

Approved: 4-26-95  
Date

## MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:00 a.m. on February 21, 1995 in Room 514--S of the Capitol.

All members were present except: Senator Moran (excused)  
Senator Brady (excused)

Committee staff present: Michael Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department  
Gordon Self, Revisor of Statutes  
Janice Brasher, Committee Secretary

Conferees appearing before the committee:  
Jennifer Wentz, Attorney, Office of the Secretary of State  
Jim Clark, County and District Attorneys' Association

Others attending: See attached list

Meeting called to order at 10:10 a.m..

Motion made by Senator Reynolds, second by Harris to approve the minutes for February 8. Motion carried.

### **SB 184--Sexual exploitation of a child, to include computer technology.**

The Chair called the Committee's attention to **SB 184** and stated that this bill was worked a few days ago, and a motion was made to pass the bill out favorably, but since it was Senator Harris's bill, and he was not present at that time, the consensus of the Committee was to delay a vote. The Chair continued by stating that this bill addresses the law on pornography to include processing computer generated pornography as well as photocopy, laser disk, video tape, etc. The Subcommittee offered an amendment to raise the age to 18, (the bill has the age as 16 and below) the Committee's recommendation was that it be left at 16.

Motion by Senator Harris, second by Senator Reynolds to recommend **SB 184** favorably as amended. Motion carried.

Chair referred **SB 329** to Senator Parkinson's Subcommittee. The Chair stated that this bill would reduce the number serving on the parole board. **SB 329** is sponsored by Senator Tillotson in response to a Post-Audit Committee's recommendations. Senator Parkinson has set hearings on **SB 329** for tomorrow.

The Chair announced that there would be an informal meeting on **SB 110**, "the massive real estate bill." The meeting will be tomorrow, and those who are interested in that bill can meet with some of the proponents and their lawyers to walk through it. The meeting will be in the fifth floor lounge from 11:30 a.m. to 1:00 p.m., lunch is provided.

### **SB 241--Life imprisonment sentence for persistent sex offender.**

Mr. Jim Clark stated that there was a similar bill in the House.

### **SB 336--Enacting the uniform limited liability company act.**

Senator Vancrum spoke in support of **SB 336**, and stated that this bill deals with limited liability acts. Senator Vancrum related that Kansas was the fourth state to enact a limited liability act in 1990. A limited liability company is an entity that shares a lot of the features of a partnership, it is taxed as a partnership. It has one feature that a partnership does not have, and that is that no one person or entity has unlimited liability, every member, has limited liability like a corporation. Senator Vancrum stated that because Kansas was the

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on February 21, 1995.

fourth state to adopt limited liability company act, a very conservative act was adopted. Senator Vancrum stated that some of the strictures that are on limited liability companies are not necessary, in fact other states, including some around us have adopted flexible and more modern bills. Senator Vancrum cited problems with the existing act.

Senator Vancrum enumerated several improvements included in this bill. The new bill will allow allocation of voting rights proportional to interest. The new uniform law would require a majority of interest to dissolve the corporation. The new law would lessen restrictions on voting rights and transfer of rights to distribution of property. The new law would narrow the scope of liability for companies for the acts of their managers in that managers can bind the company if they are acting in the ordinary course of business. The new law would correct the need for an unanimous vote for amendments. The provisions in this bill allow for adoption of a flexible operating agreement. Senator Vancrum then addressed some procedural issues. Some of those issues include, the right of access to records, and laws concerning reorganization, and mergers. Senator Vancrum continued by stating that Limited Liability Companies have become the instrument of choice because of the many advantages over Sub-Chapter S Corporations. Senator Vancrum concluded that he supports the conforming amendments from the Secretary of State's Office that are in their balloon.

Questions regarding operating agreements were discussed., and it was noted that there are no requirements for declaration of policy.

