Approved: 5/3/97
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Carmody at 3:30 p.m. on March 24, 1997 in Room 313-S of the Capitol.

All members were present except: Representative Adkins (excused)
Representative Kline (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Revisor of Statutes
Jan Brasher, Committee Secretary

Conferees appearing before the committee: Judge Marla Luckert, Member of the Judicial Council
Natalie Haag, Executive Director, Board of Indigent Defense Service
Bill Sneed, Legislative Counsel, Amvestor and American Investors Life Insurance Company
Chuck Stones, Director of Research, Kansas Bankers Association
Kyle Smith, KBI
Lee Koehring, Chief of Leavenworth Police Department
Darrell Wilson, Chairperson, Law Enforcement Training Commission
Paul Shelby, Assistant Judicial Administrator, OJA
Mark Anderson, Disciplinary Administrator of the Kansas Supreme Court
Wendy McFarland, ACLU
Amelia McIntyre, Kansas Parks and Wildlife
Jerry Bump, Regional Supervisor for Region 1, Law Enforcement, Hays, Kansas
Helen Stephens, Kansas Peace Officers and Kansas Sheriff Officers Associations
Gene Johnson, Kansas Alcohol Safety Action Project

Others attending: See attached list

The Chair called the meeting to order at 3:40 p.m.

SB 28: Recoupment of certain state expenditures for defense services to indigent defendants; pretrial release procedures

Judge Marla Luckert, Member of the Judicial Council, testified in support of SB 28. Judge Luckert referred to a study requested by the 1996 Legislature to study the interaction between the Judicial Branch and the Board of Indigents' Defense Services (BIDS). The conferee stated that the there were two studies and that the studies concluded that controls to ensure services were provided to only those who are actually indigent were inadequate. The conferee referenced a table showing the fee schedule. The conferee stated that the Senate Committee changed the language in the bill from the scheduled amount to the amount shown on the voucher or actual amount spent. The conferee stated that an objective of the Judicial Council was for the defendant to know exactly what was due at the time of sentencing. The conferee requested that the Senate's language be struck and that the original language on page 4, lines 33 and 36, page 9, lines 30 and 33, page 12, lines 22 and 25 and on page 26, lines 26 and 29 be returned. The conferee stated that returning that language would provide uniformity by setting a flat amount. (Attachment 1)

Committee members discussed with the conferee bond forfeiture and the fee that was added by the Senate Committee.

Natalie Haag, Executive Director, Board of Indigent Defense Service, testified in support of SB 28. The conferee stated that with this bill the District Judge will have the option of assessing attorney fees based upon the billing statement or a reimbursement chart prepared by BIDS. The conferee stated that her agency's proposal calling for an assessment of an up-front administrative fee for any defendant with court appointed counsel has been incorporated into SB 28. The conferee referred to a reimbursement chart attached to her testimony. (Attachment 2)

During discussion with Committee members, the conferee stated that this bill will provide some incentive for

the defendant to pay something to defray legal costs.

Wendy McFarland, ACLU testified requesting an amendment to SB 28. The conferee stated that the amendment would limit the powers of bail bondsmen. The conferee stated that currently there are no laws in Kansas limiting the power of bail bondsmen and bounty hunters although they have the powers of law enforcement officers. The conferee stated that this bill would require bounty hunters to adhere to the same law as other law enforcement officers. The conferee stated that the proposed amendment is modeled after Missouri law. (Attachment 3)

The Chair closed the hearing on SB 28.

