

JUDICIARY SUBCOMMITTEE ON CRIMINAL AND UNIFORM COMMERCIAL CODE
Senator Jerry Moran, Chairman

March 15, 1990 - 10:00 A.M. - Room 514-S

Members present: Senators Moran, Feleciano, D. Kerr, Oleen and Petty.

HB 2920 - Expedited appeal of habeas corpus actions involving extradition.

Representative Martha Jenkins (See Attachment I)

SB 730 - Uniform commercial code fees for filings and information requests.

Proponents:

John R. Wine, Jr. (See Attachment II)
Jim Magg, Kansas Bankers Association

SB 669 - Determination of parentage; relating to blood tests used to determine paternity.

Proponents:

William Woods, Kansas City

Opponents:

Patricia Henshall, Office of Judicial Administrator (See Attachment III)

SB 744 - Compensation for victims of crimes against property.

Proponents:

Ron Smith, Kansas ^{Bar} ~~Bankers~~ Assoc. (See Attachment IV)

Nancy Lindberg, Office of Attorney General (See Attachments V)

Julie McKenna, Salina County Attorney

Opponents:

Nick Tomasic, Wyandotte District Attorney (See Attachment VI)

Mike Leighton, Barton County Administrator (See Attachment VII)

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TOPEKA

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H.B. 2920

22 February 1990

Mr. Chairman, Members of the Committee,

Thank you for the opportunity to testify today on H.B. 2920. House Bill 2920 pertains to the expedited appeal of habeas corpus proceedings involving extradition. The bill requires a transcript to be prepared within 20 days after the appeal from a judgment or an order is filed in a habeas corpus proceeding. Hearings on these appeals are to be heard at the earliest practicable time.

The bill further provides that the only design of the appeal is to do substantial justice to the party appealing. No incidental questions which may have arisen on the hearing of the application before the court shall be reviewed.

This measure was introduced to address a problem we have experienced in Leavenworth County for some time. Our county jail houses many federal detainees and other criminals, for extended periods of time and at great costs to the taxpayers, who are held as detainees for other states. Leavenworth County seems to have more than its share due to the presence of the federal, military and state penitentiaries. We have been unsuccessful in our appeal to federal and state governments for impact aid.

The language was suggested by Bob Abbott, Chief Judge of the Kansas Court of Appeals and is patterned after Texas law. Simply put, this measure reduces the amount of time involved in an appeal and allows the Court to hear the appeal at the earliest practicable time.

Attach. I
 Judiciary Subcommittee
 3-15-90

3-15-90
10:00



Bill Graves
Secretary of State

2nd Floor, State Capitol
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STATE OF KANSAS

Uniform Commercial Code filing fees have not been raised for 13 years and no longer generate sufficient revenues to cover the costs of administering the program. The fees are paid by users of the system, primarily banks, who in turn pass the costs on to their customers.

We receive a fee from each commercial lender who files a financing statement or an amendment to a statement already filed. We microfilm and store the original document and enter the information into our database. We propose that the fee increase from \$3 for standard forms and \$5 for non-standard forms to \$6 for all forms. We also propose adding a \$1 fee for each additional page of the document to cover the additional microfilm and storage costs.

We also search our files for financing statements that name a particular debtor. The current fee is \$5 plus 25 cents for each statement reported after the first 10 statements naming that debtor. We propose raising the fee to \$8 regardless of the number of state-

ments reported. This would enable the customer to easily pay the search fee in advance.

These increases would place our fees slightly below the national average for U.C.C. filings and searches. The Kansas Bankers Association, representing the largest group of users of the system, support these modest increases because they are interested in maintaining the level of service previously provided. We were the first and are now one of the few states providing 24-hour service and conducting telephone searches for customers with pre-paid accounts.

The reason that increases were not necessary earlier is shown on the attached chart. For several years this office conducted a high volume of searches for the federal farm lending agency (ASCS) that loaned farmers money for grain crops. During several harvest seasons we conducted 1,600 searches daily and some days conducted more than 2,000 searches. The marginal cost of providing these additional services was, in fact, less

Attach. II
Judiciary Subcommittee
3-15-90 1/3

than the fee collected. Surplus revenues were transferred from our U.C.C. fee fund into the general fund.

However, because the "target prices" of grains are now lower than the market prices, we are conducting only 175 searches per day. This level represents the "normal" commercial activity level for Kansas without temporary federal government activities.

