

Approved: 2-5-96
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:00 a.m. on January 24, 1996 in Room 514-S of the Capitol.

All members were present except: Senator Petty (excused)

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

Conferees appearing before the committee: Carla Stovall, Attorney General
Rochelle Chronister, Secretary of SRS
Jamie Corkhill, Policy Counsel, SRS
John Badger, Chief Legal Counsel
Jim Robertson, Child Support Services, SRS

Others attending: See attached list

The Chair called the meeting to order at 10:05 a.m.

Bill Introductions:

Carla Stovall, Attorney General requested the introduction of two bills. The conferee stated that the first bill requested would bring changes in parole for off-grid crimes. The conferee stated that before a person could be considered for parole he/she must reach minimum custody status, receive no disciplinary reports for a period of one year prior to parole eligibility, and complete all recommended offender programs prior to parole eligibility. (Attachment 1)

The Attorney General stated that the second request concerned victim restitution. This proposed legislation would amend open records act to make employment and financial information for persons on probation or parole available to the crime victim, victim's family or victim's attorney. The conferee explained that with this information, the victim can determine the feasibility of trying to collect on an court order of restitution. (Attachment 1)

Motion by Senator Reynolds, second by Senator Bond to introduce as Committee bills the two legislative proposals requested by the Attorney General. The motion carried.

The Attorney General discussed legislative proposals presented to the Kansas House Judiciary Committee. (Attachment 2)

The Attorney General discussed and offered amendments to legislation still pending addressing the crimes of domestic violence and sexual assault. The conferee requested that **SB 241** be amended to Hard 40 Penalty for offender instead of life without parole, due to prison overcrowding concerns. The Attorney General's request included amending **SB 241** to include a \$100 fine paid by convicted sex offenders. The funds generated would be for sexual assault programs and administered by the Attorney General. The conferee requested amending the sexual battery statute, K.S.A. 1994 Supp. 21-3517, to exclude exemption of spouse from being charged.

The Attorney General stated that other amendments would include the merging into **SB 497** a provision not to sunset the Protection Abuse fund, and a provision that would increase marriage license fee from \$40 to \$100 for the Protection Abuse Fund. The conferee stated that if the Committee did not wish to amend current bills to include the requested changes, those changes could be introduced as separate legislation. (Attachment 3)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on January 24, 1996.

Jamie Corkhill, Policy Council, Child Support Enforcement Program, (CSE), SRS requested that a bill be introduced that would supplement the court system with administrative procedures in dealing with routine cases. The conferee stated that some related improvements and some clean-ups of existing IV-D laws are also included the requested legislation. (Attachment 4)

A motion was made by Senator Bond, and seconded by Senator Oleen to introduce as Committee bills the legislation requested by Mr. Corkhill, CSE. The motion carried.

The Chair introduced the Secretary of SRS, Rochelle Chronister.

The Secretary of SRS related the history, purpose and accomplishments of the Kansas Child Support Enforcement Program (CSE) since its creation in 1975. The Secretary stated that Kansas ranks tenth in the nation for collecting in 56 percent of the cases with support ordered, however, that means that there are 44 percent of Kansas children not getting the services they deserve. The conferee stated that program services can be significantly expanded by encouraging private contracts or competitive bidding for contracts and by handling larger numbers of cases through administrative as well as judicial processes.

The Secretary stated that consideration of privatizing some of SRS functions was requested by the Governor. The Kansas Council on Privatization, created by Senate Resolution last year, recommended CSE be considered for privatization. The conferee stated that SRS was encouraged to use private contracts for CSE functions when K.S.A. 75-5365 was enacted in 1994. This statute allows the Secretary of SRS discretion to contract with public or private entities for the performance of any or all CSE services. (Attachment 5)

The Committee members discussed with the Secretary and Mr. Badger, and Mr. Robertson issues concerning implied contracts with court trustees and the use of matching state and county funds. The Committee and conferee discussed the bidding procedure, the issue of additional costs, and issues concerning the current court trustees position in the bidding process. The conferees stated that by using the bidding process, performance of those providing the services could be evaluated for each jurisdictional district. The Secretary stated that she will wait for the post audit report due in February before making any firm determination.

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

The next meeting is scheduled for January 25, 1996.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1-24-96

NAME	REPRESENTING
Jill Campbell-Kerr	Governor
Paul Bicknell	KDHR
Bill Laves	KDHR
Galen Bremer	Dept. of adm.
Sheryl Fethner	Dept. of Admin.
Paul Shelby	OJA
Howard Schwartz	OJA
Katy Farley	OJA
Jennifer Ornbun	Senator Parkinson
Peggy Elliott	Johnson County Court Trustee
Jim Robertson	SRS
John Belger	SRS
Jamie Corkhill	SRS/CSE
Haven Burke	OPDU
ROGER DOEREN	NATIONAL PARENTING INSTRUCTORS ASSOCIATION
STUART MILLES	NATIONAL PARENTING AMERICAN FATHERS COALITION
Shirley Johnson	Rep. 91 st
Anne Spiess	Peterson Public Affairs Group
Paul Somerville	K5 Auto Dealers Assn

Martin Hawver

Hawver's Capitol Report



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

January 24, 1996

Senator Tim Emert, Chairman
Senate Judiciary
State Capitol
Topeka, KS 66612

RE: Bill Requests

Dear Senator Emert and Senate Judiciary Members:

I would appreciate your consideration of the following bill requests in Senate Judiciary.

