Approved: May 23, 1996
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on March 13 , 1996 in Room 313-S of the Capitol.

All members were present except:
Representative Dee Yoh - Excused

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

Others attending: See attached list

Chairman O'Neal stated that the committee would work sub committee bills.

SB 408 - concerning garnishment; payments from inmates trust accounts (Attachments 1 & 2)

Chairman O'Neal explained that the sub committee recommended that the bill be passed and be placed on the consent calendar.

Representative Mays made a motion to report **SB 408** favorably for passage and be placed on the consent calendar. Representative Garner seconded the motion. The motion carried.

SB 299 - concerning crimes and punishment; relating to giving of worthless checks; providing for administrative handling costs of collection.

Chairman O'Neal stated that the sub committee recommended amending in the provision of **HB 3039** regarding the waiving of all or part of attorney fees and be passed as amended. (Attachment 3)

Representative Mays made a motion to adopt the sub committee recommendations. Representative Adkins seconded the motion. The motion carried.

Representative Garner stated that he was opposed to using county attorneys to recover a fee for threatening to prosecute for a worthless check. This is not a good policy to have.

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

SB 467 - concerning code of procedure for municipal courts; relating to possible dispositions, conditions of probation or suspension of sentence

Chairman O'Neal stated that the sub committee recommended this bill be passed

Representative Adkins made a motion to report **SB 467** favorably for passage. Representative Grant seconded the motion. The motion carried.

SB 498 - alcohol and drug evaluation required for open container violation

Chairman O'Neal stated that the sub committee recommended this bill be passed and placed on the consent calendar.

Representative Miller made a motion to report **SB 498** favorably for passage and placed on the consent calendar. Representative Adkins seconded the motion. The motion carried.

SB 509 - money laundering severity classification changed to drug severity level 4 felony (Attachments 4 & 5)

Chairman O'Neal stated that the sub committee recommended that this bill be passed.

Representative Adkins made a motion to report **SB 509** favorably for passage. Representative Pauls seconded the motion. The motion carried.

SB 511 - prosecution does not have to identify informant witness until the time such witness has to testify (Attachment 6)

Chairman O'Neal stated that the sub committee recommended that an amendment be placed on the bill that would make clear that the statute says that the prosecuting attorney shall provide a list of "any" witness, except if he is in danger, at the time of filing. (Attachment 7)

Representative Adkins made a motion to adopt the sub committee recommendations. Representative Grant seconded the motion. The motion carried.

Representative Ott made a motion to report **SB 511** favorably for passage, as amended. Representative Grant seconded the motion. The motion carried.

SB 585 - criminal procedure; reports and forms; reporting criminal information; period of suspension of sentence, probation and assignment to community corrections (Attachment 8)

Chairman O'Neal stated that the sub committee recommended that the journal entry show the last offense charged by the state. (Attachment 9)

Representative Adkins made a motion to adopt the sub committee report. Representative Garner seconded the motion. The motion carried.

Representative Garner made a motion to report **SB 585** favorably for passage, as amended. Representative Grant seconded the motion. The motion carried.

SB 673- escape and aggravated escape from custody to include juvenile offenders

Chairman O'Neal stated that the sub committee recommended amending in **HB 3020** which closes the loop hole for those who are age 18 and escape from a juvenile facility and also returning the bill to the original language. (Attachment 10)

Representative Grant made a motion to adopt the sub committee recommendations. Representative Ott seconded the motion. The motion carried.

Representative Adkins made a motion to amend in **SB 583** - criteria detention of juveniles in detention facilities. Representative Grant seconded the motion. The motion carried.

Representative Ott made a motion to report **SB 673** favorably for passage, as amended. Representative Adkins seconded the motion. The motion carried.

SB 674 - material witness, juvenile offender proceedings

Chairman O'Neal stated that the sub committee recommended this bill be passed.

Representative Adkins made a motion to report **SB 674** favorably for passage. Representative Standifer seconded the motion.

Representative Goodwin made a substitute motion that would provide that upon a violation of a protection from abuse order, the person shall be sentenced to 48 hours and shall not be allowed to post bond. Representative Ruff seconded the motion. The motion carried.

Representative Goodwin made a motion to report **SB 674** favorably for passage, as amended. Representative Ruff seconded the motion. The motion carried.

SB 497 - docket fees monies to protection from abuse fund and crime victims assistance fund made permanent (Attachments 11-13)

Vice Chairman Adkins stated that the sub committee recommended this bill be passed.

Representative Miller made a motion to report **SB 497** favorably for passage. Representative Goodwin seconded the motion.

Representative Adkins made a substitute motion to amend in section 1 of **HB 3026** and the provision of **HB 3037** - protection from abuse. Also, remove the increase of .50 from the current language in **SB 497**.

Representative Miller seconded the motion. The motion carried.

Representative Pugh was confused because there were several issues now in the bill. He made a motion to table the bill. Representative Nichols seconded the motion. The motion failed.

Representative Miller made a motion to report **SB 497** favorably for passage, as amended. Representative Goodwin seconded the motion. The motion carried.

Representative Snowbarger made a motion to remove **SB 299** - concerning crimes and punishments; relating to giving of worthless checks; from the table. Representative Adkins seconded the motion. The motion carried.

Representative Mays made a motion to report **SB 299** favorably for passage, as amended. Representative Grant seconded the motion.

Representative Pugh made a substitute motion on page 2, line 4 to change "may" to "shall". Representative Mays seconded the motion. The motion failed.

The motion to report **SB 299** favorably failed.

SB 515 - requirement for consent to marriage by judge eliminated for 16 and 17 year olds (Attachment 14)

Vice Chairman Adkins stated that the sub committee recommended an amendment on page 1, line 41, after guardian, insert "and the consent of the judge unless consent of both the mother and father andy any legal guardian or all the living parents and any legal guardian is given in which case the consent of the judge shall not be required."

Representative Miller made a motion to adopt the sub committee recommendations. Representative Standifer seconded the motion. The motion carried.

Representative Adkins made a motion to report **SB 515** favorably for passage, as amended. Representative Standifer seconded the motion. The motion carried.

SB 523 - statute of limitations relating to actions by corporations or associations against its officer or directors (Attachment 15)

Vice Chairman Adkins stated that the sub committee recommended this bill be tabled.

SB 530 - food donors liability (Attachment 16)

Vice Chairman Adkins stated that the sub committee recommended changing words "gross negligence" to "willful, wanton, or malicious".

Representative Miller made a motion to adopt the sub committee recommendations. Representative Ott seconded the motion.

Representative Nichols made a substitute motion to table the bill. Representative Howell seconded the motion. The motion failed.

The motion to adopt the sub committee recommendations carried.

Representative Adkins made a motion to report **SB 530** favorably for passage, as amended. Representative Mays seconded the motion. The motion carried. Representative Nichols requested he be recorded as voting no.

SB 584 - confidentiality of mediation proceedings (Attachment 17)

Vice Chairman Adkins stated that the sub committee recommended that this bill be passed.

Representative Mays made a motion to report **SB 584** favorably for passage. Representative Miller seconded the motion.

Representative Nichols made a substitute motion to table the bill. Representative Merritt seconded the motion. The motion failed.

The motion to report the bill carried.

SB 599 - kansas guardianship program, probate code section (Attachment 18)

Vice Chairman Adkins stated that the sub committee recommended this bill be passed.

Representative Miller made a motion to report **SB 599** favorably for passage and be placed on the consent calendar. Representative Adkins seconded the motion. The motion carried.

SB 619 - certain injuries n public cemeteries exempt from liability under the kansas tort claims act

Vice Chairman Adkins stated that the sub committee recommended that this bill be passed.

Representative Standifer made a motion to report **SB 619** favorably for passage and be placed on the consent calendar. Representative Ruff seconded the motion. The motion carried.

SB 676 - division of property matters in divorce (Attachment 19)

Vice Chairman Adkins stated that the sub committee recommended this bill be passed.

Representative Adkins made a motion to report **SB 676** favorably for passage. Representative Spangler seconded the motion. The motion carried.

The committee meeting adjourned at 5:45 p.m. The next meeting is scheduled for March 14, 1996.

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: 13 March 1996

NAME	REPRESENTING
Juliene MASKA	AG office.
Helen Stephens	KPOA / KSA
Kyle Smith	KBI
Jim Clark	KCPAA
Charles Hewon	KPOA
Chuck Stones	KBA
Wayne White	KLS
Jean Krahn	KS Gship Rog.
KARLA FRANCE	KAR
John Geer	KAR
Jean Duncan	KREC
Kelly Kultala	KTLA
KEITH R LEWIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Gene M. Gerard	KTLA
Terry Humphrey	KTLA
WEBB GALLOWAY	WICHITA AREA BUILDERS ASSN.
Janet STUBBS	KS. BUILDING INDUSTRY ASSN.
Howard Couch	KCA

STATE OF KANSAS

DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
Landon State Office Building
900 S.W. Jackson — Suite 400-N
Topeka, Kansas 66612-1284
(913) 296-3317

Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

DATE: March 5, 1996

TO: House Judiciary Committee/Criminal Law Subcommittee

FROM: Charles E. Simmons, Secretary

SUBJECT: SB 408

The Department of Corrections supports SB 408.

Senate Bill 408 was introduced by the Legislative Post Audit Committee in response to an audit of correctional facilities for FY 1994. That audit found that district courts were ordering garnishment payments from inmate trust accounts of very small amounts, as small as one cent. During the audit, the correctional facilities identified 67 garnishment payments of one dollar or less, with an average amount of 14 cents.

Pursuant to SB 408, K.S.A. 60-721 would be amended to provide that no payment shall be made from any inmate trust account pursuant to any order or judgment in any garnishment proceeding for any amount less than $5. Passage of this bill would eliminate the effort and costs associated with garnishing inmate trust accounts for small sums of money. The amount of costs eliminated cannot be estimated.

CES:TGM/nd

LEGISLATURE OF KANSAS
LEGISLATIVE DIVISION OF POST AUDIT

MERCANTILE BANK TOWER
800 SOUTHWEST JACKSON STREET, SUITE 1200
TOPEKA, KANSAS 66612-2212
TELEPHONE (913) 296-3792
FAX (913) 296-4482

February 13, 1996

Representative Mike O'Neal, Chair
House Judiciary Committee
Room 170-W, Statehouse
Topeka, Kansas 66612

Dear Representative O'Neal:

As you know, the Legislative Post Audit Committee has introduced legislation (SB 408) that, in brief, would not allow payments from inmate trust accounts (because of garnishment proceedings) for amounts less than $5. That bill has passed the Senate, and been referred to your Committee.

I'm writing to provide a bit a background on this issue. An audit we completed last year of the State's correctional facilities showed that many small payments were being made from inmate trust funds for garnishments. Many of these payments were for less than $1. Some were as small as a penny.

Our audit concluded that the cost of processing these payments--including the administrative costs for processing the garnishment documents--far exceeded the amounts of the payments.

To address this situation, the audit recommended that legislation be introduced setting a minimum amount for payment, with no payments to be made for amounts less than that minimum. SB 408 would implement the audit recommendation.

My staff or I would be happy to discuss this legislation with you or with other members of your Committee. If we can be of any assistance, please call us at 6-3792. We're available at your convenience.

Sincerely,

Barb Hinton

Barbara J. Hinton
Legislative Post Auditor

cc: Senator Lana Oleen, Chair
Representative Jim Lowther, Vice-Chair
Legislative Post Audit Committee

House Judiciary
3-13-96
Attachment 2

FINANCIAL AND COMPLIANCE AUDIT REPORT

OMBUDSMAN FOR CORRECTIONS
PAROLE BOARD
SENTENCING COMMISSION
EL DORADO CORRECTIONAL FACILITY
HUTCHINSON CORRECTIONAL FACILITY
LANSING CORRECTIONAL FACILITY
LARNED CORRECTIONAL MENTAL HEALTH FACILITY
NORTON CORRECTIONAL FACILITY
TOPEKA CORRECTIONAL FACILITY
WINFIELD CORRECTIONAL FACILITY

OBTAINING AUDIT INFORMATION

This audit was conducted by Randy Tongier, Financial-Compliance Audit Manager, and Tom Vittitow, Auditor, of the Division's staff. If you need any additional information about the audit's findings, please contact Mr. Tongier at the Division's offices.