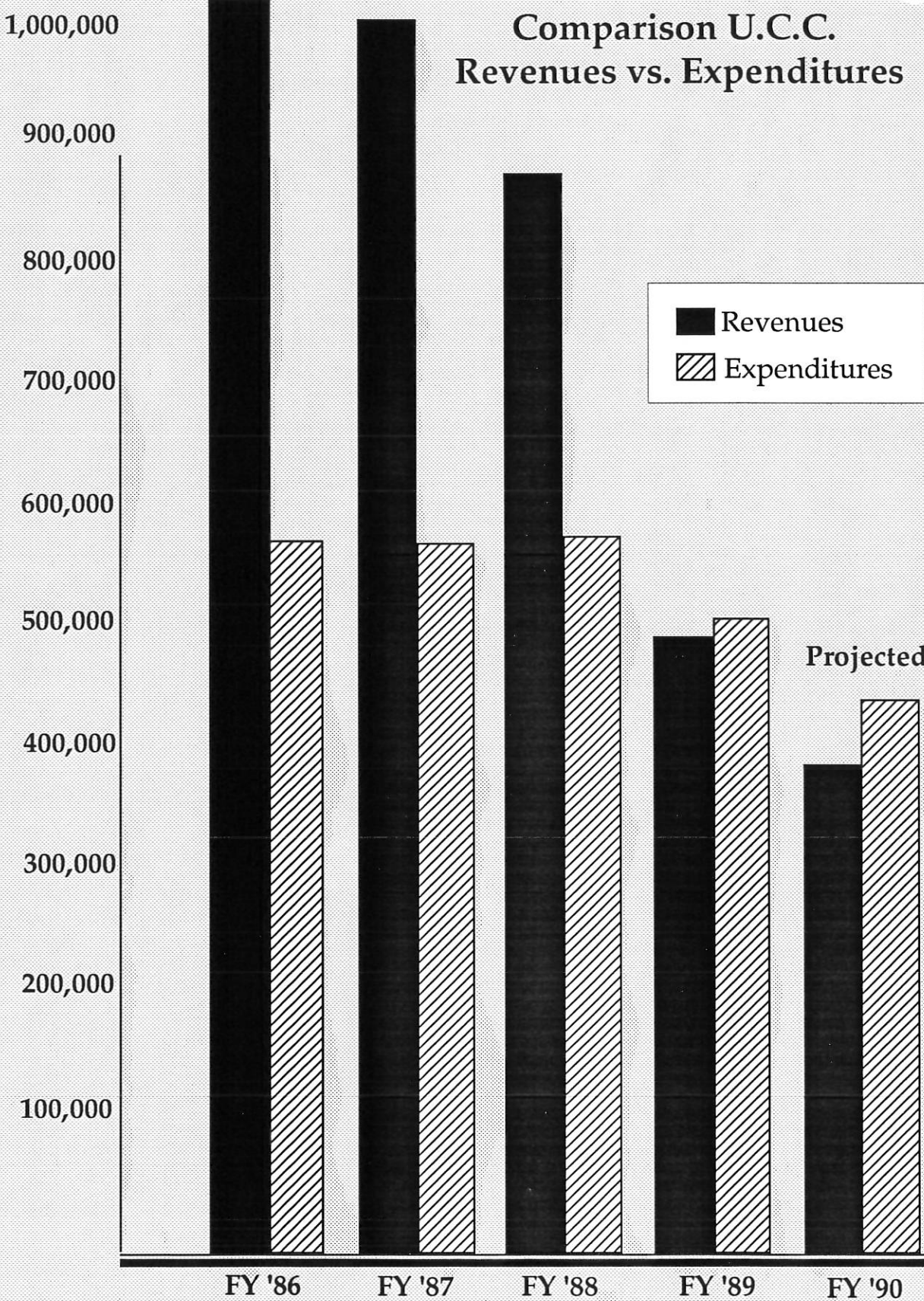
In response to this change we reduced our staff by one third, discontinued using U.C.C. funds to pay for some of the support services within the office and generally tightened our belts. Nevertheless, current fees at these search levels are insufficient to cover the costs of creating and maintaining the information system. Our current fees

certainly will not support the growth in services that our customers desire. For example, many states are now making information available on optical disk systems, while we are financially unable to do so. During F.Y. '89 we subsidized the services provided to the lenders with our general and other funds and project that we will do the same in F.Y. '90.

