

Approved

Date

3/31/92

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative John Solbach at  
Chairperson

1:15 ~~am~~<sup>x</sup>/p.m. on March 20, 19<sup>92</sup> in room 313-S of the Capitol.

All members were present except:

Representative Allen, Carmody, Everhart, Garner, Gomez, Hamilton, Hochhauser,  
Lawrence and Vancrum who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research  
Jill Wolters, Revisor of Statutes  
Judy Goeden, Committee Secretary

Conferees appearing before the committee:

Sister Therese Bangert, Kansas Sentencing Commission  
Clark Owens, District Judge, Sedgwick County  
Fred Phelps, Westboro Baptist Church  
Don Mainey, Kansas Parole Board  
Anne Smith, Kansas Sheriffs Association  
Clifford Hacker, Kansas Police Officers Association  
Ed Pavey, Kansas Law Enforcement Training Center  
Larry Blomenkamp, Kansas Law Enforcement Commission  
J. D. Ochs, Kansas Criminal Justice System Coalition  
Ernie Mosher, League of Kansas Municipalities  
State Representative Rand Rock  
Jim CLark, Kansas Association of County & District Attorneys  
Jamie Corkhill, S.R.S. Child Support Enforcement  
Paul Shelby, Judicial Administration  
Bob Corkin, Kansas

The chairman called the meeting order.

Hearing on SB 479, enacting Kansas sentencing guidelines act, was continued.

Sister Therese Bangert, Kansas Sentencing Commission, testified in favor of SB 479.  
She felt retroactivity should be put back into the bill.

Clark Owens, District Judge, Sedgwick County, testified in opposition to SB 479. (Attachment #1) He provided members with a copy of the Kansas District Judges' Association statement on SB 479. (Attachment #2) He gave several examples of why he felt instituting the sentencing guidelines would not have been good if they had been in effect. Increased probation staff and additional community corrections will need to have additional fund. Retroactivity is a concern because it will be undermining plea bargaining that was entered into some time back. He answered committee members questions.

Fred Phelps, Westboro Baptist Church, testified in opposition to SB 479. (Attachment #3) He felt SB 479 was ill-considered and flawed. He felt sodomites have more rights than good people in Kansas. He answered committee members questions.

Don Mainey, Kansas Parole Board, testified in opposition to SB 479. He said contrary to previous testimony by others, the Kansas Parole Board has opposed SB 479 from its inception.

Hearing on SB 479 was continued.

Hearing on SB 508, court costs to support the law enforcement training center, was opened.

Anne Smith, Kansas Sheriffs' Association, testified in favor of HB 508. (Attachment #4)

Clifford Hacker, President-elect of Kansas Police Officers Association, testified in favor of HB 508. (Attachment #5)

Ed Pavey testified on behalf of Larry Welch, Director of Police Training in Kansas, in favor of SB 508. (Attachment #6) He answered members questions.

Unless specifically noted, all individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,  
room 313-S, Statehouse, at 1:15 ~~xxx~~/p.m. on March 20, 1992.

Larry Blomenkamp, Kansas Law Enforcement Commission & Kansas Chiefs Association, testified in favor of HB 508. (Attachment #7)

J. D. Ochs, Kansas Criminal Justice Coalition, testified in favor of SB 508. (Attachment #8)

Ernie Mosher, League of Kansas Municipalities, testified in opposition to SB 508. He presented members with statistics entitled "Municipal Court Cases in FY 1991 which would be subject to \$5.00 Court Costs under SB 508". In answer to a member's question he said he would rather have law-abiding citizens pay for the program rather than the violators. (#9)

State Representative Rand Rock testified in favor of SB 508. He said he had been a police officer for 13 years, and training used to be 4-5 weeks for policemen. He said over 13 years ago Mosher had lobbied against police training, effectively. He urged committee members to support SB 508.

Jim Clark, County & District Attorneys Association, testified in support of SB 508.

Hearing on SB 508 was closed.

Hearing was opened on SB 588, child support orders; procedures, supplementing codes.

Jamie Corkhill, S.R.S. Child Support Enforcement, testified in favor of SB 588. (Attachment 10) She answered committee members questions.

Paul Shelby, Judicial Administration, said the Clerks' Association was in support of SB 588 as amended by the Senate.

Hearing on SB 588 was closed.

Hearing on SB 732, enforcement of support, relating to immediate income withholding, was opened.

Jamie Corkhill, S.R.S. Child Support Enforcement, testified in favor of SB 732. (Attachment #11) She outlined the technical amendments in the bill.

Paul Shelby, Judicial Administration, testified that Judicial Administration and Court Trustees organization were in support of SB 732.

Hearing on SB 732 was closed.

Hearing on SB 754, criminal code, reconciliation of statutory conflict was opened. There were no conferees appearing before the committee.

Hearing on HB 3053, punitive damages awarded could include net worth of defendant, was opened.

Bob Corkins, Kansas Chamber of Commerce & Industry, submitted written testimony in opposition of HB 3053. (Attachment #12)

Hearing on HB 3053 was closed.

Meeting adjourned at 3:45 P.M.

DISTRICT COURT  
EIGHTEENTH JUDICIAL DISTRICT  
SEDGWICK COUNTY COURTHOUSE  
WICHITA, KANSAS  
67203

CLARK V. OWENS, II  
JUDGE

(316) 383-7661

March 19, 1992

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE ON S.B. 479

The Kansas District Judges Association has previously sent a letter to this committee taking the position of opposing S.B. 479. I have requested an appearance before the committee to speak individually in opposition to the bill.

Prior to being appointed as a District Judge in 1991, I had the experience of serving as the District Attorney for Sedgwick County from 1981 to 1989. During that time I had the opportunity to attend national conferences in which sentencing guidelines for other states and the federal system were being discussed. A system of sentencing guidelines have some positive aspects, but I am convinced that the positives are far outweighed by the negative factors.

**THE ELIMINATION OF DISCRETION CREATES INJUSTICES**

One of the goals of the sentencing guideline proposal is to eliminate disparity in sentencing. However, variations in sentences is desirable to achieve justice provided that it is based upon the appropriate factors.

The proposed sentencing guidelines create a two dimensional sentencing analysis. The only factors taken into consideration in arriving at a sentence is the crime category for the present crime and the crime category for prior criminal convictions. Even within those two factors there are wide variations of circumstances that need to be considered by the sentencing court that cannot be reduced to a sentencing grid. The bill attempts to address this issue by creating subclassifications for some crimes. This does not completely solve the problem.

There are many circumstances involving a particular crime classification that may affect the appropriate sentence to be imposed. A residential burglary committed by a family member involved in a family dispute may need to be handled differently than a residential burglary that is part of a organized burglary ring. The forgery of a \$50.00 check at a grocery store to get money for drugs may need to be handled differently than major forgery operation involving numerous checks and a large amount of money.

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Similarly, the nature of the prior criminal history of the defendant should have an impact upon the appropriate sentence. A prior conviction on one occasion for 10 burglaries should weigh differently than a single count burglary conviction. However, the guidelines do not provide for a distinction. There may also be aggravating or mitigating circumstances involved in the prior convictions that should be considered, rather than just the crime classification itself.

