

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

12:15 ~~xxx~~ p.m. on March 29, 1990 in room 526-S of the Capitol.

All members were present except: Senators Yost, Gaines, Martin and Morris
who were excused

Committee staff present:

Mike Heim, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:

Ron Smith, Kansas Bar Association

The Chairman called the meeting to order by recognizing Senator Moran to continue the Criminal Law and Uniform Commercial Code Subcommittee reports.

SB 744 - concerning victims of property crimes; compensation and assistance therefor.

HB 2734 - concerning the crime victims compensation board.

The Subcommittee recommended adoption of balloon amendments to SB 744 offered by the Kansas Bar Association (ATTACHMENT I) and that the amended SB 744 be amended into HB 2734. The Subcommittee further recommended that HB 2734 reported favorable as amended.

Ron Smith, Kansas Bar Association, addressed the committee in support of SB 744. He explained the provisions of the bill and added the Property Crime Victims Reparation Act would be totally voluntary.

Senator Moran moved to adopt the subcommittee report to amend SB 744 with the balloon and amending the revised version of SB 744 into HB 2734. Senator Feleciano seconded the motion. The motion carried.

Senator Moran moved to recommend HB 2734 favorable for passage as amended. Senator Petty seconded the motion. The motion carried.

HB 2644 - concerning the recording of certain decrees of the court with the register of deeds.

The Subcommittee had discussed adopting HB 2644 to provide the attorneys fill out the Notice of Action and clerks file with the register of deeds. However, the Subcommittee recommended that HB 2478 be amended into HB 2644 and that HB 2644 be reported favorable.

HB 2478 - concerning liens; relating to certain liens on residential real property and certain liens on personal property.

Committee discussion followed that explored the various aspects of the law, both past and current. It was the consensus of the committee that current law is flawed and some action is required to correct the situation.

Senator Rock moved to amend HB 2644 to have the clerks send a copy of the Journal Entry to the register of deeds. Senator Parrish seconded the motion. The motion carried.

Senator Oleen moved to amend HB 2644 by including the provisions of HB 2478, allowing destruction of old register of deeds records. Senator Feleciano seconded the motion. The motion carried.

Senator Moran moved to recommend HB 2644 favorable for passage as amended. Senator Oleen seconded the motion. The motion carried.

This concluded the reports of the Criminal Law and Uniform Commercial Code Subcommittee.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 526-S, Statehouse, at 12:15 ~~xxxx~~ p.m. on March 29, 1990.

The Chairman reviewed the measures that remain in committee and available for the committee's attention at the next meeting of the committee, scheduled for Monday, April 2, 1990 at 10:00 a.m.

Senator Bond moved to approve the minutes of February 15, 16, 19, 20 and 21. Senator Feleciano seconded the motion. The motion carried.

The meeting was adjourned.

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Doug Bowman	Topeka	Children & Youth Advisory
Paul Shelby	Topeka	OJA
Ron Smith	"	KBA
RA Frey	"	K.T.H.A.
Lisa McBride	Topeka	Observer
Julius Maclean	Topeka	A.G. office

SENATE BILL No. 744

By Committee on Judiciary

2-21

9 AN ACT concerning victims of property crimes; compensation and
10 assistance therefor; creating fees; disposition of fines, fees, pen-
11 alties and forfeitures; restitution; amending K.S.A. 75-5211 and
12 75-5268 and K.S.A. 1989 Supp. 22-2909, 22-2909b and 74-7304
13 and repealing the existing sections.

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

15 New Section 1. This act may be cited as the property crime
16 restitution and compensation act.

17 New Sec. 2. As used in this act:

18 (a) "Commission" means board of county commissioners;

19 (b) "crime" or "property crime" means an act made criminal by
20 state, county or municipal penal codes and which ~~do~~ not constitute
21 criminally injurious conduct as defined in subsection (e) of K.S.A.
22 1989 Supp. 74-7301 and amendments thereto; does

23 (c) "collateral source" means the same as defined in subsection
24 (d) of K.S.A. 1989 Supp. 74-7301 and amendments thereto;

25 (d) "local board" means a county property crime compensation
26 board;

27 (e) "local fund" means a county property crime compensation
28 fund;

29 (f) "loss" means out of pocket damage sustained by a victim
30 against whom a crime has been committed, but does not include
31 collateral sources;

32 (g) "property crime compensation board" means an entity created
33 by a commission, or through an interlocal agreement pursuant to
34 K.S.A. 12-2901 et seq. and amendments thereto, an entity created
35 by a group of counties, to administer this act;

36 (h) "victim" means an individual who suffers loss as a result of
37 the commission of a crime, loss due to the good faith effort of any
38 individual person to prevent a crime or loss due to the good faith
39 effort of any individual person to apprehend a person suspected of
40 engaging in a crime; where the context so requires, "victim" includes
41 those persons filing a claim at the request of and on behalf of the
42 victim, or the actual owner of property interests which were the
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1 subject of the crime.

2 New Sec. 3. (a) A commission may establish a special revenue
3 fund to implement this act. Such fund shall be the county's property
4 crime compensation fund.

5 (b) Moneys in such fund shall be used only pursuant to authority
6 granted in this act. Money appropriated or received in one fiscal
7 year for use in the local fund pursuant to this act may be spent in
8 the same or subsequent fiscal years.

