

Approved March 15, 1990
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

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

7:00 a.m./~~p.m.~~ on March 2, 1990 in room 313-S of the Capitol.

All members were present except:

Representatives Moomaw 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:

DISCUSSION AND ACTION ON BILLS:

HB 2469 Income withholding for enforcement of support

The Committee discussed the amendments submitted by the Department of Social and Rehabilitation Services. They recommended that the bill apply only to type IV-D cases and that the effective date be changed to October 1, 1990, see Attachment I.

Representative Snowbarger moved and Representative Jenkins seconded to adopt the amendments
The motion passed.

A motion was made by Representative Jenkins to report, as amended, HB 2469 favorably for
passage. The motion was seconded by Representative Fuller. The motion passed.

HB 3042 Application of tort claims act to certain persons training inmates

The Committee discussed the amendment recommended by the Department of Corrections that would change the language from educational and vocational training to program services.

Representative Vancrum moved to amend line 32 by striking educational or vocational training
and inserting program services. Representative Jenkins seconded the motion. The motion passed.

Representative Vancrum moved to report HB 3042, as amended, favorably for passage. Representative
Jenkins seconded the motion. The motion passed.

HB 3041 Length of detention shortened from 48 hrs. to 24 hrs. for a juvenile offender

The Committee discussed the proposed amendment which would conform to federal regulation, see Attachment II.

Representative Solbach moved and Representative Jenkins seconded to adopt the proposed
amendment. The motion passed.

A motion was made by Representative Jenkins and seconded by Representative Fuller to report
HB 3041, as amended, favorably for passage. The motion passed.

HB 2752 Court allowed 30 days to issue warrant for arrest of defendant who did not meet conditions of probation.

Representative Walker moved to table HB 2752. Representative Buehler seconded the motion.
The motion failed.

Representative Solbach moved to report HB 2752 favorably for passage. Representative Adam
seconded the motion. The motion passed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 7:00 a.m./~~p.m.~~ on March 2, 1990

HB 2601 Acquisition of fee title by Secretary of Transportation within cities

Representative Solbach moved to table HB 2601. Representative Roy seconded the motion. The motion failed.

Representative Snowbarger moved to amend HB 2601 by striking lines 39 on page 1 through line 12 on page 2. Representative Vancrum seconded the motion. The motion failed.

The Committee discussed the Department of Transportation's amendment to delete on page 2, lines 13 through 32 regarding release of easements.

Representative Jenkins moved to delete on page 2, lines 13 through 32. Representative Vancrum seconded the motion. The motion passed.

Representative Solbach moved and Representative Hochhauser seconded to table HB 2601, as amended. The motion failed.

Representative Jenkins moved and Representative Fuller seconded to report HB 2601, as amended, favorable for passage. The motion passed.

HB 3007 Creating the crime of allowing a minor access to a loaded firearm

The Committee discussed reducing the penalty from a class D felony to a class E felony. The class D felony was based on Florida law. Representative Solbach suggested using HB 2898, Creating the crimes of reckless endangerment and aggravated reckless endangerment, further creating a civil cause of action, as an amendment to HB 3007. HB 2898 would make it a class D misdemeanor to point a firearm at another person.

Representative Fuller moved to amend HB 3007 by changing the class D felony to a class E felony on line 34. Representative Lawrence seconded the motion. The motion passed.

Representative Fuller moved to report HB 3007, as amended, favorably for passage. Representative Lawrence seconded the motion. The motion was withdrawn so another amendment could be offered.

Representative Sebelius moved to strike "or incidental to" on line 32. Representative Shriver seconded the motion. The motion passed.

Representative Whiteman moved to amend HB 2898 into HB 3007. Representative Solbach seconded the motion.

The motion was withdrawn with the agreement that a request would be made to refer HB 2898 to an exempt committee so that it can be considered at a later date.

Representative Fuller moved and Representative Lawrence seconded to report HB 3007, as amended, favorably for passage. The motion passed.

The Committee meeting adjourned at 8:30 a.m.

