

Approved: April 24, 1991
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Senator Wint Winter Jr. at 10:00 a.m. on February 11, 1991 in room 514-S of the Capitol.

All members were present.

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:

Helen Stephens, Kansas Police Officers Association
Juliene Maska, Victims Rights Coordinator, Office of the Attorney General
Jerry Slaughter, Kansas Medical Society
Steve McDowell, Kansas Department of Health and Environment

The Chairman opened the meeting by asking for requests for introduction of bills.

Helen Stephens, Kansas Police Officers Association, presented the Committee with a copy of a report prepared by Detective Scott L. Wiswell and asked that the Committee introduce a bill to allow forfeiture of property used in the commission of a felony. (ATTACHMENT 1)

Senator Yost moved to introduce a forfeiture bill as requested by Ms. Stephens. Senator Kerr seconded the motion. The motion to introduce the bill carried.

Juliene Maska, Victims Rights Coordinator for the Attorney General's Office, addressed the Committee with their requests for introduction of legislation. (ATTACHMENT 2) The Victims Rights Task Force are responsible for the first six listed on the attached.

Senator Morris moved to introduce the bills as requested by the Victim Rights Task Force. Senator Oleen seconded the motion. The motion carried.

Ms. Maska continued her presentation with requests for additional bills, also requested on behalf of the Kansas Bureau of Investigation. (ATTACHMENT 3)

Senator Rock moved to introduce the bills as requested. Senator Bond seconded the motion and the motion carried.

Chairman Winter distributed copies of correspondence received from Barkley Clark requesting introduction of a Kansas Lease-Purchase Agreement Act. (ATTACHMENT 4) The Chairman also outlined changes needed to bring Kansas up-to-date with the Uniform Commercial Code as recognized by other states. These changes would be to Articles 2A, 3, 4A and 4.

Senator Bond moved to introduce the rent-to-own legislation requested by Mr. Clark and the UCC measures as outlined by the Chairman. Senator Yost seconded the motion. The motion carried.

Chairman Winter presented a request from Douglas County for an amendment to K.S.A. 12-1765. (ATTACHMENT 5)

Senator Bond moved to introduce a bill as suggested by Douglas County. Senator Moran seconded the motion. The motion carried.

Chairman Winter turned the Committee's attention to SB 102 and opened the hearing.
SB 102 - increase in compensation for members of screening panels.

Jerry Slaughter, Kansas Medical Society, testified in support of SB 102. (ATTACHMENT 6)

As no other conferees appeared, this concluded the hearing for SB 102.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:05 a.m. on February 11, 1991.

Senator Gaines moved to recommend SB 102 favorable for passage. Senator Bond seconded the motion. The motion carried.

The Chairman turned the Committee's attention to the Charitable Health Provider Program, established by legislation passed in the 1990 Legislative Session and being administrated by the Kansas Department of Health and Environment.

Steve McDowell, Director of the Office of Local and Rural Health Systems in the Division of Health of the Kansas Department of Health and Environment, briefed the Committee on the status of implementation of the Charitable Health Provider Program. (ATTACHMENT 7)

Responding to Mr. McDowell's statement on the implementation date scheduled for 1 April 1991, Senator Bond expressed "frustration that it is taking so long to get the process off of the ground. It was very important to the Legislature." He added that there appears to be no cooperation from SRS and the Department of Health and Environment has not managed to get the first doctor to see the first indigent patient as yet.

Mr. McDowell also shared the KDHE's difficulty with the issue of doctor's liability. He explained that the Attorney General's opinion has changed their understanding of how the liability question is to be handled. The Committee requested the Chairman to seek a formal opinion from the Attorney General on the question of whether liability is covered under the Tort Claims Act, as was the intent of the 1990 Legislature, or whether liability reverts back to the physician's personal coverage.

The Chairman further requested that KDHE meet with Kansas Medical Society, Kansas Hospital Association, KDHE and the Public Assistance Coalition, when the regulations are finished to explore any area of dispute on education process and to report back to the Committee if there are disputes that the Legislature should be aware of.

The Chairman turned the Committee's attention to SB 30.
SB 30 - service charge on worthless checks.

The Committee reviewed the testimony presented at the 30 January hearing. Copies of an alternate amendment from Paul Mohr were distributed. (ATTACHMENT 8)

Senator Gaines moved to amend SB 30 by changing the "\$10" to "up to \$20" and to eliminate the addition of "or more upon proof of a written notice posted conspicuously". The motion was seconded by Senator Bond.

Discussion was suspended until the next meeting of the Senate Judiciary Committee on February 12, 1991 at 10:05 a.m. in Room 514-S. The motion remains on the table until such date.

The meeting was adjourned.

Date 11 February 1991

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VISITOR SHEET
Senate Judiciary Committee

(Please sign)

Name/Company

Name/Company

Chip Wheelen, KMS	
Helen Stephens	KPOA
Paul Shelby	OJA
BRAD SWOOT	BANK IV
JJ Wasar	KTZA
Jill Clauser - Close-up KS.	
Anna Dick - Close up KS.	
Thang Duong - Close up KS	
Ryan David Simmonds - Close KS	
Matt Schuckman - Close-Up KS.	Exec. - Urban Pacification Consortium
Tonia Janzen - Close up KS	
Tim Adams	NEWTON HIGH SCHOOL
ANGELA LICHTI - CLOSE UP KANSAS	
Suzanne Filipic - Close up Kansas	
Kathy Lehman - Close-up Kansas	
J. D. Hull - CUK	
Jamie Wheat - Close Up Kansas	
Wendy State / Close-up Kansas	
Elizabeth Mathison / Close-up Kansas	
Regina Wheat / Close-up Kansas	
Jamie Anderson - Close-Up Kansas	
Amber Noff - Close-Up-Kansas	
George Barber	KS Consulting Engrs.
Tag Spikes - Close-up Kansas	
FRANCES KASTNER - Tareha - KS. Food Dealers Assn	
Aruna Rangarajan Close-up Kansas	

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5 copies
DET. SCOTT L. WISWELL # 11

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ATTENTION: ALTHIMMESCH *veg + Rico*

SUBJECT: PROPOSAL FOR AMENDMENTS TO SEIZURE STATUTES.

Jack Pearson
Separate statute from
Drugs
Seizure statutes

Sir, as you know Kansas Statute, K.S.A. 65-4135 addresses the subject of forfeiture action proceedings against property and/or contraband used to facilitate drug trafficking or profits thereof. These statutes have been an excellent tool for law enforcement in that besides criminal action against the offender, civil action further punishes the offender and in a result law enforcement receives additional funds and equipment to fight drug trafficking in our city and state.

The proposal that I am initiating would broaden the scope of this statute to address forfeiture proceedings against, crimes against persons, and crimes against property, along with morals crimes, namely prostitution.

Whether a statute to allow these forfeiture proceedings were written as an amendment to K.S.A. 65-4135 or a new statute written this would be left up to the wisdom of our legislature.

In the following report I shall try to detail what a statute dealing with the forfeiture proceedings against the above described crimes should cover. I shall try to do this by using examples, and the state statutes of Texas and Colorado who have forfeiture statutes covering these crimes. Both of these states have been successful in combating these types of crimes.

I know that I am not an attorney or a legislator but I will try to write a statute just to show the basics of what I am trying to express.

The State of Texas has a chapter in their state statutes dealing with forfeiture of contraband which is Chapter 59. This chapter deals with property and proceeds involved in or derived from non-narcotic felonies that are subject to forfeiture. Texas uses 2 theories in the forfeiture from non-narcotic felonies.

Number 1. the "the used in commission of" theory

- Example 1:
1. Burglar Bob drives his car to victims house and commits burglary.
 2. Murder Mike drives his car to victims location with intent to murder and does murder victims.
 3. Kidnaper Kim uses her home to hide the kidnaped person.
 4. Thief Tom uses his truck to take possession of property represented to him as stolen property by police officers.

Number 2. is the "proceeds" theory.

- Example 1:
1. Money, articles, property or other things of value gained directly as a result of the commission of a felony.
 2. Things of value as the result of the commission of a felony which have been in turn traded or used as payment or invested for "other things" of value these "other things" may be said to have been "acquired with proceeds" from a felony and seizable.

The Texas statute that covers these non-narcotic forfeitures is 59.01(2) A-D.

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This is an example of a statute that I am proposing.

Section 1: (a) The following contraband are subject to forfeitures:

(For the purpose of this statute the definition of "contraband means property of any nature, including real, personal, tangible, or intangible. This definition would only apply to this statute and not contradict or interfere with any contraband definition in Chapter 21 of Kansas State statutes or any other Kansas State statute.)

Contraband property of any nature including real, personal, tangible, or intangible, that is:

- (1) used or intended to be used in the commission of:
 - (a) any felony under Chapter 21 of the Kansas criminal code; or
- (2) the proceeds gained from the commission of a felony listed in paragraph (1); or
- (3) acquired with proceeds gained from the commission of a felony listed in paragraph (1).
- (4) all conveyances, including aircraft, vehicles, vessels, which are used or intended for the use to transport or in any manner to facilitate the transportation for the purpose of the commission of a felony under Chapter 21 of the Kansas criminal code.
 - (A) No conveyance used by any person as a common carrier in the transportation of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this act.
 - (B) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owners thereof to have been committed or omitted without the owners knowledge or consent;
 - (C) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party or parties;
- (5) All books, records and research products and materials including, microfilm, tapes, and data which are used or intended for the use in violation of this act.
- (6) Everything of value furnished, or intended to be furnished or traded or used as payment or invested for anything of value. This property may be said to have been acquired with proceeds of a felony under Chapter 21 Kansas Criminal Code and are subject to forfeiture.
- (7) All real property, including any building or structure thereon, which is used or intended for the use in violation of this act, if such violation constitutes a felony, except:
 - (A) real property is not subject to forfeiture under this section by reason of any act or omission committed or omitted without the owners knowledge or consent.

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(B) a forfeiture of real property encumbered by a bona fide mortgage or lien is subject to the interest of the secured party or parties.

(a) Property subject to forfeiture under this act may be seized by any law enforcement officer upon process issued by any district court having jurisdiction over the property. Seizure by a law enforcement officer may be made without process if:

(1) The seizure is incident to a lawful arrest or a lawful search conducted by a law enforcement officer.

(2) the property subject to seizure has been the subject of a prior judgment in favor of the state or municipality under this act; or

(3) there is probable cause to believe that the property was used in violation of this act.

(b) in the event of seizure pursuant to subsection (a) proceedings pursuant to Section 2 shall be instituted promptly.

(c) Property taken or detained under this section shall not be replevin, but is deemed to be in the custody of the law enforcement agency seizing it subject only to the orders of the District Court having jurisdiction over the forfeiture proceedings. When property is seized under this act, the law enforcement agency seizing it may:

(1) place the property under seal;

(2) remove the property to a place designated by it; or

(3) require the board to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(8) No property is subject to forfeiture under this section belonging to a spouse of a person, whose acts gave rise to the forfeiture of community property, because of an act of violence against the spouse who was unable to prevent the act giving rise to the forfeiture.

(9) Property which is used in the commission of a felony described in Chapter 21 of the Kansas Criminal Code or the proceeds of an above described felony which has title of ownership with two parties on the title or a cosigner is subject to forfeiture, if:

(A) one party on the title uses the property in the commission of an above described felony or receives titled property from/or as the proceeds of an above described felony even if the second party claim no knowledge or involvement in above described felony.

New. Sec. 2. (a) The county or district attorney within whose jurisdiction there is property which is sought to be forfeited pursuant to K.S.A. _____, and amendments thereto, or such attorney as employed by the law enforcement agency and approved by the county or district attorney seeking forfeiture of such property, shall promptly proceed against the property by filing in the district court having jurisdiction of such property a petition for an order to show cause why the court should not order forfeiture of such property. The petition shall be verified and shall set forth: (1) A statement that the action is brought pursuant to section 4; (2) the law enforcement agency bringing the action; (3) a description of the property sought to be forfeited; (4) a statement that (a) on or about a date certain the property was used or intended to be used in violation of this act or a violation of this act took place in, upon or by means of the property; (5) a statement detailing the facts in support of subsection (a)(5) and (6) a list of all persons known to the law enforcement agency, after diligent search and inquiry, that may claim an ownership interest in the property by title, registration or deed or by virtue of a lien allegedly perfected in the manner prescribed by law.

(b) Upon receipt of a petition complying with the requirements of subsection (a), the judge of the district court shall issue an order to show cause setting forth: (1) A statement that the controlling statutes are K.S.A. _____ and section 2, and amendments thereto. In addition, the order shall set a date at least 41 days from the date of first publication of the order pursuant to subsection (c) for all persons claiming an interest in the property to file such pleadings as they desire as to why the court should not order the forfeiture of such property to use, sale or other disposition by the law enforcement agency seeking forfeiture of the property. The court shall further order that all persons who do not appear on that date are deemed to have defaulted and waive any claim to the subject property.