S.B. 730 would also permit this office to raise the fees to a maximum of \$10 per filing or search by rule and regulation. Our Senate Budget sub-committee suggested this provision to prevent the necessity of returning to the legislature every time market changes occurred. The statute already permits us to lower the fees if costs decrease as they would if volume increased again.

	Current	Proposed	Nat' Avg.	Oklahoma	Missouri	Colorado	Nebraska
Fee for filings	\$3 std./ \$5 non-std.	\$6 std. \$6 non-std.	\$6 std. \$10 non-std.	\$10 std. \$10 non-std.	\$6 std. \$8 non-std.	\$5 std. \$6 non-std.	\$4 std. \$7 non-std.
Fee for add. pages	\$0	\$1	\$1	\$5	\$1	\$1	.50
Search fee	\$5 plus .25 for each listing after first 10	\$8	\$8	\$6	\$8	\$7	\$7

Comparison U.C.C. Revenues vs. Expenditures



Revenues	\$1,094,341	\$1,017,265	\$892,928	\$506,639	\$374,368
Expenditures	\$587,041	\$587,248	\$591,100	\$525,169	\$454,127

Testimony on SB 669
March 15, 1990

Patricia Henshall
General Counsel, OJA
on behalf of the Kansas Court Trustees

The court trustees of Kansas oppose Senate Bill 669, which would allow the judgment in a parentage case to be reopened at any time "new, scientific evidence" exists which concerns the blood tests upon which parentage was based.

First, the trustees feel that K.S.A. 60-260, which empowers a court to set aside a judgment at any time, affords the same relief offered by this bill.

Second, the trustees are concerned about the issues of liability that might arise if the earlier decision establishing parentage is reversed. Would the mother be liable to repay the child support received? Would the state have to refund the money if the support had been paid to it?

Third, and most important, the trustees are concerned about the affect of this bill upon the children involved in parentage cases. In a recent case, the Kansas Supreme Court stated that public policy requires that courts consider the best interest of the child in parentage cases. The court pointed out that the shifting of parentage from a presumed parent to a biological parent could often be detrimental to the child's well-being. The court concluded that though someone may suffer if a parentage case is left closed, "...it should never be the child, who is totally innocent and has no control over a conception of the environment in which she or he has been placed." *In re Marriage of Ross*, 245 Kan. 591, 602 (1989).



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SB 744

March 15, 1990

Property Crime Victims Compensation Act

Kansans experience nearly 115,000 property crimes annually, ten to twenty times more crime than those fellow Kansans victimized by personal injury due to criminal acts. Dollar loss in property crimes runs into tens of millions of dollars.

Obviously some of this crime, such as theft, is insured. However, there are out of pocket losses sustained by victims which are not now compensated. The insurance deductible is a good example.

While technically, a citizen could sue the criminal in civil court for this out of pocket loss, obviously there are victims of unsolved crimes. This system sets up a less cumbersome method of achieving the same result for all victims of crime, where the offender is convicted or not, and without having to file a civil action. The defendant pays the restitution and damages, without need of being named a defendant in a civil lawsuit.

Most states have crime victim compensation programs for victims of violent crime causing bodily injury. So does Kansas. When Kansas passed its Crime Victims Compensation Act, it intentionally left out compensation to victims of property crimes. Primarily this was to avoid creating the large bureaucracy needed to handle over 100,000 potential claims that could be generated.

By decentralizing administration as SB 744 does, and making adoption of the program voluntary by county commissions, we avoid the creation of a state bureaucracy. As far as we can determine, there is no other program like this in the country that creates a program for administering limited compensation of out of pocket expense due to property crimes.

It is possible for local counties to create such a program under current law. Saline County has done so. However, it was felt that SB 744 would provide structure to other programs that might be created statewide, and give them some uniformity of operation.

KBA supports legislation encouraging establishment of Property Crime Compensation Boards. Using a combination of funding sources primarily at the local level, and through enhanced collection of restitution amounts awarded by judges, programs operated locally should be made available to the public. We urged it be reported favorably for passage.

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3-15-90
10:00 A.M.
Attach. IV
Judiciary Subcomm.

3-15-90 1/19

2/19

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

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

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

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

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

20 (b) "crime" or "property crime" means an act made criminal by
21 state, county or municipal penal codes and which do not constitute
22 criminally injurious conduct as defined in subsection (e) of K.S.A.
23 1989 Supp. 74-7301 and amendments thereto;

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

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

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

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

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

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

Section 2 is definitional. The definition of "crime" excludes compensation when the violent crime compensation act can be utilized. Most other definitions come from the current crime victims act, K.S.A. 74-7301.