HOUSE BILL No. 2469

By Committee on Public Health and Welfare

2-21

3/2/90
Alfred Com
Attachment I

15 AN ACT concerning enforcement of support; relating to income
16 withholding; amending K.S.A. 23-4,106, 23-4,107, 23-4,110, 23-
17 4,113, 23-4,114 and 23-4,130 and repealing the existing sections.
18

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

20 Section 1. K.S.A. 23-4,106 is hereby amended to read as follows:
21 23-4,106. As used in K.S.A. 1985 Supp. 23-4,105 through 23-4,118:

22 (a) "Arrearage" means the total amount of unpaid support which
23 is due and unpaid under an order of for support, based upon the
24 due date specified in the order for support or, if no specific date is
25 stated in the order, the last day of the month in which the payment
26 is to be made. ~~If the order for support includes a judgment for~~
27 ~~reimbursement or for an arrearage accrued under a previously ex-~~
28 ~~isting order, an arrearage exists on the date the order for support~~
29 ~~is entered.~~

delete

equal to or greater than the amount of support payable
for one month

30 (b) "Income" means any form of periodic payment to an indi-
31 vidual, regardless of source, including but not limited to wages,
32 salary, trust, royalty, commission, bonus, compensation as an in-
33 dependent contractor, annuity and retirement benefits and any other
34 periodic payments made by any person, private entity or federal,
35 state or local government or any agency or instrumentality thereof.
36 "Income" does not include: (1) Any amounts required by law to be
37 withheld, other than creditor claims, including but not limited to
38 federal and state taxes, social security tax and other retirement and
39 disability contributions; (2) any amounts exempted by federal law;
40 (3) public assistance payments; and (4) unemployment insurance ben-
41 efits except to the extent otherwise provided by law. Any other state
42 or local laws which limit or exempt income or the amount or per-
43 centage of income that can be withheld shall not apply.

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44 (c) "Income withholding order" means an order issued under this
45 act which requires a payor to withhold income to satisfy an order
46 for support or to defray an arrearage.

47 (e) (d) "Obligee" means the person or entity to whom a duty of
48 support is owed.

49 (d) (e) "Obligor" means any person who owes a duty to make
50 payments under an order for support.

51 (e) (f) "Order for support" means any order of a court, or of an
52 administrative agency of another jurisdiction, authorized by law to
53 issue such an order, which provides for payment of funds for the
54 support of a child, or for maintenance of a spouse or ex-spouse living
55 with a child for whom an order of support is also being enforced,
56 and includes such an order which provides for modification or re-
57 sumption of a previously existing order; payment of an arrearage
58 accrued under a previously existing order; a reimbursement order,
59 including but not limited to an order established pursuant to K.S.A.
60 39-718a and amendments thereto; or an order established pursuant
61 to K.S.A. 23-451 *et seq.* and amendments thereto.

62 (f) (g) "Payor" means any person or entity owing income to an
63 obligor or any self-employed obligor.

64 (g) (h) "Public office" means any elected or appointed official of
65 the state or any political subdivision or agency of the state, or any
66 subcontractor thereof, who is or may become responsible by law for
67 enforcement of, or who is or may become authorized to enforce, an
68 order for support, including but not limited to the department of
69 social and rehabilitation services, court trustees, county or district
70 attorneys and other subcontractors.

71 (h) (i) "Title IV-D cases" means those cases required by part D
72 of title IV of the federal social security act (42 U.S.C. §651 *et seq.*),
73 as amended, to be processed by the department of social and re-
74 habilitation services under the state's plan for support enforcement.

75 Sec. 2. K.S.A. 23-4,107 is hereby amended to read as follows:
76 23-4,107. (a) Any new or modified order for support entered on
77 or after January 1, 1986, shall include a provision for the with-
78 holding of income to enforce the order of support. Unless the
79 order provides that income withholding will take effect im-
80 mediately, withholding shall take effect only if: (1) There is

or K.S.A. 1989 Supp. 39-718b and amendments thereto

(a) Any new or modified order for support entered on or after January 1, 1986, shall include a provision for the withholding of income to enforce the order for support. Except as otherwise provided in subsection (b) or (c), withholding shall take effect only if: (1) There is an arrearage in an amount equal to or greater than the amount of support payable for one month or, if a judgment is granted pursuant to K.S.A. 39-718a and amendments thereto or pursuant to K.S.A. 39-718b and amendments thereto, a lump sum due and owing; and (2) there is compliance with the requirements of subsections (d) and (h).