The Cost to Process Many Garnishment Payments from Trust Funds Appeared to Far Exceed the Payments Themselves

While reviewing payments from inmate trust funds, we found that district courts were ordering garnishment payments from these inmate funds of very small amounts—as small as one cent.

Generally, a court will issue an order to a correctional facility to hold the assets of an inmate to satisfy a garnishment. In response, the correctional facility will identify the balance in the inmate's trust fund account, place a hold on that amount, and notify the court of the amount being held. The court may then order the correctional facility to pay these trust fund amounts to the plaintiff, usually through the plaintiff's attorney.

In reviewing trust fund payments, we noted several very small garnishment payments. To find out the extent of such payments, we asked the institutions to list for us all garnishment payments from inmate trust funds in the amount of one dollar or less. As the following table shows, the institutions identified 67 such payments. Those payments averaged 14 cents, and ranged from one cent to one dollar.

Court-Ordered Garnishment Payments
One Dollar or Less
Fiscal Year 1994

Correctional Facility	Number of Court Orders	Dollar Amount of Orders Total	Dollar Amount of Orders Average
El Dorado	26	$3.40	$.13
Ellsworth	14	1.28	.09
Hutchinson	13	.65	.05
Lansing (six month-period only)	14	3.83	.27
Total	**67**	**$9.16**	**$.14**

The court's actions in issuing these orders appear to follow those prescribed in State law (K.S.A. 60-714 *et seq.* and K.S.A. 61-2002 *et seq.*). However, the very small amount of money being paid out would appear to be totally disproportionate to the efforts and costs experienced by the plaintiff, the plaintiff's attorney, the court, and the correctional facility. Those efforts and costs would include correspondence, clerical time and costs, computer time, checks and other materials, and postage. Although we didn't attempt to estimate the costs involved, it is clear that those costs far exceeded the amounts paid out.

Recommendation

To ensure that the cost of garnisheeing inmate trust funds does not far exceed the amounts being paid out, the Legislature should revise State law to establish a minimum amount below which payment need not be made from inmate trust funds. Even a $5 minimum would have eliminated all the unnecessary processing efforts and costs identified in the 67 court orders discussed in this audit.

Session of 1995

SENATE BILL No. 299

By Committee on Judiciary

2-13

AN ACT concerning ~~crimes and punishment; relating to~~ giving a worthless check; ~~providing for administrative handling costs of collection;~~ amending K.S.A. ~~1994 Supp.~~ 21-3707 and repealing the existing ~~section~~ and K.S.A. 1995 Supp. 60-2610 sections; also repealing K.S.A. 60-2611

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

Section 1. ~~K.S.A. 1994 Supp. 21-3707 is hereby amended to read as~~ follows: 21-3707. (a) Giving a worthless check is the making, drawing, issuing or delivering or causing or directing the making, drawing, issuing or delivering of any check, order or draft on any bank, credit union, savings and loan association or depository for the payment of money or its equivalent with intent to defraud and knowing, at the time of the making, drawing, issuing or delivering of such check, order or draft, that the maker or drawer has no deposit in or credits with the drawee or has not sufficient funds in, or credits with, the drawee for the payment of such check, order or draft in full upon its presentation.

(b) In any prosecution against the maker or drawer of a check, order or draft payment, of which has been refused by the drawee on account of insufficient funds, the making, drawing, issuing or delivering of such check shall be prima facie evidence of intent to defraud and of knowledge of insufficient funds in, or on deposit with, the drawee unless the maker or drawer pays the holder thereof the amount due thereon and a service charge not exceeding $10 for each check, within seven days after notice has been given to the maker or drawer that such check, draft or order has not been paid by the drawee. As used in this section, "notice" includes oral or written notice to the person entitled thereto. Written notice shall be presumed to have been given when deposited as restricted matter in the United States mail, addressed to the person to be given notice at such person's address as it appears on such check, draft or order.

(c) *In addition to all other costs and fees allowed by law, each prosecuting attorney who takes any action under the provisions of this section may collect from the issuer in such action an administrative handling cost, except in cases filed in a court of appropriate jurisdiction. The cost shall not exceed $10 for each check. If the issuer of the check is convicted in* ~~district court, the administrative handling costs may be assessed as part~~

~~of the court costs in the matter. The moneys collected pursuant to this~~ *subsection shall be deposited into a trust fund which shall be administered by the board of county commissioners. The funds shall be expended only with the approval of the board of county commissioners, but may be used to help fund the normal operating expenses of the county or district attorney's office.*

(d) It shall be a defense to a prosecution under this section that the check, draft or order upon which such prosecution is based:

(1) Was postdated; or

(2) was given to a payee who had knowledge or had been informed, when the payee accepted such check, draft or order, that the maker did not have sufficient funds in the hands of the drawee to pay such check, draft or order upon presentation.

~~(d)~~ *(e)* (1) Giving a worthless check is a severity level 7, nonperson felony if the check, draft or order is drawn for $25,000 or more.

(2) Giving a worthless check is a severity level 9, nonperson felony if the check, draft or order is drawn for at least $500 but less than $25,000.

(3) Giving a worthless check is a class A nonperson misdemeanor if the check, draft or order is drawn for less than $500.

(4) Giving a worthless check, draft or order drawn for less than $500 is a severity level 9, nonperson felony if committed by a person who has, within five years immediately preceding commission of the crime, been ~~convicted of giving a worthless check two or more times.~~

Insert attached sections.

Sec. 2. K.S.A. ~~1994 Supp.~~ 21-3707 ~~is~~ hereby repealed.

and 60-2611 and K.S.A. 1995 Supp. 60-2610 are

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

3-2

K.S.A. 21-3707 is hereby amended to read as follows:

(a) Giving a worthless check is the making, drawing, issuing or delivering or causing or directing the making, drawing, issuing or delivering of any check, order or draft on any bank, credit union, savings and loan association or depository for the payment of money or its equivalent with intent to defraud and knowing, at the time of the making, drawing, issuing or delivering of such check, order or draft, that the maker or drawer has no deposit in or credits with the drawee or has not sufficient funds in, or credits with, the drawee for the payment of such check, order or draft in full upon its presentation.

(b) In any prosecution against the maker or drawer of a check, order or draft payment, of which has been refused by the drawee on account of insufficient funds, the making, drawing, issuing or delivering of such check shall be prima facie evidence of intent to defraud and of knowledge of insufficient funds in, or on deposit with, the drawee: (1) Unless the maker or drawer pays the holder thereof the amount due thereon and a service charge not exceeding $10 for each check, within seven days after notice has been given to the maker or drawer that such check, draft or order has not been paid by the drawee. As used in this section, "notice" includes oral or written notice to the person entitled thereto. Written notice shall be presumed to have been given when deposited as restricted matter in the United States mail, addressed to the person to be given notice at such person's address as it appears on such check, draft or order; or (2) if a postdated date is placed on the check, order or draft without the knowledge or consent of the payee.

(c) It shall not be a defense to a prosecution under this section that the check, draft or order upon which such prosecution is based:

(1) Was postdated, unless such check, draft or order was presented for payment prior to the postdated date; or

(2) was given to a payee who had knowledge or had been informed, when the payee accepted such check, draft or order, that the maker did not have sufficient funds in the hands of the

drawee to pay such check, draft or order upon presentation, unless such check, draft or order was presented for payment prior to the date the maker informed the payee there would be sufficient funds.

(d) (1) Giving a worthless check is a severity level 7, nonperson felony if the check, draft or order is drawn for $25,000 or more.

(2) Giving a worthless check is a severity level 9, nonperson felony if the check, draft or order is drawn for at least $500 but less than $25,000.

(3) Giving a worthless check is a class A nonperson misdemeanor if the check, draft or order is drawn for less than $500.

(4) Giving a worthless check, draft or order drawn for less than $500 is a severity level 9, nonperson felony if committed by a person who has, within five years immediately preceding commission of the crime, been convicted of giving a worthless check two or more times.

(c) In addition to all other costs and fees allowed by law, each prosecuting attorney who takes any action under the provisions of this section may collect from the issuer in such action an administrative handling cost, except in cases filed in a court of appropriate jurisdiction. The cost shall not exceed $10 for each check. If the issuer of the check is convicted in district court, the administrative handling costs may be assessed as part of the court costs in the matter. The moneys collected pursuant to this subsection shall be deposited into a trust fund which shall be administered by the board of county commissioners. The funds shall be expended only with the approval of the board of county commissioners, but may be used to help fund the normal operating expenses of the county or district attorney's office.

Sec. 2. K.S.A. 1995 Supp. 60-2610 is hereby amended to read as follows: 60-2610. (a) If a person gives a worthless check, as defined by

subsection (g), the person shall be liable to the holder of the check for the amount of the check, the incurred court costs, the costs of restricted mail and the service charge and the costs of collection, including but not limited to reasonable attorney fees, plus an amount equal to the greater of the following:

(1) Damages equal to three times the amount of the check but not exceeding the amount of the check by more than $500; or

(2) $100.

~~The court may waive all or part of the attorney fees provided for by this subsection, if the court finds that the damages and other amounts awarded are sufficient to adequately compensate the holder of the check.~~

(b) The amounts specified by subsection (a) shall be recoverable in a civil action brought by or on behalf of the holder of the check only if: (1) Not less than ~~14~~ *30* days before filing the action, the holder of the check made written demand on the maker or drawer for payment of the amount of the check, the incurred service charge and the costs of restricted mail; and (2) the maker or drawer failed to tender to the holder, prior to the filing of the action, an amount not less than the amount demanded. The written demand shall be sent by restricted mail, as defined by subsection (g), to the person to be given notice at such person's address as it appears on such check, draft or order or to the last known address of the maker or drawer and shall include notice that, if the money is not paid within ~~14~~ *30* days, triple damages in addition to an amount of money equal to the sum of the amount of the check, the incurred court costs, service charge, costs of restricted mail and the costs of collection including but not limited to reasonable attorney fees ~~unless the court otherwise orders~~, may be incurred by the maker or drawer of the check.

may be incurred by the maker or drawer of the check.

(c) Subsequent to the filing of an action under this section but prior to the hearing of the court, the defendant may tender to the plaintiff as satisfaction of the claim, an amount of money equal to the sum of the amount of the check, the incurred court costs, service charge, costs of restricted mail and the costs of collection, including but not limited to reasonable attorney fees. ~~The court may waive all or part of the attorney fees provided for by this subsection, if the court finds that the damages and other amounts awarded are sufficient to adequately compensate the holder of the check.~~

(d) If the trier of fact, *from evidence presented by the defendant at a hearing requested by the defendant,* determines that the failure of the defendant to satisfy the dishonored check was due to economic hardship, the court may waive all or part of the damages provided for by this section, but the court shall render judgment against defendant for not less than the amount of the dishonored check, the incurred court costs, service charge, costs of restricted mail and the costs of collection, including but not limited to reasonable attorney fees, unless otherwise provided in this subsection. ~~The court may waive all or part of the attorney fees provided for by this subsection, if the court finds that the damages and other amounts awarded are sufficient to adequately compensate the holder of the check.~~

(e) Any amount previously paid as restitution or reparations to the holder of the check by its maker or drawer shall be credited against the amount for which the maker or drawer is liable under subsection (a).

(f) Conviction of giving a worthless check or habitually giving a worthless check, as defined by K.S.A. 21-3707 and 21-3708 and amendments

section.

(g) As used in this section:

(1) ``Giving a worthless check" means the making, drawing, issuing or delivering or causing or directing the making, drawing, issuing or delivering of any check, order or draft on any bank, credit union, savings and loan association or depository for the payment of money or its equivalent~~:~~.