(c) The county or district attorney, or such attorney as employed by the law enforcement agency approved by the county or district attorney seeking forfeiture, shall give notice of the forfeiture proceedings by:

(1) Causing to be published a copy of the order to show cause once each week for three consecutive weeks in a newspaper having general circulation in the county where the property is located and meeting the requirements of K.S.A. 64-101 and amendments thereto; and

(2) sending a copy of the petition and order to show cause by certified mail, return receipt requested, to each person having ownership of or a security interest in the property if (A) the property is of a type for which title, registration or deed is required by law; (b) the owner of the property is known in fact to the law enforcement agency at the time of seizure; or (C) the property is subject to a security interest perfected in accordance with the uniform commercial code. The law enforcement agency shall be obligated only to make diligent search and inquiry as to the owner of the property and if, after diligent search and inquiry, such agency is unable to ascertain the owner, the requirement of actual notice by mail with respect to persons having perfected security interest in the property shall not be applicable.

(d) At the hearing on the matter, the petitioner shall have the burden to establish by clear and convincing evidence that the property is subject to forfeiture as provided in K.S.A. _____.

(e) The final order of forfeiture by the court shall perfect in the law enforcement agency right, title and interest in and to such property and shall relate back to the date of the seizure.

(f) Physical seizure of property shall not be necessary in order to allege in a petition under this section that property is forfeitable. Upon filing the petition, the

county or district attorney or the attorney for the law enforcement agency approved by the county or district attorney seeking forfeiture may also seek such protective orders as necessary to prevent the transfer, encumbrance or other disposal of any property named in the petition. If the property alleged to be forfeitable is real property, the county or district attorney or the attorney for the law enforcement agency approved by the county or district attorney seeking forfeiture shall cause to be recorded a lis pendens on the property in the county in which the property is located.

(g) Unless otherwise stated, proceedings brought pursuant to this section are separate and distinct from and in no way supplemental to or dependent upon the outcome of any criminal charges, indictment, complaint or information.

New Sec. 3. (a) Subject to the provisions of subsection (c), if property forfeited pursuant to section 4 is harmful to the public or required by law to be destroyed, the law enforcement agency to which the property is forfeited shall:

(1) Require the sheriff of the county to take custody of the property and remove it to an appropriate location for disposition in accordance with law; or

(2) forward it to the Kansas Bureau of Investigation for disposition.

(b) Subject to the the provisions of subsection (c), if property forfeited pursuant to section 4 is not harmful to the public and is not required by law to be destroyed, the law enforcement agency to which the property is forfeited shall:

(1) Sell the property in accordance with subsection (d); or

(2) if the property is not subject to a lien which has been preserved by the court, retain the property for official use.

(c) If the property is a controlled substance, transfer it to another law enforcement agency for use in training canines for detection of controlled substances so long as a record is kept of the substance similar to that required in a chain of custody for evidence handling.

(d) If a law enforcement agency desires to sell property forfeited to it pursuant to section 4, the agency shall first cause notice of the sale to be made by publication at least once a week for three consecutive weeks in a newspaper having general circulation in the county and meeting the requirements of K.S.A. 64-101 and amendments thereto. Such notice shall include the time, place and conditions of the sale and a description of the property to be sold. The property shall then be disposed of at public auction to the highest bidder for cash without appraisal.

(e) In lieu of the sale of property ordered forfeited pursuant to section 4, if the head of the law enforcement agency considers it necessary or expedient, the property may be salvaged unless such property is subject to a lien preserved by the court.

(f) Upon the sale of any vessel, motor vehicle or aircraft pursuant to this section, the state shall issue a title certificate to the purchaser. Upon the request of any law enforcement agency which elects to retain titled property after forfeiture, the state shall issue a certificate of title for such property to the agency.

New Sec. 4. The proceeds of any sale pursuant to section 5 and any moneys forfeited pursuant to section 4 shall be applied; first, to payment of the balance due on any lien preserved by the court in the forfeiture proceedings; second, to payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security and forfeiture of the property; third, to payment of the costs incurred by the county or district attorney or attorney for the law enforcement agency approved by the county and district attorney to which the property is forfeited; and fourth, to payment of costs incurred by the court. The remaining proceeds or moneys shall be disposed of as follows: (a) if such agency is a state agency, the entire amount shall be deposited in the state treasury and credited to the state general fund; (b) if such agency is a county agency, the entire amount shall be deposited in the state treasury and credited to the state general fund; (b) if such agency is a county agency, the entire amount shall be deposited in the county treasury and credited to a special law enforcement fund in the county treasury; and (c) if such law enforcement agency is a city agency, the entire amount shall be deposited in the

city treasury and credited to a special law enforcement trust fund in the city treasury. Moneys in the special law enforcement trust fund in the county or city treasury shall be expended only upon appropriation to the sheriff's office or police department, by the respective board of county commissioners or governing body of the city, to defray the costs of protracted or complex investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants or for such other law enforcement purposes as the respective board of county commissioners or governing body of the city deems appropriate and shall not be considered a source of revenue to meet normal operating expenses.

New Sec. 5. If more than one law enforcement agency is substantially involved in effecting a forfeiture pursuant to section 4, the court having jurisdiction over the forfeiture proceeding shall equitably distribute the property among such agencies. Any forfeited moneys, or any proceeds remaining after the sale of the property, shall be equitably distributed to the board of county commissioners or the governing body of the city having budgetary control over such agencies for deposit in the respective county or city treasury and credit to the law enforcement trust fund provided in section 6.

New Sec. 6. Any law enforcement agency receiving forfeited property or proceeds from the sale of forfeited property in accordance with this act shall submit a quarterly report to the entity which has budgetary authority over such agency, which report shall specify, for such period, the type and approximate value of the property received and the amount of any proceeds received. Neither the law enforcement agency nor the entity having budgetary control shall anticipate future forfeitures or proceeds therefrom in the adoption and approval of the budget for the law enforcement agency.

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

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The second subject I would like to address is a proposed state statute to combat the problem of prostitution and commercialized gambling through forfeitures.

Prostitution is a recognized detriment to the quality of life in the neighborhoods of this community and creates dangers to the life and well being of its citizens. The problem of commercialized gambling is also present in this community and recent cases made, shows a network of organized gambling which is taking hundreds of thousands of dollars out of our city and some of this money has even been shown to be used to finance political movements in foreign countries.

The state of Colorado along with the state of Michigan have adopted statutes which allows the seizure of assets from prostitution activities and gambling.

Examples of how these two states statutes work.

1. Any vehicle from which a "John" accosts or solicits an act of prostitution; and an officer overhears this a seizure can be made.
2. Any vehicle in which an act of prostitution is presently occurring or in which an act of prostitution; has taken place and an officer has observed the act.
3. Any vehicle used to transport a prostitute to or from a "work" station from which accosting, solicitation and/or prostitution has taken place. This includes "pimps" cars if they are used to pickup or deliver prostitutes, or "Johns" cars used to transport a prostitute to or from a location where an act of prostitution has or will take place.

I know that in the state of Kansas prostitution is only a misdemeanor but if we could adopt such a statute, I believe this would have a great impact on the prostitution; in our state, especially on the organized types of prostitution such as the "escort services".

In the case of commercial gambling if we could adopt a statute like what I previously described seizures could be made on these types of cases due to the fact commercial gambling is a Class E felony.

The state of Colorado currently seizes assets on prostitution cases under a public nuisance statute in which the seizures are made to abate the public nuisance. Kansas does have a public nuisance statute under statute numbers 21-4106 and 21-4107 of the Kansas criminal code. This may be an avenue to explore to see if a statute could be written under these guidelines.

An example of a forfeiture statute that I am proposing is as follows:

Sec. 1. The following are subject to forfeiture:

(1) All conveyances, including aircraft, vehicles or vessels which are used or intended for use to transport or in any manner to facilitate the transportation for the purpose of prostitution; pursuant to K.S.A. 21-3512, and/or promoting prostitution pursuant to K.S.A. 21-3513, K.S.A. 21-3514 and/or patronizing a prostitute 21-3515.

(A) No conveyance used by any person as a common carrier in the transactin of business as a common carrier is subject to forfeiture under this section unless it appears that the owners or other person in charge of the conveyance is a consenting party or privy to a violation of this act;

(B) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted with out the owners knowledge or consent;

(C) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party or parties;

(2) all books, records, research products and materials, microfilm, tapes and data which are used or intended for use in violation of this act;

(2) everything of value furnished, or intended to be furnished, in exchange for an act of prostitution covered in K.S.A. 21-3512, K.S.A. 21-3513, K.S.A. 21-3514, K.S.A. 21-3515, all proceeds traceable to such an exchange, and all moneys, negotiable instruments and securities used or intended to be used, to facilitate any violations of above described statutes.

(3) all real property, including any building or structure thereon, which is used or intended for use in violation of this act;

(A) real property is not subject to forfeiture under this section by reason of any act or omission committed or omitted without the owners knowledge or consent;

(B) a forfeiture of real property encumbered by a bona fide mortgage or lien is subject to the interest of the secured party or parties.

(4) Property which is used in a violation of this section or the proceeds of an above described violation of this section which has title of ownership with two parties on the title or a cosigner is subject to forfeiture if;

A) one party on the title uses the property in a violation of this section or receives titled property from/or as the proceeds of a violation of this section even if the second party claims no knowledge or involvement in the violation of this section.

(a) Property subject to forfeiture under this ;act may be seized by any law enforcement officer upon process issued by any district court having jurisdiction over the property. Seizure by any law enforcement officer may be made without process if:

(1) The seizure is incident to a lawful arrest or a lawful search conducted by a law enforcement officer;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the state or municipality under this act; or

(3) there is probable cause to believe that the property was used in violation of this act.

(b) In the event of seizure pursuant to subsection (a) proceedings pursuant to section 2 shall be instituted promptly.

(c) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the law enforcement agency seizing it subject only to the orders of the district court having jurisdiction over the forfeiture proceedings. When property is seized under this act, the law enforcement agency seizing it may:

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- (1) Place the property under seal;
- (2) remove the property to a place designated by it; or
- (3) require the board to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

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New. Sec. 2. (a) The county or district attorney within whose jurisdiction there is property which is sought to be forfeited pursuant to K.S.A. _____, and amendments thereto, or such attorney as employed by the law enforcement agency and approved by the county or district attorney seeking forfeiture of such property, shall promptly proceed against the property by filing in the district court having jurisdiction of such property a petition for an order to show cause why the court should not order forfeiture of such property. The petition shall be verified and shall set forth: (1) A statement that the action is brought pursuant to section 4; (2) the law enforcement agency bringing the action; (3) a description of the property sought to be forfeited; (4) a statement that (a) on or about a date certain the property was used or intended to be used in violation of this act or a violation of this act took place in, upon or by means of the property; (5) a statement detailing the facts in support of subsection (a)(5) and (6) a list of all persons known to the law enforcement agency, after diligent search and inquiry, that may claim an ownership interest in the property by title, registration or deed or by virtue of a lien allegedly perfected in the manner prescribed by law.

(b) Upon receipt of a petition complying with the requirements of subsection (a), the judge of the district court shall issue an order to show cause setting forth: (1) A statement that the controlling statutes are K.S.A. _____ and section 2, and amendments thereto. In addition, the order shall set a date at least 41 days from the date of first publication of the order pursuant to subsection (c) for all persons claiming an interest in the property to file such pleadings as they desire as to why the court should not order the forfeiture of such property to use, sale or other disposition by the law enforcement agency seeking forfeiture of the property. The court shall further order that all persons who do not appear on that date are deemed to have defaulted and waive any claim to the subject property.

(c) The county or district attorney, or such attorney as employed by the law enforcement agency approved by the county or district attorney seeking forfeiture, shall give notice of the forfeiture proceedings by:

(1) Causing to be published a copy of the order to show cause once each week for three consecutive weeks in a newspaper having general circulation in the county where the property is located and meeting the requirements of K.S.A. 64-101 and amendments thereto; and

(2) sending a copy of the petition and order to show cause by certified mail, return receipt requested, to each person having ownership of or a security interest in the property if (A) the property is of a type for which title, registration or deed is required by law; (b) the owner of the property is known in fact to the law enforcement agency at the time of seizure; or (C) the property is subject to a security interest perfected in accordance with the uniform commercial code. The law enforcement agency shall be obligated only to make diligent search and inquiry as to the owner of the property and if, after diligent search and inquiry, such agency is unable to ascertain the owner, the requirement of actual notice by mail with respect to persons having perfected security interest in the property shall not be applicable.

(d) At the hearing on the matter, the petitioner shall have the burden to establish by clear and convincing evidence that the property is subject to forfeiture as provided in K.S.A. _____.

(e) The final order of forfeiture by the court shall perfect in the law enforcement agency right, title and interest in and to such property and shall relate back to the date of the seizure.

(f) Physical seizure of property shall not be necessary in order to allege in a petition under this section that property is forfeitable. Upon filing the petition, the county or district attorney or the attorney for the law enforcement agency approved by the county or district attorney seeking forfeiture may also seek such protective orders as necessary to prevent the transfer, encumbrance or other disposal of any property named in

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the petition. If the property alleged to be forfeitable is real property, the county or district attorney or the attorney for the law enforcement agency approved by the county or district attorney seeking forfeiture shall cause to be recorded a lis pendens on the property in the county in which the property is located.

(g) Unless otherwise stated, proceedings brought pursuant to this section are separate and distinct from and in no way supplemental to or dependent upon the outcome of any criminal charges, indictment, complaint or information.

New Sec. 3. (a) Subject to the provisions of subsection (c), if property forfeited pursuant to section 4 is harmful to the public or required by law to be destroyed, the law enforcement agency to which the property is forfeited shall:

(1) Require the sheriff of the county to take custody of the property and remove it to an appropriate location for disposition in accordance with law; or

(2) forward it to the Kansas Bureau of Investigation for disposition.

