

Approved: April 7, 1995
Date

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 February 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:

Others attending: See attached list

HB 2030 - Crime of official misconduct

Representative Heinemann stated that the sub-committee recommends that this bill be sent to an exepmt committee because it needs to be studied carefully.

HB 2012 - Restitution paid to the victim; financial records open to the victim; programs for the inmates.

Representative Yoh made a motion to report **HB 2012** favorably for passage. Representative Graeber seconded the motion.

Representative Graeber made a substitute motion to strike the language in section 8, lines 7-9 and insert "records of the department of corrections regarding the financial assets of an offender in the custody of the secretary of corrections shall be subject to disclosure to the victim, or such victim's family, of the crime for which the inmate is in custody as set forth in an order of restitution by the sentencing court." Representative Spangler seconded the motion. The motion carried.

Representative Graeber made a motion to reinsert "shall" to replace "may" in section 11. Representative Spangler seconded the motion. Representative Howell felt that inmates are already getting lots of benefits and this is one item that could be cut. Representative Garner commented that these programs are necessary in the rehabilitation of inmates. The motion carried.

Representative Graeber made a motion to strike in section (k)(2) "persons" and "supervision" and replace with "inmates". Representative Spangler seconded the motion. The motion carried.

Representative Ott made a motion to amend in a balloon amendment (Attachment 1) which would have juvenile offenders pay restitution the same way adults do. Representative Pauls seconded the motion. The motion carried.

Representative Graeber made a motion to change "persons" to "juvenile offenders". Representative Yoh seconded the motion. The motion carried.

Representative Nichols made a motion to strike on page 3 of the balloon, lines 16-19, because it goes further than current law. Representative Garner seconded the motion. The motion carried.

Representative Graeber made a motion to report **HB 2012** favorably for passage as amended. Representative Ott seconded the motion. The motion carried.

HB 2180 - Amendments to the administrative procedure act and judicial review act

Representative Garner made a motion to report **HB 2180** favorably for passage. Representative Grant seconded the motion.

Representative Edmonds made a substitute motion to amend in the Judicial Council's recommendations with a time frame of up to 1 year to appeal. (Attachment 2) Representative Howell seconded the motion. The motion carried.

Representative Graeber made a motion to report **HB 2180** favorably for passage as amended. Representative Spangler seconded the motion. The motion carried.

CONTINUATION SHEET

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

HB 2213 - Creating an office of administrative hearings within the department of administration; administrative law judges from such office would preside over administrative hearings under the Kansas administrative procedure act.

Representative Nichols made a motion to report HB 2213 favorably for passage. Representative Ott seconded the motion.

Representative Nichols provided the committee with a balloon amendment that deletes, on page 2, lines 15 & 34, "any state agency" and replace with "any agency with Governor appointed secretaries subjected to confirmation by the Senate." (Attachment 3) He made a substitute motion to amend in the balloon draft. Representative Ott seconded the motion. The motion carried.

Representative Pauls asked if this would apply to the Workers Compensation area because they fall under the Secretary of Human Resources. Representative Nichols replied that they would be included. Representative Grant stated that the language in the bill states "except as otherwise provided by law" so they could specifically be written into the bill to be exempt.

Representative Garner commented that he understands the concerns with having all agencies included in the bill and suggested that the bill should only apply to Social Rehabilitation Services and Department of Health & Environment and then if it works with those two agencies, expand it to include other agencies.

Representative Garner made a motion to have the bill apply only to Social Rehabilitation Services & Department of Health & Environment. Representative Heinemann seconded the motion. Representative Goodwin stated that she would like to include the Department of Revenue. Representative Ott commented that the bill should start with all agencies and then exempt the ones which are a concern to the committee. With permission of the second, Representative Garner withdrew his motion.

Representative Nichols made a motion to have the bill exempt Division of Workers Compensation, Division of Motor Vehicle, Director of Taxation and Human Rights Commission. Representative Ott seconded the motion. The motion carried.

Representative Nichols made a motion to report HB 2213 favorably for passage as amended. Representative Graeber seconded the motion. The motion carried.

HB 2310 - Docket fees for inmates

Representative Pauls made a motion to report HB 2310 favorably for passage. Representative Nichols seconded the motion.