1. Changes in Parole for Off-Grid Crimes (or under the old system A and B felonies) - Before an inmate could be considered for parole, he/she must reach minimum custody status, receive no disciplinary reports for a period of one year prior to parole eligibility, and complete all recommended offender programs prior to parole eligibility.
2. Restitution - Amend open records act to make employment and financial information for persons on probation or parole available to the crime victim, victim's family or victim's attorney. Make restitution order into civil judgment for collection automatically after 60 days of non-payment. Expand collection of restitution, court costs, fines and penalties to be done by the Attorney General, to make crime victim or victim's family the first payee and make the collection fee to be paid by criminal defendant.

Thank you for your consideration.

Sincerely,

Carla J. Stovall
Attorney General

Sen Jud. Comm.
1-24-96
Attach 1



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Office of the Attorney General

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CARLA J. STOVALL
ATTORNEY GENERAL

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

January 24, 1996

Representative Mike O'Neal, Chairman
House Judiciary
State Capitol
Topeka, KS 66612

RE: Request for Bill Requests

Dear Representative O'Neal and House Judiciary Members:

I would appreciate your consideration of the following bill requests in House Judiciary.

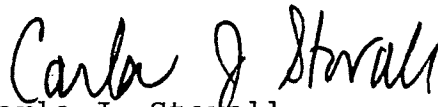
1. Escape from Custody - Amend K.S.A. 21-3809 and K.S.A. 21-3810 to place an adult juvenile in an SRS institution in the same legal status as the adult who escapes from a jail.
2. Deceptive Commercial Practice - Amend K.S.A. 21-4403 to change definitions, to increase the penalties available and to grant original jurisdiction to commend such criminal actions to the Attorney General in the deceptive commercial practice act. Also, amend K.S.A. 21-3106 to provide a five year statute of limitations for crime of deceptive commercial practices.
3. Protection for Abuse Act - Amend protection from abuse order to include violations of foreign protection orders, mandatory arrest for violation of PFA and petitioner be allowed to obtain order in jurisdiction where he/she may be sheltered. Also, amend K.S.A. 22-2307 & 22-2308 to include enforcement of foreign protection orders and to provide immunity for law enforcement officers when enforcing such orders. And, create a new crime of violation of protective order--when the court has ordered a person to have no contact with a person in regard to the following: protection from abuse orders, foreign protection orders, restraining orders, pre-trial release, probation, diversion, post-release supervision, suspended sentence, that person who violates such order shall be guilty of a class A person misdemeanor.

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4. Family Violence Model State Code Suggestions - A. Authority of law enforcement officer to seize weapons: When an officer makes an arrest in a domestic violence related crime, the officer (a) shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of a crime. (b) may seize a weapon that is in the plain view of the officer or was discovered pursuant to a consensual search, as necessary for the protection of the officer or other persons. B. Written policies for all prosecutors: The city, county and district attorneys who prosecute violations of crimes that are domestic violence related, shall develop or adopt and put into effect written procedures for attorneys who prosecute crimes related to domestic violence concerning: (a) effective prosecution of such crimes; and (b) the protection and safety of victims and their children of domestic violence.

Thank you for your consideration.

Sincerely,



Carla J. Stovall
Attorney General

H.O.



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

ATTORNEY GENERAL CARLA J. STOVALL'S LEGISLATIVE PACKAGE ADDRESSING THE CRIMES OF DOMESTIC VIOLENCE AND SEXUAL ASSAULT

1996 LEGISLATION

1. *Senate Bill 177, Repeated Acts of Battery*—Upon the third or subsequent conviction of battery the person would be guilty of a severity level 5, person felony. Introduced by Sen. Pat Ranson.
2. *Senate Bill 237, Enhancing Sex Offender Registration Law*—Expands notification to those granted diversion and juveniles adjudicated of a violent sex offense and requires submission of samples for DNA testing. **Will request amendment to allow juvenile court judges discretion to order juvenile offender to register and make it discretion of prosecutor to include registration for diversion agreements.** Attorney General's 1995 Bill.
3. *Senate Bill 241, Second Conviction for Sex Offense*—**Amend to Hard 40 Penalty for offender instead of life without parole.** Attorney General's 1995 Bill.
4. *Expungement Records*—Expand expungement law to prevent expungement of convictions for any sex crime without regard to age. Juveniles who commit rape can expunge that crime under current law.
5. *Amend protection from abuse act to ensure that violations of foreign protection orders (orders issued by courts in other states) are treated like Kansas protection orders. Also, that victim be allowed to obtain order in jurisdiction where he/she may be sheltered or currently resides.*
6. *Amend K.S.A.s 1994 Supp. 22-2307 and 22-2308 to include enforcement of foreign protection orders. Law enforcement written domestic violence policies should include a provision that addresses foreign protection orders and that law enforcement officers are provided immunity for enforcing foreign protection orders.*
7. *Create new crime of invasion of privacy for violations of bond, Protection from Abuse orders, restraining orders, foreign protection orders, pre-trial diversion, pre-trial release, probation, suspended sentence, post-release supervision.*

