

Approved: March 26, 1996  
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael R. O'Neal at 12:15 p.m. on February 23, 1996 in Room 514-S of the Capitol.

All members were present except:

Representative Bob Miller - Excused

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

Others attending: See attached list

**HB 3038** - amendments to the penalties the division of motor vehicles enforces concerning the suspension of drivers' licenses for driving under the influence

Representative Ruff made a motion to reconsider the committees action on **HB 3038**. Representative Grant seconded the motion.

Representative Grant stated that this bill was not a cure all but anything that has the possibility of keeping drunk drivers off the roads needs to be considered. Representative May commented that the legislature looks at this issue every year. Chairman O'Neal explained that this year was different because this was a pilot program that expired this year.

Representative Ott stated that she objected to this procedure because there was not a recorded vote and requested that the Rules Committee look at this issue. The Chairman explained that there was the suggestion that he had miscounted and believed that this issue should be revisited. He agreed that it does make it difficult when there is not a recorded vote.

Representative Howell questioned if the motion to reconsider was allowable. Chairman O'Neal responded that there was no rule that stated that a motion to reconsider was not in order in committee. Representative Mays commented that a vote could be reconsidered at any time, when the "right" people were in the room. The Chairman stated that a motion to reconsider was only in order the same day as the vote or the next legislative day.

The motion to reconsider the committees action carried, 9-8.

Representative Grant made a motion to report **HB 3038** favorably for passage. Representative Spangler seconded the motion.

Representative Mays made a substitute motion to table the bill. Representative Nichols seconded the motion. The motion failed, 9-9.

The motion to report **HB 3038** favorably failed, 8-9.

Representative Grant made a motion to report **HB 3038** without recommendation. Representative Yoh seconded the motion. The motion carried, 11-8.

**HB 2841** - requiring the secretary of corrections to establish disciplinary work action groups

No interest was shown in working the bill.

Chairman O'Neal stated that the committee would consider sub committee reports.

**HB 2875** - foreign adoption decrees may be filed and entered into district court records (Attachments 1-6).

Representative Adkins explained that this bill would allow Kansas court to issue a new birth certificate when there are foreign adoption. The sub committee recommended the adoption of a balloon amendment (Attachment 7).

Representative Ott made a motion to adopt the sub committee recommendation. Representative Standifer seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 514 S Statehouse, at 12:15 p.m. on February 23, 1996.

Representative Ott made a motion that would clarify the "decree of adoption and evidence of lawful admission into the United States".(Attachment 8) Representative Grant seconded the motion. The motion carried.

Representative Adkins made a motion to report **HB 2875** favorably for passage as amended. Representative Ott seconded the motion. The motion carried. Representative Haley requested he be recorded as voting no. He believed that there are many adoption agencies in Kansas that have children in need of adoption and felt that these children should be adopted first before having a foreign adoption.

**HB 2932** - employment and payment of child support as a condition of parole, probation or post release supervision, (Attachments 9-20)

Representative Adkins explained that the sub committee recommended adding the following language "disability payments be assigned for child support...to the extent allowed by law" into the bill.

Representative Ott made a motion to adopt the sub committee recommendation and report **HB 2932** favorably for passage as amended. Representative Howell seconded the motion. The motion carried.

**HB 2948** - appointing a case manager for a contested issue of child custody or visitation (Attachment 21)

Representative Adkins explained that the sub committee recommended an amendment which would clarify how the bill would work with other mediation and alternative dispute resolution, (see attachment 21).

Representative Adkins made a motion to adopt the sub committee recommendation and report **HB 2948** favorably for passage as amended. The motion carried.

**HB 2931** - requiring the report of new employees; and such employees to provide information regarding child support, (Attachments 22-25)

No action was taken on this bill.

**HB 2795** - immunity from liability for volunteers of nonprofit homeowners organizations (Attachment 26)

Representative Adkins explained that sub committee recommended that this bill be passed.

Representative Adkins made a motion to adopt the sub committee recommendation and report **HB 2795** favorably for passage. Representative Haley seconded the motion.

Some committee members were concerned that some home associations operate recreational facilities such as tennis courts and swimming pools and believed that this would give the associations immunity from any liability.

Representative Garner made a substitute motion to amend in that "homeowners associations have to carry liability insurance". Representative Standifer seconded the motion. Representative Haley stated that this would be adding an unnecessary cost for those associations that don't have recreational facilities. Representative Garner explained that in exchange for the homeowners association carrying liability insurance is that volunteers would be immune from liability. The motion failed.

The motion to report **HB 2795** favorably for passage carried.

**HB 3034** - amendments to the dispute resolution act (Attachments 27 & 28)

Representative Adkins explained that the sub committee recommended this bill be passed.

Representative Adkins made a motion to adopt the sub committee recommendation and report **HB 3034** favorably for passage. Representative Grant seconded the motion. The motion carried.

**HB 3017** - SRS shall not investigate child abuse reports when the alleged victim is 23 year of age or older (Attachment 29)

Representative Adkins explained that the sub committee recommended inserting "by SRS" on page 1, line 24 and report the bill favorably as amended.

Representative Adkins made a motion to adopt the sub committee recommendation and report **HB 3017** favorably for passage as amended. Representative Pauls seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 514 S Statehouse, at 12:15 p.m. on February 23, 1996.

**HB 3033** - increasing civil docket fees \$5; creating a post divorce motion docket fee of \$20; money goes to access to justice fund, (Attachments 30- 38)

Representative Adkins explained that the sub committee recommended adoption of the Office of Judicial Administration's balloon amendment, which would define a "post divorce motion", (Attachment 39) and to report the bill favorably as amended.

Representative Grant made a motion to adopt the sub committee recommendation and report **HB 3033** favorably for passage as amended. Representative Standifer seconded the motion. Representative Mays requested that the issue be divided.

The motion on creating a post divorce motion docket fee of \$20 carried. The motion on increasing the civil docket fee by \$5 failed.

Representative Standifer made a motion to report **HB 3033** favorably for passage as amended. Representative Garner seconded the motion. The motion carried.

**HB 2110** - hearing for probate; uncontested consent

Chairman O'Neal explained that this bill had hearings in 1995 and that Representative Tomlinson provided the committee with balloon amendment (Attachment 40) that would take care of the concerns that the committee had.

Representative Adkins made a motion to adopt the balloon amendment and report **HB 2110** favorably for passage as amended. Representative Goodwin seconded the motion. The motion carried.

**HB 2996** - reporting of traffic convictions and adjudications from the district courts to the division of vehicles (Attachment 41)

Chairman O'Neal stated that the sub committee recommend that this bill be reported favorably.

Representative Snowbarger made a motion to adopt the sub committee recommendation and report **HB 2996** favorably. Representative Adkins seconded the motion. The motion carried.

**HB 2741** - admissibility of forensic reports at trial (Attachment 42)

Chairman O'Neal explained that the sub committee recommended amending in **HB 2748 & 2755** and reporting favorably as amended.

Representative Snowbarger made a motion to adopt the sub committee recommendation and report **HB 2741** favorably for passage as amended. Representative Adkins seconded the motion.

Representative Garner made a substitute motion to strike section 1 in **HB 2755**. Representative Haley seconded the motion. The motion carried.

Representative Ott made a motion to amend **HB 2819** (Attachments 43 & 44) into **HB 2741**. Representative Grant seconded the motion. The motion carried.

Representative Snowbarger made a motion to report **HB 2741** favorably for passage as amended. Representative Adkins seconded the motion. The motion carried.

**HB 2402** - establishing visitation centers for victims of domestic violence; creating the visitation centers for victims of domestic violence fund (Attachments 45 & 46)

Representative Adkins stated that the sub committee recommended the Office of Judicial Administration be removed as the coordinator and be replaced with SRS and that the bill be reported favorably.

Representative Pauls made a motion to adopt the sub committee recommendation and report **HB 2402** favorably for passage as amended. Representative Grant seconded the motion. The motion carried.

**HB 2751** - landlord may retain possession of tenant personal property in forcible detainer action if tenant does not remove such personal property within 120 hours or possession by landlord (Attachments 47-49)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 514 S Statehouse, at 12:15 p.m. on February 23, 1996.

Representative Adkins explained that the sub committee recommended that the bill be amended so that "no recoverable expenses may be accrued by the landlord after the tenant is removed from the dwelling unit as a result of a forcible detainer action" and to remove the 120 hour time frame.

Representative Garner made a motion to adopt the sub committee recommendations and report **HB 2751** favorably for passage as amended. Representative Pauls seconded the motion. The revisor requested that the "takes" be stricken and replace with the original language of "may take". The motion carried.

The committee meeting adjourned at 2:30 p.m. The next meeting is scheduled for February 26, 1996.



State of Kansas  
House of Representatives

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TOPEKA

PHYLLIS GILMORE  
Representative, Twenty-Seventh District

COMMITTEE ASSIGNMENT  
GOVERNMENTAL ORGANIZATION AND  
ELECTIONS  
HEALTH AND HUMAN SERVICES  
JOINT COMMITTEE ON CHILDREN AND  
FAMILIES  
SELECT COMMITTEE ON DEVELOPMENTAL  
DISABILITIES

## TESTIMONY ON HB 2875

Mr. Chairman and members of the committee: Thank you for the opportunity to testify before you today on behalf of HB 2875.

This bill has been requested in order to simplify the foreign adoption process. Currently, after an adoption has been finalized in a foreign country an adoptive couple must go through another entire adoption process in Kansas to obtain a Kansas birth certificate for their child. The intent of this bill is to simplify obtaining the Kansas birth certificate by making it a clerical procedure. There would be no need for any judicial involvement.

This would obviously save considerable time and money for the adoptive parents as well as allowing additional space in the court docket.

All attorneys and social workers doing international adoptions with whom I have spoken are supportive of this bill, as is Judge Bruner of Johnson County.

We have spoken with Immigration and Naturalization Services in regard to black market adoptions. INS concurs that our present system is not addressing the black market issue. INS states that they screen all international adoptions and watch for any indication of black market traffic of children. They add that they not only do this, they prefer to do the screening because they then know there has been uniform screening among the 50 states.

I will be happy to answer any questions.

House Judiciary  
2-23-96  
Attachment 1

TESTIMONY ON MONDAY, FEBRUARY 19, 1996, CONCERNING HOUSE BILL  
INTRODUCED BY REPRESENTATIVE PHYLLIS GILMORE PERTAINING TO  
RECOGNITION OF FOREIGN BORN ADOPTIONS:

POINTS TO MAKE:

1. Thousands of Kansas families are turning to international adoptions.
2. Two primary motivations:
  - Desire to add to their families.
  - Desire to help children in horrific conditions.
3. The process of adopting a child in a foreign country is long, arduous and costly:
  - Oversight by foreign courts and agencies.
  - Oversight by Immigration and Naturalization Service.
  - Evaluation by Kansas child placing agency.
4. Those who adopt internationally are more carefully evaluated and scrutinized than those who adopt domestically.
5. Following completion of foreign adoption, one last step remains:
  - Recognition of the foreign adoption in Kansas.
6. Purpose is primarily to obtain a Kansas birth certificate:
  - Need birth certificate for school, work, etc.
  - Difficult to obtain internationally.
  - Foreign decree is not always accurate.
7. K.S.A. 59-2144 currently requires the adoptive family to complete an entire second adoption here in order to obtain a birth certificate, which is unsatisfactory and unnecessary:
  - Much of Kansas Adoption and Relinquishment Act is inapplicable (Indian Child Welfare Act, ICPC).
  - Who should consent/relinquish -- Adoptive parents or genetic parents or foreign agency?
  - Additional cost.
  - Redundant.
  - Waste of judicial time.

8. Proposed law is a good step, but I have these questions:

- (1) Who determines that the foreign adoption has been completed "in accordance with the laws of the foreign country pertaining to relinquishment, termination of parental rights and consent to the adoption?"

RECOMMENDATION: Should not require the involvement of a Kansas court. Should be presumptively valid. Perhaps the adoptive parent will complete an affidavit attesting to that fact.

- (2) Does the clerk of a district court have any obligation other than to accept the filing of the foreign decree?

RECOMMENDATION: Should be clear that the clerk is to treat it just as any other adoption decree.

- (3) Must the foreign decree be an original signed, certified document or merely a copy?

RECOMMENDATION: Should be an original signed and certified adoption decree with a certified translation.

- (4) Is it possible to change the name of the child upon filing of the foreign decree?

RECOMMENDATION: Parents should be permitted to change the first name of the child and should be permitted to change the last name of the child to theirs (or one of theirs).

- (5) Is there a filing fee?

RECOMMENDATION: No filing fee.



State of Kansas

Bill Graves



Governor

---

**Department of Health and Environment**

James J. O'Connell, Secretary

Testimony presented to

House Judiciary

by

The Kansas Department of Health and Environment

House Bill 2875

In 1994 Representative Everhart introduced legislation to allow the Office of Vital Statistics to prepare a birth certificate for a child born and adopted in a foreign country. However, the bill was drafted to require the child be readopted in Kansas. H.B. 2875 eliminates the need to readopt the child.

We concur with the language proposed in H.B. 2875 as long as the court determines the authenticity of the adoption in the foreign country. However, to assist the Department in the development of accurate birth certificate information, we need reassurance that the Department will receive the Report of Adoption from the court. The Report of Adoption is a form prepared by KDHE and supplied to the court for the purpose of reporting the information necessary for us to prepare a new birth certificate based upon the adoption. Therefore, we propose an amendment to H.B. 2875 that would require the court to furnish the Report of Adoption form complete with the information necessary to prepare a birth certificate.

We support H.B. 2875 with the proposed amendment.

Testimony presented by:

Dr. Lorne A. Phillips  
State Registrar and Director  
Center for Health and Environmental Statistics  
February 19, 1996

## HOUSE BILL No. 2875

By Representatives Gilmore, Becker, Carmody, Cornfield, Freeborn, Hayzlett, Horst, Howell, Kejr, King, Merritt, Mollenkamp, Myers, B. Nichols, O'Connor, Powell, Powers, Snowbarger, Vickrey and Wilson

2-5

11 AN ACT concerning adoption; relating to adoptions in foreign countries;  
12 amending K.S.A. 59-2144 and K.S.A. 1995 Supp. 65-2423 and repeal-  
13 ing the existing sections.

14

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

16 Section 1. K.S.A. 59-2144 is hereby amended to read as follows: 59-  
17 2144. (a) When an adoption occurs in a foreign country and is recognized  
18 as a valid adoption by the immigration and naturalization service of the  
19 United States department of justice, the adoptive parent or parents may  
20 petition the court, pursuant to K.S.A. 59-2128, and amendments thereto,  
21 for a subsequent adoption in the state of Kansas, pursuant to the appli-  
22 cable provisions of the Kansas adoption and relinquishment act, and  
23 amendments thereto. In an adoption under this section, the court shall  
24 recognize and give effect to the laws of the foreign country and proceed-  
25 ings conducted in accordance with the laws of the foreign country per-  
26 taining to relinquishment, termination of parental rights and consent to  
27 the adoption, the decree of adoption, when filed with and entered in the  
28 records of the clerk of the district court of any county in this state, has  
29 the same force and effect as if the decree of adoption was granted in  
30 accordance with the provisions of the Kansas adoption and relinquish-  
31 ment act.

32 (b) ~~If the adoption is granted~~ When such decree is filed and entered,  
33 the adoptive parent or parents may request a birth certificate pursuant  
34 to K.S.A. 65-2423, and amendments thereto.

35 (c) This section shall be part of and supplemental to the Kansas adop-  
36 tion and relinquishment act.

37 Sec. 2. K.S.A. 1995 Supp. 65-2423 is hereby amended to read as  
38 follows: 65-2423. (a) In cases of adoption the state registrar upon receipt  
39 of a certified order of adoption shall prepare a supplementary certificate and the Report of Adoption form  
40 in the new name of the adopted person and seal and file the original  
41 certificate of birth with such certified copy attached thereto. Such sealed  
42 documents may be opened by the state registrar only upon the demand  
43 of the adopted person if of legal age or by an order of court. Upon receipt

1 of a certified copy of a court order of annulment of adoption the state  
2 registrar shall restore the original certificate to its original place in the  
3 files.

4 (b) For any child born in a foreign country but adopted in Kansas *or*  
5 *born and adopted in a foreign country and such adoption is filed and*  
6 *entered pursuant to K.S.A. 59-2144, and amendments thereto*, the state  
7 registrar, upon request, shall complete and register a birth certificate  
8 upon receipt of a certified copy of the decree of adoption, ~~together with~~ the Report of Adoption form and  
9 proof of the date and place of the child's birth. The certificate shall show  
10 the new name of the child as specified in the decree of adoption, and  
11 such further information concerning the adopting parents as may be nec-  
12 essary to complete the birth certificate. The certificate shall show the true  
13 country of birth and the date of birth of the child, and that the certificate  
14 is not evidence of United States citizenship. ~~The provisions of this sub-~~  
15 ~~section shall apply to an adoption granted pursuant to K.S.A. 50-2144.~~

16 Sec. 3. K.S.A. 59-2144 and K.S.A. 1995 Supp. 65-2423 are hereby  
17 repealed.

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



(Do Not Write in This Box)

KANSAS STATE DEPARTMENT OF HEALTH AND ENVIRONMENT  
VITAL STATISTICS

FB-

CERTIFICATE OF BIRTH

BIRTH NUMBER

**CHILD**

CHILD—NAME FIRST MIDDLE LAST	SEX	DATE OF BIRTH (Mo., Day, Yr.)
1.	2.	3.

COUNTRY OF BIRTH	STATE OR PROVINCE	CITY, TOWN OR VILLAGE
4a.	4b.	4c.

**PARENTS**

MOTHER—MAIDEN NAME FIRST MIDDLE LAST	AGE (At time of this birth)	STATE OF BIRTH (If not in U.S.A., name country)
5a.	5b.	5c.

ADDRESS—STREET NO.	CITY OR TOWN	STATE	ZIP CODE
6.			

FATHER—NAME FIRST MIDDLE LAST	AGE (At time of this birth)	STATE OF BIRTH (If not in U.S.A., name country)
7a.	7b.	7c.

PARENT'S VERIFICATION: I certify that the personal information provided on this certificate is correct to the best of my knowledge and belief. (Signature of Parent)	DATE SIGNED:
8a.	8b.

THIS BIRTH WAS REGISTERED THIS DATE IN ACCORDANCE WITH PROVISIONS OF K.S.A. 65-2423b; ENACTED PER 1978 LEGISLATIVE SESSION

THIS CERTIFICATE IS NOT EVIDENCE OF UNITED STATES CITIZENSHIP

REGISTRAR	DATE OF REGISTRATION
-----------	----------------------

CONFIDENTIAL PERSONAL DATA

Is a copy of the original birth or data record on file? Yes  No

Alien Registration Card Number (Form I 551 or I 151) A \_\_\_\_\_  
(eight digits)

This Child Was Adopted In The Kansas District Court of \_\_\_\_\_ County,

On The Date Of \_\_\_\_\_ Case Number \_\_\_\_\_

Birth Certificate for Foreign-Born Child Adopted in Kansas

**CONFIDENTIAL RECORD**  
Copy for Research Purposes Only  
Per K.S.A. 65-2422

TESTIMONY TO THE HOUSE JUDICIARY COMMITTEE  
By the Office of Judicial Administration  
Kathy Kirk

February 19, 1996

**HB 2875**

Thank you for allowing OJA to testify this afternoon. We are in favor of HB 2875. This bill effectively amends our current laws setting forth the procedure for the filing of foreign adoptions.

Under the current law, parents who have all followed a prescribed process for adoption in a foreign county must re-do the entire adoption procedure if they wish to have the adoption on file in this state. This procedure can cost the parties \$700 or more and mandates a new home study, translation and certification of all papers, and an adoption hearing. Without this process, adopted children cannot obtain a birth certificate in Kansas.

This bill would allow the filing of the foreign decree which is based on home studies, hearings, and proper immigration papers. It is merely a more efficient and less costly way to record adoption.

**TESTIMONY ON HOUSE BILL 2875  
JUDICIARY COMMITTEE  
CHAIRMAN O'NEIL  
FEBRUARY 19, 1996**

Presented by: Antonia R. Mancuso  
13200 Woodson Street  
Overland Park, KS 66209  
(913) 681-6889

I am here today in a dual capacity - that of an adoptive parent with two children who were adopted internationally and also as an attorney who represents adoptive parents in the State of Kansas, many of whom have adopted internationally. I am also in the process of adopting a third child internationally. I believe that the issues to be addressed in each of these capacities are essentially the same with regard to international adoption in the State of Kansas. Such issues are those relating to obtaining a Kansas birth certificate and U.S. citizenship for the children upon return to the United States.

Although the term international adoption is broadly applied to all adoptions abroad, there are differences in the adoption process of each country. One of the biggest differences between procedures in each country is that many countries, such as Russia and Romania, process a final adoption in the country where the child was born through very well-established procedures. On the other hand, countries such as Korea, transfer the legal guardianship of the child to a U.S. agency with the intent that the adoption be finalized in the United States. In countries where a final adoption has been completed in that country, the adoptive parents leave the country with legal documents in hand. This bill affects the adoptions which are final in the country where the child is born.

It is my understanding that many states have chosen to give full, faith and credit to those international adoptions where a final adoption has been completed in the country. This procedure saves the state time and money by recognizing that a final adoption has been completed. In such states, the child is automatically issued a birth certificate from that state upon careful review of the legal documents. However, current Kansas law requires that parents who have adopted from

countries where a final adoption has been completed must re-adopt the children in the State of Kansas. Thus, the parents are forced to spend time and money to essentially adopt the child twice.

For example, in my case, we have adopted our children from Russia and Romania, both states where the adoption was final before we left the country with our child. However, in order to obtain a Kansas birth certificate, which will, among other things, allow us to file for U.S. citizenship for our children, we must re-adopt all three children through the judicial process. In our case, since I am an attorney, our expenses will be limited. However, we will still be required to pay court costs and will tie up the courts for the time it takes to process three adoptions. In my opinion this is a waste of the precious time of the courts as well as a waste of hundreds or even thousands more dollars in attorney fees for adoptive parents to re-adopt these children. Many families spend nearly every penny they have to adopt these children, not to mention the emotional roller coaster they experience in bringing a child back from another country. The last thing an adoptive parent should have to worry about when arriving back in Kansas is finding the time and money to pay for a second adoption in the State of Kansas.

The proposed new law before you today essentially changes Kansas procedure with regard to final foreign adoptions so that the foreign adoption is recognized and the adoptive parents may request a Kansas birth certificate, thus alleviating the need to re-adopt the child.

In the end, whether the law stays as is, or is changed, the result will be the same. Families will continue to adopt children internationally; the children will receive a Kansas birth certificate, either through re-adoption, or by the courts giving full, faith and credit to the foreign laws; and the children will receive U.S. citizenship. The difference between the current law and the proposed new law is the means justifying such an end. Under the current law, adoptive parents will be forced to pay unnecessary attorney fees and waste valuable time in the Kansas court system. Under the proposed new law as written, they will pay a reasonable fee which will enable full, faith and credit to be given to the foreign adoption laws. It is my position that we not waste any more time and money on such an obvious decision.