(b) Subject to the the provisions of subsection (c), if property forfeited pursuant to section 4 is not harmful to the public and is not required by law to be destroyed, the law enforcement agency to which the property is forfeited shall:

(1) Sell the property in accordance with subsection (d); or

(2) if the property is not subject to a lien which has been preserved by the court, retain the property for official use.

(c) If the property is a controlled substance, transfer it to another law enforcement agency for use in training canines for detection of controlled substances so long as a record is kept of the substance similar to that required in a chain of custody for evidence handling.

(d) If a law enforcement agency desires to sell property forfeited to it pursuant to section 4, the agency shall first cause notice of the sale to be made by publication at least once a week for three consecutive weeks in a newspaper having general circulation in the county and meeting the requirements of K.S.A. 64-101 and amendments thereto. Such notice shall include the time, place and conditions of the sale and a description of the property to be sold. The property shall then be disposed of at public auction to the highest bidder for cash without appraisal.

(e) In lieu of the sale of property ordered forfeited pursuant to section 4, if the head of the law enforcement agency considers it necessary or expedient, the property may be salvaged unless such property is subject to a lien preserved by the court.

(f) Upon the sale of any vessel, motor vehicle or aircraft pursuant to this section, the state shall issue a title certificate to the purchaser. Upon the request of any law enforcement agency which elects to retain titled property after forfeiture, the state shall issue a certificate of title for such property to the agency.

New Sec. 4. The proceeds of any sale pursuant to section 5 and any moneys forfeited pursuant to section 4 shall be applied; first, to payment of the balance due on any lien preserved by the court in the forfeiture proceedings; second, to payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security and forfeiture of the property; third, to payment of the costs incurred by the county or district attorney or attorney for the law enforcement agency approved by the county and district attorney to which the property is forfeited; and fourth, to payment of costs incurred by the court. The remaining proceeds or moneys shall be disposed of as follows: (a) if such agency is a state agency, the entire amount shall be deposited in the state treasury and credited to the state general fund; (b) if such agency is a county agency, the entire amount shall be deposited in the county treasury and credited to a special law enforcement fund in the county treasury; and (c) if such law enforcement agency is a city agency, the entire amount shall be deposited in the city treasury and credited to a special law enforcement trust fund in the city treasury. Moneys in the special law enforcement trust fund in the county or city treasury shall be expended only upon appropriation to the sheriff's office or police department, by the

*recover costs
balance into gov acct for law enforcement purposes
from seizing agency. 1-11/13*

respective board of county commissioners or governing body of the city, to defray the costs of protracted or complex investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants or for such other law enforcement purposes as the respective board of county commissioners or governing body of the city deems appropriate and shall not be considered a source of revenue to meet normal operating expenses.

New Sec. 5. If more than one law enforcement agency is substantially involved in effecting a forfeiture pursuant to section 4, the court having jurisdiction over the forfeiture proceeding shall equitably distribute the property among such agencies. Any forfeited moneys, or any proceeds remaining after the sale of the property, shall be equitably distributed to the board of county commissioners or the governing body of the city having budgetary control over such agencies for deposit in the respective county or city treasury and credit to the law enforcement trust fund provided in section 6.

New Sec. 6. Any law enforcement agency receiving forfeited property or proceeds from the sale of forfeited property in accordance with this act shall submit a quarterly report to the entity which has budgetary authority over such agency, which report shall specify, for such period, the type and approximate value of the property received and the amount of any proceeds received. Neither the law enforcement agency nor the entity having budgetary control shall anticipate future forfeitures or proceeds therefrom in the adoption and approval of the budget for the law enforcement agency.

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

Attached in this report are two decisions by the U. S. Supreme Court dealing with using forfeitable assets for attorney's fees.

In proposing these statutes I would like to address the practice of using forfeitable assets for the payment of attorney's fees.

There are two cases that have been decided by the United States Supreme Court dealing with this practice. Both of these cases were decided June 22, 1989.

The first case is:

Caplin & Drysdale, Chartered, Petitioner
 v
 United States
 491 US-, 105 LED 2d 528, 109 S CT.
 [NO. 87-1729]

The second case is:

United States, Petitioner
 v
 Peter Monsanto
 491 US-, 105 L Ed 2d 512, 109 S Ct-
 [No. 88-454]

On the first case, Caplin & Drysdale V U.S., the United States Supreme Court held that the District Court does not have discretion to allow payment of attorney's fees to be excluded

1-12/13

10/3/90

DET. SCOTT L. WISWELL # 11

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from the forfeitable assets and does not violate due process or Sixth Amendment right to counsel.

The second case, U. S. V Peter Monsanto, the United States Supreme Court held not to exempt from restraint or forfeiture assets which accused seeks to use for attorney's fees and does not violate due process or Sixth Amendment right to counsel.

In the two statutes that I am proposing I would like to suggest that the use of forfeitable assets for attorney's fees be prohibited, using the case law provided by the two previous mentioned cases.

I believe it would be helpful to apply the decisions from these two cases and write them directly into the proposed statutes.

Your consideration of this report is greatly appreciated.

Det. Scott L. Wiswell # 1112
DET. SCOTT L. WISWELL # 1112
VICE SECTION

bjs
10/5/90

1-13/113



3/11

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: 296-3711
TELECOPIER: 296-6296

MEMORANDUM

TO: Senator Wint Winter
Chairperson, Senate Judiciary
Committee, 120-S

FROM: Attorney General Bob Stephan

DATE: February 1, 1991

RE: Legislative Recommendations

VRTF

1. CHILD CUSTODY - Require consideration of spouse abuse when the court determines child custody.

VRTF

2. INCIDENT REPORTING - Reintroduce 1990 S.B. 681, an incident reporting bill (K.S.A. 21-2501a), which establishes a uniform reporting system of all felonies and misdemeanors to the KBI.

VRTF

3. REQUIRE WRITTEN POLICY - Require all law enforcement agencies to have written policies for responding to domestic calls. These policies shall include a statement that an arrest will be made when probable cause exists.

VRTF

4. SEX OFFENSES - Remove the exemption that spouses cannot be charged with sexual battery. At the present time, the language in Kansas statutes regarding sex offenses excludes spouses from being possible perpetrators.

VRTF

5. ADULT ABUSE CRIME - Require the filing of criminal charges when adult abuse is reported. Also establish and fund the toll-free line to report abuse. Current law makes it a crime to fail to report abuse, but it does not make it a crime to commit abuse. Twenty-eight states currently have statutory penalties for adult abuse. (Create crime if required by ADULT)

VRTF

6. DEATH CERTIFICATES - Increase the death certificate fee from \$6 to \$10. The increase would be used for elder abuse prevention grants. See Michigan Law

Senate Judiciary Committee
Attachment 2
2-11-91

VRTF = Victim's Rights Task Force

2-1/21

KRI
7. DRUG VIOLATIONS/DRIVERS LICENSE APPLICATIONS - Federal mandate requiring states to either enact and enforce laws requiring the revocation or suspension of a drivers license if a person is convicted of drug offenses or providing a governor's certification and state legislature's resolution expressing opposition to such a law.

KRI
8. DNA PROFILING LIBRARY - Require convicted (sex and violence) offenders to provide samples for future comparison of AFIS.

9. RESUBMISSION OF DRUG LAW LEGISLATION

a. The creation of a money laundering statute. This is language taken from the Uniform Act and follows the lead given by the federal government. Their money laundering statutes have proven most effective as in a number of times they can show the manipulation of funds, but not that that particular individual facilitated the sale of drugs.

b. The creation of a continued Criminal Enterprise Statute or a Racketeer Influenced and Corrupt Organization (RICO) Act. Such a statute could also be applied to some gang situations and thus provide us a timely weapon against a growing problem.

c. The creation of a five-year statute of limitations not just for drug violations, but in all criminal offenses.

d. Admission of hearsay at preliminary hearings, thus reducing the strain on the courts and providing for swifter administration of justice.

e. Resubmit consecutive mandatory sentences for firearm violations occurring in the court of a drug violation.

f. Update conspiracy to commit drug offenses to the same status as the actual offense.

CHILD CUSTODY

Require consideration of spouse abuse when the court determines child custody.

Reference to House Congressional Resolution 172 (copy attached).

Copy of K.S.A. 60-1610 attached.

House Calendar No. 156

101ST CONGRESS
2D SESSION

H. CON. RES. 172

[Report No. 101-737]

Expressing the sense of the Congress that, for purposes of determining child custody, evidence of spousal abuse should create a statutory presumption that it is detrimental to the child to be placed in the custody of an abusive parent.

IN THE HOUSE OF REPRESENTATIVES

JULY 20, 1989

Mrs. MORELLA (for herself and Mr. MILLER of California) submitted the following concurrent resolution which was referred to the Committee on the Judiciary

SEPTEMBER 21, 1990

Additional sponsors: Mr. BEBEUTER, Mr. WHEAT, Mr. STARK, Mr. WALSH, Mrs. BOXER, Mr. MCNUITY, Mr. MATSUI, Mr. FAUNTROY, Mr. RANGEL, Mr. OWENS of Utah, Mr. CAMPBELL of California, Mr. CAMPBELL of Colorado, Mr. CROCKETT, Ms. PELOSI, Mr. LEHMAN of Florida, Mr. DELAY, Mr. FAZIO, Mr. DWYER of New Jersey, Mrs. JOHNSON of Connecticut, Mr. PAYNE of New Jersey, Mr. PALLONE, Mr. DE LUGO, Mrs. MEYERS of Kansas, Mr. MCDEERMOTT, Mr. KILDEE, Mr. SHAYS, Mr. JOHNSON of South Dakota, Mr. WYDEN, Mr. BONIOE, Ms. SLAUGHTER of New York, Mr. PRICE, Mr. SOLARZ, Mr. MORRISON of Connecticut, Mr. WEISS, Mr. COSTELLO, Mr. MACHTEY, Mr. POSHARD, Mr. OBERSTAR, Mr. DUBBIN, Ms. KAPTUR, Mr. FRANK, Mrs. COLLINS, Mr. LIPINSKI, Mr. HYDE, Mrs. LLOYD, Mr. ACKERMAN, Mrs. KENNELLY, Mr. BRUCE, Mr. ENGEL, Mr. FOGLIETTA, Mr. SIKORSKI, Mr. BEEMAN, Mr. LEWIS of Georgia, Mr. FROST, Mr. LEWIS of California, Mr. WAXMAN, Mrs. VUCANOVICH, Mr. CARPER, Mr. CHAPMAN, Mr. KOLTER, Ms. SNOWE, Mr. RHODES, Mr. YATES, Mr. BROWN of California, Mrs. UNSOELD, Mr. OWENS of New York, Mr. MFUME, Mr. HOYER, Mr. McMILLEN of Maryland, Mr. HORTON, Mr. JONTZ, Mr. BATES, Mr. DYSON, Ms. LONG, Mr. LEVINE of California, Mrs. SAIKI, Mr. ROE, Mrs. SCHROEDER, Mr. LEVIN of Michigan, Mr. HAYES of Illinois, Mr. DOUGLAS, and Mrs. BYRON

1 mental to the child to be placed in the custody of the abusive
2 parent.

Whereas State courts have often failed to recognize the detrimental effects of having as a custodial parent an individual who physically abuses his or her spouse, insofar as the courts do not hear or weigh evidence of domestic violence in child custody litigation;

Whereas there is an alarming bias against battered spouses in contemporary child custody trends such as joint custody and mandatory mediation;

Whereas joint custody guarantees the batterer continued access and control over the battered spouse's life through their children;

Whereas joint custody forced upon hostile parents can create a dangerous psychological environment for a child;

Whereas a batterer's violence toward an estranged spouse often escalates during or after a divorce, placing both the abused spouse and children at risk through shared custody arrangements and unsupervised visitation;

Whereas physical abuse of a spouse is relevant to child abuse in child custody disputes;

Whereas the effects of physical abuse of a spouse on children include actual and potential emotional and physical harm, the negative effects of exposure to an inappropriate role model, and the potential for future harm where contact with the batterer continues;

Whereas children are emotionally traumatized by witnessing physical abuse of a parent;

Whereas children often become targets of physical abuse themselves or are injured when they attempt to intervene on behalf of a parent;

Whereas even children who do not directly witness spousal abuse are affected by the climate of violence in their homes and experience shock, fear, guilt, long lasting impairment of self-esteem, and impairment of developmental and socialization skills;

Whereas research into the intergenerational aspects of domestic violence reveals that violent tendencies may be passed on from one generation to the next;

Whereas witnessing an aggressive parent as a role model may communicate to children that violence is an acceptable tool for resolving marital conflict; and

Whereas few States have recognized the interrelated nature of child custody and battering and have enacted legislation that allows or requires courts to consider evidence of physical abuse of a spouse in child custody cases: Now, therefore, be it

1 Resolved by the House of Representatives (the Senate
2 concurring),

3 SECTION 1. It is the sense of the Congress that, for
4 purposes of determining child custody, credible evidence of
5 physical abuse of a spouse should create a statutory presump-
6 tion that it is detrimental to the child to be placed in the
7 custody of the abusive spouse.

