

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 March 20, 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

Others attending: See attached list

HB 2519 - Drivers under 21 blood alcohol concentration .01 or greater, drivers licensed suspended

Staff provided the committee with a balloon draft of possible changes that the committee had discussed when hearings were held on the bill. The balloon consisted of a funding split change that would take 10% from ASAP to go towards a Driving Under the Influence Equipment Fund and to set a standard of positive/negative. (Attachment 1)

Representative Yoh made a motion to adopt the balloon amendment and amend it into **House Substitute for SB 127**. Representative Rutledge seconded the motion. The motion carried.

Representative Garner was concerned that there is currently a 30 days suspension for an under age drinkers, who are not intoxicated, and this balloon would be going with a 6 months suspension. Chairman O'Neal explained the 6 months suspension would be for those person under 21 who test positive for any alcohol level.

Representative Garner made a motion to amend in Division of Motor Vehicle balloon amendment (which was provided to the committee on 3-14-95) and language regarding the Driving Under the Influence Equipment Fund. Representative Pauls seconded the motion.

Representative Rutledge stated that he opposed the motion because there is already different standards imposed with commercial drivers licenses and the statute already says that it's illegal for minors to drink, so any BAC level would be a violation of that statute and therefore a zero tolerance level should be set.

Representative Yoh made a substitute motion to amend in Division of Motor Vehicle balloon amendment with zero tolerance replacing the .04 standard and adding the Driving Under the Influence Equipment Fund language. Representative Rutledge seconded the motion. The motion carried 10-9.

Representative Spangler made a motion to amend in **HB 2510** - Requiring the use of ignition interlock device under certain restrictions of driver's licenses. Representative Haley seconded the motion. The motion carried 9-8.

Representative Adkins made a motion to amend in **HB 2421**- Standards for certification of community-based alcohol and drug safety action programs to provide services to DUI offenders. Representative Yoh seconded the motion. The motion carried 9-8.

Representative Adkins made a motion to amend in 6 months suspension for those under 21 who test positive for alcohol. Representative Yoh seconded the motion. The motion carried 9-8.

Representative Adkins made a motion to apply the zero tolerance standard to commercial drivers licenses. Representative Rutledge seconded the motion.

Representative Garner made a substitute motion to table the bill because this was a big policy change. Representative Pauls seconded the motion. The motion failed.

Representative Adkins' motion failed.

Representative Adkins made a motion to report **House Substitute for SB 127** favorably for passage. Representative Spangler seconded the motion. The motion carried.

HCR 5009 - Constitutional amendment (Kansas) regarding rights of parents for upbringing and education of their children

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313-S-Statehouse, at 3:30 p.m. on March 20, 1995.

Representative Heinemann made a motion to report **HCR 5009** favorably for passage. Representative Goodwin seconded the motion.

Representative Heinemann provided the committee with a balloon amendment (Attachment 2) He made a substitute motion to amend in the balloon. Representative Goodwin seconded the motion.

Many of the committee members were not comfortable with the explanation of a vote against the amendment. Upon further discussion the committee suggested the following language "A vote against the amendment would favor retaining the current statues of the law as interpreted by court decisions, which recognizes a protected right of parents to direct the upbringing of their children free from unwarranted state infringement."

With permission of the second, Representative Heinemann amended the balloon amendment to include the change in the explanatory statement regarding a vote against the amendment.

Chairman O'Neal divided the motion. The first motion was to adopt lines 28-38 of the balloon amendment. The motion carried. The second motion was to adopt the explanatory statement regarding the vote. The motion carried.

Representative Adkins stated that as the Judiciary Committee there is an obligation to consider Constitutional amendments very sparingly and when they are in the best interest of both the Government and the citizens of Kansas to act on them favorably. However, the parental rights amendment has become an issue of convenience for some groups in the state to insert the language into the Constitution. Those who look at this issue rationally understand that the rights of parents are recognized.

Representative Snowbarger made a motion to report **HCR 5009** favorably for passage as amended. Representative Graeber seconded the motion. The motion carried.

SB 140 - Amendments to rules of civil procedure

Representative Snowbarger made a motion to report **SB 140** favorably for passage. Representative Adkins seconded the motion.

The committee had concerns with a Senate amendment which dealt with the "office of the clerk of the district court being inaccessible". They had questions as to who would make the call that the "office was inaccessible" especially since the court accepts fax copies.

Representative Graeber made a substitute motion to strike lines 12-17 which deal with the court being inaccessible. Representative Grant seconded the motion.

Representative Pugh explained that maybe the amendment by the Senate was directed at the situation where courts no longer work an eight hour day. They have been closing early in the day and a lot of times there is no one to accept the filings. Chairman O'Neal commented that another concern is if one plans on filing the document by fax and discovers that the fax phone line is dead, would that count as the court being inaccessible?

The Graeber motion failed.

Representative Garner made a motion to replace "inaccessible" with "is closed". Representative Rutledge seconded the motion. The motion failed.

Representative Nichols made a motion to amend in the balloon amendment which dealt with request for admissions. (Attachment 3). Representative Pugh seconded the motion. The motion carried.

Representative Adkins made a motion to include the expert witness testimony provision in **HB 2429** - Civil procedure; expert testimony in the form of an opinion. Representative Grant seconded the motion. The motion carried.

Representative Nichols made a motion to report **SB 140** favorably for passage as amended. Representative Snowbarger seconded the motion. The motion carried.

SB 3 - Civil commitment, evaluation, care and treatment of persons who commit sexually violent offense

Representative Nichols made a motion to report **SB 3** favorably for passage. Representative Graeber seconded the motion.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313-S-Statehouse, at 3:30 p.m. on March 20, 1995.

Representative Heinemann made a substitute motion to amend in the balloon amendment provided by the Attorney General's office.(Attachment 4) Representative Ott seconded the motion. The committee commented that the balloon amendment was not a complete sentence.

Chairman O'Neal commented that **HB 2296** - sexually violent predators; multidisciplinary teams formed by department of corrections to review records of sexually violent predators; attorney general shall represent the state in civil commitment proceedings, was introduced and the committee did not have time to consider it. However, the Attorney General's Office and Department of Corrections had reported back that the procedure of screening is working, but what needs to be decided is where the prosecutions will take place; the state needs to either fund the mandate or have the Attorney General's office handle the prosecution and give them funding. The second part of the bill would have the Attorney General's office do the prosecution but once passed it would have to go to the Appropriations Committee for funding. Representative Garner stated that if the state was going to pay the cost of the prosecutions, then the Attorney General's office should have the control.

Representative Heinemann made a substitute motion to have the Attorney General's office receive information from the screening panel. The Attorney General would determine whether to file a civil commitment, and if so, that office would handle the case. The motion was seconded. The motion carried.

Jill Wolters stated that a clean-up of the balloon amendment from the Attorney Generals office would have the stricken language remain stricken and the following language would be "Any psychological reports, drug and alcohol reports, treatment records, reports of the diagnostic center, medical records or victim impact statements which have been submitted to the court or admitted into evidence under this act shall be made available to the prosecutor or counsel."

Representative Heinemann made a motion to adopt the language staff suggested. Representative Goodwin seconded the motion. The motion carried.

Representative Nichols made a motion to strike "which has been submitted to the court under this act". Representative Grant seconded the motion. The motion carried.

