Approved 6-27-90
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Senator Wint Winter, Jr. at
Chairperson

10:00 a.m./~~p.m.~~ on March 22, 19 90 in room 514-S of the Capitol.

All members were present~~except~~:

Committee staff present:
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:
Paul Shelby, Office of Judicial Administration
Senator Leroy Hayden
Pete McGill, Southwest Kansas Royalty Owners Association
David Pierce, Southwest Kansas Royalty Owners
Representative Eugene Shore
Bill Fuller, Kansas Farm Bureau
Donald Schnacke, Kansas Independent Oil and Gas Association
Spencer Depew, Kansas Independent Oil and Gas Association
Robert Anderson, Kansas Mid-Continent Association
Representative Sheila Hochhauser

The Chairman called the meeting to order by opening the hearing for SB 772.

SB 772 - concerning civil procedure; relating to garnishment.

Paul Shelby, Office of Judicial Administration, testified in support of SB 772. He stated that the bill is to update the Kansas statutes to reflect the recent changes in the national minimum wage laws. He added that the bill would need to be amended by changing the effective date to "publication in the Kansas Register."

As no other conferees appeared to testify, this concluded the hearing for SB 772.

Senator Gaines moved to adopt the amendment to SB 772 as suggested by Mr. Shelby changing the effective date. Senator Morris seconded the motion. The motion carried.

Senator Gaines moved to recommend SB 772 favorable for passage as amended. Senator Morris seconded the motion. The motion carried.

The Chairman opened the hearings for SB 510 and HB 2353.

SB 510 - concerning oil and gas; providinng for a security interest and lien on severed oil and gas and certain oil and gas leasehold estates to secure payment to owners of interest entitled to payment by reason of the sale of severed oil or gas.

HB 2353 -concerning oil and gas; providing for a trust on severed oil and gas and the proceeds from the sale thereof to provide payment to owners of interest entitled to payment by reason of the sale of severed oil or gas as beneficiaries of such trust.

Senator Leroy Hayden, sponsor of SB 510, deferred to Pete McGill to testify on the measures being heard.

Pete McGill, Southwest Kansas Royalty Owners Association, testified in support of HB 2353. (ATTACHMENT I)

David Pierce, Southwest Kansas Royalty Owners, testified in support of HB 2353. He restated the testimony of Mr. McGill and added that HB 2353 was "a good bill as written".

Representative Eugene Shore testified in support of HB 2353. (ATTACHMENT II)

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.

Bill Fuller, Kansas Farm Bureau, testified in support of HB 2353. (ATTACHMENT III)

Donald Schnacke, Kansas Independent Oil and Gas Association, testified in opposition of SB 510 and HB 2353. However, he included suggested amendments if the committee intended to pass one of the bills. (ATTACHMENT IV)

Spencer Depew, Kansas Independent Oil and Gas Association, testified in opposition of SB 510 and HB 2353. (ATTACHMENT V)

Robert Anderson, Kansas Mid-Continent Association, testified in opposition of SB 510 and HB 2353. (ATTACHMENT VI)

This concluded the hearing for SB 50 and HB 2353.

The Chairman opened the hearing for HB 3038.

HB 3038 - concerning civil procedure; relating to child hearsay evidence.

Representative Sheila Hochhauser testified in support of HB 3038. (ATTACHMENT VII)

Written testimony in support of HB 3038 was submitted to the committee from:
Susan Stanley, Assistant Attorney General; (ATTACHMENT VIII)
Tamara Hawk, Manhattan clinical social worker; (ATTACHMENT IX)
Kay Ediger Gareis, Manhattan L.M.S.W.; (ATTACHMENT X)
Kristin Johnson, Riley County Community Corrctions Victim Assistance Coordinator; and (ATTACHMENT XI)
Virginia Olson-Chaput, Ph.D. Student-in-Training in Marriage and Family Therapy. (ATTACHMENT XII)

Written testimony submitted in opposition of HB 3038 was presented by David Troup, Manhattan attorney. (ATTACHMENT XIII)

This concluded the hearing for HB 3038.

The Chairman opened the hearing for SB 321 and HB 3021.

SB 321 - concerning civil procedure for limited actions; realting to service of process.
HB 3021 - concerning the service of process by certified mail.

Major Lymon Rees, Sedgwick County, testified in support of HB 3021. He added that including the provisions of SB 321 that would allow sheriffs to mail like process would reduce the number of duty hours currently being spent in the non-law enforcement activity of servicing process.

Jim Daily, Barton County Sheriff, testified in support of HB 3021 with amendment to include SB 321 provisions. (ATTACHMENT XIV)

Anne Smith, Kansas Association of Counties, stood to support the testimony presented on HB 3021 and SB 321.

Walt Scott, Kansas Collectors Association, testified in support of HB 3021. He presented the committee with statistics of case load histories as support for his testimony. (ATTACHMENT XV)

The Chairman appointed the Service of Process Subcommittee to study the issue and questions presented in the testimony. Senator Moran was designated as Chairman of the subcommittee with the other members bing Senator Oleen and Senator Petty. The Subcommittee is to consider SB 321, HB 3021 and SB 620. The Chairman instructed the subcommittee to work with Mr. Scott, Matt Lynch of the Kansas Judicial Council, and the Sheriffs.

This concluded the hearing for SB 321 and HB 3021.

Written information was presented to the committee members from Campaign Against Marijuana Planting (CAMP) with regard to SB 707, uniform controlled substances act, separate offense for manufacture of controlled substances. (ATTACHMENTs XVI and XVII)

The meeting was adjourned.

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: March 22, 1990

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Tim Loper	514 Park Hill Terr.	Lawrence PAGES
Dacia McCabe	2805 Atchison	Lawrence PAGES
jaelyn hart	2559 Missouri	Lawrence
Paul Shelby	Topeka	OJA
Robert Gunderson	Olathe	Nat'l Cent for Youth & Law
MIKE McGRAW	Box 300 Tulsa OK 74102	OXY USA INC.
S. Stephens	Atty General	Topeka
Walt Stoft	Topeka	Assoc Credit Bur
Walter Dunn	✓	EKOGA
Ron MARTIN	✓	KPC
TREVA POTTER	TOPEKA	PEOPLES NAT. GAS
Kip Peterson	Topeka	KPC
Spencer Allphin	Wichita	KIOGA
Dora Schmalle	Topeka	KIOGA
David E. Pierce	TOPEKA	SWKROA
Jim Daily	Great Bend	KSA/BTSO
Beverly Steinmeyer	Topeka	KCC
Bill Fuller	Manhattan	Kansas Farm Bureau
Kathy Taylor	Topeka	KS Bankers Assn.
Rebecca Lee	Topeka	Ames
Lyman Reese	Wichita	Sheriffs Dept.
Janet J. Lee	Elk County	KSA
[illegible]	KOCH OIL CO.	TOPEKA
Matt Lynch	Topeka	Jud. Council
Julie Klein	Topeka	MESA

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE DATE:

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Rita McGee	Topeka	SWK Regional Office
DON LINDSEY	OSAWATOMIE	UTU
D. JOHNSTON	Lawrence	inter

March 22, 1990
10:00 am

Mr. Chairman and Members of the Committee:

I am Pete McGill of Pete McGill & Associates. I appear today on behalf of the Southwest Kansas Royalty Owners Association, comprised of approximately 2500 owners of royalty interests under oil and gas leases in a 10 county region in southwest Kansas.