9 (c) ~~A~~ commission establishing a local fund under this section ~~may~~
10 appoint a three-person local board to administer the local fund. Such
11 local board shall from time to time review and make recommen-
12 dations to the commission regarding amounts to be awarded under
13 this act. Local board members appointed by the commission shall
14 be residents of the county. Payments from the fund shall be made
15 pursuant to warrant and shall be approved by the commission at a
16 regularly scheduled meeting. ~~In lieu of appointing a separate local~~
17 ~~board, the commission itself may sit as a local board and exercise~~
18 ~~the powers of a local board.~~

19 (d) A local board may apply for, receive or accept money from
20 any source, including financial contributions from inmates as pro-
21 vided by subsection (b) of K.S.A. 75-5211 and amendments thereto
22 for the purposes specified in this act. Upon receipt of any such
23 money, at least monthly the commission shall cause all amounts
24 received to be remitted to the county treasurer and deposited in
25 and credited to the local fund.

26 (e) A commission may appropriate funds from other revenue
27 sources to the local fund for use pursuant to this act.

28 New Sec. 4. (a) An application for compensation shall be made
29 in the manner and form prescribed by the state crime victims com-
30 pensation board. A

31 (b) Compensation may not be awarded unless the crime has been
32 reported to an appropriate law enforcement agency within 72 hours
33 after its discovery and the claim has been filed with the local board
34 within 60 days after the filing of such report, unless the local board
35 finds there was good cause for the failure to report such crime within
36 the time required.

37 (c) Compensation may not be awarded to a victim who was the
38 offender or an accomplice of the offender and may not be awarded
39 to another person if the award would unjustly benefit the offender
40 or accomplice.

41 (d) Compensation may not be awarded unless the local board
42 finds the victim has fully cooperated with appropriate law enforce-
43 ment agencies. The local board may deny, withdraw or reduce ar

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In conjunction with recommendations
by the county or district attorney, a

may

shall

~~In lieu of appointing a separate local board,
the commission itself may sit as a local board
and exercise the powers of a local board.~~

A victim may seek compensation under this act
whether or not an offender has been charged
with the crime which results in the victims loss.

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1 award of compensation for noncooperativeness.

2 (e) Compensation otherwise payable to a victim shall be
3 diminished:

4 (1) To the extent, if any, that the economic loss upon which the
5 victim's claim is based is recouped from other persons, including
6 collateral sources; or

7 (2) to the extent a local board deems reasonable because of the
8 contributory misconduct of the victim.

9 (f) Compensation may be awarded only if the local board finds
10 a genuine need is present.

11 (g) No compensation payment may exceed \$250 if the property
12 crime results in a felony charge. If the crime is committed by a
13 juvenile, whether this subsection applies shall be determined on the
14 basis of whether a felony would be charged had the offender been
15 an adult.

16 (h) No compensation payment may exceed \$150 if the property
17 crime results in a misdemeanor or traffic charge. If the crime is
18 committed by a juvenile, whether this subsection applies shall be
19 determined on the basis of whether a misdemeanor would be charged
20 had the offender been an adult. If the original crime charged was
21 a felony and through plea negotiations the adult or juvenile offender
22 is charged with and pleads guilty or *nolo contendere* to a misde-
23 meanor, in the discretion of the local board subsection (g) limits may
24 apply to the compensation payment.

25 (i) If extraordinary circumstances are present and subject to the
26 requirements imposed by subsection (c) of section 3, the local board
27 may exceed the amounts in subsections (g) and (h).

28 (j) Compensation for work loss or personal injury due to crimi-
29 nally injurious conduct shall be governed by K.S.A. 1989 Supp. 74-
30 7301 *et seq.* and amendments thereto, and rules and regulations
31 promulgated by the state crime victims compensation board for that
32 purpose. No local board may duplicate compensation for criminally
33 injurious conduct through payments under this act.

34 (k) The local board may determine a floor amount of compen-
35 sation which would be administratively wasteful. Once such an
36 amount is chosen it shall be made public and must be uniformly
37 applied to all persons filing claims with the local board.

38 (l) The local board may provide written policy for the handling
39 of an expedited claims process where prompt assistance and payment
of services needed to repair property damage is needed to thwart
the possibility of the onset of illness or disease to the victim or
victim's family, and where the victim has no other means or paying
42 for such services.
43

1 (m) No award made pursuant to this act shall be subject to ex-
2 ecution, attachment, garnishment or other legal process, except that
3 an award for allowable expenses shall not be exempt from a claim
4 of a creditor to the extent the creditor has provided products, services
5 or accommodations the costs of which are included in the payment
6 made pursuant to this act.

7 (n) No assignment or agreement to assign any right to compen-
8 sation for loss under this act shall be enforceable in this state.

9 (o) No local fund shall pay any single individual or such indi-
10 vidual's immediate family member compensation on more than two
11 claims within a given fiscal year.

12 (p) No claim shall be paid from the local fund to any corporation,
13 partnership or other business entity or governmental entity.