Representative Pauls made a substitute motion to have the \$3 docket fee going to the Crime Victims Reparation Fund. Representative Edmonds seconded the motion. The Chairman stated that docket fees go primarily to fund the courts, so some of the \$3 should go to the courts. Inmate pleadings are an additional burden on the courts and the docket fee should be sent to the general court fund. The motion failed.

Representative Garner made motion to have the docket fee go to the general court fund. Representative Heinemann commented that dockets fees go into the State General Fund. The committee decided to let the docket fee be handled in the same manner as other docket fees. Representative Garner withdrew his motion.

Representative Haley made a motion to strike on, page 2, line 38 and page 5, line 42, "Filed a false or malicious action or claim with the court;". Representative Garner seconded the motion. He stated that he would prefer that section 2 be stricken. He was concerned with linking good time credits with actions brought to the court.

Representative Pugh made a substitute motion to strike sections 2 & 3. Representative Garner seconded the motion. Representative Graeber stated that this would strike the whole intent of the bill which is to cut down on the filing of lawsuits which are false. The motion failed.

Representative Haley's motion failed 8-10.

Representative Graeber made a motion to report HB 2310 favorably for passage. Representative Rutledge seconded the motion. The motion carried.

HB 2318 - Durable power of attorney may include power to convey homestead rights

CONTINUATION SHEET

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

Representative Snowbarger made a motion to report **HB 2318** favorably for passage. Representative Adkins seconded the motion.

Representative Snowbarger made a substitute motion to add in line 23 "mortgages". Representative Adkins seconded the motion. The motion carried.

Representative Snowbarger made a motion to report **HB 2318** favorably for passage as amended. Representative Adkins seconded the motion. The motion carried.

HB 2425 - Penalty for rape is increased to severity level 1; penalty for criminal discharge of firearm at an occupied building or vehicle which results in bodily harm

Representative Grant made a motion to report **HB 2425** favorably for passage. Representative Adkins seconded the motion.

Lisa Moots, Executive Director Kansas Sentencing Commission, suggested moving the criminal discharge to a higher severity level because it would be inconsistent with other crimes at severity level 3 and lower.

Representative Garner made a substitute motion to change severity level so that if a drive by shooting results in great bodily harm it would be a level 3. Representative Grant seconded the motion. The motion carried.

Representative Grant made a motion to report **HB 2425** favorably for passage as amended. Representative Ott seconded the motion. The motion carried.

HB 2331 - Repealing not guilty by reason of insanity; creating the defense of lack of mental state

Representative Mays made a motion to report **HB 2331** favorably for passage. Representative Rutledge seconded the motion. The motion carried.

HB 2396 - Transfer of real property on death of owner; relating to an heir who files a notification of interest in title.

Representative Haley made a motion to report **HB 2396** favorably for passage. The motion was seconded. The motion carried.

HB 2391 - Authority and benefits of certain special deputy sheriffs

Representative Mays made a motion to report **HB 2391** favorably for passage. Representative Pauls seconded the motion.

Representative Snowbarger made a substitute motion to table the bill. Representative Garner seconded the motion. The motion failed 6-7.

The original motion carried.

HB 2412 - Include in the crime of perjury presenting false testimony to a legislative committee.

Representative Nichols provided the committee with a handwritten amendment that would replace section 1 and delete lines 39 & 40. (Attachment 4) He made a motion to have the amendment placed in the bill. Representative Edmonds seconded the motion.

Representative Heinemann commented that the House and Senate have Rules of Procedure to follow and believed that this would be the easiest way to deal with those who present false testimony.

Representative Garner made a substitute motion to have the Chairman request an interim study on the issue of presenting false testimony to a legislative committee. Representative Pauls seconded the motion. The motion carried.

HB 2299 - Giving worthless checks and causing an unlawful prosecution for worthless checks.

Representative Rutledge made a motion to report **HB 2299** favorably for passage. Representative Pauls seconded the motion.

CONTINUATION SHEET

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

Representative Garner made a substitute motion to amend in the provisions of **HB 2504** - attorney fees may be awarded in civil collection for worthless checks. Representative Goodwin seconded the motion. The motion failed.

The original motion carried.

HB 2111 - Civil procedure, change of venue

Representative Graeber made a motion to report **HB 2111** favorably for passage. Representative Howell seconded the motion.