Last year, HB 2353 was introduced and hearings were held. HB 2353 would have provided working interest owners and royalty owners a lien on the leasehold of the non-paying operator and on their share of the oil and gas, or the sales proceed, by making the appropriate filing with the clerk of the district court of the county in which the well is located. The Kansas Independent Oil and Gas Association testified in opposition to the bill. Stating numerous problems with the language and the need of such legislation.

SB 510 was introduced this Session which is identical to 1989 HB 2353. A hearing was held in February before the Senate Judiciary subcommittee. The Kansas Independent Oil and Gas Association reiterated their opposition to SB 510. At the conclusion of the hearings, the subcommittee members requested that the proponents and opponents convene to resolve the language that would be satisfactory between the Royalty Owners Association and KIOGA.

Senate Judiciary Committee
3-22-90 am
Attachment I page 1 of 2

HB 2353, as amended by the House Judiciary Committee, is that compromise between the two organizations. This bill is designed to protect interest holders in the event of the failure to pay proceeds from the sale of oil and gas production, having a statutory declaration that the funds in question are held as trust funds for the benefit of persons entitled to receive them.

Every producer I know is extremely interested in protecting their investors' interests and would also be equally embarrassed by those in the industry who did not protect the rights of the interest owners. Any action to the contrary reflects adversely on the entire industry.

Professor David Pierce, who teaches oil and gas law at Washburn University, is here today on behalf of the Southwest Kansas Royalty Owners. He is very capable in responding to any of the technical questions you may have.

We respectfully urge you to recommend HB 2353 for passage.

Thank you for your consideration.

(3-22-90 am)
I 2/2

EUGENE L. SHORE

SENATE JUDICIARY COMMITTEE: Testimony for March 22, 1990, l0:00 A.M., Rm. 514-S, PROPONENT for HB-2353.

House Bill 2353 is a compromise which was signed off on by Royalty owners and KIOGA.

House Bill 2353 addresses the problem which happens when a gas or oil producer files for bankruptcy. Under current Kansas law a Royalty Owner becomes an unsecured creditor. This means he is paid when and if all secured creditors, accountants, trustees and attorneys are paid in full. In reality the unsecured creditor does not get paid.

Recent headlines stories involving large independent producers and hostile takeovers of major gas and oil companies have caused royalty owners to ask for some protection by law.

As introduced House Bill 2353 was identical to Senate Bill 510 which would make the royalty owner a secured creditor under Kansas Lien Law. Objections to this concept centered around fears that the first purchaser may not know about the lien and might be placed in the position of paying for the gas or oil twice. The compromise which was agreed to by all parties involved, develops a trust concept whereas ownership would not be

Senate Judiciary Committee
3-22-90 am
Attachment II page 1 of 2

transferred on the royalty owners share until the royalty owner is paid. The party responsible for making sure all owed parties were paid would be the person who is responsible for paying the severance tax since that is the person who has the money in hand to disperse.

(3-22-90 pm)
II 2/2

Kansas Farm Bureau

PUBLIC POLICY STATEMENT

SENATE COMMITTEE ON JUDICIARY

RE: H.B. 2353 — Establishing a lien for royalty owners on Oil and Gas Production

March 22, 1990
Topeka, Kansas

Presented by:
Bill R. Fuller, Assistant Director
Public Affairs Division, Kansas Farm Bureau

Chairman Winter and Members of the Committee:

My name is Bill Fuller. I am the Assistant Director of the Public Affairs Division for Kansas Farm Bureau. We certainly appreciate this opportunity to speak on behalf of the farmers and ranchers who are members of the 105 County Farm Bureaus in Kansas.

We **support H.B. 2353.** Our position is based upon a new section in Farm Bureau policy on "Mineral Interests." The 437 voting delegates representing the 105 County Farm Bureaus at the 71st KFB Annual Meeting adopted this resolution for 1990:

Mineral Interests

We believe legislation should provide for an orderly divestiture of mineral interests held by the Farm Credit System. These mineral interests should be appraised and sold to the owners of overlying surface property.

We support legislation to reduce from 20 years to 10 years the time required for unused mineral interests to be returned to the owner of the overlying surface land.

We support legislation which would result in renegotiation of mineral leases involving infill drilling.

We support legislation to give a royalty owner a lien to ensure royalty payments — or an improved, secured creditor position in the case of a mineral producer bankruptcy.

We believe legislation is needed to protect a landowner and royalty owner from division orders which modify or amend the terms of an original lease to the disadvantage of the royalty owner or landowner. We support legislation to require the payment of interest on suspended royalties.

H.B 2353 enacts the "Oil and Gas Owners Lien Act". It provides for the proceeds from the sale of oil and gas to be held in trust for the interest owner. This simply ensures that royalty owners will receive their royalty payments if a producer goes into bankruptcy. The current status is that a royalty owner is an unsecured creditor.

We appreciate this opportunity to express Farm Bureau support for this proposed legislation. While S.B. 510 also addresses our concern, we respectfully request the Committee's approval of **H.B. 2353** since this is a compromise between the two associations that have been involved. Thank you!

Senate Judiciary Committee
3-22-90 am
Attachment III page 1 of 1

KIOGA
KANSAS INDEPENDENT OIL & GAS ASSOCIATION
105 SOUTH BROADWAY • SUITE 500 • WICHITA, KANSAS 67202 • (316) 263-7297

March 22, 1990

TO: Senate Judiciary Committee

RE: HB 2353 - Oil & Gas Lien Act

You had a hearing on SB 510 in your subcommittee chaired by Senator Moran. The parties were instructed to work out a compromise.

We delivered to the House and Senate subcommittee members alternative suggested language in our February 28, 1990 memorandum. This suggested language was to be considered as the basis for a discussion of a substitute to HB 2353 and SB 510. There were no hearings on the amendments to HB 2353. This is the first hearing.

We stated in our memorandum of February 28th that we were asked to come up with a solution to a problem that we do not believe generally exists in Kansas. We represent a large constituency in Kansas. Although some of our members would be the beneficiaries of HB 2353, we do not recommend passage of the bill.

Senator Feleciano was quoted in this past week's Kansas Bar Association's legislative bulletin as stating, "What is the crisis we're trying to fix?"

We subscribe to this attitude toward all legislation. If there is no issue or problem, why try to speculate with a remedy that is not needed? I've had no inquiries statewide to support the passage of HB 2353.

If you are intending to pass HB 2353 we do have some suggested amendments:

Sec. 4, line 28 - after the word "within" add the following: "six months after the date of the first sale and thereafter no later than six months" from the date... This would provide for review of title on new wells.

Sec. 4, pg. 3, line 38 - After the word "court" strike "of the county in which the severance of the oil or gas occurs".