8 SEC. 2. This resolution is not intended to encourage
9 States to prohibit supervised visitation.

Amend the title so as to read: "Concurrent resolution expressing the sense of the Congress that, for purposes of determining child custody, credible evidence of physical abuse of one's spouse should create a statutory presumption that it is detrimental to the child to be placed in the custody of the abusive spouse."

cific findings of fact stating why the agreement is not in the best interests of the child.

(B) In determining the issue of custody or residency of a child, the court shall consider all relevant factors, including but not limited to:

- (i) The length of time that the child has been under the actual care and control of any person other than a parent and the circumstances relating thereto;
- (ii) the desires of the child's parents as to custody or residency;
- (iii) the desires of the child as to the child's custody or residency;
- (iv) the interaction and interrelationship of the child with parents, siblings and any other person who may significantly affect the child's best interests;
- (v) the child's adjustment to the child's home, school and community; and
- (vi) the willingness and ability of each parent to respect and appreciate the bond between the child and the other parent and to allow for a continuing relationship between the child and the other parent.

Neither parent shall be considered to have a vested interest in the custody or residency of any child as against the other parent, regardless of the age of the child, and there shall be no presumption that it is in the best interests of any infant or young child to give custody or residency to the mother.

(4) *Types of custodial arrangements.* Subject to the provisions of this article, the court may make any order relating to custodial arrangements which is in the best interests of the child. The order shall include, but not be limited to, one of the following, in the order of preference:

(A) *Joint custody.* The court may place the custody of a child with both parties on a shared or joint-custody basis. In that event, the parties shall have equal rights to make decisions in the best interests of the child under their custody. When a child is placed in the joint custody of the child's parents, the court may further determine that the residency of the child shall be divided either in an equal manner with regard to time of residency or on the basis of a primary residency arrangement for the child. The court, in its discretion, may require the parents to submit a plan for implementation of a joint custody order upon finding that both parents are suitable parents or the parents, acting individually or in concert, may submit a custody implementation

plan to the court prior to issuance of a custody decree. If the court does not order joint custody, it shall include in the record the specific findings of fact upon which the order for custody other than joint custody is based.

(B) *Sole custody.* The court may place the custody of a child with one parent, and the other parent shall be the noncustodial parent. The custodial parent shall have the right to make decisions in the best interests of the child, subject to the visitation rights of the noncustodial parent.

(C) *Divided custody.* In an exceptional case, the court may divide the custody of two or more children between the parties.

(D) *Nonparental custody.* If during the proceedings the court determines that there is probable cause to believe that the child is a child in need of care as defined by subsections (a)(1), (2) or (3) of K.S.A. 38-1502 and amendments thereto or that neither parent is fit to have custody, the court may award temporary custody of the child to another person or agency if the court finds the award of custody to the other person or agency is in the best interests of the child. In making such a custody order, the court shall give preference, to the extent that the court finds it is in the best interests of the child, first to awarding such custody to a relative of the child by blood, marriage or adoption and second to awarding such custody to another person with whom the child has close emotional ties. The court may make temporary orders for care, support, education and visitation that it considers appropriate. Temporary custody orders are to be entered in lieu of temporary orders provided for in K.S.A. 38-1542 and 38-1543, and amendments thereto, and shall remain in effect until there is a final determination under the Kansas code for care of children. An award of temporary custody under this paragraph shall not terminate parental rights nor give the court the authority to consent to the adoption of the child. When the court enters orders awarding temporary custody of the child to an agency or a person other than the parent, the court shall refer a transcript of the proceedings to the county or district attorney. The county or district attorney shall file a petition as provided in K.S.A. 38-1531 and amendments thereto and may request termination of parental rights pursuant to K.S.A. 38-1581 and amendments thereto. The costs of the proceedings shall be paid from the general fund of the county. When a final determination is made that the

child is not a child in need of care, the county district attorney shall notify the court in writing and the court, after a hearing, shall enter appropriate custody orders pursuant to this section. If the same judge presides over both proceedings, the notice is not required. Any disposition pursuant to the Kansas code of care of children shall be binding and shall supersede any order under this section.

(b) *Financial matters.* (1) *Division of property.* The decree shall divide the real and personal property of the parties, whether owned by either spouse prior to marriage, acquired by either spouse in the spouse's own right after marriage or acquired by the spouses' joint efforts, by: (A) a division of the property in kind; (B) awarding the property or part of the property to one of the spouses and requiring the other to pay a just and proper sum; or (C) ordering a sale of the property, under conditions prescribed by the court, and dividing the proceeds of the sale. In making the division of property the court shall consider the age of the parties; the duration of the marriage; the property owned by the parties; their present and future earning capacities; the time, source and manner of acquisition of property; family ties and obligations; the allowance of maintenance and lack thereof; dissipation of assets; and such other factors as the court considers necessary to make a just and reasonable division of property.

(2) *Maintenance.* The decree may award to either party an allowance for future support designated as maintenance, in an amount the court finds to be fair, just and equitable under all of the circumstances. The decree may make the future payments modifiable or terminable under circumstances prescribed in the decree. In any event, the court may not award maintenance for a period of time in excess of 121 months. If the original court decree reserves the power of the court to hear subsequent motions for reinstatement of maintenance and such a motion is filed prior to the expiration of the stated period of time for maintenance payments, the court shall have jurisdiction to hear a motion by the recipient of the maintenance to reinstate the maintenance payments. Upon motion and hearing, the court may reinstate the payments in whole or in part for a period of time, conditioned upon any modifying or terminating circumstances prescribed by the court, but the reinstatement shall be limited to a period of time not exceeding 121 months. The recipient may file

subsequent motions for reinstatement of maintenance prior to the expiration of subsequent periods of time for maintenance payments to be made, but no single period of reinstatement ordered by the court may exceed 121 months. Maintenance may be in a lump sum, in periodic payments, on a percentage of earnings or on any other basis. At any time, on a hearing with reasonable notice to the party affected, the court may modify the amounts or other conditions for the payment of any portion of the maintenance originally awarded that has not already become due, but no modification shall be made without the consent of the party liable for the maintenance, if it has the effect of increasing or accelerating the liability for the unpaid maintenance beyond what was prescribed in the original decree. Every order requiring payment of maintenance under this section shall require that the maintenance be paid through the clerk of the district court or the court trustee except for good cause shown.

(3) *Separation agreement.* If the parties have entered into a separation agreement which the court finds to be valid, just and equitable, the agreement shall be incorporated in the decree. The provisions of the agreement on all matters settled by it shall be confirmed in the decree except that any provisions for the custody, support or education of the minor children shall be subject to the control of the court in accordance with all other provisions of this article. Matters settled by an agreement incorporated in the decree, other than matters pertaining to the custody, support or education of the minor children, shall not be subject to subsequent modification by the court except: (A) As prescribed by the agreement or (B) as subsequently consented to by the parties.

(4) *Costs and fees.* Costs and attorney fees may be awarded to either party as justice and equity require. The court may order that the amount be paid directly to the attorney, who may enforce the order in the attorney's name in the same case.

(c) *Miscellaneous matters.* (1) *Restoration of name.* Upon the request of a spouse, the court shall order the restoration of that spouse's maiden or former name.

(2) *Effective date as to remarriage.* Any marriage contracted by a party, within or outside this state, with any other person before a judgment of divorce becomes final shall be voidable until the decree of divorce becomes final. An agreement which waives the right of appeal from the granting of the divorce and

(3) No bond shall be required for the issuance of an order of garnishment pursuant to this section. Except as provided in this section, garnishments authorized by this section shall be subject to the procedures and limitations applicable to other orders of garnishment authorized by law.

(4) A party desiring to have the order of garnishment issued shall file an affidavit with the clerk of the district court stating that:

(A) The order of support contained the notice required by this subsection;

(B) ten or more days have elapsed since the order of support was served upon the party required to pay the support; and

(C) either no hearing was requested on the issuance of an order of garnishment within the five days after service of the order of support upon the party required to pay the same or a hearing was requested and held and the court did not prohibit the issuance of an order of garnishment.

(d) *Service of process.* Service of process served under subsection (a)(1) and (2) shall be by personal service and not by certified mail return receipt requested.

History: L. 1963, ch. 303, 60-1607; L. 1976, ch. 251, § 25; L. 1977, ch. 204, § 2; L. 1979, ch. 153, § 3; L. 1982, ch. 152, § 7; L. 1990, ch. 202, § 32; Jan. 1, 1991.

Law Review and Bar Journal References:

"Reform in Kansas Domestic Violence Legislation," David J. Gottlieb and L. Eric Johnson, 31 K.L.R. 527, 557, 560 (1983).

"Kansas Enacts New Provisions for Child Support Enforcement—Mandatory Wage Withholding," Yvonne C. Anderson, Richard A. Forster, 25 W.L.J. 91, 102 (1985).

60-1610. Decree; authorized orders. A decree in an action under this article may include orders on the following matters:

(a) *Minor children.* (1) *Child support and education.* The court shall make provisions for the support and education of the minor children. The court may modify or change any prior order when a material change in circumstances is shown, irrespective of the present domicile of the child or the parents. Regardless of the type of custodial arrangement ordered by the court, the court may order the child support and education expenses to be paid by either or both parents for any child less than 18 years of age, at which age the support shall terminate unless: (A) The parent or parents agree, by written agreement approved by the court, to pay support beyond the time the child reaches 18 years of age; or (B) the child reaches

18 years of age before completing the child's high school education in which case the support shall not terminate, unless otherwise ordered by the court, until June 1 of the school year during which the child became 18 years of age if the child is still attending high school. Provision for payment of support and educational expenses of a child after reaching 18 years of age if still attending high school shall apply to any child subject to the jurisdiction of the court, including those whose support was ordered prior to July 1, 1986. If an agreement approved by the court prior to the effective date of this act provides for termination of support before the date provided by subsection (a)(1)(B), the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection (a)(1)(B). In determining the amount to be paid for child support, the court shall consider all relevant factors, without regard to marital misconduct, including the financial resources and needs of both parents, the financial resources and needs of the child and the physical and emotional condition of the child. Until a child reaches 18 years of age, the court may set apart any portion of property of either the husband or wife, or both, that seems necessary and proper for the support of the child. Every order requiring payment of child support under this section shall require that the support be paid through the clerk of the district court or the court trustee except for good cause shown.

(2) *Child custody and residency.* (A) *Changes in custody.* Subject to the provisions of the uniform child custody jurisdiction act (K.S.A. 38-1301 *et seq.*, and amendments thereto), the court may change or modify any prior order of custody when a material change of circumstances is shown.

(B) *Examination of parties.* The court may order physical or mental examinations of the parties if requested pursuant to K.S.A. 60-235 and amendments thereto.

(3) *Child custody or residency criteria.* The court shall determine custody or residency of a child in accordance with the best interests of the child.

(A) If the parties have a written agreement concerning the custody or residency of their minor child, it is presumed that the agreement is in the best interests of the child. This presumption may be overcome and the court may make a different order if the court makes spe-

Session of 1990

SENATE BILL No. 681

By Committee on Judiciary

2-19

9 AN ACT concerning crimes and penalties; relating to records of
10 incidents and reporting thereof; amending K.S.A. 21-2501a and
11 repealing the existing section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 21-2501a is hereby amended to read as follows:
15 21-2501a. (a) All law enforcement agencies having responsibility for
16 law enforcement in any political subdivision of this state shall main-
17 tain, on forms *or in a format* approved by the attorney general, a
18 permanent record of all ~~felony offenses incidents which are~~ reported
19 or known to have been committed within their respective jurisdic-
20 tions, ~~and of all misdemeanors or other offenses which involve~~
21 ~~the violation of the uniform controlled substances act irrespec-~~
22 ~~tive of the referral of criminal charges and which are:~~

23 (1) *Felonies or misdemeanors; or*

24 (2) *violations of city ordinances or county resolutions which pro-*
25 *hibit acts which constitute felonies or misdemeanors.*

26 (b) All law enforcement agencies having the responsibility of
27 maintaining a permanent record of ~~offenses incidents~~ shall file with
28 the bureau of investigation, on a ~~form~~ *forms or in a format* approved
29 by the attorney general, a report on each ~~offense incident~~ for which
30 a permanent record is required within ~~seventy-two (72)~~ hours after
31 ~~such offense is reported or known to have been committed a~~
32 ~~specified time determined by the director of the bureau.~~

33 (c) *The director of the bureau of investigation shall adopt any*
34 *rules and regulations necessary to implement, administer and enforce*
35 *the provisions of this act.*

36 Sec. 2. K.S.A. 21-2501a is hereby repealed.

37 Sec. 3. This act shall take effect and be in force from and after
38 its publication in the statute book.

2-11/21

REQUIRE WRITTEN POLICY

All law enforcement agencies shall have written policies regarding domestic violence calls. These policies shall be available to all officers.

The policy shall include, but not be limited to, the following:

1. Statement the officers shall arrest when they have probable cause. Included in this statement is the statute, K.S.A. 22-2401, which allows an officer to make an arrest.
2. A statement defining domestic violence.
3. A statement describing dispatchers' responsibilities.
4. A statement describing responding officers' responsibilities and procedures to follow when responding to a domestic call and the suspect is at the scene.
5. A statement regarding procedures when suspect has left the scene of the crime.
6. The policy shall include procedures for both misdemeanor and felony cases.
7. The policy shall include procedures to follow on court orders, i.e. protection from abuse act and restraining orders.
8. A statement that all law enforcement officers shall provide the following information:
 - a. Availability of emergency and medical numbers if needed
 - b. The police report number
 - c. The address and telephone number of the prosecutors office 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
 - d. The name and address of the Crime Victims' Compensation Board and information about compensation benefits
 - e. Advise the victim that the details of the crime may be made public
 - f. Advise the victim of such victims' rights under K.S.A 1989 supp. 74-7333 and 74-7335 and amendments thereto
 - g. Advise the victim of available resources which would assist the victim
9. Whether an arrest is made or not, a standard offense report shall be completed on all incidents and sent to the KBI.
10. Training shall be provided yearly on the domestic violence procedures and policies.

