Approved: March 14, 1996
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on January 31, 1996 in

Room 313-S of the Capitol.

All members were present except:
Representative Gary Merritt - Excused
Representative Candy Ruff - Excused
Representative Vince Snowbarger - Excused

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

Conferees appearing before the committee:
Dr. Kevin Koch, President Kansas Chapter of American College of Emergency Physicians
Joann Wiley, Kansas Silver Haired Legislature
Kathy Kirk, Director of Dispute Resolution,
Helen Stephens, Kansas Peace Officers Association
John Peterson, Kansas Land & Title Association
Barbara Tombs, Executive Director Kansas Sentencing Commission
Representative John Toplikar
Representative Brenda Landwehr
Jamie Corkhill, Social and Rehabilitation Services
Gary Jarchow, Court Trustee, Wichita
Peggy Elliott, Court Trustee, Johnson County

Others attending: See attached list

Dr. Kevin Koch, President Kansas Chapter of American College of Emergency Physicians, appeared before the committee with a bill request that would define emergency medical care, (Attachment 1).

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

Joann Wiley, Kansas Silver Haired Legislature, appeared before the committee with a bill request which would enhance grandparent visitation rights, (Attachment 2).

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

Kathy Kirk, Director of Dispute Resolution, appeared on behalf of the Office of Judicial Administration with a bill request that would amend the Dispute Resolution Act to make to make it more "user friendly", (Attachment 3).

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

John Peterson, Kansas Land & Title Association, appeared before the committee with a bill request that would amend K.S.A. 60-1103b dealing with notices to perform concerning new residential real estate, (Attachment 4).

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

Representative Haley appeared before the committee with a bill request that would amend the consumer credit code, (Attachment 5). He made a motion to have this bill request introduced as a committee bill. Representative Spangler seconded the motion. The motion carried.

Helen Stephens, Kansas Peace Officers Association, appeared before the committee with a bill request that would give limited police powers to Federal Bureau of Investigation Agents in certain circumstances.

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

Representative Pauls appeared before the committee with three bill requests. The first was a parental rights bill based on Illinois' parental rights bill. The next request addressed several concerns that were discussed during the parental rights hearings before the Judiciary Committee last year.

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

Her last request would allow the consideration of fault in divorce cases where custody was in dispute. She made a motion to have this bill request introduced as a committee bill. Representative Yoh seconded the motion. The motion carried.

Representative Mays appeared before the committee with a bill request amending section 7 of the capitol murder statute so that any premeditated intentional killing of a child would result in capitol murder charges. He made a motion to have this bill request introduced as a committee bill. Representative Nichols seconded the motion. The motion carried.

Chairman O'Neal received a bill request that would increase the docket fee for Chapter 60 filings by $5 and add a $20 filing fee for post divorce motions.

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

The Chairman also received a bill request that would enhance the law regarding the non-use of a seat belt.

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

Barbara Tombs, Executive Director Kansas Sentencing Commission, appeared before the committee and gave an update on prison impact data, (Attachment 6). She stated that Kansas is at a very crucial point with regard to issues of public safety, prison bedspace and sentencing policies. There are no easy or cheap solutions to the state's current prison overcrowding problem. Last year the Legislature allocated funds for the development of the Prophet Model for prison population projections. Projections alone do not provide an answer to whether prison construction is the solution. What projections are intended to do is serve as a decision making tool that permits rational and informed policy changes that address the current problems, (Attachment 7).

Hearings on **HB 2410** - nonpayment of child support; contempt of court; interest on arrearages; suspension of driving privileges, were opened.

Representative John Toplikar appeared before the committee as a sponsor of the bill. He commented that the sponsors of this bill believe that this would "ground" the disobeying father by taking away the use of his "toy", (Attachment 8).

Representative Pugh was concerned that if the parent who owes child support has his license taken away, how would they make a living and pay any support in the future. He also was curious as to what connection a license had with child support.

Jamie Corkhill, Social and Rehabilitation Services, appeared before the committee as a proponent of the bill and also had an amendment to the proposed bill, (Attachment 9).

Gary Jarchow, Court Trustee, Wichita, appeared before the committee in support of the bill. He commented that there would be a problem implementing the suggested policy of collection of interest because interest rates vary from year to year depending on the federal reserve discount rates. Some states have enacted a flat rate for those whose child support is past due, (Attachment 10).

Representative Brenda Landwehr appeared before the committee as a proponent of the bill. She stated that during the off session she did a lot of research on this issue and that Post Audit is looking at this issue.

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Peggy Elliott, Court Trustee, Johnson County, appeared before the committee in support of the bill and the amendments offered by the Office of Judicial Administration, (Attachment 11).

Kay Farley, Office of Judicial Administration, did not appear before the committee but requested that her written testimony be included in the minutes, (Attachment 12).

The committee meeting adjourned at 5:30. The next meeting is scheduled for February 5, 1996.

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: January 31, 96

NAME	REPRESENTING
Rebecca Ward	KS Sentencing Comm.
Julie Meyer	KS Sentencing Comm.
Barbara Tombs	KS Sentencing Comm.
Jan Johnson	KDOC
Joann Wiley	Ks. Silver Haired Legislator Speaker
Kathy Kirk	OJA
Paul Shelby	OJA
Wendy Mitchell	ACLU
Don Smith	KBA
Peggy Elliott	Jo. Co. Court Trustee
Virginia Taylor	OJA
Jay D. Jackson	Sedgwick County Court Trustee
Beth McBride	KDOR
John W. Smith	KDOR DMV
Helen Stephens	KPOA / KSA
Terri Stech	FBI
Dale Watson	FBI
Jamie Corkhill	SRS/CSE
TK Shively	KANSAS LEGAL SERVICES

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: 1-31

NAME	REPRESENTING
Tom Whitaker	Ks Motor Carriers Assn.
Kelly Kultala	KTLA
Melissa Wei-Dan Smith	KDHA
Jim McDaniel	Ks Education Watch
Donna Schneweis	AI

Request For A Bill

" An Act To Define Emergency Medical Care"

Section 1. Policy and purpose. Because of the need for rapid assessment and care, in order to protect the life and health of the people of Kansas, during a medical emergency, it is hereby found and declared necessary:

(1) to establish a definition for Emergency Medical Care;

(2) to insure that emergency medical care is provided in a timely manner by licensed and qualified personnel at a hospital's emergency department;

(3) to insure that emergency medical care is not delayed or denied based on:

(A) a person's ability to pay for expenses incurred during a medical emergency;

(B) prospective authorization of treatment by an insurance company, health maintenance organization, hospital medical service corporation, health benefit plan, or any other insurer.

Section 2. Definitions.

(1) Emergency medical care refers to health care services provided in a hospital emergency facility to evaluate and treat medical and traumatic conditions of a recent onset and severity, including , but not limited to , severe pain, that would lead a prudent lay person, possessing an average knowledge of medicine and health, to believe that his or her condition, sickness, or injury is of such a nature that failure to get immediate medical care could result in : 1) placing the patient's health in serious jeopardy; 2) serious impairment to bodily functions; or 3) serious dysfunction of any bodily organ or part.

(2) Prospective authorization means contacting any insurer , health maintenance organization, hospital medical services corporation, or health benefit plan who is not physically present in the hospital's emergency department, at the time the patient presents for emergency medical care.

as defined above, for approval or authorization to evaluate and treat the patient.

(3) Emergency medical providers refers to hospitals licensed by the Kansas Board of Healing Arts, hospital based services, and physicians licensed by the Kansas State Medical Board who provide emergency medical care.

Section 3. Procedures.

(1) Once a person qualifying for emergency medical care, based on the definition in Section 2 (1) above, presents to an emergency department, that person shall be evaluated by medical personnel. This evaluation may include diagnostic testing to assess the extent of the condition, sickness, or injury and radiographic interpretations by a radiologist or emergency physician.

(2) Prior authorization is not required for emergency care including a medical screening exam, and stabilizing treatment as defined in Section 1867 of the Social Security Act.

(3) Appropriate intervention may be initiated by medical personnel to stabilize any condition presenting under this act prior to receiving authorization for such treatment by an insurer, health maintenance organization, hospital medical service corporation, or health benefit plan.

SUMMARY OF SHL BILL NO. 1207

Brief

SHL Bill No. 1207 amends the Kansas Divorce Code and K.S.A. 38-129 dealing with unmarried minor children to enhance grandparent visitation rights.

K.S.A. 38-129 is amended to require a district court to grant grandparents reasonable visitation rights to unmarried minor children unless the court finds, after a hearing, that visitation would seriously endanger the child's physical, mental, moral, or emotional health.

The Kansas Divorce Code is also amended to state that grandparents are entitled to reasonable visitation rights unless the court finds, after the hearing, that the visitation would seriously endanger the child's physical, mental, moral, or emotional health.

Background

The following is a brief description of the current grandparent visitation rights statutes in Kansas.

1. K.S.A. 38-129, *et seq.*, authorizes the district court to grant the grandparents of an unmarried minor child visitation rights when this would be in the best interest and when a substantial relationship exists between the child and the grandparent.

2. K.S.A. 38-1563(f), a provision of the Code for Care of Children, authorizes the court to grant visitation rights to any person (including grandparents) when a child is found to be a child in need of care and custody is granted to a person other than the child's parent.

3. K.S.A. 60-1616, a provision of the Kansas Divorce Code, authorizes the court to grant visitation rights to grandparents and stepparents in divorce situations.

All 50 states have enacted statutes recognizing grandparent visitation. Approximately 40 states allow grandparents to seek visitation when the parents divorce; approximately 34 states permit visitation if their child dies; others allow visitation if there has been a long-term living arrangement with a grandparent. Twenty-seven states have general provisions allowing grandparent visitation.

Some states require a divorce or custody action to be pending for the grandparent to intervene in the existing action but this may be broadly interpreted. Other states give grandparents an independent action. See *Grandparent Visitation Dispute, a Legal Resource Manual*, American Bar Association (1989).

House Judiciary
1-31-96
Attachment 2

SILVER HAIRED LEGISLATURE BILL NO. 1207

By PSA 6 and 8

AN ACT concerning children and minors; relating to visitation rights of grandparents; amending K.S.A. 38-129 and 60-1616 and repealing the existing sections.

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

Sec. 1. K.S.A. 38-129 is hereby amended to read as follows: 38-129. (a) The district court may grant the grandparents of an unmarried minor child reasonable visitation rights to the child during the child's minority upon a finding that the visitation rights would be in the child's best interests and when a substantial relationship between the child and the grandparent has been established.

(b) The district court may grant the parents of a deceased person visitation rights, or may enforce visitation rights previously granted, pursuant to this section, even if the surviving parent has remarried and the surviving parent's spouse has adopted the child. Visitation rights may be granted ~~pursuant to this subsection~~ without regard to whether the adoption of the child occurred before or after the effective date of this act.

(c) The district court shall grant grandparents reasonable visitation rights unless the court finds, after a hearing, that visitation would seriously endanger the child's physical, mental, moral or emotional health.

Sec. 2. K.S.A. 60-1616 is hereby amended to read as follows: 60-1616. (a) Parents. A parent not granted custody or residency of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would ~~endanger~~ seriously endanger the child's physical, mental, moral or emotional health.

(b) ~~Grandparents and stepparents. Grandparents and stepparents~~ Grandparents. Grandparents are entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would seriously endanger the child's physical, mental, moral or emotional health.

(c) Stepparents. Stepparents may be granted visitation rights.

~~(c)~~ (d) Modification. The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child.

~~(d)~~ (e) Enforcement of rights. An order granting visitation rights to a parent pursuant to this section may be enforced in accordance with K.S.A. 23-701 and amendments thereto.

~~(e)~~ (f) Repeated denial of rights, effect. Repeated

unreasonable denial of or interference with visitation rights granted to a parent pursuant to this section may be considered a material change of circumstances which justifies modification of a prior order of child custody.

(f) Repeated child support misuse, effect. Repeated child support misuse may be considered a material change of circumstances which justifies modification of a prior order of child custody.

Sec. 3. K.S.A. 38-129 and 60-1616 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Support of Amendments for K.S.A. 5-501 et. seq.
January 31, 1996
Kathy Kirk, Director of Dispute Resolution

On behalf of the Office of Judicial Administration acting on the recommendations of the advisory council on dispute resolution, I urge the members of the committee to approve the proposed amendments to the Dispute Resolution Act, K.S.A. 5-501 et. seq.

The proposed amendments to this act have been formulated in order to make the act more "user friendly" and broad enough to encompass the wide variety of changes occurring in the field of dispute resolution in Kansas. The majority of changes are semantic in nature and create consistency throughout the act.

The proposed amendments fall into four categories:

1) Modification of terminology:

a) The term "approved centers" has been deleted and replaced throughout with "registered and approved programs", and language relating to this term has been modified to reflect the change;

b) The term "mediation" has been replaced with more generic terms, allowing a more broadly based ability for the director and council to help programs and individuals develop standards and general quality control for a variety of dispute resolution processes;

c) New definitions have been added to create a uniform state definition for processes currently being used;

2) Increase in the number of council members. Because of the statutory mandate for having geographically diverse members and the work load required of the council members, a greater total number would ensure adequate representation for meetings and required duties;

3) Modifications of director's duties and limitations;

4) Expansion of funding possibilities; and

6) Amendments made to make the Dispute Resolution Act consistent with other statutes.