Representative Heinemann made a motion to report **SB 3** favorably for passage as amended. Representative Goodwin seconded the motion. The motion carried.

SB 222 - Crime victims assistance fund

Representative Yoh made a motion to report **SB 222** favorably for passage. Representative Nichols seconded the motion. The motion carried.

SB 333 - Controlled substances, penalties, violations involving marijuana of municipal ordinances

Representative Grant made a motion to report **SB 333** favorably for passage. Representative Nichols seconded the motion.

Representative Pauls made a substitute motion to have the bill effective upon publication in the Kansas Register. Representative Garner seconded the motion. The motion carried.

Representative Garner made a motion to report **SB 333** favorably for passage as amended. Representative Pauls seconded the motion. The motion carried.

SB 312 - Scope of review of appeals of departure sentences under the sentencing guidelines act

Representative Garner made a motion to report **SB 312** favorably for passage. Representative Grant seconded the motion.

Representative Grant made a substitute motion to amend in the provisions on **HB 2425** - Penalty for rape is increased to severity level 1; penalty for criminal discharge of a firearm at occupied building or vehicle which results in bodily harm, as it passed the House Committee as a Whole. Representative Ott seconded the motion. The motion carried.

Representative Goodwin made a motion to report **SB 312** favorably for passage as amended. Representative Grant 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 March 20, 1995.

Reconsideration of action on **SB 333**

Representative Nichols made a motion to reconsider the committees action on **SB 333**. Representative Rutledge seconded the motion. The motion carried.

Representative Nichols made a substitute motion to amend in the provisions of **HB 2449** - allow KBI to collect genetic markers. Representative Rutledge seconded the motion. The motion carried.

Representative Nichols made a motion to report **SB 333** favorably for passage as amended. Representative Rutledge seconded the motion. The motion carried.

SB 212 - Award of attorney fees to attorney general or county or district attorney in consumer protection cases

Representative Rutledge made a motion to report **SB 212** favorably for passage. Representative Grant seconded the motion.

Representative Rutledge made a substitute motion to amend in the provisions of **SB 224** - Diversion programs for juvenile offender. Representative Grant seconded the motion . The motion carried.

Representative Haley made a motion to amend in the provision of **HB 2562** - Transfer of real property on death of owner, relating to an heir who files notification of interest in title. Representative Edmonds seconded the motion.

The committee discussed with staff the possibility of amending in **HB 2562** into **SB 212** and staff stated that is could be a problem because it would jeopardize the constitutionality of the bill.

Representative Haley's motion failed.

Representative Nichols made a motion to report **SB 212** favorably for passage as amended. Representative Grant seconded the motion. The motion carried.

The committee meeting adjourned at 7:00 p.m.

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: March 20, 1995

NAME	REPRESENTING
Betty McBride	KDOR - MVD
Gene Johnson	Ks ASAA Coord. Comm
John W. Smith	KDOR - DMV
Kyle Smith	KBI
James Q. Keller	KDOR - Legal Services
Lisa Mott	KSC
Kay Farley	OJA
Sandy Jones	Citizen - Arkansas City
Clara Remper	Right to Life of Mo.
James Crawford	Intern
Dale Singer	KBI
Peggy James	PCAL
Sydney Hardman	Ks Action for Children
Wm Jennings Bryan Omond	Heu, KS
Debra Scheweis	ATI
Jon Johnson	Ks Governmental Consulting
Michal A. Rod	KPB
DON LINDSEY	UTU
Charles Simmons	Dept. of Corrections

PROPOSED HOUSE Substitute for SENATE BILL NO. 127

By Committee on Judiciary

AN ACT concerning alcohol or drug related offenses involving the operation of a vehicle; concerning the blood alcohol concentration of a person under 21; amending K.S.A. 1994 Supp. 8-241, 8-259, 8-1001, 8-1002, 8-1013 and 8-1014 and repealing the existing sections.

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

Section 1. K.S.A. 1994 Supp. 8-241 is hereby amended to read as follows: 8-241. (a) Except as provided in K.S.A. 8-2,125 through 8-2,142, and amendments thereto, any person licensed to operate a motor vehicle in this state shall submit to an examination whenever: (1) The division of vehicles has good cause to believe that such person is incompetent or otherwise not qualified to be licensed; ~~or~~ (2) such person has been convicted of a violation of K.S.A. 8-1567, and amendments thereto; or (3) the division of vehicles has suspended such person's license pursuant to subsection (c) of K.S.A. 8-1014, and amendments thereto.

(b) When a person is required to submit to an examination pursuant to subsection (a)(1), the fee for such examination shall be in the amount provided by K.S.A 8-240, and amendments thereto. When a person is required to submit to an examination pursuant to subsection (a)(2) or (a)(3), the fee for such examination shall be \$5. In addition, any person required to submit to an examination pursuant to subsection (a)(2) or (a)(3) shall be required, at the time of examination, to pay a reinstatement fee of ~~\$25~~ \$50. All examination fees collected pursuant to this section shall be disposed of as provided in K.S.A. 8-267, and amendments thereto. All reinstatement fees collected pursuant to this section shall be remitted to the state treasurer, who shall deposit the entire amount in the state treasury and credit 75%

50% to the community alcoholism and intoxication programs fund created pursuant to K.S.A. 41-1126, and amendments thereto ~~and 25%~~, 20% to the juvenile detention facilities fund created by K.S.A. 79-4803, and amendments thereto, 20% to the forensic laboratory and materials fee fund cited in K.S.A. 28-176, and amendments thereto, and 10% to the driving under the influence equipment fund created by section 7.

(c) When an examination is required pursuant to subsection (a), at least five days' written notice of the examination shall be given to the licensee. The examination administered hereunder shall be at least equivalent to the examination required by subsection (e) of K.S.A. 8-247, and amendments thereto, with such additional tests as the division deems necessary. Upon the conclusion of such examination, the division shall take action as may be appropriate and may suspend or revoke the license of such person or permit the licensee to retain such license, or may issue a license subject to restrictions as permitted under K.S.A. 8-245, and amendments thereto.

(d) Refusal or neglect of the licensee to submit to an examination as required by this section shall be grounds for suspension or revocation of the license.

Sec. 2. K.S.A. 1994 Supp. 8-259 is hereby amended to read as follows: 8-259. (a) Except in the case of mandatory revocation under K.S.A. 8-254 or 8-286, and amendments thereto, mandatory suspension for an alcohol or drug-related conviction under subsection (b) or (c) of K.S.A. 8-1014, and amendments thereto, mandatory suspension under K.S.A. 8-262, and amendments thereto, or mandatory disqualification of the privilege to drive a commercial motor vehicle under subsection (a)(1), (2) or (3) of K.S.A. 8-2,142, and amendments thereto, the cancellation, suspension, revocation, disqualification or denial of a person's driving privileges by the division is subject to review. Such review shall be in accordance with the act for judicial review and civil enforcement of agency actions. In the case of review of an order of suspension under K.S.A. 8-1001 et seq., and

amendments thereto, or of an order of disqualification under subsection (a)(4) of K.S.A. 8-2,142, and amendments thereto, the petition for review shall be filed within 10 days after the effective date of the order and venue of the action for review is the county where the administrative proceeding was held or the county where the person was arrested. In all other cases, the time for filing the petition is as provided by K.S.A. 77-613, and amendments thereto, and venue is the county where the licensee resides. The action for review shall be by trial de novo to the court. The court shall take testimony, examine the facts of the case and determine whether the petitioner is entitled to driving privileges or whether the petitioner's driving privileges are subject to suspension, cancellation or revocation under the provisions of this act. The court on review shall consider the petitioner's traffic violations record and liability insurance coverage before granting a stay or other temporary remedy pursuant to K.S.A. 77-616, and amendments thereto. If a stay is granted, it shall be considered equivalent to any license surrendered. If a stay is not granted, trial shall be set upon 20 days' notice to the legal services bureau of the department of revenue. No stay shall be issued if a person's driving privileges are canceled pursuant to K.S.A. 8-250, and amendments thereto.