Sec. 5 - Renumber as Sec. 6 and add the following language: "Sec. 5 the trust shall expire two years after the date of severance of oil or gas. Each day that oil and gas is produced shall be considered to be a new date of severance unless an action to enforce the trust commences within such time."

Donald P. Schnacke
Executive Vice President

Senate Judiciary Committee
3-22-90 am
Attachment IV page 1 of 1

March 22, 1990

TO: SENATE JUDICIARY COMMITTEE

RE: HB 2353, As Amended by House Committee

My name is Spencer L. Depew and my address is Suite 621, 106 West Douglas, Wichita, Kansas 67202. I am a practicing attorney at law and I am here today in my capacity as Chairman of the State Legislative Committee of the Kansas Independent Oil & Gas Association.

HB 2353, as Amended, in my opinion, is a substantial improvement over HB 2353 as introduced by Representatives Shore and Holmes. I still question the need for a law such as this because in my experience in the oil and gas area, I have seen very few occasions where a law such as this would have made a significant difference.

It has been represented that certain persons feel that there is a need to protect interest owners in oil and gas producing wells from the possibility of not being paid when the oil or gas purchaser files a voluntary bankruptcy petition, or is involuntarily placed in bankruptcy, leaving the unpaid interest owners in the position of unsecured creditors.

If such a scenario is determined by the Kansas Legislature to be a pressing matter that needs immediate solution, I would suggest the following modifications to HB 2353, as Amended:

1. The word "lien" as appears in Line 19 upon Page 1 should be deleted and in lieu thereof I suggest inserting the word "trust".

2. At Line 28 on Page 2, after the word "within" add the following:

> "six months after the date of the first sale and thereafter no later than six months" from the date. . .

this would provide the first purchaser with a reasonable time to examine the title to the property.

3. Page 3, Line 42 - Make the period a comma followed by the following language:

Senate Judiciary Committee
3-22-90 am
Attachment I page 1 of 2

"subject to the interest owner executing a division order showing marketable title and the right of the interest owner to receive the oil or gas so severed or the proceeds of the sale thereof."

4. Insert a new Sec. 5 as follows:

"Sec. 5. The trust shall expire two years after the date of severance of oil or gas. Each day that oil or gas is produced shall be considered to be a new date of severance unless an action to enforce the trust is commenced within such time in the District Court of the county in which the severance occurs."

5. Page 3, Line 43 - Renumber Sec. 5 as Sec. 6.

6. Page 4, Line 3 - Renumber Sec. 6 as Sec. 7.

Spencer L. Depew

(3-22-90 am)
V 2/2

Testimony for Bob Anderson
Re: H.B 2353 and S.B. 510

I appreciate the opportunity to appear before this committee today. My name is Robert Anderson, and I am speaking on behalf of the Kansas Mid-Continent Association which represents major oil and gas producers in the state. To be honest, I was not going to testify on this bill, but I recently realized this bill does more than merely address bankruptcies.

By the inclusion of the language contained in Section 4, this bill is attempting to establish a timeframe for royalty payments. If this is indeed the intent of the authors and the desires of this committee, then I would support the amendment proposed by Mr. Schnacke pertaining to the insertion of the six-month provision for new wells in Section 4. Essentially, this does nothing more than put Kansas in compliance with Texas, Oklahoma, Wyoming, and many other producing states which require that royalty payments commence within six months after the date of first sale. This does not affect royalty owners currently getting payments as it only applies to first sales, or new wells. This is a standard provision which allows the operator an opportunity to do, among many things, necessary title searches or opinions, prepare division orders and validate owners' interests. This is a time consuming process, but it is certainly in the best interest of everyone that the time is taken to locate all interest owners.

Again, this is an opportunity for Kansas to benefit from the efforts of other states which have found the six month period to provide the most workable timeframe for all concerned. I would appreciate the committee's consideration of this amendment, and I thank the committee for allowing me this time.

Senate Judiciary Committee
3-22-96 am
Attachment II page 1 of 1

STATE OF KANSAS

SHEILA HOCHHAUSER
REPRESENTATIVE, 67TH DISTRICT
1636 LEAVENWORTH
MANHATTAN, KANSAS 66502
(913) 539-6177 HOME
(913) 296-7691 TOPEKA OFFICE

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: JUDICIARY
PUBLIC HEALTH AND
WELFARE
LEGISLATIVE EDUCATIONAL
PLANNING COMMITTEE

TESTIMONY BEFORE SENATE JUDICIARY COMMITTEE
HOUSE BILL 3038

March 22, 1990

Mr. Chairman, Colleagues on the Judiciary Committee, thank you for holding hearings on the bill. This past summer and fall I spent much time involved in post-divorce proceedings in a case involving allegations of sexual abuse by the father of twin 3-year old girls. The father had been granted visitation with his daughters for two days every weekend. When SRS and the county attorney became involved, the civil court in the divorce case was asked to suspend visitation between the father and his daughters. The court refused to do so.

After felony child abuse charges were brought against the father, a full evidentiary hearing on whether visitation should be suspended was held. At the hearing professionals testified as to what the children had told them and shown them about their father's abusive conduct. The court permitted the testimony, but by Memorandum Decision stated:

> The Court finds that the statements on videotape of the minor children and the conclusions drawn by the social workers based upon the hearsay statements of the children are not admissible in evidence for the reason that this proceeding is not a criminal proceeding, a proceeding to determine if a child is a deprived child or proceeding to determine if a child is in need of care.

Senate Judiciary Committee
3-22-90 am
Attachment VII page 1 of 3

I believe the court was correct in its ruling based upon the current language of K.S.A. 60-460(dd) and the law as set forth in In Re: Mary P., 237 Kan. 456(1985). Having not admitted the child hearsay evidence of abuse, the divorce court had no evidence upon which to suspend visitation, and the court refused to do so, even temporarily. The criminal court, hearing the felony child abuse case, refused to suspend visitation pending the disposition of the felony charges against the father for two reasons:

(1) visitation between the children and their father was not at issue in the criminal proceedings;

(2) the court hearing the civil (divorce) case had already ruled against suspending visitation.

K.S.A. 60-460(dd) currently permits child hearsay to be admitted into evidence in criminal, juvenile offender and child in need of care proceedings if the child is alleged to be a victim of the crime, offense, or a child in need of care. To be admissible the statement must be from a child who is unable to testify, the statement must be apparently reliable, and the statement must not have been induced by false threats or promises.

The purpose of HB 3038 is to extend the child victim hearsay exception to statements of children of the parties to divorce proceedings who are the alleged victims of sexual abuse by one of the parties to the divorce. As divorce proceedings are not tried before a jury, it will be for the divorce judge to determine the weight and credit to be given to the hearsay statement of the child. The judge will consider the following factors as set out in K.S.A. 60-460(dd):

(1) age and maturity of the child;
(2) nature of the statement;

(3-22-90 am)
VII 2/3

(3) circumstances under which the statement was made;
(4) any possible threats or promises that might have been made to obtain the child's statement.

Thank you for your time. I would be happy to answer any questions.