**Testimony on House Bill 2875  
Judiciary Committee  
Chairman O'Neil  
February 19, 1996**

**Presented by:  
Debra L. Murphy-Scheumann  
Director, Special Additions, Inc.  
10985 W 175th St.  
Olathe, KS 66062  
(913)681-9604**

**Honorable Chairman O'Neil and Judiciary Committee Members,**

**I would like to take the opportunity to thank you for giving me the opportunity to address the committee in regard to this bill. This bill is very important to adoptive parents who adopt children internationally.**

**Special Additions, Inc., is a not for profit, 501c3 agency which is licensed in the States of Kansas and Missouri. This agency specializes in the placement of waiting children both domestically and internationally. The agency is somewhat unique, in the fact that we place all children with the exception of the white healthy infant. Our agency works in cooperation with other agencies licensed in countries around the world. The bill that you are considering today, will directly affect the majority of parents who adopt children internationally. Children placed by Special Additions, are primarily children from Korea, China, Russia, Romania and many other countries. Special Additions also places waiting children from the State of Kansas and minority infants.**

**When proceeding with an international adoption, the final adoption hearing is either in the country where the child is born, or in the state where the parents reside. This bill affects the adoptions that occur in the country where the child was born. In the past five years, we have seen more countries now requiring that the final adoption hearing take place in the country of the child's birth. Currently, only Korea and India are escorting children to this country for adoption. In those cases, the adoption hearing and final decree are completed in this**

**country.**

**In the majority of countries, the adoptions are completed in the country of the child's birth. Upon return to this country, the child is the legally adopted child of the family. Many of the adoptive parents, upon return to the United States, select to "readopt", "reaffirm the adoption", or "recognize the adoption" through some type of procedure according to their states laws.**

**Why do people choose to readopt if their adoption is final? The primary reason is to obtain a U.S. birth certificate with the child's American name. In some countries the adoption decree has the American name on the final decree, but this is a small percentage of the countries. In today's world, having a U.S. birth certificate makes it much more convenient for adoptive families. A birth certificate is needed for school, sports, employment, traveling outside the U.S., and many other reasons.**

**Currently, in order to obtain a Kansas birth certificate, a family has to "readopt" through the court system. These families basically have to go through the same procedure that a couple who was adopting an infant from Kansas, would go through. A couple would hire an attorney, the appropriate documents would be filed with the Clerk of Court and a hearing date would be set. Once the hearing is held, the international adoption is confirmed and the family then applies for a Kansas birth certificate. Often times the family also has to have the agency update the homestudy, and have a post placement visit. These are fees on top of their attorney fees. Thus, this additional adoption procedure can cost the family somewhere between \$1,000-\$2,000.**

**This bill would propose to eliminate this second adoption. It would allow the foreign adoption to be legally recognized in this country. It does appear to be redundant having yet another legal entity recognizing an adoption that INS has already approved. And most important, it would save adoptive parents money, and the aggravation of going through more bureaucracy.**

# HOUSE BILL No. 2875

By Representatives Gilmore, Becker, Carmody, Cornfield, Freeborn, Hayzlett, Horst, Howell, Kejr, King, Merritt, Mollenkamp, Myers, B. Nichols, O'Connor, Powell, Powers, Snowbarger, Vickrey and Wilson

2-5

House Judiciary  
2-23-96  
Attachment 7

11 AN ACT concerning adoption; relating to adoptions in foreign countries;  
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15 *Be it enacted by the Legislature of the State of Kansas:*

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19 United States department of justice, the adoptive parent or parents may  
20 petition the court, pursuant to K.S.A. 50-2126, and amendments thereto,  
21 for a subsequent adoption in the state of Kansas, pursuant to the appli-  
22 cable provisions of the Kansas adoption and relinquishment act, and  
23 amendments thereto. In an adoption under this section, the court shall  
24 recognize and give effect to the laws of the foreign country and proceed-  
25 ings conducted in accordance with the laws of the foreign country per-  
26 taining to relinquishment, termination of parental rights and consent to  
27 the adoption, ~~the decree of adoption, when filed with and entered in the~~  
28 ~~records of the clerk of the district court of any county in this state, has~~  
29 ~~the same force and effect as if the decree of adoption was granted in~~  
30 ~~accordance with the provisions of the Kansas adoption and relinquish-~~  
31 ~~ment act.~~

or a similar document or documents which evidences finalization of the adoption in the foreign country,

or a similar document or documents which evidences finalization of the adoption in the foreign country,

32 (b) ~~If the adoption is granted~~ ~~When such decree is filed and entered,~~  
33 the adoptive parent or parents may request a birth certificate pursuant  
34 to K.S.A. 65-2423, and amendments thereto.

or document

35 (c) This section shall be part of and supplemental to the Kansas adop-  
36 tion and relinquishment act.

37 Sec. 2. K.S.A. 1995 Supp. 65-2423 is hereby amended to read as  
38 follows: 65-2423. (a) In cases of adoption the state registrar upon receipt  
39 of a certified ~~order~~ of adoption shall prepare a supplementary certificate  
40 in the new name of the adopted person and seal and file the original  
41 certificate of birth with such certified copy attached thereto. Such sealed  
42 documents may be opened by the state registrar only upon the demand  
43 of the adopted person if of legal age or by an order of court. Upon receipt

decree

or a similar document or documents which evidences finalization of the adoption in the foreign country,

2-2

1 of a certified copy of a court order of annulment of adoption the state  
2 registrar shall restore the original certificate to its original place in the  
3 files.

4 (b) For any child born in a foreign country but adopted in Kansas or  
5 *born and adopted in a foreign country and such adoption is filed and*  
6 *entered pursuant to K.S.A. 59-2144, and amendments thereto*, the state  
7 registrar, upon request, shall complete and register a birth certificate  
8 upon receipt of a certified copy of the decree of adoption, together with  
9 proof of the date and place of the child's birth. The certificate shall show  
10 the new name of the child as specified in the decree of adoption, and  
11 such further information concerning the adopting parents as may be nec-  
12 essary to complete the birth certificate. The certificate shall show the true  
13 country of birth and the date of birth of the child, and that the certificate  
14 is not evidence of United States citizenship. ~~The provisions of this sub-~~  
15 ~~section shall apply to an adoption granted pursuant to K.S.A. 59-2144.~~

or a similar document or documents which  
evidences finalization of the adoption in the  
foreign country,

16 Sec. 3. K.S.A. 59-2144 and K.S.A. 1995 Supp. 65-2423 are hereby  
17 repealed.

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

UNITED STATES DEPARTMENT OF JUSTICE  
IMMIGRATION AND NATURALIZATION SERVICE  
9747 NORTH CONANT AVE.  
KANSAS CITY, MISSOURI 64153

PLEASE ADDRESS REPLY TO

(Via Telefax)

C-1  
AND REFER TO THIS FILE NO.

February 20, 1996

Ms. Charlene Satzler  
Bureau of Vital Statistics  
State of Kansas  
Topeka, Kansas

Dear Ms. Satzler:

Pursuant to your telephone call this date, we have reviewed the proposed changes in House Bill No. 2875 relating to adoptions in foreign countries.

We do not object to the proposed removal of language, as indicated in Section 1(a), lines 17 through 25. However we believe that an additional phrase should be added beginning in the middle of line 27 as follows:

"...the adoption, the decree of adoption and evidence of lawful admission into the United States, when filed and entered in the ..."

The addition of this language could help prevent a problem of having children, with no legal immigration status, being brought into the United States for the purpose of obtaining a Kansas birth certificate, which might be used to falsely claim U.S. citizenship or permanent resident status.

Please call me if you have any questions. (816) 891-0684.

Sincerely,



Mike Heston  
District Director

## HOUSE BILL No. 2875

By Representatives Gilmore, Becker, Carmody, Cornfield, Freeborn, Hayzlett, Horst, Howell, Kejr, King, Merritt, Mollenkamp, Myers, B. Nichols, O'Connor, Powell, Powers, Snowbarger, Vickrey and Wilson

2-5

11 AN ACT concerning adoption; relating to adoptions in foreign countries;  
12 amending K.S.A. 59-2144 and K.S.A. 1995 Supp. 65-2423 and repeal-  
13 ing the existing sections.

14

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

16 Section 1. K.S.A. 59-2144 is hereby amended to read as follows: 59-

17 2144. (a) ~~When an adoption occurs in a foreign country and is recognized~~  
18 ~~as a valid adoption by the immigration and naturalization service of the~~  
19 ~~United States department of justice, the adoptive parent or parents may~~  
20 ~~petition the court, pursuant to K.S.A. 59-2128, and amendments thereto,~~  
21 ~~for a subsequent adoption in the state of Kansas, pursuant to the appli-~~  
22 ~~cable provisions of the Kansas adoption and relinquishment act, and~~  
23 ~~amendments thereto. In an adoption under this section, the court shall~~  
24 ~~recognize and give effect to the laws of the foreign country and proceed-~~  
25 ~~ings conducted in accordance with the laws of the foreign country per-~~  
26 ~~taining to relinquishment, termination of parental rights and consent to~~  
27 ~~the adoption, the decree of adoption, when filed with and entered in the~~  
28 ~~records of the clerk of the district court of any county in this state, has~~  
29 ~~the same force and effect as if the decree of adoption was granted in~~  
30 ~~accordance with the provisions of the Kansas adoption and relinquish-~~  
31 ~~ment act.~~

a Kansas resident adopts a child

32 (b) ~~If the adoption is granted~~ *When such decree is filed and entered,*  
33 *the adoptive parent or parents may request a birth certificate pursuant*  
34 *to K.S.A. 65-2423, and amendments thereto.*

and evidence of lawful admission  
into the United States

35 (c) This section shall be part of and supplemental to the Kansas adop-  
36 tion and relinquishment act.

37 Sec. 2. K.S.A. 1995 Supp. 65-2423 is hereby amended to read as  
38 follows: 65-2423. (a) ~~In cases of adoption the state registrar upon receipt~~  
39 ~~of a certified order of adoption shall prepare a supplementary certificate~~  
40 ~~in the new name of the adopted person and seal and file the original~~  
41 ~~certificate of birth with such certified copy attached thereto. Such sealed~~  
42 ~~documents may be opened by the state registrar only upon the demand~~  
43 ~~of the adopted person if of legal age or by an order of court. Upon receipt~~

and the Report of Adoption form

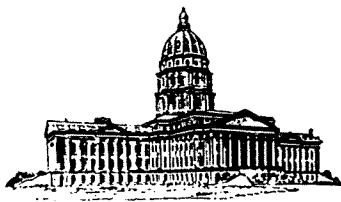
1 of a certified copy of a court order of annulment of adoption the state  
2 registrar shall restore the original certificate to its original place in the  
3 files.

4 (b) For any child born in a foreign country but adopted in Kansas or  
5 *born and adopted in a foreign country and such adoption is filed and*  
6 *entered pursuant to K.S.A. 59-2144, and amendments thereto*, the state  
7 registrar, upon request, shall complete and register a birth certificate  
8 upon receipt of a certified copy of the decree of adoption, ~~together with~~  
9 proof of the date and place of the child's birth. The certificate shall show  
10 the new name of the child as specified in the decree of adoption, and  
11 such further information concerning the adopting parents as may be nec-  
12 essary to complete the birth certificate. The certificate shall show the true  
13 country of birth and the date of birth of the child, and that the certificate  
14 is not evidence of United States citizenship. ~~The provisions of this sub-~~  
15 ~~section shall apply to an adoption granted pursuant to K.S.A. 59-2144.~~

the Report of Adoption form and

16 Sec. 3. K.S.A. 59-2144 and K.S.A. 1995 Supp. 65-2423 are hereby  
17 repealed.

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



TOPEKA

## TESTIMONY FOR HB 2932

Thank you Mr. Chairman and committee members for the opportunity to appear before you today in support of HB 2932, HB 2948 and HB 2931. These are bills that could help relieve the taxpayers of Kansas by helping make it easier to enforce the child support orders. If child support is ordered, but can not be collected, it does the child no good. There are too many cases where child support cannot be collected, either because the obligor cannot be found or information about their employment is obscure so that wages cannot be garnished.

HB 2931 will help solve these and other problems surrounding the difficulty of enforcing child support orders.

- Another section of this bill would require that social security numbers be required on all child support orders. While privacy concerns are not to be discarded lightly, the need for identifying information in child support cases is crucial to the success of the program. Federal law recognizes the need for the collection of the social security account numbers of parents for use by child support enforcement agencies.
- A lien for child support would have priority over all subsequent lienholders other than a purchase money security interest.
- The Bradley Amendment provides that child support is reduced to judgement by operation of law once it is past due. The Bradley Amendment also has had one unexpected negative impact. By virtue a state's statute of limitations from the date each payment is due. Kansas dormancy period is 5 years. A statute of limitation confines collection on a money judgement. This bill would increase this to 20 years.

HB 2932 would require the payment of any child support order as an additional condition of state, county, or city probation and/or parole. Except in special circumstances, employment is a condition of probation and/or parole. This would include the privilege of residing in a half-way house. Once employment is obtained, every probationer or parolee will be required as a condition of continued parole or probation to pay child support with priority distribution over other civil and criminal money obligations.

HB 2948 would provide the ability of the court to order case management, when appropriate, of any contested issue of child custody or visitation at any time, upon the motion of a party or on the court's own motion. This would help those couples that the emotions are affecting the best interest of both parties and children and be much quicker to assist in diffusing a situation instead of a court.

There are numerous other points in these bills, which I will allow the other conferees to speak on behalf of the details in these bills.

Mr. Chairman and committee, I thank you for your time, and I will be available for questions.



THE STATE OF KANSAS  
26TH JUDICIAL DISTRICT  
COURT SERVICES DIVISION

February 7, 1996

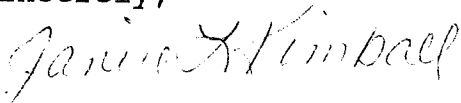
Rep. Brenda Landwehr  
State Capitol  
Room 303 N  
Topeka, Kansas 66612-1504

Dear Rep. Landwehr:

I am writing to voice my support for your bill which would allow judges to order parties in highly conflicted post-divorce situations to a case management process. As a Court Services Officer who handles primarily all domestic post-divorce cases in the 26th Judicial District, I am a strong advocate of the case management approach in custody/visitation issues, and feel that we are seeing positive results when this method is utilized (court ordered).

Please feel free to contact me or Honorable Tom R. Smith, District Court Judge, 26th Judicial District, if you would like additional input.

Sincerely,



Janice L. Kimball, CSO I  
Domestic Relations Investigator  
Court Services Division  
Seward County Courthouse  
Liberal, Kansas 67901  
(316) 626-3242

JLK/jas

cc: Hon. Tom R. Smith

House Judiciary  
2-23-96  
Attachment 10

Jerri Lynn Stanley-Garcia  
6740 Rockhill Road  
Kansas City, MO 64131

January 28, 1996

BONNIE SUE COOPER  
STATE REPRESENTATIVE  
(DIST. 32) MO. STATE REPRESENTATIVE  
413 N.W. 58TH ST.  
KANSAS CITY, MO 64118

Dear BONNIE SUE COOPER:

On January 23, 1996 President Clinton delivered his State of The Union Address. As in all politically motivated speeches, there are parts we agree with and parts we find opposed to our beliefs and expectations. One area that seemed to arouse the very heart of America was the reference to the fact that we cannot leave Americans to "fend for themselves". It is in the truest belief of this statement that I am asking for your experience, knowledge, and assistance with a matter of dire concern. The exact nature is specific to my situation but the same scenario is occurring in households across our land.

In 1989 I entered into a divorce settlement. I did not want or ask for this devastating experience. At the time of the divorce our only child was two (2) years old. In the seven (7) years since the divorce my ex-husband has betrayed his promise to me and our child. At this time he is in arrears on child support of more than fourteen thousand dollars (\$14,000.00). I have had my meager wages garnished, I have had to sell my transportation to pay hospital bills and have borrowed money from friends and family to survive.

*AND 6000 IN Medical Debt INS*

I have secured a company to help secure some of the funds but my ex-husband quit his job of five years (5) and now works for cash. He has remarried, has a beautiful home and a new Harley-Davidson. His promise to the court is still just a promise. Will "no one" make this heinous man accountable for his promise. I have always encouraged contact between him and our child in the hope that he would see how much she needs his support.

I have all documentation. I have kept records in hope that someone can help me. I am hopeful you know of some way to bring justice to this "grave injustice". A nine year old (9) should not have to fend for herself while our justice system is brazenly flaunted in the face of the most vulnerable.

I look forward with great anticipation to your assistance and help in this matter.

Sincerely,



Jerri Lynn Stanley-Garcia

*Mid America Child Support Collector Agency*

House Judiciary  
2-23-96  
Attachment 11

I am the single mother of 2 boys, aged 16 and 22. Shortly after the birth of my 2nd son my husband and I were divorced. Four years after our divorce my X-husband went to Saudi Arabia on business and has resided there since, however, he is still a U.S. citizen. Since he left the country I have worked with state agencies and private attorneys but have never received one dollar in child support or medical support since he left.

I have worked three jobs at a time, including one in the legal field, to support my boys. My oldest has received four scholarships and worked full time to put himself through college. Due to outstanding medical bills, resulting from my x-husband not providing court ordered insurance and medical support, I have had my wages garnished over medical bills resulting from an operation my son had to have, and watched my own credit suffer as a result.

The provision in House Bill 2931, relating to the extension of the dormancy period is especially important to cases such as mine. If my x-husband remains in Saudi Arabia for several more years my case will become dormant, and I will never have the opportunity to collect all the past due support he owes my children. It has always been his intention to return to the U.S. when he retires. This law would allow ample time for collection of his arrears, and further enforce the fact that you can't just run away

from your responsibilities to your children. I've borne the entire burden of taking care of my family, but there are many things my boys have gone without - with the passage of this bill maybe we can make it up to them later.

Margaret Mead, the famous anthropologist, said it best: "Never doubt that a small group of thoughtful, committed citizens can change the world, indeed, it's the only thing that ever has".

Shannon Ciccone  
February 19, 1996

Two years ago I decided that I needed to file for child support. It was at that time when I realized how helpless the system is. I wrote letters, made phone calls and pleaded for someone to work on my case, but it was all in vain. In the last two years my son has received approximately \$1800 of the \$9600 he was supposed to receive. About a year ago my son's father moved out of state. At that time I did the necessary research to find out where he was living and working. I then reported this information to the Office of Child Support Enforcement. For the next two months I called every two weeks to check on my case. It was at the end of these two months that I was told that the information I had given had been lost. Unfortunately, this has not been the only time when someone has dropped the ball in my case. Recently enough, I have been calling to check on the status of my case and a few weeks ago was told that nothing had been done because my file was across the street and no one had had time to retrieve it.

Horror stories aside, the point of the matter is that something has to be done to resolve the problems with child support enforcement. Not only to improve the way the system works, but also to improve the lives of our children. I want to give my son the best life possible and that is why I have struggled to continue working and attending school full time. I have no desire to go back to being a welfare recipient but at times I wonder if I have a choice. Is the system is set up to promote failure? I don't know. I do know, however, that it does not encourage the absent parent to take responsibility for their actions.

About two years ago my son said "I don't have a daddy, do I mommy?" I remember crying and thinking, how do you respond to a question like that? I understand that Max may never really know his daddy, but by receiving child support at least he will know that his father tried. Max's question, as well as the financial hardship we have been experiencing force me to realize that I cannot give up the fight. So I join together today with others like me to ask you to help us make the system stronger and more efficient. Our children are our future and by improving the enforcement of child support we pave the way for our children to have just that, a future.

My name is Lu Ann Pauler, for the past 11 years I have worked for the State of Kansas, & the past 7 years as an SRS child support case worker, I now work for MidAmerica. In the past years I have seen many changes & improvements in child support enforcement - but we have a LONG way to go. The next wave of child support enforcement is upon us. The tools available in House Bills 2931, 2932, & 2948 will allow us to do our job both more efficiently but also faster.

1. Effective child support enforcement & collection usually starts with location - location of employer and/or address. For these cases the inclusion of Social Security numbers, on court documents relating to child support, would in many cases cut off months of time in location procedures. For an additional number it would be the only way for locate. And in many cases, these documents would represent the **only** real opportunity to obtain the Social Security number.

2. W-4 Reporting is a vital link in the enforcement process. Current state employment reporting is only done quarterly, so in many cases employment information is ~~only~~ 4 or 5 months old. This is one of the biggest loopholes that absent parents have taken advantage of. Job hopping for many is the norm & keeps them always 1 step ahead of anyone trying to locate their employment. With new records available only every 3 months, by the time a match is made between obligee & employment, the obligee may have had 3 or 4 other employments & any Income Withholding Order sent would be totally useless. W-4 reporting within 10 days would make a **huge** improvement in the usefulness of employment information.

3. Extension of the dormancy period for child support collection would greatly effect not only the ability to collect past due child support but would be a most effective tool to further stress to the absent parent the importance Kansas has placed on child support enforcement. Currently, if the absent parent can manage to successfully elude locate or enforcement processes long enough, their child support can become dormant with the resultant factor that they have "beaten the system". The Kansas dormancy period is one of the lowest in the country. This change would allow a longer time for collection, & in many cases providing the money that older children can use to further their education.

4. In requiring probationers/parolees to be responsible in paying their child support as a condition of probation/parole a significant savings to Kansas taxpayers will result from less welfare dependence by the custodial parent & again reinforce the seriousness of non-support.

My name is Susie Haas. My phone number is area code 316-636-5350. I'm here to ask for your support of house bills 2931, 2932, 2948. I'm a custodial parent with two children. I've been struggling for 15 years to receive my child support and now arrearage. My case started back in 1981 - back in the old days when you didn't have any effective laws to help procure child support. I could tell you many horror stories that I've been through, which I won't do, but if these bills had been in effect as laws back in 1981, I would not have to be sitting here today still trying to get arrearage. I never would have heard, "We're sorry, dear, we can't find your wife. It just slipped through the cracks."

Today, I'm here in behalf of all the other custodial parents who can't speak at this time to ask for your support in passing these bills.

HB 2932  
House Judiciary Civil Law Subcommittee  
February 19, 1996

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

Chairman Adkins and members of the committee:

Thank you for the opportunity to appear before you and express my support of HB 2932.

As a former prosecutor, I know that judges usually require that a person on probation or suspension of sentence maintain steady employment. I also know that, upon request, they will require that same person as a term of probation to support their dependents. These should be standard terms of every probation, suspension of sentence or parole for a criminal offense.

In Sedgwick County, we have found that many of our child support obligors are also on probation for criminal offenses. For this reason, the Court Trustee has recently started sending copies of our journal entries enforcing child support obligations to the court service officers supervising their probation or to Community Corrections.

Investigators and caseworkers in the Court Trustee's office have a good working relationship with court service officers and Community Corrections in Sedgwick County. We have no problem obtaining employment information from them so we can serve income withholding orders. This information should also be available to private attorneys trying to help people collect child support.

Private attorney, child support enforcement agencies and those supervising criminal offenders should work hand in hand to ensure that the offenders realize their personal responsibility to their dependents.



**1996 HOUSE BILL 2932**

**FEBRUARY 19, 1996**

**TESTIMONY OF KAY FARLEY  
COORDINATOR OF CHILDREN AND FAMILY PROGRAMS  
OFFICE OF JUDICIAL ADMINISTRATION**

REPRESENTATIVE ADKINS AND  
MEMBERS OF THE CIVIL LAW SUB-COMMITTEE:

I am here today to support the passage of 1996 House Bill 2932. This bill converts certain "standard" language in K.S.A. 21-4610 about the conditions of probation any convicted person should observe to more specific language. It inserts similar language in parole statutes so that the Parole Board will also have specific requirements regarding family support.

Passage of the bill will ensure that both probation and parole contracts require a convicted person to take care of the person's dependents. This language will permit probation and parole supervisors to encourage convicted persons to face up to their family obligations. Permitting any licensed attorney to have access to employment information will permit SRS, court trustees and private attorneys to press child support claims as necessary.

Not only does the Office of Judicial Administration support passage of this bill, but the Kansas court trustees programs have asked me to pass on to you their support of House Bill 2932. Thank you for the opportunity to support this bill. I would be glad to stand for questions.

**HOUSE BILL NO. 2932**  
**House Judiciary Committee**  
**February 19, 1996**

Testimony of David E. Yoder  
District Court Trustee  
Ninth Judicial District, Harvey County

Mr. Chairman and Honorable Members of The Committee:

I sincerely thank you for the opportunity to testify before you today in support of House Bill No. 2932.

This bill will substantially improve the process for collection of child support by all agencies enforcing support. Speaking as an officer of the court with the responsibility of enforcing child support in Harvey County, this bill would expedite the process of collecting child support in cases where the obligor (the non-custodial parent with the responsibility to pay child support) has been convicted of a criminal offense. As a condition of probation or parole, the obligor would be required to hold a job and make his or her child support payments. If the obligor failed or refused to comply, he or she could be facing the revocation of his or her probation.

The requirement for a person convicted of a crime to hold a job serves multiple purposes. As any condition of probation or parole, the convicted person is ordered to pay court costs, and often a fine. There is sometimes an order to pay restitution to the victim of the crime. Requiring a person convicted of a crime to hold a job would greatly increase the likelihood that these costs, fines and restitution would be paid. Adding the payment of child support is a logical extension of that principle. It reinforces the importance of the obligor's duty to support his children, by conditioning his probation upon making the payments.