(b) The clerk of any court to which an appeal has been taken under this section, within 10 days after the final disposition of such appeal, shall forward a notification of the final disposition to the division.

Sec. 3. K.S.A. 1994 Supp. 8-1001 is hereby amended to read as follows: 8-1001. (a) Any person who operates or attempts to operate a vehicle within this state is deemed to have given consent, subject to the provisions of this act, to submit to one or more tests of the person's blood, breath, urine or other bodily substance to determine the presence of alcohol or drugs. The testing deemed consented to herein shall include all quantitative and qualitative tests for alcohol and drugs. A person who is dead or unconscious shall be deemed not to have

withdrawn the person's consent to such test or tests, which shall be administered in the manner provided by this section.

(b) A law enforcement officer shall request a person to submit to a test or tests deemed consented to under subsection (a) if the officer has reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person was driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system; and one of the following conditions exists: (1) The person has been arrested or otherwise taken into custody for any offense involving operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both, or involving driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, in violation of a state statute or a city ordinance; or (2) the person has been involved in a vehicle accident or collision resulting in property damage, personal injury or death. The law enforcement officer directing administration of the test or tests may act on personal knowledge or on the basis of the collective information available to law enforcement officers involved in the accident investigation or arrest.

(c) If a law enforcement officer requests a person to submit to a test of blood under this section, the withdrawal of blood at the direction of the officer may be performed only by: (1) A person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person; (2) a registered nurse or a licensed practical nurse; or (3) any qualified medical technician, including, but not limited to, an emergency medical technician-intermediate or mobile intensive care technician, as those terms are defined in K.S.A. 65-6112, and amendments thereto, or a phlebotomist. When presented with a written statement by a law enforcement officer directing blood to be withdrawn from a person who has tentatively agreed to allow

the withdrawal of blood under this section, the person authorized herein to withdraw blood and the medical care facility where blood is withdrawn may rely on such a statement as evidence that the person has consented to the medical procedure used and shall not require the person to sign any additional consent or waiver form. In such a case, the person authorized to withdraw blood and the medical care facility shall not be liable in any action alleging lack of consent or lack of informed consent. No person authorized by this subsection to withdraw blood, nor any person assisting in the performance of a blood test nor any medical care facility where blood is withdrawn or tested that has been directed by any law enforcement officer to withdraw or test blood, shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices in the community where performed.

(d) If there are reasonable grounds to believe that there is impairment by a drug which is not subject to detection by the blood or breath test used, a urine test may be required. If a law enforcement officer requests a person to submit to a test of urine under this section, the collection of the urine sample shall be supervised by persons of the same sex as the person being tested and shall be conducted out of the view of any person other than the persons supervising the collection of the sample and the person being tested, unless the right to privacy is waived by the person being tested. The results of qualitative testing for drug presence shall be admissible in evidence and questions of accuracy or reliability shall go to the weight rather than the admissibility of the evidence.

(e) No law enforcement officer who is acting in accordance with this section shall be liable in any civil or criminal proceeding involving the action.

(f) (1) Before a test or tests are administered under this section, the person shall be given oral and written notice that:
(A) Kansas law requires the person to submit to and complete one or more tests of breath, blood or urine to determine if the

person is under the influence of alcohol or drugs, or both; (B) the opportunity to consent to or refuse a test is not a constitutional right; (C) there is no constitutional right to consult with an attorney regarding whether to submit to testing; (D) if the person refuses to submit to and complete any test of breath, blood or urine hereafter requested by a law enforcement officer, the person's driving privileges will be suspended for at least one year; (E) if the person is 21 or more years of age at the time of the test, submits to and completes the test or tests and the test results show an alcohol concentration of .08 or greater, the person's driving privileges will be suspended for at least 30 days; (F) if the person is less than 21 years of age at the time of the test, submits to and completes the test or tests, and the test results show a positive result of any alcohol concentration, the person's driving privileges will be suspended for at least 30 days; (G) if the person refuses a test or the test results show an alcohol concentration of .08 or greater and if, within the past five years, the person has been convicted or granted diversion on a charge of driving under the influence of alcohol or drugs, or both, or a related offense or has refused or failed a test, the person's driving privileges will be suspended for at least one year; ~~(G)~~ (H) refusal to submit to testing may be used against the person at any trial on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both; ~~(H)~~ (I) the results of the testing may be used against the person at any trial on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both; and ~~(I)~~ (J) after the completion of the testing, the person has the right to consult with an attorney and may secure additional testing, which, if desired, should be done as soon as possible and is customarily available from medical care facilities and physicians. If a law enforcement officer has reasonable grounds to believe that the person has been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto,

while having alcohol or other drugs in such person's system, the person must also be provided the oral and written notice pursuant to K.S.A. 8-2,145 and amendments thereto. Any failure to give the notices required by K.S.A. 8-2,145 and amendments thereto shall not invalidate any action taken as a result of the requirements of this section. After giving the foregoing information, a law enforcement officer shall request the person to submit to testing. The selection of the test or tests shall be made by the officer. If the person refuses to submit to and complete a test as requested pursuant to this section, additional testing shall not be given unless the certifying officer has probable cause to believe that the person, while under the influence of alcohol or drugs, or both, has operated a vehicle in such a manner as to have caused the death of or serious injury to another person. As used in this section, the officer shall have probable cause to believe that the person operated a vehicle while under the influence of alcohol or drugs, or both, if the vehicle was operated by such person in such a manner as to have caused the death of or serious injury to another person. In such event, such test or tests may be made pursuant to a search warrant issued under the authority of K.S.A. 22-2502, and amendments thereto, or without a search warrant under the authority of K.S.A. 22-2501, and amendments thereto. If the test results show a positive result of a blood or breath alcohol concentration of if such person is less than 21 years of age, or show a blood or breath alcohol concentration of .08 or greater of any person, the person's driving privileges shall be subject to suspension, or suspension and restriction, as provided in K.S.A. 8-1002 and 8-1014, and amendments thereto. The person's refusal shall be admissible in evidence against the person at any trial on a charge arising out of the alleged operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both. If a law enforcement officer had reasonable grounds to believe the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto,

and the test results show a blood or breath alcohol concentration of .01 or greater, the person shall be disqualified from driving a commercial motor vehicle, pursuant to K.S.A. 8-2,142, and amendments thereto. If a law enforcement officer had reasonable grounds to believe the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and the test results show a blood or breath alcohol concentration of .08 or greater, or the person refuses a test, the person's driving privileges shall be subject to suspension, or suspension and restriction, pursuant to this section, in addition to being disqualified from driving a commercial motor vehicle pursuant to K.S.A. 8-2,142, and amendments thereto.