Jennifer Wentz, Secretary of States Office, testified in support of SB 336, and proposed a balloon, plus some additional proposed amendments. Ms. Wentz testified these amendment were prepared by the Secretary of State's Office to maintain consistency in filing procedures, in terminology, and practices common to business entities in Kansas. Ms Wentz stated that the Secretary of States Office also suggests a phase in period. (Attachment 1)

Discussion followed concerning input from the Judicial Council.

The Chair suggested that Ms Wentz discuss the balloon with the Revisor, and stated that he will call the Judicial Council and the KBA before this bill is considered.

**SB 131--Sex predators, payment of indigent person's counsel and experts by state board of indigents' defense services.**

The Chair referred to SB 131, the Sedgwick County bill on the indigents' defense fund, as paying for the defense under the sexual predator act.

Motion made by Senator Harris, second by Senator Feleciano to report SB 131 favorably for passage.

Substitute motion by Senator Bond, second by Senator Vancrum to table. Motion carried.

Suggestion was made by Senator Rock to have some kind of matching funds with the indigents' defense fund and local governments.

Senator Vancrum suggested attaching the payment from the fund to the cases that the panel has made recommendations on.

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

The Chair stated that SB 3 was referred to a Subcommittee of Senator Vancrum and Senator Rock.

Senator Vancrum reported on SB 3, stating that testimony from the Kansas Mental Health Coalition; the Attorney General; Paul Shelby, Judicial Council; Lisa Moots, Sentencing Commission; and Chuck Simmons, Department of Corrections was heard. Senator Vancrum continued, stating that in full Committee several defense counselors and the ACLU, presented testimony.

Senator Vancrum referred to the amendments and explained the changes in each section and discussed the deletion of Section 9. Section 9 deals with the judges' authority to exclude persons from the hearings, Senator Vancrum reported all that language was taken out. (Attachment 2)

Subcommittee's recommendation is that the records would be sealed and open by order of the court.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on February 21, 1995.

Senator Vancrum stated that the Attorney General expressed concerns regarding whether someone can be held in a secure facility in the event of a mistrial or a subsequent hearing. A clause was added that was drafted by the assistant attorney general and it is on the end of subsection 6(a) page 5, basically it states that the court can keep the person in a secured facility until another trial is conducted and that has to be within 90 days. (Attachment 2)

Concerns by corrections facility administrators regarding incidental contact with other inmates, line 6, page 5 are addressed by:

*agreement shall be segregated from any other person under the control and supervision housed and managed separately from offenders in the custody of the secretary of corrections, and except for occasional instances of supervised incidental contact, shall be segregated from such offenders.*

Other amendments by the Subcommittee are included in the balloon. (Attachment 2)

Referring to budget issues, Senator Vancrum stated that venue will be from where the inmate came, the Attorney General has the discretion to handle prosecution. Citing the cost relationship to the number convicted under the sex predator act, Senator Vancrum referred to a letter from Chuck Simmons, that stated there are 572 inmates that have been convicted of sexually violent offenses and have conditional release dates within the next three years.

Discussion followed.

The Chair adjourned the meeting at 11:05 a.m.

The next meeting is scheduled for February 22, 1995.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-21-95

NAME	REPRESENTING
Heather Randall	Senator Terry Karr
J. Chubb	LOS
W. Anderson	
A. H. Co.	Sen. Bond
Brian Cooper	Senator Bond
Kathie Spinks	DOB
Nathan Song	Ottawa Young Leaders
Joseph Thomas	Ottawa Young Leaders
Jonathan Honey	" " "
Cynthia Montague	" " "
Shawn Dickinson	" " "
Amanda Chen	Ottawa Young Leaders
Emily Petersen	Ottawa Young Leaders
Elizabeth Barker	" "
Kathryn McCurdy	" "
Stephen Walker	" "
Lisa Glatt	" "
Angie DeJarnette	" "
Amy Goodlee	" "

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: February 21, 1995

NAME	REPRESENTING
Jennifer Morris	Ottawa Young Leaders
Samantha Hart	Ottawa Young Leaders
Dared Wiesner	Ottawa Young Leaders
Shannon Peterson	KBA

Ron Thornburgh  
Secretary of State



2nd Floor, State Capitol  
300 S.W. 10th Ave.  
Topeka, KS 66612-1594  
(913) 296-2236

## STATE OF KANSAS

Senate Judiciary Committee  
February 21, 1995

Hearing on SB 336

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you to testify on SB 336.

