parent-adolescent mediation, it sometimes is a first step in helping families decide to pursue and take advantage of other needed services.

In the past two decades, mediation has gained recognition as an alternative method of dispute resolution for interpersonal conflict. Studies cite that mediation can prevent escalation of conflict into violence. Never, more than today, with overcrowded prisons, backlogged courts, and fracturing family units, has the need to learn to live together peacefully been more important.

The Parent-Adolescent Mediation Program is a program of the Topeka District Office of Kansas Children's Service League. Although this service is the only one of its kind in Kansas, other programs of a similar nature exist across the United States. Established in 1987 under a two-year federal grant from the Department of Health and Human Services, the program is designed to provide an early intervention option for parents and teens in conflict. Through mediation, more serious problems of family violence, delinquency, or placement outside the home may be avoided. The program focuses, in part, on trauncy and runaway behavior as signals of family conflict. Families are referred to the Parent-Adolescent Mediation Program by the schools, court services, law enforcement personnel, Social and Rehabilitation Services and other agencies. Or, families themselves can request services. The model of mediation used by Kansas Children's Service League is based on one developed and used successfully by the Center for Dispute Settlement in Washington, D.C. In this model, two

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mediators work together as a team. The service is short-term, usually consisting of two to three sessions. A goal of mediation is to help families devise a mutually satisfactory agreement which addresses specific needs of each family member who participates in the process. Services are provided by Kansas Children's Service League mediation staff and trained, experienced community volunteers. A feature of the mediation service is the ability to engage families quickly in the process while motivation to resolve problems is usually very high. Funding since the end of the federal grant has come largely from the United Way of Greater Topeka.

During the past two and one-half years, the Parent-Adolescent Mediation Program has provided mediation services to over 100 families. Many adolescents involved in mediation are runaways who are returning home. Issues often addressed in mediation include conflicts involving freedom and responsibility, inadequate communication patterns, discipline and school attendance/performance.

Follow-up studies conducted for Kansas Children's Service League Parent-Adolescent Mediation Program indicate significantly enhanced relationships over responses given before mediation. The follow-up studies indicate that having gone through the process, whether agreement was reached or not, contributed to improved family relationships and resolution of conflict.

Kansas Children's Service League supports House Bill 2692 which provides courts the option of referring juvenile offenders and their families for mediation. This option can provide families the opportunity to be actively involved in devising workable solutions that are tailor-made for their particular situation. The quick-response, short-term nature of mediation is unique and beneficial in that the service can be utilized while motivation is high to address critical issues facing families.

One issue that needs to be brought to the attention of the Committee is that, while mediation and other forms of alternative dispute resolution are gaining acceptance in Kansas and across the United States, the service as it is utilized with parents and adolescents may not currently be readily available across the state. However, the expertise exists in Kansas to support implementation of programs similar to the Parent-Adolescent Mediation Program in Topeka.

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Kansas Child Abuse Prevention Council

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TESTIMONY

House Judiciary Committee
February 15, 1990

I would like to offer the support of the Kansas Child Abuse Prevention Council for HB 2692.

This bill appears to us to open up some additional options for courts in dealing with juvenile offenders. We believe that both mediation and house arrest could effectively offer communities alternatives to the institutionalization of youthful offenders.

KCAPC is concerned that Kansas is nearing the end of it compliance period with the Federal Juvenile Justice and Delinquency Prevention Act which requires Kansas to stop holding Juveniles in adult jails. Over the past several years many more options have been developed to accomplish this purpose. Additional regional detention centers have been developed, several intake projects and attendant care programs have also been developed around the State. Each of these options are important. The addition of mediation and house arrest just furthers the goal of creating community based alternatives available to the courts.

In addition to seeing the intent of HB 2692 to serve as another leg in the creation of community based options to serve juvenile offenders, we believe that mediation is a service that has been successfully demonstrated in Shawnee county through the efforts of the Kansas Children's Service League. Likewise, we understand, house arrest is currently being successfully used on a limited basis in Rush County. Passage of this bill, we believe, would spread these options to the whole State.

The bottom line for KCAPC is that children should be served in their home community through the least restrictive and most effective method possible. We believe that while the options of mediation and house arrest will not be the alternative of choice for all juvenile offenders, it does represent another useful option in better serving this group.

We appreciate the opportunity to offer our support for HB 2692.

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H Jud Comm.

Department of Social and Rehabilitation Services
Winston Barton, Secretary

Testimony in Support of H.B. 2692
AN ACT CONCERNING J.O.s, RELATING TO COURT-ORDERED MEDIATION

(Mr. Chairman), Members of the Committee, I am appearing today in support of H.B. 2692, which amends the dispositional alternatives of the juvenile offender code, KSA 38-1663.

Background: The juvenile offender code enumerates the dispositional alternatives available to the court in seeking appropriate supervision of the juvenile offender.

This bill adds house arrest, as described in KSA 21-4603b, and family mediation to the choices available to the court in the disposition of juvenile offender cases. In addition, the bill allows counties to require the parents of a juvenile offender to pay the cost of the house arrest program.

Discussion: The criminal code was amended to allow judges to order some offenders to receive more intense supervision than simple probation would provide.

In the same fashion, many juvenile offenders do not need out-of-home placements but require daily supervision of their whereabouts. The addition of court operated house arrest to the dispositional section of the juvenile offender code opens the opportunity for closer in-home supervision. As KSA 38-1601 advises that placement be in the juvenile's home whenever possible, this bill would help keep some juvenile offenders in the home without increasing the risk of further offenses.

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H. Jud Com

Attachment XI

Action Requested: I urge your support of this bill.

Winston Barton
Secretary
Department of Social &
Rehabilitation Services
(913) 296-3271

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