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Attach 3

8. Authority of law enforcement officer to seize weapons. This would make it mandatory for weapons to be seized if used during domestic violence incidents. **As recommended by Family Violence Model State Code from National Council of Juvenile and Family Court Judges.**
9. Require all prosecutors to have written procedures for prosecution of domestic violence. **As recommended by Family Violence Model State Code from National Council of Juvenile and Family Court Judges.**
10. Recommend continued funding for the Protection from Abuse Fund and Crime Victims' Assistance Fund Child Abuse grants from municipal and district court docket fees. **Amend by deleting sunset provision of June 30, 1996, from K.S.A.s 12-4117, 19-101e, 19-4707 and 20-367 (1995 Session Laws, Ch. 243, Sec. 5 and 6).**
11. Amend statute to provide that convicted sex offenders be fined an additional \$100. Funds generated would be for sexual assault programs and administered by the Attorney General.
12. Recommend increase in marriage license fee from \$40 to \$100 for Protection from Abuse Fund.
13. Amend sexual battery statute, K.S.A. 1994 Supp. 21-3517, to exclude exemption of spouse from being charged.

Supporting

1. *Senate Bill 334, Testing for Infectious Diseases*—The victim can ask the court for a test to be done on any person arrested and charged with a crime in which it appears that bodily fluids may have been transmitted. Currently, the victim must wait until there is a conviction before a test can be ordered by the court. **Will request amendment to allow prosecutor to also ask for testing to be done.** Introduced by Sen. Jerry Moran.
2. *House Bill 2465 and Senate Bill 347, Child Custody*—Concerns parent who is abusive to the other parent. This bill would create new language and amend existing language that requires the court to consider domestic violence before determining child custody. It also allows the court to consider certain programs the batterer must complete before being allowed custody or visitation without supervision. House Bill 2465 introduced by Rep. Candy Ruff. Senate Bill 347 introduced by Sen. Bob Vancrum.
3. *Senate Bill 444*—Legislation to prohibit insurers from considering medical conditions caused by abuse or domestic violence as a reason to deny insurance.
4. *Rape statute would be amended to include rape by position of authority.* **Johnson County District Attorney Paul Morrison will ask for bill introduction.**
5. *Exclude victim as responsible party for payment of offender in state institution if victim is spouse or family member of the offender.* **Johnson County District Attorney Paul Morrison will ask for bill introduction.**
6. *Require the convicted offender to pay the cost of a sexual assault examination kit as part of their court costs.* **Kansas County and District Attorneys Association proposal. Wyandotte County District Attorney Nick Tomasic will ask for bill introduction.**

HS

**Kansas Department of Social and Rehabilitation Services
Rochelle Chronister, Secretary**

**Senate Committee on Judiciary
Testimony on CSE and Administrative Process**

January 24, 1996

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today on behalf of Secretary Chronister concerning the SRS Child Support Enforcement Program and administrative process.

A number of states have adopted administrative procedures to establish and enforce support orders. An administrative process provides an informal, inexpensive way to make sure children receive financial support while protecting parents' rights to due process. Attached to this testimony is an outline of how a typical case might progress under our proposal for Kansas IV-D cases. We incorporate a new term, "Responsible Parent," to refer to the person whose duty of support is being addressed – the new terminology recognizes that some people object strongly to being called an "absent parent," our more familiar term.

Administrative process does not replace judicial process. The majority of support orders will continue to be part of divorce proceedings, complex cases that are more suited to the special knowledge and powers of judges, and cases needing remedies (contempt, for example) that are best reserved to the courts. An administrative process, however, can relieve the judicial system from a significant number of routine, uncontested cases and free court resources for matters that demand the exercise of judicial discretion and expertise.

Increased federal regulation of CSE casework and the evolution of statewide support guidelines have eliminated much of the discretion that was integral to support cases only a few years ago. One benefit of this standardization is that simpler, less costly processes can be used without impairing parents' rights or their access to court.

States that have supplemented court systems with administrative procedures

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report that, after a temporary rash of appeals, a very low percentage of parents contest the results from the first level of an administrative process. Even in states like Iowa where access to court is available on demand, very few parents actually exercise the right. It is important for parents to have court access, but the fact it is rarely invoked suggests that most parents are satisfied with the level of fairness in administrative processes.

Kansas is fortunate to have one of the nation's elite judicial branches. Even so, the existing system cannot hope to keep up with the expanding demand for support enforcement services while holding the line on costs. The process outlined above, by making more effective use of existing resources, holds the potential for the increased productivity Kansas needs. Innovation and new approaches like administrative process will help more children receive the parental support they deserve.

As part of CSE's proposal for a true administrative process for Kansas, we have included a handful of related improvements and some clean-ups of existing IV-D laws, all aimed at providing as seamless and streamlined a service as possible. At this time, we ask that a bill reflecting the CSE proposals be introduced by the committee.

Respectfully submitted,

Jamie L. Corkhill
Policy Counsel
Child Support Enforcement Program
Department of Social and Rehabilitation Services

913-296-3237

JLC: Legis\ SENJUD23.016

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*SIMPLIFIED ESTABLISHMENT AND ENFORCEMENT
OF SUPPORT ACT (SEESA)
AN ADMINISTRATIVE PROCESS FOR KANSAS*

Many states have adopted administrative procedures to establish and enforce support orders. An administrative process provides an informal, inexpensive way to make sure the child receives financial support and to make sure that parents' rights are protected. This outline describes what might happen in a typical case under the SRS proposal for administrative process.