(2) Failure of a person to provide an adequate breath sample or samples as directed shall constitute a refusal unless the person shows that the failure was due to physical inability caused by a medical condition unrelated to any ingested alcohol or drugs.

(3) It shall not be a defense that the person did not understand the written or oral notice required by this section.

(4) No test shall be suppressed because of technical irregularities in the consent or notice pursuant to K.S.A. 8-2,145, and amendments thereto.

(g) Nothing in this section shall be construed to limit the admissibility at any trial of alcohol or drug concentration testing results obtained pursuant to a search warrant.

(h) Upon the request of any person submitting to testing under this section, a report of the results of the testing shall be made available to such person.

(i) This act is remedial law and shall be liberally construed to promote public health, safety and welfare.

Sec. 4. K.S.A. 1994 Supp. 8-1002 is hereby amended to read as follows: 8-1002. (a) Whenever a test is requested pursuant to this act and results in either a test failure or test refusal, a law enforcement officer's certification shall be prepared. If the person had been driving a commercial motor vehicle, as defined in

K.S.A. 8-2,128, and amendments thereto, a separate certification pursuant to K.S.A. 8-2,145 and amendments thereto shall be prepared in addition to any certification required by this section. The certification required by this section shall be signed by one or more officers to certify:

(1) With regard to a test refusal, that: (A) There existed reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system; (B) the person had been placed under arrest, was in custody or had been involved in a vehicle accident or collision; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; and (D) the person refused to submit to and complete a test as requested by a law enforcement officer.

(2) With regard to a test failure, that: (A) There existed reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system; (B) the person had been placed under arrest, was in custody or had been involved in a vehicle accident or collision; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; and (D) the result of the test showed that the person had an a positive result of any alcohol concentration of if such person is less than 21 years of age, in such person's blood or breath or had an alcohol concentration of .08 or greater in such any person's blood or breath.

(3) With regard to failure of a breath test, in addition to those matters required to be certified under subsection (a)(2),

that: (A) The testing equipment used was certified by the Kansas department of health and environment; (B) the testing procedures used were in accordance with the requirements set out by the Kansas department of health and environment; and (C) the person who operated the testing equipment was certified by the Kansas department of health and environment to operate such equipment.

(b) For purposes of this section, certification shall be complete upon signing, and no additional acts of oath, affirmation, acknowledgment or proof of execution shall be required. The signed certification or a copy or photostatic reproduction thereof shall be admissible in evidence in all proceedings brought pursuant to this act, and receipt of any such certification, copy or reproduction shall accord the department authority to proceed as set forth herein. Any person who signs a certification submitted to the division knowing it contains a false statement is guilty of a class B nonperson misdemeanor.

(c) When the officer directing administration of the testing determines that a person has refused a test and the criteria of subsection (a)(1) have been met or determines that a person has failed a test and the criteria of subsection (a)(2) have been met, the officer shall serve upon the person notice of suspension of driving privileges pursuant to K.S.A. 8-1014, and amendments thereto. If the determination is made while the person is still in custody, service shall be made in person by the officer on behalf of the division of vehicles. In cases where a test failure is established by a subsequent analysis of a breath, blood or urine sample, the officer shall serve notice of such suspension in person or by another designated officer or by mailing the notice to the person at the address provided at the time of the test.

(d) In addition to the information required by subsection (a), the law enforcement officer's certification and notice of suspension shall contain the following information: (1) The person's name, driver's license number and current address; (2) the reason and statutory grounds for the suspension; (3) the date

notice is being served and a statement that the effective date of the suspension shall be the 20th calendar day after the date of service; (4) the right of the person to request an administrative hearing; and (5) the procedure the person must follow to request an administrative hearing. The law enforcement officer's certification and notice of suspension shall also inform the person that all correspondence will be mailed to the person at the address contained in the law enforcement officer's certification and notice of suspension unless the person notifies the division in writing of a different address or change of address. The address provided will be considered a change of address for purposes of K.S.A. 8-248, and amendments thereto, if the address furnished is different from that on file with the division.

(e) If a person refuses a test or if a person is still in custody when it is determined that the person has failed a test, the officer shall take any license in the possession of the person and, if the license is not expired, suspended, revoked or canceled, shall issue a temporary license effective until the 20th calendar day after the date of service set out in the law enforcement officer's certification and notice of suspension. If the test failure is established by a subsequent analysis of a breath or blood sample, the temporary license shall be served together with the copy of the law enforcement officer's certification and notice of suspension. A temporary license issued pursuant to this subsection shall bear the same restrictions and limitations as the license for which it was exchanged. Within five days after the date of service of a copy of the law enforcement officer's certification and notice of suspension the officer's certification and notice of suspension, along with any licenses taken, shall be forwarded to the division.

(f) Upon receipt of the law enforcement officer's certification, the division shall review the certification to determine that it meets the requirements of subsection (a). Upon

so determining, the division shall proceed to suspend the person's driving privileges in accordance with the notice of suspension previously served. If the requirements of subsection (a) are not met, the division shall dismiss the administrative proceeding and return any license surrendered by the person.

(g) If the person mails a written request which is postmarked within 10 days after service of the notice, if by personal service, or 13 days after service, if by mail, the division shall schedule a hearing in the county where the alleged violation occurred, or in a county adjacent thereto. The licensee may request that subpoenas be issued in accordance with the notice provided pursuant to subsection (d). Any request made by the licensee to subpoena witnesses must be made in writing at the time the hearing is requested and must include the name and current address of such witnesses and, except for the law enforcement officer or officers certifying refusal or failure, a statement of how the testimony of such witness is relevant. Upon receiving a timely request for a hearing, the division shall mail to the person notice of the time, date and place of hearing in accordance with subsection (1) and extend the person's temporary driving privileges until the date set for the hearing by the division.

(h) (1) If the officer certifies that the person refused the test, the scope of the hearing shall be limited to whether: (A) A law enforcement officer had reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system; (B) the person was in custody or arrested for an alcohol or drug related offense or was involved in a vehicle accident or collision resulting in property damage, personal injury or death; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; and (D) the

person refused to submit to and complete a test as requested by a law enforcement officer.

(2) If the officer certifies that the person failed the test, the scope of the hearing shall be limited to whether: (A) A law enforcement officer had reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system; (B) the person was in custody or arrested for an alcohol or drug related offense or was involved in a vehicle accident or collision resulting in property damage, personal injury or death; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; (D) the testing equipment used was reliable; (E) the person who operated the testing equipment was qualified; (F) the testing procedures used were reliable; (G) the test result determined that the person had an a positive result of any alcohol concentration of if such person is less than 21 years of age in such person's blood or breath or had an alcohol concentration of .08 or greater in such any person's blood or breath; and (H) the person was operating a vehicle.

(i) At a hearing pursuant to this section, or upon court review of an order entered at such a hearing, an affidavit of the custodian of records at the Kansas department of health and environment stating that the breath testing device was certified and the operator of such device was certified on the date of the test shall be admissible into evidence in the same manner and with the same force and effect as if the certifying officer or employee of the Kansas department of health and environment had testified in person. Such affidavit shall be admitted to prove such reliability without further foundation requirement. A certified operator of a breath testing device shall be competent to testify regarding the proper procedures to be used in conducting the test.

