

Approved February 13, 1991  
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

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

10:05 a.m./~~p.m.~~ on January 29, 1991 in room 514-S of the Capitol.

All members were present except: Senator Yost who was excused.

Committee staff present:

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

Conferees appearing before the committee:

Alan Alderson, Mid-America Lumbermens Association  
Senator Janis Lee  
Terry Leatherman, Kansas Chamber of Commerce and Industry  
Nancy Goodall, Kansas Banker's Association  
James McHenry, Kansas Child Abuse Prevention Council  
Randy Hearrell, Kansas Judicial Council

Chairman Winter called the meeting to order by asking for requests of bill introductions.

Alan Alderson, Mid-America Lumbermens Association, requested the introduction of a construction fund fraud bill. (ATTACHMENT 1)

Senator Moran moved to introduce the construction fund fraud bill as requested. Senator Gaines seconded the motion. The motion carried.

Senator Janis Lee outlined a traffic violation problem with out-of-state violators who are residents of states that are not members of the interstate traffic violation states. She requested the committee introduce a bill to address the situation. She suggested making it a misdemeanor for failure to post bond on these violations.

Senator Morris moved to introduce a bill that would address the problem, giving latitude within the boundaries of the discussion to the revisor for drafting purposes. Senator Feleciano seconded the motion. The motion carried. Chairman Winter requested Matt Lynch, Kansas Judicial Council, consult with his office to suggest a bill draft to the revisor, Gordon Self.

Terry Leatherman, Kansas Chamber of Commerce and Industry, requested introduction of a bill concerning wage garnishment law. (ATTACHMENT 2)

Senator Moran moved to introduce the legislation requested by the KCCI. Senator Rock seconded the motion, the motion carried.

Nancy Goodall, Kansas Banker's Association, presented the committee with a request for introduction of a bill regarding trust actions. (ATTACHMENT 3)

Senator Bond moved to introduce the bill as requested by the Kansas Banker's Association. Senator Gaines seconded the motion. The motion carried.

James McHenry, Kansas Child Abuse Prevention Council, requested the committee introduce a bill to provide immunity to members of multidisciplinary child protection teams from penalties. (ATTACHMENT 4)

Senator Morris moved to introduce the bill requested by Mr. McHenry, but limited to civil penalties only. Senator Petty seconded the motion. The motion carried.

Senator Petty brought to the attention of the committee the Shawnee County program for the misdemeanor payment docket. She suggested that if this program were adopted on

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

room 514-S, Statehouse, at 10:05 a.m./~~p.m.~~ on January 29, 1991

a statewide basis, the courts could recoup a significant amount of money. She further suggested the Committee write to the Supreme Court and suggest examining this matter.

Senator Petty moved to have Chairman Winter write to Chief Justice Miller on behalf of the committee, requesting consideration by the Supreme Court of this program. Senator Rock seconded the motion. The motion was carried.

Chairman Winter directed the Committee's staff from Kansas Legislative Research Department draft the letter for his signature.

Randy Hearrell, Kansas Judicial Council, presented the committee with a request for introduction of revision to the criminal code as suggested by the Judicial Council study committee.

Senator Gaines moved to introduce the bill as requested. Senator Martin seconded the motion. The motion carried.

Mr. Hearrell also requested a bill for implementation of the judicial redistricting committee report.

Senator Gaines moved to introduce the bill requested by Mr. Hearrell. Senator Rock seconded the motion. The motion carried.

The Chairman turned the committee attention to the sex offender bills waiting committee discussion and action.

SB 18 - sexually violent offenders.

SB 19 - persons likely to commit sexual acts as mentally ill person under treatment act for mentally ill persons.

SB 20 - required supervision and treatment by mental health professional for sex offenders.

Mike Heim, of committee staff, distributed a listing of the concerns expressed by conferees who appeared on the bills. (ATTACHMENT 5)

Chairman Winter assigned Senator David Kerr to chair a subcommittee to address the concerns identified in the public hearings on SB 18, SB 19 and SB 20. All committee members were invited to serve on the subcommittee if they so desired, but the Chairman assigned Senator Dick Bond, Senator Richard Rock, Senator Nancy Parrish and Senator Wint Wnter. The subcommittee is requested to report back to the full committee with their recommendations by February 22, 1991.