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82 an arrearage in an amount equal to or greater than the amount
83 of support payable for one month or, if a judgment is granted
84 pursuant to K.S.A. 39-718a and amendments thereto, a lump
85 sum due and owing; and (2) there is compliance with the re-
quirements of this section.

86 (b) If the court has issued an order for support, with or
87 without a conditional order requiring income withholding as
88 provided by subsection (a), the obligee or a public office may
89 apply for an order for withholding by filing with the court an
90 affidavit stating: (1) That an arrearage exists in an amount equal
91 to or greater than the amount of support payable for one month;
92 (2) that a notice of delinquency has been served on the obligor
93 in accordance with subsection (f) and the date and type of
94 service; (3) that the obligor has not filed a motion to stay service
95 of the income withholding order; and (4) a specified amount
96 which shall be withheld by the payor to satisfy the order of
97 support and to defray any arrearage. Upon the filing of the
98 affidavit, the court shall issue an order requiring the with-
99 holding of income without the requirement of a hearing,
100 amendment of the support order or further notice to the obligor.

101 For purposes of this subsection, an arrearage shall be com-
102 puted on the basis of support payments due and unpaid on the
103 date the notice of delinquency was served on the obligor.

104 ~~(d)~~ Except as otherwise provided in subsection (h) or (i), all new
105 or modified orders for support entered on or after January 1, 1990,
106 shall include a provision for the withholding of income to enforce
107 the order of support, and an income withholding order shall be
108 issued without further notice to the obligor specifying an amount
109 sufficient to satisfy the order for support and to defray any ar-
110 rearage. The income withholding order shall be issued regardless of
111 whether a payor subject to the jurisdiction of this state can be
112 identified at the time the order for support is entered.

113 (b) (1) Not less than seven days after the obligee or public office
114 has served a notice of intent to apply for an income withholding
order pursuant to subsection (f), the obligee or public office may
115 apply for an income withholding order by filing with the court an
116 affidavit stating: (1) The date that the notice was served on the
117

(b)

(j) or (k)

October

in title IV-D cases

(c) If the provisions of subsection (b) do not apply, the obligee or public office may file a motion requesting that an income withholding order be issued at the same time a new or modified order for support is entered, regardless of whether an arrearage exists. If the motion is granted, an income withholding order shall be issued without further notice to the obligor specifying an amount sufficient to satisfy the order for support and to defray any arrearage. The income withholding order may be issued regardless of whether a payor subject to the jurisdiction of this state can be identified at the time the order for support is entered.

(d)

(h)

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118 obligor and the manner of service; (2) that the obligor has not filed
119 a motion and to stay issuance of the income withholding order or,
120 if a motion to stay has been filed, the reason an income withholding
121 order must be issued immediately; (3) a specified amount to be
122 withheld by the payor to satisfy the order of support and to defray
123 any arrearage; and (4) ~~if subsection (h)(2) applies,~~ that the amount except in title IV-D cases
124 of the arrearage as of the date the notice to the obligor was prepared
125 was equal to or greater than the amount of support payable for one
126 month. In addition to any other penalty provided by law, the filing
127 of such an affidavit with knowledge of the falsity of a material
128 declaration is punishable as a contempt.

129 (2) Upon the filing of an affidavit pursuant to subsection ~~(b)(1),~~ (d)(1)
130 the income withholding order shall be issued without further notice
131 to the obligor, hearing or amendments of the support order. Payment
132 of all or part of the arrearage before issuance of the income with-
133 holding order shall not prevent issuance of the income withholding
134 order, unless the arrearage is paid in full and the order for support
135 does not include an amount for the current support of a person.
136 No affidavit is required if the court, upon hearing a motion to stay
137 issuance of the income withholding order or otherwise, issues an
138 income withholding order.

139 ~~(d)~~ An income withholding order issued under this section shall (e)
140 be directed to any payor of the obligor and shall require the payor
141 to withhold from any income due, or to become due, to the obligor
142 a specified amount sufficient to satisfy the order of support and to
143 defray any arrearage, subject to the limitations set forth in K.S.A.
144 1986 Supp. 23-4,109 and amendments thereto. The order shall in-
145 clude notice of and direction to comply with the provisions of K.S.A.
146 1986 Supp. 23-4,108 and 23-4,109, and amendments thereto.