14 (q) No claim shall be allowed unless the crime charged is pur-
15 suant to article 37 of chapter 21 of Kansas Statutes Annotated or
16 similar crimes in county or municipal penal codes. If the crime
17 charges is pursuant to K.S.A. 21-3707, 21-3708, 21-3722, 21-3725,
18 21-3734, 21-3736, 21-3737, 21-3739, 21-3748, 21-3749, 21-3750, 21-
19 3753, 21-3754 and 21-3756 and amendments thereto, no claim for
20 compensation under this act shall be allowed. In addition to claims
21 that may be made for criminally injurious conduct with the state
22 crime victims compensation board, a claim for compensation for
23 property damage may be allowed under this act for crimes charged
24 under K.S.A. 21-3418, 21-3426 or 21-3427.

25 (r) Payment or payments made from a local fund under this act
26 shall not limit, impair or preclude the ability of a court or the parole
27 board to order restitution, and prescribe the manner and conditions
28 of payment of restitution, as allowed by law.

29 New Sec. 5. (a) Within the limits of revenues available to a local
30 fund, a local board may award compensation for actual out of pocket
31 economic loss arising from a property crime if the local board is
32 satisfied by a preponderance of the evidence that the requirements
33 for compensation have been met.

34 (b) Compensation from a local board is not a right, nor may this
35 act be construed to confer a right upon anyone. Amounts awarded
36 under this act, if any, are subject to the sole discretion of a majority
37 vote of the local board. No person shall be civilly liable for any act
38 or decision associated with the process of investigating, determining
39 or recommending an amount of money to be awarded under this
40 act unless such act or decision otherwise amounts to criminal
41 conduct.

42 New Sec. 6. When two or more claims are filed for limited funds
43 available, a local board shall give priority first to victim loss incurred

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1 from crimes where prosecutions result, second to crimes where res-
2 titution is authorized as part of a diversion agreement and then to
3 all other victim claims.

4 New Sec. 7. (a) All restitution awards ordered by any court after
5 the effective date of this act shall comply with administrative order
6 number 41 of the supreme court of Kansas. In addition to crediting
7 restitution or reparation payments through the district court to pay
8 for docket fees, costs, fines, reparations, restitution or attorneys' fees
9 for indigent defendants, if a payment is made from a local board,
10 upon application by the local board to the clerk, the clerk shall from
11 restitution amounts received pay to the local board an amount equal
12 to the sum or sums actually advanced to the victim by the local
13 board, except that such amounts paid by the clerk shall not exceed
14 the amounts fixed in subsections (g) or (h) of section 4. _____ of the district court

15 (b) Victims may elect to receive as payment for part or all of
16 their out of pocket loss from the local fund and the balance from
17 the offender under court-ordered restitution.

18 (c) Any money recovered on behalf of the local board pursuant
19 to subsections (c) or (d) shall be deposited in and credited to the
20 local fund. _____ (c) (a)

21 (d) If for any reason a victim receiving, or who is authorized to
22 receive, restitution by court order leaves no forwarding address and
23 after reasonable diligence the victim or the victim's family cannot
24 be located by the clerk, restitution received pursuant to this section
25 shall be remitted to the local fund, if any.

26 New Sec. 8. (a) Within seven days after the initial contact be-
27 tween the victim of a reported crime and the law enforcement agency
28 investigating the crime, such agency shall notify the victim com-
29 pensation coordinator of the report of the crime and the name and
30 address of the victim or victims.

31 (b) A law enforcement agency shall provide the following infor-
32 mation to the victim:

- 33 (1) The availability of emergency and medical services numbers,
34 if needed;
- 35 (2) the police report number, in writing;
- 36 (3) the address and telephone number of the prosecutor's office
37 that the victim should contact to obtain information about victims'
38 rights pursuant to K.S.A. 1989 Supp. 74-7333 and 74-7335 and
39 amendments thereto;
- (4) the name, address and telephone number of the local board
and information about victim compensation benefits, if any local
board has been appointed in the county;
- (5) advise the victim that the details of the crime may be made

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1 public; and

2 (6) advise the victim of such victim's rights under K.S.A. 1989
3 Supp. 74-7333 and 74-7335 and amendments thereto.

4 (c) A law enforcement agency may adopt any procedure to trans-
5 mit such information which substantially complies with the provisions
6 of this section.

7 New Sec. 9. (a) An administrative judge who appoints a property
8 crime compensation coordinator pursuant to this act shall create a
9 payments docket to monitor the payment of criminal restitution in
10 criminal convictions ordered by judges in the judicial district. Such
11 restitution orders shall comply with administrative order number 41
12 of the supreme court of Kansas. The administrative judge may assign
13 a judge or judges of the court to administer the payments docket.
14 Such assigned judge may be a district judge, a district magistrate
15 judge, or a judge *pro tem*. The assigned judge shall call the docket
16 and review cases placed on such payments docket at least quarterly.
17 Such assigned judge shall insure that required staff is monitoring
18 the timely payment of reparation or restitution ordered, and take
19 such action as is necessary to insure payment as allowed in admin-
20 istrative order number 41 of the supreme court of Kansas.

21 (b) For good cause shown, if an offender is delinquent in payment
22 of restitution, fines or court costs, the assigned judge may decrease
23 the amount of restitution required to be paid.