My office has personally experienced numerous occasions where an obligor has been convicted of a crime. In most of these cases, the obligor had stopped paying his child support. What relation the commission of a crime had on the obligor's decision to stop paying is uncertain, but in most cases the obligor had not ever been voluntarily meeting his support obligation, and the only support collection in the case was by involuntary wage withholding

(when my office could successfully locate an employer). In some instances, a bench warrant had even been issued for the obligor's arrest in the domestic case. While I am not inferring that people who don't voluntarily pay their child support also commit crimes, it seems there are some elements of society who do both. It is these persons to whom the bill is addressed. Those obligors who become involved in the criminal justice system will be made to confront their support obligations. It may be the only way to reach a certain segment of our obligors.

At the present time, a judge has the authority to order a parolee or person on probation to make an effort to find employment, and to pay his fines, costs and restitution, but not necessarily to hold down a job as a condition of probation or parole. And there are certainly no statutory provisions for adding child support payments to the order. At this time, if my office discovers an obligor has been convicted of a crime and is on parole or probation in a judicial district, I must contact that court, locate the parole or probation officer, and attempt to locate the obligor's present address and possible employer. Then my office must file either a contempt of court proceeding or an income withholding order, and proceed through the normal enforcement mechanisms in the domestic case.

Although I have found all parole and probation officers with whom I have dealt to be helpful and cooperative with my office, it often takes a few phone calls or letters to the appropriate agency to obtain the information I need to proceed with collection efforts. With the proposed amendment to this bill, my office could work with the probation or parole officer in a more direct manner, and it would prevent problems and delays in obtaining the necessary information from the parole or probation officers. By simply adding a question or two on the intake form that probation and parole officers provide to the convicted person, these officers can obtain information concerning that person's support obligations and can inform the appropriate enforcement agency of the pending probation or parole. This would substantially expedite the process of obtaining support from the obligor, and getting it into the hands of the persons who most need that money: the children.

Support enforcement would still be processed through the original civil domestic case. If payments stopped or the obligor violated the support requirements in the domestic case, the agency handling the support collection would be responsible for reporting the violation to the probation or parole officer, and that officer could take the appropriate action in the criminal case,

possibly revoking his parole or probation.

Although on its face this sounds somewhat cumbersome, it is actually quite a simplification of the present process. There is presently no method of enforcing child support through the criminal process without pursuing criminal nonsupport as separate charges against the obligor, and having him arrested and charged with this entirely new offense. The state would then have to prove criminal nonsupport as a separate offense from those nonrelated crimes for which he was previously convicted, and would require a possible trial on these nonsupport charges. Besides tying up the courts with new cases, this also causes substantial confusion and overlap between the civil support case and the criminal nonsupport case, since the criminal nonsupport case is based solely upon nonpayment of support in the domestic case. We are then dealing with two agencies that have to address the support payments: the agency that enforces the support in the civil case, and the probation or parole officer assigned to the criminal nonsupport case.

My office is in one of the lucky jurisdictions that has a county attorney willing to pursue criminal nonsupport. Many judicial districts in Kansas don't even pursue criminal nonsupport, leaving no alternative to civil enforcement in those districts.

I thank the members of this distinguished committee for giving me the opportunity to speak before you, and I hope my testimony in support of this bill was helpful.

**House Committee on Judiciary, Civil Law Subcommittee  
Testimony on H.B. 2931 and H.B. 2932 pertaining to child support**

**February 19, 1996**

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify today on behalf of Secretary Chronister concerning House Bills 2931 and 2932. The primary responsibility of the SRS Child Support Enforcement Program (CSE) is to help children by establishing regular and adequate current support payments, as well as by enforcing past due obligations. From that perspective, CSE supports the concepts embodied in these two bills. We hope they will become landmarks in the changing landscape of support enforcement, a landscape in which responsibility and accountability must be the twin guideposts.

The key change in HB 2931 is creation of a "new hires" registry for Kansas. In a nutshell, a new hires registry operates as follows: employers promptly report basic data about new employees to a central point; the information is collected and matched against IV-D computer records; and, if a name matches and income withholding needs to be implemented, the IV-D agency takes appropriate action. In some states employers use W-4 forms to report their new hires, so the process is also referred to as "W-4 reporting." One unusual feature of H.B. 2931 is the modest – and optional – \$1 fee it allows employers to collect to defray the costs of the one-time report.

The advantage of a new hires registry over our current system of checking employment security (ES) records is two-fold: ES data can be as much as 6 months old by the time the employment information reaches the child support case, and ES records do not cover 100% of Kansas employment.

New hire registries have proven very cost-effective in other states. The State of Washington, for example, reported a 22 to 1 return on investment for their new hires registry in 1992. Our neighboring states of Missouri and Nebraska recently established new hire registries, each with a private contractor processing employers' reports and preparing computer tapes to match against the state IV-D caseload. In June 1995, Nebraska's IV-D director estimated that their registry cost about \$100,000 per year to operate and that it had more than paid for itself in new collections. Both Missouri and Nebraska report a 10% match rate – one in 10 new hires involved a IV-D case – which is consistent with the experience of Washington and other states.

Our agency has long supported the establishment of a new hires registry for Kansas families, and we urge your support for H.B. 2931. One change that might be considered is requiring the registry to keep data for at least 6 months, or until the employment information appears in the Employment Security records. That way, if a new IV-D case opens after the absent parent is reported as a new hire but before the employment appears on ES records, CSE will still be able to implement income withholding by matching the new IV-D case with the new hires data. Six months should be long enough to catch most cases while allowing stale data to be purged regularly from the database.

H.B. 2932, which makes paying child support a mandatory condition for parole or probation, is beneficial in two ways. First, it makes clear that supporting children is a fundamental responsibility, one to be given high priority. Second, like H.B. 2931, it provides a

mechanism for new employment to be reported so that income withholding can be promptly initiated. Although we would like to see an amendment specifically directing that employment information be shared with the IV-D agency (which might simplify the duties of the parole or probation officer), the effect should be similar to that of the new hires registry in H.B. 2931.

Along with new responsibilities, such as those set forth in House Bills 2931 and 2932, there also needs to be accountability. It is not easy to ask ourselves, or to be asked, "Are there ways to do better?" Yet no matter how proud we are of ranking well in comparison with other states, so long as only half the children with orders are receiving support in full each and every month, we must actively seek better ways to ensure our children are financially supported.

Contractors have always been key partners in Kansas' Child Support Enforcement Program. Although traditionally CSE has relied heavily on contractors in the public sector, we have also had contractors in the private sector performing tasks such as genetic testing, service of process, and general collection work. Earlier I mentioned the changing landscape of support enforcement. In many states this has included shifting more IV-D tasks to the private sector. Here in Kansas we want to preserve the best of what has been accomplished with our public sector contractors, but we also need to explore the potential benefits the private sector may now offer. The best way to reach these twin goals, as well as to ensure accountability, is through a competitive bidding process structured to allow both public bodies and private enterprise a fair opportunity to make proposals.

Even though Kansas has made progress in support enforcement, reaching record high collections of \$103 million in FY 1995 and improving our rates for both paternity and order establishment, we cannot allow complacency or inertia to keep us from doing better. As the landscape of support enforcement changes, both at the state and at the national level, we must take every opportunity to raise our standards and achieve more for the children we serve.

Thank you for your ongoing interest in the financial well-being of children. House Bills 2931 and 2932 would both contribute to that well-being, and we urge that they be recommended for passage.

Respectfully submitted,

Jamie L. Corkhill, Policy Counsel  
Child Support Enforcement Program  
Dept. of Social & Rehabilitation Services  
913-296-3237

JLC: Legis\2931TH16.026

# Midamerica Child Support Collections, Inc.

Wichita  
245 N. Hillside  
Wichita, KS 67214  
(316) 688-0700

Oklahoma City  
500 N. Meridian, Suite 105  
Oklahoma City, OK 73107  
(405) 946-6620

Kansas City  
5000 Johnson Dr., Suite 102  
Roeland Park, KS 66205  
(913) 236-4442

Home Page: <http://www.fn.net/~csupport>  
E-Mail: [csupport@fn.net](mailto:csupport@fn.net)

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*...we can't make them care...but we can make them pay!*

---

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My name is Jan Jewett, I am one of the owners of MidAmerica Child Support Collections, Inc.; we are one of the oldest and largest private child support collection businesses in the nation. In our company combined experience in child support and collections total over 50 years, not counting the years some of us or our current spouses have spent in the system with their own personal child support cases. Day in, day out we fight with every tool available to help get the support that the children deserve and need so desperately. We keep only one attitude, no arrearage will be tolerated. None. Not any. Ever.

If the 90's offer one villain by consensus, it is the "deadbeat", that selfish fugitive condemned by liberals and conservatives alike for their irresponsible behavior and generous contribution to the cycle of welfare dependency. **One half** of all Kansas children will spend time in a single-parent family. And children in single-parent families are more than **five times** more likely to be poor as children who live with both parents. Lack of child support and its arrearages pitch thousands of Kansas households into poverty - and into the state's overwhelmed welfare systems - and keep many teetering on the brink, grappling with the many associated family, school, and social problems.

While children are the primary victims of non-support, tax payers suffer as well. Many who are not supported by both parents must rely on Aid for Families with Dependent Children or other forms of government assistance. In 1995, combined benefit payments to 1 adult and 2 children families amounted to over \$17,000.00 per family.

There are **more than 30,000 Kansas children** who are currently eligible for AFDC because their custodial parent is not getting their child support.

We must declare once and for all that the mission of the child support program is to **take** and **KEEP** families off welfare, and get rid of provisions in existing laws that contradict this mission. Today I come to you, to ask for a legislative commitment to help us reverse these disturbing trends by passing House Bills 2931, 2932, and 2948.

### **House Bill 2931**

**A. W-4 Reporting** - One of the most important data bases for locate is the state's employment security agency. However a drawback to employment is its age. Employers are only required to report earnings within 1 month after the end of a 3 month period, so information is often 4 months old.

The state IV-D agency currently identifies a change in employment when support payments are missed or when the quarterly match with the state employment agency identifies a new employer for an absent parent. So many changes is each case **necessitates** the need for a method to track new employment & immediately send the new employer an Income Withholding Order.

- In IV-D cases it is estimated that the mean length of employment of the absent parent is **3 months**, making it imperative that enforcement begin immediately upon hiring. Due to job changes, the duration of a wage withholding order is less than 6 months in 40% of cases for obligors whose families receive AFDC & 28% for nonAFDC obligors. 25% of obligors terminate or change employment before the state IV-D agency can serve the wage withholding order notice on the employer.

The W-4 reporting program is modeled after an extremely successful program that has been implemented for six years in Washington state. In Washington most employers who are required to report are supportive of the program according to a survey conducted by the



Legislative Budget Committee, and the consensus of employers at a 1993 meeting indicated that all employers should report new hires.

1. A tremendous barrier to child support collection is the lack of current locate information as obligors move from job to job. The longer the delay, the more likely that a wage withholding order will be ineffective.

2. As the number of cases processed increases, the importance of a single, effective method to secure & maintain information on the location of the parent(s) becomes apparent. Locate systems can be useful to persons processing cases only when the information obtained is accurate & current.

3. The expanded W-4 provides 2 extremely important sources of information - the absent parent's whereabouts & income source. The change of employment of obligors interrupts the income available to children.

4. The revised W-4 form would require persons with a child support obligation or a healthcare support obligation payable under an Incoming Withholding Order, to report the amount, payee, & payment instructions.

5. Employers under penalty of state fines would forward a copy of the W-4 within **10 days** of employment to the state employment agency. The employment agency would enter the W-4 information & allow access to it. The information would be used to match against cases. For any case in which an obligation was identified, an income withholding order would be sent to the employer.

6. The W-4 reporting mechanism also assists in the location of parent(s) where a child support order is needed, or location in child kidnapping cases.

7. W-4 reporting allows employees to report child support obligations just as they report tax liability, and employers benefit in a reduction of paperwork required to redo payroll information when the state sends a wage withholding order.

**B. Property Liens** - A lien is a dormant claim to property that is awakened when the person possessing the property sells it. Liens for child support represent liens for debts considered as important, if not more so, than any other debt.

With the provisions in this Bill for a process in which liens can be placed on real and/or personal property immediately upon the support becoming past due, this tool will automatically become faster and more efficient, resulting in less paperwork and time spent for courts, attorneys, and custodial parents. Another tool that can be used to impress upon the absent parent the seriousness of non-payment of child support.

**C. Social Security Numbers on Court Documents Relating to Child Support** - It is imperative that certain universal identifying information be available so that the system can locate the correct individual in a pool of millions. While far from perfect, the social security number comes close to being the universal identifier. Due to their common use as individual identifiers by both the public and private sectors, social security numbers are essential tools for enforcing child support obligations because many of the child support enforcement actions mandated by federal law cannot be successfully undertaken without the use of the social security number. While privacy concerns are not to be discarded lightly the need for the identifying information in child support cases is crucial to the success of the program.

1. Federal law requires all employers must report the social security number of all new hires.
2. Kansas drivers license bear the social security number.
3. Kansas marriage license requires the social security number.
4. The better the identifying information the less likely the wrong person will be served with child support papers.

5. The recommendation of requiring social security numbers of both parents on all child support orders is NOT contrary to existing privacy laws regarding the use of the social security number.

D. **Extending Dormancy Periods** - The Bradley Amendment provides that child support is reduced to judgment by operation of law once it is past due. The Bradley Amendment also has had one unexpected negative impact. By virtue of their judgment status, support installments are subject to a state's statute of limitations from the date each payment is due. States vary as to how long they will enforce child support arrearages before they are considered "too dormant" for enforcement. Statutes of limitations confine collection on a money judgment to a specific time period. In Kansas it is only 5 years well below the national average. See Exhibit I.

1. The statute of limitations may bar collection of child support in cases when the obligor was not located for several years or did not earn enough to pay the support owed.

2. A statute of limitations is considered to be part of procedural & not substantive law.

## House Bill 2932

This bill makes paying owed child support a condition of probation and/or parole.

At present **over 2/3rds** of all Kansas families whose absent parent is incarcerated, or on probation or parole is receiving one or more types of government assistance (welfare).

Except in special circumstances (usually medical), employment is a condition of probation, parole, or the privilege of residing in a half-way house. Once employment is secured, every probationer or parolee must be required to pay their child support as a condition of continued probation or parole. This is one step we can take that will help remove many currently on our welfare roles.

## House Bill 2948

This bill addresses a case management procedure relating to resolution of issues concerning custody and visitation, thus freeing valuable court time.

Although lack of visitation is not legal grounds for the non-payment of child support, it is a reason, nonetheless, that is heard over and over by anyone in child support enforcement.

Children benefit from relationships with both parents. Many studies have shown that absent parents who have regular visitation with their children pay a higher proportion of their child support obligations. When resolutions are met and agreed upon by parties, and supervised to meet requirements, it is a win situation for both parents but especially for the children involved.

In closing, I would like to thank each of you for your consideration of these bills. I appreciate the opportunity to appear here today to share my support of these bills with you. I will make each of you a promise - **Give us these tools and we will use them.**

# EXHIBIT I

## Time Limit Per State to Collect Without Reviving Case

State	Years
Alabama	20 years
Alaska	10 years
Arizona	5 years
Arkansas	10 years
California	10 years
Colorado	20 years
Connecticut	20 years
Delaware	10 years
D.C.	3 years
Florida	20 years
Georgia	7 years
Hawaii	10 years
Idaho	6 years
Illinois	20 years
Indiana	20 years
Iowa	20 years
Kansas	5 years
Kentucky	15 years
Louisiana	10 years
Maine	20 years
Maryland	12 years
Massachusetts	20 years
Michigan	10 years
Minnesota	10 years
Mississippi	7 years
Missouri	10 years
Montana	10 years
Nebraska	5 years
Nevada	6 years
New Hampshire	20 years
New Jersey	20 years
New Mexico	14 years
New York	20 years

<b>State</b>	<b>Years</b>
North Carolina	10 years
North Dakota	10 years
Ohio	21 years
Oklahoma	5 years
Oregon	10 years
Pennsylvania	6 years
Rhode Island	20 years
South Carolina	10 years
South Dakota	20 years
Tennessee	10 years
Texas	10 years
Utah	8 years
Vermont	8 years
Virginia	20 years
Washington	10 years
West Virginia	10 years
Wisconsin	20 years
Wyoming	5 years

TESTIMONY OF KATHY KIRK  
FOR THE OFFICE OF JUDICIAL ADMINISTRATION

February 19, 1996

House Judiciary Committee

HB 2948

Thank you for allowing me to present the position of the Office of Judicial Administration on House Bill 2948.

OJA supports the concept of this bill. Case management is a procedure currently being used in several judicial districts. It has proven to be an effective procedure for post-divorce cases in which the parties have a long history of contention and tend to use the court on a frequent and continual basis. This bill would statutorily provide a uniform structure for the procedure and give guidance to other districts.

OJA recommends the following minor changes to clarify the language:

- Section 1. Lines 18 and 19: through agreement by the parties, assists the parties ~~in reaching a mutually acceptable agreement as to issues of child custody or visitation~~ **by providing a procedure, other than mediation, which facilitates negotiation of a plan for child custody or visitation...;**
- Section 2. (3). Lines 34 - 36: repetitive conflict occurs within the family, ~~as when at least two motions regarding custody or visitation are filed within a six month period;~~ **as evidenced by the parties filing at least two motions in a six month period for enforcement, modification, or change of visitation or custody which are denied by the court.**
- Section 2. (d)(3). Line 12: approved by the **district** court **in which the case is filed;**

- Section 3. (7) Line 37: ...judge's ~~agent~~ **designee;** and
- Section 3. (d)(7) Lines 38 -41: Costs ~~for such information~~ **of the procedure** and professional time may be ~~charged at a rate higher than normal and shall be~~ assessed to the party who objected to the recommendations in the journal entry ~~or may be otherwise assessed by the court.~~

Thank you for your consideration.



HB 2931  
House Judiciary Civil Law Subcommittee  
February 19, 1996

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

Chairman Adkins and members of the committee:

Thank you for the opportunity to appear before you and express my support of HB 2931.

New Section 1.

One of the most commonly-recurring problems faced by the child support caseworker is locating new employment for an obligor who has changed employment. Although both the former employer and the obligor are supposed to report new employment, the former employer usually does not know it and the obligor more often than not fails to report it. The custodial parent may be in a position to report it only if the obligor keeps in contact. This problem is especially acute in Sedgwick County, where in 1995 the Court Trustee served 1,445 withholding orders on new employers.

In Sedgwick County, we obtain employment information by direct computer linkup with the Department of Human Resources. The problem is that the records are driven by quarterly earnings reports by employers that start appearing about 45 days after the end of the preceding quarter. We are just now starting to have access to 4th quarter 1995 employment reports. If, for example, an obligor changed employment on October 1, 1995, we may be just now able to discover it.

New Section 1, which provides for "new hire reporting" by employers and labor organizations, would enable SRS or the Court Trustee to serve an income withholding order on a new employer as much as 4 months sooner than we often do now. It would allow for early intervention to resolve the problem of nonpayment, providing the custodial parent with more continuity in payments and keeping a large arrearage from accruing.

Wage withholding is the most effective child support collection tool that we have, and new hire reporting greatly enhances its effectiveness. New Section 1 would keep the administrative burden on the employer to a minimum by allowing reports to be made either by mail or facsimile. It would also allow this information to be shared in IV-D cases with other states and a proposed National Directory of New Hires.

New Section 2.

Subparagraph (a) of this new section would provide a new tool for the child support enforcement office. A child support arrearage would be made a first and priority lien on personal property. This lien could be filed with the register of deeds in the county and enforced, if necessary, under the Uniform Commercial Code. The lien on personal property could tie up the transfer of personal property just as a child support arrearage now ties up the transfer of real property until the arrearage is satisfied.

In Sedgwick County, a child support arrearage already becomes a judgement lien on real property under K.S.A. 60-2202. Subparagraph (b), by giving this lien priority status over subsequent lienholders, not only gives recognition to the importance of the child support obligation but would enable the obligee to satisfy the lien before many other creditors of the obligor.

K.S.A. 1995 Supp. 60-1610, sec. 4

The Kansas Child Support Guidelines already require that the obligor's social security number be placed on the domestic relations affidavit when a party asks for a new or modified child support order. Therefore, the number if known should already be part of the record of the case. Nevertheless, having the number on the order itself would make it easier to find and facilitate the creation of a state or national registry of support orders, if later required by federal law.

K.S.A. 1995 Supp. 60-2403 and 60-2404

The present statutes, when construed together, may cut off the right to collect a child support arrearage unless action is taken within 2 years of a child's emancipation or of when a prior judgment for child support arrearage becomes dormant. The action taken, in the form of a "motion to revive," is a time consuming process usually used when other child support enforcement efforts have failed because the whereabouts of the obligor are unknown or when there has been no child support enforcement action possible over the last 5 years. These motions are almost always sustained in cases of judgments for past due child support. Extending the time for filing them would not only save time and effort but help prevent the possibility of their not being filed in a timely manner and the resulting loss of the child support arrearage.

HOUSE BILL NO. 2931  
Senate Judiciary Committee  
February 19, 1996

Testimony of David E. Yoder  
District Court Trustee  
Ninth Judicial District, Harvey County

Mr. Chairman and Honorable Members of the Committee:

I sincerely thank you for the opportunity to speak with you today in support of House Bill No. 2931.

The proposed amendment to K.S.A. 60-2403 will bring Kansas to a level of parity with the other states. Kansas is "dead last" concerning its statute of limitations on child support collection. Nineteen of the 50 states don't even have a statute of limitations on child support arrears. Of the remaining states, eight have a 20 year statute of limitations, and 16 more, including the District of Columbia, have a statute of limitations of 10 years or longer for child support arrears. In all, 43 states and the District of Columbia have a statute of limitations of 10 years or longer. Kansas ranks 51st.

Of the 8 states with the lowest statute of limitations, Kansas is the only one that voids child support 2 years after a child turns 18. The next-lowest, Arizona, does not void child support arrearages until 3 years after the youngest child turns 18. This law keeps support arrears enforceable on the older children, some of whom may have turned 18 many years earlier, until the youngest of the children turns 18. Only then does the statute of limitations begin to run.

In Kansas, each child has his or her own statute of limitations, resulting in a possibility that, even though some children are still under the age of 18 and current support is still accruing as to them, the child support arrears for the children that have turned 18 will become void and unenforceable. Even the next-lowest state extends support through the youngest child.

Of the remaining states on the low end of support arrears

enforcement, one state has a four-year limitation, three states allow five years, another allows seven years after a child turns 21 (making their limitations laws 8 years longer than ours), and the other state, which has an eight-year statute of limitations, suspends the statute completely while the obligor is out of state.

Besides bringing Kansas on line with the rest of the country, extending the statute on child support arrears to 20 years after the child becomes emancipated will substantially resolve the dichotomy created by having an individual statute of limitations on each child. With the overall statute of limitations extended for such a long period, any enforcement action taken within that 20 year period should be sufficient to cover all children covered by the support orders. The bifurcation of our statute of limitations among the children thus becomes much less of a problem, and provides greater assurances that all the support arrears owed to all the children will be collected.

My office has been enforcing child support since the Harvey County Court Trustee office was created on January 1, 1990. We began by enforcing new support orders and modifications of existing support orders. Any custodial parent (obligee) whose support was set by court order prior to 1990 could obtain our assistance in collecting that support simply by applying for our services. Immediately after we began our operations in 1990, numerous obligees came to our office and applied for enforcement. At that time, the statute of limitations on child support was exactly the same as the limitation of actions on any judgments: five years. Upon examination of their cases, I discovered numerous instances where the statute of limitations had run on most if not all of the support arrears, since there was previously no enforcement agency handling their case, and most of the obligees were unable to afford attorneys to pursue support collection for them.

After July 1, 1990, the present law took effect, extending the statute of limitations to emancipation plus 2 years. This amendment was a great blessing to many obligees, who now found much of their support arrearages enforceable through our office. A great deal of money which would have been lost was now collectible,

and my office went to work.