147 ~~(d)~~ An order issued under this section shall Upon written (f)
148 request and without the requirement of further notice to the obligor,
149 the clerk of the district court shall cause a copy of the income
150 withholding order to be served on the payor and returned by the
151 officer making service in the same manner as an order of attachment. in any manner permitted for service of summons and petition
by article 3 of chapter 60 of the Kansas Statutes Annotated.

152 ~~(d)~~ An income withholding order issued under this section shall (g)
153 be binding on any existing or future payor on whom a copy of the
154 order is served and shall require the continued withholding of income

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155 from each periodic payment of income until further order of the
 156 court. If the obligor changes employment or has a new source
 157 of income after an income withholding order is issued by the
 158 court, the new employer or income source, if known, must be
 159 served a copy of the income withholding order. At any time
 160 following issuance of an income withholding order, the obligee, ob-
 161 ligor or public office may request service of a copy of the income
 162 withholding order on any payor without the requirement of prior
 163 further notice to the obligor.

164 ~~(f)~~ No sworn affidavit shall be filed with the court issuing (h)
 165 the support order pursuant to subsection (b) unless it contains
 166 a declaration that Except as provided in subsection (i), at any time (k)

167 following entry of an order for support the obligee or public office
 168 has served may serve upon the obligor a written notice of delin-
 169 quency because an arrearage exists in an amount equal to or
 170 greater than the amount of support payable for one month and
 171 that intent to apply for issuance of an income withholding order.

172 The notice was shall be served on the obligor by certified mail,
 173 return receipt requested, or in the manner for service of a summons
 174 pursuant to article 3 of chapter 60 of the Kansas Statutes Annotated
 175 at least seven days before the date the affidavit is filed. If service
 176 is by certified mail, a copy of the return receipt shall be attached
 177 to the affidavit. The notice of delinquency served on the obligor
 178 must state: (1) The terms of the support order and the total arrearage
 179 as of the date the notice of delinquency was prepared; (2) the
 180 amount of income that will be withheld; (3) that the provision for
 181 withholding applies to any current or subsequent payors payor; (4)
 182 the procedures available for contesting the withholding and that the
 183 only basis for contesting the withholding is a mistake of fact con-
 184 cerning the amount of the support order, the amount of the ar-
 185 rearage, the amount of income to be withheld or the proper identity
 186 of the obligor; (5) the period within which the obligor must file a
 187 motion to stay service issuance of the income withholding order and
 188 that failure to take such action within the specified time will result
 189 in payors' being ordered to begin withholding; and (6) the action
 190 which will be taken if the obligor contests the withholding.

191 In addition to any other penalty provided by law, the filing

, provided that the case is a title IV-D case or that the
 requirement of subsection (a)(1) has been met.

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192 of an affidavit with knowledge of falsity of the declaration of
193 notice is punishable as a contempt. The obligor may, at any time,
194 waive in writing the notice required by this subsection.

195 ~~(g)~~ On request of an obligor, the court shall issue a withholding (i)
196 order which shall be honored by a payor regardless of whether there
197 is an arrearage. *Nothing in this subsection shall limit the right of*
198 *the obligee to request modification of the income withholding order.*

199 ~~(h)~~ (1) Before entry of a new or modified order for support, a (j) The provisions of this subsection apply only in
200 party may request that no income withholding order be issued pur- title IV-D cases.
201 suant to subsection ~~(a)~~ if notice of the request has been served on (b)

202 all interested parties and: (A) The party demonstrates, and the court
203 finds, that there is good cause not to require immediate income
204 withholding, or (B) a written agreement among all interested parties
205 provides for an alternative arrangement. (j)(1)

206 (2) Notwithstanding the provisions of subsection ~~(h)(1)~~, the court (d)
207 shall issue an income withholding order when an affidavit pursuant if an arrearage exists in an amount equal to or greater
208 to subsection ~~(b)~~ is filed, ~~if the obligor does not file a motion to~~ than the amount of support payable for one month.
209 ~~stay issuance of the income withholding order.~~ , there is no arrearage or the arrearage is less than the

210 (3) If an affidavit pursuant to subsection ~~(b)~~ is filed and the amount of support payable for one month,
211 obligor files a motion to stay issuance of the income withholding (d)

212 order based upon the court's previous finding of good cause not to
213 require immediate income withholding pursuant to subsection ~~(h)(1)~~, (j)(1)
214 the obligor must demonstrate the continued existence of good cause.