24 (c) In determining the appropriate amount of restitution to be
25 awarded in such a hearing or other steps the court may take to
26 insure restitution is paid promptly, the court shall determine:

- 27 (1) The amount of money appropriate for full restitution to victims
28 and interested collateral sources;
- 29 (2) whether the offender can pay by means other than cash;
- 30 (3) whether collateral, guarantors or other forms of co-payment
31 should be authorized;
- 32 (4) the delinquent offender's means to pay in full;
- 33 (5) the delinquent offender's means were adequately assessed in
34 determining the original restitution award;
- 35 (6) the risk the offender poses for nonpayment of restitution; and
- 36 (7) The victim's desires concerning restitution payments.

37 New Sec. 10. ~~Administrative judges in judicial districts forming~~
38 ~~one or more local property crime compensation funds shall appoint~~
39 ~~at least one property crime coordinator. If more than one county is~~
40 ~~contained within the judicial district, the costs of such employee or~~
41 ~~employees shall be made pro rata by such counties in the manner~~
42 ~~in which the county commissions may determine.~~

43 The property crime compensation coordinator shall provide each

~~Administrative judges in judicial districts forming one or more local property crime compensation funds shall appoint at least one property crime coordinator. If more than one county is contained within the judicial district, the district, the costs of such employee or employees shall be made pro rata by such counties in the manner in which the county commissions may determine.~~

The county or district attorney in any county where a local fund is created shall appoint a property crime compensation coordinator. The costs of such employee shall be paid by the county in a manner decided by the county commission. If more than one county contained within a judicial district desires to appoint a property crime compensation coordinator, the commissions may agree through an interlocal agreement pursuant to K.S.A. 12-2901 et. seq. that one or more of such appointees may serve multiple counties.

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1 victim who files a claim under this act the following information:

- 2 (a) Assistance in filling out applications for assistance;
- 3 (b) make preliminary investigations of such claim to insure a loss
- 4 occurred;
- 5 (c) if the crime includes a personal injury, assist the victim in
- 6 making a claim with the state crime victims compensation board;
- 7 (d) insure that prior to a sentencing hearing the county attorney
- 8 has information sufficient to recommend an appropriate amount of
- 9 restitution for the victim, or other party which has suffered loss
- 10 because of the commission of such crime;
- 11 (e) notify the local board whether the victim has cooperated fully
- 12 with law enforcement agencies in prosecuting the crime;
- 13 (f) determine and recommend whether the victim desires to re-
- 14 ceive a lump sum payment from the local board in lieu of restitution
- 15 or desires full restitution paid directly by the criminal;
- 16 (g) work with court services and probation officers to track res-
- 17 titution payments ordered, and if a delinquency develops, to place
- 18 such case on the payments docket for review;
- 19 (h) coordinate with court service officers or parole officers to
- 20 insure offenders who are making restitution payments adhere to a
- 21 payment plan;
- 22 (i) coordinate meetings of the local board or boards;
- 23 (j) recommend an amount of money to be paid by such local
- 24 board or boards as compensation for each claim; and
- 25 (k) make annual reports on the progress of the program to the
- 26 administrative judge with recommendations for improving the
- 27 program.

or district

28 New Sec. 11. The administrative judge shall, annually, cause to
29 be compiled a report of the property crime compensation fund or
30 funds existing within such judicial district and forward such report
31 to the office of judicial administration by the first day of December
32 of the year beginning the next full year after implementation of such
33 local program. The office of judicial administration shall compile such
34 reports submitted by administrative judges, and send a composite
35 report annually to the governor and the state legislature.

36 New Sec. 12. In addition to other duties prescribed by law, court
37 services officers in judicial districts with local boards shall advise the
38 property compensation coordinator if there is no compliance or un-
39 dercompliance with a restitution plan ordered by a court.

40 Sec. 13. K.S.A. 1989 Supp. 22-2909 is hereby amended to read
41 as follows: 22-2909. (a) A diversion agreement shall provide that if
42 the defendant fulfills the obligations of the program described
43 therein, as determined by the county or district attorney, the county

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1 or district attorney shall act to have the criminal charges against the
 2 defendant dismissed with prejudice. The diversion agreement shall
 3 include specifically the waiver of all rights under the law or the
 4 constitution of Kansas or of the United States to a speedy arraign-
 5 ment, preliminary examinations and hearings, and a speedy trial,
 6 and in the case of diversion under subsection (c) waiver of the right
 7 to trial by jury. The diversion agreement may include, but is not
 8 limited to, provisions concerning payment of restitution, including
 9 court costs and diversion costs, residence in a specified facility,
 10 maintenance of gainful employment, and participation in programs
 11 offering medical, educational, vocational, social and psychological
 12 services, corrective and preventive guidance and other rehabilitative
 13 services. ~~If a county creates a local fund, a county or district attorney~~
 14 ~~shall require in all diversion agreements as a condition of diversion~~
 15 ~~the payment of a diversion fee in an amount not to exceed \$100.~~
 16 ~~Such fees shall be deposited into the local fund and disbursed pur-~~
 17 ~~suant to recommendations of the local board under the property~~
 18 ~~crime restitution and victims compensation act.~~

under the property crime restitution and compensation act,

19 (b) The diversion agreement shall state: (1) The defendant's full
 20 name; (2) the defendant's full name at the time the complaint was
 21 filed, if different from the defendant's current name; (3) the de-
 22 fendant's sex, race and date of birth; (4) the crime with which the
 23 defendant is charged; (5) the date the complaint was filed; and (6)
 24 the district court with which the agreement is filed.