(3-22-90 pm)
VII 3/3

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
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

TESTIMONY OF
ASSISTANT ATTORNEY GENERAL SUSAN G. STANLEY
ON BEHALF OF ATTORNEY GENERAL ROBERT T. STEPHAN
BEFORE THE HOUSE JUDICIARY COMMITTEE
MARCH 22, 1990
RE: HOUSE BILL 3038

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

On behalf of Attorney General Robert T. Stephan, I am here in support of House Bill 3038 expanding the application of the child hearsay exception, K.S.A. 60-460(dd), in the Kansas Code of Civil Procedures.

Kansas law under K.S.A. 60-460 currently allows the admission of what would otherwise be hearsay statements by children, if certain criteria of reliability are met. However, admission is limited to criminal proceedings where the child is a victim, and proceedings under the Kansas laws concerning Juvenile Offenders, or children in need of care. The proposed amendment would keep the procedural safeguards requiring the judge to find the statement to be reliable, but expand the application of the testimony to all proceedings under Kansas law.

Senate Judiciary Committee
3-22-90 9 am
Attachment VIII page 1 of 2

Such statements are currently allowed in the most serious kinds of cases, i.e. criminal prosecutions, so there would seem little reason to continue to restrict the use of such evidence in civil matters and other proceedings. Clearly, the trauma to the child and the usefulness of the testimony would not be significantly different.

Further, in criminal procedures there is currently a gap under the statute whereby a child might be a witness to a crime and hence involved in the proceedings, but if not a victim the current statute would prevent the statement of the child from being admitted, even if all the safeguards under Section (dd) are met.

Attorney General Stephan would urge you to pass House Bill 3038 as an important advancement in victim and witness rights and a logical expansion of the use of these statements.

I would be happy to answer any questions.

(3-22-90 am)
VIII 2/2

Chairman Winter and members of the Senate Judiciary Committee:

My name is Tamara Hawk. I am a licensed specialist clinical social worker, currently in private practice in Manhattan, Ks. I have worked for 15 years in the area of child welfare protective services and sexual assault.

I apologize that I could not be at the hearing in person to give my testimony, but was restricted by my professional responsibilities.

During my carreer, I have interviewed approximately 300 children and their families who have been involved in allegations of physical and sexual abuse.

In the past several months I have been involved in several cases involving child sexual assault and physical abuse as an issues in divorce proceedings. In each of these cases, I determined that children had experienced sexual and sexual assault during visitations with their fathers. My testimony as a professional, regarding the statements of these children, was inadmissable in court, leaving the visitation plans unchanged. The statements were not admitted due to the current statutes on child hearsay.

In the first case, four and six year old sisters were visiting their father out of town two times per month. The girls returned from each visit more upset, withdrawn, and regressing developmentally. Their mother observed them masturbating excessively, having sudden onset of nightmares, and talking about killing themselves. During therapy with the six year old, she disclosed that her father drank beer until he passed out every night; that she, being worried that he was dead, would leave the house in the middle of the night, knocking on neighbors doors, trying to get help for him. Later at home, upon awakening, he would come into the girls' room and get into bed with one of them, forcing them to participate in oral sex and mutual genital fondling with him.

The mother attempted to stop visitation. The father denied the charges. The children's explicit descriptions of their experiences with their father, were not admissable in civil court. The mother, at this time, has chosen to disregard the court order for twice monthly visitation. The father has yet to respond or file a motion of contempt and the case is in limbo. At any point, however, the mother could be forced to comply with the original visitation order. Other than the children's statement and the mother's observations of their behavior, no other evidence exists to support a change in the current visitation plan.

The second case involves twin sisters of preschool age.

Senate Judiciary Committee
3-22-90 am
Attachment IX page 1 of 3

Their parents divorced when they were infants and the father had regular visitation. Since age eighteen months, the girls had been making a number of statements accusing their father of sexually abusing them during visitation. They returned from each vist more anxious and disturbed. Their behavior was unmanageable. They screamed with nightmares, smeared feces on the walls, wet the bed, vomited, and masturbated constantly. They repeatedly talked of being poked in their genital area by their father. They repeated this story consistently to as many as five professionals and five other adults over the next two years.

In therapy, they gave specific information, in their own language, as to what sexual abuse they had experienced, how and where the abuse occurred, what their father said to them, how they accomodated to him, how they dreamed about the incidents, and how fearful they were of it re-occuring on each visit. At this point, they were three and a half years old.

I testified in civil court regarding visitation on several occasions. I recommended that all visitation should be stopped, and reinstituted only after treatment had progressed and then occur in the therapy office. My recommendations were based, in part, on the children's statements. Disallowing my testimony about the children's statements due to the child hearsay statute, the judge stated that he saw no difference in these children's behavior from any other children of divorce.

The criminal justice system does not always work on the child's behalf. Few of these cases produce hard physical evidence. County attorney's are reluctant to prosecute without it. The children are not good witnesses due to the trauma they have experienced, as well as the power they perceive the perpetrator has over them. Most of them are just too young to offer testimony within the structure of courtroom protocol. In some cases, county attorney's have refused to file Child in Need of Care cases because the case was being heard in civil (divorce) court.

In many cases, numerous interviews are needed to obtain a full disclosure. Many of these cases come to therapists after investigations are incomplete and a decision has been made not to file child in need of care action. This leaves the issue to be resolved in civil court, where child hearsay is not admissable.

In most areas of the state, divorce courts have begun immediately ordering full custody evaluations of each family member, by mental health professionals as a means of finding a way to introduce this evidence. Even then with the best clinical judgment of the evaluators, children's direct statements about their experiences are seldom admitted, and

the evaluations are easily challenged. Each evaluation may cost the family from $1,000 to $5,000, with they can seldom afford. Sometimes the evaluations are never completed due to finances. Most often, the community mental health centers end up writing off the balance at great expense to themselves.

In many cases that come before civil court where children are being abused, the adult has rights to custody and visitation that they can rely on. But if the child, for many reasons, is unable to speak in court for themselves, their experiences cannot be heard.

The proposed ammendment would keep the proceedural safeguards requiring the judge to find the statements to be reliable, but expand the application of the testimony to all proceedings under Kansas law.

In changing this statute, we are asking that children be given a voice through the adults they confide in, and that courts be allowed to make these important decisions by having access to all of the relevant information about the children they are trying to protect. Thank You.

Tamara J Hawk

Tamara J. Hawk, LSCSW
Private Practioner
200 Southwind Pl. #101
Manhattan, Ks. 66502
(913)539-7789

(3-22-90 am)

IX 3/3

March 22, 1990

Chairman Winter and Members of the Senate Judiciary Committee:

My schedule today prevents me from appearing before you in person. I have a Master's Degree in Social Work and have been a School Social Worker in Manhattan for eleven years. This past year, I have testified in two court cases, one civil and one criminal, involving the same family. I have come before the court in both cases as a neighbor of the family, and a person to whom the children disclosed statements indicating possible sexual abuse by the father. In the criminal case, the non-custodial father faces charges of taking indecent liberties with his minor daughters, now age 4. The accompanying civil case revolves around visitation and custody issues. As is common in child sexual abuse cases, there is no conclusive medical evidence and the basis of the case rests on statements made by the children out of court. The criminal court has had access to child heresay evidence from more than ten witnesses. The civil proceedings, in which none of the child heresay has been accepted, continues to determine the status of visitation and custody of these minor children. When much of this evidence was presented before the civil court, the judge did not admit the child heresay evidence and explicitly made his decisions as if it were "just another divorce case". I do not believe that the best interest of these children, or others like them, can be served unless the child heresay evidence is available in all of the proceedings having to do with their welfare.