~~(A) With intent to defraud or in payment for a preexisting debt; and~~

~~(B)~~ which is dishonored by the drawee because the maker or drawer had no deposits in or credits with the drawee or has not sufficient funds in, or credits with, the drawee for the payment of such check, order or draft in full upon its presentation.

(2) ``Restricted mail" means mail which carries on its face the endorsements ``restricted mail" and ``deliver to addressee only."

(3) ``Service charge" means $10, or subject to limitations contained in this subsection, if a larger amount is posted conspicuously, the larger amount. In no event shall the amount of such insufficient check service charge exceed $30.

RENUMBER REMAINING SECTIONS ACCORDINGLY.

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

LARRY WELCH
DIRECTOR

CARLA J. STOVALL
ATTORNEY GENERAL

TESTIMONY
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
BEFORE THE HOUSE JUDICIARY SUB-COMMITTEE
IN SUPPORT OF SENATE BILL 509
March 5, 1996

Chairman O'Neal and Members of the Committee:

It is a pleasure to appear today in support of Senate Bill 509. Technically, this bill amends the Kansas money laundering statute, but in a very real sense it merely repairs it.

In 1992, the Kansas legislature passed a statute prohibiting the laundering of drug money as a level C felony with a minimum sentence of 3-5 years, a maximum of 10-20 years in the state penal system. The penalty was much higher than other financial crimes, as this is a drug trafficking crime; it applies only to proceeds from violations of the Uniform Controlled Substances Act. However, in the following years the sentencing guidelines were passed and then the penalty for this crime was reduced to a level 7 non-person felony. If a defendant has no record it means a sentence of less than a year and is presumptive probation for the first seven categories. Indeed, you would need more than three prior non-person felonies on a defendant's record to reach presumptive incarceration.

This bill would re-classify this offense as a level 4 drug grid felony, which while still presumptive probation and only 10-12 months for someone with no record, would provide for presumptive incarceration for persons with more than one non-person felony. This is actually a reduction in sentence for a person with no record, but would be enhanced sentence for other offenders.

I requested this bill at the suggestion of Trego County Attorney Bernie Giefer. Mr. Giefer's testimony illustrates how current penalties would appear to be totally inadequate if we are serious about

1620 TYLER TOPEKA, KANSAS 66612
(913) 296-8200 FAX: 296-6781

fighting drug dealers.

I would like to note that money launderers are in a unique situation within drug organizations. Unlike the mere "mule" carrying the dope, a money launderer will frequently know the entire organization, how it operates and the heads of the organization. Further, they may be involved with several different networks, not just work for one organization. Given those facts, they are a very desirable target for a criminal investigation to try to focus on. If we can turn a money launderer we can take down an entire organization, not just remove one or two replaceable members. However, to get a money launderer to see the advisability of cooperating with the government against his frequently violent associates, it is necessary and appropriate that there be sufficient penalties to provide incentive. Persons who are this deeply involved in a drug distribution organization deserve a felony record. If they cooperate, or if they have no record, probation is fine. However, without the potential for prison being somewhat real, the opportunity to gain their cooperation is lost.

I don't believe this will have a major impact on our prison over-crowding situation as there are, unfortunately, a very limited number of money laundering cases discovered each year, only two or three. Most go federal, and as mentioned, we try to turn them into witnesses through plea bargains. However, passage would repair this tool against drug dealers and make it more effective. Thank you for your attention and I would be happy to stand for questions.

STATE OF KANSAS
OFFICE OF THE TREGO COUNTY ATTORNEY
207 North Main Street
P.O. Box 264
WaKeeney, Kansas 67672

Bernard T. Giefer
Trego County Attorney

Telephone: (913) 743-5458
Facsimile: (913) 743-5388

TESTIMONY PRESENTED ON BEHALF OF BERNARD T. GIEFER, TREGO COUNTY ATTORNEY, BEFORE THE SENATE JUDICIARY COMMITTEE ON FEBRUARY 8, 1996, IN SUPPORT OF SENATE BILL 509

Chairman Emert and Members of the Committee,

I am pleased to have the opportunity to present this testimony to the Senate Judiciary Committee regarding a proposed change in the classification of a violation of K.S.A. 65-4142 from a severity level 7, nonperson felony, to a drug level 4 felony. I regret that I cannot deliver this testimony personally, but I had a conflicting court proceeding on a pending drug case that I could not reschedule.

On October 30, 1995, a Trego County jury convicted a person involved in the transportation of $813,786.00 of drug proceeds - the largest drug related cash seizure in the history of the State of Kansas. The conviction was the result of the coordinated efforts between the Trego County Attorney's Office and the Kansas Highway Patrol that have led to numerous drug or drug related interdiction cases in Trego County over the last year and a half.

A brief factual background of this case: The cash discovered was divided among two bags. In one small bag, approximately $14,000.00 of cash was discovered in bundles of $1 and $5 bills. In a suitcase, the balance of the cash was discovered in bundles of currency, separated by denomination, in $100, $50, $20, $10, $5, $1 denominations. A canine alert and other circumstances about the defendant's "trip" were the link between the currency and its drug tainted past.

House Judiciary
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Attachment 5

Needless to say, $813,786.00 is the proceeds from a substantial quantity of illegal narcotics or drugs. While a person convicted of possessing illegal narcotics and drugs with the intent to sell, deliver, or distribute, faces mandatory jail time under the Kansas Sentencing Guidelines Act, such is not currently the case with respect to transporting proceeds of the sale of illegal narcotics or drugs. K.S.A. 65-4142 is classified as a severity level 7, nonperson felony; for whatever reason, the statute is not even listed as a drug offense. Prior to sentencing, I did file a Motion for Upward Departure, in which I converted $813,786.00 into illegal narcotic or drug quantities based upon "typical" prices in the Kansas City market. The particular illegal narcotic or drugs chosen were the seven drugs that the canine utilized at the stop was trained to detect. I enclose a copy of the Motion for Upward Departure that was filed with the court. The quantities of illegal narcotics or drugs is substantial. In this particular case, the District Judge refused to grant the Motion for Upward Departure, and sentenced McGrath strictly in accordance with the sentencing guidelines act. Therefore, the defendant was sentenced to twelve months in the state penitentiary, which was suspended in lieu of 24 months probation. In arguing for an upward departure, I suggested to the District Court that if an upward departure was not to be granted, that the defendant at least be placed with community corrections for a term of probation, preferably five years. Not only did the District Court deny the Motion for an Upward Departure, but it also denied the State's attempt to have the defendant placed on supervised probation. The defendant is now residing in California on 24 months unsupervised probation. I strongly question the deterrent effect of the conviction, considering the defendant was not even required to pay a fine.

My concern with the current classification of K.S.A. 65-4142 is that we do not have consistent penalties for those who actually possess the drugs as compared to those who possess the proceeds from the sales of those drugs. It is not atypical that a drug dealer will hire persons (called "mules" in the trade) who happen to be down on their luck and are willing to take a chance to be a drug runner in return for a substantial payment; on the other hand, drug dealers are not so willing to entrust currency with just anyone, and it is not uncommon that the currency is collected and transported by those persons that are well connected to the drug distribution "cartel." I actually think that a person convicted of transporting drug proceeds should be dealt with harsher than a person who is caught transporting the illegal narcotics or drugs, but the proposed reclassification of K.S.A. 65-4142 will at least bring the penalty more in line with the severity of the crime.

We in Trego County are committed to doing whatever it takes to stem the flow of illegal narcotics and drugs. I enclose a synopsis of drug interdiction in Trego County for the period July 1, 1994 to June 30, 1995. I want to especially thank the close cooperation and support received from the Attorney General's Office, and particularly Assistant Attorney General Kyle Smith. Those of us who are down in the "trenches" need every bit of help that we can get, and the efforts of Kyle Smith have been very critical to the continued success of

the criminal interdiction program in Trego County, and have certainly been very much appreciated by myself.

I urge this committee to report this bill to the full Senate with a strong and favorable recommendation.

Sincerely,

TREGO COUNTY ATTORNEY

Bernard T. Giefer

Bernard T. Giefer

BTG:sn

IN THE DISTRICT COURT OF TREGO COUNTY, KANSAS

THE STATE OF KANSAS, *Plaintiff,*	)	
v.	)	Case No. 95-CR-5
MARSI J. MCGRATH, *Defendant.*	)	

MOTION FOR UPWARD DEPARTURE

The State of Kansas, by Bernard T. Giefer, pursuant to K.S.A. 21-4716, moves the Court for an upward departure from the presumptive sentence provided by the sentencing guidelines, K.S.A. 21-4701 *et seq.*

In support of this Motion, the State of Kansas alleges as follows:

1. In this case, evidence was admitted at trial that a dog trained to detect the presence of illegal narcotics and drugs alerted to the presence of illegal narcotics or drugs.

2. Evidence admitted at trial was that the dog, Canine Trooper, had been trained to detect the following illegal narcotics or drugs:

a. Marijuana.

b. Cocaine.

c. Crack cocaine.

d. Methamphetamine.

e. Opium.

f. Hashish.

g. Heroine.

3. The street value of the above illegal narcotice or drugs (based upon typical prices in Kansas City) is:

a.	Marijuana:	$1,000.00 per pound
b.	Cocaine:	$15,000.00 per pound
c.	Crack cocaine:	$12,000.00 per pound
d.	Methamphetamine:	$26,000.00 per pound
e.	Opium:	$40,000.00 per pound
f.	Hashish:	$4,000.00 per pound
g.	Heroine:	$40,000.00 per pound

4. Based upon the street value of the above illegal narcotics or drugs, $813,786 would be derived from the sale of the following amount of the stated illegal narcotic or drug:

a.	Marijuana.	813.79 pounds
b.	Cocaine	54.25 pounds
c.	Crack cocaine	67.82 pounds
d.	Methamphetamine	31.30 pounds
e.	Opium	20.34 pounds
f.	Hashish	203.45 pounds
g.	Heroine	20.34 pounds

5. Had the convicted charge been categorized a drug crime, an agravating factor considered a substantial and compelling reason for upward sentencing departure, pursuant to K.S.A. 21-4717(a)(1), would be that "[t]he crime was comitted as part of a major organized drug . . . delivery activity" a factor of which, pursuant to K.S.A. 21-4717(a)(1)(A), would be that "[t]he offender derived a substantial amount of money . . from the illegal drug sale activity."

Therefore, the State of Kansas contends that there are aggravating factors present in this case that are substantial and compelling reasons to impose an upward departure from the sentencing guidelines; under the facts of this case, probation is inappropriate.

Bernard T. Giefer
TREGO COUNTY ATTORNEY
207 N. Main
P.O. Box 264
WaKeeney, Kansas 67672
(913) 743-5458

NOTICE OF HEARING

PLEASE TAKE NOTICE that the hearing in the above referenced matter will be heard in the District Courtroom of the Trego County Courthouse, on January 9, 1996 at 1:00 p.m. or as soon thereafter as the same may be heard.

Bernard T. Giefer
TREGO COUNTY ATTORNEY
207 N. Main
P.O. Box 264
WaKeeney, Kansas 67672
(913) 743-5458

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing Motion for Upward Departure and Notice of Hearing was served by facsimile transmission to the person and at the number stated below. That the transmission was reported as complete and without error and that the facsimile machine complies with Supreme Court Rule 119(b)(3).

Steven P. Flood
P.O. Box 998
Hays, Kansas 67601
FAX NO. 913-625-2434

Clerk of the District Court
Trego County Courthouse
WaKeeney, Kansas 67672
FAX NO. 913-743-2726

on this 5th day of January, 1996.