3/19

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.

To implement the act, a county com-
mission must create a special reve-
nue fund.

Subsection (b) allows carry-over use
of the funds from year to year.

If a local fund is created, Subsec-
tion (c) allows the commissioners to
appoint a three-person board to
administer the fund, or the commis-
sioners could serve as a board them-
selves.

Any source can be used to fund the
victims fund, including private
donations. While it could include
property tax revenue, I doubt that
local politicians will opt for that.

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.

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 an

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
apply to the compensation payment.

New Section 4 limits use and defines eligibility for property crime compensation payments.

The victim must cooperate with authorities. Several subsections are identical to those limiting sections of the violent crime compensation commission.

Subsections (g) and (h) limit the amounts to \$250 or \$150, depending on whether the crime if charged would be a felony or misdemeanor. NOTE: based on 1974 studies by the Department of Justice, these amounts would cover the bulk of out of pocket loss attributed to property crimes. There are higher amounts of out of pocket loss, such as a stolen car that is uninsured. However, the vast majority of claims will be fully met using these amounts.

requirements imposed by subsection (c) of section 3, the local board may exceed the amounts in subsections (g) and (h).

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

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

(l) The local board may provide written policy for the handling 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 for such services.

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

(n) No assignment or agreement to assign any right to compensation for loss under this act shall be enforceable in this state.

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

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

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

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

5/19
Subsection (i) allows a local board discretion to exceed (g) and (h) limits in extraordinary circumstances.

Subsection (k) allows the local board to determine that a \$10 loss (or other amount chosen by the board) is "de minimis" and will not be compensated. Again, local boards decide.

Subsection (l) recognizes that some property crimes damaging a house in the middle of winter, when the victim can't pay for damages, might create risk of illness.

Subsections (m) and (n) are taken from the violent crime victims compensation act.

Subsection (o) tries to prevent possible collusion. Presumably local boards could adopt such rules internally, but it was thought we should make it state policy.

Subsection (p) makes the program specific to individuals, not corporate crime losses.

Subsection (q) limits the program to property crimes listed in these statutes. That way property damage resulting from other crimes not listed are not compensated. For example, if a person were kidnapped and beaten, and their car was also stolen, the current violent crime victims compensation act covers property loss, not the local program. This section keeps the property crime victims program from overlapping with the state program.

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.

Subsections 5(a) and 5(b) simply indicate the burden of proof required to make a payment, and that no official is liable for not compensating someone under this plan.

Subsection (a) is similar to the violent crime act.

7/19

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

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.

This section gives county boards guidance in prioritizing payments when there are more claims outstanding than funds available to pay them.

8/19

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.

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.

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.

This section references Administrative Order 41 of the Supreme Court, which outlines for judges how and when to impose restitution orders. See Appendix "A".

Lines 9-14 allow local funds to be reimbursed for payments the funds have made, reimbursement coming from restitution amounts recovered from defendants. That way if defendants are ordered to pay restitution, the local fund can go ahead and make an award knowing there is some likelihood they might eventually get reimbursed.

Subsection (b) outlines the effect of having a local board, or restitution, as alternatives. Currently, only restitution is the alternative for out of pocket loss.

Subsection (d) directs where "unclaimed" restitution goes.

AMENDMENT: in line 19, change "(c)" to read "(a)"

9/19

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New Sec. 8. (a) Within seven days after the initial contact between the victim of a reported crime and the law enforcement agency investigating the crime, such agency shall notify the victim compensation coordinator of the report of the crime and the name and address of the victim or victims.

(b) A law enforcement agency shall provide the following information to the victim:

(1) The availability of emergency and medical services numbers, if needed;

(2) the police report number, in writing;

(3) the address and telephone number of the prosecutor's office that the victim should contact to obtain information about victims' rights pursuant to K.S.A. 1989 Supp. 74-7333 and 74-7335 and 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 public; and

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

(c) A law enforcement agency may adopt any procedure to transmit such information which substantially complies with the provisions of this section.

This section comes from a proposal in Arizona. Victims are notified of a number of things by police. One of them, (b)(4), is whether there is a local board available.