The determination of an appropriate sentence is a subjective process for a judge. It is a multi-dimensional process rather than just two dimensional. The judge must take into consideration numerous factors and apply varying weights to the factors to arrive at a fair and just sentence. K.S.A. 21-4606 provides statutory guidance for the court to review in determining whether a sentence greater than the minimum should be imposed. Some factors that I believe are important for the sentencing court to review include:

- \* the severity of the circumstances of the current crime
- \* the severity of the circumstances of the prior convictions
- \* mitigating factors that fail to establish a defense
- \* provocation of the defendant
- \* defendant's attitude toward the crime
- \* likelihood of the defendant to repeat crime
  - defendant's education
  - employment
  - family structure
  - substance abuse and prior treatment
  - mental capacity
  - prior attempts at rehabilitation

The use of discretion by the trial judge is a necessity to achieve justice. There is no practical way to implement a sentencing grid that can take into consideration all of the important factors that go into a sentencing decision. The Kansas Supreme Court explained the sentencing function in State v. Heywood, 245 Kan. 615 (1989):

"One of the greatest responsibilities within the jurisdiction of district court judges is that of sentencing and corrective penalization. Correct sentencing practice requires a basic knowledge of human nature and common sense. Though general statutory guidelines are set out by the legislature, trial judges are required to use their discretion when imposing a sentence. When sentencing a person to prison, the judge, being cognizant of the nature and circumstances of the crime, and of the history, character, and condition of the

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defendant, fixes the lowest minimum term which, in the opinion of the judge, is consistent with the public safety, the needs of the defendant, and the seriousness of the defendant's crime." 245 at p. 617

#### **DISCRETION WILL BE SHIFTED TO THE PROSECUTOR**

Discretion will not be totally eliminated by the sentencing guideline proposal. Other than the rare occasion of a sentence departure, the trial judge can adjust the sentence by only a few months in most cases. However, on the contrary the prosecutor will still be vested with considerable discretion.

By the time that a plea of guilty has been entered, the defendant's sentence has essentially been determined. The federal sentencing guidelines have proven this to be the case. The need for a presentence investigation is useful only to aid in the documentation of the prior criminal record for the sentencing grid. But the prosecutor may dismiss or amend charges in an attempt to arrive at a fair and just sentence for the defendant. What this has essentially done is to shift the sentencing responsibility to the prosecutor.

The separation of powers is a vital philosophical part of our system of government. Traditionally the prosecutor has been in the exclusive control of the charging decision and plea bargaining. The court then controls the appropriate sentence to be imposed. Sentencing will be little more than a formality in most cases under the guidelines.

A secondary problem with placing the sentencing determination with the prosecutor is that most of the prosecutors in the State of Kansas have less experience than the District Judges. The county attorneys in 100 of the 105 counties are not required to have any level of experience in the practice of law before becoming qualified to assume that office.

#### **COMPARISON OF MANDATORY FIREARM LAW UNDER K.S.A. 21-4618**

An example of the effect of eliminating sentencing discretion can be found in the mandatory firearm law in K.S.A. 21-4618. This statute provides that certain crimes committed while armed with a firearm cause the offender to be ineligible for probation.

On rare occasions there are mitigating circumstances where justice demands that the offender be considered for probation. In the past this has been handled by the prosecutor amending the charge to a crime that is not affected by the mandatory firearm

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law. For example, aggravated battery would be amended to attempted aggravated battery. The sentencing court would then have the discretion to grant probation.

The effect of this statute was to shift the discretion to the prosecutor. Only the prosecutor had the power to consider if probation was appropriate, since he controlled the right to amend the charges. It didn't eliminate discretion. It only changed the person that was vested with the discretion.

Another important lesson was learned with the mandatory firearm law. There were occasional cases of great injustice in which the prosecutor refused to amend the charges and an outcry of the public caused the legislature to amend the statute and reinstate the sentencing judge's discretion where imprisonment would create "manifest injustice". For the mandatory firearm law this safety valve was sufficient to handle the rare occasions in which justice required probation. By contrast, the use of the sentence or disposition departure under the guidelines will not adequately meet the need to frequently adjust the sentences to individual cases as justice requires.

#### **HABITUAL PROPERTY OFFENDERS REMAIN PRESUMPTIVE PROBATIONERS**

A very significant defect in the guidelines provide that property offenders regardless of the number of prior convictions for other property offenses will always be entitled to probation. Crimes of severity level VII, VIII, IX, and X never graduate to presumptive incarceration unless the offender has 2 or more person offense priors. This means that career shoplifters, forgers, and commercial burglars can never be sent to prison unless a disposition departure is granted.

A disposition departure requires the court to find that there is substantial and compelling reasons for the departure. This may be a problem to the sentencing judge since the guidelines themselves dictate that "3+ non-person" offenders are presumptive probation.

#### **ELIMINATION OF THE PAROLE BOARD**

The elimination of the parole board and automatic release of inmates will pose another problem. There are many inmates that are not ready to be released when they become parole eligible under the current system. With a parole board, an inmate exhibiting violent behavior or failing to complete pre-release programs can be retained within the prison. This bill provides for automatic release regardless of the inmate's likelihood to repeat criminal activity. There is little motivation for an inmate to complete programs available within the prison when he knows that he is entitled to be released on a specified date.

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## HIDDEN COSTS OF THE SENTENCING GUIDELINE

One of the primary objectives of sentencing guidelines is to obtain a better control over the prison population. The Kansas Sentencing Commission is predicting that there will be a decrease in the prison population. However, this is contrary to the experience in the federal system and the other states that have adopted similar proposals.

It is difficult to predict the use of sentence and disposition departures. Liberal use of departures will cause problems in predicting prison populations. However, infrequent use of departures will cause injustices to occur.

The implementation of guidelines may cause the number of jury trials to increase. When the sentencing judge has very little discretion and may adjust the sentence up or down by only a few months in most cases, there is little incentive to forego a jury trial and enter a plea of guilty.

In the event that sentence or disposition departures are used by the courts, this may create a number of sentencing appeals that we do not currently have. It should be expected that if the defendant receives a prison sentence on a presumptive probation crime or receives a longer sentence than indicated, he will likely pursue an appeal of the sentence. Of course, the number of appeals will depend upon the number of departures.

## CONCLUSION

The sentencing function of the court was intended to be discretionary. Our court system is based upon the concept of justice. There is no chart or computer that can replace the use of common sense and experience to evaluate a case for the appropriate sentence.

Certainly the legislature must give guidance to the courts by establishing the public policy and perimeters on sentences. However, when those perimeters become too restrictive to adapt the sentence to the characteristics of an individual case, substantial injustices will occur.