Representative Howell made a substitute motion to delete the provisions of **HB 2111** and replace it with the balloon amendment, which would allow jails to be located in other areas besides the county seat. (Attachment 5) Representative Garner seconded the motion. The motion carried.

Representative Graeber made a motion to report **HB 2111** favorably for passage as amended. Representative Howell seconded the motion. The motion carried.

HB 2001 - Limited liability for damages caused by amusement rides owned by nonprofit groups

Representative Nichols made a motion to report **HB 2001** favorably for passage. Representative Spangler seconded the motion.

Representative Nichols made a substitute motion to insert in line 33 "or non-profit or operate for more than 4 consecutive days" Representative Spangler seconded the motion. The motion failed.

Representative Garner made a motion to table the bill. Representative Snowbarger seconded the motion. The motion carried.

HB 2084 - Creating the Kansas crime tip hotline; creating the crime tip hotline fund.

Representative Edmonds made a motion to report **HB 2084** favorably for passage. Representative Nichols seconded the motion.

Representative Adkins made a substitute motion to table the bill. Representative Graeber seconded the motion. The motion carried.

The next meeting is scheduled for March 8, 1995

Rep. OH
2/24/95

HOUSE BILL No. 2012

House Judiciary
2-24-95
Attachment 1

By Representatives Phill Kline and Howell, Aurand, Ballou, Boston, Bradley, Cox, Crabb, Edmonds, Farmer, Feuerborn, Flower, Franklin, Freeborn, Geringer, Gilmore, Graeber, Grant, Hayzlett, Horst, Hummerickhouse, Hutchins, Jennison, Kejr, King, Landwehr, Lane, Luthi, Mason, Mayans, Mays, Mollenkamp, Myers, Neufeld, B. Nichols, O'Connor, Ott, Packer, Powell, Powers, Pugh, Shallenburger, Shore, Sloan, Spangler, Thimesch, Toplikar, Vickrey, Wagle, Weber, Wilk, Wilson and Yoh

2-6

16 AN ACT concerning criminals; relating to restitution paid to the victims;
17 concerning records open to the victim; relating to programs established
18 by the department of corrections; amending K.S.A. 60-715 and 60-
19 2403 and K.S.A. 1994 Supp. 21-4603d, 21-4610, 21-4611, 22-3424, 22-
20 3717, 22-3718, ~~45-221 and 75-5210 and repealing the existing sections;~~
21 also repealing K.S.A. 1994 Supp. 45-221a, 45-221b and 45-221c.

38-1663,

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

23 New Section 1. (a) (1) In addition to any punishment, the court shall
24 order the defendant to make restitution to the victim for:

or adjudication

25 (A) Damage or loss caused directly or indirectly by the defendant's
26 offense; and

or juvenile offender

27 (B) damage or loss related to the defendant's criminal episode, unless

or juvenile offender's

28 the court finds clear and compelling reasons not to order such restitution.

29 Restitution may be monetary or nonmonetary restitution. The court shall
30 make the payment of restitution a condition of probation in accordance
31 with K.S.A. 21-4610, and amendments thereto. An order requiring the
32 defendant to make restitution to a victim does not remove or diminish a
33 court order payment to the crime victims compensation fund.

by the defendant

34 (2) (A) If the court does not order restitution, or orders restitution
35 of only a portion of the damages, as provided in this section, it shall state
36 on the record in detail the reasons therefor.

37 (B) An order of restitution entered as a part of a plea agreement is
38 as definitive and binding as any other order of restitution, and a statement
39 to such effect must be made part of the plea agreement. A plea agreement
40 may contain provisions that order restitution relating to criminal offenses
41 committed by the defendant, to which the defendant did not specifically
42 enter a plea.
43

or juvenile offender

1-2

or juvenile offender

1 (3) The term "victim" as used in this section and in any provision of
2 law relating to restitution includes the aggrieved party, the aggrieved party's
3 estate if the aggrieved party is deceased, and the aggrieved party's
4 next of kin if the aggrieved party is deceased as a result of the offense.

5 (b) When an offense has resulted in bodily injury to a victim, a restitution
6 order entered pursuant to subsection (a) shall require that the
7 defendant

8 (1) Pay the cost of necessary medical and related professional services
9 and devices relating to physical, psychiatric, and psychological care, including
10 nonmedical care and treatment rendered in accordance with a recognized method of healing.

