

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on January 24, 1995 in Room 313-S-of the Capitol.

All members were present.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:

Janet Chubb, Secretary of State's Office
Paul Shelby, Office of Judicial Administration
Janet Stubbs, Kansas Private Property Rights Coalition
Representative Doug Spangler
Lisa Moots, Executive Director Kansas Sentencing Commission

Others attending: See attached list

Janet Chubb, Secretary of State's Office, appeared before the committee with a bill request which would amend a provision of the limited liability partnership act passed in 1994. (Attachment 1)

Representative Heinemann made a motion to have the bill request introduced as a committee bill. Representative Edmonds seconded the motion. The motion carried.

Paul Shelby, Office of Judicial Administration, appeared before the committee with several bill requests: law library amendments; marriage license amendments; expanding the statewide court trustee program; providing economical means to pay witnesses; and repeal the statute on Deposit of Wills. (Attachment 2)

Representative Shriver made a motion to have these bill requests introduced as committee bills. Representative Edmonds seconded the motion. The motion carried.

Janet Stubbs, Kansas Private Property Rights Coalition, appeared before the committee with a bill request which would enact private property rights protection. (Attachment 3)

Representative Ott made a motion to have this bill request introduced as a committee bill. Representative Powell seconded the motion. The motion carried.

Representative Spangler appeared before the committee with a bill request regarding an informed jury amendment. (Attachment 4)

Representative Spangler made a motion to have this bill request introduced as a committee bill. Representative Powell seconded the motion. The motion carried.

Chairman O'Neal received a bill request that would amend the Rules of Evidence to require that trial judges first find that there is some basis in other studies or in the medical literature before an expert can give an opinion. (Attachment 5)

Representative Pauls made a motion to have this bill request introduced as a committee bill. Representative Ruff seconded the motion. The motion carried.

Lisa Moots, Executive Director Kansas Sentencing Commission, appeared before the committee with a briefing on the Kansas Criminal History Information Database. The Criminal Justice Coordinating Council began by looking at the requirements for bringing Federal grant monies to Kansas to be used for improving the database. The grant requires 25% matching from the state before it gives the state 75% of the funds, of which 48% has to be passed to the local levels. A big portion of the remaining funds would be directed to the Kansas Bureau of Investigation. (Attachment 6)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313-S-Statehouse, at 3:30 p.m. on January 24, 1995.

The Council tried to identify the problems and decide how to improve them. This process is just about complete. A concern was to either build on the existing system or hire a contractor to design a new one.

Chairman O'Neal asked if the Koch Crime Commission report had been taken into consideration with regards to the database. Ms. Moots replied that the Koch report assumes that there already is a central system and the cost would be attributed to the hook-up of the local levels of government.

Representative Pauls asked what other proposals there are for housing the central database. Ms. Moots replied that there has been talk that the Department of Correction could possibly house the database because they have a large mainframe computer and already do data entry for those who are in the system.

The Chairman stated it was not a function of the Criminal Justice Coordinating Council to decide where the Criminal History Database would be located. Current law states that the database is to be located at the KBI. He hadn't heard anyone requesting a bill that would move the database someplace else. He questioned why this was an issue. Ms. Moots responded that because a significant amount of money was going to be invested, the Council wants to be comfortable in telling the Legislature that the money was spent on what it was appropriated for. Chairman O'Neal stated that the Legislature would have to be extremely impressed with the facts in order to switch from the KBI, particularly in view of the new Director. The Council should not waste a lot of time in turf battles over where it is going to be, because by statute it's with the KBI.

Chairman O'Neal commented that perhaps the Legislature did not give the Council enough direction and part of the problem is the Council being uncertain of their list of priorities and asked if the Council needed more direction from the Legislature. Ms. Moots responded that with the new appointments it is possible that they could use more direction.

The committee meeting adjourned at 4:45 p.m. The next meeting is scheduled for January 26, 1995.

Richard Thornburgh
Secretary of State



2nd Floor, State Capitol
300 S.W. 10th Ave.
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STATE OF KANSAS

HOUSE JUDICIARY COMMITTEE

Request from Secretary of State
for technical amendment
January 24, 1995

Mr. Chairman and Members of the Committee:

My name is Janet Chubb. I am assistant secretary of state. The office of the Secretary requests that this committee introduce legislation to amend a provision of the limited liability partnership act passed in 1994. The amendment is considered a technical one, and the attached balloon sets it out. The omission of this fee was an oversight.

Thank you.

Corporations (913) 296-4564
FAX (913) 296-4570

Elections (913) 296-4561
Administration (913) 296-2236
FAX (913) 291-3051

UCC (913) 296-3650
FAX (913) 296-3659
House Judiciary
1-24-95
Attachment 1

CHAPTER 140

SENATE BILL No. 592

New Section 1. (a) To become and to continue as a registered limited liability partnership, a partnership shall file with the secretary of state an application, or a renewal application, as the case may be, stating:

- (1) The name of the partnership;
- (2) the address of the registered office and the name and address of the agent for service of process, which agent may be either an individual Kansas resident or a domestic corporation;
- (3) the number of partners;
- (4) a brief statement of the business in which the partnership engages;
- (5) a statement that the partnership thereby applies for status or renewal of its status, as the case may be, as a registered limited liability partnership;
- (6) if the limited liability partnership is a foreign limited liability partnership, the state or other jurisdiction or country in which the limited liability partnership is organized and the date of its organization; and
- (7) any other information that the partnership determines to include.

(b) The application or renewal application shall be executed by a majority in interest of the partnership or by one or more partners authorized to execute an application or renewal application.

(c) The application or renewal application shall be accompanied by a fee of \$75 for each partner whose principal office is in Kansas, but in no event shall the fee payable for any year be more than the maximum annual limited partnership franchise tax as specified in K.S.A. 56-1a606 and amendments thereto.

(d) The secretary of state shall register as a registered limited liability partnership, and shall renew the registration of any limited liability partnership, any partnership that submits a completed application or renewal application with the required fee.