~~shall~~
may

25 (c) If a diversion agreement is entered into in lieu of further
 26 criminal proceedings on a complaint alleging a violation of K.S.A.
 27 8-1567, and amendments thereto, the diversion agreement shall in-
 28 clude a stipulation, agreed to by the defendant and the county or
 29 district attorney, of the facts upon which the charge is based and a
 30 provision that if the defendant fails to fulfill the terms of the specific
 31 diversion agreement and the criminal proceedings on the complaint
 32 are resumed, the proceedings, including any proceedings on appeal,
 33 shall be conducted on the record of the stipulation of facts relating
 34 to the complaint. In addition, the agreement shall include a re-
 35 quirement that the defendant:

36 (1) Pay a fine specified by the agreement in an amount equal to
 37 an amount authorized by K.S.A. 8-1567, and amendments thereto
 38 for a first offense or, in lieu of payment of the fine, perform com-
 39 munity service specified by the agreement, in accordance with
 40 K.S.A. 8-1567, and amendments thereto; and

41 (2) enroll in and successfully complete an alcohol and drug safety
 42 action program or a treatment program, or both, as provided in
 43 K.S.A. 8-1008, and amendments thereto, and specified by the agree-

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1 ment, and pay the assessment required by K.S.A. 8-1008, and
2 amendments thereto.

3 (d) If the person entering into a diversion agreement is a non-
4 resident, the county or district attorney shall transmit a copy of the
5 diversion agreement to the division. The division shall forward a
6 copy of the diversion agreement to the motor vehicle administrator
7 of the person's state of residence.

8 (e) If the county or district attorney elects to offer diversion in
9 lieu of further criminal proceedings on the complaint and the de-
10 fendant agrees to all of the terms of the proposed agreement, the
11 diversion agreement shall be filed with the district court and the
12 district court shall stay further proceedings on the complaint. If the
13 defendant declines to accept diversion, the district court shall resume
14 the criminal proceedings on the complaint.

15 (f) Except diversion agreements reported under subsection (h),
16 the county or district attorney shall forward to the Kansas bureau
17 of investigation a copy of the diversion agreement at the time such
18 agreement is filed with the district court. The copy of the agreement
19 shall be made available upon request to any county, district or city
20 attorney or court.

21 (g) At the time of filing the diversion agreement with the district
22 court, the county or district attorney shall forward to the division
23 of vehicles of the state department of revenue a copy of any diversion
24 agreement entered into in lieu of further criminal proceedings on a
25 complaint alleging a violation of K.S.A. 8-1567, and amendments
26 thereto. The copy of the agreement shall be made available upon
27 request to any county, district or city attorney or court.

28 Sec. 14. K.S.A. 1989 Supp. 22-2909b is hereby amended to read
29 as follows: 22-2909b. (a) A diversion agreement shall provide that if
30 the defendant fulfills the obligations of the program described
31 therein, as determined by the county or district attorney, the county
32 or district attorney shall act to have the criminal charges against the
33 defendant dismissed with prejudice. The diversion agreement shall
34 include specifically the waiver of all rights under the law or the
35 constitution of Kansas or of the United States to a speedy arraign-
36 ment, preliminary examinations and hearings and a speedy trial, and
37 in the case of diversion under subsection (c) waiver of the rights to
38 counsel and trial by jury. The diversion agreement may include, but
39 is not limited to, provisions concerning payment of restitution, in-
40 cluding court costs and diversion costs, residence in a specified
41 facility, maintenance of gainful employment, and participation in
42 programs offering medical, educational, vocational, social and psy-
43 chological services, corrective and preventive guidance and other

1 rehabilitative services. *If a county creates a local fund, a county or*
2 *district attorney shall require in all diversion agreements as a con-*
3 *dition of diversion the payment of a diversion fee in an amount not*
4 *to exceed \$100. Such fees shall be deposited into the local fund and*
5 *disbursed pursuant to recommendations of the local board under the*
6 *property crime restitution and victims compensation act.*

under the property crime restitution and compensation act,

~~shall.~~

may

7 (b) The diversion agreement shall state: (1) The defendant's full
8 name; (2) the defendant's full name at the time the complaint was
9 filed, if different from the defendant's current name; (3) the de-
10 fendant's sex, race and date of birth; (4) the crime with which the
11 defendant is charged; (5) the date the complaint was filed; and (6)
12 the district court with which the agreement is filed.

13 (c) If a diversion agreement is entered into in lieu of further
14 criminal proceedings on a complaint alleging a violation of K.S.A.
15 8-1567 and amendments thereto, the diversion agreement shall in-
16 clude a stipulation, agreed to by the defendant and the county or
17 district attorney, of the facts upon which the charge is based and a
18 provision that if the defendant fails to fulfill the terms of the specific
19 diversion agreement and the criminal proceedings on the complaint
20 are resumed, the proceedings, including any proceedings on appeal,
21 shall be conducted on the record of the stipulation of facts relating
22 to the complaint. In addition, the agreement shall include a re-
23 quirement that the defendant:

24 (1) Pay a fine specified by the agreement in an amount equal to
25 an amount authorized by K.S.A. 8-1567 and amendments thereto
26 for a first offense or, in lieu of payment of the fine, perform com-
27 munity service specified by the agreement, in accordance with
28 K.S.A. 8-1567 and amendments thereto; and

29 (2) enroll in and successfully complete an alcohol and drug safety
30 action program or a treatment program, or both, as provided in
31 K.S.A. 8-1008 and amendments thereto, and specified by the agree-
32 ment, and pay the assessment required by K.S.A. 8-1008 and amend-
33 ments thereto.