Enforcement powers will be given to the Attorney General's Office.

2-12/21

Remove exemption that causes
cannot be charged

The crimes below are sex offenses under article 35 and 36 of the Kansas Criminal Code. There are other crimes in the code that involve sexual conduct appearing in other articles.

- A. **RAPE (32-3502)** - The act of sexual intercourse with (any penetration of female sex organ by anything) without consent of the victim under any of the following circumstances:
- a. Victim overcome by force or fear;
 - b. Victim unconscious or physically powerless;
 - c. Victim incapable of consent because of mental deficiency or disease - condition known to offender or reasonably apparent;
 - d. Victim incapable of consent because of effect of alcohol, narcotic, drug or other substance administered by offender, or with offender's knowledge.
- * **B felony**
- B. **INDECENT LIBERTIES WITH A CHILD (21-3503)**- Engaging in any of the following acts with child who is not married to the offender and who is under 16 years of age:
- a. Sexual intercourse;
 - b. Lewd fondling or touching of the person of the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender or both;
 - c. Soliciting the child to engage in lewd fondling or touching of the person of another with intent to satisfy the sexual desires of the child, the offender, or another.
- * **C felony**
- C. **AGGRAVATED INDECENT LIBERTIES WITH A CHILD (21-3504)**- Same as above when charge of the victim is committed to the offender by any court, C.S.O., S.R.S., or other agency acting under color of law.
- * **B felony**
- D. **SODOMY (21-3505)**- Sodomy (defined in 21-3501) between persons of same sex of a person and an animal.
- * **B misdemeanor**
- E. **AGGRAVATED CRIMINAL SODOMY (21-3506)** - One of the following:
- a. Sodomy with a child not married to the offender and under 16 years of age;
 - b. Causing a child under 16 years of age to engage in sodomy with a person or animal; or
 - c. Sodomy with a person who does not consent or causing a person to engage in sodomy without consent under the circumstances set forth for rape (A above).
- * **B felony**
- F. **ADULTERY (21-3507)**- Sexual intercourse or sodomy with a person not married to the offender if:
- a. Offender is married;
 - b. Offender is not married and knows other person is married.
- * **C misdemeanor**
- G. **LEWD AND LASCIVIOUS BEHAVIOR (21-3508)** - One of the following:
- a. Sexual intercourse or sodomy while being viewed;
 - b. Exposure of sexual organ in public or in presence of non-consenting, non-spouse with intent of sexual gratification.
- * **B misdemeanor**
- H. **ENTICEMENT OF A CHILD (21-3509)** - Inviting, persuading, or attempting to persuade a child under 16 years of age to enter any vehicle, building, room or secluded place with intent to commit an unlawful sex act.
- * **D felony**
- I. **INDECENT SOLICITATION OF A CHILD (21-3510)** - Accosting, enticing, or soliciting a child under 16 years of age to commit or submit to an unlawful sex act.
- * **A misdemeanor, but see Indecent Liberties (21-3503(c))**

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- J. **AGGRAVATED INDECENT SOLICITATION OF CHILD (21-3511)**- Same as I, above, with child under 12 years of age.
* **B felony**
- K. **PROSTITUTION (21-3512)**- Performing or offering or agreeing to perform for hire.
a. Sexual intercourse;
b. Sodomy; or
c. Manual or other bodily contact stimulation of the genitals with intent to arouse or gratify sexual desires of offender or another.
* **B misdemeanor**
- L. **PROMOTING PROSTITUTION (21-3513)**- See statute.
* **A misdemeanor or E felony if prostitute is less than 16 years of age.**
- M. **HABITUALLY PROMOTING PROSTITUTION (21-3514)** - See statute.
* **E felony**
- N. **PATRONIZING A PROSTITUTE (21-3515)** - See statute.
* **C misdemeanor**
- O. **SEXUAL EXPLOITATION OF A CHILD (21-3516)**- One of the following:
a. Employing, using, persuading, inducing, enticing, or coercing a child under 16 years of age to engage in sexually explicit conduct for the purpose of promoting any film, photograph, negative, slide, book, magazine, or other printed or visual medium, or any play or other live performance.
b. Possessing any medium above which depicts a live child; or
c. Being a parent, guardian, or other person having custody or control of a child and knowingly permitting the child to perform acts for purposes above set forth.
Definitions set forth in statute.
* **D felony**
- P. **SEXUAL BATTERY (21-3517)** - Unlawful intentional touching of a non-spouse without consent with intent to arouse or satisfy sexual desires.
- Q. **AGGRAVATED SEXUAL BATTERY (21-3518)** - As above:
a. With application of force;
b. With person under 16 years of age;
c. In another's dwelling after entering or remaining without authority;
d. With a person who is unconscious or physically powerless; or
e. With a person who is incapable of giving consent because of mental deficiency or disease - condition known to offender or reasonably apparent.
* **D felony**
- R. **PROMOTING SEXUAL PERFORMANCE BY A MINOR (21-3519)** - Promoting any performance that includes sexually explicit conduct by a child under 18 years of age, while knowing the character and content of the performance.
* **E felony**
- S. **INCEST (21-3602)** - Is marriage to or engaging in sexual intercourse, sodomy, or any unlawful sexual act with a person 18 years of age or more known to the offender to be related as parent, child, grandparent, grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew, or niece.
* **E felony**
- T. **AGGRAVATED INCEST (21-3603)** - Sexual intercourse, sodomy, or any unlawful sexual act with person 18 years of age related to offender as child, grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew, or niece.
* **D felony**

The above information is submitted solely as a guide while in the field and does not include all definitions or contexts as set forth in the various statutes. All determinations of specific charges to be filed should be made by the prosecuting attorney having venue.

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believe that the resident is in need of protective services, that finding and all information relating to that finding shall be forwarded by the secretary of health and environment to the secretary of social and rehabilitation services.

Except as otherwise provided in this section, the report received by the department of health and environment and the written findings, evaluations and actions recommended shall be confidential and shall not be subject to the open records act. Except as otherwise provided in this section, the name of the person making the original report to the department of health and environment or any person mentioned in such report shall not be disclosed unless such person specifically requests or agrees in writing to such disclosure or unless a judicial or administrative proceeding results therefrom. In the event that an administrative or judicial action arises, no use of the information shall be made until the judge or presiding officer makes a specific finding, in writing, after a hearing, that under all the circumstances the need for the information outweighs the need for confidentiality. Except as otherwise provided in this section, no information contained in the register shall be made available to the public in such a manner as to identify individuals.

History: L. 1990, ch. 153, § 9; Oct. 1.

39-1412 to 39-1420. Reserved.

39-1421 to 39-1429.

History: L. 1985, ch. 267, §§ 1 to 9; Revised L. 1989, ch. 129, § 14; July 1.

CASE ANNOTATIONS

Retaliation against discharge of probationary employee in retaliation for reporting employer's illegal practices as action examined. *Palmer v. Brown*, 242 K. 593, 596, 272 P.2d 655 (1988).

REPORTING ABUSE, NEGLECT OR EXPLOITATION OF CERTAIN ADULTS

39-1430. Abuse, neglect or exploitation of certain adults; definitions. As used in this

"Adult" means an individual 18 years of age or older alleged to be unable to protect their own interest and who is harmed or threatened with harm through action or inaction by another individual or through their own action or inaction. Such term shall not include a resident as the term "resident" is defined in K.S.A. 39-1401 and amendments

"Abuse" means the intentional infliction of unreasonable confinement, fiduciary

abuse, intimidation, cruel punishment, omission or deprivation by a caretaker or another person of goods or services which are necessary to avoid physical or mental harm or illness.

(c) "Neglect" means the failure or omission by one's self, caretaker or another person to provide goods or services which are necessary to ensure safety and well-being and to avoid physical or mental harm or illness.

(d) "Exploitation" means taking unfair advantage of an adult's physical or financial resources for another individual's personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense by a caretaker or another person.

(e) "Fiduciary abuse" means a situation in which any person who is the caretaker of, or who stands in a position of trust to, an adult, takes, secretes, or appropriates their money or property, to any use or purpose not in the due and lawful execution of such person's trust.

(f) "In need of protective services" means that an adult is unable to provide for or obtain services which are necessary to maintain physical or mental health or both.

(g) "Services which are necessary to maintain physical or mental health or both" include, but are not limited to, the provision of medical care for physical and mental health needs, the relocation of an adult to a facility or institution able to offer such care, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from maltreatment the result of which includes, but is not limited to, malnutrition, deprivation of necessities or physical punishment and transportation necessary to secure any of the above stated needs, except that this term shall not include taking such person into custody without consent except as provided in this act.

(h) "Protective services" means services provided by the state or other governmental agency or by private organizations or individuals which are necessary to prevent abuse, neglect or exploitation. Such protective services shall include, but shall not be limited to, evaluation of the need for services, assistance in obtaining appropriate social services, and assistance in securing medical and legal services.

(i) "Caretaker" means a person who has assumed the responsibility for an adult's care or financial management or both.

(j) "Secretary" means the secretary of social and rehabilitation services.

Reserve in Home care Assured

39-1431 MENTALLY ILL, INCAPACITATED, DEPENDENT PERSONS

(k) "Report" means a report of abuse, neglect or exploitation under this act.

(l) "Law enforcement" means the public office which is vested by law with the duty to maintain public order, make arrests for crimes, investigate criminal acts and file criminal charges, whether that duty extends to all crimes or is limited to specific crimes.

(m) "Involved adult" means the adult who is the subject of a report of abuse, neglect or exploitation under this act.

No person shall be considered to be abused, neglected or exploited or in need of protective services for the sole reason that such person relies upon spiritual means through prayer alone for treatment in accordance with the tenets and practices of a recognized church or religious denomination in lieu of medical treatment.

History: L. 1989, ch. 129, § 1; July 1.

39-1431. Same; reporting abuse, neglect or exploitation or need of protective services; persons required to report; contents of report; penalty for failure to report. (a) Any person who is licensed to practice any branch of the healing arts, a licensed psychologist, the chief administrative officer of a medical care facility, a licensed social worker, a licensed professional nurse, a licensed practical nurse, a licensed dentist, a law enforcement officer and the chief administrative officer of a licensed home health agency, who has reasonable cause to believe that an adult is being or has been abused, neglected or exploited or is in need of protective services shall report, within six hours from receipt of the information, such information or cause a report of such information to be made in any reasonable manner. An employee of a domestic violence center shall not be required to report information or cause a report of information to be made under this subsection. Other state agencies receiving reports that are to be referred to the department of social and rehabilitation services, shall submit the report to the department within six hours, during normal work days, of receiving the information. Reports shall be made to the department of social and rehabilitation services during the normal working week days and hours of operation. Reports shall be made to law enforcement agencies during the time social and rehabilitation services are not in operation. Law enforcement shall submit the report and appropriate information to the department of social and rehabilitation services

on the first working day that social and rehabilitation services is in operation.

(b) The report made pursuant to subsection (a) shall contain the name and address of the person making the report and of the caretaker caring for the involved adult, the name and address of the involved adult, information regarding the nature and extent of the abuse neglect or exploitation, the name of the next of kin of the involved adult, if known, and any other information which the person making the report believes might be helpful in the investigation of the case and the protection of the involved adult.

(c) Any other person having reasonable cause to suspect or believe that an adult is being or has been abused, neglected or exploited or is in need of protective services may report such information to the department of social and rehabilitation services. Reports shall be made to law enforcement agencies during the time social and rehabilitation services are not in operation.

(d) A person making a report under subsection (a) shall not be required to make a report under K.S.A. 39-1401 to 39-1410, inclusive, and amendments thereto. A person making a report under K.S.A. 39-1401 to 39-1410, inclusive, and amendments thereto, shall not be required to make a report under this act.

(e) Any person required to report information or cause a report of information to be made under subsection (a) who knowingly fails to make such report or cause such report not to be made shall be guilty of a class E misdemeanor.

History: L. 1989, ch. 129, § 2, July 1.

39-1432. Same; immunity from liability of certain persons; employer prohibited from imposing sanctions on employee making report; attorney fees awarded, when. (a) Anyone participating in the making of any report pursuant to this act, or in any follow-up activity to or investigation of such report or who testifies in any administrative or judicial proceeding arising from such report shall not be subject to any civil or criminal liability on account of such report, investigation or testimony, unless such person acted in bad faith or with malicious purpose.

(b) No employer shall terminate the employment of, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that such

employee made or caused to be made a report, cooperated with an investigation, under this act. A court, in addition to other damages and remedies, may assess reasonable attorney fees against an employer who has been found to have violated the provisions of this subsection.

History: L. 1989, ch. 129, § 3; July 1.