Sincerely,



Clark V. Owens II  
District Judge

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Attach #1  
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# The Kansas District Judges' Association



C. FRED LORENTZ, PRESIDENT  
Wilson County Courthouse, Room 206  
Fredonia, Kansas 66736  
Telephone: (316) 378-4361

February 21, 1992

Senator Wint Winters  
Chairman, Senate Judiciary  
State Capital Building  
Topeka, Kansas 66612

Representative John Solbach  
Chairman, House Judiciary  
State Capital Building  
Topeka, Kansas 66612

Re: SB 479 - Sentencing Guidelines

Dear Senator Winters and Representative Solbach:

Our association has elected to take a position in opposition to the proposed sentencing guidelines. We understand a good deal of time and effort was put into the proposal by the sentencing commission, and though the result might be the best possible combination of grid and guidelines available, we are not satisfied that such a radical change from the current system is practical nor advisable at this time.

Following are some of our specific concerns with the proposed legislation, and we offer these concerns not with an eye toward being critical of the efforts of the sentencing commission, but because of our very real concerns with the proposal.

1. SB 479 does not appear to contain any provision for reviewing an inmates's progress in prison to determine his/her suitability for release. Our Association is concerned that the public will not be protected in the absence of any review to determine suitability for release.
2. SB 479 fails to provide an incentive system to encourage inmates to complete programs (e.g., drug treatment, counseling, education) while incarcerated.
3. We do not believe the fiscal impact of the bill on either state or local government is fully known, nor has provision for funding of additional services been made. Reducing the number of offenders sent to prison and in some cases reducing the amount of time they spend in prison must of necessity coincide with increased staffing in parole supervision, community corrections and court services/probation supervision, all at a considerable additional funding cost to the state. Anyone who has spent time looking into the existing shortages of staff cannot realistically expect the existing network to absorb the additional case load

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# The Kansas District Judges' Association

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of supervision necessitated by the enactment of this bill.

On the local level, county court budgets may be strained by an increase in the number of jury trials brought about because of the inflexibility of the sentencing guidelines. Much expense and time involved in trial is currently avoided by the ability of prosecutors to negotiate for pleas with recommended dispositions. When that "plea bargaining" is removed or severely limited, the result will very obviously be additional trials for the very simple reason accused persons will have nothing to lose.

In addition, it is our understanding that the Kansas Bureau of Investigation and other law enforcement agencies are very concerned about the additional need for personnel and computer storage required to track criminal histories. Under the guidelines, there will be a need to track prior A and B misdemeanors for the purpose of the histories, and we understand that those are not currently maintained or tracked.

4. Our Association questions statements which suggest that the guidelines will provide a saving of tax dollars. If in fact guidelines will result in a decrease in the prison population, will the budget of the Department of Corrections be reduced proportionately to offset some of the other costs which may very well increase?
5. SB 479 provides for an inherently inflexible approach to sentencing. Although some provision is made for a judge to depart from the guidelines, the determinate grid allows for almost no individualized treatment of offenders, even when merited. Discretion is shifted from the judicial branch of government to the executive branch in that the initial use of discretion will be by the prosecutor in charging. Particularly in rural areas, the prosecutor is generally the least experienced link in the criminal process. Although plea bargaining is limited, it is virtually unenforceable, as nothing prevents the prosecuting attorney from dismissing and refileing a prosecution. This will result in cases where the grid is being applied to a class of felony which may bear little relationship to the actual felony committed.

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6. K.S.A. 21-4601 reads as follows:

"This article shall be liberally construed to the end that persons convicted of crime shall be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities as revealed by case studies; that dangerous offenders shall be correctively treated in custody for long terms as needed; and that other offenders shall be dealt with by probation, suspended sentence, fine or assignment to a community correctional services program whenever such disposition appears practicable and not detrimental to the needs of public safety and the welfare of the offender, or shall be committed for at least a minimum term within the limits provided by law."

The foregoing statement has been the public policy in this state for over 20 years. Sentencing guidelines fly in the face of this policy, yet this statute is not repealed by SB 479.

Guidelines as set forth in SB 479 would treat all offenders essentially the same with very limited variance to allow consideration of mental or behavioral problems, drug or alcohol addiction, support structure for the offender, or lack thereof, or any other problem or situation unique to an individual.

7. The American Bar Association Standards relative to sentencing state:

"The sentencing court should be provided in all cases with a wide range of alternatives, with gradations of supervisory, supportive and custodial facilities at its disposal so as to permit a sentence appropriate for each individual case."

We believe this philosophy is ignored by the proposed legislation.

8. SB 479 fails to consider the results of presumptive sentencing laws in other states. The Sentencing Commission relied on the experience from Oregon, Minnesota and Washington. Since Kansas is not the first state to venture in this direction careful evaluation must be made of the results from other jurisdictions. Many grid states which originally

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# The Kansas District Judges' Association

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eliminated discretionary parole have now returned to that system after experience and mistakes (e.g., Colorado, Florida and Connecticut.) Kansas should not repeat the same mistakes which have been experienced in other jurisdictions.

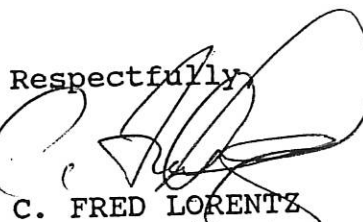
The questions of sentencing and release of inmates pose important concerns for public safety. Public confidence in the judicial systems' ability to protect public safety must not be compromised by prison overcrowding concerns.

The Kansas District Judges Association opposes passage and enactment of SB 479. In the alternative, KDJA strongly recommends that passage be deferred to the 1993 session to afford appropriate opportunity to debate the concerns enumerated herein and to complete a comprehensive fiscal impact statement. SB 479 should not be enacted without benefit of a detailed impact statement from all state and local agencies which might be affected. Additionally, some provision for determining release suitability should be incorporated into the guidelines, if they are to become law.

Judge Clark Owens from Wichita together with one or two other judges from our association would like an opportunity to appear and testify before the House Judiciary committee which we understand will be conducting hearings on SB 479 during the week of February 24, 1992. Please advise me specifically of your hearing schedule and when our representatives might appear. If possible, later in the week would help with scheduling conflicts which must be worked around.

Thank you for taking the time to review this letter, and we appreciate your considering the matters set out herein. I would very much appreciate your circulating this letter among the committee members.

Respectfully,

  
C. FRED LORENTZ  
KDJA President

CFL:kc

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Fred Phelps, Pastor  
3701 West 12th Street

Westboro Baptist Church

Topcka, Kansas 66604

Since November, 1955  
913-273-0338/FAX 9132739228

March 20, 1992

## BEFORE THE HOUSE JUDICIARY COMMITTEE

Testimony of  
FRED PHELPS

### Mr. Chairman and Committee Members:

It's a privilege to appear before this distinguished Committee in opposition to Senate Bill No. 479 as ill-considered and flawed. It will not cure disparity, and it will bust any budget. Ben Coates' meiosis that savings will be illusory, translated: This bill will double the Corrections budget. Worse, New Sec. 16(b)(2)(C)[page 25, lines 12-14] is illustrative and suggests a secret agenda may be driving this bill:

"The following non-exclusive list of aggravating factors may be considered ...  
(C) The offense was motivated entirely or in part by the race, color, religion, ethnic, national origin or SEXUAL ORIENTATION of the victim."