Definitions:

- CSE..... SRS's Child Support Enforcement Program
- Custodial Parent..... The parent (or caretaker relative) receiving CSE services on the child's behalf.
- Responsible Parent. The parent whose duty of support is being determined or enforced; the absent parent.

Notice to the Responsible Parent. To establish an obligation, CSE sends the Responsible Parent a Notice of Financial Responsibility. It is delivered the same way a court petition is served -- by hand delivery or certified mail in most cases.

The notice:

- Gives the Responsible Parent a copy of the proposed support order, including the proposed income withholding order;
- Tells the parent a negotiation conference is scheduled with the CSE worker (not a lawyer) and how to reschedule the conference or request a telephone conference;
- Outlines the parent's rights at the negotiation conference and what issues the parent can raise (for example, nonpaternity or reduced income);
- Warns the parent that the proposed order will be entered if the parent does not appear at the negotiation conference or otherwise take action;
- Outlines the effect of the administrative order, how it may be enforced, and how it may be appealed through the SRS Fair Hearing process; and
- Gives the parent the option, any time before an administrative order is entered, of having SRS file the case in district court instead of continuing with the administrative process.

If there is an order from another state, it may be registered or modified using the administrative process. Although the notice and time frames vary slightly, the process is very similar to establishing an administrative support order from scratch.

To prevent confusion, cases with Kansas court orders are not within the administrative process for establishing or modifying orders. These cases will qualify, however, for administrative enforcement, just as they qualify now for administrative remedies such as state and federal tax refund intercepts.

The negotiation conference. Whenever a current support order is being established or modified, a negotiation conference is scheduled in advance and the date, time, and place are included in the notice to the Responsible Parent.

At the conference, which may be face-to-face or by phone, the Responsible Parent and the CSE worker try to resolve any disagreement about whether the parent has a duty to support the child (see "paternity"). The Kansas Child Support Guidelines are applied to information from CSE records and/or from the Responsible Parent to determine the amount of current support. Other issues are also settled, such as what health insurance coverage is appropriate, what arrearages are owed (if any), and the exact terms of the income withholding order. SRS has no jurisdiction in the administrative process to try to resolve custody or visitation disputes, though where the child lives (and at what times) may be a factor under the Guidelines.

If the Responsible Parent needs time to furnish supporting information or evidence to the CSE worker, at least one additional negotiation conference must be scheduled by the worker. Additional conferences may be scheduled as needed, though federal regulations set outside limits on how long cases may remain unresolved.

At any time before an administrative support order is entered, the Responsible Parent may demand that the agency file suit in district court instead of proceeding with the administrative process. Also, if the case turns out to be unsuitable for administrative process the CSE worker may dismiss the proceedings and refer the case to an attorney. This might be done if a complex issue surfaces at the conference, such as multiple presumed fathers, or if the conduct of a parent raises concerns about safety or the reliability of information.

Paternity. If a Responsible Parent denies paternity, genetic testing may be done through the administrative process. If the child or the natural mother cannot be compelled to participate in genetic testing and will not do so voluntarily (when the child lives with a caretaker relative, for example), the administrative proceedings must be dismissed. The dismissal will not prevent later court action or new administrative proceedings, if circumstances change.

Unless there is a presumption of paternity because the child's parents were married¹, the CSE worker orders genetic testing upon request or upon recognizing that tests will help resolve the case. CSE generally pays the test costs initially, with the option of requiring the Responsible Parent to repay the costs if paternity is confirmed. Additional tests may be done at the expense of the person requesting them.

¹ If the man and the mother were married, Kansas case law requires a special hearing to decide whether it is in the child's best interests to determine biological paternity before genetic testing is allowed. In re: Ross, 245 Kan. 591, 783 P.2d 331, 1989.

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When the test results come back, a copy is sent to each parent.

- If the man is excluded as a possible father, additional tests may be ordered, the proceedings may be dismissed (without prejudice) or, with the consent of the natural mother, an administrative order may be entered finding that the man is not the father of the child.
- Results showing a 97% or better probability of paternity create the presumption of paternity under the Kansas Parentage Act. Unless the results are challenged, the case proceeds toward establishing the support order.
- In a rare case, the results may show a probability of paternity less than 97% without excluding the man as a possible father. If this happens, the CSE worker may order additional tests or dismiss the administrative proceedings – court action may be the only way to resolve paternity.

Administrative child support orders. If the Responsible Parent fails to attend a scheduled negotiation conference, the proposed administrative child support order is entered by default. Ideally, though, the CSE worker and the parent work out an agreed order, which the CSE worker prepares. If the Responsible Parent attends all negotiation conferences but neither signs an agreed order nor requests that the case be filed in district court, the CSE worker may (after notice) determine the essential facts and enter an order.

A copy of the new administrative order is sent to both parents. In addition to stating the terms of the support order and income withholding order, the administrative order explains the effects of the order, how it may be enforced and modified, and how to request an SRS Fair Hearing if the order is contested.

If the Responsible Parent requests a Fair Hearing, the administrative support order may be temporarily suspended while the appeal is pending. The hearing officer may affirm the administrative order, order genetic testing, direct the CSE worker to enter an amended order, or direct the CSE worker to dismiss the administrative proceedings. Decisions of hearing officers are subject to further review, including judicial review.