House Judiciary
1-31-96
Attachment 3

DRAFT 1/96

An act concerning the use of dispute resolution; relating to registered and approved programs and individuals, definitions of dispute resolution, director of dispute resolution, advisory council, fee collection; amending K.S.A. 5-501(b), K.S.A. 5-502 (a)(b)(c)(d)(e)(g), K.S.A. 5-503, K.S.A. 5-504(a), K.S.A. 5-505(a)(2)(4)(5)(6), K.S.A. 5-506(a)(1)(2)(3)(4)(5)(6)(7)(11)(b), K.S.A. 5-507(a)(1)(2)(4)(7)(8)(c)(d), K.S.A. 5-508, K.S.A. 5-509(a)(b)(c), K.S.A. 5-510(a)(b)(c), K.S.A. 5-511(a)(b)(c)(d), K.S.A. 5-512(a)(b)(1)(2)(4), K.S.A. 5-513, K.S.A. 5-514, K.S.A. 5-515, K.S.A. 5-516, K.S.A. 5-517, and repealing the existing sections.

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

Section 1. K.S.A. 5-501 is hereby amended to read as follows:

(a) K.S.A. 1994 Supp. 5-501 through 5-516, and amendments thereto, shall be known and may be cited as the dispute resolution act.

(b) The dispute resolution act shall apply ~~only~~ to ~~approved centers, including the governing board members and the mediators and their personnel of approved centers, whether or not such persons are compensated, and to the parties to disputes accepted for dispute resolution at approved center.~~ *registered and approved programs and individuals , and personnel thereof, to parties to disputes resolution being conducted by registered programs and individuals, and to disputes referred by a court to dispute resolution other than litigation. The dispute resolution act shall not apply to any judge acting in an official capacity.*

Section 2. K.S.A. 5-502 is hereby amended to read as follows:

As used in the dispute resolution act:

(a) ~~"Approved center" means a center that has applied for and received approval from the director under K.S.A. 1994 Supp. 5-507, and amendments thereto;~~ *"Registered programs" and "registered individuals" refer to those programs and individuals who have registered with the director of dispute resolution and are eligible to apply for public funding or approval from the director of dispute resolution.*

~~(b) "center" means any entity or program which makes dispute resolution procedures available, other than a dispute resolution program operated by the judicial branch. An entity or program which merely coordinates or cooperates with the judicial branch shall not be considered to be operated by the judicial branch.~~

(b) "approval" means the program or individual has applied for

inclusion on a list of programs and individuals and has been found to have met requirements and guidelines to be considered for the receipt of public funding or be recommended to the court as an approved service provider.

(c) "council" means the advisory council on dispute resolution;

(d) "director" means the director of ~~the office of~~ dispute resolution;

(e) "dispute resolution" ~~process~~" means a process by which the parties involved in a dispute voluntarily agree or are referred *or ordered* by a court to enter into ~~informal~~ discussion and negotiation with the assistance of a ~~mediator;~~ *neutral party.*

(f) "mediation" means the intervention into a dispute by a third party who has no decision making authority and is impartial to the issues being discussed, *and assists the parties in defining the issues in dispute, facilitates communication between the parties, and assists the parties in reaching resolution;*

(g) ~~"mediator means a person trained in the process of mediation who assists parties in dispute to reach a mutually acceptable resolution of their conflict;~~

(g) "arbitration" means a proceeding in which a neutral person or panel hears a formal case presentation and makes an award, which can be binding or non-binding upon the parties relative to a prior agreement.;

(h) "neutral evaluation" means a proceeding conducted by a neutral person who helps facilitate settlement of a case by giving the parties to the dispute an evaluation of the case;

(i) "summary jury trial" means a formal case presentation to a jury and judge which results in a non-binding decision.;

(j) "mini trial" means a formal case presentation to a party representative and an expert neutral person who makes a non-binding decision;

(k) "settlement" means a proceeding in which someone other than the presiding judge assists the parties in reaching a resolution ;

(l) "conciliation" means a proceeding in which a neutral person assists the parties in reconciliation efforts;

(m) "neutral person" or "neutral" means the impartial third party who intervenes in a dispute at the request of the parties or the court in order to help facilitate settlement or resolution of a dispute.

Section 3. K.S.A. 5-503 is hereby amended to read as follows:

~~The office of dispute resolution is hereby established in the office of the judicial administrator.~~ The director of ~~the office~~ *dispute resolution shall*

be appointed by the judicial administrator and work for the Office of Judicial Administration. The director of dispute resolution shall be in ~~the~~ unclassified service under the Kansas civil service act. ~~and shall be appointed by the judicial administrator.~~ The director may be but is not required to be an attorney and shall be selected for appointment on the basis of the individual's training and experience in ~~mediation.~~ *dispute resolution.* The director shall administer the dispute resolution act and shall provide administrative and clerical assistance to the council. [If] The person appointed as director is an attorney, such person shall devote full time to the duties of the office of director and shall not engage in the private practice of *law* ~~any profession~~ during the period such person serves as director.

Section 4. K.S.A. 5-504 is hereby amended to read as follows:

(a) The advisory council on dispute resolution is hereby created. The council shall be comprised of individuals from a variety of disciplines who are trained and knowledgeable in ~~mediation~~ *dispute resolution* and shall be selected to be representative of the geographical and cultural diversity of the state and to reflect balanced gender representation. The council shall consist of *no more than* ~~11~~*19* voting members ~~appointed by the chief justice of the supreme court.~~ The voting members shall include not more than ~~one district judge, not more than one district magistrate judge, and not more than one other person who is licensed to practice law in Kansas.~~ *six members who are licensed to practice law in Kansas.* The council shall be appointed by the chief justice of the supreme court in accordance with this section. The chief justice shall solicit nominations from Kansas judges, ~~mediation~~ *dispute resolution* organizations, legal and mental health professional organizations, social and legal services agencies, domestic violence advocacy groups, state and local government agencies, business organizations, consumer organizations, court service officers, social workers, mental health professional, educators and other interested groups or individuals. The chief justice is not restricted to the solicited lists of nominees in making such appointments. ~~Two nonvoting, exofficio members of the council shall be appointed by the council from among representatives of the approved centers.~~

(b) The initial members of the council shall be appointed for terms of one, two or three years so that the terms of not more than four voting members shall expire during the same calendar year. All successor appointments shall be made for terms of three years. Any vacancy on the

council shall be filled in the same manner in which the original appointment was meade the duration of the term vacated. Appointments to the council shall be made within 90 days after July 1, 1994.

(c) The council annually shall elect a chair-person, a vice-chairperson and other officers as deemed necessary by the council.

Section 5. K.S.A. 5-505 is hereby amended to read as follows:

(a) The council shall:

(1) Advise the director on the administration of the dispute resolution act and on policy development therefor;

(2) assist the director in providing technical assistance to ~~centers~~ *programs and individuals;* and other entities, including courts, requesting the study and development of dispute resolution programs;

(3) consult with appropriate and necessary state agencies and offices to promote a cooperative and comprehensive implementation of the act;

(4) advise the director with respect to the awarding of grants ~~to approved centers~~ or any other financial assistance program which is administered under this act;

(5) advise the director with respect to applications submitted by ~~centers and other entities~~ *programs and individuals* for approval under K.S.A. 1994 Supp. 5-507, and amendments thereto, ~~as approved centers~~;

(6) assist the director with the review, supervision and evaluation of *dispute resolution programs* ~~of approved centers~~; and

(7) make recommendations to the director pertaining to legislation affecting dispute resolution.

(b) The council shall meet at least four times per year and at other times deemed necessary to perform its functions. Members of the council or attending a subcommittee meeting thereof authorized by the council shall receive amounts provided for in subsection (e) of K.S.A. 75-3223 and amendments thereto.

(c) The council may appoint subcommittees of the council and *task forces* to carry out its work. Subcommittee *and task force* members shall have knowledge of, responsibility for, or interest in an area related to the duties of the council assigned to the subcommittee *or task force.*

Section 6. K.S.A. 5-506 is hereby amended to read as follows:

(a) consistent with provisions of the dispute resolution act and the rules of the supreme court adopted pursuant to the dispute resolution act, and in consultation with the council, the director shall:

(1) Make information ~~on the formation of centers~~ *on dispute*

resolution available throughout the state and encourage ~~the formation of centers~~ *development of new programs;*

(2) approve ~~centers~~ *programs and individuals* which meet requirements and guidelines for approval which are prescribed by this act or by rules of the supreme court adopted pursuant to the dispute resolution act;

(3) develop and administer a uniform system of reporting and collecting statistical data from ~~approved centers~~ *approved programs and individuals;*

(4) develop and administer a uniform system of evaluating ~~approved centers~~ *approved programs and individuals* for compliance with the requirements of the dispute resolution act and the rules of the supreme court adopted pursuant to the dispute resolution act;

(5) prepare an annual budget for the implementation and administration of the dispute resolution act and disburse funds to ~~approved centers~~ *approved programs and individuals;*

(6) develop guidelines for a sliding scale of fees that may be charged ~~by approved centers~~ *by approved programs and individuals*

(7) develop and approve curricula and initiate training sessions for mediators and staff of ~~approved centers~~ *registered programs and individuals*, including continuing education programs;

(8) establish and approve volunteer training and continuing education programs;

(9) promote public awareness of the dispute resolution process;

(10) apply for and receive funds from public and private sources for carrying out the purposes and objectives of the dispute resolution act; and

(11) provide technical assistance to ~~centers~~ *any program or individual*, and other entities, including courts, requesting the study and development of dispute resolution programs.

(b) The director shall report annually to the supreme court, the governor and the legislature on the implementation of the dispute resolution act. The report shall include ~~the number and types of disputes received, the disposition of the disputes, any problems encountered, any recommendations to address problems and a comparison of the cost of mediation and litigation.~~ *, but not be limited to, information on types of disputes being handled by registered programs and individuals, recommendations to address problems and for program development, statistics concerning numbers and resolutions of disputes when available,*

and any other information available which is relevant to achieving the goals of the dispute resolution act.

Section 7. K.S.A. 5-507 is hereby amended to read as follows:

(a) A *program or individual* ~~center or an entity program proposing to establish a center~~ *not connected with a court and desiring approval* may apply to the director ~~for approval to participate in the dispute resolution process~~ *to be approved* under the dispute resolution act by submitting an application which includes:

(1) A plan for the operation of the ~~center~~ *program or service,*

(2) the ~~center's~~ *program's or individual's* objectives;

(3) the areas of population to be served;

(4) the administrative organization of the ~~center~~ *program or service,*

(5) the recordkeeping procedures;

(6) the procedures for client intake and for scheduling, conducting and terminating dispute resolution sessions;

(7) qualifications for ~~mediators~~ *neutrals* for the ~~center~~ *program*;

(8) an annual budget for the ~~center~~ *program;* and

(9) such additional criteria for approval or for grants which are prescribed by the director in accordance with the dispute resolution act or by rules of the supreme court adopted pursuant to the dispute resolution act.

(b) The director shall approve or disapprove each application submitted for approval under this section by the end of the second meeting of the advisory council occurring after the date the application was submitted.

(c) Each approved ~~center~~ *program* shall submit an annual report to the director. The reports shall include the number and types of cases handled in the year and a showing of continued compliance with the dispute resolution act.

(d) Any entities, *programs or individuals* providing ~~mediation programs~~ *dispute resolution services* and existing on July 1, 1994, shall not be ~~included as~~ approved ~~centers~~ under the dispute resolution act unless such entities apply and are approved under this section.

Section 8. K.S.A. 5-508 is hereby amended to ready as follows:

An approved ~~center~~ *program or individual* may use sources of funds, both public and private, in addition to funds appropriated by the legislature. An approved ~~center~~ *program or individual* may require each party to pay a fee to help defray costs based upon ability to pay. ~~A person shall not be denied~~

~~mediation services solely because of an inability to pay the applicable fee.~~*Each approved program or individual shall have a sliding scale system for assessing fees.*

Section 9. K.S.A. 5-509 is hereby amended and shall read as follows:

(a) The following types of cases may be accepted for dispute resolution ~~at~~ *by* an approved ~~center~~ *program or individual.*:

(1) Civil claims and disputes, including, but not limited to, consumer and commercial complaints, disputes involving allegations of shoplifting, disputes between neighbors, disputes between business associates, disputes between landlords and tenants, disputes involving matters under the small claims procedure act, *farmer-lender disputes,* and disputes within communities:

(2) disputes concerning child custody and visitation rights and other areas of domestic relations:

(3) juvenile offenses and disputes involving juveniles:

(4) disputes between victims and offenders, in which the victims voluntarily agree to participate in mediation;

(5) disputes involving allegations of unlawful discrimination under state or federal laws;

(6) disputes referred by county attorneys or district attorneys;

(7) disputes involving g employer and employee relations under K.S.A. 72-5413 through 72-5432, and amendments thereto, or K.S.A. 75-4321 through 75-4337, and amendments thereto: and

(8) disputes referred by a court, attorney, a law enforcement officer, a social service agency, a school or any other interested person or agency, including the request of the parties involved.

(b) A case may be referred prior to the commencement of formal judicial proceedings or may be referred as a pending court case. If a court refers a case ~~to an approved center, the center shall provide~~ information *shall be provided* to the court as to whether an agreement was reached and, ~~if the court requests a copy of the agreement, the center shall provide such copy.~~ *if available, a copy of the signed agreement shall be provided to the court.*

(c) Before the dispute resolution process begins, ~~an approved center~~ *the neutral conducting the process* shall provide the parties with a written statement setting forth the procedures to be followed.