215 Unless the court again finds that good cause not to require immediate
216 income withholding exists, the court shall issue the income with-
217 holding order. , there is no arrearage or the arrearage is less than the

218 (4) If an affidavit pursuant to subsection ~~(b)~~ is filed and the amount of support payable for one month,
219 obligor files a motion to stay issuance of an income withholding (d)

220 order based upon a previous agreement of the interested parties for
221 an alternative arrangement pursuant to subsection ~~(h)(1)~~, the court (j)(1)
222 shall issue an income withholding order, notwithstanding any pre-
223 vious agreement, if the court finds that:

- 224 (A) The agreement was not in writing;
- 225 (B) the agreement was not approved by all interested parties;
- 226 (C) the terms of the agreement or alternative arrangement are
227 not being met;
- 228 (D) the agreement or alternative arrangement is not in the best

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interests of the child; or

(E) the agreement or alternative arrangement places an unnecessary burden upon the obligor, obligee or a public office.

(5) The procedures and requirements of K.S.A. 23-4,110 and amendments thereto apply to any motion pursuant to subsection

~~(h)(3) or (h)(4).~~ (j)(3) or (j)(4)

~~(i) (1) An ex parte interlocutory order for support may be enforced~~ (k)

~~pursuant to subsection (a) only if the obligor has consented~~ (b) or (c)

to the income withholding in writing.

(2) An ex parte interlocutory order for support may be enforced

~~pursuant to subsection (b) only if 10 or more days have elapsed~~ (d)

since the order for support was served on the obligor.

(3) Any other interlocutory order for support may be enforced by income withholding pursuant to this act in the same manner as a final order for support.

(4) No bond shall be required for the issuance of an income withholding order to enforce an interlocutory order pursuant to this act.

Sec. 3. K.S.A. 23-4,110 is hereby amended to read as follows:

23-4,110. (a) An obligor may prevent an income withholding order issued under this section from being served on the payor by filing with the court a motion to stay service of the withholding order and serving a copy of the motion on the obligee or public office filing the notice of delinquency within seven days after being served with the notice of delinquency. The A motion to stay issuance of the income withholding order must be filed with the court and a copy served on the obligee or public office within seven days after service on the obligor of a notice pursuant

~~to subsection (f) of K.S.A. 23-4,107 and amendments thereto. Except~~ (h)

~~as provided in subsection (h) of K.S.A. 23-4,107 and amendments~~ (j)

thereto, the grounds for obtaining the stay shall be limited to a showing of a mistake of fact in the notice of delinquency concerning the amount of the order for support, the amount of the arrearage, the amount of income to be withheld or the proper identity of the obligor. If the obligor files a motion to stay service of the income withholding order, the obligor The motion shall specify the mistake of fact alleged to be the basis for the motion.

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266 If the amount of the order for support or the amount of the arrearage
 267 is challenged, the obligor ~~motion~~ shall specify the amount of the
 268 order for support or the arrearage which is uncontested. *In addition*
 269 *to any other penalty provided by law, filing a motion to stay with*
 270 *knowledge of the falsity of any material declaration or without spec-*
 271 *ifying the uncontested amount of the order for support or the ar-*
 272 *rearage, when required, is punishable as a contempt.*

273 (b) If the obligor files a motion to stay service of the with-
 274 holding order, ~~the~~ The court, upon notice of the date, time and
 275 place of hearing to the obligor and the obligee or public office ~~that~~
 276 filed the affidavit, shall hear the matter within 14 days after the
 277 obligor's motion to stay issuance of the income withholding order
 278 is filed with the court. The court shall enter an order granting
 279 or denying relief, amending the notice of delinquency or oth-
 280 erwise resolving the matter. If the court finds that an arrearage
 281 existed when the notice of delinquency was served in an
 282 amount at least equal to one month's support obligation, the
 283 court shall order immediate service of the order for withhold-
 284 ing. If the court cannot promptly resolve any dispute over the
 285 total amount of the arrearage, the court shall order immediate
 286 service of the order for withholding if the undisputed arrearage
 287 is at least equal to the amount of one month's support obligation
 288 and may continue the hearing on the disputed arrearage. In
 289 any case, the court must notify