The meeting was adjourned.



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January 22, 1991

The Honorable Wint Winter, Jr.  
Senator, 2nd District  
Room 120-S, Statehouse  
Topeka, Kansas 66612

Re: Mid-America Lumbermens Association  
Lien Fraud Proposal

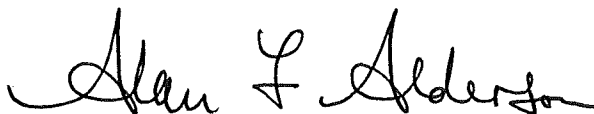
**ATTENTION: JUDY**

Dear Senator Winter:

This letter will confirm my January 22 phone conversation with Judy regarding a brief appearance before the Senate Judiciary Committee in order to seek introduction of MLA's lien fraud bill. I will appear at 10:00 a.m. on Tuesday, January 29, 1991, and will need only a few minutes of the Committee's time.

Thank you for your courtesy in this matter.

Sincerely,



Alan F. Alderson

ALDERSON, ALDERSON, MONTGOMERY & NEWBERY

AFA:sbe

cc: Art Brown

Ben Swank

*Senate Judiciary Committee  
Attachment 1*

*1-29-91*

*1-13*

21-4403. Deceptive Commercial Practices.

(1) A deceptive commercial practice is:

(a) The act, use or employment by any person of any deception, fraud, false pretense, false promise, or knowing misrepresentation of a material fact, with the intent that others shall rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby, or

(b) Construction fund fraud, as hereinafter defined in subsection (4).

(2) The following definitions shall be applicable to this section:

(a) "Merchandise" means any objects, wares, goods, commodities, intangibles, real estate or services.

(b) "Person" means any natural person or his legal representative, partnership, corporation (domestic or foreign), company, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof.

(c) "Sale" means any sale, offer for sale, or attempt to sell any merchandise for any consideration.

(d) "Construction funds" shall be all construction loans or monies otherwise received for the payment of improvements to real property.

(3) This section shall not apply to the owner or publisher of any newspaper, magazine, or other printed matter wherein an advertisement appears, or to the owner or operator of a radio or television station which disseminates an advertisement, when such owner, publisher or operator had no knowledge of the intent, design or purpose of the advertisement.

(4) Construction fund fraud is the failure with intent to defraud by an owner, contractor, owner-contractor or subcontractor to pay invoices or contractual obligations within 30 days of final receipt of all construction funds due such owner,

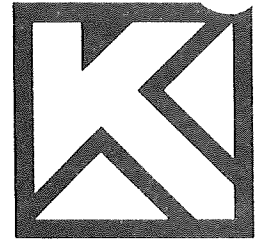
contractor, owner-contractor or subcontractor, exposing the property under construction or improvement to the filing of one or more mechanic's liens.

(a) If an owner, contractor, owner-contractor or subcontractor is a corporation or any entity other than an individual, such corporation and other entity and its managing officers shall be responsible for adhering to and be subject to the requirements and penalty of this subsection.

(b) Nothing in this subsection shall replace or in any manner affect the mechanic's or materialman's lien remedy provided by law and this section shall apply notwithstanding the filing of a lien.

(5) A deceptive commercial practice is a Class B misdemeanor.

January 28, 1991



**Kansas  
Chamber of  
Commerce  
and Industry**

A consolidation of the  
Kansas State Chamber  
of Commerce,  
Associated Industries  
of Kansas,  
Kansas Retail Council

The Honorable Wint Winter, Jr.  
Kansas Senate  
State Capitol, Room 120-S  
Topeka, KS 66612

Dear Senator Winter:

On behalf of the Kansas Chamber of Commerce and Industry, I respectfully request the Senate Judiciary Committee consider introducing legislation to address the concerns of several of its members in the area of wage garnishment. The legislation would attempt to address the concerns which several KCCI members have expressed about the following aspects of the Kansas wage garnishment law.