Bernard T. Giefer
TREGO COUNTY ATTORNEY
207 N. Main
P.O. Box 264
WaKeeney, Kansas 67672
(913) 743-5458

STATE OF KANSAS
OFFICE OF THE TREGO COUNTY ATTORNEY
207 North Main Street
P.O. Box 264
WaKeeney, Kansas 67672

Bernard T. Giefer
Trego County Attorney

Telephone: (913) 743-5458
Facsimile: (913) 743-5388

February 6, 1996

THE WAR ON DRUGS IN TREGO COUNTY

July 1, 1994 through June 30, 1995

The war on drugs came in earnest to Trego County in 1994. All tolled, 1,668 pounds of marijuana, 1,869 pounds of cocaine, 4 pounds of methamphetamine, 3 pounds of crack cocaine, $1,076,430 dollars in cash, and other items were seized in Trego County between July 1, 1994, and June 30, 1995. These seizures are but one aspect of a coordinated effort between the office of the Trego County Attorney and the Kansas Highway Patrol.

Trego County is well suited for deployment of the Kansas Highway Patrol's criminal interdiction unit. Interstate 70 is a known drug pipeline for persons transporting cocaine, marijuana, and other illegal narcotics to distribution points in the larger metropolitan centers of the eastern United States. It is believed that most marijuana transported into this country originates in Mexico, and that most cocaine that is distributed in the United States originates in Columbia. The thinly populated areas of western Kansas lends itself to a successful criminal interdiction program because of lessened traffic density and fewer primary routes of travel, as contrasted with larger metropolitan areas. Criminal interdiction on the traffic ways in the State of Kansas is premised upon vigorous traffic enforcement followed by thorough investigation. Drug interdiction is typically successful because of specially trained law enforcement personnel such as those in the Kansas Highway Patrol criminal interdiction unit and the utilization of other investigatory tools suited, in general, for the broader criminal interdiction program.

The drug interdiction effort in Trego County began in earnest with the arrest on April 18, 1993, of Jose Valenzuela. The evidentiary admissibility of the 58 pounds of marijuana seized in that stop was suppressed by the District Court of Trego County. Though the Trego County Attorney unsuccessfully appealed that suppression order to the Kansas Supreme Court and to the United States Supreme Court, it signaled the beginning of Trego County's willingness to step up the war on illegal drugs. A summation of all drug related arrests in Trego County between July 1, 1994 and June 30, 1995 is as follows:

TREGO COUNTY DRUG OR DRUG RELATED INTERDICTION
JULY 1, 1994 - JUNE 30, 1995

State (S)/Federal (F) Adoption	Date	Item Seized	Persons Detained
F	07/10/94	45 lbs. cocaine	Clark, Williams
	*Result of Controlled Delivery: 11 additional arrests - $190,000.00 seized + 20 KG Coke Houston		
S	07/29/94	108 lbs. marijuana $450.00 cash	Walkowski
F	07/22/94	600 lbs. marijuana	Madrid, Perez
F/S	07/27/94	21 lbs. marijuana 3 lbs. crack $1,050.00 cash 1986 Ford Taurus	Oldfield
S	08-14-94	2 lbs. methamphetamine	McCandless
F	08/22/94	232 lbs. cocaine	Guzman
	*Result of Controlled Delivery: 1 additional arrest (NY)		
S	09/09/94	$7,000.00 cash	Jenkins
F	09/13/94	112 lbs.cocaine	Renault
F/S	10/__/94	18 lbs. cocaine	McCray, McCray

State (S)/Federal (F) Adoption	Date	Item Seized	Persons Detained
F	10/24/94	67 lbs. cocaine	Bonsall, Gonzales
	*Result of Controlled Delivery: 1 additional arrest (PA)		
F	11/29/94	$36,000.00 cash	Robles, Caballero
F/S	11/02/94	107 lbs. marijuana 1989 Ford Pickup Miscellaneous Property	Robles
F	11/22/94	20 lbs. cocaine	
	*Result of Controlled Delivery: 1 additional arrest (OH)		
F/S	12/08/94	340 lbs. marijuana $879.00 cash Miscellaneous Property	Boisvert
	*Result of Controlled Delivery: 2 additional arrests (NH)		
F/S	12/10/94	472 lbs. cocaine $123.00 cash 1980 Chevrolet Pickup	Toro
F/S	02/09/95	$813,786.00 cash	McGrath, Jimenez
F/S	02/27/95	$190,000.00 cash 1989 Chevy Pickup	Brancart
S	02/05/95	20 lbs. marijuana	Bock, Jack
F/S	02/06/95	94 lbs. cocaine $2,046.00 cash	Cook, Walker
S	02-19-95	17 lbs. marijuana 1980 Cadillac Miscellaneous Property	Acuna, Rodriguez, Munoz

State (S)/Federal (F) Adoption	Date	Item Seized	Persons Detained
F	02/25/95	441 lbs. cocaine	Recko
F/S	03/31/95	2 lbs. methamphetamine $610.00 cash	Wood
S	03/15/95	154 lbs marijuana	Whitehead, Gilman
	*Result of Controlled Delivery: 4 additional arrests (TN) + $13,000.00 cash		
S	5/14/95	$24,000.00 cash	Crohan
S	05/03/95	120 lbs. marijuana 1983 Buick Century	Chapman
F/S	05/23/95	368 lbs. cocaine 1988 Chevrolet Suburban Miscellaneous Property	Nelson, Peppers
	*Result of Controlled Delivery: 6 additional arrests (NY) - warehouse in LA identified. - ½ KG heroin in Chicago seized		
S	05-29-95	57 lbs. marijuana 1978 Lanier Motor Home $486.00 cash Miscellaneous Property	Mota, Dominguez
S	06/17/95	124 lbs. marijuana	Peet

The Trego County Attorney is committed to the societal war on drugs. The devastating impact of drugs on the health of individuals, the huge financial losses suffered nationwide by crime that is directly attributable to the drug trade, and the paralyzing fear of escalating drug induced violence demands nothing less.

If you have any questions about the criminal interdiction program in Trego County, please contact me.

Bernard T. Giefer
TREGO COUNTY ATTORNEY
P.O. Box 264
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(913) 743-5458

BTG:dh

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

LARRY WELCH
DIRECTOR

CARLA J. STOVALL
ATTORNEY GENERAL

TESTIMONY
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
BEFORE THE HOUSE JUDICIARY SUB-COMMITTEE
IN SUPPORT OF SENATE BILL 511
MARCH 5, 1996

Chairman O'Neal and Members of the Committee:

I am pleased to appear on behalf of Senate Bill 511, which I view as an effective anti-gang legislation with no fiscal note.

Prosecutors and law enforcement officers throughout Kansas would love to see this legislature fund a witness protection program modeled after the federal system. In dealing with violent street gangs and indeed a number of violent criminals, it is becoming increasingly difficult to get even good-intentioned citizens to come forward and testify given the risk of repercussions by either the defendants out on bond or gang members and associates. It would be nice to be able to offer these people the opportunity to be set up in another community, under another identity, with a new home and job. Such legislation has been requested in the past by both the Attorney General's Office, the County and District Attorneys Association, and other law enforcement agencies. However, the fiscal note has always prevented it from being passed.

SB 511 attacks this problem in another way. Statutorily, witnesses must be endorsed on the complaint. Constitutionally a defendant must have the right to confront and cross-examine the witness which means identification. The time frame as to when this information is revealed, however, is <u>not</u> constitutionally mandated as long as the defendant is given the adequate opportunity to prepare for trial. *U.S. v. Pennick*, 500 F.2d 184 (10th Cir. 1974).

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3-13-96
Attachment 6

1620 TYLER TOPEKA, KANSAS 66612
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SB 511 provides that when an informant is going to be used to testify and the county attorney has reason to believe the witness is in danger if immediately identified, then the identifiers of that informant/witness may be withheld until the witness actually testifies, normally at preliminary hearing. Once a person's testimony is preserved in the preliminary hearing transcript it can be used at trial if the witness disappears or is killed. The incentive for a defendant or his associates to intimidate or kill a witness is removed.

As a practical matter I don't expect this to be utilized often as cross-examination may necessitate delays for a defendant to receive and investigate the identifying information requested.

However, there are cases where if we are not given the means to protect a witness' identity until the testimony is preserved, those witnesses will not be available for trial and violent criminals will go free. The KBI was involved in a case here in Topeka where the evening before the preliminary hearing twenty-three 9mm bullets were fired into the front of the apartment of one of our informants while he was sleeping. That witness still testified, but you can understand how your average citizen or witness may decide that kind of message is hard to ignore.

Ron Wurtz, representing the criminal defense attorneys made two suggestions which were adopted on the Senate side: the definition was clarified and made self-contained within the bill, and a limitation was included that the protection only extends to arraignment unless there is a hearing first with an opportunity for the defense to be heard.

The bottom line is that SB 511 does not affect a defendant's rights other than as to the time which information is provided. In exchange for this inconvenience, we will be able to offer witnesses, in the appropriate case, some modicum of protection by assuring their anonymity until they testify at preliminary hearing. Thank you.

As Amended by Senate Committee

Session of 1996

SENATE BILL No. 511

By Committee on Judiciary

1-23

AN ACT concerning criminal procedure; relating to identification of informants; amending K.S.A. 22-3201 and repealing the existing section.

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

Section 1. K.S.A. 22-3201 is hereby amended to read as follows: 22-3201. (a) Prosecutions in the district court shall be upon complaint, indictment or information.

(b) The complaint, information or indictment shall be a plain and concise written statement of the essential facts constituting the crime charged, which complaint, information or indictment, drawn in the language of the statute, shall be deemed sufficient. The precise time of the commission of an offense need not be stated in the indictment or information; but it is sufficient if shown to have been within the statute of limitations, except where the time is an indispensable ingredient in the offense. An indictment shall be signed by the presiding juror of the grand jury. An information shall be signed by the county attorney, the attorney general or any legally appointed assistant or deputy of either. A complaint shall be signed by some person with knowledge of the facts. Allegations made in one count may be incorporated by reference in another count. The complaint, information or indictment shall state for each count the official or customary citation of the statute, rule and regulation or other provision of law which the defendant is alleged to have violated. Error in the citation or its omission shall be not ground for dismissal of the complaint, information or indictment or for reversal of a conviction if the error or omission did not prejudice the defendant.

(c) When relevant, the complaint, information or indictment shall also allege facts sufficient to constitute a crime or specific crime subcategory in the crime seriousness scale.

(d) The court may strike surplusage from the complaint, information or indictment.

(e) The court may permit a complaint or information to be amended at any time before verdict or finding if no additional or different crime is charged and if substantial rights of the defendant are not prejudiced.

(f) When a complaint, information or indictment charges a crime but

fails to specify the particulars of the crime sufficiently to enable the defendant to prepare a defense the court may, on written motion of the defendant, require the prosecuting attorney to furnish the defendant with a bill of particulars. At the trial the state's evidence shall be confined to the particulars of the bill.

(g) *Except as otherwise provided,* the prosecuting attorney shall endorse the names of all witnesses known to the prosecuting attorney upon the complaint, information and indictment at the time of filing it. The prosecuting attorney may endorse on it the names of other witnesses that may afterward become known to the prosecuting attorney, at times that the court may by rule or otherwise prescribe. *If* ~~*the*~~ *witness* ***is*** *to testify* ~~*is an informer as described in K.S.A. 60-436 and amendments thereto*~~ ***and the prosecuting attorney believes the witness who has provided information is in danger of intimidation or retaliation,*** *the prosecuting attorney may delay identifying such informant witness until such informant witness actually testifies* ***but in no event shall identification of a witness be delayed beyond arraignment without further order of the court after hearing and an opportunity of the defendant to be heard.***

Except as otherwise provided,

any

Sec. 2. K.S.A. 22-3201 is hereby repealed.