11 (2) Pay the cost of necessary physical and occupational therapy and
12 rehabilitation.

13 (3) Reimburse the victim for income lost by such victim as a result
14 of the offense.

15 (4) In the case of an offense which resulted in bodily injury that also
16 resulted in the death of a victim, pay an amount equal to the cost of
17 necessary funeral and related services.

18 (c) (1) The court may require that the defendant make restitution
19 under this section within a specified period or in specified installments.

20 (2) The end of such period or the last such installment shall not be
21 later than:

22 (A) The end of the period of probation if probation is ordered;

23 (B) five years after the end of the term of imprisonment imposed if
24 the court does not order probation; or

25 (C) five years after the date of sentencing in any other case.

26 (3) If not otherwise provided by the court under this subsection, restitution
27 must be made immediately.

28 If the restitution ordered by the court is not made within the time
29 period specified, the court may continue the restitution order through
30 the duration of the civil judgment provision set forth in K.S.A. 60-2403,
31 and amendments thereto.

32 (d) If a defendant is placed on probation or paroled, complete satisfaction
33 of any restitution ordered under this section shall be a condition
34 of such probation or parole. The court may revoke probation, and the
35 parole board may revoke parole, if the defendant fails to comply with
36 such order.

37 (e) An order of restitution may be enforced by the state, or by a victim
38 named in the order to receive the restitution, in the same manner as a
39 judgment in a civil action. The outstanding unpaid amount of the order
40 of restitution bears interest in accordance with K.S.A. 16-204, and amendments
41 thereto, and, when properly recorded, becomes a lien on real estate
42 owned by the defendant.

or
; or
(D) five years after the date
of adjudication of a juvenile offender

or juvenile offender

1 (f) The court, in determining whether to order restitution and the
 2 amount of such restitution, shall consider the amount of the loss sustained
 3 by any victim as a result of the offense and may consider the financial
 4 resources of the defendant, ~~the present and potential future financial~~
 5 needs and earning ability of the defendant ~~and such defendant's depend-~~
 6 ents, and such other factors which it deems appropriate.

or juvenile offender

7 (g) Any dispute as to the proper amount or type of restitution shall
 8 be resolved by the court by a preponderance of the evidence. The burden
 9 of demonstrating the amount of the loss sustained by a victim as a result
 10 of the offense is on the prosecuting attorney. The burden of demonstrat-
 11 ing the present financial resources and the absence of potential future
 12 financial resources of the defendant ~~and the financial needs of the defen-~~
 13 ~~dant and the defendant's dependents is on the defendant.~~ The burden of
 14 demonstrating such other matters as the court deems appropriate is upon
 15 the party designated by the court as justice requires.

or juvenile offender's

or juvenile offender

or juvenile offender's

16 (h) The conviction of a defendant ~~for an offense involving the act~~
 17 giving rise to restitution under this section shall estop the defendant ~~from~~
 18 denying the essential allegations of that offense in any subsequent civil
 19 proceeding. An order of restitution hereunder will not bar any subsequent
 20 civil remedy or recovery, but the amount of such restitution shall be set
 21 off against any subsequent independent civil recovery.

or the adjudication of a juvenile offender

or juvenile offender

22 (i) When a corporation or unincorporated association is ordered to
 23 make restitution, the person authorized to make disbursements from the
 24 assets of such corporation or association shall pay restitution from such
 25 assets, and such person may be held in contempt for failure to make such
 26 restitution.

27 (j) (1) The amount of restitution established by the court shall be
 28 enforced as judgments for payment of money in civil cases pursuant to
 29 the code of civil procedure under chapter 60 of the Kansas Statutes An-
 30 notated, and amendments thereto. If a hearing was held pursuant to
 31 K.S.A. 22-3424, and amendments thereto, the judgment shall become an
 32 attachment or garnishment pursuant to article 7 of chapter 60 of the
 33 Kansas Statutes Annotated, and amendments thereto.

34 (2) The restitution obligation is not subject to discharge in bank-
 35 ruptcy, whether voluntary or involuntary, or to any other statutory or
 36 common law proceeding for relief against creditors.

37 (k) (1) The court may order the clerk of the district court to collect
 38 and disburse restitution payments in any case.

39 (2) The court may order the department of corrections to collect and
 40 disburse restitution and other payments from persons remanded to the
 department of corrections custody or supervision.