Many police departments currently provide information to traffic accident victims, usually a simple photocopied sheet of paper. It is envisioned similar "notices" would result from this section.

10/19

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.

Allows judges to create a payments docket. The section was suggested by Judge Carpenter in Shawnee County.

A 1989 American Bar Association report on restitution made important findings and suggests five important ways that court-ordered restitution could be enhanced. They were:

- 1. prosecutors provided information for use in determining the restitution award;
- 2. the program accepted certified checks;
- 3. delinquent offenders' means were assessed in determining action to be taken in response to the delinquency;
- 4. the program handled all restitution cases in the jurisdiction; and
- 5. offenders' means were assessed in determining the amount of the restitution award. More offenders paid in jurisdictions where the court made an effort to determine an offender's ability to pay before ordering restitution.

Using a payments docket, the court (or a special *pro tem*) can monitor how well probationers are complying with restitution orders, and implement these ABA recommendations.

Subsection (b) allows a judge to lower the amounts of restitution ordered for good cause shown. This is an ABA guideline recommendation.

11/19

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

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.

The administrative judge of a dis-
trict appoints the property crime
victims coordinator. This can be a
new employee, or expanding the
duties of existing employees.

If extra money is required to pay
the coordinator or staff, it must be
paid for locally.

It was felt the administrative judge
was the best person to be charged
with this supervision because in
multi-county districts, there may
be more than one commission in-
volved and more than one fund in-
volved, however, it makes no sense
for each county to have its own
victims coordinator, especially in
rural districts where property
crimes hopefully aren't as numerous.

The duties of the coordinator are
set forth in the lettered paragraphs.

12/19

28 New Sec. 11. The administrative judge shall, annually, cause to
9 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.

This section 11 allows the court system to compile a report on how well the property compensation system is working.

Section 12 gives direction to court service officers to advise and work with property compensation coordinators to insure that restitution orders of probationers are being followed.

Again this is designed to keep the court system on top of restitution payments.

41 as follows: 22-2909. (a) A diversion agreement shall provide to read
42 the defendant fulfills the obligations of the program described
43 therein, as determined by the county or district attorney, the county

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 arraignment,
5 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 pursuant*
17 *to recommendations of the local board under the property*
18 *crime restitution and victims 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 defendant's
22 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.

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 include
28 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 requirement
35 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 community
39 service specified by the agreement, in accordance with
40 K.S.A. 8-1567, and amendments thereto; and

1 (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-

13/19
Section 13 amends our diversion agreement statutes to allow a separate diversion fee be assessed by prosecutors if:

- (1) a local board and fund are created under this act, and
- (2) diversions are granted.

The county attorney or DA shall determine the amount of the diversion fee, but it cannot exceed \$100.

Line 9 indicates that "diversion costs" still can be assessed independent of this act if a county decides NOT to adopt a local property crime compensation fund.

14/19

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

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

29 sec. 14. K.S.A. 1988 Supp. 8-1567 is hereby amended to read
30 as follows: 22-2909b. (a) A diversion agreement shall provide that if
31 the defendant fulfills the obligations of the program described
32 therein, as determined by the county or district attorney, the county
33 or district attorney shall act to have the criminal charges against the
34 defendant dismissed with prejudice. The diversion agreement shall
35 include specifically the waiver of all rights under the law or the
36 constitution of Kansas or of the United States to a speedy arraignment,
37 preliminary examinations and hearings and a speedy trial, and
38 in the case of diversion under subsection (c) waiver of the rights to
39 counsel and trial by jury. The diversion agreement may include, but
40 is not limited to, provisions concerning payment of restitution, including
41 court costs and diversion costs, residence in a specified facility,
42 maintenance of gainful employment, and participation in programs offering
43 medical, educational, vocational, social and psychological services, corrective and preventive guidance and other

15/19
This section is in here because two bills amending this section were not married into a single section late last session.

The reasons are identical to Section 13.

1 rehabilitative services. If a county creates a local fund, a county or
2 district attorney shall require in all diversion agreements as a condition
3 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.

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 defendant's
10 sex, race and date of birth; (4) the crime with which the defendant
11 is charged; (5) the date the complaint was filed; and (6) the district
12 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 include
16 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 requirement
23 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 community
27 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 agreement,
32 and pay the assessment required by K.S.A. 8-1008 and amendments
33 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 restrict
37 the defendant's driving privileges, in addition to any suspension and
38 restriction required by K.S.A. 1988 Supp. 8-1014 and amendments
39 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
or parole meetings, drug or alcohol counseling or any place the

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

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

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

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



Line 37 amendment clarifies that the state crime victims compensation board shall promulgated necessary rules and regulations to implement the property crime victims act.