The attached amendments were prepared by the Secretary of State's office in order to maintain consistency in filing procedures used by business entities, as well as terminology and practices common to business entities in Kansas.

The amendments do not address substantive aspects of the bill.

I will stand for questions at this time.

Jennifer Chaulk Wentz, Legal Counsel  
Deputy Assistant Secretary of State

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

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

UCC (913) 296-3650  
FAX (913) 296-3659

*Senate Judiciary  
2-21-95  
Attachment 1*

Additional Amendments proposed by Secretary of State:

1. p.7, line 38: insert additional subsection "(13) have and exercise all powers which may be exercised by a Kansas professional association or professional corporation, including employment of professionals to practice a profession, which shall be limited to the practice of one profession, except as provided in K.S.A. 17-2710 and amendments thereto." (from K.S.A. 17-7605)
2. p.8, line 41: delete subsection (a)(2); this is information already on file.
3. p.35, line 15: delete reference to article 9; replace with appropriate section numbers.
4. p. 36, line 1: add additional subsection "(9) the date on which the foreign limited liability company first did, or intends to do, business in the state of Kansas."
5. p. 40, lines 29 - 40: amend language to make act effective January 1, 1996 for companies formed after that date. Add some phase-in period for companies currently in existence; uniform law commissioners suggest five years.

SENATE BILL No. 3

By Special Committee on Judiciary

12-16

Proposed Subcommittee Amendments to Senate Bill No. 3

Senate Judiciary  
2-21-95  
Attachment 2

9 AN ACT concerning persons who commit sexually violent offenses; re-  
10 relating to such person's civil commitment, evaluation, care and treat-  
11 ment; confidentiality; jurisdiction of district magistrate judges; aggra-  
12 vated escape from custody; docket fees; amending K.S.A. 59-104,  
13 59-29a02, 59-29a03, 59-29a04, 59-29a05, 59-29a06 and 59-29a07 and  
14 K.S.A. 1994 Supp. 20-302b and 21-3810 and repealing the existing  
15 sections.

16  
17 *Be it enacted by the Legislature of the State of Kansas:*

18 Section 1. K.S.A. 59-29a02 is hereby amended to read as follows: 59-  
19 29a02. As used in this act:

20 (a) "Sexually violent predator" means any person who has been con-  
21 victed of or charged with a sexually violent offense and who suffers from  
22 a mental abnormality or personality disorder which makes the person  
23 likely to engage in the predatory acts of sexual violence, *if not confined*  
24 *in a secure facility.*

25 (b) "Mental abnormality" means a congenital or acquired condition  
26 affecting the emotional or volitional capacity which predisposes the per-  
27 son to commit sexually violent offenses in a degree constituting such per-  
28 son a menace to the health and safety of others.

29 (c) "Predatory" means acts directed towards strangers or individuals  
30 with whom relationships have been established or promoted for the pri-  
31 mary purpose of victimization.

32 (d) "Sexually motivated" means that one of the purposes for which  
33 the defendant committed the crime was for the purpose of the defen-  
34 dant's sexual gratification.