SB 31: **Certain exemptions of interest in contracts of annuity**

Bill Sneed, Legislative Counsel, Amvestor and American Investors Life Insurance Company testified in support of SB 31. The conferee stated that SB 31 amends K.S.A. 40-414 to provide the same exemptions for contracts of annuity as exists for interest in life insurance policies. The conferee stated that the United States Bankruptcy Court, District of Kansas, has held that the language of K.S.A. 40-414 exempting "any policy of insurance" issued by a life insurance company does not include contracts of annuity. (Attachment 4)

Chuck Stones, Director of Research with the Kansas Bankers Association testified in opposition to SB 31. The conferee stated that annuities have always been considered an investment alternative, rather than an alternative to an essential insurance product. The conferee stated that other non-essential investment products, such as CD's, Treasury Securities, etc., are not exempt. The conferee stated that the non-essential, investment nature of annuities should preclude them from becoming exempt in bankruptcy proceedings. (Attachment 5)

The Chair closed the hearing on SB 31.

SB 214: **Law enforcement: sheriffs: qualifications and officer training requirements**

Kyle Smith, KBI testified in support of SB 214. The conferee stated that this bill is designed to improve the professionalism of law enforcement officers in Kansas. The conferee discussed the criteria listed in Section 7 of the bill. The conferee stated that SB 214 also incorporates a change in federal law which prohibits a person convicted of a misdemeanor domestic violence offense from possessing a firearm. The conferee discussed the third change dealing with the addition of a definition for "auxiliary personnel." The conferee stated that provisions in this bill prohibit a law enforcement agency head from permitting auxiliary personnel who have a felony conviction from having access to law enforcement records or communication systems. (Attachment 6)

The Committee members discussed with the conferee issues concerning the time allowed to comply for former law enforcement officers as well as newly hired officers. Issues concerning the language pertaining to domestic violence were discussed.

Lee Koehring, Chief of Leavenworth Police Department spoke in favor of SB 214. The conferee stated that he particularly endorses the portion of the bill relating to proficiency testing or retraining of officer applicants who have not served as law enforcement officers for a period exceeding five years. (Attachment 7)

The Committee members discussed with the conferee issues concerning reciprocity with other states and the allowance of one year before completion of retraining.

Darrell Wilson, Chairperson of the Law Enforcement Training Commission testified in support of SB 214. The conferee stated that the Commission unanimously supports this proposed legislation and referred to his written testimony listing other law enforcement associations supporting this bill as well as the Kansas Attorney General's Law Enforcement Advisory Group. (Attachment 8)

The Chair closed the hearing on SB 214.

SB 269: **Collection of fingerprints and criminal history for persons applying for admission to practice law.**

Paul Shelby, Assistant Judicial Administrator, OJA testified in support of SB 269. The conferee stated that this bill authorizes the KBI and the FBI to provide criminal history information concerning the applicants upon request by the Kansas Supreme Court or the State Board of Law Examiners. The conferee stated that the Senate floor amendment on lines 15 and 16 of the bill were added requiring the applicant to pay the cost of the

finger printing and background check. (Attachment 9)

Mark Anderson, Disciplinary Administrator of the Kansas Supreme Court testified in favor of SB 269. The conferee stated that currently a background check for admission to practice law relies on information furnished by the applicant. The conferee stated that currently if an applicant has a Kansas arrest report then further information from the FBI about arrests and convictions elsewhere can be obtained. If there is not a Kansas arrest record then another FBI report is necessary for those applicants who apply for admission to practice law from outside the state. The conferee related that between 43% to 51% of all applicants over the past six years have been out of state applicants. The conferee stated that this law would permit the exchange of federal criminal history information with state and local governments for purposes of employment and licensing. (Attachment 10)

The conferee and Committee members discussed similarities with this bill's requirement and the requirements of securities licensees. Issues concerning the need for this bill as required by the federal government were discussed.

Wendy McFarland, ACLU testified in opposition to SB 269. The conferee stated that this bill infringes on the applicant's right to privacy when there is no reasonable suspicion. The conferee stated that fingerprinting is an invasive action and that there are less invasive methods to establish identification of an individual. (Attachment 11)

The Committee members discussed with the conferee circumstances where fingerprinting was required as security clearance in certain occupations.

The Chair closed the hearing on SB 269.