- 1) Currently, a court order for wage garnishment includes the percentage of an employee's pay which an employer must withhold, but does not include the specific dollar amount the employee owes to satisfy the garnishment. As a result, an employer often withholds more of an employee's pay than is needed to satisfy the court order for wage garnishment.
- 2) When complying with an income withholding order to pay child support, an employer is permitted to deduct a cost recovery fee to defray the administrative cost of complying with the court order. The cost recovery fee is assessed against the employee's pay and is limited to \$5 per withholding, up to a maximum of \$10 a month. However, a cost recovery fee is not permitted by the Kansas wage garnishment law.
- 3) Wage garnishment court orders identify the garnishee only by name. For large companies, it is not unusual to employ several people with the same common name. When the situation arises where an employer receives a wage garnishment order for "Bob Jones" or "Sue Johnson" and there are more than one employee with that name at the business, the employer's efforts to comply with the wage garnishment order is complicated.

Thank you for considering KCCI's request to introduce legislation which addresses these concerns with the Kansas wage garnishment law.

Sincerely,

TERRY LEATHERMAN  
Executive Director  
Kansas Industrial Council

*Senate Judiciary Committee  
Attachment 2  
1-29-91*

January 29, 1991

**BANK IV**

Senator Wint Winter, Chairman  
Senate Judiciary Committee  
Kansas Legislature

Dear Senator Winter and Senate Judiciary Committee Members:

I am writing on behalf of the Kansas Banker's Association regarding the reintroduction of 1989 Session House Bill No. 2462. This proposal provides that all trust actions, whether or not created by one's last will and testament, will fall under the laws set out in the Probate Code, Chapter 59 of the Kansas Statutes Annotated. This bill proposes amendment of K.S.A. 59-103, 59-2203, 59-2210, and 59-2214 and K.S.A. 1988 Supp. 59-212, 59-2401, and 59-2402a, while repealing existing sections.

This proposal assures legal conformity. Our current system requires two sets of laws for legal determinations of trust actions. If a trust was created during one's lifetime, actions on said trust would be brought under Chapter 60 of the Kansas Statutes Annotated. If, however, a trust was set up in one's will and became effective at death, the trust action would have to be brought as a probate action under Chapter 59 of the Kansas Statutes Annotated. While two trusts may have exactly the same terms and while both may be irrevocable due to the maker's death, they will be treated differently. Pleadings and notices will be different, interested parties may differ, and even judicial interpretation itself may vary. This is an illogical result and all trusts should be governed under one set of laws.

The amendment provides for more uniform judicial interpretation. There are few statutes and little case law currently existing interpreting non-testamentary trust matters. For instance, Chapter 59 permits judicial termination of testamentary trusts (those trusts set up in one's will) if the trust becomes economically unfeasible to continue. There is no such statute governing non-testamentary (living trusts which are or have become irrevocable) trusts. This proposed change would allow the application and amendment of existing testamentary trust provisions to apply to non-testamentary trusts.

*Senate Judiciary Committee  
Attachment 3  
1-29-91*

3-1/9



Senator Wint Winter, Chairman  
January 29, 1991  
Page Two

Finally, the proposal would result in judicial economy and expertise. While the case load may not decrease by transferring Chapter 60 trust actions to the Chapter 59 arena, judges will develop a heightened knowledge of all trusts as they have in the probate field. That specialty already exists in the testamentary trust area, but living trust actions are tried before a variety of judges who hear other Chapter 60 cases, including criminal, divorce, and general litigation actions.

The Kansas Banker's Association urges this body to support legislation transferring governance of all trust actions to Chapter 59 of the Kansas Statutes Annotated.

If you have any questions regarding this bill, please feel free to contact me at (913) 295-3412.

Sincerely,

*Nancy Goodall*

Nancy Goodall  
Trust Division, Legislative Chair  
Kansas Banker's Association

NG/bea

**HOUSE BILL No. 2462**

By Committee on Judiciary

2-20

15 AN ACT concerning trusts; relating to the construction and inter-  
16 pretation thereof; amending K.S.A. 59-103, 59-2203, 59-2210 and  
17 59-2214 and K.S.A. 1988 Supp. 59-212, 59-2401 and 59-2402a and  
18 repealing the existing sections.  
19

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

21 Section 1. K.S.A. 59-103 is hereby amended to read as follows:  
22 59-103. (a) Chapter 59 of the Kansas Statutes Annotated may be  
23 used to:

24 (1) ~~To~~ Admit last wills and testaments to probate.