(e) Registration is effective for one year after the date an application is filed, unless voluntarily withdrawn by filing with the secretary of state a written withdrawal notice executed by a majority in interest of the partners or by one or more partners authorized to execute a withdrawal notice. Registration, whether pursuant to an original application or a renewal application, as a registered limited liability partnership is renewed if, during the 60-day period preceding the date the application or renewal application otherwise would have expired, the partnership files with the secretary of state a renewal application. A renewal application expires one year after the date an original application would have expired if the last renewal of the application had not occurred.

(f) The status of a partnership as a registered limited liability partnership shall not be affected by errors in the information stated in an application or a renewal application, or by changes after the filing of an application or a renewal application in the information stated in the application or renewal application.

(g) The secretary of state may provide forms for application for or renewal of registration.

If the partnership has no partner whose principal office is in Kansas, the fee shall be \$75.

HOUSE JUDICIARY COMMITTEE

1995 LEGISLATIVE PROPOSALS

Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

1. Law Library Amendments

We have eliminated the multiple options for forming and financing county law libraries. We have grandfathered those existing libraries formed under statutes we suggest be repealed. Any new libraries will be formed and governed by the single remaining statute. All attorneys residing within such county shall register annually with the Clerk of the District Court. We have mandated development of local guidelines for public access to the county law libraries.

2. Marriage License Amendments

This amends K.S.A. 23-107 to allow the Secretary of Health and Environment to approve the use of an automated system whereby the marriage license form is computer generated by the courts and not furnished by health and environment. The courts must comply with prescribed specifications as set out by the Secretary.

3. Statewide Court Trustee Program

This is a proposal to expand our current court trustee program to those districts which have been unable to establish a system under current rules of the court. It amends K.S.A. 23-494 to require the establishment of a court trustee program in each judicial district no later than January 1, 1997. It amends K.S.A. 23-495 allowing Administrative Judges authorizing a court trustee to accept, process, pay out and maintain records for all monies received under support orders payable through the court trustees and to contract with a financial institution for these responsibilities. It allows districts without a court trustee program to collect fees from child support payments in order to develop a funding source for a new court trustee program. It also establishes a

state court trustee fund where monies in the fund could be used as start-up funds for new programs, development of public relations material and etc. for statewide administration costs.

4. Witness Fee Amendments - KS Association of District Court Clerks and Administrators

Amend K.S.A. 28-125 to provide the most economical means to pay witnesses. This is intended to save the counties money for mileage costs for witnesses. Our amendment would read : "When a mode of transportation is available and is less costly than transportation by privately owned conveyance, mileage payments for use of a privately owned conveyance shall be limited to the cost of that other mode of transportation".

5. Repeal Statute on "Deposit of Wills" - KS Association of District Court Clerks and Administrators

Repeal K.S.A. 59-620 which allows wills to be deposited with the Clerk of the District Court for a \$1.00 fee. We feel that in today's mobile society this statute is outdated. This law dates back to a time when the court knew everyone and would call in the family and publicly read a will to them. This is no longer feasible. We have surveyed each district court and it is estimated that there are at least 20,000 wills on deposit with one court having as many as 6,200 on file. Many of these wills date back to the early 1800's. The statute allows a person to deposit a will with the Court in the county where that person currently resides. The court is required to issue a certificate of deposit at the time the will is deposited. It also requires that during the testator's lifetime, only the person that deposited the will be allowed to pick it up. After the testator's death, if the court is notified of the death, the court shall open the will publicly and retain the same.

We feel that this service is now a disservice to the public. People move more often now....people forget the will is on deposit...the court is not notified of the death....we feel the statute should be repealed.

We request introduction of these bills by the committee.

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ASSOCIATION, INC.

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PAST PRESIDENTS
Lee Haworth 1965 & 1970
Warren Schmidt 1966
Mel Clingan 1967
Ken Murrow 1968
Roger Harter 1969
Dick Miika 1971-72
Terry Messing 1973-74
Denis C. Stewart 1975-76
Jerry D. Andrews 1977
R. Bradley Taylor 1978
Joel M. Pollack 1979
Richard H. Bassett 1980
John W. McKay 1981
Donald L. Tasker 1982
Frank A. Stuckey 1983
Harold Warner, Jr. 1984
Joe Pashman 1985
Jay Schrock 1986
Richard Hill 1987
M.S. Mitchell 1988
Robert Hogue 1989
Jim Milner 1990
Elton Parsons 1991
Vernon L. Weis 1992
Gilbert Bristow 1993
James D. Peterson 1994

TESTIMONY
to the
HOUSE COMMITTEE ON JUDICIARY

January 24, 1995

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

My name is Janet Stubbs appearing today on behalf of the members of the Kansas Private Property Rights Coalition due to the absence of the Chairman, M. S. Mitchell, who is on his way to attend the convention of the National Association of Home Builders in Houston, Texas.

This Coalition was formed prior to the 1993 Session of the Kansas Legislature and has grown to include approximately 40 organizations which support legislation ensuring the rights granted by the Constitution. We are requesting introduction of legislation very similar to House Substitute for Senate Bill 293 of the 1994 Session which was approved by this Committee, as well as the full House of Representatives, only to be vetoed by then Governor Joan Finney.

In the audience today, are a number of the members of the Coalition, some of whom have been in attendance when we met with Attorney General Stovall and her staff and the Senior Liaison and staff of Governor Bill Graves to discuss and seek acceptance of the provisions of this draft. We have received support from both to proceed with introduction and seek passage of this meaningful private property rights protection legislation.

Mr. Chairman, we believe the objections of the state agencies who opposed this proposal in the final days of the 1994 Session due to inflated fiscal notes, were without merit. We believe this bill requires substantially the same analysis as is required in K.S.A. 77-416 enacted in 1988. Therefore, we respectfully request introduction of this legislation by the House Judiciary Committee.