Omitting age and sex, using the adjective ethnic, adding SEXUAL ORIENTATION (euphemism for Bible sodomites) -- all dangerously suspicious evidences; to wit:

1. Sodomites are not a protected class as the others, under state or federal law, because they are self-defined not by innocent conditions of BEING (race, sex, age, etc.), but by guilty CONDUCT voluntarily engaged in. As soon make protected classes of guilty necrophiles, adulterers, pedophiles, or bank robbers.
2. If such a profound change in our law as bestowing protected class status on guilty sodomites is being proposed, let it be done in the full light of day, with opportunity for plenary debate and public input -- not in this sneaky way of tucking poison language in a 225-page bill whose title gives no hint of the poison.
3. This technique follows the blueprint of the militant sodomite agenda which their publications have promulgated for more than 20 years; their ultimate stated goal being to overwhelm and thereby abolish the First Amendment by diabolical legislation as in Sweden, where a Lutheran minister was recently jailed six months for preaching the truth about sodomites from Genesis 19 in his own church. They want, quite simply, to stop us from preaching Gospel truth about them.
4. Sodomites in Kansas already have more rights than good people. Local and state governments give them the most and best jobs far out of proportion to their numbers and abilities. They live and eat where they please, fornicate where they please (even in public places), and commit assaults and batteries and criminal destruction of property against their critics, with the blessing of government and sodomite-ridden police departments. Our church members know from experience.

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Attach #3



"Service to County Government"

1275 S.W. Topeka Blvd.  
Topeka, Kansas 66612  
(913) 233-2271  
FAX (913) 233-4830

**EXECUTIVE BOARD**

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Bourbon County Clerk  
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**NACo Representative**  
Keith Devenney  
Geary County Commissioner  
(913) 238-7894

**Executive Director**  
John T. Torbert, CAE

**TO:** Chairman John Solbach  
House Judiciary Committee

**FROM:** Anne Smith, Director of Legislation

**DATE:** March 19, 1992

**RE:** SB 508

The Kansas Association of Counties and the Kansas Sheriffs Association support SB 508.

The Kansas Law Enforcement Training Center (KLETC) was established by the Kansas Legislature in 1968 as the central law enforcement training facility for our state and as the headquarters for all law enforcement training in Kansas.

KLETC, a unit of the Division of Continuing Education of the University of Kansas, directly trains the overwhelming majority of municipal, county and state law enforcement officers in Kansas, and oversees, supervises and monitors the training of the remaining officers.

The KAC and the Kansas Sheriffs Association support the bill as amended by the Senate. It should be noted that approximately 62% of all officers trained at KLETC are municipal law enforcement officers, yet no support from municipal court docket fees is being received by KLETC.

We urge your favorable consideration of SB 508.

SB 508

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Attach #4

PAVEY, President  
Ks. Law Enforcement Training Center  
Hutchinson, Kansas 67504

CLIFF HACKER, President-Elect  
County Sheriff  
Emporia, Kansas 66801

LARRY MAHAN, Vice-President  
Kansas Highway Patrol  
Wichita, Kansas 67201

ALVIN THIMMESCH,  
Secretary-Treasurer  
Kansas Peace Officers  
Wichita, Kansas 67201

# Kansas Peace Officers' Association

INCORPORATED

TELEPHONE 316-722-7030

FAX 316-729-0655

P.O. BOX 2592 • WICHITA, KANSAS 67201



## BOARD OF GOVERNORS

### GOVERNORS

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CHARLES RUMMERY  
Chief W.S.U. Police  
Wichita, Kansas 67208

DENNIS TANGEMAN  
Kansas Highway Patrol  
Topeka, Kansas 66603

BOB SCHUMAKER  
Santa Fe R.R. Police  
Topeka, Kansas 66612

### DISTRICT 1

FRANK P. DENNING  
Johnson Co. Sheriff's Office  
Olathe, Kansas 66202

DAVE SMAIL  
Paola Police Department  
Paola, Kansas 66071

DARRELL PFLUGHOF  
Kansas Lottery Security  
Kansas City, Kansas 66103

### DISTRICT 2

DANA KYLE

Riley County Police Department  
Manhattan, Kansas 66502

RANDALL THOMAS  
Lyon County Sheriff's Office  
Emporia, Kansas 66801

DOUGLAS PECK  
Kansas Highway Patrol  
Emporia, Kansas 66801

### DISTRICT 3

JIM HUFF  
Chief of Police

Wasson, Kansas 67439

CARI McDONALD  
Pawnee County Sheriff's Office  
Arlene, Kansas 67410

ALLEN BACHELOR  
Kansas Highway Patrol  
Salina, Kansas 67401

### DISTRICT 4

LAWRENCE YOUNGER  
Chief of Police

Hays, Kansas 67501

JOHN FROSS  
H. Hays State University Police  
Hays, Kansas 67501

FRANK REESE  
Ellis County Sheriff's Office  
Hays, Kansas 67501

### DISTRICT 5

KENT NEWPORT

Holcomb Police Department  
Holcomb, Kansas 67851

CAMERON HENSON  
Kansas Bureau of Investigation  
Liberal, Kansas 67901

RAY MORGAN

Kearny County Sheriff's Office  
Lakin, Kansas 67860

### DISTRICT 6

DAVE SMITH

Hobbs Police Department  
Hobbs, Kansas 67594

JIM DAILY

Barton County Sheriff's Office  
Great Bend, Kansas 67530

DICK BURCH

Kansas Law Enforcement Training Ctr.  
Hutchinson, Kansas 67504

### DISTRICT 7

DELBERT FOWLER  
Chief of Police  
Derby, Kansas 67037

BOB ODELL

Cowley County Sheriff  
Winfield, Kansas 67156

LARRY WELCH

Ks. Law Enforcement Training Center  
Hutchinson, Kansas 67504

### DISTRICT 8

ALLEN FLOWERS  
Chief of Police  
Coffeyville, Kansas 67337

LOWELL PARKER

Greenwood County Sheriff  
Eureka, Kansas 67045

TINY WILNERD

Ks. Dept. Wildlife & Parks  
Howard, Kansas 67349

## House Judiciary Committee

I am Clifford Hacker, President-Elect of Kansas Peace Officers' Association

Reference Senate Bill #508  
Doms for KLETC

Senate Bill #508 was requested by the Kansas Peace Officers' Association because of the lack of dormitory space at the Law Enforcement Training Center in Hutchinson. The space is critical because the majority of the law enforcement agencies in Kansas must send their officers to the academy for training. Because there is not enough dormitory space, agencies must wait up to 1½ years to get a new officer the basic training to become certified as a law enforcement officer in Kansas.

When the majority of officers graduate from KLETC, they will go back to a small department with no chance to spend additional time training with another officer and they will not usually go into a special unit because they will be expected to do everything that needs to be done. These officers will be working traffic, narcotics, investigation, civil process, animal control, public relations and every other aspect of law enforcement in a small department. When a small department sends an officer through KLETC, that one officer represents 1/3 to 1/10 of the whole department. That is why it is so critical to these departments to get their officers trained as soon as possible.