(3) The court may order the department of
 social and rehabilitation services to collect and disburse
 restitution and other payments from persons remanded
 to the department of social and rehabilitation services custody or supervision

43 Section 2. K.S.A. 1994 Supp. 21-4603d is hereby amended to read
 as follows: 21-4603d. (a) Whenever any person has been found guilty of

51

1 that person shall be considered the representative or agent for the sec-
2 retary.

3 (i) The secretary shall establish administrative and fiscal procedures
4 to permit the use of regional or community institutions, local govern-
5 mental or private facilities or halfway houses for the placement of inmates
6 released for the purposes of this act and for the work and educational
7 release programs under K.S.A. 75-5267 and amendments thereto.

8 (j) The secretary may establish correctional work facilities and select
9 inmates to be assigned to such facilities.

10 (k) The secretary may acquire, in the name of the state, by lease,
11 purchase or contract additional facilities as may be needed for the housing
12 of persons in the secretary's custody.

13 (l) The secretary is hereby authorized to use any of the inmates as-
14 signed to the secretary's custody in the construction and repair of build-
15 ings or property on state owned or leased grounds.

16 (m) For the purposes of establishing and carrying out the programs
17 provided for by subsection (a) and by K.S.A. 75-5267 and amendments
18 thereto, the secretary may contract with qualified individuals, partner-
19 ships, corporations or organizations; with agencies of the state; or with
20 the United States or any political subdivision of the state, or any agency
21 thereof.

22 Sec. 12. K.S.A. 60-715 and 60-2403 and K.S.A. 1994 Supp. 21-4603d,
23 21-4610, 21-4611, 22-3424, 22-3717, 22-3718, 45-221, 45-221a, 45-221b,
24 45-221c and 75-5210 are hereby repealed.

25 Sec. 13. This act shall take effect and be in force from and after its
26 publication in the statute book.

Insert § KSA 1994 38-1663
Reumber remaining sections

38-1663,

Sec. 12. K.S.A. 1994 Supp. 38-1663 is hereby amended to read as follows: 38-1663. (a) When a respondent has been adjudged to be a juvenile offender, the judge may select from the following alternatives:

(1) Place the juvenile offender on probation for a fixed period, subject to the terms and conditions the court deems appropriate, ~~including a requirement of making restitution as required by subsection (d).~~

(2) Place the juvenile offender in the custody of a parent or other suitable person, subject to the terms and conditions the court orders, ~~including a requirement of making restitution as required by subsection (d).~~

(3) Place the juvenile offender in the custody of a youth residential facility, subject to the terms and conditions the court orders.

(4) Place the juvenile offender in the custody of the secretary.

(5) Impose any appropriate combination of subsections (a)(1) and (2), subsection (a)(3) or subsection (a)(4) and make other orders directed to the juvenile offender as the court deems appropriate.

(6) Commit the juvenile offender, if 13 years of age or older, to a state youth center if the juvenile offender:

(A) Has had a previous adjudication as a juvenile offender under this code or as a delinquent or miscreant under the Kansas juvenile code; or

(B) has been adjudicated a juvenile offender as a result of having committed an act which, if done by a person 18 years of age or over, would constitute a class A, B or C felony as defined by the Kansas criminal code or, if done on or after July 1, 1993, would constitute an off-grid crime or a nondrug crime ranked in severity level 1 through 5 or a drug crime ranked in severity level 1 through 3.

(7) Place the juvenile offender under a house arrest program administered by the court pursuant to K.S.A. 21-4603b and amendments thereto.

(b) (1) In addition to any other order authorized by this section, the court may order the juvenile offender and the parents of the juvenile offender to:

(A) Attend counseling sessions as the court directs; or

(B) participate in mediation as the court directs. Participants in such mediation may include, but shall not be limited to, the victim, the juvenile offender and the juvenile offender's parents. Mediation shall not be mandatory for the victim.

(2) Upon entering an order requiring a juvenile offender's parent to attend counseling sessions or mediation, the court shall give the parent notice of the order. The notice shall inform the parent of the parent's right to request a hearing within 10 days after entry of the order and the parent's right to employ an attorney to represent the parent at the hearing or, if the parent is financially unable to employ an attorney, the

parent's right to request the court to appoint an attorney to represent the parent. If the parent does not request a hearing within 10 days after entry of the order, the order shall take effect at that time. If the parent requests a hearing, the court shall set the matter for hearing and, if requested, shall appoint an attorney to represent the parent. The expense and fees of the appointed attorney may be allowed and assessed as provided by K.S.A. 38-1606 and amendments thereto.