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

7-2

State of Kansas

KANSAS SENTENCING COMMISSION

HOUSE JUDICIARY CRIMINAL LAW SUBCOMMITTEE

Testimony Regarding SB 585

March 6, 1996

Among the mandatory duties assigned to the Kansas Sentencing Commission under K.S.A. 74-9101 is to make recommendations relating to modification and improvement of the sentencing guidelines. In carrying out this duty, a bill proposal was introduced by the Commission to the Senate Judiciary Committee, which resulted in Senate Bill 585. SB 585 was passed favorably as amended by the Senate Judiciary Committee on February 21, 1996. I am here today to ask that SB 585 be passed favorably by this Committee. The Commission believes that the modifications to the sentencing guidelines as proposed in SB 585 improve the guidelines considerably, and are essential to efficient and effective evaluation of guidelines sentences.

SB 585 contains various amendments to the sentencing guidelines act and to sentencing guidelines procedures, which are intended to remove potential conflicts between provisions, and to improve generally the reporting and monitoring of cases under the sentencing guidelines.

Section 1 of SB 585 amends K.S.A. 21-4611, which sets forth terms of probation or assignment to community corrections. There is currently a conflict between the language in subsection (a) stating, "In no event shall the total period of probation, suspension of sentence or assignment to community corrections for a felony exceed the greatest maximum term provided by law for the crime,..." and the periods of probation for guidelines sentences set forth in subsection (c). The intent of the amendment to subsection (a) is to remove this conflict from the statute, and to make clear that the provisions in subsection (a) in regard to probation terms in felony cases apply to felonies committed prior to July 1, 1993, while subsection (c) applies to felonies committed on or after July 1, 1993.

Sections 2, 3 and 4 of the bill amend K.S.A. 21-4714 dealing with presentence investigation reports in felony cases under the sentencing guidelines, K.S.A.. 22-3426 dealing with journal entries in felony cases under the guidelines, and K.S.A. 22-3426a dealing with journal entries of revocation under the guidelines. Specifically, the amendments remove all mandated forms from these statutes, and replace them with language stating that the presentence investigation report, journal entry, and journal entry of revocation shall be on a form approved by the Kansas sentencing commission.

Under K.S.A. 1995 Supp. 74-9101(b)(5), the sentencing commission is required to "receive presentence reports and journal entries for all persons who are sentenced for crimes committed on or after July 1, 1993, to develop post-implementation monitoring procedures and

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reporting methods to evaluate guidelines sentences." The forms currently mandated were intended to encompass the necessary information to facilitate data entry, in order to carry out the commission's duties in this regard. However, the currently mandated forms have proved to impede rather than facilitate effective monitoring and reporting procedures. With respect to the journal entry form, for example, based upon feedback from preparers of guidelines journal entries it is clear that the current form, consisting of at least eight pages, is both confusing and cumbersome.

The impetus for the amendments came from responses to a questionnaire sent by the sentencing commission to all 105 county/district attorneys in the state in November, 1995. The questionnaire solicited feedback regarding the guidelines journal entry form. The responses to the questionnaire were consistent in the belief that the current form is too long, too cumbersome and too confusing, and asks for much irrelevant information. The consensus from county/district attorneys, and many others, is that the journal entry form can be and should be changed.

The sentencing commission believes that the presentence investigation form and the journal entry forms should be in a format which not only contains the required reporting information, but which is shorter and easy to complete. As an information resource for criminal justice agency personnel regarding the sentencing guidelines system, the commission routinely receives queries about the forms and how to fill them out. Therefore, the commission has the necessary expertise to identify problems with the forms and to revise the forms as necessary to make them more user-friendly, and to accommodate substantive changes to the guidelines.

Finally, SB 585 sets forth New Section 5, the purpose of which is to consolidate into one statute several provisions now under separate statutes (see K.S.A. 21-4714(h), K.S.A. 22-3426(g) and (h), and K.S.A. 22-3426a(d) and (e)) requiring courts to forward certain information to the Kansas Sentencing Commission or the Kansas Bureau of investigation, so that any confusion about exactly what information is to be sent to which agency will be avoided. A more specific purpose of the new section is to avoid the impediments to timely and effective monitoring of the sentencing guidelines which have resulted from journal entries and presentence investigation reports being sent separately to the sentencing commission, albeit in accordance with the current statutory scheme. Due to the volume of journal entries and presentence investigation reports coming in to the sentencing commission office on a daily basis, it is difficult and time consuming to match up a journal entry and PSI which have arrived separately and on separate dates, sometimes far apart.

The Kansas Sentencing Commission is committed to carrying out its duty to monitor the implementation of the sentencing guidelines. Studying the practical operation of the guidelines and proposing amendments to improve their operation plays a significant part in the commission's performance of this duty. The Commission believes that SB 585 will substantially improve the practical operation of the sentencing guidelines, making it easier for practitioners in the field to comply with the guidelines, facilitating timely and accurate reporting to the Commission, and thus resulting in more effective monitoring and evaluation of the sentencing guidelines structure.

Submitted by:
Rebecca E. Woodman, Staff Attorney

SENATE BILL No. 585

By Committee on Judiciary

2-2

AN ACT concerning crimes, criminal procedure and punishment; relating to certain reports and forms; information to sentencing commission and Kansas bureau of investigation; period of suspension of sentence, probation or assignment to community corrections; amending K.S.A. 21-4611, 21-4714, 22-3426 and 22-3426a and repealing the existing sections.

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

Section 1. K.S.A. 21-4611 is hereby amended to read as follows: 21-4611. (a) The period of suspension of sentence, probation or assignment to community corrections fixed by the court shall not exceed five years in felony cases ***involving crimes committed prior to July 1, 1993,*** or two years in misdemeanor cases, subject to renewal and extension for additional fixed periods not exceeding five years in ***such*** felony cases, nor two years in misdemeanor cases. In no event shall the total period of probation, suspension of sentence or assignment to community corrections for a felony ***committed prior to July 1, 1993,*** exceed the greatest maximum term provided by law for the crime, except that where the defendant is convicted of nonsupport of a child, the period may be continued as long as the responsibility for support continues. Probation, suspension of sentence or assignment to community corrections may be terminated by the court at any time and upon such termination or upon termination by expiration of the term of probation, suspension of sentence or assignment to community corrections, an order to this effect shall be entered by the court. ~~*The provisions of this subsection shall not apply to crimes committed on or after July 1, 1993.*~~

(b) The district court having jurisdiction of the offender may parole any misdemeanant sentenced to confinement in the county jail. The period of such parole shall be fixed by the court and shall not exceed two years and shall be terminated in the manner provided for termination of suspended sentence and probation.

(c) For all crimes committed on or after July 1, 1993, the recommended duration of probation in all felony cases is as follows:

(1) For nondrug crimes:

~~(h) The court shall forward copies of the presentence face sheet and criminal history work sheet for all felony convictions for offenses committed on or after July 1, 1993, to the Kansas sentencing commission within 30 days after sentencing.~~

Sec. 3. K.S.A. 22-3426 is hereby amended to read as follows: 22-3426. (a) When judgment is rendered or sentence of imprisonment is imposed, upon a plea or verdict of guilty, a record thereof shall be made upon the journal of the court, reflecting, if applicable, conviction or other judgment, the sentence if imposed, and the commitment, which record among other things shall contain a statement of the crime charged, and under what statute; the plea or verdict and the judgment rendered or sentence imposed, and under what statute, and a statement that the defendant was duly represented by counsel naming such counsel, or a statement that the defendant has stated in writing that the defendant did not want representation of counsel.

(b) If defendant is sentenced to the custody of the secretary of corrections the journal entry shall record all the information required under K.S.A. 21-4620 and amendments thereto to be included in a judgment form, if it were used.

(c) The journal entry shall also include the name and residence of the officer before whom the preliminary trial was held, the judge presiding at the trial, and of the witnesses sworn on such trial.

(d) If the sentence is increased because defendant previously has been convicted of one or more felonies the record shall contain a statement of each of such previous convictions, showing the date, in what court, of what crime and a brief statement of the evidence relied upon by the court in finding such previous convictions. Defendant shall not be required to furnish such evidence.

(e) It shall be the duty of the court personally to examine the journal entry and to sign the same.

(f) For felony convictions for crimes committed on or after July 1, 1993, the journal entry shall contain the following information:

(1) Court case number;

(2) Kansas bureau of investigation number;

(3) case tracking number;

(4) court O.R.I. number;

(5) ~~a listing of the original offenses charged by the state;~~

~~(A) the title of the crime;~~

~~(B) the statute violated;~~

~~(C) the crime seriousness ranking;~~

~~(D) the date the offense occurred;~~

~~(6)~~ the type of counsel;

~~(7)~~ *(6)* type of trial, if any;

a listing of the last offenses charged by the state;

(6)

[renumber remaining subparagraphs]

9-2

Criminal Law Subcommittee
3-13-96

House Judiciary
3-13-96
Attachment 10

As Amended by Senate Committee

Session of 1996

SENATE BILL No. 673

By Committee on Judiciary

2-13

AN ACT concerning crimes and punishment; ~~relating to escape from custody and aggravated escape from custody; juvenile offenders;~~ ***aggravated juvenile delinquency;*** amending K.S.A. ~~21-3809 and 21-3810~~ ~~21-3611~~ and repealing the existing ~~sections~~ ~~section~~.

sections 21-3809, 21-3810 and 21-3811

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

~~*Section 1. K.S.A. 21-3611 is hereby amended to read as follows:*~~

21-3611. (a) Aggravated juvenile delinquency is running away or escaping from any training or rehabilitation facility under the jurisdiction and control of the department of social and rehabilitation service *or running away or escaping while held in lawful custody from a juvenile detention facility as defined in K.S.A. 38-1602 and amendments thereto* ***after having previously run away or escaped therefrom one or more times committed by a child 16 or more years of age who has been adjudicated to be a delinquent or miscreant child under the Kansas juvenile code or a juvenile offender under the Kansas juvenile offenders code and who is confined in any such institution or facility.***

(b) Aggravated juvenile delinquency is a severity level 9, nonperson felony.

(c) Persons charged with aggravated juvenile delinquency, as defined by this section, shall not be prosecuted pursuant to the Kansas juvenile offenders code but shall be prosecuted under the general criminal laws of the state.

~~*Sec. 2. K.S.A. 21-3611 is hereby repealed.*~~

Insert the following sections.

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

5

Section ~~1.~~ ~~K.S.A. 21-3809 is hereby amended to read as follows: 21-3809.~~ ~~(a) Escape from custody is escaping while held in lawful custody on a charge or conviction of misdemeanor or a juvenile offender, as defined in K.S.A. 38-1602 and amendments thereto, where the act, if committed by an adult, would constitute a misdemeanor,~~ or ~~on a commitment to the state security hospital as provided in K.S.A. 22-3428 and amendments thereto based on a finding that the person committed an act con-~~

~~stituting a misdemeanor.~~

~~(b) As used in this section and K.S.A. 21-3810 and 21-3811, and amendments thereto:~~

~~(1) "Custody" means arrest; detention in a facility for holding persons charged with or convicted of crimes *or a juvenile offender, as defined in K.S.A. 38-1602 and amendments thereto, where the act, if committed by an adult, would constitute a misdemeanor*; detention for extradition or deportation; detention in a hospital or other facility pursuant to court order, imposed as a specific condition of probation or parole or imposed as a specific condition of assignment to a community correctional services program; commitment to the state security hospital as provided in K.S.A. 22-3428 and amendments thereto; or any other detention for law enforcement purposes. "Custody" does not include general supervision of a person on probation or parole or constraint incidental to release on bail.~~

~~(2) "Escape" means departure from custody without lawful authority or failure to return to custody following temporary leave lawfully granted pursuant to express authorization of law or order of a court.~~

~~(c) Escape from custody is a class A nonperson misdemeanor.~~

~~Sec. 2. K.S.A. 21-3810 is hereby amended to read as follows: 21-3810. Aggravated escape from custody is:~~