Despite these advancements, I am still meeting women who have "slipped through the cracks," and who are just now getting around to meeting with me. Many of these women have children who are past the age of 20, and have been very dismayed to learn that the arrears they thought were owed to them are now barred by the present limitations of our statutes. In many cases, only a small fraction of their arrears are collectible. In most of the cases I have just described, the obligor (the noncustodial parent who owes the support) has been hiding outside the state or job-hopping to avoid withholding. It has been very difficult explaining to these obligees why a person can get away with outlasting his support obligation by simply waiting until the children turned 20 years of age. In one instance, an obligor moved back to Harvey County as soon as the youngest child turned 20, and became quite flagrant in his demeanor toward the obligee in bragging how he had outlasted his support obligation and that she could do nothing to him. Unfortunately, he was quite right as to a majority of the arrears.

This type of problem could be resolved with the proposed amendment to 60-2403. The extension of the Statute of Limitations on support collections serves a two-fold purpose: It extends the period of time in which location and enforcement action can be taken against an obligor, and if the obligor realizes that he remains liable for the child support for such an extended time, it may convince him to pay the support and not try to disappear and outlast the obligation.

By bringing Kansas into parity with the rest of the states, Kansas will resolve some of the confusion caused in interstate enforcement. I have experienced confusion within the court system, and especially with local counsel, when a support case from another state with a substantially longer statute of limitations is filed under the interstate laws for enforcement against an obligor who has moved to Kansas. Arrears that have accumulated in the other state are still enforceable under that initiating state's extensive statute of limitations laws. That state's support arrears would be completely void under Kansas law. The question as to which state's

substantive law applies would be resolved if Kansas was keeping even with the other states. The same concept applies to Kansas orders sent to other jurisdictions. A greater amount of the Kansas arrears would be collectible when forwarded to the other state.

A second portion of House Bill No. 2931 concerns the amendment to K.S.A. 23-4,106. That amendment would require the obligor's Social Security number to be placed upon all support orders. This requirement would substantially streamline enforcement action, as most location action against an obligor requires knowledge of his or her Social Security number. Mandating that his or her Social Security number be placed on all support orders would save a lot of time for the enforcement agency, as that agency would no longer have to track down the obligor's Social Security number in order to proceed. Most employers require the obligor's Social Security number on Income Withholding and Medical Support Orders, and this amendment would expedite the processing of Income Withholding and Medical Support Orders.

I thank the members of this distinguished Committee for giving me the opportunity to speak before you, and I hope my testimony in support of this Bill was helpful.

**1996 HOUSE BILL 2931**

**FEBRUARY 19, 1996**

**TESTIMONY OF KAY FARLEY  
COORDINATOR OF CHILDREN AND FAMILY PROGRAMS  
OFFICE OF JUDICIAL ADMINISTRATION**

REPRESENTATIVE ADKINS and  
MEMBERS OF THE CIVIL LAW SUB-COMMITTEE:

I am here today to support 1996 House Bill 2931 on behalf of the court trustee programs in Kansas.

New Section 1 would establish a central new hire registry. Such a new hire registry has proven quite successful as a means to increase the enforcement of support orders in other states which have implemented the idea. Obtaining timely notice of new employment information will allow the court trustee programs to quickly serve an income withholding order on the new employer.

New Section 2, beginning on page 2, should also be of value in securing support payments for children. Awarding first priority to liens generated by child support arrearages in clear terms is an improvement over current law.

The requirement to include the obligor's social security number in support orders will also be beneficial. The social security number of both the obligor and the obligee are currently required by Supreme Court rule to be include in the Domestic Relations Affidavit which must be filed with a petition to establish or modify a support order. Including the social security number in the support order itself would also be helpful.

Additionally, the provision set out in lines 9 through 16 on page 11, is desirable. The current revivor procedures are cumbersome. Enactment of the proposed language would eliminate the need for such a procedure in the future.

Thank you for the opportunity to advise you of our support for this bill. I would be glad to stand for questions.

House Judiciary  
2-23-96  
Attachment 24

TESTIMONY TO HOUSE JUDICIARY CIVIL LAW SUBCOMMITTEE

RE: HOUSE BILL 2931

DATE: FEBRUARY 20, 1996

FROM: ROY H. WORTHINGTON, CHAIRMAN  
KANSAS LAND TITLE ASSOCIATION LEGISLATIVE COMMITTEE

DEAR REPRESENTATIVES:

New Section 2 (b) appears to re-state the current state of the law concerning child support judgments. However, unlike New Section 2 (a), the New Section 2 (b) does not contain an exception for a purchase money security interest. Is this an attempt to change the provisions of K.S.A. 58-2305 concerning the priority of purchase money mortgages over existing child support judgments? If so, then the such a change should be made to K.S.A. 58-2305.

Further, the bill extends the period after which a child support judgment becomes dormant (5 years from date of judgment) and before the judgment can be barred, from 2 years to 20 years. The bill allows the revivor period to be extended from 2 years to 20 years - this will mean that title companies will need to keep tract of child support judgments for an excessively long period of time, even after the child reaches emancipation. For example, if a child reaches 18 and the child support terminates, but there are existing arrearages which are dormant, the title company must keep tabs on the judgment until the child reaches the age of at least 38 and perhaps longer if the judgment did not become dormant until after the child reached 18. In the latter situation, if the arrearages do not become dormant until 4 years after the child reaches 18 and the child support terminates, then the dormant judgment can be revived when the child is 42 years old????

The members of the Kansas Land Title Association fully support legislation which will enhance the payment of child support and in fact title searches by KLTA members result in the payment of substantial unpaid child support when the judgment debtor's real estate is sold. However, the extension of the revivor period from 2 to 20 years seems excessive and will result in tremendous additional record keeping for land title offices.

Perhaps a compromise can be reached between 2 years and 20 years.

Respectively submitted,

Roy H. Worthington



Mrs. Mary Kay Ricke  
104 N. Tarabury  
Wichita, KS 67212  
316 942-9636

I have been researching and promoting this issue for the last 1 1/2 years. Enclosed are copies of the reference materials I have used. In order to get a quick pre-view of the legal facts I am employing to argue this issue, certain statements are color highlighted in conjunction with reference notes. Like colors are statements that deal with the same fact. On the front of each stapled bundle of papers, are all the colors referenced to in that particular bundle. Like color coded, hand written notations also refer between bundles. Listed below are what colors are assigned to what nature of fact:

Orange-- What a volunteer is.

Pink----- Organizations exempt from income tax

~~Black~~ Purple--- Liability Insurance requirements

Yellow--- HOA's article of incorporation requiring the use of bylaws which require directors to obtain liability insurance on themselves

~~Green~~ Green--- Shows HOA is a perpetual corporation

~~Blue~~ Blue----- Tests, requirements, guidelines, & innurement comparisons and similarities  
528 federal tax code versus 501c federal tax code

Please, take time to read at least the color coded areas.

The enclosed, Market Availability Survery, was sent to me on request by former insurance commissioner, Mr. Todd. The circled companies, would not carry HOA's, thus narrowing our options even further.

I do not intend this expansion or revision to KSA statute 60-3601 to envelop or protect developers who are acting as directors until the HOA's, under section 528, are turned over to the actual HOA membership of homeowners. Developers, investors, or any private person who receives net earnings from the non-profit HOA would not be considered a volunteer director or officer and would not be covered under this revised statute. There are many HOA's being run by its members now, and a growing number of HOA's being turned over to its membership. Therefore, this is an issue that needs to be addressed soon.

Please endorse and expedite the expansion of a noncontroversial statute that would allow the existing Kansas statute #60-3601 to include non-profit organizations under the section 528 federal tax code.

Sincerely yours,

*Mrs. Mary Kay Ricke*  
Mrs. Mary Kay Ricke

P.S. My husband, Steven Ricke, has served as a volunteer director of Willo-esque's HOA for 2 1/2 years and now also is volunteer president of the HOA. He has done this at risk, because the general membership is ignorant of the bylaw's content and the 2 directors serving with him feel the cost of liability insurance is too prohibitive. Therefore, my interest in pursuing some sort of liability insurance for volunteer directors and officers has peaked. Educating an apathetic HOA membership is difficult--I hope enlightening representatives will be easier.

This is a copy of  
the letter sent to various  
representatives last year  
from other HOA directors  
in Wichita including my  
husband.

Dear Representative,

Please endorse and expedite the expansion of a noncontroversial statute that would allow the existing Kansas statute #60-3601 to include non-profit organizations under the section 528 of the federal tax code. This would allow all non-profit Homeowners associations, condo associations directors the same protection under Kansas state law as other non-profit directors now enjoy that are under section 501(c) of the federal tax code. I feel, as an unpaid director of a non-profit housing association, I have the same right to be protected against liabilities under the state law of Kansas as other directors of non-profit organizations. This liability insurance that is usually required in the associations bylaws, is not easily available or is too expensive. We already fulfill the prerequisites and agree to the provisions administered in Ks. statute #60-3601. We are homeowners, NOT developers, we receive NO compensation for our volunteer services. When the original Kansas statute #60-3601 was expanded to include all non-profit organizations under all sections of the 501(c) federal tax code, not just 501(c)(3),--- I believe not including federal tax code section 528 was an oversight. Being there were very few HOA's and condo associations at that time, and HOA's and condo association had the tax option of declaring 501 instead of 528, this was not a notable problem. However, in today's real estate world, HOA's and condo associations are many and must declare themselves under the 528 federal tax code, and must meet strict non-profit guidelines, more so than some of the organizations under the 501(c) federal tax code. According to federal Code Sec 528 Certain homeowners associations:

"(a)General rule. A homeowners association shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes." Kansas statute #60-3601 states " Non-profit organizations mean those organizations exempt from federal income tax pursuant to Section 501(c) of the Internal Revenue Code of 1986." Please, expand Kansas statute #60-3601 to include us volunteer, unpaid, directors serving on non-profit homeowner and condo associations as defined under federal tax code 528. THANK YOU!!

Sincerely,  
Your constituent,

Director of

Post-script: For further information, contact Representative Les Donovan of the 94th district. He has knowledge of this proposal and a file started on this issue initiated by a constituent of the 94th district of Kansas.

## TESTIMONY OF

Kathy Kirk, Director of Dispute Resolution  
Office of Judicial Administration

### HOUSE JUDICIARY CIVIL LAW SUB COMMITTEE

Tuesday, February 20, 1996

#### HB 3034

Mr. Chairman, Members of the Sub Committee, thank you for allowing me the opportunity to testify in favor of the amendments proposed for the Dispute Resolution Act, K.S.A. 5-501 et. seq. These amendments were formulated, and are approved by, the advisory council on dispute resolution.

The council is an 11 member council comprised of individuals knowledgeable in the field of dispute resolution. Members are from various parts of the state and include a district judge, a magistrate judge, an attorney, several mediators, the Secretary of Aging, and professionals from the social sciences. The amendments are proposed in order to fashion the act to the dispute resolution activity occurring in Kansas.

The act as originally passed, was modeled after the Nebraska Dispute Resolution Act. In that state, there was virtually no activity until passage of the act. The Nebraska legislature appropriated \$250,000 in order to institute the act. This enabled Nebraska to actually form 6 regional mediation centers.

In contrast, when the Kansas act was passed, there was a great deal of dispute resolution occurring in the state. All 31 judicial districts had some form of dispute resolution available for parties, and several community mediation centers were in existence. In addition, agencies in Kansas were beginning to build grievance procedures which incorporated mediation and arbitration. The Kansas act is funded by a small percentage of the civil docket fee which generates approximately \$65,000 a year for the director's salary, council meetings, dissemination of materials, and educational efforts. By virtue of existing programs, the function of the Kansas director is much different than in Nebraska and is much broader.

Likewise, the approved center concept is not necessary considering the existence of established programs.

We are proposing amendments which will delete all language referring to approved centers and suggesting it be replaced with the terms, "services", "registered", "approved", "programs", and "individuals". This language would allow the director to collect names of trained neutral persons and institute an approval process as contemplated by the statute. This language would also allow the director and council to oversee a broader group of neutral people in the interest of providing uniform standards. In addition, we suggest that "mediation" be replaced throughout with "process", allowing a wider range of processes to be embraced by the act.

The definition section has been expanded in order to encompass processes in addition to mediation. The act, although focused on mediation, does contemplate oversight of other processes.

The language "Office of Dispute Resolution" has been deleted simply because the director works for the Judicial Administrator: there is no separate office. Language not allowing the director to practice "any profession" if the director is an attorney, has been substituted with "law" to comport with other state policies.

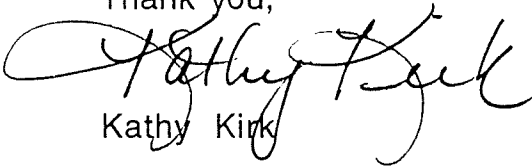
The amendments suggest increasing the size of the council and adding task forces. On February 16, 1996, the Supreme Court voted to implement rules for mediator standards and ethics. This was mandated by the act. The rules will go into effect on July 1, 1996. In order to develop the policies and practices for implementing these rules, a great deal of council, sub committee, and task force work will need to be done. An 11 member council is a bit lean for this project and the future approval duties.

The section which delineates the contents of the director's annual report has been amended to comport with the current statistical gathering capabilities. It does not preclude adding the statistics originally drafted at such time as that information is available. Other small changes have been made to match this statute with the domestic statutes already in place.

The final change concerns funding for the dispute resolution fund. Modifications are suggested which would allow the director to collect fees for registration and/or approval and training.

I urge the committee to consider these suggestions and will stand for any questions.

Thank you,

A handwritten signature in cursive script that reads "Kathy Kirk". The signature is written in black ink and is positioned to the right of the typed name.

Kathy Kirk

## **The Law Office of Steven F. Kearney**

1200 W. 10th, PO Box 2428, Topeka, KS. 66601  
(913)234-5859 Fax: (913)234-2433

February 20, 1996

Chairman O'Neal and members of the House Judiciary Committee:

Thank you for the opportunity to submit my comments concerning House Bill 3034 on behalf of the Alternative Dispute Resolution section of the Kansas Bar Association. I am Steve Kearney, the Legislative Chair for the ADR section, and I am appearing in support of the HB 3034.

The ADR section of the Kansas Bar Association supports the revisions reflected in HB 3034 that make the Act more Kansas user friendly. We believe that the original law based on statutes from another jurisdiction, although a good start, will be improved by the changes suggested.

The revisions in this measure will create a central point for registration of both programs and individuals eligible for public funding or approval by the director of dispute resolution. This registration carries with it the requirement that the programs and/or individuals meet the standards set by the Supreme court and the director. This is a positive step toward quality control for the public when selecting programs or individuals for dispute resolution.

HB 3034 also directs that any fees generated in administering this act shall be remitted to the dispute resolution fund. This appears to allow the director to apply any fees for training, registration etc to the fund causing the act to be more user supported.

Lastly, this measure helps clean up the confidentiality provision for dispute resolution. We believe that a sound confidentiality provision is critical to the success of dispute resolution in Kansas and that any further tightening of this provision is good public policy.

Thank you for this opportunity to offer the comments of the ADR section of the Kansas Bar Association.

**KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES**  
**Rochelle Chronister, Secretary**

**Committee on Judiciary**  
**HB 3017**  
**February 19, 1996**

**TITLE:**

An Act concerning the Kansas Code for care of children; relating to the investigation of reports; amending K.S.A. 38-1523 and repealing the existing section.

Mr. Chairman and Members of the committee, I am Roberta Sue McKenna, Attorney for the Department of Social and Rehabilitation Services. Thank you for the opportunity to testify on behalf of Secretary Chronister today concerning House Bill 3017.

**PURPOSE:**

House Bill 3017 provides an investigation of child abuse and neglect under provisions of the Kansas Code for Care of Children may not proceed when the alleged victim has reached the age of 23 years.

**BACKGROUND:**

The Kansas Code for Care of Children defines a child as a person under the age of 18 years and requires the department and law enforcement agencies to investigate reports of suspected abuse or neglect of children. The code does not state who, if anyone, is responsible under provisions of the code if a person who is now an adult reports having been abused as a child. In some of these reports, the motivating factor for the adult's report is concern that the perpetrator may continue to abuse other children. This is especially so when the report alleges sexual abuse.

A report of abuse or neglect which may have happened years before imposes a severe burden on an agency attempting to determine the validity of such a report. There is rarely any physical evidence, witnesses, even if available, become increasingly unreliable with the passage of time. The agency expends scarce resources in an effort to determine the truth or falsity of events which occurred long ago. Today's children would benefit from a clear limitation on our responsibility and authority.

**EFFECT OF PASSAGE:**

This bill places a limit of five years beyond the victim's having attained age 18 for the department or a law enforcement agency to investigate a report brought under the Kansas Code for Care of Children.

**RECOMMENDATION:**

The department recommends HB 3017 be adopted.

Roberta Sue McKenna, Staff Attorney  
Children and Family Services Commission  
(913) 296-3967

For: Rochelle Chronister,  
Secretary, KDSRS

House Judiciary  
2-23-96  
Attachment 29



TESTIMONY OF

Larry R. Rute  
Kansas Legal Services, Inc.  
(913) 233-2068

HOUSE JUDICIARY CIVIL LAW SUB-COMMITTEE

David Adkins, Chairman

Monday, February 19, 1996  
Room 531-N

Mr. Chairman, Members of the Sub-Committee, I very much appreciate the opportunity to appear before you today in support of House Bill 3033. I am Deputy Director and Director of Litigation for Kansas Legal Services, Inc. (KLS). I have also been authorized to speak in favor of this bill on behalf of the Kansas Bar Association Family Law Section. I am past-President of the Family Law Section.

Kansas Legal Services, Inc. (KLS) is a private, non-profit corporation dedicated to providing free or low cost legal services to low and moderate income Kansans. Last year our staff attorneys, located in twelve (12) field offices throughout the state, provided legal advice and representation to more than 28,000 Kansans. Services are provided in all 105 Kansas counties. We commonly provide civil legal assistance in a wide variety of legal issues, including: agriculture, consumer, disability, education, family, health, housing and public benefits law. This year we anticipate that we will represent more than 26,000 Kansans, this decrease reflects a recent decline in our federal funding. This decrease in federal funds is in excess of \$800,000.00 for Calendar Year 1996.

Since the mid 1980's, Kansas Legal Services has successfully reduced its reliance upon federal funds. In 1980 83% of our funding was from the federal Legal Services Corporation (LSC). By 1990 we had reduced that percentage to 57%. We have continued to reduce our reliance on federal funding each year; today only 28% of our funding is from LSC. We have diversified our scope of operations to make our services more appealing to the State, local governments and to private funding sources. For example, since 1985 KLS has successfully sought and received state funding for a variety of purposes beneficial to the State. Our Social Security Disability Advocacy Projects alone have returned over \$30 million since 1985 to Kansas residents receiving retroactive awards and new monthly benefits. These two contracts have also resulted in over \$15 million in monetary benefits to the State of Kansas.

To accomplish this diversification plan, we have attempted to place ourselves in a position to meet the needs of our various funding sources while at the same time staying within our mission to serve the legal needs of low and

moderate income Kansans. To do this we endeavor to be clear about what services we can and cannot deliver. We attempt at all times to provide quality service with staff that is carefully trained and dedicated to our mission. We take particular pride in the fact that we are responsive to the needs of our clients. KLS is one of a handful of legal services programs who annually conduct and respond to comprehensive client satisfaction surveys. We have also conducted client focus groups to help us assess the future direction of service delivery.

We believe that House Bill 3033 does the right thing at the right time. The bill includes a relatively modest filing fee increase and places revenue in the new Access to Justice Fund in accordance with guidelines promulgated by the Supreme Court of Kansas. This is an excellent vehicle for addressing not only the legal needs of low income persons but the very real needs of the Kansas judicial system.

For several months the Kansas Bar Association's Access to Justice Committee, Chaired by Professor Lynette Petty, has committed itself to the goal of equal access to the justice system for all members of our society regardless of their income or physical circumstances. This Committee has been supportive of legal services for the poor by suggesting legislation such as House Bill 3033 to increase filing fees sufficient to support civil legal services for low income persons. The Committee also seeks to address domestic matters with an emphasis on pro se litigants and supports the use of alternative dispute resolution. The Committee has noted that a number of states have already addressed this issue by establishing a specific filing fee to provide funding directly to legal services programs. Attachment No. 1 sets out in some detail filing fee funding legislation in behalf of legal services programs in other states. The Committee has also noted that filing fees for states surrounding Kansas are, for the most part, much higher than filing fees currently in existence in our state.

Sub-Committee members might justifiably ask how KLS would utilize funds made available by the Access to Justice Fund. We believe that the intent of this legislation is that KLS provide legal counsel for civil and domestic matters, provide legal assistance to pro se litigants and develop dispute resolution services. We anticipate use of funds in the following general categories:

1. Additional attorney and support staff to assist low income individuals in civil and domestic relations matters.
2. Enhance information and assistance to victims of domestic violence.
3. Enhance information and assistance to pro se litigants, particularly in domestic relations matters where children are involved.
4. Representation of children in divorce actions and/or juvenile court when there are allegations of child abuse and neglect.

5. Provide the administrative structure for alternative dispute resolution activities in individual judicial districts to allow judges ready access to ADR programs.
6. Provide certified mediators in each of our offices to meet local demands.
7. Provide an "800" number to assist the judiciary in drafting orders in cases where there are only pro se litigants.

Currently, KLS provides advice and representation to a substantial number of individuals seeking resolution of family law matters. In any given year family law cases represent between 9,000 to 11,000 cases. Of that number, cases involving divorce with abuse and custody with abuse requiring Protection Orders total between 1,800 and 2,100 cases. As can be seen, our work puts us in touch with many victims of domestic violence seeking Protection Orders, support and custody orders, injunctions and divorce. In addition, KLS now has trained, certified mediators in all but one of our field offices. We believe that the most beneficial use of Access to Justice Funds would be to utilize filing fee dollars that will primarily come from family law related cases and keep those resources in the family law/alternative dispute resolution arena.

It has been reported that on the average, divorced women and minor children and their households experience a 73% drop in their standard of living in the first year after divorce. Men, in contrast, experience a 42% increase in their standard of living. It is clear, therefore, that the most likely time for women and children to enter poverty is when a marriage or domestic relationship dissolves. It is not uncommon for women to find themselves without adequate support and many times facing eviction and the lack of food and other resources for the children. If the cause for the dissolution of the relationship is a domestic violence situation, the family faces yet another devastating crisis, being a serious drain on the public and private resources of the community.

By providing access to the Courts during a time of marital dissolution or domestic crisis, the community can prevent some of the drain on public benefits, private charity and other valuable community resources such as police, hospitals and social services. Through quality legal advice, representation and advocacy, we can lessen the drain on community resources. Even more important, participants in the dissolution of the marriage or domestic relationship can receive appropriate attention to their plight through access to the Courts, rather than suffering alone in the community.

We also believe that alternative dispute resolution, and particularly mediation, is an important component of the future of legal services for low income people. Mediation is less expensive, it relieves pressure on the judicial system and enables disputants to be actively involved in resolving their individual differences. In many cases, alternative dispute resolution proves to be a lower cost and a more satisfactory vehicle for resolving disputes. If it is

more satisfactory for the disputants it will certainly assist our judiciary. Alternative dispute resolution in the long run may help to save finite state resources and improve the quality of life for individual Kansans.

We are proud of the support that our two major bar associations, the Kansas Bar Association and the Kansas Trial Lawyers Association, have given to our legal services efforts. Both organizations have contributed significantly to our pro bono and low fee programs. Individual members of these organizations have served on a voluntary basis or at low cost in cases ranging from consumer law, domestic relations and senior citizen matters. Kansas Legal Services is proud it has been chosen for a number years to house and administer the Kansas Bar Association's Lawyer Referral Services. This important service matches individuals throughout the state with participating members of the Bar Association in order that they might receive legal advice and representation in their geographical area. The Kansas Bar Foundation has continued its outstanding financial support of our programs through its Interest On Lawyers Trust Accounts (IOLTA) program.