I believe that the reasons for allowing child heresay evidence in abuse cases are valid. Our current legal system does not typically provide an environment friendly to children. Because of their age, developmental understanding, and lack of familiarity with court settings, children do not easily tell their own stories in court. Most children, in my experience, find testifying in court frightening, often adding to the trauma that they have experienced. Allowing child heresay evidence in all courts would allow adults, in whom children have placed their trust, to speak on behalf of those children in the courts.

Kansas Statue 60-460dd is a good law but omits mention of civil cases. Civil courts are frequently called upon to make decisions that afford children protection in child abuse situations. The legislature now has the opportunity to remedy this oversight in Kansas Statue 60-460dd and it my sincere hope that you will do so by supporting this bill.

Thank you,

Kay E. Gareis

Kay Ediger Gareis, L.M.S.W.
815 N. 8th
Manhattan, Kansas 66502

Senate Judiciary Committee
3-22-90 am
Attachment X page 1 of 1

March 22, 1990

Chairman Winter and Members of the Senate Judiciary Committee:

My name is Kristin Johnson. I am the Victim Assistance Coordinator for Riley County Community Corrections. In my position, I have worked with hundreds of child sexual assault cases which have been filed. As you are well aware, these cases are extremely difficult to prosecute given a wide variety of factors.

In Riley County, we offer a child abuse prevention program, called the Happy Bear Personal Safety Program. This presentation consists of three main components: 1) Recognizing sexual assault - by associating good touch and bad touch, 2) Resisting sexual assault - through body ownership and, 3) Reporting it - giving children the opportunity to think about and designate adults which they could tell should sexual assault happen to them. This program is presented to over 2,000 children in our school system annually.

By voting for House Bill 3038, you will give these children a voice through the adults they disclose to: Educators, Social Workers, Mental Health Professionals, Prosecutors, etc. This would enable the Courts to have access to all the information pertaining to protecting children.

Please vote for House Bill 3038.

Thank you.

Respectfully submitted,

Kristin Johnson

Kristin Johnson
Victim Assistance Coordinator
Riley County Community Corrections
105 Courthouse Plaza
Manhattan, Kansas 66502
(913) 537-6380

Senate Judiciary Committee
3-22-90 am
Attachment XI page 1 of 1

I was demoralized. Today I am hopeful. I come before you as a pioneer in the assessment and treatment of child neglect, physical, emotional and sexual abuse. I am not an author or a researcher, but a woman struggling in the trenches for the last twenty years.

I recall a young Thai psychiatrist who first informed me of the generational nature of incest. I was then a fledgling juvenile probation officer cast in the role of counselor/youth evaluator working in a youth detention center housing children in limbo, or to phrase it, as we did then, youth in pre-placement evaluation. My training didn't prepare me then to grasp the tragedy of throw-away children. Conservatively, 80 to 90% of the female runaways were fleeing from father-daughter incest. I didn't know then that the American family is the most violent social institution. Nor did I imagine that our prisons house unprecedented numbers of formerly neglected, abused, and sexually traumatized people.

Many years have passed since then. I've treated the chemically dependent, massive numbers of whom self-medicate to blot out intrusive memories of being abused as children. At a Federal enclave I served as child advocate for 3 years and nearly 5 years with a multidisciplinary child protection case management team within out-patient psychology and psychiatry. I was a co-therapist for a group of parents who severely battered their children of 4 years of age and under and thus frequently testified concerning treatment recommendations as a friend of the court or as an expert witness. I facilitated a mother-daughter group for intra-family sexual abuse in that setting and served with a male co-therapist in a court-mandated father-perpetrator group. It is with agony I recall those evidentiary hearings

Senate Judiciary Committee
3-22-90 am
Attachment XII page 1 of 2

in which hurt and vulnerable children were made to testify in adversarial proceedings, when the family member perpetrator refused to stipulate to the allegations of the petition. It was then and it is now my professional opinion that this procedure cruelly re-traumatizes both children and adolescents and their non-abused siblings.

Must we have blood, guts, and semen? How much longer shall we choose to ignore that, it is the rule, not the exception, that medical evidence for child sexual abuse is rarely found. Is the incest taboo so profound that we cannot bring ourselves to believe these children? Adult survivors of incest have told me repeatedly how devastating it was to tell the "secret" as children to a trusted adult who failed to believe them. It has been my experience that children tell the truth about sexual abuse and that the first set of interviews is the most accurate. We must stop subjecting children to interrogative strategies designed for adults. We must apply criteria which are age-appropriate and compassionate. Let us support and validate our judiciary by promoting and passing Bill #3038 which allows child hearsay to be admissable in civil proceedings when said child has been the victim of a crime.

Statement submitted by:

Virginia Olson-Chaput
Ph.D. Student-in-Training in Marriage and Family Therapy

(3-22-90 am)
XII 2/2

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March 20, 1990

The Honorable Wint Winter
Chairman, Senate Judiciary Committee
State Capitol Building
Topeka, Kansas 66612

Re: House Bill 3038

Dear Senator Winter:

It appears that due to a trial setting this Thursday, I will not be able to appear before the Judiciary Committee to testify in opposition to HB 3038 although I certainly appreciate your offer. I believe you have my letter of March 6 to Chairman O'Neal of the House Judiciary Committee in which I express my serious reservations about the wisdom of this bill. Apparently that letter either arrived too late or was unpersuasive given the huge margin by which the bill passed in the House.

I think we should be looking for ways to provide better and more credible evidence rather than expanding hearsay exceptions to introduce evidence of doubtful reliability. Virtually every other statutory hearsay exception has firm roots in the common law and is based upon sound reason and logic that such statements are usually reliable. Clearly this is not the case in child hearsay statements, particularly when the child hearsay is being offered in the context of a custody dispute between the child's two parents, one of whom is virtually always in a superior position to exert influence and control over the child. It may well be true that a child would be unlikely to fabricate a claim of sexual abuse concerning a stranger or a nextdoor neighbor or perhaps a daycare provider where there is no motive either for the child or for any other interested party to fabricate such a claim. In the case of divorcing or divorced spouses involved in a custody battle, both the motive and opportunity for fabrication are significantly enhanced.