HJK  
3-20-92  
Attach #5

*In Unity There Is Strength*

The Kansas Law Enforcement Training Center  
(KLETC)  
Hutchinson, Kansas

## KANSAS LAW ENFORCEMENT SUPPORTS KLETC FEE INCREASE

Larry Welch  
Director of Police Training in Kansas

Senate Bill 508 was introduced at the request of the Kansas Peace Officers' Association, the Kansas Sheriffs' Association and the Kansas Association of Chiefs of Police. The bill was introduced for the purpose of increasing revenues available to finance the capital improvements and operating costs of the Kansas Law Enforcement Training Center. The bill would establish a \$5 docket fee on municipal court cases. The proposal contained in Senate Bill 508 is similar to a legislative proposal submitted by the University of Kansas to the Kansas Board of Regents and approved by that Board for introduction in this legislative session.

The Kansas Law Enforcement Training Center (KLETC) was established by the Kansas Legislature in 1968 as the central law enforcement training facility for our state and as the headquarters for all law enforcement training in Kansas.

KLETC, a unit of the Division of Continuing Education of the University of Kansas, directly trains the overwhelming majority of municipal, county and state law enforcement officers in Kansas, and oversees, supervises and monitors the training of the remaining officers. In addition, KLETC maintains and monitors the training records of all municipal, county and state law enforcement officers in Kansas in the Central Registry, created by the Kansas Legislature for that purpose.

Moreover, no municipal, county or state law enforcement agency pays any fees or costs in connection with the training and/or room and board furnished to their officers by KLETC during the 8 weeks of mandated basic training.

KLETC trains approximately 300 new officers annually in basic training programs and last year the KLETC staff afforded in-service training to nearly 6,000 Kansas officers at KLETC, as well as across our state at other training sites.

Kansas law enforcement officers currently receive a minimum of 320 hours (8 weeks) of basic law enforcement training and 40 hours of annual in-service training to retain their law enforcement certification.

KLETC is funded exclusively through criminal court docket fees in the state district courts and receives no financial support from tax monies or the general funds of the state or the university.

HJC  
3-20-92  
Attach #6  
1082

Funding for the training center and its operations is currently provided from the law enforcement training center fund, as established by K.S.A. 74-5619, and enabled by K.S.A. 20-362 and K.S.A. 28-172a. Currently, in accordance with the provisions of K.S.A. 20-362(e), the law enforcement training center fund receives \$5 from the docket fee charged in criminal and traffic-related cases in state district courts. This level of remittance from the docket fee was set by the legislature in its session of 1986. As pointed out above, no monies from the general revenue of the State of Kansas are involved in the funding of the operations of the center. This funding principle may be thought of as the "user tax" concept of funding for law enforcement training. That is, the monies generated come from those individuals who violate the laws of the State of Kansas. Law-abiding citizens do not participate in paying for law enforcement training provided at the Kansas Law Enforcement Training Center.

In compliance with the promises made to the legislature in 1986, KLETC did employ an architect to develop a master plan for the facility. This plan encompasses both repairs and rehabilitation to the existing facility as well as the construction of desperately needed additional space. The construction of the multipurpose/gymnasium, lockers and restrooms and administrative office addition has been completed. Construction has begun on the classroom/seminar room addition. These two projects are anticipated to cost \$1,350,000 to \$1,400,000. All of the funding for these two additions has come from the docket fee income in two ways: first, all of the difference between the income generated by the docket fee and the authorized operating portion of the budget has been applied to new construction; second, for several years certain positions were left unfilled and equipment purchases were postponed in order that the savings in the operating budget could be applied to the new construction. However, operating costs have risen almost to the point to eliminate any difference between it and the income generated and the training load has risen sufficiently that it is no longer possible to leave positions unfilled or equipment unreplaced.

In fact, the lack of sufficient dormitory and cafeteria space at KLETC has created a delay and backlog in the training center's ability to provide the mandated basic training for Kansas law enforcement officers.

It should be noted that approximately 62% of all officers trained at KLETC are municipal law enforcement officers, yet no support from municipal court docket fees is being received by KLETC.

Thus, the Kansas Peace Officers' Association, the Kansas Sheriffs' Association and the Kansas Association of Chiefs of Police join with the Kansas Law Enforcement Training Commission in recommending the initiation of a \$5.00 docket fee from municipal court cases.

The increased funding provided through Senate Bill 508 will enable the Kansas Law Enforcement Training Center to complete the final phase of the current ambitious construction program, doubling the current dormitory and cafeteria capabilities, thereby eliminating the current training delay and backlog.

HJC  
3-20-92  
Attach #6  
2082



Kansas Law Enforcement Training Commission

Senate Bill 508

Mr. Chairman, Members of the House Judiciary Committee:

I am Larry Blomenkamp, vice-chairman of the Kansas Law Enforcement Training Commission, and appear before you today on behalf of the commission to urge your support of Senate Bill 508.

The Law Enforcement Training Commission is a board appointed by the Governor and comprised of sheriffs, chiefs of police, the director of the Kansas Bureau of Investigation, the superintendent of the Kansas Highway Patrol, a representative of the Prosecuting Attorney's Office, and a member-at-large. Members of the commission recognize that excellent law enforcement services for the citizens of our state can only be supplied by well trained law enforcement officers. The primary responsibility of the commission is to assure the state has an adequate supply of trained officers to serve the citizens of our state and you as members of the legislature share that responsibility.

Many years ago, when I first began a career in law enforcement, it was generally believed that small communities or less populated areas of our state did not require a law enforcement officer who possessed the same skill level as the officer who worked in a more metropolitan area. The fact is a law enforcement officer who serves a population of 400 encounters many of the same problems as one who serve 4,000 or 400,000 people. The officer who serves a small population must maintain the same skill level as his counterpart who serves a metropolitan area.

The Kansas Law Enforcement Training Center strives to provide the opportunity for all law enforcement officers in the state of Kansas to acquire and maintain the skills needed to provide quality service, regardless of the size of the population that officer serves. The Training Center is not funded by tax monies but by a docket fee, something similar to a user fee, and we are asking that you expand that docket fee to include municipal courts throughout the state of Kansas. This legislation not only provides a means of generating revenues from a source which uses over fifty percent of the Center's resources, municipalities, but also will assure that sufficient revenues exist in the future to allow the Center to provide more timely and improved training for all law enforcement officers in the state of Kansas.

On behalf of the commission, please accept our sincere appreciation for allowing me to appear before you today to urge your support of Senate Bill 508.

HJC  
3-20-92  
A Huch #7



## Kansas Criminal Justice System Coalition

DATE: March 25, 1992

TO: House Committee

FROM: Sheriff J. Dean Ochs  
President Kansas Sheriff Association

SUBJECT: Senate Bill 508

The Kansas Sheriffs' Association supports this bill and urges the Committee to pass this bill. The Kansas Association of Chiefs of Police, the Kansas Peace Officers and the Kansas County and District Attorneys Association also support this bill.