290 (c) (1) If a motion to stay has been filed and the identity of the
 291 obligor is not contested, the obligee, obligor or public office may
 292 apply for immediate issuance of an income withholding order pur-
 293 suant to subsection ~~(b)~~ of K.S.A. 23-4,107 and amendments thereto (d)
 294 pending resolution of the contested issues. The affidavit shall specify
 295 an amount sufficient to satisfy the order for support or the arrearage
 296 only to the extent that the amount of the order for support or the
 297 arrearage is not contested. A copy of the affidavit shall be served
 298 on the obligor.

299 (2) Whenever an affidavit has been filed as provided in this
 300 subsection, the court shall immediately issue the income withholding
 301 order.

302 (d) If the court cannot promptly resolve all issues, the court may

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304 *continue the hearing on the unresolved issues, provided that within*
 305 *45 days of the date the notice was served on the obligor the court*
 306 *notifies the obligor and the obligee or public office of whether or*
 307 *not the withholding is to occur within 45 days of the date the*
 308 *obligor was served the notice of delinquency. If the court up-*
 309 *holds the issuance of a withholding order in a contested case, the*
 310 *court must include in its order notice of the time within which the*
 311 *withholding will begin and the information given to the payor as*
 312 *required in K.S.A. 1985 Supp. 23-4,108 and 23-4,109, and amend-*
 313 *ments thereto.*

313 Sec. 4. K.S.A. 23-4,113 is hereby amended to read as follows:
 314 23-4,113. (a) If an obligee is receiving income withholding payments
 315 under this act, the obligee shall give written notice of any change
 316 of address, within seven days after the change to the public office,
 317 clerk of the district court or court trustee through which the obligee
 318 receives the payments.

319 (b) If support rights are assigned to the secretary of social and
 320 rehabilitation services pursuant to K.S.A. 39-709 and amendments
 321 thereto, the obligee shall serve a copy of any notice of delin-
 322 quency filed pursuant to this act on the secretary of social and
 323 rehabilitation services a copy of any order for support providing for
 324 immediate income withholding or any notice of intent to apply for
 325 issuance of an income withholding order. If current support or all
 326 or a part of the arrearage remains assigned to the secretary of social
 327 and rehabilitation services pursuant to K.S.A. 39-709 and amend-
 328 ments thereto and subject to K.S.A. 60-2403 and amendments
 329 thereto and the secretary has on file with the court a notice of
 330 assignment as provided for in K.S.A. 39-754 and amendments
 331 thereto, payments from the payor shall be disbursed as the notice
 332 of assignment directs. When the secretary of social and rehabilitation
 333 services is no longer authorized to receive payments for the obligee,
 334 the secretary shall provide written notice to the court trustee or
 335 clerk of the court disbursing the payments to redirect all or part of
 336 the payments to the obligee.

337 (c) The obligee or public office shall provide written notice to
 338 the court trustee or clerk of the court of any other support payments
 339 made, including but not limited to a setoff under federal or state

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340 law, a collection of unemployment compensation pursuant to K.S.A.
341 44-718 and amendments thereto or a direct payment from the ob-
342 ligor. The clerk of the court issuing the support order or other
343 designated person shall record the amounts reported in such notices.

344 (d) Any public office and clerk of court which collects, disburses
345 or receives payments pursuant to orders for withholding shall main-
346 tain complete, accurate and clear records of all payments and their
347 disbursement. Certified copies of payment records maintained by a
348 public office or clerk of court shall, without further proof, be admitted
349 into evidence in any legal proceedings which concern the issue of
350 support.

351 Sec. 5. K.S.A. 23-4,114 is hereby amended to read as follows:
352 23-4,114. An obligor whose income is being withheld or who has
353 been served with a notice of delinquency under this act of intent
354 to apply for issuance of an income withholding order shall provide
355 written notice to the obligee, the public office, or the clerk of court
356 of any new payor or change of address, within seven days of the
357 change.