(3) The costs of any counseling or mediation may be assessed as expenses in the case. No mental health center shall charge a fee for court-ordered counseling greater than that the center would have charged the person receiving the counseling if the person had requested counseling on the person's own initiative. No mediator shall charge a fee for court-ordered mediation greater than that the mediator would have charged the person participating in the mediation if the person had requested mediation on the person's own initiative.

(c) (1) If a respondent has been adjudged to be a juvenile offender, the court, in addition to any other order authorized by this section, may suspend the juvenile offender's driver's license or privilege to operate a motor vehicle on the streets and highways of this state. The duration of the suspension ordered by the court shall be for a definite time period to be determined by the court. Upon suspension of a license pursuant to this subsection, the court shall require the juvenile offender to surrender the license to the court, which shall transmit the license to the division of motor vehicles of the department of revenue, to be retained until the period of suspension expires. At that time, the licensee may apply to the division for return of the license. If the license has expired, the juvenile offender may apply for a new license, which shall be issued promptly upon payment of the proper fee and satisfaction of other conditions established by law for obtaining a license unless another suspension or revocation of the juvenile offender's privilege to operate a motor vehicle is in effect. As used in this subsection, "highway" and "street" have the meanings provided by K.S.A. 8-1424 and 8-1473, and amendments thereto. Any respondent who is adjudged to be a juvenile offender who does not have a driver's license may have such juvenile offender's driving privileges revoked. No Kansas driver's license shall be issued to a juvenile offender whose driving privileges have been revoked pursuant to this section for a definite time period to be determined by the court.

(2) In lieu of suspending the driver's license or privilege to operate a motor vehicle on the highways of this state of any respondent adjudged to be a juvenile offender, as provided in subsection (c)(1), the court in which such juvenile offender was adjudged to be a juvenile offender may enter an order which places conditions on such juvenile offender's privilege of operating a motor vehicle on the highways of this state, a certified copy of which such juvenile offender shall be required to carry any time such juvenile offender is operating a motor

vehicle on the highways of this state. Any such order shall prescribe the duration of the conditions imposed and shall specify that such duration shall be for a definite time period to be determined by the court. Upon entering an order restricting a juvenile offender's license hereunder, the court shall require such juvenile offender to surrender such juvenile offender's driver's license to the court who shall cause it to be transmitted to the division of vehicles, together with a copy of the order. Upon receipt thereof, the division of vehicles shall issue without charge a driver's license which shall indicate on its face that conditions have been imposed on such juvenile offender's privilege of operating a motor vehicle and that a certified copy of the order imposing such conditions is required to be carried by the juvenile offender for whom the license was issued any time such juvenile offender is operating a motor vehicle on the highways of this state. If the juvenile offender convicted is a nonresident, the court shall cause a copy of the order to be transmitted to the division and the division shall forward a copy of it to the motor vehicle administrator of such juvenile offender's state of residence. Such court shall furnish to any juvenile offender whose driver's license has had conditions imposed on it under this section a copy of the order, which shall be recognized as a valid Kansas driver's license until such time as the division shall issue the restricted license provided for in this subsection. Upon expiration of the period of time for which conditions are imposed pursuant to this subsection, the licensee may apply to the division for the return of the license previously surrendered by such licensee. In the event such license has expired, such juvenile offender may apply to the division for a new license, which shall be issued immediately by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless such juvenile offender's privilege to operate a motor vehicle on the highways of this state has been suspended or revoked prior thereto. If any juvenile offender shall violate any of the conditions imposed under this subsection, such juvenile offender's driver's license or privilege to operate a motor vehicle on the highways of this state shall be revoked for a period as determined by the court in which such juvenile offender is convicted of violating such conditions.

(d) ~~Whenever a juvenile offender is placed pursuant to subsection (a)(1) or (2),~~ In addition to or in lieu of any other order authorized by this section, ~~the court, unless it finds compelling circumstances which would render a plan of restitution unworkable,~~ shall order the juvenile offender to make restitution to persons who sustained loss by reason of the offense. ~~The restitution shall be made either by payment of an amount fixed by the court or by working for the persons in order to compensate for the loss~~ as provided in section 1. If the court finds clear and compelling circumstances which would render a plan of restitution unworkable, the court may order the juvenile offender to perform charitable or social service for organizations

performing services for the community.