#### CONCLUSION

We believe that an increase in the filing fee is an appropriate vehicle, in fact the most appropriate vehicle, to provide the services that I have outlined above. This filing fee increase should be considered to be a user fee. As such, the user fee asks persons that use the court system to pay a portion of the cost associated with providing a strong and efficient system of justice. The Access to Justice Fund established by this legislation can address specific problems of the judicial system. First, the courts are indeed overburdened with post divorce and domestic litigation. Second, our judiciary is being asked to deal with an increasing number of pro se litigants. These pro se litigants do not understand our justice system and are unable to work within it effectively. Third, the Access to Justice Fund provides alternatives to litigation by creating a pool of resources to support alternative dispute resolution, particularly mediation. We feel that this money could go to no better purpose and strongly encourage the committee to support the principles found in House Bill 3033.

Respectfully submitted,



Larry R. Rute  
Deputy Director  
Kansas Legal Services, Inc.  
712 S. Kansas Ave., Ste. 200  
Topeka, Kansas 66603  
(913) 233-2068  
Fax: (913) 354-8311

FILING FEE FUNDING TO LEGAL SERVICES

STATE	HOW FILING FEE IS COLLECTED	AMOUNT GENERATED BY FILING FEE
FLORIDA	Surcharges can be enacted by local ordinance or special local law. About one third of the counties have the legal services surcharge. All money is distributed in the county in which it is collected.	Net revenue from the fees is estimated at \$3 million, of which \$800,000 goes to Dade County.
ILLINOIS	Fees vary between counties according to the population. The lowest fees are in counties having populations of 180,000 or less. Cook County (the largest) has the highest fees while the mid-sized counties generally have the same fee.	
KENTUCKY	State passed filing fee legislation in 1994. Collects \$5 in District and \$10 in Circuit Court, exempting domestic violence and small claims. Revenue distributed to legal services programs based on poverty population.	Projected revenue is \$1.2 million annually.
MASSACHUSETTS	Clerks collect a \$10 initial surcharge on each civil action filed, a \$4 charge in small claims. Clerks transfer these funds monthly to the Legal Assistance Fund (a state corporation created by law) under the supervision of the State treasurer. At least 80% of the funds are distributed locally with 20% going to statewide programs.	
MINNESOTA	\$25 initial charge on the filing of civil actions. Governmental entities are exempt. Funds are transferred to the state treasurer each month. Recipients are determined by the Supreme Court with the help of an advisory committee. 85% of funds to qualified legal services which receive LSC funds. The other 15% goes to other qualified legal services programs such as ADR centers. Funds are distributed according to poverty population by county with a statewide client organization receiving some of the funds.	For Fiscal Year ending June 30, 1992, approximately \$1.8 million was allocated from the original filing fee surcharge.
NEVADA	Fee add-on in any case in which there is a filing fee. It applies to any county which offers free legal services to the poor or elderly under the local bar fund or LSC funded programs. The charge is \$23 and is broken into two parts: \$14 goes to the funding of legal services for poor while the other \$9 goes to help legal services for the elderly. The funds are collected by the clerks and distributed by the county treasurer to programs operating within the county.	The fees raised \$360,000 in 1992.
NORTH DAKOTA	\$10 filing fee in each case in district or county court. County treasurers turns the funds over to a civil legal services fund in the state treasury. The state treasury then turns the money over to the Office of Management and Budget which then distributes the money to the state Attorney General who then dispenses it to the legal services programs, after consultation with the Governor and Supreme Court administrator. County/state entities are exempt. The distribution is based upon a mutually agreed upon formula which has been submitted by the legal services providers.	In 1992, the surcharge yielded \$140,000.
OHIO	Courts collect a \$15 surcharge for new civil cases and \$7 for small claims cases which is placed into a fund with the state treasury. The Public Defender's office directs the distribution. Many cases such as divorce are exempt. The distribution is based upon the number of poor people in the counties which legal services serve.	In 1992, it is estimated that these fees generated \$962,000.

STATE	HOW FILING FEE IS COLLECTED	AMOUNT GENERATED BY FILING FEE
OREGON	\$22 per case in circuit court and an additional \$9.50 per case in those counties maintaining district courts. State court administrator distributes the funds to the director of the legal aid program for the county in which they are collected.	
TENNESSEE	Filing fee legislation passed in 1995. General Sessions courts collect \$3 for each civil case. Circuit and Chancery courts require an additional \$10 per civil case.	Anticipated revenue is \$1.6 million annually.
VIRGINIA	Receives a \$2 surcharge per case in the general district court and circuit court. The money is paid into a Legal Aid Services fund within the State Bar Fund within the state's treasury. The state bar distributes the money to non-profit legal aid services through the Legal Services Corporation of Virginia. State and local governmental entities are exempt.	These fees generated \$2.1 million in 1992.
WASHINGTON	\$22 charge for civil cases which is transferred to the state Department of Community Development which then gives the money to Evergreen Legal Services to distribute based upon the number of poor people served by each program. Certain percentages are earmarked for programs such as women's rights groups and bar associations. Restrictions and exemptions were placed within the bill to help weaken opposition. Some of these restrictions include no filing of class actions and no use of money for landlord-tenant litigation.	The legal services programs have been guaranteed \$2.4 million over the next two years by the state legislature.

CIVIL FILING FEES IN OTHER STATES

- ALABAMA \$112 (PLUS \$12 FOR EACH ADDITIONAL DEFENDANT)
- ARKANSAS \$95
- KENTUCKY \$80 DISTRICT COURT AND \$40 CIRCUIT COURT
- LOUISIANA \$201
- TEXAS \$141

# KANSAS LEGAL SERVICES, INC.

## ANNUAL REPORT

1994

*Emporia • Garden City • Hays*

*Hutchinson • Kansas City*

*Manhattan • Olathe • Pittsburg*

*Salina • Seneca • Topeka • Wichita*

## DIRECTOR'S MESSAGE

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DEAR FRIENDS AND COLLEAGUES:

I am pleased to provide you with the 1994 Annual Report for Kansas Legal Services, Inc. Kansas Legal Services was formed in 1978 to provide first class legal advice and representation to economically disadvantaged Kansas residents. In 1994, Kansas Legal Services continued a long-term trend of reaching more of these individuals each year.

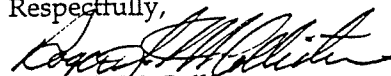
Statistical reports for 1994 display the significant growth in the number of individuals served over previous years. Cases for 1994 totaled 30,603, an increase of 5,768 cases over 1993. Comparisons from 1990 to 1994 show an increase in client services of over 49%. Most dramatically, a Case Service Report Comparison Chart for 1986 to 1994 shows an increase in the number of people served by 101%.

In 1994, Kansas Legal Services realized increases in all types of cases; however, public benefits advice and representation accounted for much of the increase. These cases resulted from the Hospital Patient Assistance Program and state contracts. The Hospital Patient Assistance Program aids uninsured and underinsured individuals in obtaining public medical assistance. In 1994, the program obtained medical cards for over 1,200 individuals. Contracts with the Kansas Department of Social and Rehabilitation Services have made it possible to serve many people who otherwise would have been without legal assistance.

Challenges for the future include maintaining Legal Services Corporation funding, continuing to diversify funding to expand services, reaching isolated individuals in need of services and maintaining alliances with private *pro bono*, low-fee and retainer attorneys to assure that limited resources are used wisely. I also anticipate federal and state changes in cash assistance programs and health care will create new and evolving policy issues requiring legal expertise.

Kansas Legal Services is proud to provide essential services to individuals in need, who otherwise would have been without legal services.

Respectfully,



Roger L. McCollister  
Executive Director



## OVERVIEW

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### PROGRAM HISTORY

During the 1920's, the American Bar Association acknowledged the need for special assistance to the poor by creating a committee on legal aid. State and local bar associations worked over the following decades to promote legal aid societies to provide free legal services to the poor. Early legal services supporters recognized the pledge of "Equal Justice Under the Law" cannot be realized as long as people with limited resources do not have access to the justice system.

In the mid-1960's, legal aid societies were formed in Topeka, Wichita and Kansas City. From the 1960's until 1974, the three Kansas legal aid societies, with the support of local bar associations, operated under the authority of the Office of Economic Opportunity, Office of Legal Services. Authority for the legal services program was transferred from the Community Services Administration (successor to the Office of Economic Opportunity) to the newly formed Legal Services Corporation during 1975. Through all of these changes in administrative authority and funding, the Kansas legal aid societies continue to provide free legal services to the poor in Kansas.

In 1978, the Kansas City, Topeka and Wichita legal aid societies merged to form Kansas Legal Services, Inc. Kansas Legal Services now has twelve legal service field offices located across the state, and maintains an extensive retainer contract system with cooperating members of the Kansas Bar Association.

### GOALS

Kansas Legal Services has progressively focused its efforts on special needs individuals, such as victims of domestic violence, the elderly, farmers, those with disabling conditions and individuals seeking access to health care. Additionally, with funding from the Kansas Bar Association and other private sources, Kansas Legal Services has been able to offer mediation services and low-fee legal services.

The primary mission of Kansas Legal Services is to provide equal access to justice for persons not able to pay for legal services. Kansas Legal Services is an essential vehicle for keeping many low-income people from falling permanently into the category of chronically poor. It is also a vehicle by which many low-income people successfully get back on their feet and become self-sustaining.

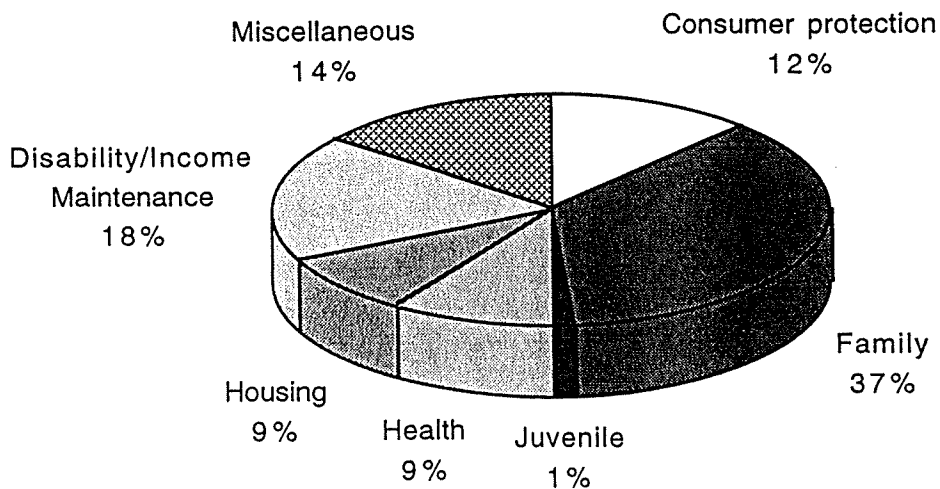
# CASE TOTALS

## ADVICE, BRIEF SERVICE AND OTHER REPRESENTATION

	1986	1990	1991	1992	1993	1994
Consumer protection	2,405	2,645	2,596	2,431	2,864	3,822
Family	6,878	8,690	7,806	8,641	9,336	11,074
Juvenile	77	318	375	542	721	454
Health	318	1,244	1,221	1,675	2,512	2,878
Housing	1,970	2,163	2,079	2,029	2,202	2,622
Disability/Income maint.	1,361	1,744	2,158	3,758	3,417	5,450
Miscellaneous*	2,235	3,678	3,219	3,098	3,122	4,303
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<i>Advice and brief service</i> subtotal	10,524	15,673	14,615	16,014	17,958	22,420
<i>Other representation</i> subtotal	4,765	4,809	4,839	6,184	6,877	8,183
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Total cases	15,244	20,482	19,454	22,198	24,835	30,603

\*Miscellaneous includes individual rights, employment, Indian law and other cases.

## 1994 CASE DISTRIBUTION



## PROGRAM OVERVIEWS AND HIGHLIGHTS

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### COOPERATIVE PROGRAMS WITH THE PRIVATE BAR

Kansas Legal Services, Inc. continues to expand many cooperative programs with the Kansas Bar Association and local bar associations in Kansas. Existing programs for expanding and improving the availability of legal services to low income Kansans are:

- **Reduced Fee Plan** - The Reduced Fee Program (RFP) provides legal services to people living on lower incomes who might not otherwise be able to hire a lawyer. The program was designed by the Kansas Bar Association and helps clients with routine legal matters at reduced fees.
- **Pro Bono** - *Pro Bono* panels have been organized in conjunction with many city and county bar organizations. The statewide program, administered at the local level, serves as a method of providing *pro bono* services in those areas where the local bar has not initiated a program.
- **Safe House Services** - Since 1984, Legal Services of Southeast Kansas has administered a *pro bono* program for victims of domestic violence in Labette county.
- **Lawyer Referral Service** - The Lawyer Referral Service is housed at and administered by Kansas Legal Services in cooperation with the Kansas Bar Association (KBA). Lawyer Referral matches individuals throughout the state with participating members of the KBA in their geographical area. Consumers can obtain a brief consultation at a nominal fee.
- **Private Bar Retainer Contracts** - Retainer contracts are used extensively by Kansas Legal Services to supplement staff service statewide and especially to expand service availability and control costs in sparsely populated rural counties.

### PUBLIC BENEFITS AND DISABILITY LAW

The primary goal of KLS's public benefits advocacy is to provide advice and representation to low income individuals to access the state and federally funded public benefits programs available to them. By maximizing benefits available through these programs, KLS advocates attempt to assure that low income persons in Kansas have access to necessary health care, food, shelter and other basic necessities of life. As part of this effort, KLS has developed many programs to expand services to this segment of the population.

- **The Disability Law Project** is primarily funded through contracts with the Kansas State Department of Social and Rehabilitation Services (SRS). The Social Security Advocacy Program for Adults and AFDC Children provides advocacy for Kansans who have received state assistance who may be eligible for federal Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI). A new component of the contract involves an annual SRS survey of all AFDC families and the referral of children to KLS who may be eligible for SSI.
- **The Children's Social Security Advocacy Project** (Zebley) seeks to obtain Supplemental Security Income (SSI) for disabled children. The project is focused on children who are in the custody of the state or who are receiving Family Preservation services. Obtaining SSI cash and medical benefits for children often makes home placement possible.
- **The Medicare Advocacy Project** seeks to assure that Medicare benefits are obtained by eligible low-income senior citizens. By assuring that Medicare pays for covered services, limited state Medicaid resources are conserved.

• **The Hospital Patients Assistance Program** is a special project of KLS resulting from contracts between KLS and participating hospitals. The purpose of the project is to assist uninsured or underinsured persons who have received medical services from participating hospitals to obtain any public or private medical assistance which may be available. The project's objective is to improve access of low-income persons to essential health care. When hospitals are able to receive reimbursement for services provided, they are more likely to accept Medicaid and private pay patients.

## FAMILY LAW

Through United Way, IOLTA, Legal Services Corporation and other funding, KLS represents thousands of low income persons—primarily women and children—each year in domestic law matters. The demand for legal assistance in family law matters continues to far exceed the capacity of KLS to provide direct representation. Priority is placed on case types such as spousal or child abuse and protection from abuse orders.

## FARM LAW

Kansas Legal Services, through a grant from the Kansas Department of Agriculture, provides legal assistance to Kansas farmers and ranchers through referrals from the Kansas Farmers Assistance, Counseling and Training Service (FACTS). KLS farm specialist attorneys provide both advice and legal representation to FACTS clients in every county of the state.

When legal assistance helps farmers retain their farms, the economies of local communities and the state benefit in a number of ways. According to the Kansas State Farm Management Association, farms the size that KLS typically serves spend approximately \$134,000 per year in cash operating expenses. The 681 farmers known to have been assisted in retaining their farms by the KLS Farm Advocacy Program will spend about \$91.3 million on operating expenses during 1995.

## ELDER LAW

KLS cooperates with the Kansas Department of Aging and the Area Agencies on Aging as an integral part of the state aging network. Older Americans Act funds are combined with LSC, IOLTA (Interest on Lawyers Trust Accounts) and other private funds to address this growing area of demand.

The Senior Citizen Law Project (SCLP) provides services in a wide range of civil legal issues to persons aged 60 and older. Its objective is to target the more vulnerable elderly population who are in the greatest social and economic need. Priorities include assuring that seniors obtain the cash and medical assistance that is essential to their well being and stopping financial, physical or psychological abuse of elders.

In two areas of the state, KLS has programs which provide persons age 60 and older with financial management services. These services make it possible for many seniors to stay in their own homes. In addition to individual advice and representation, SCLP also has an extensive community education program in which elders and workers serving the elderly are educated on elders' rights and protections under the law and a variety of legal issues.

## ALTERNATIVE DISPUTE RESOLUTION SERVICES

Kansas Legal Services of Olathe administers a mediation program for clients involved in minor disputes. This program has been operating successfully since 1986. Mediation involves the resolution of a dispute by a neutral third-party, a mediator. Mediation helps to mend and preserve on-going relationships.

Legal Services of Wichita cooperates with the Wichita Bar Association to administer the Neighborhood Justice Center. This center provides mediation in minor neighborhood disputes.

## OFFICES

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### **Administrative office**

712 South Kansas Avenue, Second Floor  
Topeka, Kansas 66603  
913-233-2068 telephone  
913-354-8311 fax  
Executive Director: Roger L. McCollister  
Deputy Director: Larry R. Rute

### **Garden City office**

Kansas Rural Legal Services  
120 Grant  
Garden City, Kansas 67846  
800-362-9009 telephone  
316-275-0249 fax  
Managing Attorney: Gene Gaede

### **Hutchinson office**

Hutchinson/Reno County Legal Aid  
206 West First  
Hutchinson, Kansas 67501  
316-663-8311 telephone  
316-663-2519 fax  
Managing Attorney: Shannon Crane  
Regional Director: Marilyn Harp

### **Manhattan office**

Flint Hills Legal Services  
102 South 4th Street, second floor  
Manhattan, Kansas 66502  
913-537-2943 telephone  
913-537-2927 fax  
Managing Attorney: Gabriel Thompson

### **Pittsburg office**

Legal Services of Southeast Kansas  
National Bank Building, Suite 204  
PO Box 1509  
Pittsburg, Kansas 66762  
316-232-1330 telephone  
316-232-1344 fax  
Project Director: Eric Rosenblad

### **Seneca office**

Legal Service of Northeast Kansas  
1500 Community Drive  
Seneca, Kansas 66538  
913-336-6016 telephone  
913-336-6429 fax  
Assistant Managing Attorney: Gail Bright

### **Wichita office**

Legal Services of Wichita  
154 North Emporia  
Wichita, Kansas 67202  
316-265-9681 or 0314 telephone  
316-265-5902 fax  
Regional Director: Marilyn Harp

### **Emporia office**

Kansas Legal Services of Emporia  
Bank IV Bldg., Suite 521  
527 Commercial  
Emporia, Kansas 66801  
316-343-7520 telephone  
316-343-6898 fax  
Assistant Managing Attorney: Ty Wheeler  
Regional Director: Patrick Donahue

### **Hays office**

Hays Legal Services  
1401-B Main  
Hays, Kansas 67601  
913-625-4514 telephone  
913-625-4702 fax  
Project Director: William J. Madden

### **Kansas City office**

Wyandotte-Leavenworth Legal Services  
707 Minnesota Avenue  
Kansas City, Kansas 66101  
913-621-0200 telephone  
913-621-3005 fax  
Managing Attorney: Sarah Sargent

### **Olathe office**

Kansas Legal Services of Olathe  
465 South Parker, Suite 103  
Olathe, Kansas 66061  
913-764-8585 telephone  
913-764-8588 fax  
Managing Attorney: Karl Johnson

### **Salina office**

Legal Services of North Central Kansas  
227 North Santa Fe, Suite 201  
Salina, Kansas 67401  
913-825-8147 telephone  
913-825-2250 fax  
Managing Attorney: Joe Kuhn  
Regional Director: Marilyn Harp

### **Topeka office**

Legal Aid Society of Topeka  
712 South Kansas Avenue, Suite 201  
Topeka, Kansas 66603  
913-354-8531 telephone  
913-354-8311 fax  
Regional Director: Patrick Donahue

3/27/95

## 1995-1996 LSC Funding

	Original 1995	Revised 1995	Funding 1996
Basic Field	2,745,604	2,699,425	2,073,816
State Support	100,357	80,024	0
Migrant	63,990	60,273	9,216
Total	2,909,951	2,839,722	2,083,032
Reduction \$		70,229	756,690
Reduction %		2.41%	26.65%

### 1990 Poverty Census:

Total	34,059,493
Kansas	274,623
% Kansas	0.81%
1996 Basic Field	258,342,931
Computed KS Share	2,083,029

## TESTIMONY OF DEAN MICHAEL HOEFLICH

### ON HB 3033

My name is Michael Hoeflich and I am the dean of the University of Kansas School of Law. I am here today as a proponent of House Bill 3033. I appreciate the Committee's willingness to hear my testimony. I shall be brief. As a legal educator and as one with a serious concern for and commitment to assuring that all members of society have access to adequate counsel in both civil and criminal matters, I am here to speak in favor of House Bill 3033. Throughout the United States and here in Kansas specifically we must be extremely sensitive to what may soon be a crisis in the provision of legal services to the poor. The demand for such services has been steadily increasing. At the same time that the demand has increased, the resources available to provide such services have decreased dramatically. For years, the federally sponsored Legal Services Corporation has provided substantial amounts of money to state and local agencies to provide indigent legal services. This is now in the process of change. For instance, in Fiscal Year 1996, the amount provided by the Legal Services Corporation to Kansas Legal Services will be cut by twenty-six percent. It is quite possible, indeed likely, that such cuts will continue and increase in future years beyond 1996. HB 3033, through the creation of the Access to Justice Fund, will provide an alternative means of funding these crucial services. Agencies which provide indigent legal services will be able to apply to the Office of Judicial Administration to receive a portion of the funds in this Fund. In so doing they will be able to continue to provide vital services to Kansas citizens.

I would also mention one other important point about House Bill 3033. That point is simple. House Bill 3033 would raise the funds necessary for the Access to Justice Fund through imposition of user fees, rather than any general tax. I believe that it is incumbent upon this Committee and this legislature to avoid the imposition of new taxes. At the same time, we must fund vital services for the citizenry. House Bill 3033, by proposing user fees rather than a new tax, achieves these important goals.

Thank you for your time.

**The Law Office of Steven F. Kearney**

1200 W. 10th, PO Box 2428, Topeka, KS. 66601  
(913)234-5859 Fax: (913)234-2433

February 19, 1996

Chairman O'Neal and members of the House Judiciary Committee:

Thank you for the opportunity to submit my comments concerning House Bill 3033 on behalf of the Alternative Dispute Resolution section of the Kansas Bar Association. I am Steve Kearney, the Legislative Chair for the ADR section, and I am appearing in support of the HB 3033.

The ADR section of the Kansas Bar Association supports the establishment of an access to justice fund that includes dispute resolution programs. We believe that adequate funding of alternative dispute resolution, can lead to the reduction of case loads, by providing for citizens otherwise financially unable to access dispute resolution the means to do so.

The measure before you leaves the discretion to establish appropriate guidelines for the administration of the fund to the Kansas supreme court. We believe that the Court is in the best position to administer the fund.

The ADR section also supports the additional docket fee in post divorce matters for additional funding for the access to justice fund.

Thank you for this opportunity to offer the comments of the ADR section of the Kansas Bar Association.



House Bill No. 3033  
House Judiciary Subcommittee  
February 19, 1996

Testimony of Paul Shelby  
Assistant Judicial Administrator  
Office of Judicial Administration

Mr. Chairman and members of the committee:

We appreciate the opportunity to appear and discuss House Bill No. 3033 which establishes a postdivorce motion docket fee of \$20, increases Chapter 60 and foreign judgment docket fees by \$5 and creates a new fund "Access to Justice" in the state treasury.

In FY95, 59,830 Chapter 60 cases were filed. By increasing the docket fee in these cases by \$5 would generate \$299,150.

Estimating the income from creating a filing fee for postjudgment motions in divorce cases is more speculative. We currently do not maintain statistics on the number of these actions. However, in FY1995, 13,644 divorces were granted. If we assume that 75% of these divorces involve minor children, 10,233 cases would involve child support, the most prevalent issue in postjudgment motions. These cases remain active until the youngest child in the family reaches 18, or if still enrolled in high school, until June 30 of that year. Thus, a case could remain active for postjudgment motions for more than 18 years. If we use 12 years as the average length of time this case will be active, there is a universe of 122,796 cases. While this may vary greatly, if we assume an average on one postjudgment motion per case per year, that would create a potential \$2,455,920 in additional receipts each year.