I do not know whether any other state has amended their hearsay statutes to allow child hearsay in divorce cases but if they have, I think it would be wise to investigate their experience before proceeding further with the bill. I strongly suspect that this

Senate Judiciary Committee
3-22-90 am
Attachment XIII page 1 of 2

amendment will constitute an invitation to bitter custodial parents (or those seeking custody) to increase the frequency of allegations of sexual abuse, and encourage them to "work on the children" and haul them around from social worker to social worker until they can find one who can exact an incriminating statement out of the child. My experience in the case referred to in my earlier letter, in which Representative Hochhauser is counsel for the mother, shows that it is very easy for a parent to shop around for a social worker who will support her allegations and use such tainted evidence at least to substantially interfere with visitation between the children and the other parent while the court endeavors to sort things out.

There is no other hearsay exception that allows in hearsay statements of a declarant who is not only incompetent at the time of trial, but would have been incompetent at the time the statements were made. If you consider that K.S.A. 60-417 (the standards of which must be met before the hearsay can even be offered) requires that the declarant be either incapable of expressing himself or herself or incapable of understanding a duty to tell the truth, the situation becomes even more ironic. We have a statement made by a child who is either incapable of accurately expressing himself or herself so as to be understood or is incapable of understanding the duty to tell the truth somehow miraculously becoming credible when it is repeated by an adult (almost always by an adult who has a keen interest in the outcome of the litigation).

I am enclosing copies of but a few articles discussing the significant potential for fabrication of abuse allegations in a custody dispute. There are many more. I refer you to two books, Accusations of Child Sexual Abuse, by Hollida Wakefield and Ralph Underwager, and The Parental Alienation Syndrome and the Differentiation Between Fabricated and Genuine Child Sex Abuse, by Richard A. Gardner. The American Bar Association has also published several articles under a collection entitled Sexual Abuse Allegations in Custody and Visitation Cases.

As I indicated in my letter to Chairman O'Neal, this is an issue that on first blush, causes one to have a knee-jerk reaction in favor of the amendment since it appears to simply protect children. The real impact of the amendment will be to cause further abuse of children by encouraging parents to make allegations and encourage children to support them. There is no evidence that this amendment is needed and plenty of evidence that it would be unwise. I urge your committee to reject it.

Very truly yours,

David P. Troup

Enclosures

(3-22-90 am)
XIII 2/2

BARTON COUNTY SHERIFF'S OFFICE

P.O. Box 87

GREAT BEND, KANSAS 67530

(316) 793-7896

JIM DAILY
Sheriff

CHUCK ORTH
Undersheriff

March 20, 1990

To: Honorable Members of the Senate Judiciary Committee

From: Jim Daily, Sheriff
Barton County, Kansas

Ref: Testimony to amend H.B. 3021 to include S.B. 321

Mr. Chairman,
Distinguished Members of the Committee:

Thank you for the opportunity to come before you today, and present to you the position of not only myself but the Kansas Sheriff's Association.

We would like to express our support for H.B. 3021, its content and intent to expidite the service of court process.

We would also like for you to consider one amendment, and that is to include the provisions of S.B. 321 allowing the Sheriffs of this state to mail like process.

Making this amendment would aid the Sheriffs in reducing the number of man hours currently being spent serving process that logically could be mailed.

Your support of our proposed amendment would be greatly appreciated by all the Sheriffs in Kansas.

Thank you very much for your time and consideration.

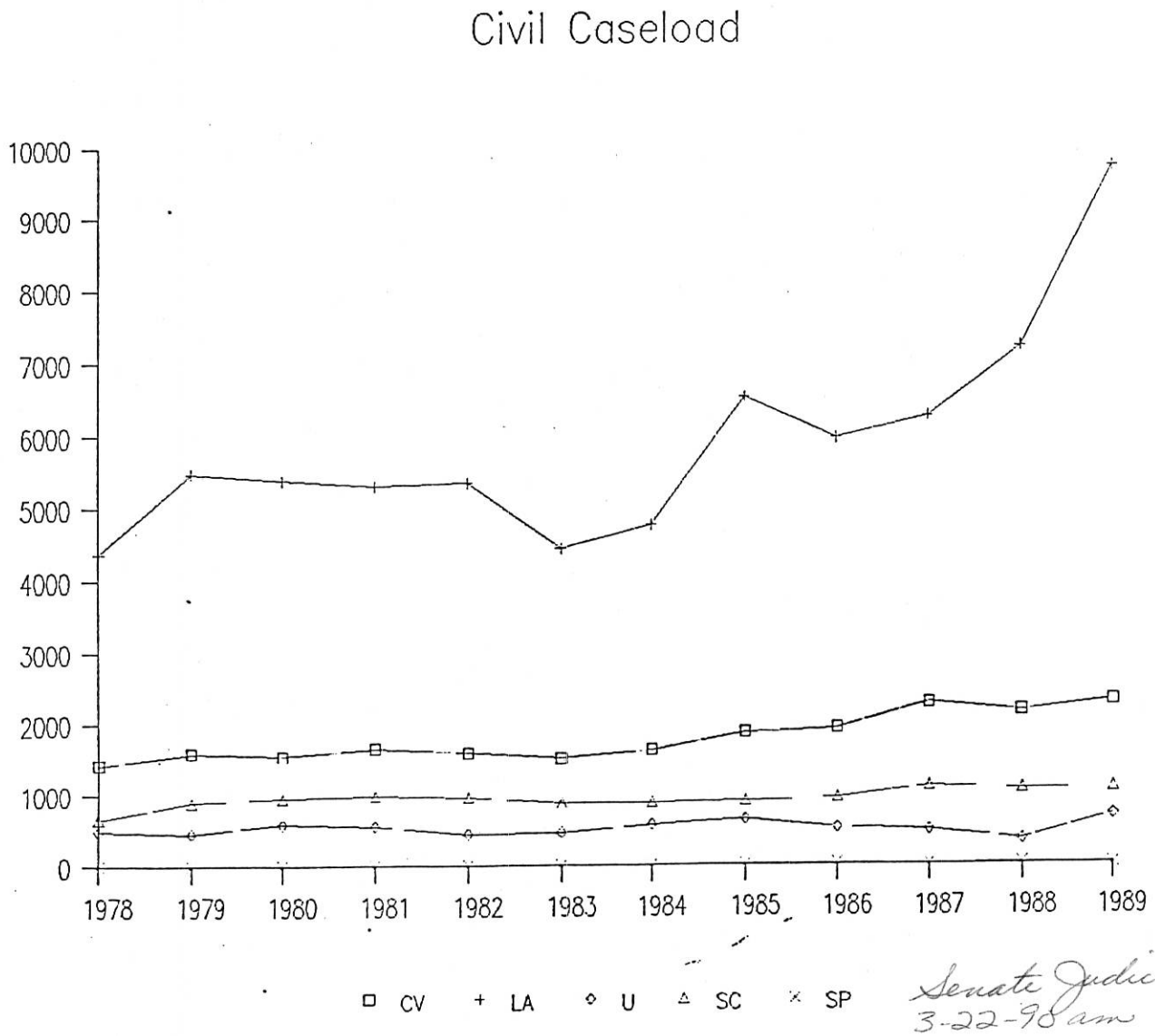
Respectfully,

Jim Daily
Barton County Sheriff

Senate Judiciary Committee
3-22-90 am
Attachment XIV page 1 of 1

Civil Caseload

	CV	LA	U	SC	SP
1978	1,425	4,370	481	650	
1979	1,586	5,469	449	891	6
1980	1,538	5,369	572	945	3
1981	1,638	5,286	541	975	3
1982	1,578	5,323	440	955	5
1983	1,499	4,419	449	862	2
1984	1,617	4,739	553	872	3
1985	1,860	6,499	632	896	10
1986	1,911	5,928	509	941	16
1987	2,248	6,219	466	1,091	6
1988	2,130	7,179	332	1,047	15
1989	2,273	9,685	673	1,059	8