Section 10. K.S.A. 5-510 is hereby amended and shall read as follows:

(a) After reviewing the recommendations of the advisory council on dispute

resolution, the supreme court shall adopt rules which establish standards for training and qualifications for ~~mediators of approved centers~~ *neutrals* and which prescribe procedures for *registration and* approval by the director of training ~~for mediators~~ *of neutrals* in accordance with such standards. ~~Training for mediators shall include the study of conflict resolution techniques, neutrality, agreement writing and ethics.~~ All approved programs and individuals ~~mediators of approved centers~~ shall satisfy the standards for training and qualifications established by rules of the supreme court.

(b) ~~Mediators of approved centers~~ *Registered and approved programs and individuals* shall comply with the ethics requirements and standards and the annual continuing education requirements which are prescribed by the director in accordance with the dispute resolution act or by rules of the supreme court adopted pursuant to the dispute resolution act.

~~(c) An approved center may provide dispute resolution by utilizing mediators who are compensated by the approved center, by utilizing the services of volunteer mediators, or by utilizing both compensated and volunteer mediators.~~ *Services provided by approved programs or individuals may be compensated or provided on a volunteer basis.*

Section 11. K.S.A. 5-511 hereby is amended and shall read as follows: ~~(a) Each mediator of an approved center hall assist the parties in reaching a mutually acceptable resolution of their dispute through discussion and negotiation. The mediator shall be impartial, neutral and unbiased and shall make no decisions for the parties. The mediator shall act in accordance with the ethics requirements and standards prescribed by rules adopted by the supreme court pursuant to the dispute resolution act.~~

~~(b) The mediator shall officially terminate the process if the parties are unable to agree. The termination shall be without prejudice to either party in any other proceeding.~~

~~(c) The mediator has no authority to make or imposed any adjudicatory sanction or penalty upon the parties.~~

~~(d) The mediator shall recommend outside resources to the parties whenever appropriate The mediator shall advise participants to obtain legal review of agreements as necessary.~~*Approved programs and individuals providing services under the dispute resolution act shall comply with rules of procedures and ethics as set forth by the supreme court or the director.*

Section 5-512. K.S.A. 5-512 is hereby amended and shall read as follows: (a) All verbal or written information transmitted between any party to a

dispute and a ~~mediator~~ *neutral person conducting a proceeding under this act,* or the staff of ~~an approved center of~~ *an approved program* shall be confidential communications. ~~Mediation proceedings shall be regarded as settlement negotiation, and no~~*No* admission, representation or statement made in ~~mediation~~ *the proceeding* shall be admissible as evidence or subject to discovery. A ~~mediator~~ *neutral person conducting a proceeding under this act* shall not be subject to process requiring the disclosure of any matter discussed during ~~mediation~~ *the* proceedings unless all the parties consent to a waiver. *Any party , including the neutral conducting the proceeding, participating in the proceeding has a privilege in any action to refuse to disclose, and to prevent a witness from disclosing, any communication made in the courts of the proceeding. The privilege may be claimed by the party or anyone the party authorizes to claim the privilege.*

(b) The confidentiality *and privilege* requirements of this section shall not apply to:

(1) Information that is reasonably necessary to establish a defense for the ~~mediator or center~~ *neutral person or staff of an approved program conducting the proceeding* in the cause of an action against the ~~mediator or the center~~ *neutral person or staff of an approved program* that is filed by a party to the ~~mediation;~~*proceeding;*

(2) any information that the ~~mediator~~ *person conducting the proceeding* is required to report under K.S.A 38-1522, and amendments thereto;

(3) any information that is reasonably necessary to stop the commission of an ongoing crime or fraud or to prevent the commission of a crime or fraud in the future for which there was an expressed intent to commit such crime or fraud; or

(4) any information that the ~~mediator~~ *person conducting the proceeding* is required to report or communicate under the specific provisions of any statute or in order to comply with orders of a court.

Section 13. K.S.A. 5-513 is hereby amended and shall read as follows: No ~~mediator~~ neutral *person,* staff member, or member of a governing board of an approved ~~center~~ *program* may be held liable for civil damages for any statement or decision made in the process of dispute resolution unless such person acts, or fails to act, in a manner constituting gross negligence with malicious purpose or in a mann exhibiting willful disregard of the rights, safety or property of any party to the process of dispute resolution.

Section 14. K.S.A. 5-514 is hereby amended and shall read as follows:

If the parties involved in the dispute reach an agreement, the agreement may be reduced to writing and signed by the parties. The agreement shall set forth the settlement of the issues and the future responsibilities of each party. If a court referred the case, the agreement as singed and approved by the parties may be presented to the court as a stipulation and, if approved by the court, such agreement shall be enforceable as an order of the court.

Section 15. K.S.A. 5-515 is hereby amended and shall read as follows: During the period of the dispute resolution process, any applicable statute of limitations shall be tolled as to the parties. The tolling shall commence on the date that the parties jointly agree in writing to participate in ~~mediation~~ *a proceeding* under the dispute resolution act and shall end on the date ~~mediation~~ *the proceeding* is officially terminated by the ~~mediator the~~ *neutral party.* The period shall be no longer the 60 days without consent of all the parties.

Section 16. K.S.A. 5-516 is hereby amended and shall read as follows: The supreme court, upon recommendation by the director in consultation with the council, shall adopt rules for the administration of the dispute resolution act and to prescribe ethics requirements and standards for ~~mediators of approved centers~~ *approved programs and individuals.*

Section 17. K.S.A. 5-517 is hereby amended and shall read as follows: There is hereby created the dispute resolution fund in the state treasury which shall be administered by the judicial administrator. All expenditures from the dispute resolution fund shall be for the ~~operating expenses of the office of dispute resolution in the office of the judicial administrator, the advisory council on dispute resolution, or other activities or grants authorized or provided for under the~~ *purpose of carrying out the* dispute resolution act. *In addition to funds generated by remittances under K.S.A. 20-367, funds acquired through grants, training fees, registration and approval fees, and other public or private sources and designated for dispute resolution, shall be remitted to the dispute resolution fund for carrying out the dispute resolution act.* All expenditures from the dispute resolution fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the judicial administrator or by the judicial administrator's designee.

5-512. Confidentiality of mediation proceedings. (a) All verbal or written information transmitted between any party to a dispute and a mediator shall be confidential communications. No admission, representation or statement made in mediation shall be admissible as evidence or subject to discovery. A mediator shall not be subject to process requiring the disclosure of any matter discussed during mediation *unless* all the parties consent to a waiver. Any party , including the mediator conducting the proceeding, participating in the proceeding has a privilege in any action to refuse to disclose, and to prevent a witness from disclosing, any communication made in the courts of the proceeding. The privilege may be claimed by the party or anyone the party authorizes to claim the privilege.

(b) The confidentiality and privilege requirements of this section shall not apply to:

(1) Information that is reasonably necessary to establish a defense for the mediator in the cause of an action against the mediator that is filed by a party to the mediation;

(2) any information that the mediator is required to report under K.S.A 38-1522, and amendments thereto;

(3) any information that is reasonably necessary to stop the commission of an ongoing crime or fraud or to prevent the commission of a crime or fraud in the future for which there was an expressed intent to commit such crime or fraud; or

(4) any information that the mediator is required to report or communicate under the specific provisions of any statute or in order to comply with orders of a court.

K.S.A. 60-1103b is hereby amended to add the following:

(d) When any claimant who has filed a notice of intent to perform has been paid in full, such claimant shall be required to file in the office in which the notice of intent to perform was filed, and to pay any requisite filing fee, a release of such notice and waiver of lien which shall be executed by the claimant, shall identify the property as set forth in the notice of intent to perform, and state that it is the intention of the claimant to waive or relinquish any statutory right to a lien for the furnishing of labor or material to the property. Upon such filing, the notice of intent to perform previously filed by such claimant shall be of no further force or effect, and such claimant's right to a lien under K.S.A. 60-1101 and 60-1103 shall be extinguished.

(e) Any owner of the real estate upon which a notice of intent to perform has been filed, or any owner's heirs or assigns, or anyone acting for such owner, heirs or assigns, and after payment in full to the claimant, may make demand upon the claimant filing the notice of intent to perform, for the filing of a release of the notice and waiver of lien as provided for in subsection (d) above, unless the same has expired by virtue the provisions set forth in paragraph (f) below.

(f) Notwithstanding the requirements of subsections (d) and (e), a notice of intent to perform shall be of no further force or effect after the expiration of one (1) year from the date of filing the same, unless within such time the claimant has filed a lien pursuant to K.S.A. 60-1101 and 60-1103.

PROPOSED HOUSE BILL NO. ____

AN ACT concerning the consumer credit code; relating to deficiency judgments; amending K.S.A. 16a-5-103 and repealing the existing section.

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

Section 1. K.S.A. 16a-5-103 is hereby amended to read as follows: 16a-5-103. (1) This section applies to a deficiency on a consumer credit sale of goods or services and on a consumer loan in which the lender is subject to defenses arising from sales (section 16a-3-405, and amendments thereto); a consumer is not liable for a deficiency unless the ~~creditor has disposed of the goods in good faith and in a commercially reasonable manner~~ goods have not been carefully maintained and as a result have been damaged in excess of the usual wear and tear.

(2) If the seller repossesses or voluntarily accepts surrender of goods which were the subject of the sale and in which he has a security interest, the buyer is not personally liable to the seller for the unpaid balance of the debt arising from the sale of a commercial unit of goods of which the cash sale price was ~~one thousand dollars ($1,000)~~ $1,000 or less, and the seller is not obligated to resell the collateral unless the buyer has paid ~~sixty percent (60%)~~ 60% or more of the cash price and has not signed after default a statement renouncing his rights in the collateral.

(3) If the seller repossesses or voluntarily accepts surrender of goods which were not the subject of the sale but in which he has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services and the cash price of the sale was ~~one thousand dollars ($1,000)~~ $1,000 or less, the buyer is not personally liable to

the seller for the unpaid balance of the debt arising from the sale, and the seller's duty to dispose of the collateral is governed by the provisions on disposition of collateral (section 84-9-504) of the uniform commercial code.

(4) If the lender takes possession or voluntarily accepts surrender of goods in which he has a security interest to secure a debt arising from a consumer loan in which the lender is subject to defenses arising from sales (section 16a-3-405, and amendments thereto) and the net proceeds of the loan paid to or for the benefit of the debtor were ~~one-thousand-dollars-($1,000)~~ $1,000 or less, the debtor is not personally liable to the lender for the unpaid balance of the debt arising from the loan and the lender's duty to dispose of the collateral is governed by the provisions on disposition of collateral (section 84-9-504, and amendments thereto) of the uniform commercial code.

(5) For the purpose of determining the unpaid balance of consolidated debts or debts pursuant to open end credit, the allocation of payments to a debt shall be determined in the same manner as provided for determining the amount of debt secured by various security interests (section 16a-3-303, and amendments thereto).

(6) The consumer may be liable in damages to the creditor if the consumer has wrongfully damaged the collateral or if, after default and demand, the consumer has wrongfully failed to make the collateral available to the creditor.

(7) If the creditor elects to bring an action against the consumer for a debt arising from a consumer credit sale of goods or services or from a consumer loan in which the lender is subject to defenses arising from sales (section 16a-3-405, and amendments thereto), when under this section he would not be entitled to a deficiency judgment if he took possession of the collateral, and obtains judgment

(a) he may not take possession of the collateral, and

(b) the collateral is not subject to levy or sale on

execution or similar proceedings pursuant to the judgment.

Sec. 2. K.S.A. 16a-5-103 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

State of Kansas
KANSAS SENTENCING COMMISSION

HOUSE JUDICIARY COMMITTEE
TESTIMONY
JANUARY 31, 1996

HISTORY OF SENTENCING GUIDELINES

In 1989, Senate Bill 50 was introduced and passed establishing the Kansas Sentencing Commission. The stated mission of the Commission was to develop uniform sentencing guidelines that established a range of presumptive sentences based on two primary assumptions: 1) incarceration would be reserved for the most serious offenders; and 2) the primary purposes of a prison sentence are incapacitation and punishment.

The Sentencing Guidelines Act was passed by the 1992 Kansas Legislature and sentencing guidelines became effective on July 1, 1993. The Guidelines Act utilizes a sentencing grid, based on offense severity and criminal history of the offender, to determine sentences for all felony offenses committed on or after its effective date. Presumptive sentences are indicated on either the nondrug or drug grid depending on the nature of the offense. In addition, all felonies are designated either person or nonperson by statute, with person crimes assigned a higher severity level. The guidelines apply retroactively to certain offenders, primarily those who would have fallen in the presumptive probation grid boxes under the guidelines had their offense(s) been committed on or after July 1, 1993. Retroactivity has resulted in the release of approximately 2,500 offenders from prison.

In addition to the prison portion of a sentence imposed under Sentencing Guidelines, all offenders are required to serve a period of postrelease supervision, plus any amount of good time earned and retained while in prison. Initially the period of postrelease was designated as 12 or 24 months depending on the assigned severity level. During the 1995 Legislative session, the period of postrelease was extended to 24 and 36 months. The Parole Board monitors and determines postrelease revocations.

PROPHET PROJECTION MODEL

Among the duties assigned to the Sentencing Commission is the providing correctional authorities and policy makers with information that will aid in decisions regarding resource allocations. In response to that duty, the Kansas Sentencing Commission initiated a contract

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with the National Council on Crime And Delinquency (NCCD) in July of 1995, to develop a computer based simulation prison population projection model known as Prophet. The Prophet Model utilizes a modeling technique that is a combination of stochastic entity simulation and a Monte Carlo simulation. The stochastic or probabalistic technique utilizes a random number process to simulate the movement of offenders through the correctional system. The Monte Carlo technique converts the random numbers chosen into individual cases (inmates admitted to prison) and places the inmate in the possible statuses available, such as prison, parole, post-release, or discharge. The status placement of offenders is based upon transition probabilities provided by the programmer and developed by assumptions used in the construction of the model.