25 (2) ~~To~~ Grant and revoke letters testamentary and of  
26 administration.

27 (3) ~~To~~ Direct and control the official acts of executors and ad-  
28 ministrators, to settle their accounts, and to order the distribution  
29 of estates.

30 (4) ~~To~~ Administer partnership estates as provided in this act.

31 (5) ~~To~~ Determine the heirs, devisees, and legatees of decedents.

32 (6) ~~To~~ Appoint and remove guardians and conservators for mi-  
33 nors, voluntary conservatees and incapacitated persons, to make all  
34 necessary orders relating to their estates, to direct and control the  
35 official acts of such guardians and conservators and to settle their  
36 accounts.

37 (7) ~~To~~ Supervise the administration of trusts and powers created  
38 by wills admitted to probate, and trusts and powers created by  
39 written instruments other than by wills in favor of persons subject  
40 to conservatorship; to appoint and remove trustees for such trusts,  
41 to make all necessary orders relating to such trust estates, to direct  
42 and control the official acts of such trustees, and to settle their  
43 accounts.

44 (8) ~~To~~ Appoint and remove trustees of estates of convicts im-

45 prisoned in the penitentiary under sentence of imprisonment for life,  
46 to make all necessary orders relating to their estates, to direct and  
47 control the official acts of such trustees, and to settle their accounts.

48 (9) To Hold hearings respecting mentally ill persons, and to order  
49 their referral for treatment.

50 (10) *Construe and interpret trusts created by written instruments*  
51 *other than by wills. Such proceedings shall be conducted pursuant*  
52 *to articles 22 and 24 of chapter 59 of the Kansas Statutes Annotated*  
53 *to the extent such articles are applicable, and be probate proceedings*  
54 *for such purposes.*

55 (b) Every petition to commence an action pursuant to chapter  
56 59 shall state, immediately below the clause showing the name of  
57 the court, parties and case docket number, the following: "Petition  
58 pursuant to chapter 59 of the Kansas Statutes Annotated."

59 Sec. 2. K.S.A. 1988 Supp. 59-212 is hereby amended to read as  
60 follows: 59-212. The following shall be kept by the court for pro-  
61 ceedings under chapter 59 of the Kansas Statutes Annotated:

62 (1) An appearance docket, in which shall be listed under the  
63 name of the decedent, ward, conservatee, mentally ill person, *settlor*  
64 *of the trust*, or other person involved, all documents pertaining  
65 thereto and in the order filed, except that separate appearance dock-  
66 ets, not open to public inspection shall be kept for proceedings under  
67 the treatment act for mentally ill persons and adoptions. Such list  
68 shall show the nature of the document, the date of the filing thereof,  
69 shall give a reference to the volume and page of any other book or  
70 reference to microfilm in which any record shall have been made  
71 of such document, and shall state the charge, if any, therefor.

72 (2) A suitable general index, in which files pertaining to estates  
73 of decedents shall be indexed under the name of the decedent, those  
74 pertaining to guardianships under the name of the ward, those per-  
75 taining to conservatorships under the name of the conservatee, those  
76 pertaining to mentally ill persons under the name of such person,  
77 those pertaining to adoption of children under both the name and  
78 adopted name of the child, *and those relating to trusts created by*  
79 *written instruments other than by wills under the name of the settlor*  
80 *of the trust.* After the name of each file shall be shown the file  
81 number, the appearance docket sheet, by case number, on which

82 the documents pertaining to such file are listed, and the date of  
83 filing of the first document.

84 (3) A suitable index pertaining to wills deposited pursuant to  
85 K.S.A. 59-620 and amendments thereto, under the name of the  
86 testator.

87 (4) A suitable permanent duplicate copy, shall be kept by the  
88 district court of: (1) All wills admitted to probate; (2) all elections  
89 filed; (3) all letters of appointment issued; (4) all certificates of ap-  
90 pointment filed; (5) all bonds filed; (6) all orders, judgments, and  
91 decrees, including inheritance tax orders; and (7) such other docu-  
92 ments as the court may determine.