34 (d) If a diversion agreement is entered into in lieu of further
35 criminal proceedings on a complaint alleging a violation of K.S.A.
36 8-1567 and amendments thereto, the diversion agreement may re-
37 strict the defendant's driving privileges, in addition to any suspension
38 and restriction required by K.S.A. 1988 Supp. 8-1014 and amend-
39 ments thereto, to driving only under the following circumstances:

40 (1) In going to or returning from the person's place of employment
41 or schooling; (2) in the course of the person's employment; (3) during
42 a medical emergency; (4) in going to and returning from probation
43 or parole meetings, drug or alcohol counseling or any place the

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1 person is required to go to attend an alcohol and drug safety action
2 program as provided in K.S.A. 8-1008 and amendments thereto; (5)
3 at such times of the day as may be specified by the diversion agree-
4 ment; and (6) to such places as may be specified by the diversion
5 agreement.

6 In lieu of restricting the defendant's driving privileges as provided
7 above, or in lieu of suspending or revoking such privileges, the
8 diversion agreement may restrict the defendant's driving privileges
9 to driving only a motor vehicle equipped with a functioning ignition
10 interlock device, as defined by K.S.A. 1988 Supp. 8-1013 and amend-
11 ments thereto, which is approved by the division of vehicles of the
12 department of revenue and is obtained, installed and maintained at
13 the defendant's expense. Any fine required by subsection (c) shall
14 be reduced by the diversion agreement in an amount equal to the
15 expense incurred by the defendant for obtaining, installing and main-
16 taining such device.

17 Restrictions imposed pursuant to this subsection shall be for a
18 period of not less than 90 days nor more than one year, as specified
19 by the diversion agreement.

20 Upon entering a diversion agreement restricting a person's driving
21 privileges under this subsection, the county or district attorney shall
22 require that the license be surrendered to the county or district
23 attorney. The county or district attorney shall transmit the license
24 to the division of vehicles of the department of revenue, together
25 with a copy of the diversion agreement. Upon its receipt, the division
26 of vehicles shall issue without charge a driver's license which shall
27 indicate on the face of the license that restrictions have been imposed
28 on the person's driving privileges and that a certified copy of the
29 diversion agreement imposing the restrictions is required to be car-
30 ried by the person for whom the license was issued any time the
31 person is operating a motor vehicle on the highways of this state.
32 If the person is a nonresident, the county or district attorney shall
33 transmit a copy of the diversion agreement to the division. The
34 division shall forward a copy of the diversion agreement to the motor
35 vehicle administrator of the person's state of residence. The county
36 or district attorney shall furnish to any person whose driving priv-
37 ileges have been restricted under this subsection a copy of the
38 diversion agreement, which for a period of 30 days only shall be
39 recognized as a valid Kansas driver's license pending issuance of the
40 restricted license as provided in this subsection.

41 Upon expiration of the period of time for which restrictions are
42 imposed pursuant to this subsection, the licensee may apply to the
43 division for the return of the license previously surrendered by the

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1 license. If the license has expired, the person may apply to the
 2 division for a new license, which shall be issued by the division
 3 upon payment of the proper fee and satisfaction of the other con-
 4 ditions established by law, unless the person's privilege to operate
 5 a motor vehicle on the highways of this state has been suspended
 6 or revoked prior to expiration. Violation of restrictions imposed under
 7 this subsection is a misdemeanor subject to punishment and driver's
 8 license suspension as provided by K.S.A. 1988 Supp. 8-291 and
 9 amendments thereto.

10 (e) If a diversion agreement is entered into in lieu of further
 11 criminal proceedings on a complaint alleging a violation of K.S.A.
 12 8-1567 and amendments thereto, the diversion agreement may sus-
 13 pend or revoke the defendant's driving privileges. Suspension or
 14 revocation imposed pursuant to this subsection shall be for a period
 15 of not less than 90 days nor more than one year, as specified by
 16 the diversion agreement.

17 Upon entering a diversion agreement suspending or revoking a
 18 defendant's driving privileges pursuant to this subsection, the county
 19 or district attorney shall require that such license be surrendered
 20 to the county or district attorney. The county or district attorney
 21 shall transmit the license to the division to be retained by the
 22 division.

23 Upon expiration of the period of time for which suspension or
 24 revocation is imposed pursuant to this subsection, the licensee may
 25 apply to the division for the return of the license previously sur-
 26 rendered by the licensee. If the license has expired, the person may
 27 apply to the division for a new license, which shall be issued by
 28 the division upon payment of the proper fee and satisfaction of the
 29 other conditions established by law, unless the person's driving priv-
 30 ileges have been otherwise suspended or revoked prior to expiration.