(j) At a hearing pursuant to this section, or upon court review of an order entered at such hearing, in which the report of blood test results have been prepared by the Kansas bureau of investigation or other forensic laboratory of a state or local law enforcement agency are to be introduced as evidence, the report, or a copy of the report, of the findings of the forensic examiner shall be admissible into evidence in the same manner and with the same force and effect as if the forensic examiner who performed such examination, analysis, comparison or identification and prepared the report thereon had testified in person.

(k) If no timely request for hearing is made, the suspension period imposed pursuant to this section shall begin upon the expiration of the temporary license granted under subsection (e). If a timely request for hearing is made, the hearing shall be held within 30 days of the date the request for hearing is received by the division, except that failure to hold such hearing within 30 days shall not be cause for dismissal absent a showing of prejudice. At the hearing, the director or the representative of the director, shall either affirm the order of suspension or suspension and restriction or dismiss the administrative action. If the division is unable to hold a hearing within 30 days of the date upon which the request for hearing is received, the division shall extend the person's temporary driving privileges until the date set for the hearing by the division. No extension of temporary driving privileges shall be issued for continuances requested by or on behalf of the licensee. If the person whose privileges are suspended is a nonresident licensee, the license of the person shall be forwarded to the appropriate licensing authority in the person's state of residence if the result at the hearing is adverse to such person or if no timely request for a hearing is received.

(l) All notices affirming or canceling a suspension under this section, all notices of a hearing held under this section and all issuances of temporary driving privileges pursuant to

subsection (k) shall be sent by first-class mail and a U.S. post office certificate of mailing shall be obtained therefor. All notices so mailed shall be deemed received three days after mailing.

(m) The division shall prepare and distribute forms for use by law enforcement officers in giving the notice required by this section.

(n) This section and the applicable provisions contained in subsections (d) and (e) of K.S.A. 8-255 and amendments thereto constitute the administrative procedures to be used for all administrative hearings held under this act. To the extent that this section and any other provision of law conflicts, this section prevails.

(o) The provisions of K.S.A. 60-206 and amendments thereto regarding the computation of time shall not be applicable in determining the effective date of suspension set out in subsection (d) or the time for requesting an administrative hearing set out in subsection (g). "Calendar day" when used in this section shall mean that every day shall be included in computations of time whether a week day, Saturday, Sunday or holiday.

Sec. 5. K.S.A. 1994 Supp. 8-1013 is hereby amended to read as follows: 8-1013. As used in K.S.A. 8-1001 through 8-1010, 8-1011, 8-1012, 8-1014, 8-1015, 8-1016, 8-1017 and 8-1018, and amendments thereto, and this section:

(a) "Alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

(b) (1) "Alcohol or drug-related conviction" means any of the following: (A) Conviction of vehicular battery or aggravated vehicular homicide, if the crime is committed while committing a violation of K.S.A. 8-1567 and amendments thereto or the ordinance of a city or resolution of a county in this state which prohibits any acts prohibited by that statute, or conviction of a violation of K.S.A. 8-1567 and amendments thereto; (B) conviction of a violation of a law of another state which would constitute a

crime described in subsection (b)(1)(A) if committed in this state; (C) conviction of a violation of an ordinance of a city in this state or a resolution of a county in this state which would constitute a crime described in subsection (b)(1)(A), whether or not such conviction is in a court of record; or (D) conviction of an act which was committed on a military reservation and which would constitute a violation of K.S.A. 8-1567, and amendments thereto, or would constitute a crime described in subsection (b)(1)(A) if committed off a military reservation in this state.

(2) For the purpose of determining whether an occurrence is a first, second or subsequent occurrence: (A) "Alcohol or drug-related conviction" also includes entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging commission of a crime described in subsection (b)(1) which agreement was entered into during the immediately preceding five years, including prior to the effective date of this act; and (B) it is irrelevant whether an offense occurred before or after conviction or diversion for a previous offense.

(c) "Division" means the division of vehicles of the department of revenue.

(d) "Ignition interlock device" means a device which uses a breath analysis mechanism to prevent a person from operating a motor vehicle if such person has consumed an alcoholic beverage.

(e) "Occurrence" means a test refusal, test failure or alcohol or drug-related conviction, or any combination thereof arising from one arrest, occurring in the immediately preceding five years, including prior to the effective day of this act.

(f) "Other competent evidence" includes: (1) Alcohol concentration tests obtained from samples taken two hours or more after the operation or attempted operation of a vehicle; and (2) readings obtained from a partial alcohol concentration test on a breath testing machine.

(g) "Samples" includes breath supplied directly for testing, which breath is not preserved.

(h) "Test failure" or "fails a test" refers to a person's

having results of a test administered pursuant to this act, other than a preliminary screening test, which show an a positive result of any alcohol concentration of if such person is less than 21 years of age, in such person's blood or breath or show an alcohol concentration of .08 or greater in the any person's blood or breath, and includes failure of any such test on a military reservation.

(i) "Test refusal" or "refuses a test" refers to a person's failure to submit to or complete any test, other than a preliminary screening test, in accordance with this act, and includes refusal of any such test on a military reservation.

(j) "Law enforcement officer" has the meaning provided by K.S.A. 21-3110, and amendments thereto, and includes any person authorized by law to make an arrest on a military reservation for an act which would constitute a violation of K.S.A. 8-1567, and amendments thereto, if committed off a military reservation in this state.

Sec. 6. K.S.A. 1994 Supp. 8-1014 is hereby amended to read as follows: 8-1014. (a) Except as provided by subsection ~~(d)~~ (e) and K.S.A. 8-2,142, and amendments thereto, if a person refuses a test, the division, pursuant to K.S.A. 8-1002, and amendments thereto, shall suspend the person's driving privileges for one year.

(b) Except as provided by subsection ~~(d)~~ (e) and K.S.A. 8-2,142, and amendments thereto, if a person fails a test or has an alcohol or drug-related conviction in this state, the division shall:

(1) On the person's first occurrence, suspend the person's driving privileges for 30 days, then restrict the person's driving privileges as provided by K.S.A. 8-1015, and amendments thereto, for an additional 330 days; and

(2) on the person's second or a subsequent occurrence, suspend the person's driving privileges for one year.

(c) Except as provided by subsection (e), if a person less than 21 years of age shows a positive result of any alcohol

concentration in such person's blood or breath, the division, pursuant to K.S.A. 8-1002, and amendments thereto, shall:

(1) On the person's first occurrence, suspend the person's driving privileges for six months;

(2) on the person's second or a subsequent occurrence, suspend the person's driving privileges for one year;

(3) assess an administrative fine of \$25 to the person to cover the Kansas bureau of investigation laboratory costs. The division shall remit all fines received under this section to the state treasurer at least monthly. Upon receipt of such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury to the credit of the forensic laboratory and materials fee fund of the Kansas bureau of investigation; and

(4) require the person to submit to an examination pursuant to K.S.A. 8-241, and amendments thereto.

~~(c)~~ (d) Whenever the division is notified by an alcohol and drug safety action program that a person has failed to complete any alcohol and drug safety action education or treatment program ordered by a court for a conviction of a violation of K.S.A. 8-1567, and amendments thereto, the division shall suspend the person's driving privileges until the division receives notice of the person's completion of such program.