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cedure or practice requirements of the board;

(d) the duty to prescribe forms on which applications for compensation shall be made;

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

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

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

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

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

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

17/19

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

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 Inmate released on parole or conditional release shall be provided
 42 ic transportation, if required, to the place to which the inmate
 43 paroled or conditionally released.

This section deals with compensation by inmates in prison. The secretary of Corrections already can withhold funds from inmates incarcerated and send that money to the crime victims compensation board. (subsection (b))

Lines 17-24 are there so that if an inmate is serving time for a property crime, and IF there has been a payment made by a local board, the local fund is reimbursed by the 5% withheld in line 13. The limits of \$250 and \$150 found in Section 4(g) apply to this reimbursement.

If the inmate is in prison for a different crime, e.g. involving violence, then the status quo is maintained, by sending the 5% to the state crime victims compensation board.

18/19
6/1/81

1 Sec. 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

Certain inmates are allowed to work outside the prison. Their wages are subject to withholdings, in KSA 75-5268.

Subsection (f) now allows the Department of Corrections to withhold an amount to reimburse a local fund for a payment they've already made to a property crime victim. It only applies to property crimes.

Section 18 is the repealer.

Section 19 makes it effective January 1st, to coincide with the beginning of a county fiscal year.

IN THE SUPREME COURT OF THE STATE OF KANSAS

Administrative Order No. 41

Re: Reparation and Restitution pursuant to K.S.A.
1983 Supp. 21-4610(4) (a) or 38-1663(a) or (b)

APPENDIX "A"

1. In cases in which reparation or restitution is ordered pursuant to the requirements of K.S.A. 1983 Supp. 21-4610 or 38-1663, the total amount of reparation or restitution, the manner of payment if designated by the court, the names and addresses of the persons to whom restitution is to be made, and the amount to be paid each shall be journalized.
2. Imposition of restitution and determination of the amounts, recipients and manner of payment shall be a judicial function which shall not be assigned or delegated to the court services staff of the district court.
3. If, at the time reparation or restitution is ordered, the sentencing judge completes and files with the clerk of the district court a copy of the attached restitution order form (OJA-52) for each person being ordered to make reparation or restitution, the requirements of paragraph one of this order are satisfied.
4. It shall be the duty of the clerk of the district court to receive, disburse, account for and keep running balances of reparation and restitution payments coming into the court. The court services staff of the district court shall have access to the court's reparation and restitution payment records for the purpose of monitoring timely payment.
5. Unless otherwise required by law and except as otherwise directed by the court, moneys received from persons ordered to make reparation or restitution through the district court shall be credited to the following, in the order indicated, as applicable:
 - a. Docket fee, costs and fines.
 - b. Reparation or restitution.
 - c. Reimbursement ordered pursuant to K.S.A. 1983 Supp. 21-4610(4) (b) for expenditures by the State Board of Indigents' Defense Services.
6. Court services staffs of the district courts shall monitor timely payment of reparation or restitution ordered. The Judicial Administrator shall develop a set of procedures for monitoring timely payment of reparation and restitution and recommend the procedures to the judges of the district courts and assist in the implementation of the procedures upon request of the district courts.

BY ORDER OF THE COURT this 6th day of March 1984.


ALFRED G. SCHROEDER
Chief Justice

Attachment

3-15-90

10:00



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
NANCY LINDBERG, ASSISTANT TO THE ATTORNEY GENERAL
ON BEHALF OF ATTORNEY GENERAL ROBERT T. STEPHAN
BEFORE THE SENATE JUDICIARY SUB-COMMITTEE ON
CRIMINAL LAW AND UNIFORM COMMERCIAL CODE
MARCH 15, 1990
RE: SENATE BILL 744

Mr. Chairman and Members of the Sub-Committee:

Attorney General Bob Stephan has long advocated for crime victims' rights. In Kansas, like most other states, we have a program which compensates the victims of violent crime involving bodily injury. We have not had a mechanism to review and pay claims for out-of-pocket expenses in property claims. The KBI statistics just released Monday show an increase of 4.9 percent in property crimes. Property crime statistics which include burglary, theft, and motor vehicle theft rose from 110,359 in 1988 to 115,743 in 1989.