House Judiciary
1-24-95
Attachment 3



DRAFT

1 AN ACT creating the private property protection act.

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

3 Section 1. This act shall be known and may be cited as the
4 private property protection act.

5 Section 2. It is the public policy of the state of Kansas
6 that state agencies, in planning and carrying out governmental
7 actions, anticipate, be sensitive to and account for the
8 obligations imposed by the fifth and the 14th amendments of the
9 constitution of the United States and section 18 of the bill of
10 rights of the constitution of the state of Kansas. It is the
11 express purpose of this act to reduce the risk of undue or
12 inadvertent burdens on private property rights resulting from
13 certain lawful governmental actions.

14 Section 3. As used in this act, unless the context requires
15 otherwise:

16 (a) "Taking" means, due to a governmental action, private
17 property is taken such that compensation to the owner of the
18 property is required by the fifth or 14th amendment of the
19 constitution of the United States or section 18 of the bill of
20 rights of the constitution of the state of Kansas and this act.

21 (b) (1) "Governmental action" means any of the following
22 actions which may give rise to a claim of taking:

23 (A) Proposed legislation by a state agency that if enacted
24 and enforced would limit the use of private property.

25 ~~(A)~~ (B) Proposed rules and regulations by a state agency
26 that if adopted and enforced would limit the use of private
27 property;

1 ~~(B)~~ (C) proposed or existing licensing or permit
2 requirements of a state agency which limit the use of private
3 property; or

4 (D) proposed or existing administrative policies,
5 directives, or memoranda authored or implemented by a state
6 agency which would limit the use of private property; or

7 ~~(C)~~ (E) required dedications or exactions from owners
8 of private property by a state agency.

9 (2) "Governmental action" does not include:

10 (A) activity in which the power of eminent domain ^{is} if
11 formally exercised;

12 (B) the repeal of rules and regulations, elimination of
13 governmental programs, or amendment of rules and regulations
14 such that limitations on the use of private property are reduced
15 or removed;

16 (C) activity representing a valid exercise of the state's
17 police powers, including seizure or forfeiture of private
18 property for violations of law or as evidence in criminal
19 proceedings; and

20 (D) state agency action authorized by statute or by valid
21 court order in response to a violation of state law.

22 (c) "Private property" means any real or personal property
23 in this state that is protected by the fifth or 14th amendment
24 of the constitution of the United States or section 18 of the
25 bill of rights of the constitution of the state of Kansas.

26 (d) "State agency" means an officer, department, division
27 or unit of the executive branch of the state of Kansas
28 authorized to propose, adopt or enforce rules and regulations.
29 "State agency" shall not include the legislative or judicial

branches of the state of Kansas or any political or taxing
subdivision of the state of Kansas.

Section 4. The Attorney General for the state of Kansas shall establish on or before January 1, 1996, and update annually guidelines to assist state agencies in evaluating proposed and existing regulatory and/or administrative actions and to assure that such actions do not have taking implications. These guidelines shall be published in the Kansas Register. The guidelines shall be based on current law as articulated by the United States Supreme Court, the supreme court of Kansas, and this act.

Section 5. The guidelines developed by the Attorney General shall be adhered to by state agencies in promulgating rules and regulations pursuant to K.S.A. 77-415 et. seq.

Section 5 6. (a) Before any governmental action restricting private property use on the basis of protection of public health or safety is taken, the state agency shall prepare a written report available for public inspection that follows the guidelines established by the Attorney General of the state of Kansas and complies with the following:

(1) Clearly and specifically identifies the public health or safety risk created by the use of the private property;

(2) describes the manner in which the proposed action will substantially advance the purpose of protecting public health and safety against the specifically identified risk;

(3) sets forth the facts relied upon to establish that the restrictions to be imposed on the use of the private property are proportionate roughly proportional to the extent in which the use of the property gives rise to the need for such

1 restriction;

2 (4) analyzes the likelihood that the governmental action may
3 result in a taking; and

4 (5) identifies the alternatives, if any, to the proposed
5 governmental action that may:

6 (A) Fulfill the legal obligations of the state agency;

7 (B) reduce the extent of limitation of the use of the
8 private property; and

9 (C) reduce the risk to the state that the action will be
10 deemed a taking.

11 (6) Insure that any conditions imposed on issuing a permit
12 shall relate directly to the purpose for which the permit ^{is} to
13 be issued shall substantially and reasonably advance that
14 purpose and shall be expressly authorized by law.

15 (b) If there is an immediate threat to public health and
16 safety that constitutes an emergency requiring immediate action
17 to eliminate the risk, the report required by this section shall
18 be prepared when the emergency action is completed, in which
19 case the report shall include a complete description of the
20 facts relied upon by the agency in declaring the need for
21 emergency action.

22 (c) if an action involves a permit process or any other
23 procedure that will limit or otherwise prohibit the use of
24 private property pending completion of the process or procedure,
25 the duration of the limitation on or prohibited use of the
26 property shall not extend beyond a reasonable period of time.

27 ~~(e)~~ (d) Before any state agency implements a governmental
28 action for which a report is required under this section, the
29 state_agency__shall__submit a copy of the report to the governor

1 and the attorney general of the state of Kansas.

2 (e) Each state agency shall submit with the economic impact
3 statement as required by K.S.A. 77-416 a copy of the taking
4 assessment as required pursuant to this act.

5 Section 7. The state agency shall include in its budget a
6 fund to be used as a source of payment if a taking is determined
7 to have occurred.

8 Section 8. The process for reviewing existing regulations
9 shall be as follows:

10 (a) Any individual who is seeking a license or permit or
11 renewal thereof, may request the agency to review a pertinent
12 existing regulation so as to determine whether the regulations
13 constitutes a taking. The agency shall respond to the requestor
14 within 30 days of receipt of the request.

15 (b) Any individual who has a direct economic or financial
16 interest in property that is governed or affected by a
17 regulation, may seek to have the regulation reviewed by the
18 agency. The individual shall submit to the appropriate agency a
19 written request setting out the governmental action in question
20 and the corresponding regulation to be reviewed and shall
21 provide sufficient information so that the state agency can
22 determine whether the individual has an actual direct financial
23 and/or economic interest. The agency shall respond to the
24 requestor within 120 days from the receipt of the verified
25 request, or at least 30 days prior to exercising the
26 governmental action.