~~(a) Escaping while held in lawful custody upon a charge or conviction of felony *or a juvenile offender as defined in K.S.A. 38-1602 and amendments thereto where the act, if committed by an adult, would constitute a felony*, prior to or upon a finding of probable cause for evaluation as a sexually violent predator as provided in K.S.A. 59-29a05 and amendments thereto, upon commitment to a treatment facility as a sexually violent predator as provided pursuant to K.S.A. 59-29a01 et seq. and amendments thereto or upon a commitment to the state security hospital as provided in K.S.A. 22-3428 and amendments thereto based on a finding that the person committed an act constituting a felony; or~~

~~(b) Escaping while held in custody on a charge or conviction of any crime *or a juvenile offender as defined in K.S.A. 38-1602 and amendments thereto where the act, if committed by an adult, would constitute a felony*, prior to or upon a finding of probable cause for evaluation as a sexually violent predator as provided in K.S.A. 59-29a05 and amendments thereto, upon commitment to a treatment facility as a sexually violent predator as provided in K.S.A. 59-29a01 et seq. and amendments thereto or upon a commitment to the state security hospital as provided in K.S.A. 22-3428 and amendments thereto based on a finding that the person committed an act constituting any crime when such escape is effected or facilitated by the use of violence or the threat of violence against any person.~~

~~(c) (1) Aggravated escape from custody as described in subsection (a) is a severity level 8, nonperson felony.~~

10-2

~~(2) Aggravated escape from custody as described in subsection (b) is a severity level 6, person felony.~~

~~Sec. 3. K.S.A. 21-3809 and 21-3810 are hereby repealed.~~

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

10-3

Section 1. K.S.A. 21-3809 is hereby amended to read as follows: 21-3809. (a) Escape from custody is escaping while held in lawful custody on a charge or conviction of misdemeanor, or a juvenile offender, as defined in K.S.A. 38-1602, and amendments thereto, where the act , if committed by an adult, would constitute a misdemeanor, or on a commitment to the state security hospital as provided in K.S.A. 22-3428 and amendments thereto based on a finding that the person committed an act constituting a misdemeanor or by a person 18 years of age or over who is being held in lawful custody on an adjudication of a misdemeanor.

(b) As used in this section and K.S.A. 21-3810 and 21-3811, and amendments thereto:

(1) ``Custody'' means arrest; detention in a facility for holding persons charged with or convicted of crimes or a juvenile offender, as defined in K.S.A. 38-1602, and amendments thereto, where the act , if committed by an adult, would constitute a misdemeanor; detention in a facility for holding persons adjudicated as juvenile offenders; detention for extradition or deportation; detention in a hospital or other facility pursuant to court order, imposed as a specific condition of probation or parole or imposed as a specific condition of assignment to a community correctional services program; commitment to the state security hospital as provided in K.S.A. 22- and amendments thereto; or any other detention for law enforcement purposes. ``Custody'' does not include general supervision of a person on probation or parole or constraint incidental to release on bail.

(2) ``Escape'' means departure from custody without lawful authority or failure to return to custody following temporary leave lawfully granted pursuant to express authorization of law or order of a court.

(c) Escape from custody is a class A nonperson misdemeanor.

Sec. 2. K.S.A. 21-3810 is hereby amended to read as follows: 21-3810. Aggravated escape from custody is:

(a) Escaping while held in lawful custody upon a charge or conviction of felony or a juvenile offender as defined in K.S.A. 38-1602, and amendments thereto, where the act, if committed by an adult, would constitute a felony, prior to or upon a finding of probable cause for evaluation as a sexually violent predator as provided in K.S.A. 59-29a05 and amendments thereto, upon commitment to a treatment facility as a sexually violent predator as provided pursuant to K.S.A. 59-29a01 et seq. and amendments thereto or upon a commitment to the state security hospital as provided in K.S.A. 22-3428 and amendments thereto based on a finding that the person committed an act constituting a felony; or by a person 18 years of age or over who is being held in lawful custody on an adjudication of a felony; or

(b) Escaping while held in custody on a charge or conviction of any crime or a juvenile offender as defined in K.S.A. 38-1602, and amendments thereto, where the act, if committed by an adult, would constitute a felony, prior to or upon a finding of probable cause for evaluation as a sexually violent predator as provided in K.S.A. 59-29a05 and amendments thereto, upon commitment to a treatment facility as a sexually violent predator as provided in K.S.A. 59-29a01 et seq. and amendments thereto or upon a commitment to the state security hospital as provided in K.S.A. -3428 and amendments thereto based on a finding that the person committed an act constituting any crime or by a person 18 years of age or over who is being held in lawful custody or an adjudication of a misdemeanor or felony when such escape is effected or facilitated by the use of violence or the threat of violence against any person.

(c) (1) Aggravated escape from custody as described in subsection (a) is a severity level 8, nonperson felony.

(2) Aggravated escape from custody as described in subsection (b) is a severity level 6, person felony.

Sec. 3. K.S.A. 21-3811 is hereby amended to read as follows: 21-3811. Aiding escape is:

(a) Assisting another who is in lawful custody on a charge or conviction of crime, on an adjudication of a misdemeanor or felony or on a commitment to the state security hospital as provided in K.S.A. 22-3428 and amendments thereto based on a finding that the person committed an act constituting any crime to escape from such custody; or

(b) supplying to another who is in lawful custody on a charge or conviction of crime, on an adjudication of a misdemeanor or felony or on a commitment to the state security hospital as provided in K.S.A. 22-3428 and amendments thereto based on a finding that the person committed an act constituting any crime, any object or thing adapted or designed for use in making an escape, with intent that it shall be so used; or

(c) introducing into an institution in which a person is confined on a charge or conviction of crime or an adjudication of a misdemeanor or felony or into the state security hospital if such person is confined on a commitment to the state security hospital as provided in K.S.A. 22-3428 and amendments thereto based on a finding that the person committed an act constituting any crime any object or thing adapted or designed for use in making any escape, with intent that it shall be so used.

Aiding escape is a severity level 8, nonperson felony.

Sec. 4. K.S.A. 21-3809, 21-3810 and 21-3811 are hereby repealed.

State of Kansas
Office of the Attorney General
301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
FAX: 296-6296

TESTIMONY OF
JULIENE A. MASKA
STATEWIDE VICTIMS' RIGHTS COORDINATOR
BEFORE THE HOUSE JUDICIARY SUB-COMMITTEE
RE: SENATE BILL 497
MARCH 6, 1996

On behalf of Attorney General Carla J. Stovall, I urge your support for Senate Bill 497. This bill will reauthorize the increase provided two years ago in the docket fee in criminal and traffic cases and for violations of city ordinances and county resolutions in district, county and municipal courts. The funds generated from these sources provide 50 cents each to the Protection from Abuse Fund and Crime Victims Assistance Fund.

The money deposited into the Protection from Abuse Fund is used for grants to domestic violence programs. Twenty-four domestic violence programs are currently receiving the approximately $250,000 generated from these sources. The money deposited into the Crime Victims Assistance Fund is used for 29 grants to child abuse and neglect programs.

In FY 1995, 21,130 women, children and men received services from domestic violence programs. In FY 1996, it is assumed that more than 24,000 women, children and men will be provided services from domestic violence programs.

The funds for child abuse and neglect programs assisted 6,241 children in FY 1995 and in FY 1996 more than 8100 children are expected to be served.

These funds are critical for these programs. The estimated percentage of these monies assist programs from two to 23 percent of their total budgets. On behalf of Attorney General Stovall I urge the committee to support the deletion of this sunset provision and allow this money to continue to be provided to domestic violence and child abuse programs.

Thank you for your consideration of Senate Bill 497.

House Judiciary
3-13-96
Attachment 11

1996 SENATE BILL 497

House Judiciary Civil Law Subcommittee
March 6, 1996

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

Representative Adkins and Members of the Subcommittee:

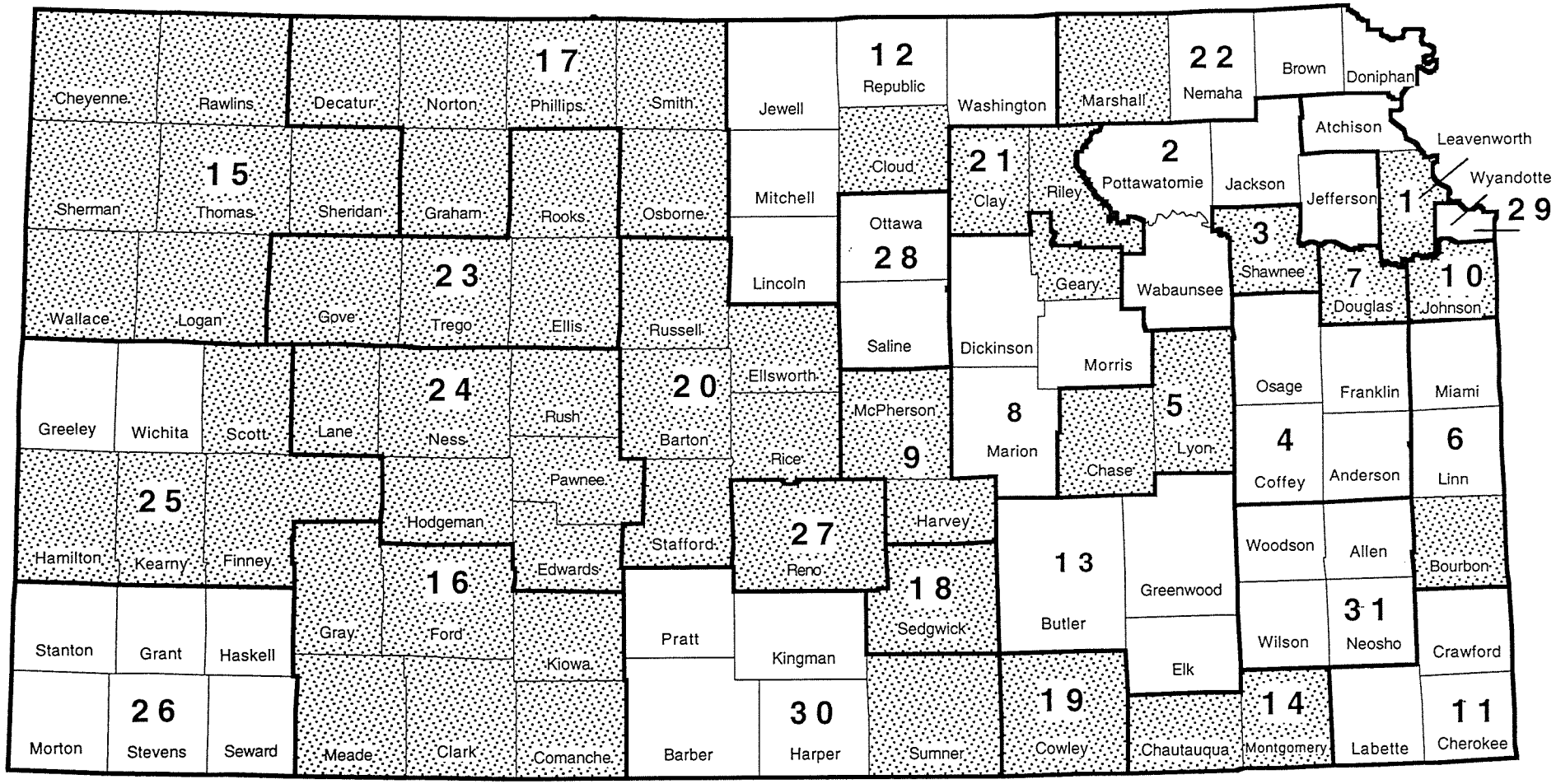
I am here today on behalf of the Kansas Court Appointed Special Advocate (CASA) programs and Citizen Review Board (CRB) programs. I support the $ .50 increase to docket fees for the benefit of the Permanent Families Fund and the Children Investment Fund. The Permanent Families Fund provides state funding for CASA and CRB programs. Currently, the only source of state funding for the Permanent Families Fund is $3 from every duplicate birth certificate issued in Kansas. The revenue generated by the birth certificate fees is about $250,000/year. This money is split evenly between the CASA programs and the CRB programs We have 23 CASA programs and this past year individual programs received from $3,500.00 to $15,000.00 depending on the size of the program and the number of children served. We have nine CRB programs covering ten judicial districts. The permanent families fund is the sole source of funding for these programs. Without an increase in funding sources for the Permanent Families Fund, the amount of funding available to each CASA program will dwindle as the number of programs increase and the number of CRB programs will remain static.