Administrative enforcement -- income withholding. Administrative income withholding is basically the same as judicial withholding, with a few adjustments to accommodate the different setting. With only limited exceptions, every administrative child support order includes an income withholding order. The same employer fees, times, terms, and limitations apply. Employer sanctions may be imposed by a court, on request.

The major difference with administrative process is how employers are notified to begin withholding. In existing judicial withholding, a certified copy of the withholding order must be served, and the employer is expected to complete and file an answer form. Under administrative process, the employer is served a uniform notice to begin withholding, which

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does not require an employer answer. If, in order to enroll the child in a group health plan, a "qualified medical child support order" is needed to meet federal law, a copy of a medical withholding order may be served.

Administrative enforcement -- administrative levy on cash assets. When an arrearage exists and CSE identifies cash assets of the Responsible Parent, CSE may serve an Order to Verify Information and Restrict Transfer on the person holding the cash assets. This order freezes the cash assets up to the amount requested. No assets are attached if they total less than \$35. The holder is allowed a \$10 fee, as would be allowed for a garnishment. A notice is also sent to the Responsible Parent, giving the parent an opportunity to challenge the proposed levy. If the levy is not successfully challenged, CSE notifies the holder how to disburse the cash assets. Sanctions may be imposed on the holder by a court, on request.

Many institutions, such as banks, will prefer to automate the administrative levy process as much as possible. They may arrange with CSE for automated or electronic information transfers; an asset holder who accepts this unorthodox service of orders cannot be held liable for doing so.

Modification. Either parent may ask for reevaluation of the administrative order for current support – federal regulations govern when CSE must conduct such reviews. Whenever the Responsible Parent asks CSE to reduce the current support order in a judicial case, the CSE attorney involved is caught in a serious ethical dilemma – federal law requires the program to honor the Responsible Parent's request, but the attorney is already identified in the court's eyes as an advocate for the Custodial Parent's interests. Even if there is not a technical conflict of interests, the appearance of impropriety is to be avoided. Because administrative process normally does not involve a CSE lawyer, the issue of attorney ethics is avoided entirely in many cases.

When modification is requested, both parents are notified of the upcoming review and instructed to submit information required by the Kansas Child Support Guidelines. The CSE worker applies the Guidelines to the information and, if modification appears appropriate, notifies the parents of the proposed new order. Either parent may challenge the proposed modification, or the finding that modification is not appropriate, by requesting a negotiation conference. The process thereafter is very similar to establishing a new administrative order, though the defenses and options available are more limited.

Registration with the district court. At some point either CSE or the Custodial Parent may wish to register the administrative child support order with the Kansas district court in order to invoke a remedy not available through administrative process, such as contempt proceedings, or because the Custodial Parent no longer wishes to receive IV-D (CSE) services. Once registered, the support order is on the same footing as an order entered by the district court.

#4

**Kansas Department of Social and Rehabilitation Services
Rochelle Chronister, Secretary**

**Testimony pertaining to SRS Plans for the Future of the
Kansas Child Support Enforcement Program (CSE)**

Hearing Date: January 24, 1996

Mr. Chairman and Members of the Committee, I am Rochelle Chronister, Secretary of SRS. Thank you for the opportunity to testify today concerning the Child Support Enforcement Program.

Since its creation in 1975, the Kansas Child Support Enforcement Program (CSE) has helped improve the lives of many children and their families and reduced public assistance expenses for Kansas taxpayers. Last year the CSE Program collected \$103 million in support, established over 10,000 paternities, established 17,000 support orders and helped close 4,633 AFDC cases. In total, the CSE Program returned more than \$13 million to the State over and above State costs.

Despite significant program improvement, much remains to be done. Only 50% of children needing a support order have one. Of those children with support orders nationally, only 50% receive the support owed to them. Although Kansas ranks tenth in the nation for collecting in 56% of cases with support ordered, we are not proud of the fact that 44% of Kansas children are not getting the services they deserve.

We believe program services can be tremendously expanded by encouraging private contracts or competitive bidding for contracts and by handling larger numbers of cases through administrative as well as judicial processes.

Privatization/Competitive Bidding

When I assumed leadership of SRS, I was asked by Governor Graves to consider privatizing some SRS functions as a way to streamline government and reduce the need for additional public employees to satisfy an increasing demand for CSE services.

In addition, the Kansas Council on Privatization, created by Senate Resolution last year, recommended CSE be considered for privatization.

SRS was also encouraged to use private contracts for CSE functions when K.S.A. 75-5365 was enacted in 1994. This statute allows the Secretary of SRS discretion to contract with public or private entities for the performance of any or all CSE services. However, if the Secretary opts to contract, "Such contracts shall be based on competitive bids in accordance to statutes governing State agency contracts."
(Attachment A)

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Attach # 5*

In response to these recommendations and directives, SRS has developed a plan to open to competitive bid several significant CSE functions. This plan was developed after careful consideration of the existing contracts SRS has with private businesses, the experiences of several other states with varying degrees of CSE privatization and discussions with numerous businesses desiring to provide CSE services. Our analysis concluded that potential contractors were primarily interested in doing enforcement work rather than CSE intake, administrative functions and establishment work. This is because bidding is simplified and potential income is more predictable when the contractor fee is based on a percentage of collections resulting from enforcement activity. We also concluded that bids would be significantly lower if SRS staff continued to do the more time consuming establishment functions in the majority of cases.