27 (c) The agencies of the state of Kansas which are impacted
28 by this act may adopt any rules and regulations necessary to
29 implement the provisions of this section.

1 Section 9. If a state district or appellate court or state
 2 agency pursuant to this act determines that a governmental
 3 action has resulted in an unconstitutional taking, the effect on
 4 the valuation for property tax purposes of such property shall
 5 be taken into account in determining the value of the
 6 property as required pursuant to K.S.A. 79-503a.

7 Section 10. An owner of private property who successfully
 8 establishes that a governmental action constitutes a taking of
 9 such owner's private property shall be entitled to recover
 10 reasonable attorney's fees and expenses.

11 Section 6 11. Nothing in this act shall be construed to
 12 limit the scope of judicial review of an agency action, create a
 13 new private cause of action or limit any right of action
 14 pursuant to other statutes or at common law.

15 Section 12. If any portion of this act is found to be
 16 unconstitutional, the remaining provisions of the act shall be
 17 deemed valid and severable.

18 Section 7 13. This act shall take effect and be in force
 19 from and after its publication in the statute book.

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3418 N. 71 ST.
KANSAS CITY, KANSAS 66109
JAN. 9, 1995

KANSAS STATE LEGISLATURE

JUDICIARY COMMITTEE

SUBJECT:

INFORMED JURY AMENDMENT

PROPOSAL:

AMENDMENT LANGUAGE ATTACHED


BENEFITS DERIVED:

THIS BILL WOULD INFORM THE JURORS OF THEIR POWERS TO DETERMINE NOT ONLY GUILT OR INNOCENCE BUT WHETHER THE LAW SHOULD APPLY IN THE PARTICULAR INSTANCE BEING JUDGED. IN INSTANCES WHERE THE LAW HAS BEEN BADLY WRITTEN THEY RENDER RELIEF UNTIL A NEW LAW IS WRITTEN. THIS IS ONLY IN CASES WHERE THE GOVERNMENT IS BRING THE CASE AGAINST ANOTHER PARTY.

CASES IN POINT:

WHEN A FARMER IN KANSAS SHOT A TIRE, ON A VEHICLE THAT THIEVES WERE USING, TO KEEP THEM FROM LEAVING THE SCENE OF A CRIME. THE FARMER WAS GIVEN ONE YEAR IN PRISON BECAUSE THE STATE LAW REQUIRED ONE YEAR MINIMUM SENTENCE FOR THE USE OF A FIREARM IN THE COMMISSION OF A CRIME.

CONTACT PERSON


CHESTER RICHARDS
3418 N. 71 ST.
KANSAS CITY, KANSAS 66109
913-299-3744

House Judiciary
1-24-95
Attachment 4

INFORMED JURY AMENDMENT 1995

"AN ACCUSED OR AGGRIEVED PARTY'S RIGHT TO TRIAL BY JURY, IN ALL INSTANCES WHERE THE GOVERNMENT OR ANY OF ITS AGENCIES IS AN OPPOSING PARTY, INCLUDES THE RIGHT TO INFORM THE JURORS OF THEIR POWER TO JUDGE THE LAW AS WELL AS THE EVIDENCE, AND TO VOTE ON THE VERDICT ACCORDING TO CONSCIENCE".

"THIS RIGHT SHALL NOT BE INFRINGED BY ANY STATUTE, JUROR OATH, COURT ORDER, OR PROCEDURE OR PRACTICE OF THE COURT, INCLUDING THE USE OF ANY METHOD OF JURY SELECTION WHICH COULD PRECLUDE OR LIMIT THE EMPANELMENT OF JURORS WILLING TO EXERCISE THIS POWER."

"NOR SHALL THIS RIGHT BE INFRINGED BY PREVENTING ANY PARTY TO THE TRIAL, ONCE THE JURORS HAVE BEEN INFORMED OF THEIR POWERS. FROM PRESENTING ARGUMENTS TO THE JURY WHICH MAY PERTAIN TO ISSUES OF LAW AND CONSCIENCE, INCLUDING

- (1) THE MERIT, INTENT, CONSTITUTIONALITY OR APPLICABILITY OF THE LAW IN THE INSTANT CASE;
- (2) THE MOTIVES, MORAL PERSPECTIVE, OR CIRCUMSTANCES OF THE ACCUSED OR AGGRIEVED PARTY,
- (3) THE DEGREE AND DIRECTION OF GUILT OR ACTUAL HARM DONE; OR
- (4) THE SANCTIONS WHICH MAY BE APPLIED TO THE LOSING PARTY.

FAILURE TO ALLOW THE ACCUSED OR AGGRIEVED PARTY OR COUNSEL FOR THE PARTY TO SO INFORM THE JURY SHALL BE GROUNDS FOR MISTRIAL AND ANOTHER TRIAL BY JURY".

→ Mike O'Ma
Mike -
what do you
think
P

MEMORANDUM

TO: Phill Kline
FROM: Jim Griffin
RE: Possible bill to introduce in the Legislature
DATE: December 20, 1994

One of the problems with our civil justice system is that experts under Kansas law may be able to testify about opinions that have no basis whatsoever merely by saying that they are experts. The United States Supreme Court in Daubert v. Merrell Dow Pharmaceutical, Inc., 113 S.Ct. 2786 (1983) interpreted the Federal Rules of Evidence to require that a trial judge first find that there is some basis in other studies or in the medical literature before an expert can give an opinion, especially on causation. Therefore, I propose the following amendment to K.S.A. § 60-456(b). That subsection currently requires a judge to find that an expert's opinions are:

- (1) based on facts or data perceived by or personally known or made known to the witness at the hearing; and
- (2) within the scope of the special knowledge, skill, experience or training possessed by the witness.