~~(d)~~ (e) Except as provided in K.S.A. 8-2,142, and amendments thereto, if a person's driving privileges are subject to suspension pursuant to this section for a test refusal, test failure or alcohol or drug-related conviction arising from the same arrest, the period of such suspension shall not exceed the longest applicable period authorized by subsection (a) ~~or~~, (b) or (c), and such suspension periods shall not be added together or otherwise imposed consecutively. In addition, in determining the period of such suspension as authorized by subsection (a) ~~or~~, (b) or (c), such person shall receive credit for any period of time for which such person's driving privileges were suspended while awaiting any hearing or final order authorized by this act.

If a person's driving privileges are subject to restriction pursuant to this section for a test failure or alcohol or drug-related conviction arising from the same arrest, the restriction periods shall not be added together or otherwise imposed consecutively. In addition, in determining the period of restriction, the person shall receive credit for any period of suspension imposed for a test refusal arising from the same arrest.

~~(e)~~ (f) If the division has taken action under subsection (a) for a test refusal or under subsection (b) or (c) for a test failure and such action is stayed pursuant to K.S.A. 8-259, and amendments thereto, or if temporary driving privileges are issued pursuant to subsection (k) of K.S.A. 8-1002, and amendments thereto, the stay or temporary driving privileges shall not prevent the division from taking the action required by subsection (b) for an alcohol or drug-related conviction.

~~(f)~~ (g) Upon restricting a person's driving privileges pursuant to this section, the division shall issue without charge a driver's license which shall indicate on the face of the license that restrictions have been imposed on the person's driving privileges and that a copy of the order imposing the restrictions is required to be carried by the person for whom the license was issued any time the person is operating a motor vehicle on the highways of this state.

New Sec. 7. (a) There is hereby established in the state treasury the driving under the influence equipment fund.

(b) Moneys in the driving under the influence equipment fund shall be used by the department of health and environment only for the purpose of purchasing blood or breath alcohol concentration testing equipment or establishing and maintaining driver's safety programs.

(c) All expenditures from the driving under the influence equipment fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of health and

environment or the secretary's designee.

Sec. 8. K.S.A. 1994 Supp. 8-241, 8-259, 8-1001, 8-1002, 8-1013 and 8-1014 are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.

House Concurrent Resolution No. 5009

By Representatives Cornfield, Boston, Bradley, Carnody, Donovan, Farmer, Flower, Freeborn, Graeber, Haley, Hayzlett, Howell, Hutchins, Jennison, Kejr, King, Landwehr, Lawrence, Lloyd, Long, Lowther, Mason, Mayans, Mays, Merritt, Mollenkamp, Morrison, Myers, Neufeld, O'Connor, Packer, Pauls, Powell, Powers, Ruff, Shallenburger, Swenson, Thimesch, Toplikar, Vickrey, Wagle, Weber and Yoh

House Judiciary
3-20-95
Attachment 2

1-25

14 A PROPOSITION to amend the bill of rights of the constitution of the
15 state of Kansas by adding a new section thereto, regarding rights of
16 parents to direct the upbringing and education of their children.
17

18 *Be it resolved by the Legislature of the State of Kansas, two-thirds of the*
19 *members elected (or appointed) and qualified to the House of Repre-*
20 *sentatives and two-thirds of the members elected (or appointed) and*
21 *qualified to the Senate concurring therein:*

22 Section 1. The following proposition to amend the constitution of the
23 state of Kansas shall be submitted to the qualified electors of the state
24 for their approval or rejection: The bill of rights of the constitution of the
25 state of Kansas is amended by adding a new section thereto to read as
26 follows:

27 "§ 21. **Rights of parents.** The rights of parents to direct the
28 upbringing and education of their children shall ~~not be infringed~~
29 The legislature shall have power to enforce, by appropriate legis-
30 lation, the provisions of this section."

be protected against unwarranted state infringement

31 Sec. 2. The following statement shall be printed on the ballot with
32 the amendment as a whole:

in the state constitution

33 "*Explanatory statement.* This proposed amendment would rec-
34 ognize the rights of parents to direct the upbringing and education
35 of their children.

and to be protected against unwarranted state infringement

36 "A vote for this amendment would favor recognizing in the con-
37 stitution the rights of parents to direct the upbringing and education
38 of their children.

the

39 "A vote against this amendment would favor retaining ~~current~~
40 ~~provisions of the constitution which do not contain language spe-~~
41 ~~cifically recognizing the rights of parents to direct the upbringing~~
42 ~~and education of their children."~~

status of the law which recognizes a protected right under the United States constitution of parents to direct the upbringing of their children free from unwarranted state infringement

43 Sec. 3. This resolution, if approved by two-thirds of the members

As Amended by Senate Committee

Session of 1995

SENATE BILL No. 140

By Committee on Judiciary

1-27

12 AN ACT concerning civil procedure; amending K.S.A. 60-102, 60-205,
13 60-206, 60-209, 60-211, 60-214, 60-215, 60-216, 60-223, 60-226, 60-
14 228, 60-230, 60-231, 60-232, 60-233, 60-234, 60-235, 60-237, 60-238,
15 60-241, 60-243, 60-245, 60-245a, 60-250, 60-252, 60-256, ~~60-262~~, 60-
16 1608, ~~60-2103~~, 60-3703 and, ~~61-1710~~, 61-1725 and ~~75-3079~~ and
17 repealing the existing sections; also repealing K.S.A. 60-2007.
18

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

20 Section 1. K.S.A. 60-102 is hereby amended to read as follows: 60-
21 102. The provisions of this act shall be liberally construed *and adminis-*
22 *tered* to secure the just, speedy and inexpensive determination of every
23 action or proceeding.

24 Sec. 2. K.S.A. 60-205 is hereby amended to read as follows: 60-205.
25 The method of service and filing of pleadings and other papers as pro-
26 vided in this section shall constitute sufficient service and filing in all civil
27 actions and special proceedings but they shall be alternative to, and not
28 in restriction of, different methods specifically provided by law.

29 (a) *When required.* Except as otherwise provided in this chapter, the
30 following shall be served upon each of the parties: Every order required
31 by its terms to be served; every pleading subsequent to the original pe-
32 tition, unless the court otherwise orders because of numerous defendants;
33 every paper relating to *disclosure of expert testimony* or discovery re-
34 quired to be served upon a party, unless the court otherwise orders; every
35 written motion other than one which may be heard *ex parte*; and every
36 written notice, appearance, demand, offer of judgment, designation of
37 record on appeal and similar paper. No service need be made on parties
38 in default for failure to appear except that pleadings asserting new or
39 additional claims for relief against them shall be served upon them in the
40 manner provided for service of summons in article 3 of this chapter.

41 (b) *How made.* Whenever under this article service is required or
42 permitted to be made upon a party represented by an attorney the service
43 shall be made upon the attorney unless service upon the party is ordered

House Judiciary
3-20-95
Attachment 3

1 manner of taking the deposition, in the form of the questions or answers,
 2 in the oath or affirmation or in the conduct of parties, and errors of any
 3 kind which might be obviated, removed or cured if promptly presented,
 4 are waived unless seasonable objection thereto is made at the taking of
 5 the deposition.