Wildlife and Parks representative Amelia McIntyre appeared in support of SB 292. Ms McIntyre introduced Jerry Bump, Regional Supervisor for Region 1-Law Enforcement from Hays, Kansas.

Mr. Bump testified in favor of SB 292. The conferee discussed the need for conservation officers to be able to enforce state laws for the safety of law abiding Kansans. The conferee stated that conservation officers provide important supplemental support to understaffed local law enforcement agencies in most of rural Kansas. The conferee stated that conservation officer encounter serious violations of other criminal statutes while in the routine pursuit of their duties. (Attachment 12)

The Committee members discussed with the conferee issues concerning the granting of law enforcement authority to other employees. The Committee members discussed with the conferee the provision granting the power to arrest without a warrant. The conferee stated that provisions exist to allow arrest if a violation of law is in progress.

Helen Stephens, Kansas Peace Officers and Kansas Sheriff Officers Associations testified in support of S B 292. The conferee stated that a lot of rural communities do not have enough manpower and that enabling conservation officers to aid in law enforcement activities will help those communities. The conferee responded to a Committee member's question regarding the language in the bill giving law enforcement powers to "other employees" by stating that the qualifications for that power is explained in the bill. The conferee stated that the intent of this bill is not to expand law enforcement, but to re-establish what had been practiced before the Attorney General's opinion which limited conservation officers' authority to the boundaries of the park areas. (Attachment 13)

The Committee members discussed the Attorney General's opinion and the Revisor offered to provide copies of that opinion. Amelia McIntyre also offered to provide copies of that opinion and a chart outlining certain offenses. The Chairman suggested adding the words, "on or off land controlled by the park."

Written testimony in support of SB 292 was provided by Gene Johnson, Kansas Alcohol Safety Action Project Coordinator Association. (Attachment 14)

The Chair closed the hearing on SB 292.

The Chairman announced the tentative schedule for hearings on SB 140 and stated that the Committee will work bills at tomorrow's meeting.

The Chair adjourned the meeting at 6:10 p.m

The next meeting is scheduled for March 25, 1997.

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-24-97

NAME	REPRESENTING
David Traster	KS Bar Assn
Callerstill Denton	Bottenberg's Assoc.
Kelly Teeple	AG's Office
Mark Gauntt	KS Wildlife Officers Assn.
Darrell Wilson	Kansas Law Enforcement Training Center
Ed H Pavey	KLETC
Helen Stephens	KPOA / KSA
Lee Doering	Leavenworth Police
Paul Shelby	OJA
Mark Anderson	Disciplinary Admin. - KSC
Carol G. Green	Kansas Supreme Court
Bill Sneed	Am Vectors Fin. Corp.
Chuck Stones	ICBA

#1

Judicial Council
Testimony in Support of Senate Bill No. 28

Presented by Marla J. Luckert
District Court Judge and
Chair of Judicial Council
Judicial Branch/ Board of Indigent
Defense Services Advisory Committee

The 1996 Legislature requested the Kansas Judicial Council undertake a study of the interaction between the Judicial Branch and the Board of Indigents' Defense Services (BIDS). The direction from the Legislature was:

> The study should include suggestions about how to help judges determine indigence, how to ensure that judges are actually scrutinizing the required affidavits of indigence, what factors are appropriate to examine in determining indigence, and any other measures that would help increase the recoupment efforts of the Board of Indigents' Defense Services. The study should also focus on reimbursement for services and costs for those defendants found to be partially indigent and whether judges should order defendants to reimburse costs at the time of sentencing.

In part, this request was prompted by a Legislative Post Audit report conducted in September 1994 and a study funded by the Legislature and conducted by the Wichita State University Hugo Wall School of Urban and Public Affairs. These studies concluded that controls to ensure services were provided to only those who are actually indigent were inadequate. The Legislative Post Audit report concluded that in nearly one-half of the 192 cases reviewed, the judge did not have all the information required under statutes and regulations before declaring a defendant indigent. The researchers also determined that in approximately ten percent of the cases reviewed there appeared to be income or property holdings which might disqualify the defendant from free legal services. Finally, the report criticized the recoupment of attorneys' fees and the significant lack of uniformity in these efforts in the

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various parts of the state.