I propose to add a new subsection (2) and (3) to state as follows:

- (2) based on reasoning or methodology which is scientifically valid which can be properly applied to the facts in issue; and
- (3) likely to assist the trier of fact to understand the evidence or to determine a fact in issue; and

I would propose to keep the current subsection (1) and change the number of subsection (2) to (4).

The new subsection (2) is taken directly from the Daubert case. It would require that if a party challenged expert testimony, that the expert providing the testimony must show some valid basis or method which is scientifically valid which supports his opinion. Subsection 3 is taken directly from the Federal Rules of Evidence, Rule 702, and further reinforces the requirement that the testimony must actually apply to the case in issue.

If you need any more information, please don't hesitate to ask.

PROPOSAL FOR AN ASSESSMENT OF
KANSAS CRIMINAL JUSTICE RECORDS

August 24, 1994

I. Proposed Activities

The Kansas Criminal Justice Policy Board instructed that a proposal be prepared outlining the scope, methodology, time frame and resource needs to complete the required assessment and the development of an appropriate plan for submission to Washington. Appointed to address the required activities were:

Michael E. Boyer (Kansas Bureau of Investigation)
Jeff Lewis (Department of Corrections)
Helen Pedigo (Kansas Sentencing Commission)
Evelyn Gates (Judicial Administration)
Brent Bengtson (Office of Drug Abuse Programs)
Jim Clark (County and District Attorney's Association)
Mark Matese (Social and Rehabilitation Services)
Doug Smith (District Court Administrator)

Boyer, Lewis and Pedigo were assigned specific responsibilities concerning the assessment.

After a series of meetings, specific guidance was developed to direct the assessment effort. The scope of the project was discussed at length. While recognizing that a comprehensive review of all aspects for the criminal justice reporting process would be very useful, the specific requirements of the Block Grant program did not dictate such a level of comprehensiveness. Likewise, the time frame for completion and the financial resources mitigate against such an approach.

Therefore, the proposed assessment will examine the flow of information to the central repository, the inter-relationship of the central repository to local agencies, the needs of the both the justice system and non-justice system users requesting information, and the linkages to the various related state and local systems. Because some juvenile convictions count in adult criminal history, because juvenile records are housed in the same place as adult offender records, and because in many cases, post-disposition supervision is through the same agency as for adult offenders, both juvenile and adult records will be collected. Both locked and unlocked populations will be examined in both samples. Sample survey instruments for both adult and juvenile data collection are attached. Federal and State foundations for the reporting requirements will be examined, with specific attention to the voluntary standards for improving the quality of criminal history record information, as well as to the present statutory underpinnings for the criminal history record system.

A. Automation of Records in Central Repository

This section will automate both juvenile and adult arrest, prosecution and court disposition records from January 1993 to July 1, 1994 so that an assessment of the Repository can be adequately completed based upon the most current information available. The Kansas Sentencing Commission/Criminal Justice Coordinating Council will hire temporary personnel using funds provided by the Department of Social and Rehabilitative Services and the Kansas Bureau of Investigation to bring juvenile and adult arrest records up to date. The data entry will be done at the Kansas Sentencing Commission offices on equipment provided by the Bureau and the Kansas Sentencing Commission. The Bureau and the Department of Social and Rehabilitation Services will equally provide \$3520 in temporary personnel costs. These amounts would be used as matching funds for the assessment. The \$3520 is determined by entering 20,000 records each in the adult and juvenile systems, amounting to 400 hours each of data entry at a rate of \$8/hr. plus fringe benefits. The Bureau will update the prosecution and court dispositions from January 1993 to the present with a full staff of 9 data entry personnel working full-time giving this project priority treatment.

B. Review of Technical Linkages to Central Repository

This section will examine the present flow of information and the potential to automate the input of most justice system activities. This review will include remote transmission of data, networking capabilities, remote access to the stored information, and usage by non-criminal justice practitioners.

C. Review of Reporting Processes at the Local Level -- State Fiscal Year 1994

A field study will entail reading approximately 1500 records from Johnson, Saline, Finney, Thomas, Pawnee, Mitchell, Atchison, and Shawnee counties to measure the clarity, completeness, accuracy and the timeliness with which they are submitted to the Bureau. Pawnee, Mitchell, Atchison, and Shawnee counties were chosen because they each contain youth centers, allowing data collectors to investigate records at both the local court and the youth center while they are collecting data in that jurisdiction. Furthermore, the collection of juvenile information in the study will allow us to make general assumptions regarding that population, as well as predict the effect of juvenile convictions on adult criminal history.

The study will initiate at the local courts where a random sample of case dispositions will be selected for study. Completeness, clarity and timeliness will be determined and recorded. Staff will track these records from fingerprint card through post-disposition and through the Repository to

determine completeness and accuracy. It is anticipated that a data collector can read 20 files per day. Using 4 full-time staff this task should be accomplished in approximately 30 working days. Using an average yearly salary of \$30,000, the net cost of personnel in this effort is estimated at \$15,000.

An additional 10 days is needed to set up the database, 20 days for data entry and 2 1/2 months for data cleanup, recoding and analysis which will overlap with an estimated 2 1/2 months for finalizing the report and plan. Average annual salary used is \$30,000, except for data entry personnel, which are estimated at a rate of \$8.00 per hour. The attached budget outlines the specific costs anticipated.

D. Review of Information Collection, Processing and Dissemination at the Central Repository

This will be a procedural review of the activities of the Central Repository. The data collector will review documents received with the automated output produced to determine accuracy and timeliness in data entry. Approximately 400 records each of both adult and juvenile offenders state-wide will be read over an estimated 4 week period. Two full-time staff will spend approximately 80% of their time on this task. The estimate is based upon an average yearly salary of \$40,000.

E. User Needs Assessment - Criminal and Non-criminal Justice Users

The attached User Needs Survey and Criminal History Data Quality Questionnaire survey instruments were designed to assess the services provided by the central repository in terms of availability, adequacy and needs left unfulfilled. These surveys will be completed by both criminal justice and non-criminal justice audiences. It is anticipated that approximately 600 surveys will be sent to law enforcement, county and district attorneys, court services officers, administrative judges, parole chiefs, community corrections directors, correctional facility wardens and state agencies. This data will be compiled and recommendations made.