Prophet assigns every inmate into one of three basic identification groups: Indeterminate Sentencing Group/Old Law; Determinate Sentencing Group/New Law; and an Aggregate Sentencing Group/Combination Old and New Law. The Aggregate Sentencing Group consists of offenders with concurrent and/or consecutive sentences involving both indeterminate and determinate sentencing structure. The placement of the offender is then dependent on the possibilities available under that specific sentencing structure (See Attachment A).

Within each of the three basic identification groups, the inmate is then assigned to one of the fifteen sentencing guidelines groups based on the most serious offense, producing a total of 45 separate inmate sub-groups or identification groups. The assignment process was used for stock prison population, as well as new admissions for FY 1995. The identification group distribution of future admissions to prison is assumed to be the same as inmates admitted to prison during FY 1995.

The report provides a list of the major assumptions used in the development of the Prophet Model. Assumptions play a crucial role in the accuracy of the projections and are based on both past and anticipated future trends in law enforcement, correctional policies, and parole board practices. A Consensus Group was formed to review the assumptions used in Prophet. This group was comprised of representatives from the KBI, Department of Corrections, Court Services, Community Corrections, and the Parole Board. Based on the group discussion, the assumptions formulated represented what members anticipated, to the best of their knowledge, would be future practices. The major assumptions included are:

1. Anticipated yearly admissions increase will mirror the prior ten years and are projected to be 2.9% annually.

2. By July of 1997, all admissions will be determinate or guideline sentences.

3. Future new court commitments will be the same as 1995 admissions in terms of the types of offenses and length of sentences.

4. Parole rates are anticipated to increase from 20% to 25% over the projection period.

5. Technical violators of parole are anticipated to serve 7.8 months and post-release violators will serve 3.1 months under sentencing guidelines. It is assumed that 75% of technical violators under guidelines will earn all eligible good time (S.B. 360), and the remaining 25% will earn 50% of their good time.

6. Revocation rates for offenders returned to prison for the commission of a new offense will remain unchanged.

7. Department of Correction's graduated sanctions program will reduce the number of technical post-release violators returned to prison by 25% (120-130 beds per year) beginning in FY 1996.

8. Good time awards for indeterminate sentences are assumed to be 24.5 days per month based on the prediction that 65-75% of all inmates will earn all good time available; 25-30% of inmates will earn 50% of good time available and 5% of the remaining inmates will receive no good time credits.

9. Inmates sentenced under guideline sentences will serve 80% of their sentences less jail credits prior to July 1995 and 85% of their sentences less jail credits after July 1995 (S.B.360). It is assumed that all inmates on guidelines sentences will lose 15% of eligible good time.

All population projections were done on an annual basis, rather than monthly. Monthly projections often indicate short term trends such as seasonality, which was factored into the annual projections. It should be noted that the projections are based on current legislation and any changes in legislation would have an impact on the numbers. In addition, there are a couple of unknowns at this time that could not be factored into the model, but may impact adult prison admissions. First, any changes in the Juvenile Code could increase the projections if a significant number of juveniles are sentenced to adult facilities. Second, the closing of state hospitals could have the potential to increase prison population.

A ten year forecast period was developed, which provided a baseline prison population projection by severity level up to the year 2005 (Table 2). The baseline projections also include a projection number of technical parole/postrelease violators that will enter correctional facilities in that same ten year period. Current prison bed capacity provided by the Department of Corrections indicates that Kansas will have a maximum capacity of 7,548 beds available by March of 1996. 467 of the total beds available are temporary in nature and should not be considered as permanent housing for inmates. With the removal of the temporary beds, current long-term capacity stands at 7,081 beds. Given the prophet projections, even if the temporary beds are utilized, the state of Kansas will exceed available bedspace by the end of FY 1997.

The analysis of the data used in the Prophet Model indicates a that in spite of modest project growth of annual prison admissions (2.9%) over the next ten years, the population continues to increase due to low parole grant rates and the large number of technical parole/postrelease violators returning to prison. It should be noted that the projected prison

population would be considerably higher if the Department of Corrections had not established a graduated sanctions program for technical parole/postrelease violators, which is anticipated to reduce the current number of violators returned to prison by 25%.

Examining the distribution of offenders by severity levels, sentencing guidelines are fulfilling the purpose for which they were established. The highest levels of projected growth are in the levels with the longest sentences, which target the most serious offenders. Severity levels 1, 2, and 3 indicates a projected growth of 1,162 offenders over the next ten years. Declines are projected in levels 4, 9, and 10, along with a reduction in technical violators. In reviewing the projections, it should be noted that because of the growth in severity levels containing the longest sentences, there is a certain stacking effect that takes place over time. This means that even if admissions are flat or decrease slightly, bedspace needed may increase because of the length of time these offenders are incarcerated. Stacking effects are not immediately noticeable, but have a significant impact 10 to 20 years in the future. You can admit the same number of offenders year after year, but if there are limited number of releases, eventually there will be a shortage of beds.

LEGISLATIVE IMPACT PROJECTIONS

The Prophet Model also allows impact statements of proposed legislation that would impact sentencing lengths for specific offenses. The second report provided indicates projected bedspace needed for three bills held over from the 1995 Legislative Session: HB 2424, HB 2425, and HB 2025. HB 2424 changes rape from a severity level 2 person felony to a severity level 1 person felony and increases the severity level from level 5 to level 3 person felony for criminal discharge of a firearm. HB 2425 doubles the sentencing ranges in the top three severity levels. It also increases rape to a level 1 person felony and criminal discharge of a firearm to a level 3 person felony. HB 2025 increases the sentence for first degree, capital murder, treason or any level 1, 2, or 3 person felony, or any sexually violent crime to life imprisonment without parole, if the offender has at least one prior conviction for any of the above mentioned crimes.

The impact projections for SB 241 and HB 2155 are also included in the package of information provided. SB 241 defines a second conviction for sexually violent crimes as a persistent sex offender, with a sentence of life without parole and requires mandatory prison sentences of 15 or 25 years for convictions of treason, capital murder, and first degree murder. H.B. 2155 provides a sentence of life imprisonment without parole for a second conviction of an any offgrid crime, a severity level 1, 2, or 3 person felony, sexually violent offense, aggravated battery, and several child abuse crimes.

The projections for these pieces of proposed legislation encompass a 20 year period to allow for the lag time before offenders sentenced under the new legislation would actually enter correctional facilities. The individual impact of each piece of legislation is presented and the projected year that the bedspace would be needed. Since these pieces of legislation increase sentence lengths significantly, the stacking effect increases over time.

The Prophet Model cannot provide impacts for SB 177 or HB 2426, since both pieces of legislation involve the misdemeanor offenses. Prophet was designed for felony offense information and does not have the capability to track misdemeanor offenses.

INTERIM JUDICIARY REQUESTS

Upon review of the initial legislative impact projections, the Interim Judiciary Committee requested additional projections be completed that incorporate some modifications. These projections included the following:

* Doubling all sentence lengths for nondrug severity levels I and II.

* Crimes of rape and second degree murder moved offgrid and nondrug sentences for severity level I and II increased by 50%.

* Crimes of rape and second degree murder raised to severity level I and all nondrug severity level I and II sentences increased by 50%.

* All nondrug severity level I and II sentences increased by 50%.

* Drug grid levels III and IV reduced to sentence lengths of nondrug grid levels VII and VII - probation cells not applicable.

* Adding different combinations of border boxes to the drug grid.

Attached are tables indicating either the projected beds needed or saved according to the impact projection performed. These projections are based on the assumptions that admissions rates for the specified offenses will mirror past rates and that there are no additional changes to the law.

The state of Kansas is at a very crucial point with regard to issues of public safety, prison bedspace capacity, and sentencing policies. There are no easy or cheap solutions to the state's current prison overcrowding problem. Last year the Legislature allocated funds for the development of the Prophet Model for prison population projections. Projections alone do not provide an answer to whether prison construction is the solution. What projections are intended to do are serve as a decision making tool that permits rational and informed policy changes that address the current problem. The Sentencing Commission will continue to be available to provide any assistance, support or information requested.

For more information contact:

Barbara Tombs
Executive Director
Kansas Sentencing Commission

KANSAS SENTENCING COMMISSION

INTERIM JUDICIARY COMMITTEE REQUESTS
FOR
ALTERNATIVE BEDSPACE PROJECTIONS TO PROPOSED LEGISLATION

House Judiciary
1-31-96
Attachment 7

SENTENCING RANGE - NONDRUG OFFENSES

Category⇒	A	B	C	D	E	F	G	H	I
Severity Level ⇓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanor	1 Misdemeanor No Record
I	408 388 370	386 366 346	178 170 161	167 158 150	154 146 138	141 134 127	127 122 115	116 110 104	103 97 92
II	308 292 276	288 274 260	135 128 121	125 119 113	115 109 103	105 100 95	96 91 86	86 82 77	77 73 68
III	206 194 184	190 180 172	89 85 80	83 78 74	77 73 68	69 66 62	64 60 57	59 55 51	51 49 46
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

Recommended probation terms are:
36 months for felonies classified in Severity Levels 1 - 5
24 months for felonies classified in Severity Levels 6 - 10

Postrelease terms are:

For felonies committed before 4/20/95
24 months for felonies classified in Severity Levels 1 - 6
12 months for felonies classified in Severity Level 7 - 10

For felonies committed on or after 4/20/95
36 months for felonies classified in Severity Levels 1 - 6
24 months for felonies classified in Severity Level 7 - 10

SENTENCING RANGE - DRUG OFFENSES

Category ⇒	A	B	C	D	E	F	G	H	I
Severity Level ⇓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanors	1 Misdemeanor No Record
I	204 194 185	196 186 176	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	83 78 74	77 73 68	72 68 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46
III	51 49 46	47 44 41	42 40 37	36 34 32	32 30 28	26 24 23	23 22 20	19 18 17	16 15 14
IV	42 40 37	36 34 32	32 30 28	26 24 23	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10

LEGEND
Presumptive Probation
Presumptive Imprisonment

Recommended probation terms are:

36 months for felonies classified in Severity Levels 1 - 3
24 months for felonies classified in Severity Level 4

Postrelease supervision terms are:

For felonies committed before 4/20/95
24 months for felonies classified in Severity Levels 1 - 3
12 months for felonies classified in Severity Level 4

For felonies committed on or after 4/20/95
36 months for felonies classified in Severity Levels 1 - 3
24 months for felonies classified in Severity Level 4