To address these issues, the Judicial Council appointed the Judicial Branch/Board of Indigents' Defense Services Advisory Committee consisting of legislators, judges, and attorneys. The committee included Representative Gayle Mollenkamp, Russell Springs, and Senator Stephen R. Morris, Hugoton. Judges serving on the committee in addition to me were Jack L. Burr; Goodland, William F. Lyle, Jr., Hutchinson; Paul E. Miller, Manhattan; and Clark V. Owens II, Wichita. Professor William Rich of Washburn University, Mark J. Sachse, Kansas City and Ronald Wurtz, Topeka were the attorney members. The committee met over a several month period and heard from a number of conferees, including those who had conducted the legislative post audit.

The committee's report contains some recommendations to the Board of Indigents' Defense Services regarding the forms which are utilized in the determination of indigency. The only statutory change recommended which relates to the affidavit is in section 9 of the bill. This requires the filing of the affidavit in the court file.

The recommendations which result in more substantial legislative changes relate to mechanisms which will improve recoupment. The committee reached the consensus that district court's should presume that defendants were able to pay some amount for defense services. The amount may be minimal or it may be a rough equivalent of the actual cost. Hence, while a defendant may have been truly indigent when arrested or even at the time of sentence, he or she may gain the ability to pay the costs while on probation, parole or post-release supervision.

Kansas law before 1972 mandated repayment. However, this statute was found unconstitutional by the United States Supreme Court. *James v. Strange*, 407 U.S. 128 (1972). Subsequently, the Court, in *Fuller v. Oregon*, 417 U.S. 40 (1974), determined it was constitutional to require those able to repay to do so as long as there were hardship exceptions. The Judicial Council's recommendation is that this

approach be adopted.

Under current statutes, specifically K.S.A. 22-4513, BIDS may send to the county or district attorney a notice that expenditures have been made on behalf of a named defendant. The county or district attorney may then petition the court to require the defendant to repay the state all or part of that amount. The reality is that the procedure is not uniformly followed. Orders to repay are not always sought. Where the procedure is followed, it is cumbersome and costly because additional proceedings are required.

The proposed amendments require the sentencing judge to impose a judgment for an attorney fee. Our committee proposed and the bill was originally written to assess the judgment at an amount which is the lesser of all expenditures made by the state board of indigents' defense services to provide counsel and other defense services or the amount allowed by the board of indigents' defense reimbursement table (a current table is attached). Section 11 of the bill imposed an obligation upon BIDS to adopt and maintain a table for this use. The Senate Committee changed this language so that the court is required to assess the amount claimed upon the vouchers prepared by the appointed attorney. Our committee had rejected this view for a number of reasons, including problems with logistics and fairness. The logistics problems include: (1) after the court orders the amount, the voucher would be sent to BIDS which, in its audit process, might change the approved amount thus affecting the "correctness" of the judgment and potentially leading to more hearings; (2) a defendant would not have notice of the claimed amount and thus, at least arguably, could seek continuance of the hearing (as opposed to knowing a scheduled amount before a hearing); and (3) the bill allows submission of supplemental vouchers after sentencing which leads to potentially more hearings. The loss of efficiency impacts the cost of defense. The fairness issue arises because of the potential disparity co-defendants might owe and because of the issue of fairness based upon geographic location.

The committee recognized that under its proposal full reimbursement to the State would not be achieved. However, realistically, even if the full amount of the fee were assessed as a judgment, we will never achieve 100 percent recoupment. We, therefore, urge you to return to the original language found at lines 33 and 36 of page 4, line 30 and 33 of page 9, lines 22 and 25 of page 12, and lines 26 and 29 of page 26. We believe that the hidden costs in efficiency weigh against the increased recoupment which might be gained through the amendments. Also, it should be noted that BIDS can determine the scheduled rates and may raise the amounts as appropriate. Over time an average percentage of recoupment will become known and revenue can be estimated which would uniformly recoup costs.