6 (C) Objections to the form of written questions submitted under
 7 K.S.A. 60-231 and amendments thereto are waived unless served in writ-
 8 ing upon the party propounding them within the time allowed for serving
 9 the succeeding cross or other questions and within five days after service
 10 of the last questions authorized.

11 (4) *As to completion and return of deposition.* Errors and irregulari-
 12 ties in the manner in which the testimony is transcribed or the deposition
 13 is prepared, signed, certified, sealed, indorsed, transmitted, filed, deliv-
 14 ered or otherwise dealt with by the officer under K.S.A. 60-230 or 60-
 15 231, and amendments thereto, are waived unless a motion to suppress
 16 the deposition or some part thereof is made with reasonable promptness
 17 after such defect is, or with due diligence might have been, ascertained.

18 Sec. 15. K.S.A. 60-233 is hereby amended to read as follows: 60-233.
 19 (a) *Availability; procedures for use.* Any party may serve upon any other
 20 party written interrogatories to be answered by the party served or, if the
 21 party served is a public or private corporation or a partnership, association
 22 or governmental agency, by any officer or agent, who shall furnish such
 23 information as is available to the party. Interrogatories ~~may~~, without leave
 24 of court, *may* be served upon the plaintiff after commencement of the
 25 action and upon any other party with or after service of process upon that
 26 party.

27 (b) *Answers and objections.* (1) Each interrogatory shall be answered
 28 separately and fully in writing under oath, unless it is objected to, in which
 29 event *the objecting party shall state* the reasons for objection ~~shall be~~
 30 ~~stated in lieu of an answer and shall answer to the extent the interrogatory~~
 31 *is not objectionable.*

32 (2) The answers are to be signed by the person making ~~them~~ *the*
 33 *answers*, and the objections signed by the attorney making ~~them~~ *the ob-*
 34 *jections.*

35 (3) The party upon whom the interrogatories have been served shall
 36 serve a copy of the answers, and objections if any, within 30 days after
 37 the service of the interrogatories, except that a defendant may serve an-
 38 swers or objections within 45 days after service of process upon that de-
 39 ~~fendant. The court may allow a shorter or longer time~~

40 (4) *All grounds for an objection to an interrogatory shall be stated*
 41 *with specificity. Any ground not stated in a timely objection is waived*
 42 *unless the party's failure to object is excused by the court for good cause*
 43 *shown.*

period upon a motion requesting such shorter
 or longer period made prior to the expiration
 of the stated time period

1 (5) The party submitting the interrogatories may move for an order
2 under subsection (a) of K.S.A. 60-237 and amendments thereto with re-
3 spect to any objection to or other failure to answer an interrogatory.

4 ~~(b)~~ (c) *Scope; use at trial.* Interrogatories may relate to any matters
5 which can be inquired into under subsection (b) of K.S.A. 60-226 and
6 amendments thereto and the answers may be used to the extent permit-
7 ted by the rules of evidence.

8 An interrogatory otherwise proper is not necessarily objectionable
9 merely because an answer to the interrogatory involves an opinion or
10 contention that relates to fact or the application of law to fact, but the
11 court may order that such an interrogatory need not be answered until
12 after designated discovery has been completed or until a pretrial confer-
13 ence or other later time.

14 ~~(e)~~ (d) *Option to produce business records.* Where the answer to an
15 interrogatory may be derived or ascertained from the business records of
16 the party upon whom the interrogatory has been served or from an ex-
17 amination, audit or inspection of such business records, or from a com-
18 pilation, abstract or summary based thereon, and the burden of deriving
19 or ascertaining the answer is substantially the same for the party serving
20 the interrogatory as for the party served, it is a sufficient answer to such
21 interrogatory to specify the records from which the answer may be de-
22 rived or ascertained and to afford to the party serving the interrogatory
23 reasonable opportunity to examine, audit or inspect such records and to
24 make copies, compilations, abstracts or summaries. A specification shall
25 be in sufficient detail to permit the interrogating party to locate and to
26 identify, as readily as can the party served, the records from which the
27 answer may be ascertained.

28 Sec. 16. K.S.A. 60-234 is hereby amended to read as follows: 60-234.

29 (a) *Scope.* Any party may serve on any other party a request (1) to produce
30 and permit the party making the request, or someone acting on the party's
31 behalf, to inspect and copy any designated documents (including writings,
32 drawings, graphs, charts, photographs, phono-records and other data
33 compilations from which information can be obtained, translated, if nec-
34 essary, by the respondent through detection devices into reasonable *rea-*
35 *sonably* usable form), or to inspect and copy, test or sample any tangible
36 things which constitute or contain matters within the scope of subsection
37 (b) of K.S.A. 60-226 and amendments thereto and which are in the pos-
38 session, custody or control of the party upon whom the request is served;
39 or (2) to permit entry upon designated land or other property in the
40 possession or control of the party upon whom the request is served for
41 the purpose of inspection and measuring, surveying, photographing, test-
42 ing or sampling the property or any designated object or operation
43 thereon, within the scope of subsection (b) of K.S.A. 60-226 and amend-

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period upon a motion requesting such shorter or longer period made prior to the expiration of the stated time period

1 ments thereto.

2 (b) *Procedure.* The request ~~may~~, without leave of court, *may* be
3 served upon the plaintiff after commencement of the action and upon
4 any other party with or after service of process upon that party. The
5 request shall set forth the items to be inspected either by individual item
6 or by category, and describe each item and category with reasonable par-
7 ticularity. The request shall specify a reasonable time, place and manner
8 of making the inspection and performing the related acts.

9 The party upon whom the request is served shall serve a written re-
10 sponse within 30 days after the service of the request, except that a de-
11 fendant may serve a response within 45 days after service of process upon
12 ~~that defendant. The court may allow a shorter or longer time.~~ The re-
13 sponse shall state, with respect to each item or category, that inspection
14 and related activities will be permitted as requested unless the request is
15 objected to, in which event the reasons for objection shall be stated. If
16 objection is made to part of an item or category, the part shall be specified
17 *and inspection permitted of the remaining parts.* The party submitting
18 the request may move for an order under subsection (a) of K.S.A. 60-237
19 and amendments thereto with respect to any objection to or other failure
20 to respond to the request or any part thereof, or any failure to permit
21 inspection as requested. A party who produces documents for inspection
22 shall produce them as they are kept in the usual course of business or
23 shall organize and label them to correspond to the categories in the re-
24 quest.

25 (c) *Persons not parties.* ~~This rule does not preclude an independent~~
26 ~~action against a person not a party for production of documents and things~~
27 ~~and permission to enter upon land~~ *A person not a party to the action may*
28 *be compelled to produce documents and things or to submit to an inspec-*
29 *tion as provided in K.S.A. 60-245 and 60-245a and amendments thereto.*

30 Sec. 17. K.S.A. 60-235 is hereby amended to read as follows: 60-235.

31 (a) *Order for examination.* When the mental or physical condition (in-
32 cluding the blood group), of a party, or of a person in the custody or
33 under the legal control of a party, is in controversy, the court in which
34 the action is pending may order the party to submit to a physical or mental
35 examination by a ~~physician~~ *suitably licensed or certified examiner* or to
36 produce for examination the person in the party's custody or legal control.
37 The order may be made only on motion for good cause shown and upon
38 notice to the person to be examined and to all parties and shall specify
39 the time, place, manner, conditions and scope of the examination and the
40 person or persons by whom it is to be made. The moving party shall
41 advance the expenses which will necessarily be incurred by the party to
42 be examined.