The Kansas Law Enforcement Training Center (KLETC), for several years, have been facing a problem of the lack of sufficient dormitory and cafeteria space. This has created a backlog in the mandated basic training of law enforcement officers from across the state. KLETC receives no support form the municipal courts. This \$5 municipal court docket fee will allow cities to give for the training of municipal officers. About 62% of all officers trained at KLETC are municipal law enforcement officers.

One point that is not right, in one jurisdiction you pay a \$5 docket fee and in others you do not have a docket fee. The only difference being one is a within the city and the other is in a county.

As stated earlier, the KSA with the other Coalition members request your support on this bill.

HJC  
3-20-92  
Attach #8

**Municipal Court Cases in FY 1991 which would  
be subject to \$5.00 Court Costs under SB508**

**STATE TOTALS**

	<u>Total Gross</u>	<u>Less Dismissals</u>	<u>Trials Less 50%</u>	<u>Total Net</u>	<u>Contribution at \$5.00 per case</u>
<u>DUI Cases</u>	13,503	1,722	1,786/893	10,888	
<u>All Other Cases</u>	335,182	48,912	15,075/7,537	278,733	
<u>Total Net Cases</u>				289,621	\$1,448,105

**15 CITIES WITH OVER 5,000 CASES (GROSS)**

<u>City</u>	<u>Total Gross</u>	<u>Less Dismissals</u>	<u>Trials Less 50%</u>	<u>Total Net</u>	<u>Contribution at \$5.00 per case</u>	
Emporia	<u>DUI Cases</u>	285	10	4/2	273	
	<u>All Other Cases</u>	5,101	1,085	135/68	3,948	
	<u>Total Net Cases</u>				4,221	\$21,105
Hutchinson	<u>DUI Cases</u>	402	47	54/27	328	
	<u>All Other Cases</u>	6,273	1,203	680/340	4,730	
	<u>Total Net Cases</u>				5,058	\$25,290
Kansas City	<u>DUI Cases</u>	470	164	13/7	299	
	<u>All Other Cases</u>	24,253	7,951	621/311	15,991	
	<u>Total Net Cases</u>				16,290	\$81,450
Lawrence	<u>DUI Cases</u>	341	12	9/5	324	
	<u>All Other Cases</u>	13,119	1,082	25/13	12,024	
	<u>Total Net Cases</u>				12,348	\$61,740
Leavenworth	<u>DUI Cases</u>	136	16	9/5	115	
	<u>All Other Cases</u>	5,520	945	288/144	4,431	
	<u>Total Net Cases</u>				4,546	\$22,730
Leawood	<u>DUI Cases</u>	145	8	2/1	136	
	<u>All Other Cases</u>	5,922	561	16/8	5,353	
	<u>Total Net Cases</u>				5,489	\$27,445
Lenexa	<u>DUI Cases</u>	250	31	64/32	187	
	<u>All Other Cases</u>	10,965	2,151	797/399	8,415	
	<u>Total Net Cases</u>				8,602	\$43,010
Manhattan	<u>DUI Cases</u>	334	9	12/6	319	
	<u>All Other Cases</u>	6,632	928	192/96	5,608	
	<u>Total Net Cases</u>				5,927	\$29,635

*HJK  
3-20-92  
Attach #9  
10/2*

City		Total Gross	Less Dismissals	Trials Less 50%	Total Net	Contribution at \$5.00 per case
Olathe	<u>DUI Cases</u>	413	44	31/16	353	
	<u>All Other Cases</u>	11,368	1,935	315/158	9,275	
	<u>Total Net Cases</u>				9,628	\$48,140
Overland Park	<u>DUI Cases</u>	2,066	518	659/330	1,218	
	<u>All Other Cases</u>	48,864	6,029	5,036/2,518	40,317	
	<u>Total Net Cases</u>				41,535	\$207,675
Prairie Village	<u>DUI Cases</u>	152	20	4/2	130	
	<u>All Other Cases</u>	6,422	1,055	41/21	5,346	
	<u>Total Net Cases</u>				5,476	\$27,380
Salina	<u>DUI Cases</u>	221	10	54/2	209	
	<u>All Other Cases</u>	9,348	1,268	82/41	8,039	
	<u>Total Net Cases</u>				8,248	\$41,240
Shawnee	<u>DUI Cases</u>	158	66	18/9	83	
	<u>All Other Cases</u>	11,627	1,945	196/98	9,584	
	<u>Total Net Cases</u>				9,667	\$48,335
Topeka	<u>DUI Cases</u>	1,424	130	32/16	1,278	
	<u>All Other Cases</u>	36,292	3,617	521/261	32,414	
	<u>Total Net Cases</u>				33,692	\$168,460
Wichita	<u>DUI Cases</u>	1,938	194	10/5	1,739	
	<u>All Other Cases</u>	25,200	5,152	251/126	19,922	
	<u>Total Net Cases</u>				21,661	\$108,305
<b>TOTAL, 15 CITIES WITH OVER 5,000 CASES (GROSS)</b>					192,388	\$961,940 (66.4%)
<b>TOTAL, 336 OTHER CITIES WITH LESS THAN 5,000 CASES (GROSS)</b>					97,233	\$486,165 (33.6%)

Calculations by the League of Kansas Municipalities, based on data from "Kansas Municipal Courts Caseload Report, FY 1991", published by Office of Judicial Administration, Kansas Supreme Court

HJK  
3-20-92  
Attach #8  
208 2

Department of Social and Rehabilitation Services  
Donna L. Whiteman, Secretary

**Senate Bill 588**

Before the House Judiciary Committee  
March 20, 1992

The primary responsibility of the SRS Child Support Enforcement Program is to establish regular and adequate child support payments. The CSE Program also performs a vital role in seeing that a child's cost of care, when placed with SRS, is fairly shared between the child's parents and the taxpayers. From that perspective, SRS strongly supports passage of Senate Bill 588.

Currently, Kansas law does not require the juvenile court to order support when a child is placed in SRS custody. Although SRS has the authority to later seek reimbursement from the parents, there is an inevitable delay between the time the child is placed with SRS and the time the CSE Unit can contact the parents to discuss paying for the child's care. This gap tends to give parents false impressions about financial responsibilities, leaves them vulnerable to suit for full reimbursement of costs, and creates frustration for those parents wanting to establish their obligations right away.

Finding a way to set support for these parents as quickly as possible requires balancing many competing interests and requirements, not least of which are federal Title IV-D requirements for use of the support guidelines and immediate income withholding. An added complication is the confidential nature of juvenile proceedings, which runs against the need of prospective creditors, abstractors, and others for full access to support payment records. We believe this measure achieves an equitable balance, one flexible enough to accommodate conflicting needs without being unduly burdensome.