It should be noted that many divorce postjudgment motions are filed by representatives of state and county governments in the execution of their duties to assist eligible persons in collecting court-ordered support. In these cases, K.S.A. 60-2005 would apply and the postjudgment "docket" fee would be assessed against the nonprevailing party. In revenue terms this means there would often be a long delay between the filing of the

motion and collection of the fee. It is plausible that 100,000 of these motions would be filed by SRS and court trustees and the fee would be collected only after support payments are made.

Thus, an estimated \$455,920 or \$20 x 22,796 cases, would be collected upon filing and the rest would be an accounts receivable. If we estimated that 50% of the amount charged would be collected during the same fiscal year charged, this would generate an additional \$1 million in income and a like amount in accounts receivable.

With all these speculative assumptions, this bill would generate an estimated \$1,755,070 to the Access to Justice Fund. This could vary considerably, especially depending on the amount actually collected versus the amount charged.

In any event, the expenditure necessary to assess, account for, and ultimately to collect, segregate and forward to the state treasurer becomes a significant figure. A clerk must assess the "docket" fee, account for it as a receivable if a government agent files the motion, keep track of the receivable over a considerable time span, collect the money, segregate it, forward it as a collection under K.S.A. 20-362, labelled as for the Access to Justice Fund, and include the amount in the monthly check forwarded to the state treasurer. This is a huge impact on our 105 Clerks of the District Court.

I recommend that we find out how much money is needed for this fund, and we can calculate what percentage of "clerks fees state" will be needed to collect that amount. The State Treasurer would then deduct that percentage monthly from the total fees applied to "clerks fees state" and place it in a special account for the "Access for Justice Fund". This would save some of the costs for accounting and clerical time because only one computer and/or form change would be necessary instead of 105.

We would be very pleased to work with the proponents of this bill to make it workable.

Thank you.

## Other Charges:

Probation or community corrections service fee: Misdemeanors \$25, Felony \$50; K.S.A. 21-4610a; all to State General Fund;

Alcohol and drug safety action program fee. For the benefit of local programs. \$125, K.S.A. 8-1008; two different methods of distribution.

Driver's License Reinstatement Fee; \$50, K.S.A. 8-2110; to State Treasurer for distribution.

Marriage License; \$40, K.S.A. 23-108a; to State Treasurer for distribution.

Case Type	Docket Fee	Statute	State <sup>1</sup>	County	Law Library Fund	Pros. Attys. Fund	Aid to Indigent Def. Fund	LETC
Regular Civil	\$61.50 to \$66.50	60-2001 <sup>2</sup>	Balance	\$10.00	X	--	--	--
Limited Action or Small Claims Appeal	\$61.50 to \$66.50	61-2102 61-2709	Balance	\$10.00	X	--	--	--
Limited Action	\$500 or less \$16.50 to \$19.50	61-2501	Balance	\$5.00	X	--	--	--
Limited Action	\$500.01-- \$5,000 \$36.50 to \$39.50 \$5,000.01-- \$10,000 \$61.50 to \$64.50	61-2501	Balance	\$10.00	X	--	--	--
Foreign Judgment	\$61.50 to \$66.50	60-3005	Balance	\$10.00	X	--	--	--
Small Claims	\$16.50 to \$19.50	61-2704	Balance	\$5.00	X	--	--	--
(See limited action)	\$36.50 to \$39.50	61-2704	Balance	\$10.00	X	--	--	--
Probate, Estates	\$96.50 to \$99.50	59-104	Balance	--	X	--	--	--
Probate, Treatment <sup>3</sup>	\$21.50 to \$24.50	59-104	Balance	--	X	\$1.00	\$ .50	--
Probate, Property	\$36.50 to \$39.50	59-104	Balance	--	X	--	--	--
Probate, Trust, etc.	\$56.50 to \$59.50	59-104	Balance	--	X	--	--	--
Probate, Adoption	\$36.50 to \$39.50	59-104	Balance	--	X	--	--	--
Probate, Transcript	\$11.50 to \$14.50	59-104	Balance	--	X	--	--	--
Murder or Manslaughter	\$159.50 to \$164.50	28-172a	Balance	--	X	\$1.00	\$ .50	\$9.00
Felony	\$129.50 to \$134.50	27-172a	Balance	--	X	\$1.00	\$ .50	\$9.00
Misdemeanor	\$99.50 to \$102.50	28-172a	Balance	--	X	\$1.00	\$ .50	\$9.00
Municipal Appeal	\$59.50 to \$62.50	28-172a	Balance	--	X	\$1.00	\$ .50	\$9.00
Traffic, Fish & Game, Watercraft	\$42.00 to \$45.00	8-2107 28-172a 32-1050	Balance	--	X	\$1.00	\$ .50	\$9.00
Juvenile	\$16.50 to \$19.50	38-1511 38-1613	Balance	--	X	\$1.00	\$ .50	--
Appellate	\$55.00	Sup. Ct. Rule 2.04	All	--	--	--	--	--

<sup>1</sup>FROM THE BALANCE FORWARDED TO THE STATE, 5.01% goes to the juvenile detention facilities fund, 1.04% to the protection from abuse fund; 1.04% to the crimes victims assistance fund; .64% to the dispute resolution fund, 3.85% to the judicial branch education fund, 2.89% to the emergency services operating fund, 4.91% to the judiciary technology fund, and 80.62% to the State General Fund for the period 7-1-94 to 6-30-96.

<sup>2</sup>Prisoners who file a 60-1507 action must also forward a docket fee; if they have no money in their prison account, the minimum to be forwarded is \$3.

<sup>3</sup>Includes docket fee for civil commitment of sexual predators.

# THE CHILDREN'S COALITION

"...to increase the power of children  
by joining with many different voices."

## TESTIMONY OF

Dodie J. Lacey, Vice-Chair  
Children's Coalition  
913/272-8447

HOUSE JUDICIARY CIVIL LAW SUBCOMMITTEE  
Re: House Bill 3033

David Adkins, Chair

19 February 1996



Mr. Chairman and Members of the Committee, I thank you for the opportunity to speak today in support of HB 3033. In addition to my responsibilities as Research and Public Policy Analyst for Kansas Children's Service League, I serve as Vice-Chair of the Children's Coalition and it is on their behalf that I appear today.

As you will note in the Coalition profile I have attached [blue], the Children's Coalition was organized in 1984 to provide a strong united voice for a vulnerable population that has no political voice of its own -- children. The Coalition's *mission* is to promote laws, policies and services that help children:

- ❖ to be provided with food, shelter, clothing, health care, education and recreation;
- ❖ to have a stable living environment which provides security, permanence, and a sense of belonging and being loved;
- ❖ to be safe from abuse, neglect and exploitation; and,
- ❖ to be recognized as individuals and to have their *legal rights*, as individual citizens, protected.

More simply stated, we are here today because of the obligation we have to the children in this state, to translate their needs into public policies that support their best interests.

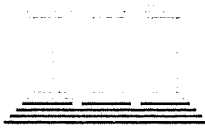
The Children's Coalition believes the *Access to Justice Fund*, as conceptualized in HB 3033, provides a significant step toward critically needed legal services, not widely afforded to children in the judicial system. We assert the Access to Justice Fund speaks to the needs of children in three critical ways:

① ***It increases the availability of alternative dispute resolution services.*** We know that children need a stable living environment and divorce, especially in the presence of parental custody battles, disrupts the sense of stability and security critical to a child's development. Voluntary dispute resolution has been shown to minimize the adversarial nature of divorce, creating significantly less stress on children, and provides more satisfactory, long-term outcomes for all of those involved in the children's custody and visitation process;

② ***It improves access to legal assistance and representation in the judicial system.*** We believe this fund, in addition to providing representation for adult victims of domestic violence and low-income adults in family law-related cases, has the ability to supply critical legal representation, by appointing a guardian ad litem for *children* when allegations of *child sexual or physical abuse* are present; and,

③ ***It increases the establishment of appropriate child support and medical support orders*** in divorce cases where minor children are involved, thereby increasing the economic well-being of children.

The Children's Coalition believes children need increased access to proper representation in the legal system and the Access to Justice Fund and the provisions of HB 3033 afford us an excellent opportunity to move at least three steps in that direction.



KANSAS TRIAL LAWYERS ASSOCIATION

*Lawyers Representing Consumers*  
**Kansas Trial Lawyers Association**  
**Legislative Testimony**  
**House Bill 3033**  
**Presented by: Patrick Nichols**  
**February 19, 1996**

Chairman O'Neal and members of the committee, thank you for this opportunity to appear before you and testify in support of House Bill 3033. The aim of the bill is to fund programs, including dispute resolution programs, which provide access to the Kansas civil justice system for persons who would otherwise be unable to gain access to civil justice. KTLA's specific interest in this legislation is the provision of adequate supplemental funding for Kansas Legal Services to guarantee continued access to civil justice for low-income Kansans.

The American justice system is founded on the principle of "Equal Justice Under the Law." Unfortunately, there is wide disparity in this country between the statement of the principle and the reality. Justice is simply more available to those who can pay for it. This is a painful reality to many Kansas low and moderate income families.

The Legal Services Corporation (LSC) channels federal funding to local legal services programs serving the nation's indigent. LSC is faced with mounting budget restraints and funding shortfalls. Despite the legal profession's continuing emphasis on pro-bono services, the states, including Kansas, must accept greater financial responsibility for making justice accessible.

If the Kansas justice system does not respond to growing pressures to improve access to its services, it faces a loss of confidence that Kansas courts will dispense justice in an expedient, fair way. Action which places legitimacy of the whole justice system in question must be avoided.

House Judiciary  
2-23-96  
Attachment 35

*Terry Humphrey, Executive Director*

House Bill No. 3033 creates funding by modestly increasing civil docket fees. KTLA supports the proposed increase and regards it as reasonable. Furthermore, we support the new filing fee of \$20.00 for each postdivorce motion. This fee is a minor charge and an appropriate strategy for discouraging frivolous motions in domestic disputes.

When considering this legislation, it is important to pay particular attention to the distribution of funds. KTLA believes Alternative Dispute Resolution (ADR) is a promising bridge over the gap between legal needs and affordable services. On the other hand, it is essential that ADR be introduced into the justice system in a balanced way so as to avoid any serious threat to the continuing viability of the justice system itself, especially the courts. While KTLA supports both, Kansas Legal Services and Alternative Dispute Resolution as recipients of funding from the Access to Justice Fund, we are particularly concerned that no changes be made in the bill that reduce the potential level of funding available to KLS. While their federal funding base is shrinking, the demand for their services is not.

Kansas must not turn its back on the equal access to civil justice for all its' citizens. Therefore, KTLA is proud to support this legislation and compliments the authors on their initiative to bring this critical matter to the attention of the Legislature.

## FILING FEE JUSTIFICATION

The Kansas Bar Association supports that portion of HB 3033 which increases docket fees (filing fees) in certain Chapter 60 cases by \$5.00 per filing to provide access to the Kansas civil justice systems for people who would otherwise be unable to gain access to civil justice.

In all probability, the Legal Services Corporation will cease to exist in 1997. The Legal Services has already received a 40% reduction in funds for 1996. This translates into a loss of over \$1 million for the Kansas Legal Services offices. Kansas Legal Services offered some type of direct representation in 1995 to approximately 15,000 people and provided brief services to another 15,000 people. Over one-third of these services were domestic in nature. This direct service will be eliminated in the near future unless alternative funding can be achieved. In addition to eliminating sorely needed legal services for a significant portion of our population, there will be added pressure on the courts as the number of pro se litigants will undoubtedly increase dramatically.

Last year the Kansas Bar Association Family Law Section sponsored a program at which the court trustee for Maricopa County, (Phoenix) Arizona, was a principal speaker. Ten years ago only 24% of the Maricopa County divorce cases were pro se cases. Last year the court trustee reported that nearly 90% of the divorce cases involved at least one party not being represented by an attorney. The majority of the cases had no attorney representation. The American Bar Association Standing Committee on the Delivery of Legal Services in the report "Self-Representation in Divorce Cases" indicates that pro se representation is on the rise in



many areas and that they would negatively impact state courts. The report indicates that it generally takes twice as long for a judge to hear a pro se case and the judge's neutral position may be jeopardized as the judge attempts to insure that the pro se litigant is dealt with fairly.

The state of Tennessee has recently increased its docket fee to provide for legal services to those in its state which would not otherwise receive same. This is an area in which the increase in fees would be directly applicable to the court system and to not provide funds to allow access to the civil justice system for people who would not otherwise have it will lead to increased problems in the future.

HOUSE BILL NO. 3033  
House Judiciary Sub-Committee  
February 19, 1996

Testimony of Sherlyn Sampson  
Clerk of District Court, Douglas County  
for the Kansas Association of District Court Clerks & Administrators

Mr. Chair:

I appreciate the opportunity to appear before you today to discuss House Bill No. 3033 which creates the "Access to Justice Fund". I am addressing you on behalf of the District Court Clerks and Administrators in Kansas in opposition to this bill. We have several concerns about this bill that I would like to share with you.

New Sec. 2 (a) states "No postdivorce motion shall be filed or docketed in the district court without payment of a docket fee in the amount of \$20." What is a "postdivorce motion"? As the bill is currently worded it could include motions for garnishments, motions for continuances, motions for Orders to appear and all kinds of other motions. We would prefer that there be no new docket fee for "postdivorce motions", but if one is created, then post divorce motions need to be specifically defined. We would recommend that they only be "Motions for Modification of Child Support" and "Motions for Change of Custody" as these motions can require a lengthy post divorce hearing.

New Sec 2 (b) states "a poverty affidavit may be filed in lieu of a docket fee as established in K.S.A. 60-2001 and amendments thereto. Does this mean that a person can file a poverty affidavit in lieu of paying the \$20 docket fee? A lot of the motions for modification of child support are filed by SRS or Court Trustee Offices. Both of these offices are exempt from paying a docket fee. Therefore, the amount of fees collected by the filing of these motions would probably be minimal.

New Sec 2(c) states "the docket fee shall be the only costs assessed to each case .....". Which docket fee does this apply to if multiple docket fees will be paid on a case with post divorce motions?

Section 3 (f) states \$5.00 of each Chapt 60 docket fee, including foreign judgment docket fees, and the \$20 postdivorce motion docket fee mentioned above will be sent to the state treasurer monthly to be credited to the access to justice fund. All the fees we collect in a given month are sent in one check to the state treasurer accompanied by a list of each category the fees are to be applied to. In order for the state treasurer to know how much of that check goes to the "access to justice fund" the Clerks of District Court would have to keep records to count every postdivorce motion that is filed and has a fee paid as well as set up a way to make sure \$5.00 of each docket fee on Chapter 60 cases is flagged so the State Treasurer will know how much to apply to the "Access to Justice Fund".

REMARKS CONCERNING HOUSE BILL 3033  
HOUSE JUDICIARY CIVIL LAW SUBCOMMITTEE  
FEBRUARY 19, 1996

Thank you for giving me the opportunity to appear before your subcommittee on behalf of Kansas Credit Attorneys Association, which is a state-wide organization of attorneys whose practice includes considerable collection work, and Kansas Collectors Association, Inc., which is an association of collection agencies in Kansas.

Since most of the litigation involving both of my clients involve Chapter 61 proceedings, we have no comment on this bill as it now stands, since it does not provide for any increase in docket fees for Chapter 61 proceedings.

We would vigorously oppose any amendment to the bill to include Chapter 61 proceedings, and I could give you a long list of reasons for our opposition, but I will not burden you at this time with those reasons.

Elwaine F. Pomeroy  
For Kansas Credit Attorneys Association  
and Kansas Collectors Association, Inc.

2-21-96  
OTA Bellom

House Judiciary  
2-23-96  
Attachment 39

# HOUSE BILL No. 3033

By Committee on Judiciary

2-14

9 AN ACT concerning civil procedure; relating to docket fees; creating the  
10 access to justice fund in the state treasury; amending K.S.A. 20-362  
11 and K.S.A. 1995 Supp. 60-2001 and repealing the existing sections.  
12

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

14 New Section 1. (a) There is hereby created in the state treasury the  
15 access to justice fund. Money credited to the fund pursuant to K.S.A. 20-  
16 362, and amendments thereto, shall be used solely for the purpose of  
17 making grants for operating expenses to programs, including dispute res-  
18 olution programs, which provide access to the Kansas civil justice system  
19 for persons who would otherwise be unable to gain access to civil justice.  
20 Such programs may provide legal assistance to pro se litigants, legal coun-  
21 sel for civil and domestic matters or other legal or dispute resolution  
22 services provided the recipient of the assistance or counsel meets financial  
23 qualifications under guidelines established by the program in accordance  
24 with grant guidelines promulgated by the supreme court of Kansas.

25 (b) All expenditures from the access to justice fund shall be made in  
26 accordance with appropriations acts upon warrants of the director of ac-  
27 counts and reports issued pursuant to vouchers approved by the chief  
28 justice of the Kansas supreme court or by a person or persons designated  
29 by the chief justice.

30 (c) The chief justice may apply for, receive and accept money from  
31 any source for the purposes for which money in the access to justice fund  
32 may be expended. Upon receipt of any such money, the chief justice shall  
33 remit the entire amount at least monthly to the state treasurer, who shall  
34 deposit it in the state treasury and credit it to the access to justice fund.

35 (d) Grants made to programs pursuant to this section shall be based  
36 on the number of persons to be served and such other requirements as  
37 may be established by the Kansas supreme court in guidelines established  
38 and promulgated to regulate grants made under authority of this section.  
39 The guidelines may include requirements for grant applications, organi-  
40 zational characteristics, reporting and auditing criteria and such other  
41 standards for eligibility and accountability as are deemed advisable by the  
42 supreme court.

43 New Sec. 2. (a) No postdivorce motion shall be filed or docketed in

petitioning for a change in child custody, a  
modification of child support or a change in  
visitation

39.2

1 the district court without payment of a docket fee in the amount of \$20  
2 to the clerk of the district court.

3 (b) A poverty affidavit may be filed in lieu of a docket fee as estab-  
4 lished in K.S.A. 60-2001, and amendments thereto.

5 (c) The docket fee shall be the only costs assessed in each case for  
6 services of the clerk of the district court and the sheriff. The docket fee  
7 shall be ~~disbursed~~ in accordance with K.S.A. ~~20-367~~, and amendments  
8 thereto.

disbursed

20-362 (f)

9 ~~Sec. 3. K.S.A. 20-362 is hereby amended to read as follows: 20-362.~~  
10 ~~The clerk of the district court shall remit at least monthly all revenues~~  
11 ~~received from docket fees as follows:~~

12 (a) To the county treasurer, for deposit in the county treasury and  
13 credit to the county general fund:

14 (1) A sum equal to \$10 for each docket fee paid pursuant to K.S.A.  
15 60-2001 and 60-3005, and amendments thereto, during the preceding  
16 calendar month;

17 (2) a sum equal to \$10 for each \$36.50 or \$61.50 docket fee paid  
18 pursuant to K.S.A. 61-2501, 61-2704 or 61-2705, and amendments  
19 thereto; and

20 (3) a sum equal to \$5 for each \$16.50 docket fee paid pursuant to  
21 K.S.A. 61-2501 or 61-2704, and amendments thereto, during the preced-  
22 ing calendar month.

23 (b) To the board of trustees of the county law library fund, for deposit  
24 in the fund, a sum equal to the library fees paid during the preceding  
25 calendar month for cases filed in the county.

26 (c) To the county treasurer, for deposit in the county treasury and  
27 credit to the prosecuting attorneys' training fund, a sum equal to \$1 for  
28 each docket fee paid pursuant to K.S.A. 28-172a, and amendments  
29 thereto, during the preceding calendar month for cases filed in the county  
30 and for each fee paid pursuant to subsection (c) of K.S.A. 28-170, and  
31 amendments thereto, during the preceding calendar month for cases filed  
32 in the county.

33 (d) To the state treasurer, for deposit in the state treasury and credit  
34 to the indigents' defense services fund, a sum equal to \$.50 for each  
35 docket fee paid pursuant to K.S.A. 28-172a and subsection (d) of K.S.A.  
36 28-170, and amendments thereto, during the preceding calendar month.

37 (e) To the state treasurer, for deposit in the state treasury and credit  
38 to the law enforcement training center fund, during the period com-  
39 mencing July 1, 1994, and ending June 30, 1998, a sum equal to \$9, and  
40 on and after July 1, 1998, a sum equal to \$8 for each docket fee paid  
41 pursuant to K.S.A. 28-172a, and amendments thereto, during the pre-  
42 ceding calendar month.

43 ~~(f) To the state treasurer, for deposit in the state treasury and credit~~

Sec. 3. 20-367 is hereby amended to read as follows: 20-367. ~~(a) Except as provided by subsection (b),~~ ~~of~~ Of the remittance of the balance of docket fees received monthly by the state treasurer from clerks of district court pursuant to subsection (f) of K.S.A. 20-362, and amendments thereto, the state treasurer shall deposit and credit to the access to justice fund, a sum equal to 7.40% of the remittance of docket fees; to the juvenile detention facilities fund, the state treasurer shall deposit and credit a sum equal to 5.12% 4.74% of the remittances of docket fees; to the judicial branch education fund, the state treasurer shall deposit and credit a sum equal to 3.93% 3.64% of the remittances of docket fees; to the emergency medical services operating fund, the state treasurer shall deposit and credit a sum equal to 2.95% 2.73% of the remittances of docket fees; to the judiciary technology fund, the state treasurer shall deposit and credit a sum equal to 5.01% 4.64% of the remittances of docket fees; and to the dispute resolution fund, the state treasurer shall deposit and credit a sum equal to .65% .60% of the remittances of docket fees. The balance remaining of docket fees shall be deposited and credited to the state general fund.

~~(b) With regard to docket fees collected for the period commencing July 1, 1994, and ending June 30, 1996, of the remittance of the balance of such docket fees received monthly by the state treasurer from clerks of district court pursuant to subsection (f) of~~

~~the access to justice fund, created in section 1, a sum equal to \$5 for each docket fee paid pursuant to K.S.A. 60-2001 and 60-3005, and amendments thereto, and a sum equal to \$20 for each docket fee paid pursuant to section 2 during the preceding calendar month.~~

~~(g) To the state treasurer, for deposit in the state treasury and distribution according to K.S.A. 20-367 and amendments thereto, a sum equal to the balance which remains from all docket fees paid during the preceding calendar month after deduction of the amounts specified in subsections (a) (b) (c) (d) and (e) and (f).~~

Sec. 4. K.S.A. 1995 Supp. 60-2001 is hereby amended to read as follows: 60-2001. (a) *Docket fee.* Except as otherwise provided by law, no case shall be filed or docketed in the district court, whether original or appealed, without payment of a docket fee in the amount of ~~\$61.50~~ \$66.50 to the clerk of the district court.

(b) *Poverty affidavit in lieu of docket fee.* (1) *Effect.* In any case where a plaintiff by reason of poverty is unable to pay a docket fee, and an affidavit so stating is filed, no fee will be required. An inmate in the custody of the secretary of corrections may file a poverty affidavit only if the inmate attaches a statement of the balance in the inmate's trust fund. Such statement shall be certified by the secretary. On receipt of the affidavit and attached statement, the court shall determine the costs for filing the action but in no event shall the court require an inmate to pay less than \$3. The secretary of corrections is hereby authorized to disburse money from the inmate's account to pay the costs as determined by the court. If the inmate has a zero balance in such inmate's account, the secretary shall debit such account in the amount of \$3 per docket fee as established by the court until money is credited to the account to pay such docket fee.

(2) *Form of affidavit.* The affidavit provided for in this subsection shall be in the following form and attached to the petition:

State of Kansas, \_\_\_\_\_ County.

In the district court of the county: I do solemnly swear that the claim set forth in the petition herein is just, and I do further swear that, by reason of my poverty, I am unable to pay a docket fee.

(c) *Disposition of docket fee.* The docket fee shall be the only costs assessed in each case for services of the clerk of the district court and the sheriff. The docket fee shall be disbursed in accordance with K.S.A. 20-362 and amendments thereto.