93 Sec. 3. K.S.A. 59-2203 is hereby amended to read as follows:  
94 59-2203. Proceedings for the probate of a will or for administration  
95 shall be had in the county of the residence of the decedent at the  
96 time of his or her *such decedent's* death; If the decedent was not  
97 a resident of this state, proceedings may be had in any county  
98 wherein said *such* decedent left any estate to be administered as  
99 provided in K.S.A. 59-805, and amendments thereto. *Proceedings to*  
100 *construe trusts created by written instruments other than by wills*  
101 *shall be had in the county where the settlor resides or resided at*  
102 *the time of such settlor's death or where the trustee resides or is*  
103 *located.* Proceedings for the appointment of a guardian may be had  
104 in the county of the proposed ward's residence or where the proposed  
105 ward may be found. Proceedings for the appointment of a conservator  
106 shall be had in the county of the proposed conservatee's residence.  
107 If the proposed conservatee resides without this state, proceedings  
108 may be had in any county in which any of the proposed conservatee's  
109 property is situated. Proceedings for the administration of a part-  
110 nership estate by the surviving partner shall be had in the county  
111 of the residence of the deceased partner at the time. If the deceased  
112 partner is a nonresident of the state the proceedings may be had in  
113 any county in which any of the partnership property is situated.  
114 Such proceedings first legally commenced shall extend to all of the  
115 property of the decedent or proposed conservatee in this state.

116 If the proceedings are instituted in more than one county, they  
117 shall be stayed except in the county where first commenced until  
118 final determination of venue. If the proper venue is determined to

119 be in another county, the district court, after making and retaining  
 120 a true copy of the entire file, shall transmit the original to the proper  
 121 county. Proceedings by a person seeking to adopt a child shall be  
 122 had in the county of the residence of such person if such person is  
 123 a resident of the state. If such person is a nonresident of the state  
 124 such proceedings shall be had in the county in which the child to  
 125 be adopted resides, except that if the child is in the custody of an  
 126 institution or agency authorized by the laws of this state to place  
 127 children for adoption such proceedings shall be had in the county  
 128 in which such institution or agency is located. If such person resides  
 129 upon or is stationed at a United States military post or reservation  
 130 within this state, and the child to be adopted is then residing with  
 131 such person, adoption proceedings may be had in the district court  
 132 of the county in which such post or reservation is located, or in the  
 133 district court of any county located immediately adjacent to such  
 134 county.

135 . Sec. 4. K.S.A. 59-2210 is hereby amended to read as follows:  
 136 59-2210. Notice of any hearing, if such is required, shall be in  
 137 substantially the following form:

138 State of Kansas, \_\_\_\_\_ County, ss. In the district  
 139 court of said county and state. In the matter of the estate of (name of decedent or  
 140 person under disability, or settlor of the trust, with a specific designation which it  
 141 is). Notice of Hearing. The state of Kansas to all persons concerned:  
 142 You are hereby notified that a petition has been filed in said the court by (name  
 143 of petitioner and capacity in which said petitioner appears), praying for (state nature  
 144 of petition and the nature of the judgment, order or other relief sought), and you  
 145 are hereby required to file your written defenses thereto on or before the \_\_\_\_\_  
 146 day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ m. of said the day, in said the court,  
 147 in the city of \_\_\_\_\_, at which time and place  
 148 said the cause will be heard. Should you fail therein, judgment and decree will be  
 149 entered in due course upon said the petition.  
 150 \_\_\_\_\_, petitioner.

151 Sec. 5. K.S.A. 59-2214 is hereby amended to read as follows:  
 152 59-2214. In all probate proceedings relating to a decedent or con-  
 153 servatee or to construe and interpret trusts created by written in-  
 154 struments other than by wills, the court shall tax the costs thereof  
 155 against the estate unless otherwise provided by this act, or unless  
 156 it appears that it would be unjust and inequitable to do so, in which  
 157 event the court shall tax such costs or any part thereof against such  
 158 party as it appears to the court is just and equitable in the premises.  
 159 In case of any contested demand or matters the court may, in its

160 discretion, require the claimant to give security for costs, or in lieu  
161 thereof file a poverty affidavit as provided in the code of civil pro-  
162 cedure. In all proceedings relating to a ward, the court shall tax the  
163 costs or any part thereof as it appears to the court is just and  
164 equitable.