PROPHET PROJECTION MODEL
KDOC SIMULATED PRISONER MOVEMENT

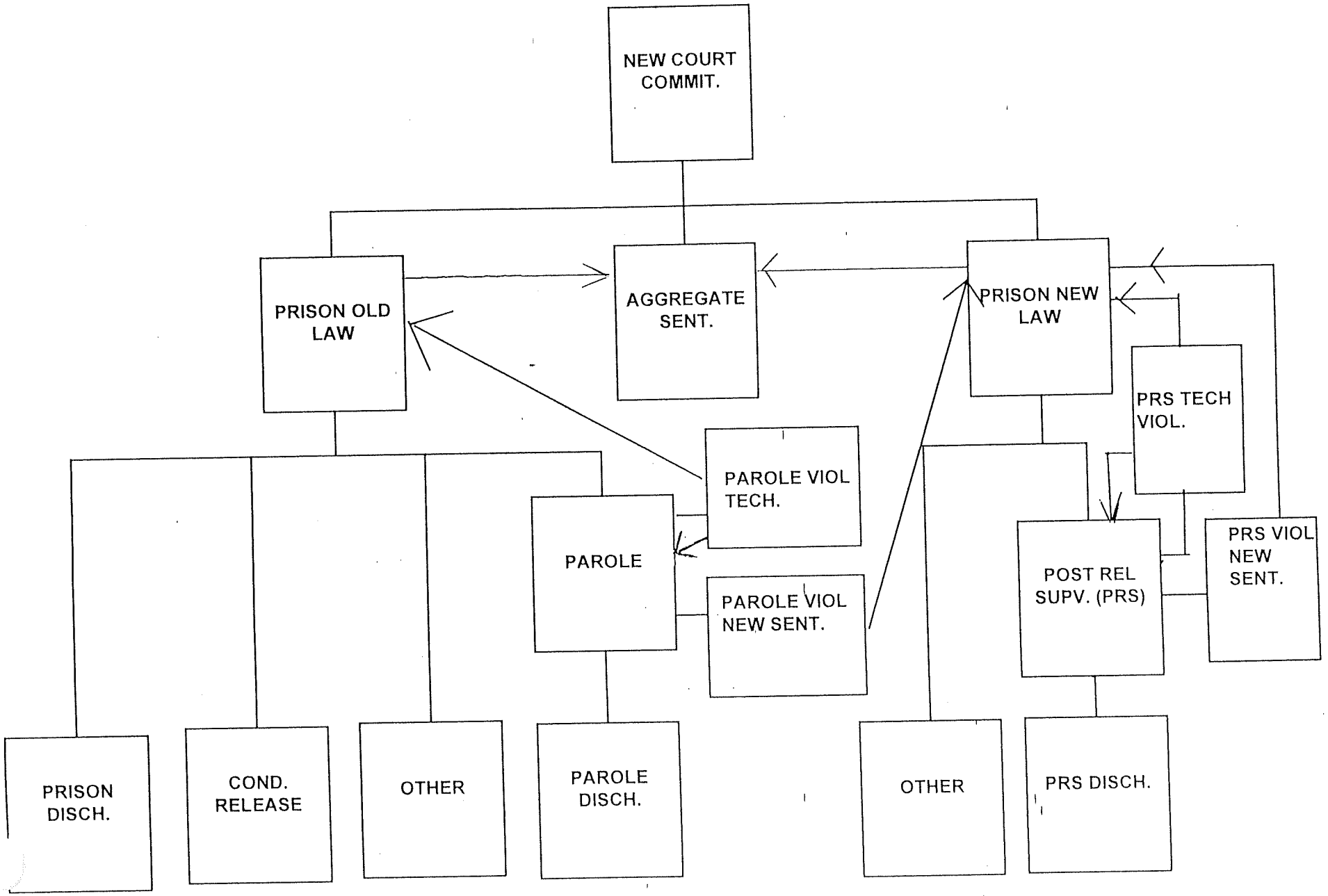

TABLE 2

KANSAS DEPARTMENT OF CORRECTIONS
PRISON POPULATION PROJECTIONS
OCTOBER 1995 - JUNE 2005

Inmate Population - June of Each Year

Severity Level	October 1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Total Increase	Percent Increase
Level 1	288	320	361	396	439	478	513	536	560	589	610	322	111.8
Level 2	523	558	629	676	723	760	784	811	824	824	830	307	58.7
Level 3	1,214	1,266	1,329	1,369	1,417	1,435	1,422	1,466	1,474	1,467	1,441	227	18.7
Level 4	294	289	291	293	294	292	285	279	269	260	269	-25	-8.5
Level 5	901	913	960	1,011	1,031	1,025	1,033	1,040	1,086	1,095	1,097	196	21.8
Level 6	176	192	208	222	224	220	230	213	219	233	251	75	42.6
Level 7	588	615	621	662	662	664	667	666	656	680	684	96	16.3
Level 8	200	202	197	199	211	208	211	221	199	222	221	21	10.5
Level 9	337	326	310	315	318	305	298	313	324	325	314	-23	-6.8
Level 10	39	55	60	43	43	40	31	29	31	27	24	-15	-38.5
Level D1	11	13	17	23	27	27	28	28	30	30	29	18	163.6
Level D2	119	136	167	188	196	214	241	243	243	238	231	112	94.1
Level D3	851	892	933	920	899	848	845	857	810	821	849	-2	-0.2
Level D4	214	208	223	221	247	255	260	247	278	259	275	61	28.5
Lifer	584	607	635	662	695	731	767	801	830	860	890	306	52.4
Technical Violator	792	739	766	612	541	483	402	385	362	406	406	-386	-48.7
Total*	7,131	7,331	7,707	7,812	7,967	7,985	8,017	8,135	8,195	8,336	8,421	1,290	18.1

KANSAS DEPARTMENT OF CORRECTIONS
BEDSPACE IMPACT ASSESSMENT
TOTAL IMPACT: HB 2424, HB 2425, HB 2025

June Each Year	Additional Beds Needed		
	House Bill 2424	House Bill 2425	House Bill 2025
1996	0	0	0
1997	0	0	0
1998	0	0	0
1999	0	0	0
2000	0	0	7
2001	10	21	15
2002	18	72	22
2003	19	202	48
2004	23	331	85
2005	39	480	114
2006	42	633	195
2007	38	796	255
2008	43	874	312
2009	38	913	384
2010	34	983	470
2011	39	1,046	523
2012	43	1,055	650
2013	43	1,048	714
2014	54	1,049	793
2015	61	1,063	888

Source: National Council on Crime and Delinquency

KANSAS DEPARTMENT OF CORRECTIONS
BEDSPACE IMPACT ASSESSMENT
HB 2155

June of Each Year	Additional Beds
1996	0
1997	0
1998	0
1999	1
2000	35
2001	78
2002	121
2003	187
2004	256
2005	328
2006	454
2007	559
2008	665
2009	684
2010	926
2011	1,028
2012	1,206
2013	1,319
2014	1,461
2015	1,616

Source: National Council on Crime and Delinquency

KANSAS DEPARTMENT OF CORRECTIONS
BEDSPACE IMPACT ASSESSMENT
SB 241

June of Each Year	Scenario #1	Scenario #2	Scenario #3
1997	0	0	0
1998	1	1	0
1999	10	3	0
2000	22	12	3
2001	40	22	5
2002	63	35	12
2003	86	51	21
2004	106	69	24
2005	124	88	29
2006	152	99	34
2007	184	113	45
2008	226	136	55
2009	255	152	62
2010	298	171	68
2011	334	199	74
2012	376	220	83
2013	424	251	88
2014	465	272	97
2015	503	297	102

The three scenarios are based on different assumptions relating to number of inmates admitted each year as persistent sex offenders.

#1. All 33 admissions in FY 1995 with a prior person felony conviction, were convicted of a violent sexual crime.

#2. Assumes 60% (20 admissions) of the 33 prison admissions in FY 1995 were convicted previously of a sexually violent crime.

#3. Assumes that 19% of the 33 prison admissions in FY 1995 (six cases) with prior felony convictions were convicted previously for a sexually violent crime.

Note: In Fy 1995, 19% of all person felonies fell into the category of "sexually violent".

REVISED BEDSPACE IMPACT
HB 2425
DOUBLING SENTENCE LENGTH IN LEVELS I AND II ONLY
ADDITIONAL BEDS NEEDED

JUNE EACH YEAR	SEVERITY LEVEL 1	SEVERITY LEVEL 2	TOTAL
1996	0	0	0
1997	0	0	0
1998	0	0	0
1999	0	0	0
2000	0	0	0
2001	0	3	3
2002	0	15	15
2003	0	62	62
2004	1	97	98
2005	3	142	145
2006	12	181	193
2007	22	226	248
2008	36	233	269
2009	65	238	303
2010	84	264	348
2011	99	278	377
2012	108	286	394
2013	116	300	416
2014	119	301	420
2015	128	300	428

KANSAS SENTENCING COMMISSION
BEDSPACE IMPACT ASSESSMENT
RAPE AND SECOND DEGREE MURDER RAISED TO OFF-GRID
AND
NONDRUG LEVEL I AND II INCREASED BY 50%

June Of Each Year	Level I Additional Beds	Level II Additional Beds	Rape Additional Beds	2nd Degree Murder - Level II Additional Beds	2nd Degree Murder - Level I Additional Beds	Total Extra Beds Needed
1997	0	0	0	0	0	0
1998	0	0	0	0	0	0
1999	0	0	0	0	0	0
2000	0	0	0	3	0	3
2001	0	0	1	6	0	7
2002	0	3	7	11	0	21
2003	0	9	12	19	1	41
2004	1	15	26	31	1	74
2005	6	23	39	47	4	119
2006	13	23	54	66	9	165
2007	18	28	74	87	17	224
2008	26	30	95	110	26	287
2009	26	36	119	134	34	349
2010	34	48	145	158	52	437
2011	39	49	172	185	64	509
2012	48	48	196	208	79	579
2013	55	52	225	231	98	661
2014	56	58	265	247	116	742
2015	63	64	298	272	137	834

KANSAS SENTENCING COMMISSION
BEDSPACE IMPACT ASSESSMENT
RAPE AND SECOND DEGREE MURDER RAISED TO LEVEL I
AND
NONDRUG LEVEL I AND II INCREASED BY 50%

June of Each Year	Level I Additional Beds	Level II Additional Beds	Rape Additional Beds	2nd Degree Murder Additional Beds	Total Additional Beds Needed
1997	0	0	0	0	0
1998	0	0	0	0	0
1999	0	0	0	0	0
2000	0	0	0	3	3
2001	0	0	1	6	7
2002	0	3	7	11	21
2003	0	9	12	19	40
2004	1	15	26	31	73
2005	10	23	39	47	119
2006	21	23	54	66	164
2007	30	28	72	79	209
2008	47	30	85	88	250
2009	56	36	107	93	292
2010	73	48	115	102	388
2011	76	49	130	101	356
2012	85	48	135	99	367
2013	99	52	149	96	396
2014	115	58	171	90	434
2015	118	64	183	95	460

KANSAS SENTENCING COMMISSION
BEDSPACE IMPACT ASSESSMENT
NONDRUG GRID LEVEL I AND II SENTENCES INCREASED BY 50%

June Of Each Year	Beds Needed Level I	Beds Needed Level II	Total Beds Needed
1997	0	0	0
1998	0	0	0
1999	0	0	0
2000	0	0	0
2001	0	4	4
2002	0	16	16
2003	0	26	26
2004	1	39	40
2005	10	58	68
2006	21	79	100
2007	30	80	110
2008	47	107	154
2009	56	128	184
2010	73	145	218
2011	76	168	244
2012	85	180	265
2013	99	201	300
2014	115	227	342
2015	118	248	366

KANSAS SENTENCING COMMISSION
BEDSPACE IMPACT ASSESSMENT
DRUG LEVELS III AND IV REDUCED TO NONDRUG GRID LEVELS VII AND VIII

June of Each Year	Drug Level III Savings	Drug Level IV Savings	Total Bed Savings
1997	42	9	51
1998	114	40	154
1999	168	48	216
2000	188	58	246
2001	213	74	287
2002	204	88	292
2003	241	82	323
2004	235	84	319
2005	215	88	303

KANSAS SENTENCING COMMISSION
PRISON BEDSPACE IMPACT ASSESSMENT: BEDS SAVED
DRUG GRID DIVERSIONS*
1997-2005

June of Each Year	Scenario #1	Scenario #2	Scenario #3	Scenario #4
1997	102	157	184	204
1998	171	269	329	367
1999	191	277	359	403
2000	207	317	405	444
2001	204	320	410	448
2002	211	322	416	463
2003	212	325	425	471
2004	225	325	426	470
2005	227	339	442	489

* Scenario #1 -- Diverts drug level 3: H and I convictions.
Scenario #2 -- Diverts drug level 3: H, I, and G convictions.
Scenario #3 -- Diverts drug level 3: H, I, G, F, and E convictions.
Scenario #4 -- Diverts drug level 3: H, I, G, F, and E convictions; and drug level 4: E and F convictions.

Note: Bed savings based on assumed diversion of 75 percent of prison admissions falling in the target drug grid levels and cells.

Table17: Distribution of 1995 Drug Offenders by Admission Type

Type	Cases	Percentage
New Court Commitment	356	30.45
Probation Violators Technical Without New Sentences	298	25.49
Probation Violators With New Sentences	63	5.39
Inmate Receive on Interstate Compact	2	0.17
Presentence Evaluation	0	0.0
Parole/Postrelease Violators Technical	354	30.28
Parole/Postrelease Violators With New Sentences	61	5.22
Paroled to Detrainer	3	0.26
Conditional Release Technical	18	1.54
Conditional Release with New Sentences	3	0.26
Offenders Returned to Prison	11	0.94
Total	1169	100.0

Table18: Distribution of 1995 Drug Offenders by Admission Type and Severity Level

Type	Severity Level					
	D1	D2	D3	D4	Total	Percent
New Court Commitment	2	33	229	89	353	30.30
Probation Violators Technical Without New Sentences	1	3	223	71	298	25.58
Probation Violators With New Sentences	2	10	38	13	63	5.41
Inmate Receive on Interstate Compact	0	0	2	0	2	0.17
Presentence Evaluation	0	0	0	0	0	0.00
Parole/Postrelease Violators Technical	0	2	335	17	354	30.39
Parole/Postrelease Violators With New Sentences	0	4	26	30	60	5.15
Paroled to Detrainer	0	1	0	2	3	0.26
Conditional Release Technical	0	0	17	1	18	1.55
Conditional Release with New Sentences	0	1	1	1	3	0.26
Offenders Returned to Prison	0	0	10	1	11	0.94
Total	5	54	881	225	1165	100.00

Note: This table is based on 1,165 drug offenders reporting admission type.

STATE OF KANSAS

JOHN M. TOPLIKAR
REPRESENTATIVE, 15TH DISTRICT
507 E. SPRUCE
OLATHE, KS 66061

HOUSE OF REPRESENTATIVES
OFFICE: 155 EAST
TOPEKA, KS 66612
(913) 296-7683

January 31, 1996

TESTIMONY ON HB-2410

Mr. Chairman and members of the Committee:

This bipartisan legislation is being proposed to make three changes in the law concerning child support.

The first intended change, on page 1 in New Sec. 1 of the bill requires the court to notify the sheriff's office of a person found guilty of contempt of court and require the sheriff's office to allow open inspection of the list of violators.

The second change in page 1, line 35, requires the court to suspend a person's driving privileges until all arrearages plus interest are paid.

Interest is to be calculated using the "Interest on judgements." statute specified on page 7, line 22 of the bill, which cites KSA 16-204 and amendments thereto.

Over the last few years I have received several phone calls and letters concerning non-payment of child support by women who have run out of luck in trying to provide for their own children, mostly because of an irresponsible or revengeful father who is attempting to inflict pain and suffering on his ex-spouse. In the communications I've had with these women, most of the time the father has manipulated the law rather skillfully by delaying payments, or making excuses such as changing jobs, or getting laid off work or not being able to find a job paying over minimum wage, or not being able to find full time work or by many other creative ways.

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It is probably very difficult for the court trustees or SRS to determine the truth in these excuses and delays, and I know many times the father is given the benefit of the doubt and allowed to slide some more mainly because the collection offices know that partial payment is at least something for the children.