35 (e) "Sexually violent offense" means:

36 (1) Rape as defined in K.S.A. 21-3502 and amendments thereto;

37 (2) indecent liberties with a child as defined in K.S.A. 21-3503 and  
38 amendments thereto;

39 (3) aggravated indecent liberties with a child as defined in K.S.A. 21-  
40 3504 and amendments thereto;

41 (4) criminal sodomy as defined in subsection (a)(2) and (a)(3) of  
42 K.S.A. 21-3505 and amendments thereto;

43 (5) aggravated criminal sodomy as defined in K.S.A. 21-3506 and



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amendments thereto;

2 (6) indecent solicitation of a child as defined in K.S.A. 21-3510 and  
3 amendments thereto;

4 (7) aggravated indecent solicitation of a child as defined in K.S.A. 21-  
5 2511 and amendments thereto;

6 (8) sexual exploitation of a child as defined in K.S.A. 21-3516 and  
7 amendments thereto;

8 (9) aggravated sexual battery as defined in K.S.A. 21-3518 and  
9 amendments thereto;

10 (10) any conviction for a felony offense in effect at any time prior to  
11 the effective date of this act, that is comparable to a sexually violent  
12 offense as defined in subparagraphs (1) through (9) or any federal or other  
13 state conviction for a felony offense that under the laws of this state would  
14 be a sexually violent offense as defined in this section;

15 (11) an attempt, conspiracy or criminal solicitation, as defined in  
16 K.S.A. 21-3301, 21-3302 and 21-3303, and amendments thereto, of a  
17 sexually violent offense as defined in this subsection; or

18 (12) any act which either at the time of sentencing for the offense or  
19 subsequently during civil commitment proceedings pursuant to this act,  
20 has been determined beyond a reasonable doubt to have been sexually  
21 motivated.

22 (f) "Agency with jurisdiction" means that agency ~~with the authority~~  
23 ~~to direct the release of which releases upon lawful order or authority~~ a  
24 person serving a sentence or term of confinement and includes the de-  
25 partment of corrections ~~and~~ the department of social and rehabilitation  
26 services *and the Kansas parole board.*

27 Sec. 2. K.S.A. 59-29a03 is hereby amended to read as follows: 59-  
28 29a03. (a) When it appears that a person may meet the criteria of a  
29 sexually violent predator as defined in K.S.A. 59-29a02 *and amendments*  
30 *thereto*, the agency with jurisdiction shall give written notice of such to  
31 the prosecuting attorney of the county where that person was charged,  
32 ~~60~~ 90 days prior to:

33 (1) The anticipated release from total confinement of a person who  
34 has been convicted of a sexually violent offense;

35 (2) release of a person who has been charged with a sexually violent  
36 offense and who has been determined to be incompetent to stand trial  
37 pursuant to K.S.A. 22-3305 and amendments thereto; or

38 (3) release of a person who has been found not guilty by reason of  
39 insanity of a sexually violent offense pursuant to K.S.A. 22-3428 and  
40 amendments thereto.

41 (b) The agency with jurisdiction shall inform the prosecutor of the  
42 following:

(1) The person's name, identifying factors, anticipated future resi-

, except that in the case of persons who are returned to prison for no more than 90 days as a result of revocation of postrelease supervision, written notice shall be given as soon as practicable following the person's readmission to prison

1 dence and offense history; and

2 (2) documentation of institutional adjustment and any treatment re-  
3 ceived.

4 (c) The agency with jurisdiction, its employees, officials and individ-  
5 uals contracting, appointed or volunteering to perform services hereunder  
6 shall be immune from liability for any good-faith conduct under this sec-  
7 tion.

8 Sec. 3. K.S.A. 59-29a04 is hereby amended to read as follows: 59-  
9 29a04. When it appears that the person presently confined may be a  
10 sexually violent predator, the prosecuting attorney of the county where  
11 the person was convicted or charged or the attorney general if requested  
12 by the prosecuting attorney may file a petition, within ~~45~~ 75 days of the  
13 date the prosecuting attorney received the written notice by the agency  
14 of jurisdiction as provided in subsection (a) of K.S.A. 59-29a03 *and*  
15 *amendments thereto*, alleging that the person is a sexually violent predator  
16 and stating sufficient facts to support such allegation.