II. Identification of Problems, Development of Findings and Recommendations

By analyzing collected information from all facets of this assessment, problems will be identified to include possible sources for the enumerated problems. By identifying existing problems, proposed solutions will be issued for consideration by the Policy Board. From these proposed solutions, a series of recommendations for improvement of the justice information system will be made. This series of recommendations will be ready for the 1995 Legislative session.

III. Plan for the Improvement of Criminal Justice Records in Kansas

The final product of this effort, a plan for the improvement of Kansas criminal justice records will be prepared for submission to the Bureau of Justice Assistance, Department of Justice, Washington, D.C. With the acceptance of this plan, the set-aside funds, in reserve for three federal funding cycles and totalling approximately \$650,000 will be available for distribution to the justice system participants in the state, assuming the matching fund requirements have been met.

The time frame for the completion of this project will be to coincide with the opening of the 1995 Legislative session. This will allow time for review by the State Judiciary and Ways and Means committees. A copy of the plan will also be submitted to Washington for approval.

The resources required to complete the work envisioned will be minimal in terms of monetary investment and be assisted by utilizing Block Grant funds to offset 75% of the cost. Existing personnel at the Bureau, Department of Corrections, Department of Social and Rehabilitation Services and the Sentencing Commission will provide the majority of the human resources needed to complete the project. Additional part-time personnel will be hired for data collection and data entry as needed.

DATA COLLECTION FORM
AUDIT AND ASSESSMENT OF CRIMINAL HISTORY

INSTRUCTIONS: Please fill out a separate data collection form for each separate arrest date. The records audit covers only cases in which there were adult felony arrests during the 1992 calendar year.

Fingerprint Card at KBI? Y / N Total arrest charges as per KBI record in this jurisdiction: _____

Final Disposition Report at KBI? Y / N

OJA50 Report at KBI? Y / N Total arrest charges on file in this jurisdiction: _____

SUBJECT IDENTIFICATION INFORMATION: ENTER CORRECTED INFORMATION AS APPROPRIATE

Subject Name			LAST	FIRST	MIDDLE	KBI #		
Aliases						OBSCIS#		
Birthdate	Race W B I A	Sex M F	Ethnicity H N	Height	Weight	Hair	Eyes BL BR HA	
Birthplace						FBI #		

LE Agency ORI	Arrest Date	Trans/Case #	Charge#	Statute	Arr. Disp	Arr. Disp. Date	Final Disp.	Final Disp. Date
					1 2 3 4 8		A C D LO NF AC DIV NGI	
					1 2 3 4 8		A C D LO NF AC DIV NGI	
					1 2 3 4 8		A C D LO NF AC DIV NGI	
					1 2 3 4 8		A C D LO NF AC DIV NGI	
					1 2 3 4 8		A C D LO NF AC DIV NGI	
					1 2 3 4 8		A C D LO NF AC DIV NGI	
					1 2 3 4 8		A C D LO NF AC DIV NGI	

Pros. ORI	Agency Name	Date Filed
Court ORI	Court Name	Court Case #

Audit Findings:

- A = Accurate
- E = Erroneous
- I = Incomplete
- M = Missing
- NSD = No Source Document

Arrest Disposition:

- 1 = Transferred to another L.E. Agency
- 2 = Transferred to another agency
- 3 = release, no further action
- 4 = Other (e.g. death)
- 8 = Referred to prosecutor

Final Disposition:

- A = Acquitted
- C = Convicted
- D = Dismissed
- LO = Convicted of lesser offense
- NF = Charge was not filed by prosecutor
- AC = Convicted on an amended complaint
- DIV = Diversion
- NGI = Not guilty by reason of insanity

Auditor _____

Date _____

Subject Name _____

KBI # _____

DISPOSITION INFORMATION: ENTER CORRECTED INFORMATION AS APPROPRIATE

Arrest Date	Charge#	Minimum Prison Term	Maximum Prison Term	Probation Term	Jail Term	Community Svc. Term	Fine Amount	Sentence Date
---	---	---	---	---	---	---	---\$	---
---	---	---	---	---	---	---	---\$	---
---	---	---	---	---	---	---	---\$	---
---	---	---	---	---	---	---	---\$	---
---	---	---	---	---	---	---	---\$	---
---	---	---	---	---	---	---	---\$	---
---	---	---	---	---	---	---	---\$	---
---	---	---	---	---	---	---	---\$	---

STATUS CHANGE INFORMATION: ENTER CORRECTED INFORMATION AS APPROPRIATE

Termination Code 1 2-See below 3 4		Status Change Date						
Arrest Date	Charge#	Minimum Prison Term	Maximum Prison Term	Probation Term	Jail Term	Community Svc. Term	Fine Amount	Sentence Date
---	---	---	---	---	---	---	---\$	---
---	---	---	---	---	---	---	---\$	---
---	---	---	---	---	---	---	---\$	---
---	---	---	---	---	---	---	---\$	---
---	---	---	---	---	---	---	---\$	---
---	---	---	---	---	---	---	---\$	---
---	---	---	---	---	---	---	---\$	---
---	---	---	---	---	---	---	---\$	---

Audit Findings:

- A = Accurate
- E = Erroneous
- I = Incomplete
- M = Missing
- NSD = No Source Document

Terms:

- Y = Years
- M = Months
- D = Days

Auditor _____

Date _____

JUVENILE

DATA COLLECTION INSTRUMENT

Demographics

Name of person filling out form
Date
Name of child
ID number
Date of birth
Sex
Race
Ethnicity
County of residence
School attended (elementary, middle, junior high, high school)
Type of school (public / private / parochial)
Employed?
Custodial parent marital status
Living arrangements

School information

Highest grade completed
Indicators of truancy (fill-in)
Indicators of school attendance (fill-in)
Indicators of school behavior (fill-in)
Indicators of school performance / academic (fill-in)
Indicators of school performance / extracurricular activities (fill-in)