As a result of our analysis, we are developing two Requests for Proposals (RFP's) in coordination with the State Purchasing Division of the Department of Administration.

- The first, smaller RFP is for a full service establishment and enforcement contract to recover State expenses in foster care and institutional care cases and for the recovery of other debts owed the State (i.e., overpayments). Such a contract has good collection potential and would relieve the CSE Program of enough casework to reduce the number of State employees and to concentrate remaining staff on the establishment of paternity and support orders.
- The second, larger RFP is for enforcement of support orders once they have been established. Since these services are basically the same as those offered by court trustees, every effort is being made in the development of the RFP to insure that court trustees have the opportunity to competitively bid for a part of the contract. For example, rather than requiring vendors to bid on a statewide contract, we will solicit bids for enforcement services in each judicial district. Since court trustees are already established operations with staff, offices, and equipment, they should have an excellent opportunity to become a successful bidder.

By establishing these contracts, we can proceed to eliminate 33 State positions which have been held vacant, for a cost savings of \$286,000 in the remainder of FY96 and \$920,309 in FY97.

It is important to note that I have directed that RFP's not be issued until after completion of a Legislative Post Audit of the CSE Program. The Post Audit findings should be available in February.

The Office of Judicial Administration (OJA) has objected to our effort to open the enforcement function to competitive bidding (Attachments B and C). The general feeling within the OJA seems to be that SRS is required to contract with court trustees pursuant to K.S.A. 23-4,117 unless "good cause" is shown for not doing so.

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The SRS position is that because we do not have a formal contract with the OJA or court trustees currently, K.S.A. 75-5365 requires us to use a competitive bid process to establish new contracts. If, in a competitive bid environment, court trustees are not successful bidders, this fact is "good cause" for not contracting with them.
(Attachment D)

The CSE Program has done relatively well up to this point with the current arrangement between SRS, OJA and court trustees. However, separation of powers problems between SRS and the judicial branch have created inefficiencies which must be corrected before the program is in a position to provide much improved services to the vast majority of children.

Some of these issues are:

- Overriding concerns that SRS not appear to be providing direction or dictating terms to the courts;
- An unwillingness by OJA to allow direct contracts with the service providers (court trustees). OJA has become the contracting agent for all court trustees even though they have no control over personnel or budgets;
- An unwillingness by the metropolitan court trustees to use the statewide CSE computer system which is mandated by the federal government;
- An unwillingness to accept the Secretary of SRS as a "client" in Title IV-D child support cases. Consequently, the interests of the State or our customers are not always fully represented;
- An unwillingness to contract to follow CSE Program rules, regulations and procedures unless a particular trustee interprets them as being in accord with federal regulations. This leads to multiple interpretations of federal law and results in lack of program uniformity.
- Refusal to follow State performance standards if they are stricter than federal performance standards. This position insures mediocrity;
- Resistance to a truly outcome-oriented, performance-based contract which would allow for the expeditious return of IV-D cases to SRS for case processing if a problem is identified with contractor services;
- The use of local court rules to require that all support related cases (Title IV-D and private) be referred to the trustee even if no legal services are needed or wanted. The result is that court trustee fees taken from such cases become a tax on all children with a court order and an unwarranted intrusion by government into the lives of private citizens.

We believe that competitively established contracts will satisfy the needs of many more children and enhance program effectiveness by combining the best of what State and county governments can offer with services from the private sector. New performance based, outcome oriented contracts will promote program uniformity and encourage

better cooperation and performance. We can also take advantage of the flexibility private business can offer in terms of staff adjustments and equipment purchases to do the job quickly and efficiently without delays inherent in government budget processes.

In conclusion, Mr. chairman, if we do not receive bids which are more efficient and cost-effective, we will withdraw from the bidding process and look at other ways of privatizing State services.

75-5365. Acquisition of certain support enforcement services; competitive bid procedure. The secretary of social and rehabilitation services may enter into contracts with one or more public or private entities for the performance of any or all support enforcement services that the secretary is required to provide under part D of title IV of the federal social security act (42 U.S.C. 651 *et seq.*). Such contracts shall be based on competitive bids in accordance with the statutes governing state agency contracts.

History: L. 1994, ch. 265, § 21; July 1.

BILL GRAVES, GOVERNOR OF THE STATE OF KANSAS

KANSAS DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

915 SW HARRISON STREET, TOPEKA, KANSAS 66612

ROCHELLE CHRONISTER, SECRETARY

October 2, 1995

Child Support Enforcement Program
300 SW Oakley Street
1st Floor, Biddle Building
Topeka, Kansas 66606
(913) 296-3237Dr. Howard Schwartz
Office of Judicial Administration
Kansas Judicial Center
301 West 10th
Topeka, KS 66612

Re: New IV-D Contract

Dear Dr. Schwartz:

Over the past twenty years of operation, the Kansas Title IV-D Child Support Enforcement Program has experienced remarkable growth and benefited the lives of thousands of children. However, as we plan to satisfy the program needs of a significantly greater percent of children in the future, we will need to develop new performance based, and outcome oriented contracts for greatly enhanced services.