Briefly, SB 588 would add procedures in both the CINC (child in need of care) and juvenile offender codes to allow the juvenile judge to set a support order, and to require it when placement is with SRS. Exceptions would be made where parents are already ordered to pay support or where SRS requests that no support be ordered. Each parent's support order would be drawn up separately and registered under a chapter 60 case number, much the same way that a judgment under chapter 61 (limited actions) may be registered under chapter 60. Until registration, the only enforcement available would be contempt proceedings before the juvenile judge. Although SB 588 requires the juvenile court to issue an immediate income withholding order, which insures that federal requirements for Title IV-D cases are met, that order could not be served on an employer until after registration. After registration, all modification and enforcement proceedings would occur in the chapter 60 case.

In its current form SB 588 specifically provides that support is to be calculated under the Kansas child support guidelines, insuring that Kansas is in compliance with federal requirements in that respect. The initial notice or summons would alert parents to be prepared to show their annual incomes for application of the guidelines. It should be noted that the time between the petition's filing and the setting of support at disposition allows the parties an opportunity to stipulate to facts needed for the guidelines.

HJC  
3-20-92  
Attach 10  
103 5

Whenever necessary facts are not shown by evidence or stipulation, presumptions would be used to streamline application of the guidelines and provide a degree of uniformity statewide. A key presumption would be that both parents have only minimum wage income, which dramatically simplifies calculations. SRS recognizes this will result in unusually low orders in some cases but sees this as fair exchange for having the order set quickly without the cost of bringing a IV-D attorney into the juvenile action. If a presumption is used to set the initial order, either side has three months following registration to request modification without proving a change in circumstances. This is intended to protect both parents and taxpayers from orders that do not reflect actual circumstances.

The registration of support orders under chapter 60 may at first glance appear to place a burden on the clerks of court. Under present procedures, however, CSE already files separate chapter 60 actions to establish support judgments against parents. Those lawsuits, with all their demands on court resources, would be avoided whenever orders under this measure could be registered instead.

SB 588 includes a few miscellaneous changes that should be noted. Section 1 amends the guidelines statute to insure that it covers all actions involving establishment or modification of child support. Section 31 insures that magistrate judges have authority over these support actions, necessary for Kansas' expedited process plan to meet Title IV-D requirements. Section 30 sets out in general that a parent's duty to support his or her child lasts until the child is 18 or until the end of the school year when the child turns 18. This parallels the current provisions of the divorce code and parentage act and insures that support orders not based on those two articles will have the same duration unless otherwise specified.

Finally, one of SRS's goals is to treat support obligations as consistently as possible from one program to another. The provisions in SB 588 for support orders on behalf of juvenile offenders, for example, is a major step toward that goal, as SRS has not actively and uniformly required those parents to contribute financially for their children in the past. Another, smaller step is found in Section 29. That section amends the Mental Health and Retardation Services (MHRS) reimbursement statute to provide an assignment of support rights by operation of law for minors admitted to MHRS institutions. At present MHRS reimbursement officers are accepting written assignments of support to apply to the costs of the child's care. The change in Section 29, modeled on the CSE Program's assignments, would streamline that process and insure statewide uniformity. Parents, of course, would need to be informed of the assignment at admission. This change would also resolve certain administrative problems that occur when an institution and public assistance programs are involved with one family.

HJC  
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Attach 10  
2005

Fiscal Impact. Passage of SB 588 would have substantial fiscal impact on SRS, particularly on the SRS fee fund. Early establishment of foster care obligations, while not reducing the size of CSE worker caseloads, would introduce significant efficiencies into both the administrative and legal handling of foster care cases and free \$365,967-worth of existing staff's time to perform tasks needed to meet federal performance standards.

As noted above, the collection of support from parents of juvenile offenders would constitute a new caseload, estimated at 1,374 referrals per year. To absorb the new caseload, CSE would need three Collection Officers, one Office Assistant II, one Attorney I, and one Secretary II for FY93, at a total cost of \$241,852. After IV-D federal financial participation, the net state cost would be \$82,230. Additional needs in FY94 and FY95 are anticipated, as CSE cases only close when arrearages are paid in full. No additional staff would be required for Youth and Adult Services.

The costs of adding CSE staff would be more than offset by the anticipated increase in collections SB 588 would bring. Of special note is the fact that over 90% of the collections and federal incentive payments generated would be returned to state coffers, due to the low proportion of federally funded cases affected. FY93 would be a phase-in year, with only new referrals including support orders from juvenile court; FY94 would be the first full year of increased collections.

During FY93, the increase in foster care collections is projected to be \$338,442, with the State retaining \$265,474. Federal incentives on those collections would be \$20,306. The increased collections from the new juvenile offender caseload would be \$507,428, with the State retaining 100%.

**Total FY93 Fee Fund contribution..... \$ 793,208**  
(State share + federal incentives)

For FY94, the expected increase in foster care collections would be \$624,891, with the State retaining \$516,303, plus federal incentives of \$37,493. Juvenile offender collections would be expected to reach \$936,733, with the State retaining 100%.

**Total FY94 Fee Fund contribution..... \$ 1,490,529**  
(State share + federal incentives)

For these reasons, SRS strongly urges the committee to recommend Senate Bill 588 for passage.

Respectfully submitted,

Jamie L. Corkhill  
Child Support Enforcement  
296-3237

HJC  
3-20-92  
Attach 10  
308 S

SOCIAL AND REHABILITATION SERVICES  
Child Support Enforcement Program

**SB 588**  
**As amended by Senate Committee**

Foster Care/Juvenile Offender Support Bill  
(Key changes in boldface.)

<u>Sec.</u>	<u>Page</u>	<u>Subject</u>	<u>Statute</u>
<u>SUPPORT GUIDELINES</u>			
1.	1	Courts; guidelines	K.S.A. 20-165
<u>CHILDREN IN NEED OF CARE</u>			
2.	1	Medical treatment; parentage	K.S.A. 38-1513
3.	3	Parentage	K.S.A. 1991 Supp. 38-1516
4.	3	Fingerprints & photos; parentage	K.S.A. 38-1518
<b>5.</b>	<b>4</b>	<b>Pleadings</b>	<b>K.S.A. 38-1531</b>
6.	4	Summons	K.S.A. 38-1533
7.	5	Temporary custody hearing; notice	K.S.A. 1991 Supp. 38-1543
<b>8.</b>	<b>8</b>	<b>Dispositions; support</b>	<b>K.S.A. 1991 Supp. 38-1563</b>
9.	11	Rehearing; modification	K.S.A. 38-1564
<b>10.</b>	<b>11</b>	<b>Amount; presumptions</b>	<b>New section</b>
<b>11.</b>	<b>12</b>	<b>Journal entry; caption; contents</b>	<b>New section</b>
<b>12.</b>	<b>12</b>	<b>Registration; county/district attorney duties; effect; modification</b>	<b>New section</b>
13.	14	Remedies in addition, not substitution	New section
<u>JUVENILE OFFENDERS</u>			
14.	14	Expungement of records; child support exception	K.S.A. 1991 Supp. 38-1610
15.	15	Fingerprints & photographs; parentage	K.S.A. 38-1611
<b>16.</b>	<b>17</b>	<b>Pleadings</b>	<b>K.S.A. 38-1622</b>
17.	18	Summons; persons served; form	K.S.A. 38-1626