CINC? (Y/N); Date of finding (MM/DD/YY)

Date proceeding initiated
Type of court (district / magistrate)
Name of adjudicating judge
Name of disposition judge
County
District court
Child's counsel (private / appointed)
Status offense? (Y/N) List if Yes: _____
Was the child victimized? (Y/N)
Type of victimization: (physical/emotional/sexual/other: _____)
Time frame of victimization; Explain: _____
Was child screened? If so, by which agency?
Was there a placement investigation? If so, by which agency?
Was the child in out-of-home placement? If so, how long?
Were recommendations presented to the Judge? If yes, what were they?
What agency prepared the recommendations?
Did the Judge concur with the recommendations?
Disposition: _____
Type of placement (foster care/ relatives/ psychiatric hospital-private -
State/ alcohol-drug treatment/ grouphome/ detention facility/ jail/
screening unit / temporary shelter / Other: _____; special
Placement conditions: _____
Length of custody: _____
Date of placement
Were parental rights terminated? (y/n)
Was the termination voluntary or involuntary?? _____

JO? (Y/N); Date of finding (MM/DD/YY)

Type of court (district / magistrate)
Name of adjudicating judge
Name of disposition judge
County

District court
Child's Council (private/appointed)
Most serious charge (list up to 5); Date committed (list all)
Adjudicated offense (list)
Was child screened? If so, by which agency?
Was there a presentence investigation? If so, by which agency?
Was the child victimized? (Y/N)
Type of victimization (physical/ emotional/ sexual/ other: _____)
Time frame of victimization; Explain: _____
Was the child held in detention? If so, how long?
Were recommendations presented to the Judge? If yes, what were they?
What agency prepared the recommendations?
Did the Judge concur with the recommendations?
Disposition: _____
Was the JO on probation at the time of the current offense? (Y/N)
Does this current adjudication revoke a previous probation? (Y/N)
Was this a direct commitment from the court? (Y/N)
Was current offense gang-related?
Was weapon involved?
Did the victim sustain physical injury?

Placement

Date of placement: _____
Does current placement result from a transfer (Y/N)
If yes, from where _____; Date _____
Type of placement (foster care/ relatives / psychiatric hospital-private
- State / alcohol treatment facility/ drug treatment facility/ group
home/ detention / jail / screening unit / temporary shelter/ YCAT/ YCAA
/ YCAL / YCAB / Other: _____)
Special conditions of placement:
Length of custody:
Number of prior out-of-home placements?
Location of prior out-of-home placements:
Length of prior out-of-home placements: _____
Was there a prior court-ordered placement? Date _____
While in placement have there been any incidents of:
(1) assault (Y/N) Number _____
(2) destruction of property (Y/N) Number _____
(3) running away, AWOL, escape (Y/N) Number _____
Number of home visits/home passes?

History

Age at first referral: _____ Date: _____
Indicate type of referral: _____
Source of first referral: _____
Age at first adjudication: _____
First adjudication was: CINC or JO
For all previous adjudicated offenses list the following:
Charge _____ Date _____
Disposition _____
Probation? (y/n) How long? _____
Violations? Technical or New Offense _____
Revoked? (y/n) Change in probation order? (y/n) _____
Placement? (y/n) Where? _____ How long? _____
Aftercare (y/n) Agency? _____ How long? _____
Conditional release violation? _____

Family and legal guardian

Family income? _____ (categories)
Does the family receive any form of public assistance? (list)
For the child and each family member list the following (list, including
extended family)
Name _____ Age _____
Relationship to the child: _____

Living arrangements: in home, independent, college
Employed/unemployed?
Occupation _____
Educational background (highest grade, degree completed)
History of emotional/mental illness?
Alcohol abuse?
Drug abuse?
Criminal history-most serious charge, date, conviction, disposition or placement.
Gang involvement?
Weapon offense convictions?
Sex offense convictions?

Treatment History

Are there indicators of mental health needs present?

If yes, please list _____

Previous Diagnosis _____ Date _____

Completed by: _____

Indicators of prior mental health treatment?

Indicators of present drug involvement?

Type of drug involved/abused?

Has the child been identified as experiencing any of the following:
(circle all that apply)

- physical abuse
- emotional abuse
- sexual abuse
- neglect
- suicidal behavior
- alcohol abuse
- drug abuse

Has the child received previous treatment for any of the following: (circle all that apply)

- physical abuse
- emotional abuse
- sexual abuse
- neglect
- suicidal behavior
- alcohol abuse
- drug abuse

Has previous treatment indicated family involvement (Y/N) If yes, describe

Does the Child suffer any significant physical health problems?

Does the Child have coverage under Medicaid, insurance, neither?

Recommended Voluntary Standards for Improving the Quality of Criminal History Records Information

1. Every State shall maintain fingerprint impressions or copies thereof as the basic source document for each arrest (including incidents based upon a summons issued in lieu of an arrest warrant) recorded in the criminal history record system.
2. Arrest fingerprint impressions submitted to the State repository and the FBI Identification Division (ID) should be complete, but shall at least contain the following data elements: date of arrest, originating agency identification number, arrest charges, a unique tracking number (if available) and the subject's full name, date of birth, sex, race and social security number (if available).
3. Every State shall ensure that fingerprint impressions of persons arrested for serious and/or significant offenses are included in the national criminal history records system.
4. All disposition reports submitted to the State repository and the FBI ID shall contain the following: FBI number (if available), name of subject, date of birth, sex, State identifier number, social security number (if available), date of arrest, tracking number (if available), arrest offense literal, court offense literal, and agency identifier number of agency reporting arrest.
5. All final disposition reports submitted to the State repository and the FBI ID that report a conviction for an offense classified as a felony (or equivalent) within the State shall include a flag identifying the conviction as a felony.
6. States shall ensure to the maximum extent possible that arrest and/or confinement fingerprints are submitted to the State repository and, when appropriate, to the FBI ID within 24 hours; however, in the case of single-source States, State repositories shall forward fingerprints, when appropriate, to the FBI ID within two weeks of receipt.
7. States shall ensure to the maximum extent possible that final dispositions are reported to the State repository and, when appropriate, to the FBI ID within a period not to exceed 90 days after the disposition is known.
8. Every State shall ensure that annual audits of a representative sample of State and local criminal justice agencies shall be conducted by the State to verify adherence to State and Federal standards and regulations.
9. Whenever criminal history record information is collected, stored, or disseminated, each State shall institute procedures to assure the physical security of such information, to prevent unauthorized access, disclosure or dissemination, and to ensure that such information cannot be improperly modified, destroyed, accessed, changed, purged, or overlaid.
10. Every State shall accurately identify to the maximum extent feasible all State criminal history records maintained or received in the future that contain a conviction for an offense classified as a felony (or equivalent) within the State.