165 Sec. 6. K.S.A. 1988 Supp. 59-2401 is hereby amended to read  
166 as follows: 59-2401. (a) An appeal may be taken within 30 days from  
167 the date of entry of any of the following orders, judgments, decrees  
168 and decisions:

- 169 (1) An order admitting or refusing to admit a will to probate.
- 170 (2) An order appointing, refusing to appoint, removing or refusing  
171 to remove a fiduciary other than a special administrator.
- 172 (3) An order setting apart or refusing to set apart a homestead  
173 or other property, or making or refusing to make an allowance of  
174 exempt property to the spouse and minor children.
- 175 (4) An order determining, refusing to determine, transferring or  
176 refusing to transfer venue.
- 177 (5) An order allowing or disallowing a demand, in whole or in  
178 part, when the amount in controversy exceeds \$50.
- 179 (6) An order authorizing, refusing to authorize, confirming or  
180 refusing to confirm the sale, lease or mortgage of real estate.
- 181 (7) Judgments for waste.
- 182 (8) An order directing or refusing to direct a conveyance or lease  
183 of real estate under contract.
- 184 (9) An order directing or refusing to direct the payment of a  
185 legacy or distributive share.
- 186 (10) An order allowing or refusing to allow an account of a fi-  
187 duciary or any part thereof.
- 188 (11) A judgment or decree of partial or final distribution.
- 189 (12) An order compelling or refusing to compel a legatee or  
190 distributee to refund.
- 191 (13) An order directing or refusing to direct an allowance for the  
192 expenses of administration.
- 193 (14) An order vacating or refusing to vacate a previous appealable  
194 order, judgment, decree or decision.
- 195 (15) A decree determining or refusing to determine the heirs,  
196 devisees and legatees.

- 197 (16) An order adjudging a person in contempt.
- 198 (17) An order adjudging or refusing to adjudge a person an in-
- 199 capacitated person.
- 200 (18) The granting or refusing to grant an order for treatment.
- 201 (19) An order granting or denying restoration to capacity.
- 202 (20) An order granting or denying discharge.
- 203 (21) An order finding or refusing to find that there is a valid
- 204 consent to a will.
- 205 (22) An order finding or refusing to find that there is a valid
- 206 settlement agreement.
- 207 (23) An order decreeing or refusing to decree an adoption.
- 208 (24) A final order, decision or judgment in any probate
- 209 proceeding.
- 210 (25) *A final order construing a trust created by written instru-*
- 211 *ment other than by will.*
- 212 (b) Notwithstanding the provisions of K.S.A. 60-2103 and amend-
- 213 ments thereto relating to bonds, the appellant, other than the state
- 214 or municipality or a fiduciary appealing on behalf of the estate, shall
- 215 file in the court from which the appeal is taken a bond in such sum
- 216 and with such sureties as may be fixed and approved by the court,
- 217 conditioned that the appellant will without unnecessary delay pros-
- 218 ecute the appeal and pay all sums, damages and costs that may be
- 219 adjudged against the appellant.
- 220 (c) Except as otherwise provided in this section, appeals taken
- 221 pursuant to this section shall be taken in the manner provided by
- 222 chapter 60 of the Kansas Statutes Annotated for other civil cases.
- 223 Sec. 7. K.S.A. 1988 Supp. 59-2402a is hereby amended to read
- 224 as follows: 59-2402a. When a petition is filed in the district court
- 225 and a district magistrate judge is assigned to hear such petition, any
- 226 interested party may request the transfer of the matter to the ad-
- 227 ministrative judge for assignment to a district judge if the petition
- 228 is:
- 229 (1) To admit a will to probate;
- 230 (2) to determine venue or a transfer of venue;
- 231 (3) to allow any claim exceeding \$500 in value;
- 232 (4) for the sale, lease or mortgage of real estate;
- 233 (5) for conveyance of real estate under contract;

- 234 (6) for payment of a legacy or distributive share;
- 235 (7) for partial or final distribution;
- 236 (8) for an order compelling a legatee or distributee to refund;
- 237 (9) for an order to determine heirs, devisees or legatees; or
- 238 (10) for an order which involves construction of a will or other
- 239 instrument; or
- 240 (11) for the construction and interpretation of a trust created
- 241 by written instrument other than by will.