Senate Judiciary Committee
3-22-98 am
Attachment XV page 1 of 3

1989 Limited Actions Document Caseload

	Citations	Garn	Aids	Warrants	Summons	Alias Sum	YTD
Jan	242	1273	478	131	759	231	3114
Feb	179	1067	662	66	926	218	3118
March	237	1313	632	85	1203	199	3669
April	235	1114	592	52	664	248	2905
May	321	1185	480	61	868	244	3159
June	308	1241	737	70	1473	240	4069
July	372	1140	488	53	888	264	3205
Aug	436	1242	864	46	1446	489	4523
Sept	477	895	658	48	1273	355	3706
Oct	502	1079	677	48	945	366	3617
Nov	505	903	698	73	1237	377	3793
Dec	501	1045	790	34	928	697	3995
Totals	4315	13497	7756	767	12610	3928	
Total	42873						

1989 Limited Actions, Traffic Caseload Statistics

	LA	SC	Traffic	F & G	DWI	HV	YTD
Jan	688	78	944	3	42	0	1755
Feb	599	66	524	0	27	0	1216
March	819	80	1031	4	25	0	1959
April	509	74	724	1	15	0	1323
May	798	116	1114	11	41	0	2080
June	994	85	893	7	39	0	2018
July	932	79	872	8	33	0	1924
Aug	831	114	867	6	26	91	1935
Sept	853	86	737	5	14	9	1704
Oct	963	106	981	1	54	22	2127
Nov	855	84	915	2	23	11	1890
Dec	844	91	481	5	20	0	1441
Totals	9685	1059	10083	53	359	133	
Total	21,372						

Traffic

Executions	364
Summons	1,314
Warrants	1,259
Susp-DL	2,192

(3-22-90 am)

XV 2/3

BREAK-DOWN OF SERVICE OF PROCESS
January 30 through February 26, 1990

Origin	Filings Total	Returns Total	Left Over	% of Total Filings	% Served/ Returned
Ch 61	4011	3029	982	59.1	75.5
Ch 60	1476	1211	265	21.8	82.0
Ch 62	240	177	63	3.5	73.8
Juv.	97	61	36	1.4	62.9
Out/County	904	644	260	13.3	71.2
Out/State	33	21	12	0.5	63.6
Probate	8	8	0	0.1	100.0
Other	15	8	7	0.2	53.3
Totals	6784	5159	1625	99.9	

Service/ Return Made	Total No.	Percentage of Returns	Percentage of Total Filings
Personal	988	14.6	19.1
Residence	243	3.6	4.7
Left/other	457	6.7	8.9
Corporate	1408	20.8	27.3
Tacking	671	9,9	13.0
Recalled	2	0.0	0.0
Avoiding	0	0.0	0.0
Time Expired	148	2.2	2.9
No Service	1242	18.3	24.1
Total Returns	5159	76.1	100.0

(3-22-90 am)
XV 3/3

SB 707

CAMP

CAMPAIGN AGAINST MARIJUANA PLANTING

P.O. Box 161089 ▪ Sacramento, CA 95816 ▪ Telephone: (916) 739-CAMP

SB 707

FACTS ABOUT CANNABIS AND MARIJUANA

1. It takes approximately 100 cannabis seeds to weigh one gram (44,800/1 lb.)
2. One plant can produce as many as 100,000 seeds.
3. Most cannabis plants produce a taproot which rarely extends more than one foot. Lateral growth is responsible for most of the roots.
4. Cannabis seeds germinate usually in six or seven days.
5. A plant will average 3/4 of a pound of dried leaves. If picked throughout the growing season, a plant can yield three to four pounds of dried leaves.
6. A plant grown for sinsemilla will average one pound of material.
7. Most drug type cannabis matures at 20-22 weeks from date of planting. Plants should be about 10-12 feet tall at the time.
8. Cannabis is a hardy annual weed. The temperature has to fall below 25 degrees to kill it.
9. Fifty (50) to 60% of a cannabis plant is moisture.
10. One acre of ground contains approximately 5,000 plants if planted three feet apart. (The shape of the plot can increase the number of plants.)
11. One acre of ground can produce 500-600 kilos of dried plant material (clean - no stems).
12. Many indoor growers are using metal Halite lamps - 1,000 watts covers an area of 50 square feet.
13. Only about 13% of a plant's green, wet weight is dried (smokeable) leaves.
14. Depending on the process and type of material used, only 4-15% of a plant's weight, in leaves, can be converted into hashish.
15. Twenty (20) to 28% of a plant's weight in leaves can be converted into hashish oil.

Senate Judiciary Committee
3-22-96 am
Attachment XVI

16. One pound of dried cannabis, flowering top (sinsemilla) or "shake" (leaf material) will yield 908, one-half gram marijuana cigarettes.

17. The average period of intoxication following the use of one marijuana cigarette is approximately two hours. However, the residual chemicals remain in the body for a much longer period.

18. Smaller gardens of 10/20/30 plants are often claimed to be for personal use and not commercial cultivation. This is contrary to fact as shown below.

    Using the conservative formula of one plant equals one pound of useable material, calculations for court testimony should be as follows:

    Example: 10-plant garden = 10 pounds of useable material or 4,540 grams or 9,080 marijuana cigarettes! Again using the average intoxication period of two hours per cigarette, a 10-plant garden would provide 18,160 hours of intoxication.

    There are 8,760 hours in one year. Therefore, if one individual grew 10 plants for personal use, processed the marijuana, and began smoking the material at a rate of one (joint) cigarette every two hours, 24 hours a day, 365 days year 'round, he would finish his "personal use" in 756 days or 2.1 years. Twenty (20) plants would be consumed in 4.2 years, 30 plants in 6.3 years and so forth.

    Now considering the fact that dried and processed marijuana loses approximately 3-6% of Delta 9 THS every year and is practically nil after the second year no matter how it is preserved or stored, the 10-plant garden for personal use immediately becomes a "myth" as there is no way humanly possible to consume that amount before the product is rendered useless.

10/29/87
Compiled by DEA Special Agent Charles A. Stowell, California State Marijuana Coordinator and Deputy Incident Commander of CAMP.

(3-22-90 am)
XVI 2/2

SB 707

AN ACT concerning the Uniform Controlled Substances Act creating a separate offense for unlawful manufacture of controlled substances, amending K.S.A. 1989 Supp. 65-4127a and K.S.A. 65-4127b and repealing the existing sections.