~~Nothing in this subsection shall be construed to limit a court's authority to order a juvenile offender to make restitution or perform charitable or social service under circumstances other than those specified by this subsection or when placement is made pursuant to subsection (a)(3) or (4).~~

(e) In addition to or in lieu of any other order authorized by this section, the court may order a juvenile offender to pay a fine not exceeding \$250 for each offense. In determining whether to impose a fine and the amount to be imposed, the court shall consider the following:

(1) Imposition of a fine is most appropriate in cases where the juvenile offender has derived pecuniary gain from the offense.

(2) The amount of the fine should be directly related to the seriousness of the juvenile offender's offense and the juvenile offender's ability to pay.

(3) Payment of a fine may be required in a lump sum or installments.

(4) Imposition of a restitution order is preferable to imposition of a fine.

(5) The juvenile offender's duty of payment should be limited in duration and in no event should the time necessary for payment exceed the maximum term which would be authorized if the offense had been committed by an adult.

(f) In addition to or in lieu of any other order authorized by this section, if a juvenile is adjudged to be a juvenile offender by reason of a violation of the uniform controlled substances act (K.S.A. 65-4101 et seq. and amendments thereto) or K.S.A. 41-719, 41-727, 41-804, 41-2719, 41-2720, 65-4152, 65-4153, 65-4154 or 65-4155, and amendments thereto, the court shall order the juvenile offender to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008 and amendments thereto and to pay a fee not to exceed the fee established by that statute for such evaluation, except that such evaluation may be waived by the court if the court finds that the juvenile offender has successfully completed an alcohol and drug evaluation, approved by the community-based alcohol and drug safety action program, subsequent to the offender's arrest on this offense. If the court finds that the juvenile offender and those legally liable for the offender's support are indigent, the fee may be waived. In no event shall the fee be assessed against the secretary or the department of social and rehabilitation services.

(g) The board of county commissioners of a county may provide by resolution that the parents or guardians of any juvenile offender placed under a house arrest program pursuant to subsection (a)(7) shall be required to pay to the county the cost of such house arrest program. The board of county commissioners shall further prepare a sliding financial scale based on the ability of the parents to pay for such a program.

(h) In addition to any other order authorized by this section, if child support has been requested and the parent or parents have a duty to support the respondent the court may, and when custody is placed with the secretary shall, order one or both parents to pay child support. The court shall determine, for each parent separately, whether the parent is already subject to an order to pay support for the respondent. If the parent is not presently ordered to pay support for the respondent and the court has personal jurisdiction over the parent, the court shall order the parent to pay child support in an amount determined under K.S.A. 38-16,117 and amendments thereto. Except for good cause shown, the court shall issue an immediate income withholding order pursuant to K.S.A. 23-4,105 et seq. and amendments thereto for each parent ordered to pay support under this subsection, regardless of whether a payor has been identified for the parent. A parent ordered to pay child support under this subsection shall be notified, at the hearing or otherwise, that the child support order may be registered pursuant to K.S.A. 38-16,119 and amendments thereto. The parent shall also be informed that, after registration, the income withholding order may be served on the parent's employer without further notice to the parent and the child support order may be enforced by any method allowed by law. Failure to provide this notice shall not affect the validity of the child support order.

(i) Any order issued by the judge pursuant to this section shall be in effect immediately upon entry into the judge's minutes.

HOUSE BILL No. 2180

By Committee on Judiciary

1-25

9 AN ACT concerning administrative procedure and judicial review;
10 amending K.S.A. 77-514, 77-519, 77-522, 77-526, 77-527, 77-549, 77-
11 612, 77-613, 77-614 and 77-615 and K.S.A. 1994 Supp. 77-529 and
12 repealing the existing sections. (a)

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

15 New Section 1. A person aggrieved by the failure of an agency to act
16 in a timely manner as required by K.S.A. 77-526, 77-529 or 77-549, and
17 amendments thereto, or as otherwise required by law, is entitled to in-
18 terlocutory review of the agency's failure to act.