Some statistics I've recently read concerning child suppoirt collections in Kansas: Of the 30,000 low income families now receiving AFDC support, 18,000 are on these welfare rolls because of the fathers who are not paying child support. This amounts to about $75 million that Kansas taxpayers are having to pick up every year. (Wichita Eagle 9-1-95)

I say there are too many fathers turning their backs on their own children and leaving them to society--the welfare rolls, to provide, and the sad reality is the absent, irresponsible father does not stop here. Many times he will move on to father more children, and again leave them fatherless, all the while he avoids his prompt and full court ordered payment and accumulated interest.

There are some workers collecting child support who believe that it is too difficult and time consuming to calculate interest on an amount owed. I believe that if we, as a state, enforce other provisions in the law regarding interest payments on overdue obligations such as late income tax payments or vehicle registration penalties, we can do the same for our children.

One comment I have heard concerning the collection of interest, "If women want interest they can hire an attorney themselves to get it because it takes too long to calculate for the number of cases there are."

My response to that is that most of these women I have heard from cannot afford an attorney fees to get what is legally owed them and they should not have to under the "Interest on judgements" law.

As stated in a recent newspaper editorial, SRS Secretary Chronister noted that 98% of money owed on vehicles is paid up while only 56% of money owed to children is collected.

Secretary Chronister was quoted as saying, "We should be at least as good at supporting our children as we are at paying for our cars."

The excuses seem to disappear when it comes to the father's own wants and needs. This bill attempts to use these figures as leverage to collect more money for the children.

As some parents would "ground" a disobeying child from an activity or possession as a sanction to persuade them to do the right thing, we the co-sponsors of this bill believe it is a workable solution to "ground" the disobeying father by taking away the use of his toy.

WHAT OTHER STATES HAVE DONE

The New York Times of August 7, 1995, reports that the State of Maine has collected $26 million from 13,023 chronic non-payers since it began threatening license suspensions in August of '93. Of those threats, only 100 were actually suspended.

California issued warnings to 22,889 and collections increased by $10 million, and have not revoked one single license. Massachusetts warned 60,000 and collected $600,000.

In New York State, an increase of $30 million was expected to be realized because of the threat to pull the drivers license.

Nineteen states are currently experimenting with license revocation. Studies indicate the mere threat increases compliance especially be self-employed parents.

At the federal level the U.S. Commission on Interstate Child Support was established as part of the Family Support Act of 1988. The Commission was charged by Congress to make recommendations on improvements to enforcement of child support awards. It's recommendation was that states shall have and use laws that revoke drivers licenses and refuse to renew car registrations.

By a vote of 426 to 5 on March 23, 1995, the U.S. House approved a proposal requiring states to have suspension laws for people who fail to meet their child support obligations.

As U. S. Rep. Marge Roukema commented when she offered the

proposal to the Congress "deadbeat parents miraculously come up with the money that they swore wasn't available."

I encourage your general support of HB-2410. Thank you.

Rep John Toplikar
15th District

Kansas Department of Social and Rehabilitation Services
Rochelle Chronister, Secretary

House Committee on Judiciary
Testimony on H.B. 2410 pertaining to child support enforcement

January 31, 1996

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today on behalf of Secretary Chronister concerning H.B. 2410. The primary responsibility of the SRS Child Support Enforcement Program (CSE) is to help children by establishing regular and adequate support payments and by enforcing past due support obligations. From that perspective, CSE supports this bill's tough stand on child support debts.

Several states report that a sanction against driving privileges effectively impresses chronic nonpayers with the seriousness of failing to support children. The amendments in sections 2 and 3 would add Kansas to the growing number of states adopting such a remedy. By allowing this sanction to be used only after the support debtor is found in contempt of court, the bill is tightly focused on debtors who have the proven ability to pay support but refuse to do so. It provides judges with an important alternative to jailing nonsupporters who are in contempt, one that may prove particularly effective with younger parents.

Because suspension of driving privileges would be mandatory under this bill, it may be desirable to allow the privileges to be restored either upon payment in full of the arrearages ***or*** upon full compliance with a payment plan. The minimum duration of the payment plan could be specified in the statute or left to the court's discretion. To illustrate the proposed change, a balloon is attached showing a minimum duration of 6 months.

The second balloon is a technical amendment that we believe would more clearly express the intent of section 4. On page 7, line 22, the bill adds a requirement that the district court trustee apply judgment interest to all arrearages. Because the statute amended by the bill concerns only the process of income withholding, this new language would not apply to any other enforcement remedy. If the committee wishes to create this mandate, we suggest that the proposed language be added to K.S.A. 23-496, governing court trustee powers and duties, instead of adding it to the Income Withholding Act.

Fiscal impact. Though we support the direction H.B. 2410 moves support enforcement in Kansas, we do not expect it to have material fiscal impact upon the CSE Program. Only the sanction against driving privileges is likely to produce additional collections, and only in the handful of cases in which the nonpayer is found in contempt of court. We do believe that enactment of the measure will indirectly encourage obligors to pay support, but this "halo effect" is very difficult to measure.

Thank you for your concern for the financial well-being of Kansas' children. With the slight changes we have recommended, we encourage the Committee to recommend H.B. 2410 for passage.

Respectfully submitted,

Jamie L. Corkhill, Policy Counsel
Child Support Enforcement Program
Dept. of Soci
913-296-323

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1-31-96
Attachment 9

Session of 1995

HOUSE BILL No. 2410

By Representatives Toplikar, Alldritt, Ballard, Dillon, Findley, Franklin, Gatlin, Gilbert, Gilmore, Goodwin, Graeber, Haulmark, Hayzlett, Henry, Howell, Jennison, Phill Kline, Landwehr, Mason, Mays, Myers, Neufeld, O'Connor, Packer, Pauls, Pettey, Powers, Ruff, Rutledge, Shallenburger, Standifer, Thimesch, Toelkes, Vickrey, Wagle, Weber, Welshimer, Wilk, Wilson and Yoh

2-6

AN ACT concerning child support; relating to contempt of court; allowing the court to suspend driving privileges for lack of payment; person who fails to pay is named on a list in sheriff's office; interest charged on arrearages; amending K.S.A. 20-1203 and K.S.A. 1994 Supp. 20-1204a and 23-4,107 and repealing the existing sections.

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

New Section 1. If a person is found guilty of contempt, pursuant to K.S.A. 20-1203 or 20-1204a, and amendments thereto, in a child support enforcement proceeding, the court shall notify the sheriff's office of such violation. The sheriff's office shall keep a list of such violators and such list shall be open to inspection by the public and specifically are subject to the provisions of the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto.

Sec. 2. K.S.A. 20-1203 is hereby amended to read as follows: 20-1203. ~~That~~ A direct contempt may be punished summarily, without written accusation against the person arraigned~~;~~ ~~but~~ If the court ~~or judge in chambers shall adjudge him~~ *finds such person* guilty ~~thereof~~ *of contempt*, a judgment shall be entered of record~~;~~ ~~in which shall be specified~~ *The record shall specify* the conduct constituting such contempt, with a statement of whatever defense or extenuation the accused offered thereto, and the sentence of the court thereon. *If such person is found guilty of contempt in a child support enforcement proceeding, the court, as part of the sentence, shall suspend such person's driving privileges until such time as such person pays in full the arrearages plus interest as provided in* ~~article 4 of chapter 23 of the Kansas Statutes Annotated,~~ *and amendments thereto.*

Sec. 3. K.S.A. 1994 Supp. 20-1204a is hereby amended to read as follows: 20-1204a. (a) When an order in a civil action has been entered, the court that rendered the same may order a person alleged to be guilty

K.S.A. 16-204

or until such person complies in full with a payment plan pursuant to this section. If the court finds that requiring such person to pay in full the arrearages plus interest before restoring driving privileges would create a hardship, the court may establish a support payment plan of at least six month's duration. The plan shall require periodic payment of the full amount of current support due, if any, plus an amount specified by the court to defray arrearages and interest. The person found to be in contempt of court shall have the burden of showing that the person has paid in full the arrearages and interest or has fully complied with the payment plan, if any.

of indirect contempt of such order to appear and show cause why such person should not be held in contempt if there is filed a motion requesting an order to appear and show cause which is accompanied by an affidavit specifically setting forth the facts constituting the alleged violation.

(b) Except as provided in subsection (e), the order to appear and show cause shall be served upon the party allegedly in contempt by the sheriff or some other person appointed by the court for such purpose. Such order shall state the time and place where the person is to appear and shall be accompanied by a copy of the affidavit provided for in subsection (a). The court shall hear the matter at the time specified in the order, and upon proper showing, may extend the time so as to give the accused a reasonable opportunity to purge oneself of the contempt. If the court determines that a person is guilty of contempt such person shall be punished as the court shall direct.

(c) If, after proper service of the order to appear and show cause, the person served shall not appear in court as ordered, or if the court finds at a hearing held on motion of a party to the civil action that the person allegedly in contempt is secreting oneself to avoid the process of the court, the court may issue a bench warrant commanding that the person be brought before the court to answer for contempt. When such person is brought before the court, the court shall proceed as provided in subsection (b). The court may make such orders concerning the release of the person pending the hearing as the court deems proper.

(d) The provisions of this section shall apply to both criminal and civil contempts, but in the case of a criminal contempt the court on its own motion may cause the motion and affidavit provided for in subsection (a) to be filed.

(e) In cases involving an alleged violation of a restraining order issued pursuant to paragraph (2) of subsection (a) of K.S.A. 60-1607, and amendments thereto, if the affidavit filed pursuant to subsection (a) alleges physical abuse in violation of the court's order, the court immediately may issue a bench warrant and proceed as provided in subsection (c).

(f) If a person is found guilty of contempt in a child support enforcement proceeding and the evidence shows that the person is or may be authorized to practice a profession by a licensing body as defined in K.S.A. 1994 Supp. 74-146, *and amendments thereto,* the court, in addition to any other remedies, may order that a notice pursuant to subsection (a) of K.S.A. 1994 Supp. 74-147, and amendments thereto, be served on the licensing body. If the person found guilty of contempt as provided in this subsection is a licensed attorney, the court may file a complaint with the disciplinary administrator if the licensing agency is the Kansas supreme court, or the appropriate bar counsel's office if the licensee practices in another state.

(g) If such person is found guilty of contempt in a child support enforcement proceeding, the court, as part of the sentence, shall suspend such person's driving privileges until such time as such person pays in full the arrearages plus interest as provided in ~~article 4 of chapter 23 of the Kansas Statutes Annotated,~~ and amendments thereto.

~~(g)~~ *(h)* The court shall not recognize a motion to issue nor order in a civil or criminal action a contempt citation against any person who reports or publishes the information that a gag order has been issued by the court.

K.S.A. 16-204

or until such person complies in full with a payment plan pursuant to this section. If the court finds that requiring such person to pay in full the arrearages plus interest before restoring driving privileges would create a hardship, the court may establish a support payment plan of at least six month's duration. The plan shall require periodic payment of the full amount of current support due, if any, plus an amount specified by the court to defray arrearages and interest. The person found to be in contempt of court shall have the burden of showing that the person has paid in full the arrearages and interest or has fully complied with the payment plan, if any.

9-4

Section 4. ***[Strike all current text and insert the following]***

K.S.A. 23-496 is hereby amended to read as follows:

23-496. Same; powers. (a) The court trustee shall be authorized and empowered to pursue all civil remedies which would be available to the obligee in establishing and enforcing payment of support.

(b) The court trustee may also file motions for an increase or a decrease of the amount of support on behalf of any child. Any such motion to modify the amount of support shall not be heard until notice has been given to the obligee, the obligor and their attorneys of record, if any.

(c) The court trustee shall have the following additional powers and duties upon approval of the administrative judge:

(1) To issue summonses, subpoenas and subpoenas duces tecum to obligors, obligees and other witnesses who possess knowledge or books and records relating to enforcement of support to appear in the office of the trustee or before the district court for examination;

(2) to administer oaths and take sworn testimony on the record or by affidavit;

(3) to appoint special process servers as required to carry out the court trustee's responsibilities under this section; and

(4) to enter into stipulations, acknowledgments, agreements and journal entries, subject to approval of the court.

History: L. 1972, ch. 123, § 5; L. 1976, ch. 173, § 1; L. 1985, ch. 115, § 36; July 1.

The court trustee shall apply the provisions of K.S.A. 16-204 and amendments thereto to any support judgment awarded or any arrearage accruing under any order of support entered in this state.

HB 2410
House Judiciary Committee
January 31, 1996

Testimony of Gary Jarchow
Court Trustee, 18th Judicial District of Kansas

Representative O'Neal and members of the committee:

Thank you for the opportunity to appear before you to comment on HB 2410 and why, generally, I support it.

I believe that enactment of a statute that would allow the court to restrict or suspend the driving privileges of one found in contempt for not paying child support would help fill a gap that exists in our child support enforcement efforts. Income withholding has been a wonderful remedy if the payor has regular employment, but is ineffective if the obigor constantly changes employment, is self-employed or being paid "under the table." In these cases, we must resort to contempt of court proceedings.

After a finding of indirect contempt of court under K.S.A. 20-1204a for not paying child support, the court usually places the obligor on probation conditioned on payment of current child support and payments on the arrearage. Many obligors do not keep up these payments, and we must bring them back to court. Then the court must either choose to place the obligor in jail or give her or him the proverbial "slap on the hand" and reinstate the probation, usually under similar terms. Because jails are already overcrowded and the obligor cannot pay while in jail, courts use them as a last resort.