As Title IV-D related staff in the Office of Judicial Administration and Court Trustee operations are aware, we have not had an officially executed operational contract since 1991. Obviously, this must be rectified. To establish a contract for Title IV-D services, the Secretary of SRS is required by K.S.A. 1994 Supp., 75-5365 to use a competitive bid process in accordance with state purchasing criteria. Consequently, we will be developing rather extensive bid specifications for new Title IV-D contracts within the next few months. Invitations to bid on contracts pertaining to enforcement will be offered directly and individually to all Court Trustee and County Attorney providers where we determine a need for services, as well as to other private companies which have expressed an interest in bidding.

For your planning purposes, remuneration for contractors will be provided on the basis of percentage of collections. No administrative reimbursement or incentives will be provided. Our expectation is that IV-D bid specifications will include:

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- a requirement that IV-D contractors use the federally mandated, state wide computer system;
- acceptance of the Secretary of SRS as the contractor's "Client";
- adherence to IV-D agency rules, regulations, policies and procedures;
- that a complaint/inquiry hot line be maintained eight (8) hours each working day;
- that the IV-D agency have the ability to expeditiously withdraw referred cases for alternative case processing as deemed necessary;
- performance standards based on quality and timeliness of activities, and
- financial penalty provisions for inadequate performance.

Until new contracts can be finalized and implemented, our intention is to continue to adhere to the provisions in the unexecuted July 1, 1991, contract drafted by SRS and OJA for the provision of IV-D services. In accordance with the language in that document we will provide official 60-day written notices of our intention to terminate any IV-D relationship which will not continue because of unsuccessful bids.

It is our hope that many of the IV-D relationships and "contracts" we have formed over the years can be continued as we reformulate and enhance Child Support Enforcement services in Kansas.

Sincerely,

Rochelle Chronister

Rochelle Chronister
Secretary

RC:br

cc: Kay Farley
District Court Trustees

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Supreme Court of Kansas

Kansas Judicial Center

301 W. 10th

Topeka, Kansas 66612-1507

HOWARD SCHWARTZ
Judicial Administrator

(913) 296-4873

November 2, 1995

Hon. Rochelle Chronister
Secretary of Social & Rehabilitation Services
Docking State Office Building
915 SW Harrison, 6th Floor
Topeka, KS 66612-1570

Dear Secretary Chronister:

Thank you for your recent letter in regard to IV-D contracts. I am surprised that you characterize our 1991 contract for the provision of IV-D services as "not...officially executed." The OJA and SRS have complied with the terms of the contract. In addition, both offices have assured federal authorities in the most recent federal audit and the state legislature that the contract is in full force and effect. As you know, contracts need not be signed by both parties in order to be valid under such circumstances.

I invite your attention to K.S.A. 23-4,117 which requires that OJA and SRS enter into an agreement for management information and enforcement services. The statute cited requires that SRS contract with court trustees for enforcement services, "...[u]nless good cause is shown..." OJA and SRS originally contracted for enforcement and management information services in 1985. The contract was renegotiated several times. Our 1991 negotiations led to a contract signed by both parties for the provision of management information services and a contract for support enforcement services which was not signed by SRS. Although Secretary Donna Whiteman did not sign the contract, its terms are being carried out on a daily basis.

I, also, do not understand on what basis you ascribe a retroactive application on negotiated contracts to K.S.A. 1994 Supp. 75-5365, rather than applying its provisions prospectively as is the usual case with procedural laws. The general rule of statutory construction is that a specific direction of the Legislature such as K.S.A. 23-4,117, prevails over a general direction of the Legislature, such as K.S.A. 1994 Supp. 75-5365, unless it appears that the legislature intended to make the general statute controlling.

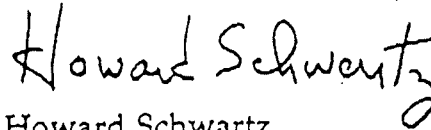
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Hon. Rochelle Chronister
November 2, 1995
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In conclusion, I strenuously object to your apparent intention to use a competitive bid process related to court trustee program enforcement services. Has the feasibility of this course of action been carefully considered? Obviously certain districts are more "desirable" from a bidding standpoint than others. How will you proceed if no qualifying bids are received in a district? It is imperative that this important function not be crippled or hindered by inadequately researched changes. I trust that you will reconsider your proposed action and follow the legislative mandate of K.S.A. 23-4,117.

Again, I wish to thank you for your letter. Please feel free to contact me or Kay Farley to discuss this matter further.

Sincerely,



Howard Schwartz
Judicial Administrator

HS:ps

cc: Chief Justice Kay McFarland

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23-4,117. Forms and informational materials; system to monitor payments; subcontractors. (a) The judicial administrator and the secretary of social and rehabilitation services shall cooperate to design suggested legal forms and informational materials which describe procedures and remedies under this act for distribution to all parties in support actions.

(b) The judicial administrator of the courts and the secretary of social and rehabilitation services shall enter into a contract to develop and maintain an automated management information system which will monitor support payments, maintain accurate records of support payments and permit prompt notice of arrearages in support payments. District courts, including court trustees, shall be subcontractors in the management information system and payments for their services shall be disbursed as directed by the judicial administrator. Unless good cause is shown, the secretary of social and rehabilitation services shall contract with court trustees for enforcement services. Subcontractor employees determined necessary to the performance of the contract by the judicial administrator shall be state employees paid by county general funds. The provisions of K.S.A. 20-358 and 20-359, and amendments thereto, shall apply. County expenditures for compensation of subcontractor employees may be paid during any budget year even though the expenditures were not included in the budget for that year. County general funds shall be promptly reimbursed for subcontractor employee compensation cost from the subcontractor's payment plus a reasonable administrative fee for the county for acting as fiscal and reporting agent as determined necessary by the judicial administrator. The provisions of the Kansas court personnel rules, except for pay and classification plans, shall apply to subcontractor employees.