(b) If an agency does not act on a petition for reconsideration within the time prescribed by K.S.A. 77-529 and amendments thereto, a party may petition for judicial review of the final order [at any time within 1 year of service of such final order]. If prior to the filing of a petition for judicial review under this subsection, the agency grants the petition for reconsideration, [any petition for judicial review under this subsection shall be dismissed and] the time for seeking judicial review of an order rendered upon such reconsideration shall be governed by subsection (c) of K.S.A. 77-613 and amendments thereto.

1 sas administrative procedure act, the model rules of procedure, and other
2 provisions of law, to govern administrative law judges;

3 (4) to establish standards and procedures for the evaluation, training,
4 promotion and discipline of administrative law judges; and

5 (5) to facilitate the performance of the responsibilities conferred
6 upon the office by the Kansas administrative procedure act.

7 (f) The director may:

8 (1) Maintain a staff of reporters and other personnel; and

9 (2) implement the provisions of this section and rules and regulations
10 adopted under its authority.

11 (g) The department of administration shall adopt rules and regula-
12 tions to establish fees to charge a state agency for the cost of using an
13 administrative law judge.

14 (h) Effective July 1, 1995, any attorney employed at that time as a
15 full-time hearing officer by ~~any state agency, except the state corporation~~
16 ~~commission, commissioner of insurance or director of taxation,~~ shall be
17 transferred to the department of administration. Such personnel shall
18 retain all rights under the state personnel system and retirement benefits
19 under the laws of this state, and such person's services shall be deemed
20 to have been continuous.

any agency with Governor-appointed secretaries
subject to confirmation by the Senate

21 New Sec. 2. (a) There is hereby created a state advisory council for
22 administrative hearings. The advisory council shall consist of seven mem-
23 bers appointed by the governor. All members of the council shall serve
24 at the pleasure of the governor. Members of the council shall not receive
25 compensation or expense allowances for serving on the council.

26 (b) The council shall meet on call of the secretary of administration.

27 (c) The advisory council shall advise the secretary of administration
28 and the director of the office of administrative hearings on policy matters
29 affecting the office of administrative hearings and on rules and regulations
30 adopted by the director.

31 Sec. 3. K.S.A. 77-514 is hereby amended to read as follows: 77-514.

32 (a) ~~The agency head or one or more other persons designated by the~~
33 ~~agency head may be the presiding officer. Except as otherwise provided~~
34 ~~by law, state agencies, except the corporation commission, insurance com-~~
35 ~~missioner and director of taxation, shall be required to use an adminis-~~
36 ~~trative law judge assigned by the office of administrative hearing as a~~
37 ~~presiding officer.~~

all agencies with Governor-appointed secretaries
subject to confirmation by the Senate

38 (b) Any person serving or designated to serve alone or with others as
39 presiding officer is subject to disqualification for administrative bias, prej-
40 udice or interest.

(c) Any party may petition for the disqualification of a person
promptly after receipt of notice indicating that the person will preside or
promptly upon discovering facts establishing grounds for disqualification,
43

~~If otherwise authorized by law, the~~
 The ~~chairperson~~ chairperson of a legislative committee or a duly
~~convened~~ convened legislative committee, ~~upon~~ upon the affirmative vote of ~~two-thirds~~ two-thirds
 of ~~its~~ its members ~~in~~ in attendance, may
 require that all testimony, ~~or written~~
 written or oral, presented or to be presented
~~as a part~~ to the committee

~~written~~

shall _____ be submitted to the committee
 pursuant to a
 written affirmation.

Such written affirmation shall be in substantial
 compliance with the following form:

AFFIRMATION OF TESTIMONY

I hereby affirm that the written ^{or oral} testimony that I present ~~to~~ to the
~~Committee~~ legislative committee holding hearings on _____
 is true and correct,

Proposed change to 19-1923

Jails in certain areas other than the county seat; cooperation by area cities. That the county commissioners of any county shall have the power to appropriate any sum out of the county treasury not otherwise appropriated, for the purpose of erecting or building in such area other than the county seat of such county, a jail or holdover, for the use of said county and area cities in which such jail shall be erected; provided that nothing in this act shall be construed as preventing the area cities from joining and cooperating with said county in the erection thereof, nor to exclude the authorities of any area city in said county which any jail that shall be so built from the use of such jail for the use of said cities.