39-1433. Same; duties of department of social and rehabilitation services. (a) The department of social and rehabilitation services, upon receiving a report that an adult is being abused, neglected, or exploited or in need of protective services, shall:

1) Make a personal visit with the involved adult;

2) Within 24 hours when the information in the reporter indicates imminent danger to the health or welfare of the involved adult;

3) Within three working days for all reports of suspected abuse, when the information in the reporter indicates no imminent danger;

4) Within five working days for all reports of neglect or exploitation when the information in the reporter indicates no imminent danger.

5) Complete, within two weeks of receiving a report, a thorough investigation and evaluation to determine the situation relative to the condition of the involved adult and what care and services, if any, are required. The investigation shall include, but not be limited to, consultation with those individuals having knowledge of the facts of the particular case. If a criminal act has appeared to have occurred, law enforcement shall be notified immediately and if the alleged perpetrator is suspected, registered or otherwise regulated by the agency, such state agency also shall be notified immediately.

6) Prepare, upon completion of the evaluation of each case, a written assessment which shall include an analysis of whether there is or has been abuse, neglect or exploitation, recommended action, a determination of whether protective services are needed, and any follow-up.

History: L. 1989, ch. 129, § 4; July 1.

39-1434. Same; statewide register; re-assessment or written evaluation not required; disclosure of certain individuals prohibited. (a) The secretary of social and rehabilitation services shall maintain a statewide register of the reports, assessments received and analyses, evaluations and the actions

recommended. The register shall be available for inspection by personnel of the department of social and rehabilitation services.

(b) Neither the report, assessment or the written evaluation analysis shall be deemed a public record or be subject to the provisions of the open records act. The name of the person making the original report or any person mentioned in such report shall not be disclosed unless the person making the original report specifically requests or agrees in writing to such disclosure or unless a judicial proceeding results therefrom. No information contained in the statewide register shall be made available to the public in such a manner as to identify individuals.

History: L. 1989, ch. 129, § 5; July 1.

39-1435. Same; assistance of state departments and agencies and other public and private agencies; law enforcement assistance. In performing the duties set forth in this act, the secretary of social and rehabilitation services may request the assistance of all state departments, agencies and commissions and may utilize any other public or private agencies, groups or individuals who are appropriate and who may be available. Law enforcement shall be contacted to assist the department of social and rehabilitation services when the information received on the report indicates that an adult, residing in such adult's own home or the home of another individual, is in a life threatening situation.

History: L. 1989, ch. 129, § 6; July 1.

39-1436. Same; access to relevant records; confidentiality requirements. (a) Any person or agency which maintains records relating to the involved adult which are relevant to any investigation conducted by the department of social and rehabilitation services under this act shall provide, upon the written consent of the involved adult or the involved adult's guardian, the department of social and rehabilitation services with the necessary records to assist in investigations. Any such information shall be subject to the confidentiality requirements of K.S.A. 1989 Supp. 39-1434 and amendments thereto.

(b) The department of social and rehabilitation services shall have access to all relevant records in accordance with the provisions of subsection (a).

History: L. 1989, ch. 129, § 7; July 1.

39-1437. Same; protective services; duties of secretary of social and rehabilitation

services; injunction. (a) If the secretary determines that an involved adult is in need of protective services, the secretary shall provide the necessary protective services if the adult consents. If the involved adult fails to consent and the secretary has reason to believe that the involved adult lacks capacity to consent, the secretary shall determine whether a petition for appointment of a guardian or conservator, or both, should be filed. The secretary may petition the district court for appointment of a guardian or conservator, or both, for an involved adult pursuant to the provisions of the act for obtaining a guardian or conservator, or both.

(b) If the caretaker of an involved adult who has consented to the receipt of reasonable and necessary protective services refuses to allow the provision of such services to the adult, the secretary may seek an injunction enjoining the caretaker from interfering with the provision of protective services to the adult. The petition in such action shall allege specific facts sufficient to show that the adult is in need of protective services and consents to their provision and that the caretaker refuses to allow the provision of such services. If the judge finds that the adult is in need of protective services and has been prevented by the caretaker from receiving such services, the judge shall issue an order enjoining the caretaker from interfering with the provision of protective services to the adult.

History: L. 1989, ch. 129, § 8; July 1.

39-1438. Same; when protective services not provided. If an involved adult does not consent to the receipt of reasonable and necessary protective services, or if such adult withdraws the consent, such services shall not be provided or continued.

History: L. 1989, ch. 129, § 9; July 1.

39-1439. Same; district court appointment of attorney to represent involved adult, when. In any proceeding in district court pursuant to provisions of this act, the district court shall appoint an attorney to represent the involved adult if the adult is without other legal representation.

History: L. 1989, ch. 129, § 10; July 1.

39-1440. Same; review subsequent to authorization of protective services; continuation of protective services; reevaluations. Subsequent to the authorization for the provision of necessary protective services, the sec-

retary shall initiate a review of each case within 45 days to determine where continuation of or modification in, the services provided is warranted. A decision to continue the provision of such services shall comply with the consent provisions of this act. Reevaluations of the need for protective services shall be made not less than every six months thereafter.

History: L. 1989, ch. 129, § 11; July 1.

39-1441. Same; authority of secretary of social and rehabilitation services; toll-free telephone number. The authority of the secretary under this act shall include, but is not limited to, the right to initiate or otherwise take those actions necessary to assure the health, safety and welfare of an involved adult subject to any specific requirements for individual consent of the adult. The secretary may establish a toll-free telephone number for the reporting of instances of abuse, neglect or exploitation under this act.

History: L. 1989, ch. 129, § 12; July 1.

39-1442. Same; least restrictive actions to be taken. Any actions taken under this act shall be consistent with providing protective services and accommodations in a manner no more restrictive of an individual's personal liberty and no more intrusive than necessary to achieve acceptable and treatment objectives.

History: L. 1989, ch. 129, § 13; July 1.

Article 16.—MENTAL HEALTH REFORM

39-1601. Citation of act, K.S.A. 1990 Supp. 39-1601 through 39-1612 and amendments thereto shall be known and may be cited as the mental health reform act.

History: L. 1990, ch. 92, § 1; July 1.

Cross References to Related Sections:

Community mental health centers, see art. 40, ch. 129, § 12.
Kansas community mental health centers assistance act, see 65-4431 et seq.

Mental health clinics, see 65-211 through 65-215 and 75-3307b.

Treatment act for mentally ill persons, see art. 29, ch. 129.

39-1602. Definitions. As used in K.S.A. 1990 Supp. 39-1601 through 39-1612 and amendments thereto:

(a) "Targeted population" means the population group designated by rules and regulations of the secretary as most in need of mental health services which are funded, in whole or in part, by state or other public funding sources, which group shall include adults with severe and persistent mental illness, *

Increase the death certificate fee from \$6 to \$10. The increase would be used for elder abuse prevention **65-2411** grants

DEATH CERTIFICATES

PUBLIC HEALTH

Dept. of Aging should administer grants.

having knowledge of the birth and prepare and file the certificate. The secretary shall prescribe the time within which a supplementary report furnishing information omitted from the original certificate may be returned for the purpose of completing the certificate. Certificates of birth completed by a supplementary report shall not be considered "delayed" or "altered."

History: L. 1951, ch. 355, § 10; L. 1974, ch. 352, § 123; July 1.

65-2411. Registration of foundlings; foundling report. (1) Whoever assumes the custody of a child of unknown parentage shall immediately report to the local registrar in writing: (a) The date and place of finding or assumption of custody; (b) sex, color or race, and approximate age of child; (c) name and address of the person or institution with whom the child has been placed for care, and (d) name given to the child by the finder or custodian. (2) The place where the child was found or custody assumed shall be known as the place of birth and the date of birth shall be determined by approximation. (3) The report shall constitute the certificate of birth. (4) If the child is identified and a regular certificate of birth is found or obtained, the report shall be sealed and filed and may be opened only by court order.

History: L. 1951, ch. 355, § 11; June 30.

65-2412. Registration of deaths and stillbirths; official death records; use of verified forms; establishment and collection of fee; duties of coroners; filing of certificates. (a) A death certificate or stillbirth certificate for each death or stillbirth which occurs in this state shall be filed with the local registrar of the district in which the death occurred within three (3) days after such death and prior to removal of the body from the state, and shall be registered by such registrar if it has been completed and filed in accordance with this section. If the place of death is unknown, a death certificate shall be filed in the registration district in which a dead body is found within three (3) days after such occurrence; if death occurs in a moving conveyance, a death certificate shall be filed in the registration district in which the dead body was first removed from such conveyance.

(b) The funeral director or person acting as such who first assumes custody of a dead

body or fetus shall file the death certificate. He or she shall obtain the personal data from the next of kin or the best qualified person or source available and shall obtain the medical certification of cause of death from the physician last in attendance prior to burial. The death certificate filed with the state registrar shall be the official death record, except that a funeral director, licensed pursuant to K.S.A. 65-1714 may verify as true and accurate information pertaining to a death on a form provided by the state registrar, and any such form, verified within twenty-one (21) days of date of death, shall be prima facie evidence of the facts therein stated for purposes of establishing death. The secretary of health and environment shall fix and collect a fee for each form provided a funeral director pursuant to this subsection. The fee shall be collected at the time the form is provided the funeral director and shall be in the same amount as the fee for a certified copy of a death certificate.

(c) When death occurred without medical attendance or when inquiry is required by the laws relating to post-mortem examinations, the coroner shall investigate the cause of death and shall complete and sign the medical certification within twenty-four (24) hours after taking charge of the case.

(d) In every instance a certificate shall be filed prior to interment or disposal of the body.

History: L. 1951, ch. 355, § 12; L. 1963, ch. 319, § 4; L. 1979, ch. 188, § 13; July 1

65-2413.

History: L. 1951, ch. 355, § 13; Repealed L. 1963, ch. 319, § 10; June 30.

65-2414. Delayed determination of cause of death. If the cause of death cannot be determined within three (3) days, the certification of its cause may be filed after the prescribed period, but the attending physician or coroner shall give the local registrar of the district in which death occurred, written notice of the reason for the delay, in order that a permit for the disposition of the body may be issued.

History: L. 1951, ch. 355, § 14; June 30

65-2415. Form of certificates. The forms of certificates shall include as a minimum the items required by the respective standard certificates as recommended by

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national office of vital statistics subject to approval of and modification by the secretary. The form and use of such certificate shall be subject to the provisions of K.S.A. 65-2422.

History: L. 1951, ch. 355, § 15; L. 1974, ch. 352, § 124; July 1.

5-2416. Certificates as evidence; reduction of records; certification. Certificates filed within six (6) months after the time prescribed therefor shall be prima facie evidence of the facts therein stated. Certificates are prima facie evidence only if the alleged father is the husband of the mother, and the father has consented in writing that his name be entered as the father on the certificate as provided in K.S.A. 65-2409 if the data pertaining to the father of a child are not evidence in any proceeding otherwise to the interest of the alleged father, his heirs, next of kin, devisees, legatees or other successors in interest, if the paternity in [is] controverted. The state registrar of vital statistics is authorized to make reproductions of original records and files in office. Such reproductions when certified by him shall be accepted as the original record.

History: L. 1951, ch. 355, § 16; L. 1963, ch. 319, § 5; June 30.

Arch and Practice Aids:
Evidence—§§ 383(4),
E.S. Evidence §§ 766, 773.

5-2417. Certified copies. (a) Subject to the requirements of K.S.A. 65-2421, 65-2422 and 65-2423, the state registrar shall, on request, furnish to any applicant a certified copy of any certificate, or any part thereof. (b) Copies of the contents of any certificate on file or any part thereof, certified by the state registrar shall be considered for all purposes the same as the original subject to the requirements of K.S.A. 65-2421, 65-2422 and 65-2423.

History: L. 1951, ch. 355, § 17; L. 1974, ch. 352, § 125; July 1.

5-2418. Fees for copies and searches; position; exemptions; copies or data furnished to national office of vital statistics; vital statistics fee fund abolished. (a) The secretary shall fix and charge the fees, if any, to be paid for certified copies of certifi-

icates or for search of the files or records when no certified copy is made. Fees for certified copies of certificates shall be fixed by rules and regulations of the secretary of health and environment. The secretary of health and environment may provide by rules and regulations for exemptions from such fees.

(b) Subject to K.S.A. 65-2420 and amendments thereto, the national office of vital statistics may be furnished copies or data it requires for national statistics. The state shall be reimbursed for the cost of furnishing the data. The data shall not be used for other than statistical purposes by the national office of vital statistics unless so authorized by the state registrar of vital statistics.

(c) The secretary of health and environment shall remit all moneys received by or for the secretary from fees, charges or penalties to the state treasurer at least monthly. Upon receipt of any such remittance the state treasurer shall deposit the entire amount thereof in the state treasury and the same shall be credited to the state general fund. On July 1, 1983, the director of accounts and reports shall transfer all moneys in the vital statistics fee fund to the state general fund. All liabilities of the vital statistics fee fund are hereby transferred to and imposed upon the state general fund. The vital statistics fee fund is hereby abolished.

History: L. 1951, ch. 355, § 18; L. 1957, ch. 431, § 9; L. 1963, ch. 398, § 14; L. 1973, ch. 309, § 21; L. 1974, ch. 352, § 126; L. 1975, ch. 324, § 1; L. 1978, ch. 347, § 12; L. 1982, ch. 182, § 139; L. 1983, ch. 256, § 11; July 1.

Cross References to Related Sections:

Purpose and limitation on moneys credited to state general fund, see 75-3170a.