(d) *Additional court costs.* Other fees and expenses to be assessed as additional court costs shall be approved by the court, unless specifically fixed by statute. Other fees shall include, but not be limited to, witness fees, appraiser fees, fees for service of process outside the state, fees for depositions, alternative dispute resolution fees, transcripts and publica-

~~K.S.A. 20-362, and amendments thereto, the state treasurer shall deposit and credit to the juvenile detention facilities fund, a sum equal to 5.01% of the remittances of docket fees; to the judicial branch education fund, the state treasurer shall deposit and credit a sum equal to 3.85% of the remittances of docket fees; to the protection from abuse fund, the state treasurer shall deposit and credit a sum equal to 1.04% of the remittances of docket fees; to the crime victims assistance fund, the state treasurer shall deposit and credit a sum equal to 1.04% of the remittances of docket fees; to the emergency medical services operating fund, the state treasurer shall deposit and credit a sum equal to 2.89% of the remittances of docket fees; to the judiciary technology fund, the state treasurer shall deposit and credit a sum equal to 4.91% of the remittances of docket fees; and to the dispute resolution fund, the state treasurer shall deposit and credit a sum equal to .64% of the remittances of docket fees. The balance remaining of docket fees shall be deposited and credited to the state general fund.~~

29-3

1 tion, attorney fees, court costs from other courts and any other fees and  
2 expenses required by statute. All additional court costs shall be taxed and  
3 billed against the parties as directed by the court. No sheriff in this state  
4 shall charge any district court in this state a fee or mileage for serving any  
5 paper or process.

6 Sec. 5. K.S.A. ~~20-362~~ and K.S.A. 1995 Supp. 60-2001 are hereby  
7 repealed.

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

20-367

39-41

**HOUSE BILL No. 2110**

By Representative Tomlinson

1-18

House Judiciary  
2-23-96  
Attachment 40

9 AN ACT concerning probate; relating to consent to a will; amending  
10 K.S.A. 59-2224 and repealing the existing section.

11  
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 59-2224 is hereby amended to read as follows: 59-  
14 2224. The hearing of a petition for the probate of a will and the hearing  
15 of a petition for the determination that the consent of the spouse to the  
16 will is a valid and binding consent shall be separate issues which, in the  
17 discretion of the court, may be determined in a consolidated hearing or  
18 in separate hearings. On the hearing of a petition for the probate of a will  
19 or for the determination that the consent of a spouse to a will is a valid  
20 and binding consent, unless it is an uncontested, self-proved will ~~whether~~  
21 ~~self-proved or otherwise~~ or ~~an uncontested~~ consent ~~of a spouse to a will~~,  
22 the testimony of at least two of the subscribing witnesses shall be taken  
23 in person, by affidavit or by deposition. ~~Otherwise, the court may admit~~  
24 the testimony of other witnesses to prove the capacity of the testator or  
25 the spouse and the due execution of the will or consent and, as evidence  
26 of such execution, may admit proof of the handwriting of the testator or  
27 the spouse and of the subscribing witnesses. Any heir, devisee, or legatee  
28 may prosecute or oppose the probate of any will or the determination  
29 that the consent of the spouse to the will is a valid and binding consent.  
30 If the instrument alleged to be the will is not allowed as the last will and  
31 if the estate should be administered, the court shall grant administration  
32 to the person or persons entitled thereto.

33 Sec. 2. K.S.A. 59-2224 is hereby repealed.

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

, self-proved

The court may waive the requirement of such testimony of such subscribing witnesses upon a proper showing that such witnesses are unavailable or cannot be located.



House Judiciary Criminal Law Subcommittee  
February 20, 1996

Testimony of Amy Waddle  
Office of Judicial Administration

Representative O'Neal and members of the Subcommittee:

Thank you for the opportunity to testify in support of HB 2996 which proposes to amend K.S.A. Supp. 8-253 and K.S.A. 8-2115 to allow greater flexibility in the methods used to transmit traffic conviction information from the Kansas district courts to the Division of Vehicles at the Kansas Department of Revenue. The two statutes noted above set out the specific format and content of the information that must be reported.

The proposed amendment to K.S.A. Supp. 8-253 begins on line 26 and would amend the second sentence of subsection (b) to read as "Such record shall be made upon a form or in a format approved by the division" and would delete the specific list of information that must be included on the form.

The proposed amendment to K.S.A. 8-2115, page 2, lines 14-35, would delete the list of specific information that must be included on the abstract of conviction and would simply state that, "The abstract shall be on a form or in a format approved by the division."

I'd like to provide you with some background on the proposed legislation. The Office of Judicial Administration staffs an Urban Computer Users Group which is made up of court administrators and systems analysts from the courts in the four urban counties; Sedgwick, Johnson, Wyandotte and Shawnee. The group meets quarterly to discuss the automation needs of those courts and to plan pilot projects to implement new technologies.

Representatives from the Division of Vehicles met with the group to explore the possibility of electronic transmission of statutorily required information. Under current law, the district courts may submit conviction information on paper forms or may transmit the information on magnetic tape. The proposed amendments would allow the courts and the Division

of Vehicles, as technology changes, to pursue alternative means of transferring statutorily required information.

The urban courts are currently downloading traffic conviction information to magnetic tape and mailing the tapes to the Division. Hardware and software connections are now in place to allow the urban courts to transfer information across the state data network rather than downloading the information to a tape format.

The Office of Judicial Administration, Wyandotte County District Court staff and the Division of Vehicles developed a pilot project in Wyandotte County in September 1994 to test electronic transmission of selected traffic conviction information across the state data network. Transfer of information during the pilot project has been very limited but both the courts and the Division feel that there is potential in the future to expand direct transfer to include more types of information. Future developments could include information transfer from courts using PC-based systems.

The proposed amendments will allow the courts and the Division of Vehicles to pursue new transfer opportunities while insuring that the Division maintains control over the information that must be reported. The Division of Vehicles supports the proposed amendments and we request your favorable consideration of the proposed changes.



LARRY WELCH  
DIRECTOR

KANSAS BUREAU OF INVESTIGATION  
DIVISION OF THE OFFICE OF ATTORNEY GENERAL  
STATE OF KANSAS



CARLA J. STOVALL  
ATTORNEY GENERAL

TESTIMONY  
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL  
KANSAS BUREAU OF INVESTIGATION  
BEFORE THE HOUSE JUDICIARY COMMITTEE  
IN SUPPORT OF HOUSE BILL 2741  
FEBRUARY 19, 1996

Chairman O'Neal and Members of the Committee:

I appear today on behalf of Director Larry Welch of the Kansas Bureau of Investigation in support of House Bill 2741. This bill in and of itself is relative simple and merely rearranges current language to clarify that reports of forensic exams dealt with in this statute includes all types of crimes, not just traffic offenses. The confusion stemmed from the language found on line 16 of page 1 of the bill which seemed to indicate that the results had to also be admissible pursuant to K.S.A. 8-1001, which of course, would only make sense if it were a DUI blood alcohol content test. As this Committee will remember, that was not the intent as evidenced by the fact that this is a chapter 22 criminal procedure statute. However, some courts have had problems with that language and to avoid that confusion in the future this bill was requested.

After speaking with Health and Environment, they have requested that we make one other change to the existing language. On line 25 of HB 2741 strike the phrase "or other person" in as much as they do not certify anyone besides law enforcement officers to operate breath test equipment. It has apparently caused some confusion for them. They would also ask that we strike the word "blood" at the end of line 22 as technically this is a breath test for alcohol content.

Due to the incredible number of bills this Committee has been asked to deal with, I guess we all realize that not all bills can have a hearing. With the permission of the Chairman, I would request this Committee consider amending into HB 2741 two other housekeeping bills proposed by the Kansas Bureau

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House Judiciary  
2-23-96  
Attachment 42

of Investigation as spelled out in the attached balloon.

First would be HB 2748 requested by the KBI, that amends the statute specifying for what offenses the laboratory analysis fee may be assessed and how the money is spent. The amendments contained in HB 2748 which would become section 2 of HB 2741 would include crimes where tests are currently being done, but no fee is authorized. It would clarify that not just persons convicted or diverted, but juveniles adjudicated or persons diverted under a pre-adjudication program will be subject to this fee. Chapter 41 alcohol violations which are submitted to the KBI will be subject to this fee and DUI's involving testing for drugs or controlled substances will be offenses covered by this statute.

As the Committee may remember, the fee was set up to have the convicted persons reimburse the KBI laboratory for the scientific examinations that were required for their conviction and these offenses are all of the kind wherein the KBI laboratory is frequently asked to make examinations.

The only other change found in HB 2748 spells out in subsection (d) that fees placed in this fund should be used to supplement the appropriations process. The actual authorized expenditures are spelled out in the statute.

Finally, we would ask that one other bill requested by the KBI, HB 2755, which is not set for hearing, also be amended into HB 2741. HB 2755 again deals with criminal procedure, and in particular with the various information repositories maintained by the KBI. Section 1 of that bill, which would become Section 3 of HB 2741, deals with offenses requiring fingerprinting and adds the offense of transporting an open container of liquor in violation of 8-1599. This is necessary because that particular offense, while a C misdemeanor, and hence not required from the sentencing guidelines point of view, does have an enhancement provision based on prior convictions. We cannot prove that a prior record goes to a particular person without their fingerprints being on file for that offense.

Section 2 of HB 2755, which would be Section 4 of HB 2741 amends the DNA exemplar statute. That statute as you may remember, requires convicted sex offenders to provide exemplars to the KBI for DNA analysis and requires the KBI to maintain this repository for investigative purposes. There are three

changes made to that statute. First, it is clarified that the statute applies to adults as well as juveniles. I realize that's what the statute already says, but again we have had trouble with some courts being persuaded by talented attorneys to interpret it otherwise. Second, the predicate offenses are modified by adding two felonies that I believe were left off inadvertently when the bill was passed, those being persons convicted of K.S.A. 21-3510, indecent solicitation of a child and persons convicted of K.S.A. 21-3516, sexual exploitation of a child. Further, it is clarified that attempts, conspiracies and solicitations of the predicate offenses are included; the current language only includes attempts of the sexual acts and not the crimes of violence. The third change deals with an Attorney General opinion that was issued this summer holding that without specific statutory authority juvenile fingerprints could not be gathered to identify a person to their DNA record. Again, as in any criminal history information, we utilize fingerprints to make a positive ID that the person who is listed in the repository is, in fact, the person we are now investigating. Therefore, on page 3 of HB 2755 there is new language making it clear that the KBI may obtain fingerprints for all contributors, both juvenile and adult.

The third section of HB 2755 amends the Sex Offender Registration Act in a strictly procedural manner by requiring annual re-registration, specifying what information will be required for registration and requiring DNA exemplars for registrants if they are not already included under the section we just discussed. There are a couple of technical amendments to HB 2755 which are spelled out in the balloons.

I believe all three of these bills can be fairly described as clarifying and clean-up criminal procedure legislation. None of the amendments will cost the state any money. Some will actually save money, and they will definitely increase the effectiveness of the operations of the KBI.

We would request you amend HB 2741 to include the provisions of HB 2748 and 2755 and report the bill favorably. I would be happy to stand for questions.

HOUSE BILL No. 2741

By Committee on Judiciary

1-25

42-4

9 AN ACT concerning criminal procedure; relating to forensic exams~~s~~ ← , reports, fees and information repositories,  
 10 amending K.S.A. 22-3437 and repealing the existing section.~~s~~ ← S  
 11  
 12 Be it enacted by the Legislature of the State of Kansas: , 21-2501, 21-2511, 22-4904, 22-4907 and 28-176

13 Section 1. K.S.A. 22-3437 is hereby amended to read as follows: 22-  
 14 3437. (1) In any hearing or trial, a report concerning forensic examinations  
 15 and certificate of forensic examination executed pursuant to this section  
 16 and admissible pursuant to subsection (f)(1) of K.S.A. 8-1001, and amend-  
 17 ments thereto, shall be admissible in evidence if the report and certificate  
 18 are prepared and attested by a criminalist or other employee of the Kansas  
 19 bureau of investigation, Kansas highway patrol or any laboratory of the  
 20 federal bureau of investigation, federal postal inspection service, federal  
 21 bureau of alcohol, tobacco and firearms or federal drug enforcement ad-  
 22 ministration or any. If the examination involves a breath test for blood  
 23 alcohol content, the report must also be admissible pursuant to subsection  
 24 (f)(1) of K.S.A. 8-1001, and amendments thereto, and be conducted by a  
 25 law enforcement officer or other person who is certified by the depart-  
 26 ment of health and environment as a breath test operator as provided by  
 27 K.S.A. 65-1;107 et seq. and amendments thereto.

28 (2) Upon the request of any law enforcement agency, such person as  
 29 provided in subsection (1) performing the analysis shall prepare a certif-  
 30 icate. Such person shall sign the certificate under oath and shall include  
 31 in the certificate an attestation as to the result of the analysis. The pres-  
 32 entation of this certificate to a court by any party to a proceeding shall  
 33 be evidence that all of the requirements and provisions of this section  
 34 have been complied with. This certificate shall be sworn to before a notary  
 35 public or other person empowered by law to take oaths and shall contain  
 36 a statement establishing the following: The type of analysis performed;  
 37 the result achieved; any conclusions reached based upon that result; that  
 38 the subscriber is the person who performed the analysis and made the  
 39 conclusions; the subscriber's training or experience to perform the anal-  
 40 ysis; the nature and condition of the equipment used; and the certification  
 41 and foundation requirements for admissibility of breath test results, when  
 42 appropriate. When properly executed, the certificate shall, subject to the  
 43 provisions of subsection (3) and notwithstanding any other provision of

See added sections 2 thru 7  
on attached sheets

42-5

1 law, be admissible evidence of the results of the forensic examination of  
2 the samples or evidence submitted for analysis and the court shall take  
3 judicial notice of the signature of the person performing the analysis and  
4 of the fact that such person is that person who performed the analysis.

5 (3) Whenever a party intends to proffer in a criminal or civil pro-  
6 ceeding, a certificate executed pursuant to this section, notice of an intent  
7 to proffer that certificate and the reports relating to the analysis in ques-  
8 tion, including a copy of the certificate, shall be conveyed to the opposing  
9 party or parties within 20 days after arraignment, if a criminal proceeding  
10 or at least 20 days before a civil trial begins. An opposing party who  
11 intends to object to the admission into evidence of a certificate shall give  
12 notice of objection and the grounds for the objection within 10 days upon  
13 receiving the adversary's notice of intent to proffer the certificate. When-  
14 ever a notice of objection is filed, admissibility of the certificate shall be  
15 determined not later than two days before the beginning of the trial. A  
16 proffered certificate shall be admitted in evidence unless it appears from  
17 the notice of objection and grounds for that objection that the conclusions  
18 of the certificate, including the composition, quality or quantity of the  
19 substance submitted to the laboratory for analysis or the alcohol content  
20 of a blood or breath sample will be contested at trial. A failure to comply  
21 with the time limitations regarding the notice of objection required by  
22 this section shall constitute a waiver of any objections to the admission of  
23 the certificate. The time limitations set forth in this section may be ex-  
24 tended upon a showing of good cause.

25 ~~Sec. XX~~ K.S.A. 22-3437~~XX~~ hereby repealed.

26 ~~Sec. XX~~ This act shall take effect and be in force from and after its  
27 publication in the statute book.

, 21-2501, 21-2511, 22-4904, 22-4907 and 28-176 are

**HOUSE BILL No. 2748**

By Committee on Judiciary

1-25

42-6

9 AN ACT concerning the Kansas bureau of investigation laboratory anal-  
10 ysis fee; amending K.S.A. 28-176 and repealing the existing section.

11

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

3

13 Section 1. K.S.A. 28-176 is hereby amended to read as follows: 28-

14 176. (a) Any person convicted or diverted, or adjudicated or diverted  
15 under a preadjudication program, pursuant to K.S.A. 22-2906 et seq., 38-  
16 1635 et seq., or 12-4414 et seq., and amendments thereto, of a misde-  
17 meanor or felony contained in chapters 21, 41 or 65 of the Kansas Statutes  
18 Annotated, or a violation of K.S.A. 8-1567 and amendments thereto, in-  
19 volving drugs or controlled substances, shall pay a separate court cost of  
20 \$150 as a Kansas bureau of investigation laboratory analysis fee for each  
21 offense if forensic science or laboratory services are rendered or admin-  
22 istered by the Kansas bureau of investigation in connection with the case.

23 (b) Such fee shall be in addition to and not in substitution for any  
24 and all fines and penalties otherwise provided for by law for such offense.

25 (c) Disbursements from the Kansas bureau of investigation laboratory  
26 analysis fee deposited into the forensic laboratory and materials fee fund  
27 of the Kansas bureau of investigation shall be made for the following:

- 28 (1) Providing criminalistic laboratory services;
- 29 (2) the purchase and maintenance of equipment for use by the lab-  
30 oratory in performing analysis;
- 31 (3) education, training and scientific development of Kansas bureau  
32 of investigation personnel; and
- 33 (4) the destruction of seized property and chemicals as prescribed in  
34 K.S.A. 22-2512 and K.S.A. 65-4135 and amendments thereto.

35 (d) Fees received into this fund shall be supplemental to regular ap-  
36 propriations to the Kansas bureau of investigation.

37 ~~Sec. 2. K.S.A. 28-176 is hereby repealed.~~

38 ~~Sec. 3. The act shall take effect and be in force from and after its  
39 publication in the statute book.~~



**HOUSE BILL No. 2755**

By Committee on Judiciary

1-25

9 AN ACT concerning criminal procedure; fingerprinting of suspects, spec-  
10 imen collection and sex offender registration; amending K.S.A. 21-  
11 2501, 21-2511, 22-4904 and 22-4907 and repealing the existing  
12 sections.  
13

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

4

15 Section ~~1~~ K.S.A. 21-2501 is hereby amended to read as follows: 21-  
16 2501. (a) It is hereby made the duty of every sheriff, police department  
17 or countywide law enforcement agency in the state, immediately to cause  
18 two sets of fingerprint impressions to be made of a person who is arrested  
19 if the person:

20 (1) Is wanted for the commission of a felony. ~~On or after July 1, 1993,~~  
21 Fingerprints shall be taken if the person is wanted for the commission of  
22 a felony or a class A or B misdemeanor, *transporting an open container*  
23 *of liquor in violation of K.S.A. 8-1599, and amendments thereto*, or assault  
24 as defined in K.S.A. 21-3408 and amendments thereto or a violation of a  
25 county resolution which would be the equivalent of a class A or B mis-  
26 demeanor, *transporting an open container of liquor in violation of K.S.A.*  
27 *8-1599, and amendments thereto*, or assault as defined in K.S.A. 21-3408  
28 and amendments thereto under state law;

29 (2) is believed to be a fugitive from justice;

30 (3) may be in the possession at the time of arrest of any goods or  
31 property reasonably believed to have been stolen by the person;

32 (4) is in possession of firearms or other concealed weapons, burglary  
33 tools, high explosives or other appliances believed to be used solely for  
34 criminal purposes;

35 (5) is wanted for any offense which involves sexual conduct prohibited  
36 by law or for violation of the uniform controlled substances act; or

37 (6) is suspected of being or known to be a habitual criminal or violator  
38 of the intoxicating liquor law.

39 (b) The court shall ensure, upon the offender's first appearance, or  
40 in any event before final disposition of a ~~felony or an A or B misdemeanor~~  
41 ~~or a violation of a county resolution which prohibits an act which is pro-~~  
42 ~~hibited by a class A or B misdemeanor, any offense set out in subsection~~  
43 (a)(1) that the offender has been processed and fingerprinted.

42-7

1 (c) Fingerprint impressions taken pursuant to this section shall be  
 2 made on the forms provided by the department of justice of the United  
 3 States or the Kansas bureau of investigation. The sheriff, police depart-  
 4 ment or countywide law enforcement agency shall cause the impressions  
 5 to be forwarded to the Kansas bureau of investigation at Topeka, Kansas,  
 6 which shall forward one set of the impressions to the federal bureau of  
 7 investigation, department of justice, at Washington, D.C. A comprehen-  
 8 sive description of the person arrested and such other data and infor-  
 9 mation as to the identification of such person as the department of justice  
 10 and bureau of investigation require shall accompany the impressions.

11 (d) A sheriff, police department or countywide law enforcement  
 12 agency may take and retain for its own use copies of fingerprint impres-  
 13 sions of a person specified in subsection (a), together with a comprehen-  
 14 sive description and such other data and information as necessary to prop-  
 15 erly identify such person.

16 (e) Except as provided in subsection (a)(1), this section shall not be  
 17 construed to include violators of any county resolution or municipal or-  
 18 dinance.

19 Sec. ~~2~~. K.S.A. 21-2511 is hereby amended to read as follows: 21-  
 20 2511. (a) Any person convicted *as an adult* or adjudicated as a juvenile  
 21 offender because of the commission of an unlawful sexual act as defined  
 22 in subsection (4) of K.S.A. 21-3501, and amendments thereto, ~~or an at-~~  
 23 ~~tempt of such unlawful sexual act~~ or convicted *as an adult* or adjudicated  
 24 as a juvenile offender because of the commission of a violation of K.S.A.  
 25 21-3401, 21-3402, 21-3510, ~~21-3516, 21-3602, 21-3603 or 21-3609,~~ and  
 26 amendments thereto, *including an attempt, as defined in K.S.A. 21-3301,*  
 27 *and amendments thereto, conspiracy, as defined in K.S.A. 21-3302, and*  
 28 *amendments thereto, or criminal solicitation, as defined in K.S.A. 21-*  
 29 *3303, and amendments thereto, of such offenses* regardless of the sentence  
 30 imposed, shall be required to submit specimens of blood and saliva to the  
 31 Kansas bureau of investigation in accordance with the provisions of this  
 32 act, if such person is:

33 (1) Convicted *as an adult* or adjudicated as a juvenile offender be-  
 34 cause of the commission of a crime specified in subsection (a) on or after  
 35 the effective date of this act;

36 (2) ordered institutionalized as a result of being convicted *as an adult*  
 37 or adjudicated as a juvenile offender because of the commission of a crime  
 38 specified in subsection (a) on or after the effective date of this act; or

39 (3) convicted *as an adult* or adjudicated as a juvenile offender be-  
 40 cause of the commission of a crime specified in this subsection before  
 41 the effective date of this act and is presently confined as a result of such  
 42 conviction or adjudication in any state correctional facility or county jail  
 43 or is presently serving an authorized disposition under K.S.A. 21-4603,

1 22-3717 or 38-1663, and amendments thereto.

2 (b) *Notwithstanding any other provision of law, the Kansas bureau*  
3 *of investigation is authorized to obtain fingerprints and other identifiers*  
4 *for all contributors, juveniles and adults.*

5 ~~(b)~~ (c) Any person required by paragraphs (a)(1) and (a)(2) to provide  
6 specimens of blood and saliva shall be ordered by the court to have spec-  
7 imens of blood and saliva collected within 10 days after sentencing or  
8 adjudication:

9 (1) If placed directly on probation, as a condition of probation, that  
10 person must provide specimens of blood and saliva, at a collection site  
11 designated by the Kansas bureau of investigation. Failure to cooperate  
12 with the collection of the specimens and any deliberate act by that person  
13 intended to impede, delay or stop the collection of the specimens shall  
14 be punishable as contempt of court and constitute grounds to revoke  
15 probation;

16 (2) if sentenced to the secretary of corrections, the specimens of  
17 blood and saliva will be obtained immediately upon arrival at the Topeka  
18 correctional facility; or

19 (3) if a juvenile offender is placed in the custody of the secretary of  
20 social and rehabilitation services, in a youth residential facility or in a state  
21 youth center, the specimens of blood and saliva will be obtained imme-  
22 diately upon arrival.

23 ~~(c)~~ (d) Any person required by paragraph (a)(3) to provide specimens  
24 of blood and saliva shall be required to provide such samples prior to  
25 final discharge, parole, or release at a collection site designated by the  
26 Kansas bureau of investigation.