History: L. 1985, ch. 115, § 13; July 1.

BILL GRAVES, GOVERNOR OF THE STATE OF KANSAS

KANSAS DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

915 SW HARRISON STREET, TOPEKA, KANSAS 66612

ROCHELLE CHRONISTER, SECRETARY

November 21, 1995

Dr. Howard Schwartz
Office of Judicial Administration
Kansas Judicial Center
301 West Tenth Street
Topeka, Kansas 66612-1507

Dear Dr. Schwartz:

Thank you for your letter of November 2, 1995, expressing your views concerning the Title IV-D relationship between SRS and your office.

As you are aware, I am interested in drawing upon the best state, county, and private resources to forge a unified IV-D child support program that is able to meet the increasing needs of children throughout Kansas. The noncompetitive environment you propose would not be conducive to securing the kind of business-oriented, performance-based services needed to meet the challenges facing us today and in the future.

Our analysis of the two statutes, K.S.A. 1994 Supp. 75-5365 and K.S.A. 23-4,117, and of the rules of statutory construction resulted in a different conclusion from the one you offered: Their provisions can, in fact, be construed together without ambiguity. K.S.A. 75-5365 requires, in absolute terms, that IV-D contracts hereafter be awarded by competitive bidding, whereas 23-4,117 specifically allows exceptions to the directive that SRS contract with court trustees. A court trustee's election not to participate in competitive bidding or a trustee's failure to offer the most competitive bid would show clearly "good cause." Furthermore, both are specific statutes; if any ambiguity existed, the rule of construction that the specific controls the general would not adequately identify legislative intent. Instead, it would be more appropriate to apply the rule that the later expression of legislative intent controls.

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Dr. Howard Schwartz
November 21, 1995
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K.S.A. 75-5365 is not being applied retroactively. Even to maintain the *status quo* with respect to court trustee services there needs to be a new, formal contract signed between SRS and OJA. The last contract signed by both parties expired long ago by its own terms. The 1991 version was never signed by both parties and is, at best, merely a basis for allowing court trustees to be reasonably compensated for services actually rendered to this agency. This casual manner of operation is not the way business ought to be conducted when services involving millions of dollars and thousands of children are at stake.

Even if SRS and OJA currently had a formal contract, I would still have the option of terminating contractual relations for good cause upon 60 days notice. Let me stress that my earlier letter to you was not intended to be a good cause notice but was simply to advise you and the trustees of the direction in which the IV-D Program is moving. We recognize that county budget cycles do not coincide with the state fiscal year and that court trustees need this information as early as possible. My decisions about existing relationships between SRS and court trustees will not be made until after requests for proposal (RFP's) are released and competitive bids received. After that, a court trustee who chooses not to bid, is not a successful bidder, or who does not serve an area appropriate for contract services may expect to receive a 60-day notice that the IV-D relationship with SRS is being terminated for good cause. If this does occur, we will work diligently to insure as smooth a transition as possible.

In the competitive bidding process, court trustees willing to operate under a true, performance-based contract with the IV-D Program should have several factors working in their favor. For example, trustees already have local offices and staff in position, giving them an advantage over anyone needing to include start-up costs in their proposal.

The feasibility of reengineering the Kansas CSE Program has been carefully thought out. In realigning our resources, we are willing to continue relationships with any current or, as appropriate, any future court trustee who bids successfully; uses our automated system for IV-D work; complies with IV-D agency rules, regulations, and interpretations of federal law; and acknowledges that the Secretary of SRS is every IV-D attorney's client in SRS' IV-D cases. These are essential elements with respect to any future RFP for IV-D services.

I do not wish to violate the law by ignoring the plain language of K.S.A. 75-5365, which specifically requires IV-D contracts with public or private entities to be established through competitive bidding. Nearly one hundred individuals and companies have already expressed desire to provide enforcement services in IV-D

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Dr. Howard Schwartz
November 21, 1995
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cases, particularly in metropolitan areas. I am unwilling to subject this agency to serious risk of litigation and liability by executing any contract for IV-D services without following the competitive bidding process required by K.S.A. 75-5365.

We expect satisfactory responses to the RFP's. If, however, the response for any particular area falls short, we are capable of reallocating existing staff and resources to provide the needed services.

Neither developing RFP's nor receiving bids and proposals will force us to accept any proposal that is not advantageous to the families we serve and to the State of Kansas. The process itself, however, gives us an opportunity to review and analyze what all vendors, including court trustees, have to offer in a competitive setting. This process of comparison conforms to basic good business principles and will result in much improved services. The people of our state expect, and deserve, nothing less.

Sincerely,

Rochelle Chronister

Rochelle Chronister
Secretary

RC:vr

cc: The Honorable Chief Justice Kay McFarland
Senator Carolyn Tillotson, Chair
Joint Committee on Children and Families
Committee Members, Joint Committee on Children and Families
Court Trustees

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