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

House Judiciary
3-13-96
Attachment 12

Kansas Judicial Districts (31)

Certified CASA Programs

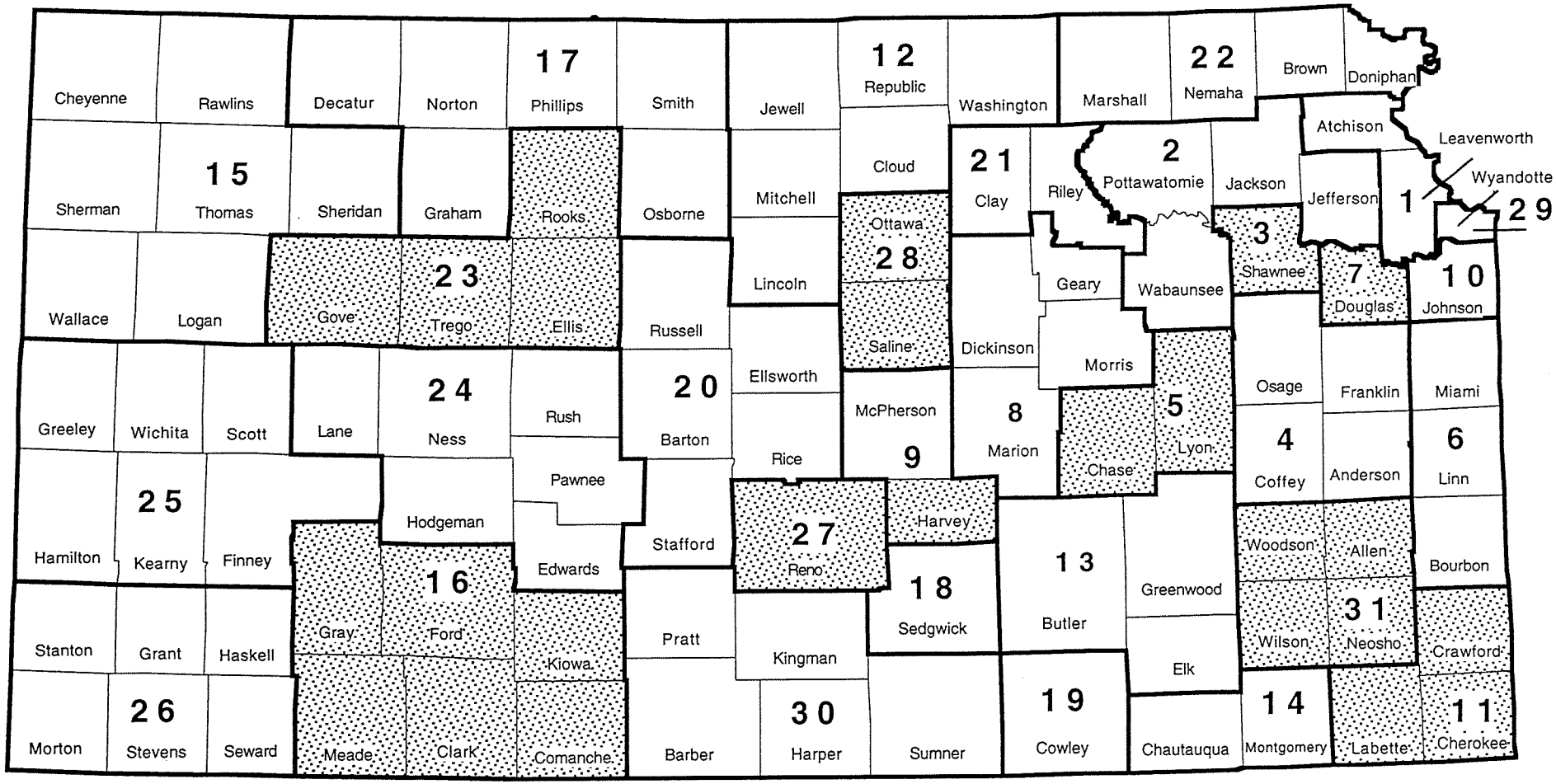


Judicial Districts with certified CASA Programs (23)

Revised 3/96

Kansas Judicial Districts (31)

Citizen Review Boards



Judicial Districts with Citizen Review Boards (10)

Revised 3/96

REMARKS CONCERNING SENATE BILL 497 AS AMENDED BY SENATE COMMITTEE

HOUSE JUDICIARY CIVIL LAW SUBCOMMITTEE

MARCH 6, 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 the Kansas Collectors Association, Inc., which is an association of collection agencies in Kansas.

Our organizations are most particularly interested in Chaper 61 proceedings. If Senate Bill 497 would be passed in its present form, we would have no great objections to it. Although we do question the use of docket fees for funding social purposes, there at least is an arguable connection between the criminal docket fees and the crime victims assistance fund or the protection from abuse fund. We would not think that civil docket fees should be increased for those purposes.

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

House Judiciary
3-13-96
Attachment 13

JUL CENTER
201 SOUTH CENTRAL
PARSONS, KANSAS 67357
Phone (316) 421-3216
Fax (316) 421-3566

DANIEL L. BREWSTER
DISTRICT JUDGE
Eleventh Judicial District, Division Six
LABETTE COUNTY, KANSAS

COURTHOUSE
OSWEGO, KANSAS 67356
Phone (316) 795-4533
Fax (316) 795-3056

December 1, 1995

Bill Brady
State Senator
State Capitol Building
Topeka, Kansas 66601

Re: K.S.A. 23-106

Dear Bill:

This letter is in response to our conversation concerning the introduction of a bill amending the above statute to reflect that, along with a parent's consent, a judge's consent would only be necessary to issue a marriage license to a minor under the age of 16, rather than 18. Enclosed is a copy of the present statute with that portion highlighted which the amendment would effect.

As you know, I've tried to get this statute amended several times before without success. I don't think there is any great opposition to it. It just seems that it dies in committee when there isn't anyone there to testify in support of it. I would be willing to do that.

This statute requires judges to be involved in making social decisions that interfere with people's lives that are better left to the parents and minors involved.

In many instances the judges who are required to sign these consent forms put that function at the low end of the priority list. Many judges simply refuse to sign any consents. The act is totally discretionary. This forces the minors and parents involved to travel to several different counties or even out of the state in order to secure a marriage license.

Some judges and jurisdictions require the applicants to participate in a certain number of hours of marriage counseling before granting permission to marry. While this is a laudable goal my experience has been that very few minor-applicants have the money, time or inclination to participate in counseling and the success rate is marginal if successful at all. In addition, there aren't any resources available from the state to fund such counseling programs. The statute, in that regard, acts as another unfunded mandate. Most judges don't even bother with such programs and decide whether to consent on a case by case basis, which subjects the system to a lot of unfairness in terms of who gets a consent and who doesn't.

In ninety-nine percent of the cases the girl is pregnant. To refuse her consent to marry the father of her child is, to me, unconscionable. And under the present system that can, does and has happened. Also, sixteen is the age of consent. She is old enough, at least in the eyes of the law, to decide whether to engage in sexual behavior without it being a crime.

The law should not discourage marriage, it should encourage it, and this law is an impediment. I think it was originally designed to protect children by preventing ill-advised marriages by minors unable to appreciate the serious responsibility of a marriage contract. It has, however, become anachronistic and basically irrelevant due to the sexual revolution that has overtaken this country. Thousands of babies are born into single parent families every day. The present law can discourage young people from marrying and accepting their responsibility as parents. In case after case I see S.R.S. attorneys filing lawsuits to establish the paternity and child support obligations of men and boys who refuse that responsibility and never marry. Then I see a case where a young person wants to marry because of a non-planned pregnancy but isn't allowed to because one of the parties is under 18 and can't get a judge to consent. The smug notion that the marriage wouldn't work anyhow isn't sufficient to deny consent. Such presumptuousness could prevent a marriage that might otherwise have been successful.

The courts can't solve the problems of underage marriages or unwanted pregnancies. Only social institutions and agencies with properly funded programs have a chance at that. A sixteen or seventeen year-old should be able to marry if her parents consent without the intervention, or in most cases, the impediment of the courts.

Please let me know what I can do to help you in attempting to amend this statute as discussed above.

Yours truly,

Daniel L. Brewster
District Judge

cc: Vernon Correll
DLB:

jurisdiction in which he or she serves, attesting to such clergy status, with the judge of the district court of the county in which any such marriage is performed and who shall record the same and give to such person an instrument evidencing proof of such filing. Failure of any clergyman, religious authority, licentiate or appointee to comply with the provisions of this act shall not affect the validity of the marriage.

History: L. 1968, ch. 207, § 2; L. 1976, ch. 145, § 115; Jan. 10, 1977.

23-105. Registration. All marriages occurring within the state shall be registered under the supervision of the secretary of health and environment as provided in K.S.A. 65-102.

History: L. 1913, ch. 224, § 1; R.S. 1923, 23-105; L. 1980, ch. 106, § 2; July 1.

Cross References to Related Sections:

Registration, see also, 65-102.

23-106. Issuance of marriage license; form; waiting period; emergency; lawful age; consent, when; unlawful acts, penalty; duties of person issuing license; expiration of license. The clerks of the district courts or judges thereof, when applied to for a marriage license by any person who is one of the parties to the proposed marriage and who is legally entitled to a marriage license, shall issue a marriage license in substance as follows:

MARRIAGE LICENSE

(Name of place where office located, month, day and year.)

TO ANY PERSON authorized by law to perform the marriage ceremony.

Greeting:

You are hereby authorized to join in marriage A B of _____, date of birth _____, and C D of _____, date of birth _____, (and name of parent or guardian consenting), and of this license, duly endorsed, you will make due return to this office immediately after performing the ceremony.

E F, (title of person issuing the license).

No clerk or judge of the district court shall issue a marriage license before the third calendar day (Sunday and holidays included) following the date of the filing of the application therefor in such clerk's or judge's office except that in cases of emergency or extraordinary circumstances, a judge of the district court may upon proper showing being made, permit by order of the court the issuance of such marriage license without waiting three days. Each district court shall keep a record of all applications filed for marriage licenses, which record shall show the name of the person applying for such license, the date of the filing of such application and the names of the parties to the proposed marriage. No clerk or judge shall issue a license authorizing the marriage of any person under the age of 18 years without the express consent of such person's father, mother or legal guardian. If not given in person at the time of the application, the consent shall be evidenced by a written certificate subscribed thereto and duly attested. Where the applicants or either of them are under age and their parents are dead and there is no legal guardian then a judge of the district court may after due investigation give consent and issue the license authorizing the marriage. Where such consent shall have been given as herein provided, no license shall be issued to any person under the age of 18 years without the consent of the judge in addition thereto. The judge or clerk may issue a license upon the affidavit of the party personally appearing and applying therefor, to the effect that the parties to whom such license is to be issued are of lawful age, as required by this section, and the judge is hereby authorized to administer oaths for that purpose.

Every person swearing falsely in such affidavit shall be guilty of a misdemeanor and shall be punished by a fine not exceeding $500. A clerk or judge of the district court shall state in every license the birth dates of the parties applying for the same, and if either or both are minors, the name of the father, mother, or guardian consenting to such marriage.

Every marriage license shall expire at the end of six months from the date of issuance if the marriage for which the license was issued does not take place within the six-month period of time.

History: L. 1867, ch. 84, § 5; G.S. 1868, ch. 61, § 5; L. 1905, ch. 302, § 1; L. 1913, ch. 224, § 2; R.S. 1923, 23-106; L. 1947, ch. 240, § 1; L. 1967, ch. 202, § 1; L. 1968, ch. 207, § 3; L. 1969, ch. 184, § 1; L. 1972, ch. 161, § 3; L. 1976, ch. 145, § 116; L. 1977, ch. 109, § 18; L. 1987, ch. 119, § 1; Jan. 1, 1989.