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

New Section 1. Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person to manufacture any controlled substance. Any person violating the provisions of this section with respect to the unlawful manufacturing or attempting to unlawfully manufacture any controlled dangerous substance, upon conviction, is guilty of ~~a felony and shall be punished by imprisonment for not less than 20 years nor more than life and a fine of not more than $300,000. Such sentence~~ **a class B felony and the sentence for which** shall not be subject to statutory provisions for suspenced sentence, community work service, or probation.

New Section 2. All costs and expenses resulting from the seizure, disposition and decontamination of an unlawful manufacturing site shall be assessed as costs against the defendant.

Section 3. K.S.A. 1989 Supp. 65-4127a is hereby amended to read as follows: (a) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person to manufacture, possess, have under such person's control, possess with intent to sell, offer for sale, sell prescribe, administer, deliver, distribute, dispense or compound any opiates, opium or narcotic drugs, **or any stimulant designated in subsection (d) (1) or (d) (3) or (f) (1) of K.S.A. 65-4107 and amendments thereto.** Any person who violates this section shall be guilty of a class C felony, except that, upon conviction for the second offense, such person shall be guilty of a class B felony, and upon conviction for a third or subsequent offense, such person shall be guilty of a class A felony, and the punishment shall be life imprisonment.

(b) Upon conviction of any person pursuant to subsection (a) in which (1) the substances involved were equal to or greater than the amounts for such substances as specified in K.S.A. 1989 Supp. 65-4127e, **and amendments thereto,** or (2) the substances involved, regardless of amounts, were possessed with intent to sell, sold or offered for sale to a child under 18 years of age, there shall be at sentencing a presumption that the defendant be sentenced to imprisonment and not granted probation, assignment to a community correctional services program or suspension of sentence.

Section 4. K.S.A. 1989 Supp. 65-4127b is hereby amended to read as follows: (a) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person to possess or have under such person's control:

(1) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(2) Any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d) **(2) or (d) (4)** (f) **(2)** of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(3) Any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105 and amendments thereto or designated in subsection (g) of K.S.A. 65-4107 and amendments thereto;

(4) Any substance designated in subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111 and amendments thereto; or

(5) Any anabolic steroids as defined in subsection (h) of K.S.A. 65-4111 and amendments thereto.

Any person who violates this subsection shall be guilty of a class A misdemeanor, except that such person shall be guilty of a class D felony upon conviction for a second or subsequent offense.

(b) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person to sell, offer for sale or have in such person's possession with the intent to sell, manufacture, **cultivate,** prescribe, administer, deliver, distribute, dispense or compound.

(1) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(2) Any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d) **(2) or (d) (4)** or **(f)** (2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(3) Any hallucionogenic drug designated in subsection (d) of K.S.A. 65-4105, and amendments thereto or designated in subsection (g) of K.S.A. 65-4107 and amendments thereto;

(4) Any substance designated in subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments thereto; or

(5) Any anabolic steroids as defined in subsection (h) of K.S.A. 65-4111 and amendments thereto.

Any person who violates this subsection shall be guilty of a class C felony.

(c) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to manufacture, possess, have under such person's control, prescribe, administer, deliver, distribute, dispense, compound, sell, offer for sale or have in such person's possession with intent to sell any controlled substance designated in K.S.A. 65-4113 and amendments thereto. Any person who violates this subsection shall be guilty of a class A misdemeanor, except that such person shall be guilty of a class D felony if the substance was prescribed for or administered, delivered, distributed, dispensed, sold, offered for sale or possessed with intent to sell to a child under 18 years of age.

(d) Upon conviction of any person pursuant to subsection (a), (b) or (c) in which (1) the substances involved were equal to or greater than the amounts for such substance as specified in K.S.A. 1988 Supp. 65-4127e and amendments thereto, or (2) ths substanced involved, regardless of amounts, were possessed with intent to sell, sold or offered for sale to a child under 18 years of age, there shall be at sentencing a presumption that the

defendant be sentenced to imprisonment and not granted probation, assignment to a community correctional services program or suspension of sentence.

Section 5. K.S.A 65-4101 is hereby amended to read as follows:

65-4101. As used in this act: (a) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by: (1) A practitioner or pursuant to the lawful direction of a practitioner; or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman.

(c) "Board" means the state board of pharmacy.

(d) "Bureau" means the bureau of narcotics and dangerous drugs, United States department of justice, or its successor agency.

(e) "Controlled substance" means any drug, substance or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments to these sections.

(f) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization bears the trademark, trade name or other identifying mark, imprint, number or device or any likeness thereof of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

(g) "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(h) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling or compounding necessary to prepare the substance for that delivery.

(i) "Dispenser" means a practitioner or pharmacist who dispenses.

(j) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(k) "Distributor" means a person who distributes.

(l) "Drug" means: (1) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary of any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; (3) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of any article specified in clause (1), (2) or (3) of this subsection. It does not include devices or their components, parts and accessories.

(3-22-90 am)

XVII 3/5

(m) "Immediate precursor" means a substance which the board has found to be and by rule and regulation designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary sued or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(n) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly by extraction from substances of natural origin or independently by means of chemical syntheses or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for the individual's own use or the preparation, compounding, packaging or labeling of a controlled substance: (1) By a practitioner or the practitioner's agent pursuant to a lawful order of a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner or by the practitioner's authorized agent under such practitioner's supervision for the purpose of or as an incident to research, teaching or chemical analysis or by a pharmacist or medical care facility as an incident to dispensing of a controlled substance.

(o) "Marijuana" means all parts of all varieties of the plant Cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

(p) "Narcotic drug" means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical syntheses or by a combination of extraction and chemical syntheses: (1) Opium and opiate and any salt, compound, derivative or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1) but not including the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw;

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(q) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of

conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under K.S.A. 65-4102 and amendments thereto, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does not include its racemic and levorotatory forms.

(r) "Opium poppy" means the plant of the species Papaver somniferum l., except its seeds.

(s) "Person" means individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust partnership or association or any other legal entity.

(t) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(u) "Pharmacist" means an individual currently licensed by the board to practice the profession of pharmacy in this state.

(v) "Practitioner" means a person licensed to practice medicine and surgery, dentist, podiatrist, veterinarian, optometrist licensed under the optometry law as a therapeutic licensee or diagnostic and therapeutic licensee, or scientific investigator or other person authorized by law to use a controlled substance in teaching or chemical analysis or to conduct research with respect to a controlled substance.

(w) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(x) "Ultimate user" means a person who lawfully possesses a controlled substance for such person's own use or for the use of a member of such person's household or for administering to an animal owned by such person or by a member of such person's household.

(y) "Isomer" means all enantiomers and diastereomers.

(z) "Medical care facility" shall have the meaning ascribed to that term in K.S.A. 65-425 and amendments thereto.

(aa) "Cultivate" means the planting or promotion of growth of five or more plants which contain or can produce controlled substances.

Section 6. K.S.A. 1989 Supp. 65-2127a, 65-2127b and 65-4101 are hereby repealed.

Section 7. This act shall take effect and be in force from and after its publication in the statute book.

(3-22-90 am)
XVII 5/5