242 When a request for such transfer is filed less than three days prior  
243 to the commencement of the hearing, the court shall assess the costs  
244 occasioned by the subpoena and attendance of witnesses against the  
245 party seeking the transfer. Such request may be included in any  
246 petition, answer or other pleading, or may be filed as a separate  
247 petition, and shall include an allegation that a bona fide controversy  
248 exists and that the transfer is not sought for the purpose of vexation  
249 or delay. Notice of such request shall be given as ordered by the  
250 court.

251 New Sec. 8. A petition to construe a trust created by written  
252 instrument other than by will shall state: (1) The name, residence  
253 and address of the trustee and of each known beneficiary, other than  
254 the petitioner; and (2) the name, residence and address of the settlor,  
255 other than the petitioner. Any interested person may petition the  
256 court to construe and interpret such trusts.

257 Sec. 9. K.S.A. 59-103, 59-2203, 59-2210 and 59-2214 and K.S.A.  
258 1988 Supp. 59-212, 59-2401 and 59-2402a are hereby repealed.

259 Sec. 10. This act shall take effect and be in force from and after  
260 its publication in the statute book.





**Kansas  
Child Abuse  
Prevention Council**

January 28, 1991

715 West 10th Street  
Topeka, Kansas 66612  
(913) 354-7738

428 S. Broadway, Suite 204  
Wichita, Kansas 67202  
(316) 262-8434

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

*Wint:*

Dear Senator Winter:

As you know, KCAPC has a continuing interest in encouraging the formation of multidisciplinary child protection teams around the state. While we are pleased with last year's passage of SB 522, we have a concern about the absence of one provision, which I believe SuEllen Fried mentioned to you during a recent conversation.

Although K.S.A. 1989 Supp. 38-1523a is now amended to indicate that any person appointed to a team "may decline to serve and shall incur no civil liability as a result of declining to serve," there is no comparable provision for those who agree to serve.

As we have worked to form a child protection team here in Topeka, this concern has been voiced by prospective team members. I have done some research on this subject, and I find that Florida addressed this issue in Florida Statutes 415.511. Their language reads as follows:

"Immunity from liability in cases of child abuse or neglect. Any person, official, or institution participating in good faith in any act authorized or required by Sect. 415.502-415.514 shall be immune from any civil or criminal liability which might otherwise result by reason of such action."

Source: The New Child Protection Team Handbook, Donald C. Bross, et. al., eds., (New York: Garland Publishing, 1988), p. 229.

I think it would greatly facilitate the formation of child protection teams in Kansas if we added similar language to our statutes. We would appreciate your assistance in requesting such an amendment, introducing it for review, and in explaining its significance. We stand ready to provide specific testimony and to lobby for its adoption.

**BOARD OF DIRECTORS**

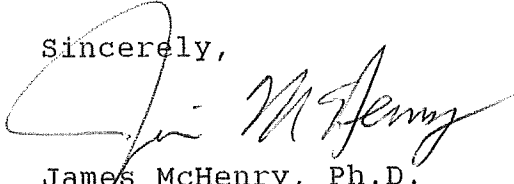
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*Wichita*
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**EXECUTIVE DIRECTOR**  
James McHenry, Ph.D.

Senate Judiciary Committee  
 Attachment 4  
 1-29-91  
 4-1/3

Thanks for your help as we attempt to clear the roadblocks to the use of multidisciplinary child protection teams in Kansas. I'm attaching a one page outline to give you a sense of our work so far.

Sincerely,



James McHenry, Ph.D.  
Executive Director

JM:jh  
Enc.

cc: Rick Bloomer  
John Wine  
SuEllen Fried

Overview of Elements in Establishing  
A Preadjudicatory Multidisciplinary Child  
Protection Team

I. Legal Authority: K.S.A. 1989 Supp. 38-1523a: "Upon recommendation of the state department of social and rehabilitation services or the county or district attorney, the court may appoint a multidisciplinary team to assist in gathering information regarding a child alleged to be a child in need of care by reason of physical, mental or emotional abuse or neglect or sexual abuse. The team may be a standing multidisciplinary team or may be appointed for a specific child."