Cross References to Related Sections:

District court fees, see 28-171.

Research and Practice Aids:

Marriage ⇐ 25(1).

C.J.S. Marriage § 24.

Application and affidavit for marriage license, Kansas Probate Law and Practice § 2861.

14-3

COMMENTS OF THE KANSAS BANKERS ASSOCIATION IN SUPPORT OF SB 523 AS AMENDED BY SENATE COMMITTEE

Kansas banks are concerned that substantial, knowledgeable persons will be less willing to serve as officers and directors of Kansas banks because of the length of time such persons now are exposed to simple negligence tort claims against them by the institutions or their receivers. SB 523, as amended by Senate committee, sets a reasonable limit to this period of exposure.

The bill before the committee today, SB 523, as amended by Senate committee, grows out of the recent decision of the Kansas Supreme Court in RTC v. Scaletty, 257 Kan. 348. In that case, the Tenth Circuit certified to the Kansas Supreme Court two questions going to whether the "doctrine of adverse domination" is recognized in Kansas. Under the doctrine as recognized in several states, in suits by corporations or their receivers against corporate officers and directors, the statute of limitations is tolled until a disinterested majority of persons comprises the board of directors. In corporations where turnover on the board of directors is slight, such as financial institutions, the result is to greatly extend the period of time officers and directors are exposed to claims growing out of their decisions as officers and directors. This is particularly true in cases of alleged negligence, where "it could almost always be said that when one or two directors actively injure the corporation, or profit at the corporation's expense, the remaining directors are at least negligent for failing to exercise 'every precaution or investigation.' . . . If adverse domination theory is not to overthrow the statute of limitations completely in the corporate context, it must be limited to those cases in which the culpable directors have been active participants in wrongdoing or fraud, rather than simply negligent." FDIC v. Dawson, 4 F.3d 1303, 1312-13 (5th Cir. 1993), *quoted in* RTC v. Scaletty, 257 Kan. 348, 357 (1995).

In Scaletty, the Kansas Supreme Court did not adopt the doctrine in Kansas as an exception to the statute of limitations. Such statutes, and exceptions to them, are legislative matters under a long line of Kansas cases. Rather, the court recognized the doctrine in another way, as determining when injury to a corporation by its directors will be deemed reasonably ascertainable so as to cause the statute of limitations to begin to run. The effect is the same, to greatly extend the period of time officers and directors are exposed to claims growing out of their decisions as officers and directors. The Kansas Supreme Court also applied the doctrine to cases of alleged simple negligence.

SB 523, as amended by Senate committee, has the support of both the Kansas Bankers Association and the Kansas Trial Lawyers Association. It was passed by the Senate by a 39-1 vote. In

essence, in negligence actions by corporations and associations, or their receivers, against officers or directors, the current period of repose is shortened from ten to five years. An officer or director is exposed to possible liability for alleged negligence for five years after the allegedly negligent act was committed.

For all other causes of action governed by K.S.A. 60-513, the period of repose remains at ten years, and there is a statutory adverse domination provision; the two year statute of limitations does not begin to run until there is a disinterested majority on the board of directors.

Negligence cause of action is defined as not including certain types of actions.

The Kansas Bankers Association believes SB 523, as amended by Senate committee, strikes a reasonable balance between competing interests, and will aid in attracting persons to serve on their board of directors.

Doc. #94443

KANSAS
FOOD DEALERS
ASSOCIATION

EXECUTIVE DIRECTOR
JIM SHEEHAN
Shawnee Mission

March 5, 1996

HOUSE JUDICIARY SUB-COMMITTEE

SUPPORTING SB 530

I am Frances Kastner, Director of Governmental Affairs for the Kansas Food Dealers Association. Our membership consists of retailers, wholesalers, and manufacturers of food products in Kansas.

We support SB 530, as passed by the Senate.

From the beginning of the food donor projects we have supported the donation of food to assist the needy so long as grocers are not subject to civil or criminal liabilities because of their offers of good will.

We believe this bill will strengthen the food donor program, and respectfully ask your favorable recommendation of SB 530.

Frances Kastner

Frances Kastner, Director
Governmental Affairs, KFDA

House Judiciary
3-13-96
Attachment 16

2809 WEST 47TH STREET SHAWNEE MISSION, KANSAS 66205

Testimony of
Larry R. Rute
Kansas Bar Association
(913/234-5696

HOUSE JUDICIARY CIVIL LAW SUB-COMMITTEE

David Adkins, Chairman

Tuesday, March 5, 1996
Room 514-S

Mr. Chairman, Members of the Committee, I very much appreciate the opportunity to appear before you today to support Senate Bill No. 584. It is my privilege to serve as president of the Kansas Bar Association's Alternative Dispute Resolution Section. One of the purposes of the Section is to work with the courts, legislative bodies and governmental administrations, and where appropriate, other ADR professional organizations, to review and critique, develop new and to improve existing ADR rules, standards, ethics, programs and all other matters relating to Alternative Dispute Resolution.

I also have the privilege to serve as this year's Chair of the Kansas Children's Coalition. The Children's Coalition is also supportive of the changes found in Senate Bill No. 584.

We believe that various Alternative Dispute Resolution (ADR) related statutes set out in Senate Bill No. 584 should be amended to assure that the mediation process is kept confidential and that information not amounting to evidence of criminal conduct is not used in subsequent actions. The proposed language in the bill before you is the result of a legislative task force made up of members from the Kansas Bar Association and Heartland Mediators Association. The statutory language found in K.S.A. 55-512 and, 44-817, 60-452a, 72-5427, 74-545 and 75-4332 has been combined to create a uniform statement of confidentiality which can and should be used in any statute containing dispute resolution process language whether it be mediation, settlement conference, arbitration or neutral evaluation.

Confidentiality, and the resulting ability to be candid, is one of the most attractive qualities dispute resolution has to offer. Much of the motivation to engage in dispute resolution is lost when confidentiality is compromised. If communications are not protected, a party may use the proceeding as a case preparation and/or discovery tool rather than a means to facilitate good faith settlement.

In the proposed bill, we are also suggesting confidentiality be extended to include a privilege for the participants. The use of the privilege permits a participant in the Alternative Dispute Resolution process to resist legal pressure to disclose information. A privilege permits any party to the Alternative Dispute Resolution process to keep another from speaking about what happened in the process. In this manner the process is kept confidential and information not amounting to evidence of criminal conduct not be used in subsequent actions, either by subpoena of papers used or produced by the process, or compelled testimony of the parties or the neutral person conducting a proceeding. Without such assurances, full discussion of subjects sent to the ADR process cannot occur.

There are, of course, instances where information should not be kept secret because of the ADR process. The confidentiality and privilege requirements do not apply to information that is reasonably necessary to establish a defense for the mediator or the neutral person or staff in the case of an action against them filed by a party to the process; any information that the mediator or neutral person is required to report under the child abuse reporting laws; any information that is reasonably necessary to stop the commission of an ongoing crime or fraud or to prevent the commission of a crime or fraud in the future; any information that the mediator or neutral person is required to report or communicate under the specific provisions of any statute or in order to comply with orders of the court; or report to the court of threats of physical violence made by a party during the proceeding.

In conclusion, we support the concepts and goals set forth in Senate Bill 584. Thank you for your attention and concern. I'll be happy to answer your questions.

Respectfully submitted,

Larry R. Rute, President
Alternative Dispute Resolution Section
Kansas Bar Association

Kansas Legal Services
712 S Kansas Avenue
Topeka, Kansas 66603
(913) 233-2068

KANSAS GUARDIANSHIP PROGRAM

KGP

3248 Kimball Avenue, Manhattan KS 66503-0353 (913) 587-8555, FAX (913) 587-9626

Kansas City Area

6700 Squibb Rd. Suite 104
Mission KS 66202
(913) 236-5207

Wichita Area

1333 N Broadway, Suite B
Wichita KS 67214
(316) 269-2525

TO: House Judiciary Civil Law Sub-Committee
Representative David Adkins, Chairperson

FROM: M. Jean Krahn, Executive Director

DATE: March 06, 1996

RE: S.B. 599

BACKGROUND

The goal of the Kansas Guardianship Program is to recruit volunteers to serve as court appointed guardians and conservators for those eligible persons adjudicated by the court as disabled and in need of this level of protection and advocacy. The KGP serves persons who are, essentially, the adult wards of the State.

The Kansas Guardianship Program was established by the 1995 Kansas Legislature pursuant to K.S.A. 1995 Supp. 74-9602. The program itself, however, has existed since 1979 and was under the administration of Kansas Advocacy and Protective Services, Inc. (KAPS), the federal entity that administered the federal protection and advocacy programs for persons with disabilities. In 1994, federal reviewers determined there was conflict of interest in KAPS administering the state guardianship program. In response to that finding, the KAPS Board agreed to take steps to separate the Guardianship Program from KAPS. The separation was accomplished through the passage of S.B. 342 by the 1995 Legislature.

PROBLEM

There are three problems that S.B. 599 addresses -- all of which are basically technical in nature and intended to clarify certain provisions of S.B. 342, which established the Kansas Guardianship Program last year.

The first pertains to the surety bonds required for conservators.

In 1987, H.B. 2906 became law. Its intent was to amend the law relating to the surety bonds for conservators to provide that the State would serve as surety on the bond of any conservator serving in the Guardianship Program. The purpose was to save the State the considerable cost of purchasing private bonds to protect the persons served through the program. Current language in the statute refers,

however, to "the agency designated as the developmental disabilities protection and advoca agency pursuant to public law 94-103, as amended," which is Kansas Advocacy and Protect Services. The proposed amendment changes this to the "Kansas Guardianship Program" to refl the separation of the program from KAPS.

The second problem addressed in S.B. 599 is the need to clarify the legal status of the Kan Guardianship Program. The bill establishing the KGP, S.B. 342, describes the agency as "a n profit corporation" and as "a body politic and corporate". This has caused some confusi particularly on the part of accountants who must determine whether the program should be audi on the basis of the non profit status or as a governmental entity. Removal of the "non pro language is intended to clarify the legal status of the agency.

Finally, a problem was created inadvertently when S.B. 342 was amended last year regarding procedures for appointing members to the Board of Directors. The portion of the bill establish term limits was not amended to comply with the changes. The language in Section 5 (2) (c) of bill is intended to set term limits while providing for staggered terms to avoid a complete turnc in Board membership.

We see these proposed amendments as basically technical in nature and do not anticipate that t would have any fiscal impact.

We ask your support in recommending S.B. 599 favorable for passage.

Respectfully Submitted,

M. Jean Krahn

MJK/acp

pc Board of Directors

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COMMITTEE ASSIGNMENTS

CHAIRMAN: JUDICIARY
MEMBER: EDUCATION
ENERGY AND NATURAL RESOURCES
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Senate Bill No. 619

Testimony of Senator Tim Emert
March 6,1996

Before the
House Judiciary Committee

Chairman Adkins and Members of the Sub-committee, I appreciate this opportunity to testify in support of SB 619.

The issue addressed in this bill was brought to my attention by constituents involved in the operation of a rural cemetery district.

The bill is straightforward; amends KSA 75-6104 and adds "public cemeteries" to the list of entities which are exceptions from liabilities under the Kansas Tort Claims Act.

Already listed as exceptions are:

> Public parks, playgrounds or open areas for recreational purposes.
>
> Unimproved public property and even abandoned cemeteries.

Surely, it was an oversight that cemeteries were excluded from the original list.

This bill is directed at helping small, mostly rural cemetery districts. These districts which operate on very small budgets and donations are forced to pay unnecessarily high insurance premiums because of this omission.

I solicit your support of SB 619.

House Judiciary
3-13-96
Attachment 19