User Needs Assessment Survey

1. Agency Name: _____

Address: _____

City: _____ State: _____ Zip: _____

2. ORI Number/User Agreement Number: _____

3. Type of Agency: (Please check the correct one)

- | | |
|--|---|
| <input type="checkbox"/> Law Enforcement | <input type="checkbox"/> Employment/Licensing |
| <input type="checkbox"/> Prosecution | <input type="checkbox"/> Military/National Security |
| <input type="checkbox"/> Courts | <input type="checkbox"/> Credit Bureau |
| <input type="checkbox"/> Corrections | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Social Services | |

4. Number of Inquires made in 1992: (Please check the correct one)

- | | | |
|----------------------------------|---------------------------------|----------------------------------|
| <input type="checkbox"/> < 50 | <input type="checkbox"/> 51-100 | <input type="checkbox"/> 101-150 |
| <input type="checkbox"/> 201-250 | <input type="checkbox"/> > 250 | |

5. How do you currently access Criminal History information: (Please check all that apply)

- | | | |
|---------------------------------------|-------------------------------|---------------------------------------|
| <input type="checkbox"/> ASTRA | <input type="checkbox"/> Mail | <input type="checkbox"/> Other Agency |
| <input type="checkbox"/> Other: _____ | | |

6. For what purpose do you use Criminal History information: (Please check all that apply)

- | | |
|---|--|
| <input type="checkbox"/> Employment/Licensing Checks | <input type="checkbox"/> PSI |
| <input type="checkbox"/> Law Enforcement Investigations | <input type="checkbox"/> Pre-Trial Release |
| <input type="checkbox"/> Research/Policy/Planning | <input type="checkbox"/> Probation/Parole |
| <input type="checkbox"/> Charge Determination | <input type="checkbox"/> Credit History |
| <input type="checkbox"/> Case Management | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Military/National Security | |

7. Please give an average time of receipt for Criminal History information: _____

8. Is the time of receipt of the Criminal History information adequate to meet the needs of your agency?

Yes No

9. For Non-Criminal Justice Users Only - Is the cost of receiving Criminal History Records information prohibitive to wider use of this information?

Yes No

10. Please assess the following characteristics of the Criminal History information you have received: (Please check the box that best represents the response for each category)

	Excellent	Good	Fair	Poor
Clarity				
Completeness				
Accuracy				
Timeliness				
Format				

10. Please explain in detail any suggestions your agency might have for the improvement or betterment of providing Criminal History information: _____

Criminal History Data Quality Questionnaire

- Q1. On a scale of 1 to 5, to what degree do you feel the following data quality issues are critical to an effective State Criminal History Repository? (1 = not critical at all, 3 = fairly critical, 5 = very critical)
- Q2. On a scale of 1 to 5, to what degree do you feel the following data quality issues are a problem in Kansas? (1 = no problem at all, 3 = fairly serious problem, 5 = very serious problem)

Issues	Q1	Q2
1. Delays in entering arrest data in criminal history data base		
2. Accuracy of data entry of arrest data		
3. Degree to which final dispositions are submitted		
4. Delays in submitting disposition reports		
5. Linkage of dispositions to corresponding arrests		
6. Delays in entering disposition data in Criminal History data base		
7. Accuracy of disposition data		
8. Delays in responding to requests by criminal justice agencies		
9. Delays in responding to requests by non-criminal justice agencies		
10. Clarity of Abstract information received		
11. Degree to which the criminal history data base has all arrests on each offender		
12. Degree to which arrests have final disposition		
13. Degree to which each offender's felony conviction status can be determined		

14.	Degree to which all Master Name Index records are automated		
15.	Degree to which all criminal history records are automated		
16.	Conducting a baseline data quality audit		
17.	Conducting a repository needs assessment		
18.	Conducting a user needs assessment		
19.	Developing a long-term data quality improvement plan		
20.	Current review of legislation concerning reporting of criminal justice data elements		
21.	Expanding training for local law enforcement agencies concerning reporting requirements		
22.	Improvement of inter-agency cooperation and commitment to data quality		
23.	Implement/improve standardized procedures for arrest reporting		
24.	Implement/improve standardized procedures for disposition reporting		
25.	Implement procedures for improving fingerprint card processing		
26.	Implement procedures for improving disposition reporting		
27.	Upgrade/install new computerized criminal history records system		
28.	Upgrade/install new Master Name Index system		
29.	Upgrade/install new Automated Fingerprint Identification System		
30.	Become a participating state in III		
31.	Implement a Delinquent Disposition Reporting Module		
32.	Implement live-scan fingerprint system at local arrest agencies		

33.	Upgrade/install interface between the arresting agency using ASTRA and the central repository		
34.	Upgrade/install interface between district/county attorneys and the central repository		
35.	Upgrade/install interface between the judicial branch and the central repository		
36.	Upgrade/install interface between the Department of Corrections and the central repository		
37.	Process fingerprint cards backlogged at the central repository		
38.	Process disposition reports backlogged at the central repository		
39.	Locate and process fingerprint card not submitted to the central repository		
40.	Locate and process disposition reports not submitted to the central repository		