358 Sec. 6. K.S.A. 23-4,130 is hereby amended to read as follows:
359 23-4,130. (a) No later than 10 days after the date a support order
360 is entered pursuant to K.S.A. 1985 Supp. 23-4,129 and amendments
361 thereto, the agency shall serve upon the obligor, a notice of de-
362 linquency notice as provided for in subsection (f) of K.S.A. 1985
363 Supp. 23-4,107 and amendments thereto. The notice shall also advise
364 the obligor that income withholding was requested on the basis of
365 a support order of another jurisdiction. As appropriate, the agency
366 shall then file the affidavit provided for in subsection (d) of K.S.A.
367 1985 Supp. 23-4,107 and amendments thereto to establish an in-
368 come withholding order. If, in accordance with subsection (b) of
369 K.S.A. 1985 Supp. 23-4,110 and amendments thereto, the obligor
370 contests the establishment issuance of an income withholding order,
371 the court must hold a hearing and render a decision within 45 days
372 of the date of service of the notice of delinquency on the obligor.

373 (b) If the obligor seeks a hearing to contest the proposed income
374 withholding, the agency shall immediately notify the requesting
75 agency of the date, time and place of the hearing.

76 Sec. 7. K.S.A. 23-4,106, 23-4,107, 23-4,110, 23-4,113, 23-4,114

377

and 23-4,130 are hereby repealed.

378

Sec. 8. This act shall take effect and be in force from and after

October

379

~~January~~ 1, 1990, and its publication in the statute book.

*3/2/90
H. Gen. Com.
Att. I 11*

HOUSE BILL No. 3041

By Committee on Judiciary

2-20

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H. Judd Com

Attachment II

AN ACT concerning juvenile offenders; relating to the length of detention; amending K.S.A. 38-1632 and repealing the existing section.

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

Section 1. K.S.A. 38-1632 is hereby amended to read as follows:
38-1632. (a) *Length of detention.* Whenever an alleged juvenile offender is taken into custody and is thereafter taken before the court or to a juvenile detention facility or youth residential facility designated by the court, the juvenile shall not remain detained for more than 48 ~~24~~ hours, excluding Saturdays, Sundays and legal holidays, from the time the initial detention was imposed, unless the court determines after hearing, within the ~~forty-eight hour~~ 24-hour period, that further detention is necessary. [Insert]

(b) *Waiver of detention hearing.* The right of a juvenile to a detention hearing may be waived if the juvenile and the attorney for the juvenile consent in writing to waive the right to a detention hearing and the judge approves the waiver. Whenever the right to a detention hearing has been waived, the juvenile, the attorney for the juvenile or the juvenile's parents may reassert the right at any time not less than 48 hours prior to the time scheduled for adjudication by submitting a written request to the judge. Upon request, the judge shall immediately set the time and place for the hearing, which shall be held not more than 48 hours after the receipt of the request excluding Saturdays, Sundays and legal holidays.

(c) *Notice of hearing.* Whenever it is determined that a detention hearing is required the court shall immediately set the time and place for the hearing. Notice of the detention hearing shall be given at least 24 hours prior to the hearing, unless waived, and shall be in substantially the following form:

(Name of Court)

(Caption of Case)

NOTICE OF DETENTION HEARING

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- Through 1993, if a juvenile is detained in jail under this subsection, the juvenile may be detained for no more than 24 hours, excluding Saturdays, Sundays and legal holidays, from the time initial detention was imposed if all of the following criteria are met:
 - (1) A detention hearing is held in accordance with this section and amendments thereto within 24 hours, excluding Saturdays, Sundays and legal holidays, after the juvenile is taken into custody and notice of such hearing, unless waived, is given at least eight hours prior to the hearing;
 - (2) No part of the county where the juvenile is in custody is within an area designated by the United States bureau of the census as a standard metropolitan statistical area;
 - (3) There is no acceptable alternative placement for the juvenile, as determined in accordance with applicable criteria provided by law; and
 - (4) The jail where the juvenile is detained has been certified by the secretary of corrections to provide for sight and sound separation of juveniles and incarcerated adults.

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SRS Youth Services

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