II. Possible duties of a standing Team:

A. To review selected abuse complaints received by Topeka SRS or local law enforcement agencies;

B. To share all knowledge that the participating agencies might have about specific abused children;

C. To determine whether court action is indicated if a filing has not already been initiated;

D. To give special consideration to the "gray area cases"; i.e., where a child's safety might be threatened but the parent is teachable and the child is accessible.

III. Possible Team Members

- A. Topeka SRS Chief of Social Services
- B. Law Enforcement Representative
- C. Representative from USD 501
- D. Emergency Room Physician or Pediatric Resident
- E. Psychiatrist
- F. Attorney familiar with children's issues
- G. Staff member from Kansas Children's Service League
- H. Representative from CASA
- I. Representative of Ks. Child Abuse Prevention Council

IV. Organizational Tasks

- A. Appointment of the standing team by Judge Dan Mitchell
- B. Agreement on meeting schedule, time, place and format.
- C. Initial group facilitation and clerical backup provided by KCAPC.
- D. Evaluation of progress presented at 2/27/91 meeting of the MDT Planning Committee.

Notes by James McHenry, Ph.D.  
December 5, 1990

# MEMORANDUM

## Kansas Legislative Research Department

Room 545-N -- Statehouse  
Topeka, Kansas 66612-1586  
(913) 296-3181

January 29, 1991

To: Senate Judiciary Committee  
From: Mike Heim  
Re: Senate Bill Nos. 18, 19, and 20

The following is a list of concerns expressed by conferees who appeared regarding Senate Bill Nos. 18, 19, and 20.

### Senate Bill No. 18

1. The term "sexually violent predator" is not a known descriptive term for psychiatry. (Risk, ACLU)
2. The term "sexually violent offense" does not include incest. (Locke, Bert Nash)
3. The use of the words "sexually motivated" in the definition of the term "sexually violent offense" needs to be clarified to refer to the gratification of either the perpetrator or the victim. (Locke)
4. Add "effective" assistance of counsel as an entitlement. (Mills, Indigent Defense)
5. SRS should not be able to define by rules and regulations persons deemed to be qualified to make evaluations under S.B. 18. (Wheelan, Psychiatric Society)
6. Evaluations would require predicting future behavior. (Wheelan)
7. Placing sexual violent predators in custody of SRS would overburden an agency already overloaded and may jeopardize persons suffering from mental illness who might come in contact with these persons. (Snyder, Alliance for Mentally Ill)
8. What level of government pays -- state or local? (Mills)
9. Liability concerns. (Klotz, Community Mental Health Centers)
10. Confidentiality and privilege issues, disincentive for treatment. (Locke)

*Senate Judiciary Committee*  
*Attachment 5*  
*1-29-91*

5-1/2

11. Should what constitutes "treatment" be made more explicit? (Locke)

**Senate Bill No. 19**

1. Definition of "mentally ill person" may need technical clarifications. (Locke)
2. S.B. 19 is too broad -- adds a whole new class to treatment act and the implications for mental health reform are unclear. (Klotz)
3. Defining what "menace" to the health and safety of others is may be an impossible task. (Risk)

**Senate Bill No. 20**

1. Are there sufficient mental health resources to answer the mandate? (Werholtz, DOC)
2. Who is responsible for payment, *i.e.*, who is the client? (Werholtz)
3. Overloaded parole staff, extended parole periods, potential higher number of parole revocations, and backlog for sex offender treatment. (Werholtz)
4. Predicting treatment needs of individuals in the future is impossible and therefore, objectionable. (Risk, ACLU)
5. Concerns about definition of mental health professional. (Locke)
6. No definition of supervision or treatment. (Locke)
7. Payment needs to be ordered by statute and supplemental funding needed. (Locke)
8. Clarify procedures for when a change in mental health professionals may be made.
9. No requirement for "good faith" participation or a consequence for lack of good faith.

**Other Concerns**

1. The statute of limitations should be extended for other crimes related to children and for reporting child abuse. (Kultala, NOW)
2. Used polygraphs in treatment. (Smith, Crawford County Mental Health)

91-83/MH