17 Sec. 4. K.S.A. 59-29a05 is hereby amended to read as follows: 59-  
18 29a05. (a) Upon filing of a petition under K.S.A. 59-29a04, the judge shall  
19 determine whether probable cause exists to believe that the person  
20 named in the petition is a sexually violent predator. If such determination  
21 is made, the judge shall direct that person be taken into custody ~~and~~

22 (b) *Within 72 hours after a person is taken into custody pursuant to*  
23 *subsection (a), such person shall be provided with notice of, and an op-*  
24 *portunity to appear in person at, a hearing to contest probable cause as*  
25 *to whether the detained person is a sexually violent predator. At this*  
26 *hearing the court shall: (1) Verify the detainer's identity; and (2) deter-*  
27 *mine whether probable cause exists to believe that the person is a sexually*  
28 *violent predator. The state may rely upon the petition and supplement*  
29 *the petition with additional documentary evidence or live testimony.*

30 (c) *At the probable cause hearing as provided in subsection (b), the*  
31 *detained person shall have the following rights in addition to the rights*  
32 *previously specified: (1) To be represented by counsel; (2) to present ev-*  
33 *idence on such person's behalf; (3) to cross-examine witnesses who testify*  
34 *against such person; and (4) to view and copy all petitions and reports in*  
35 *the court file.*

36 (d) *If the probable cause determination is made, the court shall direct*  
37 *that the person shall be transferred to an appropriate secure facility, in-*  
38 *cluding, but not limited to, a county jail, for an evaluation as to whether*  
39 *the person is a sexually violent predator. The evaluation shall be con-*  
40 *ducted by a person deemed to be professionally qualified to conduct such*  
41 *an examination.*

42 Sec. 5. K.S.A. 59-29a06 is hereby amended to read as follows: 59-  
43 29a06. Within ~~45~~ days after the filing of a petition pursuant to K.S.A. 59-

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2 ~~2004~~ 60 days after the completion of any hearing held pursuant to K.S.A.  
 3 59-29a05 and amendments thereto, the court shall conduct a trial to de-  
 4 termine whether the person is a sexually violent predator. The trial may  
 5 be continued upon the request of either party and a showing of good cause,  
 6 or by the court on its own motion in the due administration of justice,  
 7 and when the respondent will not be substantially prejudiced. At all stages  
 8 of the proceedings under this act, any person subject to this act shall be  
 9 entitled to the assistance of counsel, and if the person is indigent, the  
 10 court shall appoint counsel to assist such person. Whenever any person  
 11 is subjected to an examination under this act, such person may retain  
 12 experts or professional persons to perform an examination of such per-  
 13 son's behalf. When the person wishes to be examined by a qualified expert  
 14 or professional person of such person's own choice, such examiner shall  
 15 be permitted to have reasonable access to the person for the purpose of  
 16 such examination, as well as to all relevant medical and psychological  
 17 records and reports. In the case of a person who is indigent, the court,  
 18 upon the person's request, shall assist the person in obtaining an expert  
 19 or professional person to perform an examination or participate in the  
 20 trial on the person's behalf. The person, the county or district attorney  
 21 or attorney general, or the judge shall have the right to demand that the  
 22 trial be before a jury. Such demand for the trial to be before a jury shall  
 23 be filed, in writing, at least four days prior to trial. Number and selection  
 24 of jurors shall be determined as provided in K.S.A. 22-3403, and amend-  
 25 ments thereto. If no demand is made, the trial shall be before the court.  
 26 Sec. 6. K.S.A. 59-29a07 is hereby amended to read as follows: 59-  
 27 29a07. (a) The court or jury shall determine whether, beyond a reasonable  
 28 doubt, the person is a sexually violent predator. If such determination  
 29 that the person is a sexually violent predator is made by a jury, such  
 30 determination shall be by unanimous verdict of such jury ~~the agreement~~  
 31 ~~of 10 of 12 members of the jury shall be sufficient to render a verdict.~~  
 32 Such determination may be appealed. If the court or jury determines that  
 33 the person is a sexually violent predator, the person shall be committed  
 34 to the custody of the secretary of social and rehabilitation services for  
 35 control, care and treatment until such time as the person's mental ab-  
 36 normality or personality disorder has so changed that the person is safe  
 37 to be at large. Such control, care and treatment shall be provided at a  
 38 facility operated by the department of social and rehabilitation services.  
 39 At all times, persons committed for control, care and treatment by the  
 40 department of social and rehabilitation services pursuant to this act shall  
 41 be kept in a secure facility and such persons shall be segregated at all  
 times from any other patient under the supervision of the secretary of  
 social and rehabilitation services and commencing June 1, 1995, such  
 persons committed pursuant to this act shall be kept in a facility or build-