65-2419. Delayed birth certificates. A person born in this state may file a birth certificate after the time herein prescribed, upon submitting such proof as shall be required by the secretary.

History: L. 1951, ch. 355, § 19; L. 1974, ch. 352, § 127; July 1.

65-2420. Same; procedure. (a) Certificates accepted subsequent to six (6) months after the time prescribed for filing with the state registrar shall contain the date of the delayed filing and be marked "delayed." (b) A summary statement of the evidence sub-

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Michigan Law

Statutes Annotated

Kansas Department on Aging

Alice Hamilton Nida
Legal Services Developer

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(913) 296-4986

n of a complaint or
guilty of a misdemean-
or to a long-term care
sident in a long-term
ity.

**to comply with or
bribing ombudsman.]** (2) A person who willfully does any of the
following in connection with an ombudsman described by this act is
subject to a fine of not more than \$1,500.00:

- (a) Hinders the work of an ombudsman or an ombudsman program.
- (b) Refuses to comply with a lawful request of an ombudsman.
- (c) Offers compensation or other promises to improperly influence the outcome of a matter being investigated by an ombudsman. (MCL §400.586j.)

History. Added by Pub Acts 1987, No. 35, imd eff May 27.

§ 2.638(56k) Older persons' abuse prevention fund; establishment; administration; contributions.] Sec. 6k. (1) There is established in the state treasury an older persons' abuse prevention fund, to be administered by the office. The fund shall consist of contributions of money from individuals, corporations, or other associations, and any money appropriated to the fund. No state general purpose or general fund money shall be appropriated to the fund.

Creation of older persons' abuse prevention project; duties of office.] (2) With the fund, the office shall create an older persons' abuse prevention project, for which the office shall do all of the following:

- (a) Administer the older persons' abuse prevention fund for the purpose of implementing the older persons' abuse prevention project.
- (b) Develop an older persons' abuse prevention program in cooperation with the department of social services, department of public health, department of mental health, department of state police, the office of substance abuse services, and representatives of local police agencies.
- (c) Disseminate information about the aging process.
- (d) Evaluate and approve proposals from community organizations for grants from the older persons' abuse prevention fund. Proposals may be submitted directly to the office or may be submitted to any area agency on aging, which shall forward the proposal to the office. A grant from the older persons' abuse prevention fund shall be for a purpose consistent with the older persons' abuse prevention program and shall be expended as determined by an interagency

ELDER ABUSE PREVENTION PROGRAMS
Cumulative Supplement

DEATH CERTIFICATE

prevention fund
§ 2.638(57a) *new file*

review panel, of which the director or the director's designee shall be the chairperson.

Pilot programs; report.] (3) If sufficient contributions have been made to the fund, the office shall develop and implement 2 pilot programs for purposes of this section. The pilot programs shall be established in cooperation with community organizations that provide services to older persons and that have adequate facilities, staff, and expertise to provide services for the prevention of the abuse of older persons. The pilot programs shall be implemented not later than 18 months after the effective date of this section. Not later than 2 years after the pilot programs are implemented, the office shall report to the legislature on the results of the pilot programs.

Definition.] (4) As used in this section, "abuse of older persons" includes the following types of abuse involving an older person: physical abuse, emotional or social abuse, financial abuse, or environmental abuse. (MCL §400.586k.)

History. As amended by Pub Acts 1988, No. 235, imd eff July 8, which contained a section 2 providing: "This amendatory act shall take effect upon the expiration of 90 days after the date of its enactment."

§ 2.638(57a) State advisory council on mental health and aging; establishment; administration and operation; membership, duties, and operation.] Sec. 7a. The state advisory council on mental health and aging is jointly established in, and shall be administered and operated jointly by, the office of services to the aging and the department of mental health. The membership, duties, and operation of the state advisory council on mental health and aging shall be as provided in section 941 of the mental health code, Act No. 258 of the Public Acts of 1974, being section 330.1941 of the Michigan Compiled Laws. (MCL §400.587a.)

History. Added by Pub Acts 1988, No. 437, imd eff December 27, which contained a section 2 providing: "This amendatory act shall not take effect unless House Bill No. 5173 of the 84th Legislature [which became Act No. 436 of 1988] is enacted into law."

Statutory references. Section 941 of Act No. 258 of 1974, above referred to, is §14.800(941), supra.

TITLE 3. EXECUTIVE DEPARTMENT

PART ONE EXECUTIVE OFFICERS

CHAPTER 6. GOVERNOR

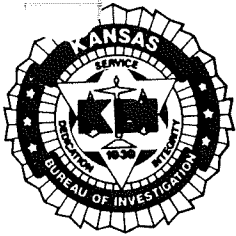
PAYMENT TO PRIVATE ENTERPRISES FOR GOODS AND SERVICES ACT

Act 279 of 1984

SEC.

3.29(15)

"Private enterprise", meaning.



JAMES G. MALSON
DIRECTOR

KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL

STATE OF KANSAS

1620 TYLER

TOPEKA, KANSAS 66612-1837

(913) 232-6000



ROBERT T. STEPHAN
ATTORNEY GENERAL

January 31, 1991

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

RE: Creation of DNA Profiling Data Bank

Dear Senator Winter:

As you know, last year the Kansas Bureau of Investigation (KBI) was appropriated funds for the training of two criminalists and acquisition of equipment to begin conducting DNA analysis of human tissues for use in criminal investigations. This forensic breakthrough allows the creation of a patterning code, sometimes compared to a UPC bar code, creating an individual pattern that is unique to that person. While such analysis is still in the implementation stage, a connected piece of legislation is being requested by the KBI.

Just as convicted felons are required to provide fingerprints for use in future investigations, we are suggesting that convicted sex offenders and persons committing serious crimes of violence, e.g. murder or aggravated battery, should be required to submit specimens of blood and saliva to the KBI to create a DNA Profiling Data Bank. This would enable the KBI to maintain these genetic marker groupings for comparison purposes. Inasmuch as sex offenders as a group have one of the highest recidivists rates, we believe such a data base would prove most useful in solving future rapes and assaults.

Furthermore, computer equipment and software is already being developed to allow automated comparison and identification of such markers in other states. Such automation would be similar to our AFIS capability and allow us to compare specimens recovered from crime scenes to the data base.

Obviously, the sooner such a data base is established and the more samples are obtained from convicted offenders, the more effective such a data base will be. At this time eleven other states have adopted similar legislation. A draft of our proposed legislation is attached to this letter.

*Senate Judiciary Committee
Attachment 3*

2-11-91

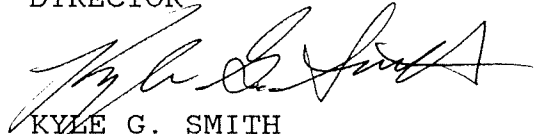
3-1/4

013191
Page 2

Thank you for your consideration.

Sincerely,

JAMES G. MALSON
DIRECTOR

A handwritten signature in black ink, appearing to read "Kyle G. Smith", written over the typed name.

KYLE G. SMITH
ASSISTANT ATTORNEY GENERAL

JGM:KS:ld:2788

3-2/4

AN ACT concerning criminal procedure requiring collection of DNA exemplars from convicted felons and authorizing the Kansas Bureau of Investigation to act as the depository of the markers.

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

Section 1. (a) Any person convicted of an unlawful sexual act as defined in K.S.A. 21-3501(4) or an attempt of such unlawful sexual act or convicted of a violation of K.S.A. 21-3401, 21-3402, 21-3403, 21-3404, 21-3414 or 21-3415 shall, regardless of the sentence imposed, be required to submit specimens of blood and saliva to the Kansas Bureau of Investigation in accordance with the provisions of this section, provided such person is:

(1) convicted of a crime specified in paragraph (a) of this act on or after the effective date of this act, or

(2) ordered institutionalized as a result of being convicted of a crime specified in paragraph (a) of this act on or after the effective date of this act of 1990, or

(3) convicted of a crime specified in paragraph (a) of this act before the effective date of this act of 1990 and is presently confined as a result of such conviction in any state correctional facility or county jail or is presently serving a sentence of probation, conditional discharge or periodic imprisonment as a result of such conviction, or

(b) Any person required by paragraphs (a)(1) and (a)(2) to provide specimens of blood and saliva shall be ordered by the court to have specimens of blood and saliva collected within 10 days after sentencing (1) *if placed directly on probation, as a condition of probation that person must provide specimens of blood and saliva at a collection site designated by the Kansas Bureau of Investigation.* (2) *if sentenced to the Secretary of Corrections, the specimens of blood and saliva will be obtained at Kansas Reception and Diagnostic Center immediately upon arrival.*

(c) Any person required by paragraph (a)(3) and (a)(4) to provide specimens of blood and saliva shall be required to provide such samples prior to final discharge, parole, or release at a collection site designated by the Kansas Bureau of Investigation.

(d) The Kansas Bureau of Investigation shall provide all specimen vials, mailing tubes, labels and instructions necessary for the collection of blood and saliva samples. The collection of samples shall be performed in a medically approved manner. Only a physician authorized to practice medicine, a registered nurse or other qualified person approved by the Kansas Department of Health and Environment may withdraw blood for the purposes of this act. The samples shall thereafter be forwarded to the Kansas Bureau of Investigation for analysis and categorizing into genetic marker groupings.

(e) The genetic marker groupings shall be maintained by the Kansas Bureau of Investigation. The Kansas Bureau of Investigation shall establish, implement and maintain a statewide automated personal identification system capable of, but not limited to, classifying,

02/01/91

Page 2

matching and storing analysis of DNA (deoxyribonucleic acid) and other biological molecules.

(f) The genetic marker grouping analysis information obtained pursuant to this act shall be confidential and shall be released only to law enforcement officers of the United States, of other states or territories, of the insular possessions of the United States , or foreign countries duly authorized to receive the same, to all law enforcement officers of the State of Kansas and to all prosecutor's agencies.

(g) The Kansas Bureau of Investigation shall be the State central repository for all genetic marker grouping analysis information obtained pursuant to this Act. The Kansas Bureau of Investigation may promulgate rules for the form and manner of the collection of blood and saliva samples and other procedures for the operation of this act. The provisions of the Administrative Procedure Act shall apply to all actions taken under the rules so promulgated.

Section 2. This act shall take effect and be in force from and after its publication in the Kansas Register.

3-4/4

LAW OFFICES

SHOOK, HARDY & BACON

FAX (816) 421-5547
 W.U.T. TELEX 482281 SHB KSO
 A PARTNERSHIP INCLUDING PROFESSIONAL
 CORPORATIONS

ONE KANSAS CITY PLACE
 1200 MAIN STREET
 KANSAS CITY, MISSOURI 64105
 (816) 474-8550

OTHER OFFICES:
 40 CORPORATE WOODS
 OVERLAND PARK, KANSAS
 18 BUCKINGHAM GATE
 LONDON, ENGLAND

February 8, 1991

VIA FAX - 913/296-1153

Senator Wint Winter
 State Capitol
 Topeka, Kansas

Re: The Kansas Lease-Purchase Agreement Act

Dear Senator Winter:

I am writing to you on behalf of the Kansas Rental Dealers Association regarding the proposed Kansas Lease-Purchase Agreement Act. As you are aware, the draft is modeled after the Virginia Lease-Purchase Agreement Act, enacted in 1988, which is included in the 1991 Suggested State Legislation Handbook published by the Council of State Governments. Legislation very similar in substance to this proposal has been enacted in 23 states since 1985, including Missouri, Oklahoma, Nebraska, Colorado, Texas, Illinois, Michigan, Ohio and New York. A complete list of states (and year of passage of the legislation) is included for your review.

The proposed legislation would regulate the lease-purchase, or "rent-to-own" industry. More specifically, the bill would govern terminable rental agreements for household durable goods, such as furniture, appliances and electronics, which rental agreements also offer the consumer the option to purchase the property. These agreements share some characteristics with consumer credit sales, but differ from those transactions in several significant ways. Most importantly, the typical rent-to-own agreement is terminable by the consumer at any time without penalty and without further obligation. Because the consumer is never obligated to continue renting or to purchase these items, the rent-to-own transaction is not covered by the Kansas Uniform Consumer Credit Code governing credit sales. For identical reasons, the transaction is also not a "security interest" as defined in Sec. 84-1-201(37) of the Kansas Uniform Commercial Code. The proposed legislation would, therefore, fill an existing void in Kansas consumer law.

The proposal represents comprehensive consumer protection legislation, yet enjoys the support of the industry to be regulated. Furthermore, it dovetails perfectly with Article 2A, the proposed amendment to the U.C.C. which is also pending before your committee.

Senate Judiciary Committee
Attachment 4

2-11-91

4-1/3

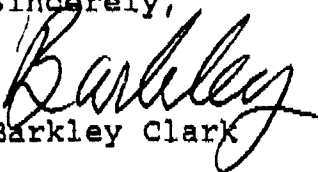
SHOOK, HARDY & BACON

Senator Wint Winter
February 8, 1991
Page 2

The Association would very much appreciate this bill being introduced as a Judiciary Committee bill. Additionally, I would be happy to appear and testify before the Committee, as would Chris Korst, Legislative Coordinator for Rent-A-Center, Inc., a Wichita-based rent-to-own company and the leader of the industry.

Finally, if you have any questions or need any further information, do not hesitate to contact me.