43 (b) *Report of examining physician examiner.* (1) If requested by the

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C C

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1 party against whom an order is made under subsection (a) or by the
 2 person examined, the party causing the examination to be made shall
 3 deliver to the party or person making the request a copy of a detailed
 4 written report of the ~~examining physician~~ *examiner*, setting out the ~~phys-~~
 5 ~~ician's~~ *examiner's* findings, including results of all tests made, diagnoses
 6 and conclusions, together with like reports of all earlier examinations of
 7 the same condition.

8 (2) This subsection applies to examinations made by agreement of
 9 the parties, unless the agreement expressly provides otherwise. This sub-
 10 section does not preclude discovery of a report of an ~~examining physician~~
 11 *examiner* or the taking of a deposition of the ~~physician~~ *examiner* in ac-
 12 cordance with the provisions of any other rule.

13 (c) *Reports of other examinations.* Any party shall be entitled upon
 14 request to receive from a party a report of any examination, previously or
 15 thereafter made, of the condition in controversy, except that the party
 16 shall not be required to provide such a report if the examination is of a
 17 person not a party and the party is unable to obtain a report thereof.
 18 Reports required to be provided under this subsection shall contain the
 19 same information as specified for reports under subsection (b).

20 (d) *Order requiring delivery of report.* The court on motion may
 21 make an order against a party requiring delivery of a report under sub-
 22 section (b) or (c) on such terms as are just. If a ~~physician an examiner~~
 23 fails or refuses to make or deliver such a report, the court may exclude
 24 the ~~physician's examiner's~~ testimony if offered at the trial.

Sec. 18. K.S.A. 60-236 see attached

25 Sec. 18. K.S.A. 60-237 is hereby amended to read as follows: 60-237.

26 (a) *Motion for order compelling disclosure or discovery.* A party, upon
 27 reasonable notice to other parties and all persons affected thereby, may
 28 apply for an order compelling *disclosure or* discovery as follows:

29 (1) *Appropriate court.* An application for an order to a party may be
 30 made to the court in which the action is pending, or, on matters relating
 31 to a deposition, to the judge in the district where the deposition is being
 32 taken. An application for an order to a deponent who is not a party shall
 33 be made to the judge in the district where the deposition is being taken.

34 (2) *Motion. (A) If a party fails to make a disclosure required by sub-*
 35 *section (b)(6) of K.S.A. 60-226 and amendments thereto, any other party*
 36 *may move to compel disclosure and for appropriate sanctions. The motion*
 37 *shall include a certification that the movant has in good faith conferred*
 38 *or attempted to confer with the party not making the disclosure in an*
 39 *effort to secure the disclosure without court action and shall describe the*
 40 *steps taken by all counsel or unrepresented parties to resolve the issues*
 41 *in dispute.*

42 (B) If a deponent fails to answer a question propounded or submitted
 43 under K.S.A. 60-230 or 60-231 *and amendments thereto*, or a corporation

Sec. 18. K.S.A. 60-236 is hereby amended to read as follows:
 60-236. (a) Request for admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of K.S.A. 60-226, and amendments thereto, set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of the judge, may be served upon the plaintiff after commencement of the action and upon any other party with or after service of process upon that party. Each matter of which an admission is requested shall be separately set forth. ~~The~~ A matter is admitted unless, within ~~thirty--(30)~~ 30 days after service of the request, ~~or within such shorter or longer time as the court may allow,~~ the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his such party's attorney, but, ~~unless the court shortens--the--time,~~ a defendant shall not be required to serve answers or objections before the expiration of ~~forty-five-(45)~~ 45 days after service of process upon ~~him~~ the defendant. The court may allow a shorter or longer period of time upon a motion requesting such shorter or longer period made prior to the expiration of the stated period of time. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify ~~his~~ such party's answer or deny only a part of the matter of which an admission is requested, ~~he~~ such party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless ~~he~~ such party states that ~~he~~ such party has made reasonable inquiry and that the information known or readily obtainable by ~~him~~ such party is insufficient to enable ~~him~~ such party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; ~~he may~~ such party, subject to the provisions of subsection (c) of K.S.A. 60-237(e), and amendments thereto, may deny the matter or set forth reasons why ~~he~~ such party cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the judge determines that an objection is justified, ~~he~~ the judge shall order that an answer be served. If the judge determines that an answer does not comply with the requirements of this rule, ~~he~~ the judge may order either that the matter is admitted or that an amended answer be served. The judge may, in lieu of

these orders, may determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of subsection (a) of K.S.A. 60-237(a), and amendments thereto, apply to the award of expenses incurred in relation to the motion.

(b) Effect of admission. Any Except for matters admitted by failure to respond, matter admitted under this rule is conclusively established unless the judge, on motion, permits withdrawal or amendment of the admission. Subject to the provisions of K.S.A. 60-216, and amendments thereto, governing amendment of a pretrial order, the judge may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the judge that withdrawal or amendment will prejudice him such party in maintaining his such party's action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by him such party for any other purpose nor may it be used against him such party in any other proceeding.

And by renumbering the remaining sections accordingly;

argued, the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on such person's own behalf, the extent to which the evidence could be reconstructed without the assistance of the person and the strength of the prosecution's case. If after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, the court shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this section.

New Sec. 7. In order to protect the public, relevant information and records which are otherwise confidential or privileged shall be released to the agency with jurisdiction, the county or district attorney or the attorney general for the purpose of meeting the notice requirement provided in K.S.A. 59-29a03 and amendments thereto and determining whether a person is or continues to be a sexually violent predator. The provisions of this section shall be part of and supplemental to the provisions of K.S.A. 59-29a01 through 59-29a15 and amendments thereto.

New Sec. 8. ~~Upon request of the prosecutor or the counsel for the respondent, the judge shall make available to the prosecutor or counsel any psychological reports, drug and alcohol reports, treatment records, reports of the diagnostic center, medical records or victim impact statements which have been submitted to the court, under this act. Except as provided in this section, all these reports shall be part of the record but shall be sealed and opened only on order of the court. The provisions of this section shall be part of and supplemental to the provisions of K.S.A. 59-29a01 through 59-29a15 and amendments thereto.~~

New Sec. 9. In order to protect the victims of any crime or the families of the victims, the judge may exclude all persons not necessary for the conduct of the proceedings from the proceedings. The provisions of this section shall be part of and supplemental to the provisions of K.S.A. 59-29a01 through 59-29a15 and amendments thereto.

Sec. 10 9. K.S.A. 1994 Supp. 20-302b is hereby amended to read as follows: 20-302b. (a) A district magistrate judge shall have the jurisdiction, power and duty, in any case in which a violation of the laws of the state is charged, to conduct the trial of traffic infractions or misdemeanor charges and the preliminary examination of felony charges. In civil cases, a district magistrate judge shall have concurrent jurisdiction, powers and duties with a district judge, except that, unless otherwise specifically provided in subsection (b), a district magistrate judge shall not have jurisdiction or cognizance over the following actions:

(1) Any action, other than an action seeking judgment for an unsecured debt not sounding in tort and arising out of a contract for the

House Judiciary
3-20-95
Attachment 4

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or admitted into evidence

or as provided in this act