Most people hold near and dear their license to drive. I believe that the mere threat of losing this privilege, or even having it restricted, for not paying child support will either keep most obligors current in their obligation or result in their making a more honest effort in meeting the terms of their probation. I do not, therefore, believe that there should be a mandatory suspension after a finding of contempt, as is provided for in new section 3(g). I would favor giving the court discretion in imposing this sanction. If, for instance, the obligor does not follow the terms of the probation by making child support payments as ordered, the court could direct that notice be given to the Motor Vehicle Department to either place restrictions on the license, such as to drive only to and from work, or if necessary suspend the driving privilege.

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I also support the new subsection (d) proposed in the testimony of the Office of Judicial Administration, which directs that any cash bond posted after an arrest on a bench warrant for failure to appear be applied on the child support arrearage. Failure to appear is a very common problem in child support proceedings, and some obligors do it habitually. Forfeiture of the cash bond is a small price to pay for someone who has not followed two court orders: to pay child support and to appear in court to answer for the failure. And it bears a direct relationship to helping remedy the wrong of nonpayment.

Finally, I support in principle the new subsection (n) of section 4, which directs that court trustees apply interest on arrearages in child support. There is a growing expectation among the people we serve that we do it, and we are doing it with greater frequency. Since child support is one of the most important obligations recognized by law, collection of interest on delinquent child support should be at least as important as on car loans and credit card debts. The custodial parent should be compensated for the loss of use of this money.

The problem lies in implementing a policy of collecting interest. K.S.A. 16-204 provides for interest rates which vary from year to year depending on the federal reserve discount rates. And Kansas case law (Dallas v. Dallas, 236 Kan.92, 689 P.2d 1184) makes application of payments to principal and interest depend upon the amounts of the payments and/or the intent of the parties. We are often asked to prove that the interest calculation is correct, and a hearing is often necessary, delaying the collection process.

Several states have addressed this problem by enacting statutes which provide for a flat rate of interest on child support debts or judgments for past due child support. Oklahoma, for instance, enacted a statute in 1994 which provides for a 10% interest rate on delinquent child support payments and court-ordered payments of suit moneys. The statute also provides that the interest be collected in the same manner as the payments upon which the interest accrues. And in 1991 Texas enacted a statute dealing specifically with interest on delinquent child support. It provides for a simple 12% interest rate on child support payments a month or more overdue. It also provides that the accrued interest is part of the child support obligation and may be collected by any means provided for the collection of child support. And it provides for a simple rule on how to apply payments on interest and the underlying debt. These statutes, which are prospective only, simplify the processes of both calculating interest and collecting it. I would suggest that Kansas examine these and other examples of how other states have handled the problem of interest on past due child support.

House Bill No. 2410
House Committee on Judiciary
January 31, 1996

Testimony of Peggy A. Elliott
Court Trustee
Tenth Judicial District

Mr. Chairman and Members of the Committee:

Thank you for the opportunity of appearing before you today in support of House Bill No. 2410 as amended by the Office of Judicial Administration. Because of the length of the bill, I will not address all issues.

Section 1 paragraph (d). **Cash Bond** (balloon on page 2)
This office normally requests the court to issue a bench warrant or an attachment when the Obligor has been properly served with a notice to appear for a court hearing or has previously been found in contempt and been ordered to appear at the jail to begin serving a stayed weekend jail order. Bond set in these cases may be for cash or surety, or cash only, depending on the severity of the case. When the bond is "cash only" and the obligor has relatives, friends or employers post the money for him/her, this office cannot attach those funds for payment of support. This situation happens frequently, perhaps as often as four to five times a week. In only approximately one-third of the cases will the obligor post his/her own money which this office can request to be forfeited. By having a third party post the bond, the obligor again gets "let off the

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Attachment 11

hook" and no bond money goes to support. In some cases where the obligor has previously been found in contempt and has a stay order on the weekend jail, and then refuses to report to jail, is later picked up and has someone else post bond for his/her appearance at a scheduled hearing where he/she is again warned to pay or serve time, the scenario is self-perpetuating. We are asking you to require that <u>any cash bond posted</u>, whether it be paid by the obligor or someone else, be forfeited and applied to the arrearages in child support. Any third party will be put on notice prior to posting the bond and if they don't want the money to be forfeited they can make an informed decision whether or not post the bond.

Section 1. paragraph (h) **Driver's License** (balloon top of page 3) I urge your support of this provision of the bill. Many states have passed driver's license revocation statutes as another enforcement tool to be used if the obligor fails to pay support as ordered. Some pending federal legislation contains a requirement that all states pass such laws. (See attached Comparison of Child Support Enforcement Bills)

The American Bar Association, Center on Children and the Law, in their January 12, 1996 informational letter to child support offices reported a recent federal district court case which upheld the constitutionality of a South Dakota statute which restricted an obligor's ability to obtain or renew a driver's license when certain thresholds were met. In *Thompson et al vs. Ellenbecker et al,* (South Dakota District Court, Case #94-4166 unpublished) the

plaintiff argued "...that the statute was unconstitutional because nonpayment of child support was not rationally related to public safety or to the individual's ability to drive safely." The court found that the state did have an interest in collecting child support and that by requiring the obligor to make application to obtain or renew a once restricted drivers license, he/she would have to give their current address, thus helping location efforts especially in cases involving obligors who move from job-to-job or state-to-state. They also found that since the obligor had advance notice of the State's action and an opportunity to be heard, the statute satisfied procedural due process requirements.

Section 2. **Income Withholding** (Page 3, (b)

This amendment is only meant to streamline the current income withholding provisions. Most of the language stricken is now unnecessary since all new or modified orders for support after July 1, 1993 must have a provision for immediate income withholding. Since we are now into 1996, this language regarding income withholding prior to 1993 is no longer relevant.

Section 2. **Interest** (Page 7, (n)

Certainly if this provision passes, it should be applied to ALL child support enforcement offices and not just Court Trustee offices. At the present time, the Department of Social and Rehabilitative Services (SRS) also enforces child support. However, before taking any action on this issue, a careful study

should be done. This provision may produce more complex problems than is anticipated. For example, how would interest be calculated when an obligor is on an income withholding order? In a hypothetical case where the current support order is for $500.00/month and an arrearage payment of $100.00/month has been ordered and both payments due on the first of each month the following problems may arise. Assume there is an income withholding in the case for a combined amount of $600.00/month and the obligor gets paid weekly.

The employer sends in $138.46 weekly to cover the order ($500 x 12 months = $6000.00. $100 x 12 = $1200. $7200 divided by 52 weeks is $138.46/week) Since the order stipulates that payments are due on the first of each month, is the obligor delinquent and charged interest on amounts not paid until the weekly payments in that month add up to $500.00? We cannot require the employer to change their method or schedule of paychecks and it would appear to me to be an accounting nightmare to figure interest in these cases. Courts should not be required to set support payments based on the obligor's paycheck schedule and this scenario could apply to almost every case where the obligor is ordered by the courts to pay an amount on a different due date than what he/she gets paid and the employer sends in. Even if the courts would originally set payment dates according to the schedule the obligor gets paid, there is no guarantee this schedule would remain unchanged throughout the life of the support order. I would urge you to give this matter a great deal of study before passing this provision.

CONCLUSION:

I appreciate your continued interest in child support. I know there are many issues which you must give consideration during the short legislative session but I feel that none are more important for our state than the issues facing our children.

COMPARISON OF CHILD SUPPORT ENFORCEMENT BILLS

Clinton Administration: Work and Responsibility Act of 1994	S. 442 Child Support Responsibility Act of 1995 (Snowe)	S. 456 Interstate Child Support Responsibility Act of 1995 (Bradley)	Title VII of H.R. 4 Personal Responsibility Act of 1995

WRA	S. 442	S. 456	H.R. 4
Sec. 665 Requires States to use procedures to place liens on motor vehicles and permitting execution, seizure and sale.	Sec. 165 Identical to WRA.	Sec. 165 Identical to WRA except that liens are placed when arrearages equal to or exceeding 1, instead of 2, months of support.	Section 768 requires liens on real and personal property by operation of law and extension of full faith & credit to liens arising in another State without registration of order in State where property is situated.
Sec. 666 Makes amendments regarding voiding of fraudulent transfers.	Sec. 166 Identical to WRA.	Sec. 166 Identical to WRA.	Section 764 Identical to WRA.
Sec. 667 Requires States to have laws providing for the suspension of driver's, professional, occupational and recreational licenses.	Sec. 167 Identical to WRA.	Sec. 167 Identical to WRA	Section 769 Identical to WRA.
Sec. 668 Requires child support arrearages of one month to be reported to credit bureaus.	Sec. 168 Identical to WRA except it calls for reporting of arrearages of 90 days.	Sec. 168 Identical to WRA except it does not specify length of time support must be delinquent before requiting arrearages to be reported.	No similar section.
Sec. 669 Includes extended statute of limitation cases for collection of arrearages.	Sec. 169 Identical to WRA.	Sec. 169 Identical to WRA	No similar section.

OFFICE OF JUDICIAL ADMINISTRATION
KAY FARLEY
TESTIMONY ON HB 2410

MR. CHAIRMAN O'NEAL
HOUSE JUDICIARY MEMBERS

House Bill 2410 was submitted in 1995. I am submitting a change to the printed version of this bill for your consideration. My remarks are keyed to the "balloon" attached.

Former sections 1 & 2 are deleted on the balloon. Section 1 provides for the local sheriff to keep track of persons who are found guilty of contempt. District court records are open to the public and provide the same information to news media and to anyone who is interested. Keeping a list in the sheriff's office seems duplicative. Also, the division of vehicles in the department of revenue will provide information on suspended or restricted licenses to all those who inquire.

Former section 2 is deleted because direct contempt is a sanction used by judges during the course of judicial proceedings. It is "direct" because it immediately flows from conduct to which the judge is a witness. Failure to pay support would rarely result in contempt expressed directly to a judge during court proceedings so that direct contempt is not a suitable sanction.

Renumbered section 1 is an amendment to 20-1204a, our indirect contempt statute. Indirect contempt proceeding are often brought to provide sanctions to encourage absent parents who are not making support payments in a straightforward manner to comply with court orders. New subsections are recommended to permit a cash appearance bond to be diverted to support rather than returned to the absent parent respondent. New subsection (e) provides that the normal service for chapter 60 proceedings may be used to provide notice to a delinquent parent, as well as the indirect contempt service requirements.

In former subsection (g), newly renumbered (h), language indicating a judge would directly suspend a driver's license is deleted. Traffic statutes now clearly give the job of suspending driver's license to the Division of Vehicles in the Department of Revenue. It may be that

suspending a license outright may deprive a delinquent parent of a means of livelihood so that restricting a driver's license would be a preferable sanction.

Corrections made in deleting material in newly renumbered section 2, subsection (b) are technical to streamline and fit this statute to statutory changes made subsequent to its first enactment. This comment also applies to the new language at subsection (d)(1).

Finally, on the last page, a direction to court trustees to apply interest to arrearages is amended. K.S.A. 16-204 is a statute whose interest on judgment rates for chapter 60 cases changes every July 1st. When court trustees have attempted to collect interest on arrearages in the past, the result has most often been a prolonged delay in the collection effort.

See page five, lines 26 through 30, which severely limit the grounds for contesting an income withholding order in order to expedite establishment of an order; note that one of the grounds is the amount of arrearage. Most obligees feel getting the arrearage within a reasonable time is preferable to getting a larger amount after a long delay. Given the nature of K.S.A. 16-204 it is easy for an obligor to use dilatory tactics in contesting the amount of arrearages due.

If the percentage to apply to arrearages were to be a fixed amount, simple interest over the life of the arrearage, such a provision may very well operate to close off dilatory arguments as to the amount of arrearage due. Accordingly we have substituted a subsection to that effect which should permit expeditious establishment of income withholding orders. We have chosen 7% for the interest amount because the interest trend seems to be downward, and that was the 16-204 rate only a few years ago in 1993.

Are there any questions?

C, J, T

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Session of 1995

HOUSE BILL No. 2410

By Representatives Toplikar, Alldritt, Ballard, Dillon, Findley, Franklin, Gatlin, Gilbert, Gilmore, Goodwin, Graeber, Haulmark, Hayzlett, Henry, Howell, Jennison, Phill Kline, Landwehr, Mason, Mays, Myers, Neufeld, O'Connor, Packer, Pauls, Pettey, Powers, Ruff, Rutledge, Shallenburger, Standifer, Thimesch, Toelkes, Vickrey, Wagle, Weber, Welshimer, Wilk, Wilson and Yoh

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AN ACT concerning child support; relating to contempt of court; allowing the court to suspend driving privileges for lack of payment; ~~person who fails to pay is named on a list in sheriff's office; interest charged on arrearages~~; amending K.S.A. 20-1203 and K.S.A. 1994 Supp. 20-1204a and 23-4,107 and repealing the existing sections.

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

~~New~~ Section 1. ~~If a person is found guilty of contempt, pursuant to K.S.A. 20-1203 or 20-1204a, and amendments thereto, in a child support enforcement proceeding, the court shall notify the sheriff's office of such violation. The sheriff's office shall keep a list of such violators and such list shall be open to inspection by the public and specifically are subject to the provisions of the Kansas open records act, K.S.A. 45-215 et seq. and amendments thereto.~~

~~Sec. 2. K.S.A. 20-1203 is hereby amended to read as follows: 20-1203. That~~ A direct contempt may be punished summarily, without written accusation against the person arraigned~~, but~~. If the court ~~or judge in chambers shall adjudge him~~ *finds such person* guilty ~~thereof~~ *of contempt*, a judgment shall be entered of record~~, in which shall be specified~~. *The record shall specify* the conduct constituting such contempt, with a statement of whatever defense or extenuation the accused offered thereto, and the sentence of the court thereon. *If such person is found guilty of contempt in a child support enforcement proceeding, the court, as part of the sentence, shall suspend such person's driving privileges until such time as such person pays in full the arrearages plus interest as provided in article 4 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto.*

~~Sec. 3.~~ K.S.A. 1994 Supp. 20-1204a is hereby amended to read as follows: 20-1204a. (a) When an order in a civil action has been entered, the court that rendered the same may order a person alleged to be guilty

of indirect contempt of such order to appear and show cause why such person should not be held in contempt if there is filed a motion requesting an order to appear and show cause which is accompanied by an affidavit specifically setting forth the facts constituting the alleged violation.