31 (f) Except as provided in subsection (g), if a diversion agreement
 32 is entered into in lieu of further criminal proceedings alleging com-
 33 mission of a misdemeanor by the defendant, while under 21 years
 34 of age, under the uniform controlled substances act (K.S.A. 65-4101
 35 *et seq.* and amendments thereto) or K.S.A. 41-719, 41-727, 41-804,
 36 41-2719, 41-2720, 65-4152, 65-4153, 65-4154 or 65-4155, and amend-
 37 ments thereto, the agreement shall require the defendant to submit
 38 to and complete an alcohol and drug evaluation by a community-
 39 based alcohol and drug safety action program certified pursuant to
 40 K.S.A. 8-1008 and amendments thereto and to pay a fee not to
 41 exceed the fee established by that statute for such evaluation. If the
 42 county or district attorney finds that the defendant is indigent, the
 43 fee may be waived.

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1 (g) If the defendant is 18 or more years of age but less than 21
2 years of age and allegedly committed a violation of K.S.A. 41-727,
3 and amendments thereto, involving cereal malt beverage, the pro-
4 visions of subsection (f) are permissive and not mandatory.

5 (h) If the county or district attorney elects to offer diversion in
6 lieu of further criminal proceedings on the complaint and the de-
7 fendant agrees to all of the terms of the proposed agreement, the
8 diversion agreement shall be filed with the district court and the
9 district court shall stay further proceedings on the complaint. If the
10 defendant declines to accept diversion, the district court shall resume
11 the criminal proceedings on the complaint.

12 (i) Except diversion agreements reported under subsection (i),
13 the county or district attorney shall forward to the Kansas bureau
14 of investigation a copy of the diversion agreement at the time such
15 agreement is filed with the district court. The copy of the agreement
16 shall be made available upon request to any county, district or city
17 attorney or court.

18 (j) At the time of filing the diversion agreement with the district
19 court, the county or district attorney shall forward to the division
20 of vehicles of the state department of revenue a copy of any diversion
21 agreement entered into in lieu of further criminal proceedings on a
22 complaint alleging a violation of K.S.A. 8-1567 and amendments
23 thereto. The copy of the agreement shall be made available upon
24 request to any county, district or city attorney or court.

25 Sec. 15. K.S.A. 1989 Supp. 74-7304 is hereby amended to read
26 as follows: 74-7304. In addition to the powers and duties specified
27 elsewhere in this act, the board shall have the following powers and
28 duties:

29 (a) The duty to establish and maintain a principal office and other
30 necessary offices within this state, to appoint employees and agents
31 as necessary and to prescribe their duties and compensation, all
32 within the limitations and conditions of appropriations made therefor;

33 (b) the duty to adopt by rule or regulation a description of the
34 organization of the board, stating the general method and course of
35 operation of the board;

36 (c) the duty to adopt rules and regulations to carry out the pro-
37 visions of this act, and the *crime restitution and compensation act*
38 including rules for the allowance of attorney fees for representation
39 of claimants; and to adopt rules and regulations providing for dis-
40 covery proceedings, including medical examination, consistent with
41 the provisions of this act relating thereto. Rules and regulations
42 adopted by the board shall be statements of general applicability
43 which implement, interpret or prescribe policy, or describe the pro-

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1 cEDURE or practice requirements of the board;

2 (d) the duty to prescribe forms on which applications for com-
3 pensation shall be made;

4 (e) the duty to hear and determine all matters relating to claims
5 for compensation, and the power to reinvestigate or reopen claims
6 without regard to statutes of limitation or periods of prescription;

7 (f) the power to request investigations and data from county and
8 district attorneys and law enforcement officers to enable the board
9 to determine whether and the extent to which a claimant qualifies
10 for compensation. Confidentiality provided by law covering claimant's
11 or victim's juvenile court records shall not be applicable in pro-
12 ceedings under this act;

13 (g) the duty, if it would contribute to the function of the board,
14 to subpoena witnesses and other prospective evidence, administer
15 oaths or affirmations, conduct hearings and receive relevant, non-
16 privileged evidence;

17 (h) the power to take notice of judicially recognizable facts and
18 general, technical and scientific facts within their specialized
19 knowledge;

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

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

26 Sec. 16. K.S.A. 75-5211 is hereby amended to read as follows:

27 75-5211. (a) The secretary of corrections shall provide programs of
28 employment, work, educational or vocational training for those in-
29 mates whom the secretary determines are available, willing and able
30 to participate and are capable of benefiting therefrom. Equipment,
31 management practices and general procedures shall, to the extent
32 possible, approximate normal conditions of employment. Such work
33 week may include schooling, vocational training, employment at pri-
34 vate industry, treatment or other activities authorized by the sec-
35 retary. For all purposes under state law, no inmate shall be deemed
36 to be an employee of the state or any state agency. The secretary
37 of corrections shall credit to each inmate as a reward for such em-
38 ployment, an amount which shall be set by the governor but shall
39 not be less than \$.25 per day. Any inmate who is gainfully employed
40 under the work release provisions of K.S.A. 75-5267 and 75-5268,
41 and amendments thereto, or who is gainfully employed by a private
42 business enterprise operating on the grounds of a correctional in-
43 stitution under K.S.A. 75-5288 and amendments thereto, or any

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1 other private business at which inmates are permitted to be gainfully
2 employed, and any inmate who is incarcerated at the Kansas re-
3 ception and diagnostic center for the purpose of receiving diagnosis
4 and any inmate on disciplinary segregation status shall not be eligible
5 to receive compensation as provided in this subsection.