Senate Bill 744 would assist counties who choose to participate in establishing a property compensation program. We would like to point out what we see as the highlights of this bill:

1. The costs for the program are born locally.
2. It allows county commissioners to establish a special revenue fund to collect and disburse funds for property crime victims who meet the program's criteria.

Attach. V
Judiciary Subcommittee

3-15-90

1/5

3. County commissioners will appoint a local board of review to administer the local funds. Claims are received and reviewed by the board and are limited to actual out-of-pocket expenses up to \$250 for felonies and \$150 for misdemeanors.

4. The local boards can apply for, receive or accept financial support from other sources, such as grants and private donations.

5. The bill calls for the local fund to be reimbursed for money advances to victims through restitution ordered paid by probationers and parolees.

6. County commissioners, county and district attorneys and administrative judges may consider an additional fee not to exceed \$100 to be assessed on diversion agreements for use in financing the program.

7. Only victims' out-of-pocket expenses are compensated. Insured losses are not compensated and neither are insurance companies reimbursed.

8. This bill allows administrative judges to create "payment" dockets to better monitor whether those offenders ordered to pay restitution are doing so in a timely manner. The timely payment of restitution by criminals to their victims is an important part of this plan. Recommendations for adjustments in restitution orders are also allowed.

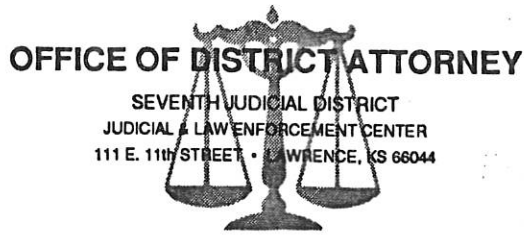
On behalf of the Attorney General, we commend the Kansas Bar Association for suggesting such legislation. We also want to acknowledge that a similar program exists in Saline County. We are optimistic that this program, administered locally as it is in

Page 3

Salina, will work in other communities of the state. We compliment Salina on the success of their program. We feel a state statute would be good in order to set standards and provide guidelines for counties to follow.

We urge your favorable consideration of Senate Bill 744.

RTS 3-15-90
10 AM
AG's Office



JAMES E. FLORY
DISTRICT ATTORNEY
DOUGLAS COUNTY, KANSAS

General Office 913-841-0211
Child Support 913-841-7420

February 5, 1990

Robert T. Stephan
Attorney General
Kansas Judicial Center, 2nd Floor
Topeka, Kansas 66611

Re: Property Crimes-Victim Reparations

Dear Attorney General Stephan:

I have received and reviewed the Property Crimes Victims Legislation (second draft) which was apparently prepared by Ron Smith of the Kansas Bar Association. While I am very supportive of the concept of reparations for property crimes, there are a number of provisions in the proposal that concern me. More specifically, my concerns are as follows:

1. Section 14: This section creates a "property crime victims coordinator" which is appointed by the administrative judge(s) of the judicial district. To my knowledge, we have never had victim advocates in the judicial branch of government, but rather, that role has always existed in the executive branch, typically under the direction of prosecution or law enforcement. In my opinion, the role of victim advocacy should remain in the office of the elected prosecutor, especially when many of the functions of the "property crime victims coordinator" are already being performed by victim-witness personnel. My rationale for this opinion is as follows:
 - a. Many victims of property crimes never have contact with the court system because the criminal is not apprehended; however, the victim nevertheless has contact with law enforcement and the county or district attorney.
 - b. Frequently property crime victims receive their restitution directly through the county or district attorney (diversions, plea agreements, etc.) and restitution awards are not approved or monitored by the courts. (In 1989 my office distributed over \$117,000.00 in restitution through such agreements.)
 - c. There would be considerable duplication (and confusion) of efforts between the judicially appointed "property crimes victim coordinator" and the victim-witness personnel appointed by the county or district attorney.
 - d. Court-ordered restitution can be adequately monitored and enforced by existing probation and parole officers without creating an additional position in the judicial bureaucracy.