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*3-20-92*  
*Attach 10*  
*425*



<u>Sec.</u>	<u>Page</u>	<u>Subject</u>	<u>Statute</u>
18.	19	Detention hearing; notice	K.S.A. 38-1632
19.	21	Detention hearing; notice	K.S.A. 38-1632 (1990 Sess. L. Ch. 150)
(NOTE: 38-1632 was amended in 1990 with an effective date of 1-1-93. Sec. 18 amends language presently in effect; Sec. 19 amends language taking effect 1-1-93.)			
20.	25	<b>Proceedings to determine competency; commitment to state, county or private institution; support order</b>	<b>K.S.A. 38-1637</b>
21.	26	<b>Disposition; clean-ups; support order</b>	<b>K.S.A. 1991 Supp. 38-1663</b>
22.	30	Modification of disposition; support	K.S.A. 38-1665
23.	31	Violation of probation/placement; modification	K.S.A. 38-1666
24.	31	<b>Parentage; stay of support proceedings</b>	<b>New section</b>
25.	31	<b>Amount; presumptions</b>	<b>New section</b>
26.	32	<b>Journal entry; caption; contents</b>	<b>New section</b>
27.	32	<b>Registration; county/district attorney duties; effect; modification</b>	<b>New section</b>
28.	34	Remedies in addition, not substitution	New section
<u>GENERAL</u>			
29.	34	<b>Assignment of child support rights by operation of law upon child's admission to state institution</b>	<b>K.S.A. 1991 Supp. 59-2006</b>
30.	37	<b>Duration of support obligation</b>	<b>New section</b>
31.	37	Magistrate judges powers	KSA 1991 Supp. 20-302b
32.	39	Repeal of amended sections, except as repealed by Sec. 33, and <b>38-1663b</b>	
33.	39	Repeal of 38-1632 (1990 Sess. Laws Ch. 150) on its 1-1-93 effective date	
34.	39	Effective date (publication in statute book)	

HJC  
3-20-92  
3 Attach 10  
5 of 5

Department of Social and Rehabilitation Services  
Donna L. Whiteman, Secretary

**Senate Bill 732**

Before the House Judiciary Committee  
March 20, 1992

The primary responsibility of the SRS Child Support Enforcement Program is to help children by establishing regular and adequate support payments and enforcing past due support obligations. From that perspective, SRS supports passage of Senate Bill 732.

This measure would extend mandatory immediate income withholding for child support to all support orders, beginning in July 1992. Currently, immediate income withholding is only mandatory in Title IV-D (SRS) cases. The Family Support Act of 1988 requires states to have universal immediate withholding in place by January 1, 1994. Early enactment is desirable because it shifts the risk of non-payment away from the child, reduces the social stigma for parents by de-emphasizing the fault basis, and reduces the costs of enforcement if non-payment occurs. The existing "opt-out" provisions would apply in all cases, giving private parties the flexibility they may need.

Aside from universal immediate withholding, this bill makes several technical improvements in existing procedures:

- o Present law requires SRS to apply a complex formula when an employee with more than one withholding order does not earn enough to cover all the normal deductions. Simplifying the formula and having money sent directly to the courts would eliminate a delay in getting support to families. SRS would continue to provide help to employers requesting assistance with the calculations.
- o Some confusion still remains about whether a withholding order is mandatory when arrearages are paid off **after** a notice of intent has been served. SB 732 would clearly state the federal requirement.
- o At present, a notice of intent to initiate withholding must be served by certified mail or personally on the absent parent; this bill would permit the use of first class mail, too.

Finally, the interstate income withholding act, which applies only to Title IV-D cases, would be amended to allow immediate issuance of the Kansas withholding order when a withholding order from another state is already in effect. This usually occurs when the other state has jurisdiction over the absent parent but not over the parent's Kansas employer. To safeguard the absent parent, the Kansas court may require service of the normal interstate notice of intent if the terms of the other state's order are not compatible with Kansas forms or procedures or if the issuing court may have lacked jurisdiction. Federal regulations require CSE services in interstate cases to be equal to those for in-state cases. The proposed change would insure compliance with respect to interstate cases entitled to immediate withholding.

HJC  
3-20-92  
Attach #11  
1062

SRS/Child Support Enforcement  
Senate Bill 732  
Page 2

The amendments made by the Senate would not affect the CSE Program. Those amendments address the use of income withholding to enforce maintenance-only (alimony) orders not involving child support, allowing income withholding by consent of the parties or upon accrual of two month's arrearages. It may be of interest to the Committee that employers in IV-D cases have expressed strong preference for the one-time paperwork of income withholding over the repeated paperwork of garnishments.

Fiscal Impact. In brief, this measure is expected to free \$33,000-worth of SRS staff time for other tasks and to increase interstate support collections slightly. By insuring timely compliance with federal requirements, this bill would prevent sanctions, which may range from \$600,000 to \$18,000,000 per year, up to an ultimate penalty of \$85,000,000.

For these reasons, SRS urges that Senate Bill 732 be recommended for passage.

Respectfully submitted,

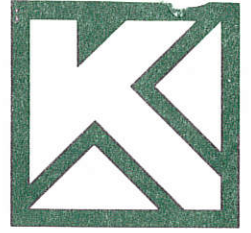
Jamie L. Corkhill  
Child Support Enforcement  
296-3237

HJC  
3-20-92  
Attach #11  
208-2

# LEGISLATIVE TESTIMONY

## Kansas Chamber of Commerce and Industry

500 Bank IV Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321



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

HB 3053

March 20, 1992

### KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the  
House Committee on Judiciary

by

Bob Corkins  
Director of Taxation

Mr. Chairman and members of the Committee:

My name is Bob Corkins, representing the Kansas Chamber of Commerce and Industry. I appreciate the chance to express our members' views today on HB 3053 regarding limitations on punitive or exemplary damages.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

KCCI opposes expansion of the potential scope of liability in tort related claims that may adversely affect Kansas' business climate. The proposal outlined in HB 3053 poses just such a threat. It would have a direct bearing on the costs of liability

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insurance, increase the costs of doing business, and create a disincentive to relocating or expanding business in Kansas...all at a time when concern for job security and job creation is extremely high.

We maintain that this proposal is also inconsistent with underlying objectives in imposing punitive and exemplary damages. The purpose should be to provide deterrence and to influence corrective action -- not to coerce bankruptcy. Furthermore, this is not a question of compensation for injured parties.

To make this proposal more consistent with valid objectives, KCCI suggests that this committee strike the word "greater" in line 15 of page two and replace it with the word "lesser." We believe that this would better protect against bankruptcies without detracting from the goals of deterrence and correction.

Finally, KCCI has a great concern with the ambiguity of the term "net worth." Would "net worth" extend to individual retirement accounts, employee pension funds, employer 401(k) contributions, escrow accounts for payment of taxes, value of non-unitary corporate subsidiaries (foreign and domestic), business accounts receivable, or partnership assets?

We urge you to clarify this language and adopt the amendment suggested above, or defeat this measure in its entirety. Thank you for this opportunity to express the views of our membership.

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