27 ~~(d)~~ (e) The Kansas bureau of investigation shall provide all specimen  
28 vials, mailing tubes, labels and instructions necessary for the collection of  
29 blood and saliva samples. The collection of samples shall be performed  
30 in a medically approved manner. No person authorized by this section to  
31 withdraw blood and collect saliva, and no person assisting in the collection  
32 of these samples shall be liable in any civil or criminal action when the  
33 act is performed in a reasonable manner according to generally accepted  
34 medical practices. The withdrawal of blood for purposes of this act may  
35 be performed only by: (1) A person licensed to practice medicine and  
36 surgery or a person acting under the supervision of any such licensed  
37 person; (2) a registered nurse or a licensed practical nurse; or (3) any  
38 qualified medical technician including, but not limited to, an emergency  
39 medical technician-intermediate or mobile intensive care technician, as  
40 those terms are defined in K.S.A. 65-6112, and amendments thereto, or  
41 a phlebotomist. The samples shall thereafter be forwarded to the Kansas  
42 bureau of investigation for analysis and categorizing into genetic marker  
43 groupings.

1    ~~(e)~~ (f) The genetic marker groupings shall be maintained by the Kan-  
 2    sas bureau of investigation. The Kansas bureau of investigation shall es-  
 3    tablish, implement and maintain a statewide automated personal identi-  
 4    fication system capable of, but not limited to, classifying, matching and  
 5    storing analysis of DNA (deoxyribonucleic acid) and other biological mol-  
 6    ecules. The genetic marker grouping analysis information and identifi-  
 7    cation system as established by this act shall be compatible with the pro-  
 8    cedures specified by the federal bureau of investigation's combined DNA  
 9    index system (CODIS). The Kansas bureau of investigation may partici-  
 10   pate in the CODIS program by sharing data and utilizing compatible test  
 11   procedures, laboratory equipment, supplies and computer software.

12   ~~(f)~~ (g) The genetic marker grouping analysis information obtained  
 13   pursuant to this act shall be confidential and shall be released only to law  
 14   enforcement officers of the United States, of other states or territories,  
 15   of the insular possessions of the United States, or foreign countries duly  
 16   authorized to receive the same, to all law enforcement officers of the state  
 17   of Kansas and to all prosecutor's agencies.

18   ~~(g)~~ (h) The Kansas bureau of investigation shall be the state central  
 19   repository for all genetic marker grouping analysis information obtained  
 20   pursuant to this act. The Kansas bureau of investigation may promulgate  
 21   rules and regulations for the form and manner of the collection of blood  
 22   and saliva samples and other procedures for the operation of this act. The  
 23   provisions of the Kansas administrative procedure act shall apply to all  
 24   actions taken under the rules and regulations so promulgated.

25   Sec. ~~3~~ K.S.A. 22-4904 is hereby amended to read as follows: 22-  
 26   4904. (a) Within 15 days of the sex offender coming into any county in  
 27   which the sex offender resides or is temporarily domiciled for more than  
 28   15 days, the sex offender shall register with the sheriff of the county. *The*  
 29   *sex offender shall thereafter update the registration annually until liability*  
 30   *to register expires pursuant to K.S.A. 22-4906, and amendments thereto.*

31   (b) (1) If any person required to register as provided in this act  
 32   changes the address of their residence, the sex offender shall, within 10  
 33   days, inform in writing the law enforcement agency where last registered  
 34   of the new address.

35   (2) The law enforcement agency shall, within three days of receipt of  
 36   the *new initial registration or change of* address, forward this information  
 37   to the Kansas bureau of investigation and, *if applicable*, to the law en-  
 38   forcement agency having jurisdiction of the new place of residence.

39   Sec. ~~4~~ K.S.A. 22-4907 is hereby amended to read as follows: 22-  
 40   4907. (a) Registration as required by this act shall consist of a statement  
 41   in writing, *on a form prepared by the Kansas bureau of investigation*,  
 42   signed by the person. The information shall include the following:

43   (1) Name;

42-11

- 1 (2) date and place of birth;
- 2 (3) offense or offenses committed, date of conviction or convictions
- 3 obtained;
- 4 (4) city or county of conviction or convictions obtained;
- 5 (5) a photograph sex and age of victim;
- 6 (6) fingerprints; and current address;
- 7 (7) social security number;
- 8 (8) identifying characteristics such as race, sex, age, hair and eye
- 9 color, scars and blood type;
- 10 (9) occupation and name of employer; and
- 11 (10) drivers license and vehicle information.
- 12 (b) The sex offender shall also provide to the registering law enforce-
- 13 ment agency:
- 14 (1) A photograph;
- 15 (2) fingerprints; and
- 16 (3) DNA exemplars ← ; unless already on file.
- 17 (c) If the exemplars to be taken require the withdrawal of blood, such
- 18 withdrawal may be performed only by:
- 19 (1) A person licensed to practice medicine and surgery or a person
- 20 acting under the supervision of any such licensed person;
- 21 (2) a registered nurse or a licensed practical nurse;
- 22 (3) any qualified medical technician; or
- 23 (4) a licensed phlebotomist.
- 24 (b) (d) Within three days, the registering law enforcement agency d
- 25 shall forward the statement and any other required information to the
- 26 Kansas bureau of investigation.
- 27 ~~Sec 21-2501, 21-2511, 22-1001 and 22-1002 are hereby~~
- 28 ~~repealed.~~
- 29 ~~Sec 20- This act shall take effect and be in force from and after its~~
- 30 ~~publication in the statute book.~~

# STATE OF KANSAS

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OFFICE OF THE GOVERNOR

## **TESTIMONY IN SUPPORT OF AMENDING HB 2819 TO ALLOW HEARSAY EVIDENCE IN PRELIMINARY EXAMINATIONS**

SUBMITTED TO THE HOUSE JUDICIARY COMMITTEE  
CRIMINAL LAW SUBCOMMITTEE  
BY BRENT ANDERSON, COUNSEL TO THE GOVERNOR  
MONDAY, FEBRUARY 19, 1996, 3:30 P.M.

Thank you, Mr. Chairman. I am here today to propose a friendly amendment to House Bill 2819 that would have far-reaching positive implications for the criminal justice system in Kansas. The amendment proposed by Governor Graves would add but one sentence to Kansas' preliminary examination statute that simply would allow a judge to make a finding of probable cause to believe a crime has been committed and the defendant committed it--based in whole or in part on hearsay evidence. (A copy of the proposed amendment is attached.)

This small change would provide huge benefits to our entire system of justice without affecting a defendant's rights. And, perhaps more importantly, it would dramatically improve the way victims of crime are treated by our criminal justice system.

### **BACKGROUND**

This idea is not new. From time to time, the legislature has considered allowing hearsay in preliminary hearings (as most people call them), most recently in 1984. It comes up because there is no federal or state constitutional right to a preliminary examination; Kansas' preliminary examination procedure is strictly statutory. In the past, however, the criminal defense bar has staved off efforts to curtail preliminary examinations because criminal defendants and their lawyers often use them for purposes other than what the statute intends. Given the state's tight budget, our need to conserve law enforcement resources and our heightened sensitivity to crime victims, the time has come to streamline our criminal justice system by cutting back on this amenity.

House Judiciary  
2-23-96  
Attachment 43

Under current Kansas law, if a person is charged with a crime, he or she generally is entitled to a preliminary examination as set out in K.S.A. 22-2902. The purpose of the hearing is for a judge to determine whether there is sufficient evidence to allow the case to proceed to trial. If there is probable cause to believe a crime has been committed and the defendant committed it, the judge is required to bind the defendant over for trial. If not, the charges are dismissed. K.S.A. 22-2902(3).

A criminal defendant has a federal and state constitutional right to a probable cause finding. However, the United States Supreme Court has ruled that a criminal defendant does not have a right to a full-blown evidentiary hearing in connection with a finding of probable cause, only the right to an objectively reasonable finding of probable cause by a neutral and detached magistrate. Gerstein v. Pugh, 420 U.S. 103 (1975). Kansas' preliminary examination statute results in tremendous unnecessary costs to state and local government.

Perhaps more important than this obvious waste of judicial, prosecution and law enforcement resources, however, is that because of our current preliminary hearing system, victims of crimes and other witnesses often are subjected to the trauma, inconvenience and intimidation that seemingly occurs whenever a witness takes the stand in a criminal case. And by law, these court appearances often occur within a matter of days or weeks of when the victim or other witness first encountered the defendant, at a time when these innocent persons still are experiencing the fear and sense of helplessness that often accompany personal exposure to criminal acts. K.S.A. 22-2902(2).

Interestingly, the Kansas Supreme Court recently upheld the murder conviction of a defendant who was bound over for trial on hearsay evidence that should not have been considered under the current preliminary hearing statute. The court ruled this error was harmless because the defendant went to trial and was found guilty beyond a reasonable doubt; the error at the preliminary hearing stage did not effect the defendant's right to a fair trial. State v. Butler, 257 Kan. 1043 (1995). In the Butler case, the Kansas Supreme Court cited a similar Michigan case, People v. Hall, 435 Mich. 599 (1990), which held that to reverse a case because of an error in admitting preliminary hearing testimony would result in "an inexcusable waste of judicial resources and contorts the preliminary examination screening process so as to protect the guilty rather than the innocent."

What this means, simply, is that it makes no sense to require strict evidentiary rules at pretrial hearings. In federal court, the rules of evidence do not apply to any pretrial proceedings, including preliminary hearings. Federal Rules of Criminal Procedure, Rule 5.1; Federal Rules of Civil Procedure, Rule 1101(d)(3). Only Kansas and ten other states provide for a full adversarial preliminary examination in which hearsay generally is not admissible. Procedures for other states vary widely, but a

majority of states relax evidentiary rules at probable cause proceedings. Defendants' rights must be protected at all stages of a criminal proceeding, but we no longer can afford the luxury of full-blown preliminary examinations in this state. Our judges are spread thin and case loads have dramatically increased; court dockets remain full; juvenile court and child in need of care cases do not receive the attention they deserve. And our law enforcement officers are needed to patrol the streets, not the courthouse.

## **IMPACT**

Please consider the dramatic impact such a simple change could bring about:

**1. Crime victims.** The victims of crime would be spared the substantial trauma and difficulty of having to come to court for preliminary examinations. And since only one in eight criminal cases go to trial, only 12 percent of crime victims would ever have to testify in court, and then only once, not two or three times. **The number one complaint of victims of crime** is how they are treated by the criminal justice system. Allowing hearsay evidence in preliminary hearings would balance the scales of justice toward victims of crimes instead of toward those accused of committing crimes.

**2. Judges.** District Court judges in Kansas spend an average of about 20 percent of their time on preliminary examinations. If hearsay evidence were admissible in preliminary hearings, most judges estimate that figure would drop to 5 percent. With this simple change, judges would save thousands of hours that could be spent on other pressing matters, such as juvenile justice, child in need of care cases and reducing case backlog. This change would drastically reduce the need for additional judge positions.

**3. Court guards and jail personnel.** Every time a jailed person has to come to court, at least two jail guards must be with him or her at all times. The prisoner must be moved and secured for breaks, meals, at the beginning of the court appearance and at its end. By allowing hearsay evidence in preliminary examinations, most hearings would take an hour or two, instead of a day or two. Thousands of hours in court guard and jail personnel time would be saved, not to mention the reduction in the security risk to law enforcement and the public when prisoners are in their cells.

**4. Law enforcement officers.** Because of strict evidentiary rules, any law enforcement officer even remotely connected to a criminal case can be required to be available for a preliminary hearing. The result is that hundreds of officers **every working day** spend thousands of hours waiting around the courthouse to testify, if needed, at preliminary hearings. This needless waste would be totally eliminated if hearsay were admissible at preliminary hearings. Law enforcement officers could be on the streets,



where they should be. And millions in overtime costs paid by state and local government would be saved, too.

**4. Prosecutors.** Thousands of hours in preparation and court time would be saved by prosecutors. They could spend their time preparing for trial and handling other important matters, such as juvenile cases they now must put off, if hearsay were admissible in preliminary hearings.

**5. Defense lawyers.** The same is true of defense lawyers, who often use preliminary hearings for discovery purposes and to assess the credibility and effectiveness of the prosecution's witnesses in preparation for trial. Full discovery is already provided to criminal defendants in this state. In the case of indigent defense counsel, tax dollars paid to counsel for preparation and court time for preliminary hearings would be saved.

**6. Court reporters.** They must be in court whenever a judge is. And, indigent defendants are entitled to preliminary hearing transcripts (at \$1-\$2 per page) paid for by the taxpayer. Again, the savings in time, money and labor would be significant.

**7. Citizen witnesses.** Often the unsung heroes of criminal investigations, these witnesses must go through the same waiting and difficulty other witnesses must endure. They rarely are treated like the heroes they are. Often they are left wondering why they stuck their necks out and tried to help in the first place. By allowing hearsay evidence at preliminary examinations, these witnesses would only have to testify in court in the small percentage of cases that actually go to trial. They would not be "punished" for doing the right thing; instead, there is a far greater chance they would be rewarded. People would be far more likely to get involved in programs such as community policing if they didn't think they would be run through the wringer if they reported a crime.

## CONCLUSION

There are two sides to every story and every issue. Defense lawyers, and perhaps others, may argue that the full evidentiary preliminary examination provides a safeguard for those who might be unjustly accused. That may be. But we can provide the constitutionally required safeguards without the exorbitant costs in time, money and human resources that our present preliminary examination system requires. And we can do so while maintaining the principles of fairness and limits on governmental power upon which our system of criminal justice is built. We simply can no longer afford the luxury of full evidentiary preliminary hearings. The remedy is incredibly simple and I join Governor Graves in urging you to attach this proposed amendment to HB 2819. Thank you for your kind attention.

**22-2902. Preliminary examination.**

(1) Every person arrested on a warrant charging a felony or served with a summons charging a felony shall have a right to a preliminary examination before a magistrate, unless such warrant has been issued as a result of an indictment by a grand jury.

(2) The preliminary examination shall be held before a magistrate of a county in which venue for the prosecution lies within 10 days after the arrest or personal appearance of the defendant. Continuances may be granted only for good cause shown.

(3) The defendant shall not enter a plea at the preliminary examination. The defendant shall be personally present and the witnesses shall be examined in the defendant's presence. The defendant's voluntary absence after the preliminary examination has been begun in the defendant's presence shall not prevent the continuation of the examination. The defendant shall have the right to cross-examine witnesses against the defendant and introduce evidence in the defendant's own behalf. If from the evidence it appears that a felony has been committed and there is probable cause to believe that a felony has been committed by the defendant, the magistrate shall order the defendant

bound over to the district judge having jurisdiction to try the case; otherwise, the magistrate shall discharge the defendant. *The finding of probable cause may be based on hearsay evidence in whole or in part.*

(4) If the defendant waives preliminary examination, the magistrate shall order the defendant bound over to the district judge having jurisdiction to try the case.

(5) Any judge of the district court may conduct a preliminary examination, and a district judge may preside at the trial of any defendant even though such judge presided at the preliminary examination of such defendant.

(6) The complaint or information, as filed by the prosecuting attorney pursuant to K.S.A. 22-2905 and amendments thereto, shall serve as the formal charging document at trial. When a defendant and prosecuting attorney reach agreement on a plea of guilty or nolo contendere, they shall notify the district court of their agreement and arrange for a time to plead, pursuant to K.S.A. 22-3210 and amendments thereto.

(7) The district judge, when conducting the preliminary examination, shall have the discretion to conduct arraignment at the conclusion of the preliminary examination.



## SEDGWICK COUNTY, KANSAS

OFFICE OF THE CORONER — MEDICAL EXAMINER

CORRIE L. MAY, M.D.

532 NORTH BROADWAY • WICHITA, KANSAS 67214-3585 • TELEPHONE (316) 263-2635

### **Testimony in Support of House Bill 2819 an Act amending K.S.A. 22-2902A**

Chairman O'Neal and Members of the House Judiciary Committee:

On December 22, 1995, the Board of Sedgwick County Commissioners opened the Sedgwick County Regional Forensic Science Center, the first facility of its kind in Kansas, incorporating the elements of a police crime laboratory with a modern autopsy suite, including body storage areas capable of meeting the daily needs of southern Kansas as well as a mass disaster involving multiple fatalities. Included in the Center are a large classroom for the enhanced education of law enforcement cadets, college and university students and medical graduates; a sterile tissue recovery suite for procuring transplantable tissues, a firing range and ballistics laboratory, expansion area for a proposed DNA laboratory, and facilities for analyzing postmortem specimens for drugs and poisons under the direction of a Ph.D. toxicologist.

Sedgwick County requests approval of HB 2819 to allow written reports from the forensic laboratories to be admissible into evidence of preliminary hearings in lieu of the testimony of the scientists and examiners who performed the analyses. Sedgwick County and the Regional Forensic Science Center will certainly be able to provide a qualified expert to the Court when called upon. The change we seek is primarily technical in nature, because current law provides that a copy of the report of a forensic examination performed by the Wichita Police Department, Kansas Bureau of Investigation, and other laboratories is admissible as evidence at preliminary examinations. What has changed is that the Regional Forensic Science Center is newly opened and will begin to provide some of these services. Because it is new, it is not yet listed in the law. This technical change is needed to continue to provide cost-effective forensic examinations in Sedgwick County and other counties who may request the services of the Center.

Corrie L. May, M.D.  
Coroner-Medical Examiner

House Judiciary  
2-23-96  
Attachment 44

Testimony for HB 2402  
Before the Judiciary Committee  
February 19, 1996

I am Melissa Boisen, Executive Director of Douglas County Court Appointed Special Advocates. I hold a Ph.D. from the University of Kansas in Developmental and Child Psychology. The majority of my graduate work focused on divorce issues and the effect divorce has on children. Having read the literature and through my work, personally witnessed the difficulties in post-divorce transitions, I am here to support House Bill 2402.

It is estimated that one third of all children under the age of 18 will experience the separation or divorce of a parent. Currently, more than one million children each year experience the divorce of their parents. As reflected in the research literature, the majority of divorcing couples are in conflict at the time of separation. On average, there is a 24 month post-separation adjustment. Although a majority of couples are able to resolve their conflicts within this time period, a significant proportion of divorced couples battle continuously for many years after the final divorce decree. Often in the midst of the battles are the children. Extreme, continuing conflict between divorced parents has been found in numerous studies to negatively influence both visitation arrangements and the child's sense of well being. For a child, parental conflict following a divorce has been shown to be associated with low self-esteem, depression, academic problems and overall poor post-divorce adjustment.

Following a divorce, parental conflict often surfaces during the exchange of children for visitation with the non-custodial parent. A local attorney recently informed me that each time one of his clients exchanges the children for visits with the non-custodial parent, the police are inevitably called to settle a dispute. After polling several attorneys in Douglas County, all reported to have at least 1-3 of these difficult cases annually. The need for a supervised visitation program as well as assistance while exchanging children for visits, were reiterated by these attorneys.

Child visitation and exchange centers offer two distinct advantages: First, the

centers would allow parents a safe and neutral location to exchange children for visitation with the non-custodial parent; thus, minimizing damaging parental conflict in front of the children. Secondly, by offering supervised visitation, many parents who might not have an opportunity to visit their children (because of the lack of individuals appropriate to supervise visits) would now be able to do so. In the past, courts have relied on relatives, SRS, or (for a generous fee) therapists to supervise visits. There have been occasions where no relative was available or willing and the non-custodial parent could not afford to visit his children at \$70-\$100.00 an hour. This particular parent that I speak of, did not see his children for nearly two years. He finally gave up on the battle and has not seen his two young daughters.

The research overwhelmingly supports the fact that children who are allowed consistent and regular contact with the non-custodial parent have far greater outcomes following a divorce than do children who have limited or no contact at all with the non-custodial parent. All children are entitled to "the right and privilege of getting to know, love, and respect both parents." In the best interests of children, I hope you will recommend HB 2402 favorable for passage.

TESTIMONY TO THE HOUSE JUDICIARY COMMITTEE  
Judiciary Civil Law Sub Committee

By the Office of Judicial Administration  
Kathy Kirk

February 19, 1996

**HB 2402**

Thank you for allowing the Office of Judicial Administration to testify today. We are opposed to HB 2402 for several reasons. The bill would mandate administration through OJA and has no stable funding mechanism to ensure adequate financial support for such an extensive program

This bill would require OJA to hire a coordinator to develop programs, create alliances with other entities, and provide a wide-scale educational program. In addition, the bill appears to contemplate community based centers. There are 110 courts in the state which would need access to physical space, volunteers, and community coordination. The initial fiscal impact is estimated to be \$600,000. The building of a uniform program with personnel in place would take several years.

The conceptual intent of this bill, protection of children and victims of domestic violence, is one which we endorse. However, at this time the Office of Judicial Administration is simply not equipped or funded adequately to administer this type of program.

The Office of Judicial Administration respectfully requests the committee not recommend this bill.

VAUGHN L. FLORA  
REPRESENTATIVE, 57TH DISTRICT  
431 WOODLAND AVE.  
TOPEKA, KANSAS 66607



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TOPEKA  
HOUSE OF  
REPRESENTATIVES

HB2751

Testimony Before The House Judiciary Committee

This bill would clarify for both landlords and tenants how tenant's abandoned property is to be treated. There was a Kansas Supreme Court decision Davis vs Odell which said that in cases of forcible detainer (an eviction) the tenants property might not be considered abandon.

This bill simply states that 5 days after the landlord has been awarded possession of the real estate by the court through the action of the Sheriff, the landlord could then go through the process outlined in the Landlord Tenant Act of storage, notification to the tenant and so on. There would be a finite time and process created so both the tenant and the landlord would be aware of how abandon property is to be treated in cases of forcible detainer. I would urge you to pass this bill to define a process for the landlord and tenant to go through so abandon property can be clearly delt with.

A handwritten signature in cursive script that reads "Vaughn L. Flora".

Vaughn L. Flora

My name is Patrick DeLapp. I am the President of Shawnee County Landlord Association. I would on the behalf of Shawnee County Landlord Association and myself, support HB2751 which concerns abandonment of property when a forcible detainer action has taken place.

A forcible detainer action in this case, after a court has ruled the tenant has no legal rights to occupy the dwelling. The court has told them to leave and they have not. So the sheriff is ordered out to put the owner or manager back in to possession of the dwelling.

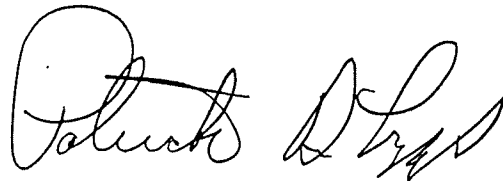
Presently, it is in limbo about what to do with the former tenant's belongings. Davis vs Odell, a case heard by the Kansas Supreme Court, ruled that a forcible detainer action "eviction" may not consider abandonment. What the court did not tell us is what we can do with the property. If it was abandoned we would know what to do with the property and that is:

- Hold property for a minimum of 30 days.
- Advertise in the newspaper at least 2 weeks before getting rid of the property..
- Send a clipping from the paper to the last know address of tenant.

The bill will clarify what to do with the property in forcible detainer. Some landlords in the past have held on to property for months. I myself have held property as long as 6 months. Other landlords have visited with me about what to do with property. And we have come up with a number of possible answers. All of which could have been challenged because the law is unclear.

Landlords are not interested in owning the tenants belongings. Most of the time the belongings have little to no value. Most of the time the cost to move and store property exceeds its value.

Please support this bill. It gives both tenants and landlord protection. Landlords know what to do with property in a forcible detainer and tenants know what to expect.

A handwritten signature in black ink, appearing to read "Patrick DeLapp". The signature is written in a cursive style with a large initial "P".





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Greater Topeka and  
Douglas County

## TESTIMONY REGARDING HB 2751

February 19, 1996

Before the House Judiciary Committee

Presenter: Marie Landry, Housing Division Manager

HCCI appreciates the opportunity to comment on HB 2751. The amendments on this bill address an important aspect of K.S.A. 58-2565. We support the amendment. In our opinion, it adequately balances the rights of landlords and tenants.

In our experience, landlords have not had a viable option for removing tenant's property when a tenant has been removed from the dwelling unit as a result of a forcible detainer action. We have suggested they use abandonment procedures to protect themselves from personal liability.

We do foresee the possibility that a question may arise regarding the landlord's right to charge storage fees during the 120 hour period after possession has been returned to the landlord. We suggest the following language be included at the end of section (d) to clarify the legislature's intent that no storage fees may be charged during this time:

**"No recoverable expenses may be accrued by the landlord during the 120 hours after the tenant is removed from the dwelling unit as a result of a forcible detainer action, pursuant to K.S.A. 61-2301, et seq."**

Thank you for your attention in addressing the needs of Kansas Landlords and Tenants.

House Judiciary  
2-23-96  
Attachment 49