Attach. II
4/5

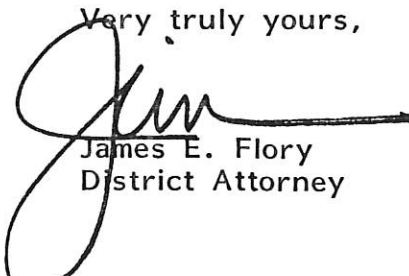
- e. It would seem improper for the necessarily impartial judiciary to have an appointee that is clearly an advocate for victim.
2. Section 11: This section requires law enforcement to inform the victim of their assorted remedies and to inform the coordinator that a property crime occurred. I suggest that officers only be required to give victims the information about the coordinator and let the coordinator take it from there. This could be done by a small business card containing the relevant information.
3. Section 3(c): The composition of the reparations board should include a representative from prosecution and law enforcement even if that means having a five member board.
4. Section 3(d) and Section 16: These sections relate to funding of the reparations program. I strongly object to the provisions of Section 16 which directs that diversion fees be placed in the reparations fund. In Douglas County, diversion fees (by agreement with the county commission) are the primary source of revenue for funding my existing victim-witness program from year to year.

It would seem far more appropriate that all defendants, not just those who receive diversion, be responsible for funding the reparations program. This could be done by amending the court costs statutes to provide for an additional amount assessed in every traffic and criminal case filed. Such a revenue provides a fairly consistent level of funding, and the mechanism is already in place. The clerk of the court would simply disburse these funds just as they do now for prosecutor training, law library, etc.

Additionally, the proposal fails to consider the diversion fees generated in the municipal courts of the state. Since many of the property crimes are misdemeanors which are charged and prosecuted through municipal courts, if the legislature decides to seize upon these funds, it would not just be the county and district attorneys who feel the loss.

Notwithstanding the above criticisms I strongly support your efforts to make reparations available to property crime victims. In that regard I have attempted (unsuccessfully) to get both state and local funding for such a program in Douglas County. I trust you will seriously consider my suggestions and look forward to the opportunity to support a bill in the Legislature. Please feel free to contact me if I can clarify or expound on the ideas above.

Very truly yours,



James E. Flory
District Attorney

cc: Mr. Jack Focht
Ms. Juliene Maska
Mr. Paul Shelby

JF:ca

V
5/5

3-15-90

10:00 AM

Office of The
DISTRICT ATTORNEY
Of The 29th Judicial District of Kansas

Wyandotte County Court House - First Floor
710 N. 7th Kansas City, Kansas 66101
(913) 573-2851



DISTRICT ATTORNEY
Nick A. Tomasic

Senate Bill 744

A. Commissioners

1. "May" establish a revenue fund.
2. "May" appoint 3 person Board or commission sit as local Board.
3. "May" receive money or appropriate funds.

Question - Where is the money to come from?

B. Compensation Awarded

1. Property crime victims
2. Report within 72 hours
3. Not to exceed \$250.00 - Felony
4. \$150.00 - Misdemeanor
5. Actual Defendant charged.

Many times can't charge. Is the victim out of luck.

Section 3 (g)

"Felony Charge"

(g) - "Crime Charged"

What about cases where no crime is charged for various reasons. Are these persons not entitled to be repaid.

Duplication

(1) K.S.A. 74-7301 - Crime Victims Compensation Board - Medical Related Claims.

State Administration

No requirement here that a charge be filed.

Attach. VI
Judiciary Subcommittee
3-15-90 1/2

(2) Now (744) - Property Claims

Local Administration

Conceivable - when a person is shot - can have a \$250.00 suit on or coat.

Will suffer both personal injury and property damage.

Victim will report to State and to local.

2 different Boards - can have
2 different decisions.

Cost

Wyandotte County had 15,934 Property crimes in 1989.
x \$250
almost 4 million dollars.

Staff

Who will process

Verify with insurance companies to avoid duplication.

Combine with personal injury board

Provide a staff avoid duplication.

State had 115,743 property crimes.

3-15-90
10:00 A

**BARTON COUNTY
COURTHOUSE**

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GREAT BEND, KANSAS 67530
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Office of

COUNTY ADMINISTRATOR

February 9, 1990

Wint Winter, Jr.
State Capitol
Room 120-S
Topeka, KS 66612

Dear Senator Winter:

I respectfully call your attention to SB-744 and ask you not to support this bill.

Counties, and the Courts that Counties support, are facing the potential of budget cutting for on-going operations. This bill, although having some merit, would simply increase budget constraints and make it even more difficult to handle those demands for services that Counties already face.

Sincerely,



Mike Leighton
County Administrator

cc: District Court Clerk

Attach. VII
Judiciary Subcommittee
3-15-90