determine whether the services are necessary and reasonable compensation for such services. If the court determines that the services are necessary and the expert or professional person's requested compensation for such services is reasonable, the court shall

The court shall approve payment for such services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the person and compensation received in the same case or for the same services from any other source.

such determination shall be by unanimous verdict of such jury

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ing separate from any other patient under the supervision of the secretary.  
 2 The department of social and rehabilitation services is authorized to enter  
 3 into an interagency agreement with the department of corrections for the  
 4 confinement of such persons. ~~At all times such~~ persons who are in the  
 5 confinement of the secretary of corrections pursuant to an interagency  
 6 agreement shall be ~~segregated from any other person under the control~~  
 7 ~~and supervision~~ of the secretary of corrections. If the court or jury is not  
 8 satisfied beyond a reasonable doubt that the person is a sexually violent  
 9 predator, the court shall direct the person's release.

Such

housed and managed separately from offenders in the custody

, and except for occasional instances of supervised incidental contact, shall be segregated from such offenders

10 (b) If the person charged with a sexually violent offense has been  
 11 found incompetent to stand trial, and is about to be released pursuant to  
 12 K.S.A. 22-3305 and amendments thereto, and such person's commitment  
 13 is sought pursuant to subsection (a), the court shall first hear evidence  
 14 and determine whether the person did commit the act or acts charged.  
 15 The hearing on this issue must comply with all the procedures specified  
 16 in this section. In addition, the rules of evidence applicable in criminal  
 17 cases shall apply, and all constitutional rights available to defendants at  
 18 criminal trials, other than the right not to be tried while incompetent,  
 19 shall apply. After hearing evidence on this issue, the court shall make  
 20 specific findings on whether the person did commit the act or acts  
 21 charged, the extent to which the person's incompetence or developmental  
 22 disability affected the outcome of the hearing, including its effect on the  
 23 person's ability to consult with and assist counsel and to testify on such  
 24 person's own behalf, the extent to which the evidence could be recon-  
 25 structed without the assistance of the person and the strength of the  
 26 prosecution's case. If after the conclusion of the hearing on this issue, the  
 27 court finds, beyond a reasonable doubt, that the person did commit the  
 28 act or acts charged, the court shall enter a final order, appealable by the  
 29 person, on that issue, and may proceed to consider whether the person  
 30 should be committed pursuant to this section.

Upon a mistrial, the court shall direct that the person be held at an appropriate secure facility, including, but not limited to, a county jail, until another trial is conducted. Any subsequent trial following a mistrial shall be held within 90 days of the previous trial, unless such subsequent trial is continued as provided in K.S.A. 59-29a06 and amendments thereto.

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

39 New Sec. 8. Upon request of the prosecutor or the counsel for the  
 40 respondent, the judge shall make available to the prosecutor or counsel  
 41 any psychological reports, drug and alcohol reports, treatment records,  
 reports of the diagnostic center, medical records or victim impact state-  
 ments which have been submitted to the court under this act. Except as