6 (b) The secretary of corrections shall establish programs and pre-
7 scribe procedures for withdrawing amounts from the compensation
8 paid to inmates from all sources for the same purposes as are pre-
9 scribed by K.S.A. 75-5268 and amendments thereto for moneys of
10 work release participants, except that any inmate employed in a
11 private industry program, other than work release, shall, in addition
12 to the deductions specified in K.S.A. 75-5268 and amendments
13 thereto, have deduction of 5% of monthly gross wages paid to the
14 crime victims compensation fund or a local property crime fund for
15 the purpose of victim compensation. The department of corrections
16 is authorized to make this deduction and payment to the crime
17 victims compensation fund or a local property crime fund. In the
18 event a local fund has made a payment to a victim of a property
19 crime under this act and there is an order of restitution for which
20 moneys are being withheld from an inmate under K.S.A. 75-5268
21 and amendments thereto, the secretary shall cause such moneys de-
22 ducted for use by the state crime victims compensation board to be
23 paid quarterly to the local fund, if any, then the balance to the
24 state crime victims compensation fund. If there is no order of res-
25 titution, then K.S.A. 75-5268 and amendments thereto shall apply
26 to the disposition of funds.

27 (c) (1) Upon the release of any inmate on parole, conditional
28 release or expiration of the inmate's maximum sentence, the inmate
29 shall be provided with suitable clothing and a cash payment of \$100.
30 Any inmate who is gainfully employed under the work release pro-
31 visions of K.S.A. 75-5267 and 75-5268, and amendments thereto, or
32 who is gainfully employed by a private business enterprise operating
33 on the grounds of a correctional institution under K.S.A. 75-5288
34 and amendments thereto, or any other private business at which
35 inmates are permitted to be gainfully employed or any inmate pa-
36 roled to a detainer shall not be eligible to receive this cash payment.

37 (2) An inmate released on expiration of the inmate's maximum
38 sentence shall be provided public transportation, if required, to the
39 inmate's home, if within the state, or, if not, to the place of conviction
40 or to some other place not more distant, as selected by the inmate.
41 An inmate released on parole or conditional release shall be provided
42 public transportation, if required, to the place to which the inmate
43 was paroled or conditionally released.

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1 Sen. 17. K.S.A. 75-5268 is hereby amended to read as follows:
 2 75-5268. Any inmate who is allowed to participate in such paid
 3 employment or in such job training or paid employment for which
 4 a subsistence allowance is paid in connection with such job training
 5 shall pay over to the secretary or the designated representative of
 6 the secretary all moneys received from such paid employment or
 7 job training except that, pursuant to rules and regulations adopted
 8 by the secretary of corrections, the inmate shall retain a stipulated
 9 reasonable amount of the money as the secretary or the designated
 10 representative of the secretary deems necessary for expenses con-
 11 nected with the employment or job training. The balance of the
 12 moneys paid to the secretary or the designated representative of the
 13 secretary shall be disbursed for the following purposes:

14 (a) A designated minimum amount of that money paid to the
 15 secretary shall be returned to the state general fund or to the political
 16 subdivision, federal government or community-based center for such
 17 inmate's food and lodging or, if the inmate is participating in a private
 18 industry program other than work release, the minimum amount
 19 collected shall be deposited to the correctional industries fund;

20 (b) transportation to and from the place of employment at the
 21 rate allowed in K.S.A. 75-3203 and amendments thereto;

22 (c) if any of the dependents of the inmate are receiving public
 23 assistance, a reasonable percentage of the inmate's net pay after
 24 deduction of the above expenses shall be forwarded to the court
 25 which ordered support for the dependent or, if there is no order,
 26 to the secretary of social and rehabilitation services;

27 (d) if subsection (c) is not applicable, then a reasonable per-
 28 centage of the inmate's net pay after deduction of the above expenses
 29 shall be disbursed for the payment, either in full or ratable, of the
 30 inmate's obligations acknowledged by the inmate in writing, or which
 31 have been reduced to judgment;

32 (e) payment of a reasonable amount into a savings account for
 33 disbursement to the inmate upon release from custody; ~~and~~

34 (f) *payment of a reasonable amount to the clerk of the district*
 35 *court in which the crime occurred pursuant to an order of resti-*
 36 *tution. Such payment shall be required only if the inmate is incar-*
 37 *cerated for a crime or crimes for which restitution is or could be*
 38 *ordered pursuant to the property crime restitution and compensation*
 39 *act. Such payment shall be in addition to any amount withheld and*
 40 *ordered paid as restitution to the state crime victims compensation*
 41 *board; and*

42 (g) the balance, if any, shall be credited to the inmate's ac/
 43 count and shall be made available to the inmate in such manner

1 and for such purposes as are authorized by the secretary.
2 Sec. 18. K.S.A. 75-5211 and 75-5268 and K.S.A. 1989 Supp. 22-
3 2909, 22-2909b and 74-7304 are hereby repealed.
4 Sec. 19. This act shall take effect and be in force from and after
5 January 1, 1991, and its publication in the statute book.

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