(b) Except as provided in ~~subsection (c)~~ subsections (e) and (f), the order to appear and show cause shall be served upon the party allegedly in contempt by the sheriff or some other person appointed by the court for such purpose. Such order shall state the time and place where the person is to appear and shall be accompanied by a copy of the affidavit provided for in subsection (a). The court shall hear the matter at the time specified in the order, and upon proper showing, may extend the time so as to give the accused a reasonable opportunity to purge oneself of the contempt. If the court determines that a person is guilty of contempt such person shall be punished as the court shall direct.

(c) If, after proper service of the order to appear and show cause, the person served shall not appear in court as ordered, or if the court finds at a hearing held on motion of a party to the civil action that the person allegedly in contempt is secreting oneself to avoid the process of the court, the court may issue a bench warrant commanding that the person be brought before the court to answer for contempt. When such person is brought before the court, the court shall proceed as provided in subsection (b). The court may make such orders concerning the release of the person pending the hearing as the court deems proper.

~~(d)~~ The provisions of this section shall apply to both criminal and civil contempts, but in the case of a criminal contempt the court on its own motion may cause the motion and affidavit provided for in subsection (a) to be filed.

~~(e)~~ In cases involving an alleged violation of a restraining order issued pursuant to paragraph (2) of subsection (a) of K.S.A. 60-1607, and amendments thereto, if the affidavit filed pursuant to subsection (a) alleges physical abuse in violation of the court's order, the court immediately may issue a bench warrant and proceed as provided in subsection (c).

~~(f)~~ (g) If a person is found guilty of contempt in a child support enforcement proceeding and the evidence shows that the person is or may be authorized to practice a profession by a licensing body as defined in K.S.A. 1994 Supp. 74-146, *and amendments thereto*, the court, in addition to any other remedies, may order that a notice pursuant to subsection (a) of K.S.A. 1994 Supp. 74-147, and amendments thereto, be served on the licensing body. If the person found guilty of contempt as provided in this subsection is a licensed attorney, the court may file a complaint with the disciplinary administrator if the licensing agency is the Kansas supreme court, or the appropriate bar counsel's office if the licensee practices in another state.

(d) If the proceeding is for failure to pay support, any cash bond posted to guarantee the appearance of the person after his or her arrest on a bench warrant shall be applied to person's arrearage in support, to the extent there is a arrearage.

(e) In cases involving contempt for the alleged nonpayment of child or spousal support, the order to appear and show cause with a copy of the affidavit provided for in subsection (a) shall be served upon alleged party in accordance with K.S.A. 60-303 and K.S.A. 60-304 (a) and any amendments thereto.

(f)

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~~(g)~~ *If such person is found guilty of contempt in a child support enforcement proceeding* ~~the court, as part of the sentence, shall suspend such person's driving privileges until such time as such person pays in full the arrearages plus interest as provided in article 4 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto.~~

~~(g)~~ ~~(h)~~ The court shall not recognize a motion to issue nor order in a civil or criminal action a contempt citation against any person who reports or publishes the information that a gag order has been issued by the court.

Sec. ~~4.~~ h K.S.A. 1994 Supp. 23-4,107 is hereby amended to read as follows: 23-4,107. (a) Any new or modified order for support entered on or after January 1, 1986, shall include a provision for the withholding of income to enforce the order for support. Except as otherwise provided in subsection (b) or (c), withholding shall take effect only if there is: (1) An arrearage in an amount equal to or greater than the amount of support payable for one month; and (2) compliance with requirements of subsections (d) and (h).

(b) Except ~~as otherwise provided in this subsection or in subsection (j), (k) or (m), all new or modified orders for support entered on or after October 1, 1990, in title IV-D cases and all~~ new or modified orders for support entered on or after July 1, 1993, ~~in all other cases~~ shall provide for immediate issuance of an income withholding order. ~~Prior to July 1, 1993, whenever an order of support is entered or modified in a case other than a title IV-D case, the court shall have discretion to order immediate issuance of an income withholding order.~~ The income withholding order shall be issued without further notice to the obligor specifying an amount sufficient to satisfy the order for support and to defray any arrearage. The income withholding order shall be issued regardless of whether a payor subject to the jurisdiction of this state can be identified at the time the order for support is entered.

(c) If the provisions of subsection (b) do not apply, the obligee or public office may file a motion in a title IV-D case requesting that an income withholding order be issued regardless of the amount of the arrearage. If no arrearage existed as of the date the notice pursuant to subsection (h) was served upon the obligor, the motion shall only be granted if the court finds that good cause exists for issuing the income withholding order or if the obligor consents to issuance of an income withholding order. If the motion is granted, an income withholding order shall be issued without further notice to the obligor specifying an amount sufficient to satisfy the order for support and to defray any arrearage. The income withholding order may be issued regardless of whether a payor subject to the jurisdiction of this state can be identified at the time the ncome withholding order is issued.

(d) (1) ~~Not~~ less than seven days after the obligee or public office has

(h)

in an amount equal to or greater than the amount of support payable for six months or the obligor has been ordered by the court to pay a sum certain each month toward the liquidation of the arrearages and the obligor has substantially failed to abide by that order, the court may order the public office as defined in K.S.A. 23-4,106 to contact the division of vehicles of the department of revenue to restrict or suspend the obligor's driver's license as indicated in the court order until further order of the court.

(i)

2.

All

In all cases with orders for support issued prior to July 1, 1993, not

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served a notice of intent to apply for an income withholding order pursuant to subsection (h), the obligee or public office may apply for an income withholding order by filing with the court an affidavit stating: (A) The date that the notice was served on the obligor and the manner of service; (B) that the obligor has not filed a motion to stay issuance of the income withholding order or, if a motion to stay has been filed, the reason an income withholding order must be issued immediately; (C) a specified amount to be withheld by the payor to satisfy the order of support and to defray any arrearage; (D) whether the income withholding order is to include a medical withholding order; and (E) except in title IV-D cases, that the amount of the arrearage as of the date the notice to the obligor was prepared was equal to or greater than the amount of support payable for one month. In addition to any other penalty provided by law, the filing of such an affidavit with knowledge of the falsity of a material declaration is punishable as a contempt.

(2) Upon the filing of an affidavit pursuant to paragraph (1), the income withholding order shall be issued without further notice to the obligor, hearing or amendments of the support order. Payment of all or part of the arrearage before issuance of the income withholding order shall not prevent issuance of the income withholding order, unless the arrearage is paid in full and the order for support does not include an amount for the current support of a person. No affidavit is required if the court, upon hearing a motion to stay issuance of the income withholding order or otherwise, issues an income withholding order.

(e) (1) An income withholding order shall be directed to any payor of the obligor.

(2) An income withholding order which does not include a medical withholding order shall require the payor to withhold from any income due, or to become due, to the obligor a specified amount sufficient to satisfy the order of support and to defray any arrearage and shall include notice of and direction to comply with the provisions of K.S.A. 23-4,108 and 23-4,109, and amendments thereto.

(3) An income withholding order which consists only of a medical withholding order shall include notice of the medical child support order and shall conform to the requirements of K.S.A. 1994 Supp. 23-4,121, *and amendments thereto*. The medical withholding order shall include notice of and direction to comply with the requirements of K.S.A. 1994 Supp. 23-4,119~~; K.S.A. 1994 Supp.~~ *and* 23-4,122~~;~~ *and* K.S.A. 23-4,108 and 23-4,109 and amendments thereto.

(4) An income withholding order which includes both a medical withholding order and an income withholding order for cash support shall meet the requirements of paragraphs (2) and (3).

(f) Upon written request and without the requirement of further no-

tice to the obligor, the clerk of the district court shall cause a copy of the income withholding order to be served on the payor in any manner permitted for service of summons and petition by the statutes contained in article 3 of chapter 60 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto.

(g) An income withholding order shall be binding on any existing or future payor on whom a copy of the order is served and shall require the continued withholding of income from each periodic payment of income until further order of the court. At any time following issuance of an income withholding order, the obligee, obligor or public office may request service of a copy of the income withholding order on any payor without the requirement of further notice to the obligor.

(h) Except as provided in subsection (k), (l) or (m), at any time following entry of an order for support the obligee or public office may serve upon the obligor a written notice of intent to apply for issuance of an income withholding order. The notice shall be served on the obligor by first-class mail or in the manner for service of a summons pursuant to the statutes contained in article 3 of chapter 60 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto at least seven days before the date the affidavit is filed. The notice served on the obligor must state: (1) The terms of the order of support and the total arrearage as of the date the notice was prepared; (2) the amount of income that will be withheld, not including premiums to satisfy a medical withholding order; (3) whether a medical withholding order will be requested; (4) that the provision for withholding applies to any current or subsequent payor; (5) the procedures available for contesting the withholding and that the only basis for contesting the withholding is a mistake of fact concerning the amount of the support order, the amount of the arrearage, the amount of income to be withheld or the proper identity of the obligor; (6) the period within which the obligor must file a motion to stay issuance of the income withholding order and that failure to take such action within the specified time will result in payors' being ordered to begin withholding; and (7) the action which will be taken if the obligor contests the withholding.

The obligor may, at any time, waive in writing the notice required by this subsection.

(i) On request of an obligor, the court shall issue an income withholding order which shall be honored by a payor regardless of whether there is an arrearage. Nothing in this subsection shall limit the right of the obligee to request modification of the income withholding order.

(j) (1) Before entry of a new or modified order for support, a party may request that no income withholding order be issued pursuant to subsection (b) if notice of the request has been served on all interested

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parties and: (A) The party demonstrates, and the court finds, that there is good cause not to require immediate income withholding, or (B) a written agreement among all interested parties provides for an alternative arrangement. In a title IV-D case, the determination that there is good cause not to require immediate income withholding must include a finding that immediate income withholding would not be in the child's best interests and, if an obligor's existing obligation is being modified, proof of timely payment of previously ordered support.

(2) Notwithstanding the provisions of subsection (j)(1), the court shall issue an income withholding order when an affidavit pursuant to subsection (d) is filed if an arrearage exists in an amount equal to or greater than the amount of support payable for one month.

(3) If a notice pursuant to subsection (h) has been served, there is no arrearage or the arrearage is less than the amount of support payable for one month, and the obligor files a motion to stay issuance of the income withholding order based upon the court's previous finding of good cause not to require immediate income withholding pursuant to subsection (j)(1), the obligor must demonstrate the continued existence of good cause. Unless the court again finds that good cause not to require immediate income withholding exists, the court shall issue the income withholding order.

(4) If a notice pursuant to subsection (h) has been served, there is no arrearage or the arrearage is less than the amount of support payable for one month, and the obligor files a motion to stay issuance of an income withholding order based upon a previous agreement of the interested parties for an alternative arrangement pursuant to subsection (j)(1), the court shall issue an income withholding order, notwithstanding any previous agreement, if the court finds that:

(A) The agreement was not in writing;

(B) the agreement was not approved by all interested parties;

(C) the terms of the agreement or alternative arrangement are not being met;

(D) the agreement or alternative arrangement is not in the best interests of the child; or

(E) the agreement or alternative arrangement places an unnecessary burden upon the obligor, obligee or a public office.

(5) The procedures and requirements of K.S.A. 23-4,110 and amendments thereto apply to any motion pursuant to paragraph (3) or (4) of this subsection (j).

(k) (1) An *ex parte* interlocutory order for support may be enforced pursuant to subsection (b) or (c) only if the obligor has consented to the income withholding in writing.

(2) An *ex parte* interlocutory order for support may be enforced pur-

suant to subsection (d) only if 10 or more days have elapsed since the order for support was served on the obligor.

(3) Any other interlocutory order for support may be enforced by income withholding pursuant to this act in the same manner as a final order for support.

(4) No bond shall be required for the issuance of an income withholding order to enforce an interlocutory order pursuant to this act.

(l) If the provisions of subsection (b) do not apply and the case is not a title IV-D case, a notice of intent to apply for issuance of an income withholding order may be served on the obligor only if there is an arrearage, as of the date the notice is prepared, in an amount equal to or greater than the amount of support payable for one month.

(m) All new or modified orders for maintenance of a spouse or ex-spouse, except orders for a spouse or ex-spouse living with a child for whom an order of support is also being enforced, entered on or after July 1, 1992, shall include a provision for the withholding of income to enforce the order of support. Unless the parties consent in writing to earlier issuance of a withholding order, withholding shall take effect only after there is an arrearage in an amount equal to or greater than the amount of support payable for two months and after service of a notice as provided in subsection (h).

(n) ~~*The court trustee's office shall apply interest, in the amount as established in K.S.A. 16-204, and amendments thereto, to all arrearages.*~~

Notwithstanding the provisions of K.S.A. 16-204, and amendments thereto, the court trustee's office shall apply simple interest in the amount of 7% to all arrearages.

Sec. ~~5.~~ K.S.A. 20-1203 and K.S.A. 1994 Supp. 20-1204a and 23-4,107 are hereby repealed. 3.

Sec. ~~6.~~ This act shall take effect and be in force from and after its publication in the statute book. 4.

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