Sincerely,


Barkley Clark

BC:ved
cc: Chris Korst (via fax)

10353753

4-2/3

Senator Wint Winter
February 8, 1991
Page 3

SHOOK, HARDY & BACONSTATES WITH RENT-TO-OWN LEGISLATION

<u>STATE</u>	<u>YEAR OF PASSAGE</u>
Michigan	1984
Georgia	1985
Texas	1985
Alabama	1985
South Carolina	1985
Massachusetts	1986
New York	1986
Tennessee	1987
Arkansas	1987
Iowa	1987
Illinois	1987
Indiana	1987
Ohio	1988
Virginia	1988
Missouri	1988
Oklahoma	1988
Florida	1988
Rhode Island	1989
Nebraska	1989
Maryland	1989
Colorado	1990
Minnesota	1990
Kentucky	1990

10353753

4-³/₃

Proposed Amendment to Public Building Commission Act
By
Douglas County, Kansas

12-1765. Same; leases by political subdivisions and state departments within county. The governing bodies of all school districts, cities, agencies and departments of the state of Kansas, and all boards of county commissioners now located or which may hereafter be located within the county where such public building commission has been created/are hereby authorized and empowered to enter into leases without the necessity of any election and without regard to K.S.A. 10-1001 to 10-1122, inclusive, and amendments thereto or to K.S.A. 1982 Supp. 79-2925 for any period of time not to exceed fifty (50) years.

History: L. 1965, ch. 122, § 9; June 30.

, or all boards of county commissioners that desire to lease space from a county public building commission for detention of eligible juveniles,

Purpose - to allow long-term leases by Douglas County and other participating counties in Northeast Kansas Regional Juvenile Detention Cachment Area

Senate Judiciary Committee
Attachment 5
2-11-91 *5-11*



KANSAS MEDICAL SOCIETY

1300 Topeka Avenue • Topeka, Kansas 66612 • (913) 235-2383
Kansas WATS 800-332-0156 FAX 913-235-5114

February 11, 1991

TO: Senate Judiciary Committee
FROM: Kansas Medical Society
SUBJECT: Senate Bill 102; Compensation Paid Screening Panel Members

Thank you for this opportunity to express our support of SB 102. Some of our members who have served on screening panels have reported to us that because such panels must review extensive, technical information, the panels devote a substantial amount of time to their deliberations and report. When analyzed in comparison to the modest compensation paid to panel members, this translates into a rather low fee per hour of service.

We believe that an increase in the amount paid to panel members will encourage more physicians to serve as members and will encourage more attorneys to serve as chairmen. This bill amends the law governing malpractice screening panels of other professions as well as health care providers. For this reason, we respectfully request your favorable recommendation on SB 102. Thank you for your consideration.

CW:ns

Senate Judiciary Committee
Attachment 6
2-11-91

6-1/1



State of Kansas

Joan Finney, Governor

Department of Health and Environment

Division of Health

Landon State Office Bldg., Topeka, KS 66612-1290

Stanley C. Grant, Ph.D., Acting Secretary

Reply to: _____

FAX (913) 296-6231

Testimony presented to
Senate Judiciary Committee

by

The Kansas Department of Health and Environment

Implementation of 1990 SB 736

Last year the legislature passed SB 736 which established the Charitable Health Provider Program. I have been asked to review with you today the implementation of that program.

As you may recall last year the program as originally drafted was to be operated by SRS. Both the fiscal impact and the complexity of administration proposed by SRS were unacceptable to the legislature. In a committee discussion, last year KDHE proposed that they would be able to develop such a program and keep it in line with the legislative intent. That intent as we understood it was to:

1. be administratively simple for the clients seeking access to care.
2. rely on client self report for determining eligibility and
3. be administratively simple with a minimum of paperwork for health care providers applying to participate.

You have before you the Rules and Regulations of the program and the administrative forms which are required.

28-53-1 is definitions and self explanatory.

28-53-2 outlines how to become a charitable health provider. Exhibit 1 is the application. It is one page in length. Exhibit 2 is the letter of notification for the provider. The data base of eligible providers is to be kept at KDHE.

28-53-3 defines eligibility. To be eligible an individual must

1. be a member of a family unit with earnings below 200% of the federal poverty guideline,
2. have no health insurance coverage and
3. initiate care at a local health department or indigent care clinic.

28-53-4 defines the necessary paperwork for the program. In keeping with the intent to keep the program simple there are two pieces of paper. Exhibit 3 is the certification of eligibility

*Senate Judiciary Committee
Attachment 7
2-11-91*

7-1/8

form. This is the client self report which establishes documentation of eligibility. Exhibit 4 is the quarterly report form to be completed by the sites where care is initiated. This reporting structure requires no added paperwork for charitable health providers and asks that the gatekeeper clinics provide the program with some basic demographic and epidemiological data which they already are keeping.

28-53-5 allows care at any site where a charitable health provider practices when referred from the initial clinic site.

Testimony presented by: Steve McDowell, Director
Office of Local and Rural Health Systems
Division of Health
February 11, 1991

Kansas Department of Health and Environment
Kansas Administrative Rules and Regulations
28-53-1 to 28-53-5

CHARITABLE HEALTH PROVIDER PROGRAM

28-53-1 Definitions.

(a) "Agreement" means a written understanding between the department and a charitable health care provider regarding the rendering of professional services to medically indigent persons.

(b) "Department" means the Kansas department of health and environment.

(c) "Federally qualified health center" means a center which meets the requirements for federal funding under 42 USC section 1396d(1) of the public health service act, and which has been designated as a "federally qualified health center" by the federal government.

(d) "Indigent health care clinic" means an outpatient medical care clinic designed to provide care to the medically indigent under the medical direction of a qualified physician licensed by the Kansas board of healing arts.

(e) "Local health department" means county, city-county and multi-county public health units established under the authority of K.S.A. 65-201.

(f) "Secretary" means the secretary of the Kansas department of health and environment. (Authorized by and implementing L. 1990, Ch. 329, sec. 1; effective April 1, 1991.)

28-53-2 Agreement.

(a) Each person applying for an agreement shall submit a completed application to the department on forms prescribed by the secretary.

(b) Each applicant for renewal of an agreement shall submit a completed application annually to the department on forms prescribed by the secretary.

(c) An agreement may be terminated by the secretary or the charitable provider with 30 days advanced written notice to the department.

Failure of the provider to maintain proper licensure by the appropriate professional licensing agency shall constitute immediate cancellation of the agreement. (Authorized by and implementing L. 1990, Ch. 329, sec. 1; effective April 1, 1991.)

28-53-3 Eligibility criteria for medically indigent. Persons shall qualify as medically indigent if they are:

(a) determined to be a member of a family unit earning at or below 200% of poverty income guidelines based on the annual update of "poverty income guidelines" published in the federal register by the United States department of health and human services;

(b) not indemnified against costs arising from medical and hospital care by a policy of accident and sickness insurance, an employee health benefits plan, a program administered by the state or federal government, or any such coverage; and

(c) seek health care at:

(1) an indigent health care clinic;

(2) a federally qualified health center;

or (3) a participating local health department. (Authorized by and implementing L. 1990, Ch. 329, sec. 1; effective April 1, 1991.)

28-53-4 Records and Reports.

(a) Charitable health care providers shall ensure that the clinics through which they provide care shall:

(1) maintain completed forms prescribed by the secretary and signed by the patient which certify that the individual receiving care pursuant to an agreement is medically indigent; and

(2) submit completed quarterly activity reports to the department on forms prescribed by the secretary.

(b) Failure to comply with the requirements of this section shall be grounds for cancellation of the agreement. (Authorized by and implementing L. 1990, Ch. 329, sec. 1; effective April 1, 1991.)

28-53-5 Referrals. Medically indigent persons may receive professional services from health care providers in other locations upon referral from a federally qualified health center, an indigent health care clinic, or a participating local health department. Any such referrals shall be reflected in the records of the referring entity. (Authorized by and implementing L. 1990, Ch. 329, sec. 1; effective April 1, 1991.)



State of Kansas

Joan Finney, Governor

Department of Health and Environment

Division of Health

Landon State Office Bldg., Topeka, KS 66612-1290

Stanley C. Grant, Ph.D., Acting Secretary

Reply to: _____

FAX (913) 296-6231

Exhibit II

Date

Name

Address

City, ST Zip

Dear Provider,

Having recieved your application for status as a Charitable Health Care Provider and verified your licensure in good standing, this letter serves as notice of your acceptance into the Charitable Health Care Provider Program.

This agreement is effective for one year, at which time you will be invited to apply for renewal.

Sincerely,

Stanley C. Grant, Ph.D.
Acting Secretary

7-5/8

Exhibit III

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
Charitable Health Care Program
Certification of Eligibility

NAME Last First MI Age Sex Race

1. What is the monthly income of your family? _____
2. How many persons are supported by this income? _____
3. If you have any of the following health coverages, please check.

Medicare ___ Medicaid ___ BlueCross ___
Other ___ I have no health insurance ___

Family size	<100% of pov. lev.	101-150% of poverty lev.	151-200% of poverty lev.
1	\$0-6280	\$6281-9420	9421-12560
2	\$0-8420	8421-12630	12631-16840
3	\$0-10560	10561-15840	15841-21120
4	\$0-12700	12701-19050	19501-25400
5	\$0-14840	14841-22260	22261-29680
6	\$0-16980	16981-25470	25471-33960
7	\$0-19120	19121-28680	28681-38240
8	\$0-21260	21261-31890	31891-42520

DIRECTIONS:

1. Multiply monthly income x 12, to convert to yearly income.
2. Match number of persons supported by income with "family size" in first column of worksheet.
3. From family size number, move right along line to find where yearly income falls.
4. Circle poverty level range.

Add \$2,140 for each additional family member.

This information is correct and I provide it in order to receive care under the Charitable Health Care Provider Program. (K.S.A. 75-6120)

_____ Date

_____ Signature of Applicant

Exhibit IV

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
Charitable Health Care Provider Program
Quarterly Report Form

Name of Clinic _____

Report Period (Jan-Mar, Apr-Jun, Jul-Sept, Oct-Dec) 19____
please circle one

Health Care Information:

1. Total Number Initial Visits _____
2. Total Number Encounters _____
3. Number Male Clients _____
4. Number Female Clients _____
5. Age of Clients - Numbers in age range: 0-5 _____ 6-15 _____
16-19 _____ 20-24 _____ 25-40 _____ 41-55 _____ 56-65 _____
66 and over _____
6. Race/Ethnic Origin of Clients - Numbers of: Blacks _____
Hispanics _____ Northeast Asians _____ Whites _____
Others _____
7. Percent of Poverty - Number of clients in range:
0-50% _____ 51-100% _____ 101-150% _____ 151-200% _____
8. Five Most Frequent Diagnoses:
 - a. _____
 - b. _____
 - c. _____
 - d. _____
 - e. _____

Note: Totals in #'s 3 plus 4; 5; 6; and, 7 above should be equal to the figure in #1 above.

Quarterly Reports should be submitted by January 5, April 5, July 5, October 5, to:

Office of Local and Rural Health Systems
Attn: Charitable Health Program
Kansas Department of Health and Environment
Landon State Office Building, 900 Jackson
Topeka, KS 66612-1290

February 6, 1991

Name
Address
City, ST. Zip

Dear Sir or Madam,

Rules and regulations for the Charitable Health Provider Program have been adopted by the Secretary of the Kansas Department of Health and Environment and will become effective on April 1, 1991. This means that starting April 1, physicians and other health care providers wishing to donate their services to the medically indigent may be considered employees of the state of Kansas for liability purposes.

Health care providers can become Charitable Providers under this program by applying to and being accepted by the Secretary of Health and Environment. Providers must have current licensure or registration by the appropriate board. Applications will be available in the near future from the Department of Health and Environment and from service sites around the state.

In order to be eligible for charitable health care, a person must be at or below 200% of the poverty level and have no health insurance. Additionally, they must seek care at one of three points of entry - a federally qualified health center, an indigent health care clinic or a participating local health department. Care can be provided at one of those three sites or the patient can be referred out to a provider's practice location. Patients must, however, enter the system at one of those first three points of entry.

Clinics and health departments that wish to participate in this program will need to register with the Department. A registration form is currently being produced and will be sent to potential sites, along with a description of the program and all relevant forms. We envision service sites maintaining a great deal of autonomy over the actual implementation of the program.

I have enclosed a copy of the administrative rules for the Charitable Health Provider program. Over the next few weeks, I will be working with potential service sites to improve the forms and quarterly report requirements. If you have any questions about the program, or if I can be of any other assistance to you, please feel free to contact me at (913) 296-7439.

Sincerely,

Jane Faubion
Health Planning Consultant

7-8/8

January 30, 1991

Senator Winton A. Winter, Jr.
502 First National Bank Tower
P.O. Box 189
Lawrence, Kansas 66044

Re: Amendment of K.S.A. 60-2610

Dear Senator Winter:

Enclosed is a copy of K.S.A. 21-3707(2). I have made the changes I believe are necessary to tailor it to K.S.A. 60-2610. I believe your idea is a good one. If it appears that my proposed definition of "worthless check" would not pass the committee, your idea is a beneficial alternative.

Thank you.

Yours very truly,

Paul J. Mohr

PJM/db

Enclosure

P.S. please do not include
K.S.A. 21-3707(3)

Senate Judiciary Committee
Attachment 8
2-11-91