Section 4 of the bill imposes these requirements at sentencings for crimes committed before July 1, 1993, and section 5 imposes the requirements for crimes committed after that date. Section 6 allows the court to order the reimbursement as a condition of probation. Sections 7 and 8 require the parole board to impose repayment of the costs of defense as a condition of parole or post release supervision, except in cases of compelling circumstances. Procedures are prescribed for situations where an amount was not set at sentencing.

All of the provisions incorporate the constitutionally required exception for circumstances where repayment would impose a hardship upon the defendant or the defendant's immediate family.

To aid in recoupment, sections 12 and 13 make available civil remedies such as garnishments, and allow the courts to contract with collection services.

REIMBURSEMENT TABLE
IN PUBLIC DEFENDER CASES

	DRUG GRID 1, 2, 3 OFF GRID & NON-DRUG GRID 1-5			DRUG GRID 4 NON-DRUG GRID 6-10		
	A	B	C	D	E	OTHER
Plea before Preliminary Hearing	350	350	350	250	250	150
Plea after Preliminary Hearing	550	550	550	350	350	
Trial	550	550	550	350	350	
	Plus $210 per day in trial					
Appeals	Actual preparation time and $35 per hour, plus $105					

*** Other includes show cause hearings (probation revocation), extradition, modification of sentence hearings, habeas corpus cases, diversion and all others that fall under the $250 or $100 maximum in the assigned counsel rules.

AVERAGE COST PER CASE TABLES

NON-DRUG
(Tried/Non-Tried)

SEVERITY LEVEL	ASSIGNED COUNSEL	PUBLIC DEFENDER
10	$1,320/$390	$905/$254
9	$877/$463	$595/$305
8	$1,070/$455	$730/$299
7	$1,262/$514	$864/$341
6	$2,165/$528	$1,496/$357
5	$1,482/$637	$1,018/$427
4	$1,170/$545	$800/$362
3	$2,271/$739	$1,570/$498
2	$2,584/$793	$1,790/$536
1	$3,191/$967	$2,215/$658
TOTAL	$1,663/$543	$1,145/$361

DRUG
(Tried/Non-Tried)

SEVERITY LEVEL	ASSIGNED COUNSEL	PUBLIC DEFENDER
4	$1,162/$521	$795/$345
3	$1,684/$667	$1,160/$448
2	$2,167/$590	$1,498/$394
1	$1,530/$780	$1,052/$527
TOTAL	$1,574/$587	$1,083/$392

FINANCIAL AFFIDAVIT

For Court-Appointed Attorney, Expert or Other Services
(K.A.R. 105-4-3)

CASE NO. _____
CHARGES: _____

CUSTODY:
☐ Jail ☐ R O R
☐ Cash Bond $_____
☐ Surety Bond $_____

Judicial Dist. _____
County _____

DEFENDANT: _____ (Last / First / MI / Age)

SPOUSE, If Married _____ (Last / First / MI)

ADDRESS: _____ (Street / City / State / Phone)

IN EMERGENCY, CONTACT: _____ (Last / First / MI)

_____ (Street / City / State / Phone)

INCOME

EMPLOYMENT: Are you (check one): ☐ Employed ☐ Unemployed ☐ Self-employed
Complete the information below for the last 12 months:

	EMPLOYER	ADDRESS	Dates of Employment	Monthly Income
You				
Spouse				

If living with your parents or others to whom you look for support, enter their monthly income ..... $

Totals × 12

Est'd Annual Income $

OTHER INCOME: Have you received within the past 12 months any other income, including from a business, rent payments, public assistance, support or other sources? ☐ Yes ☐ No

If yes, give the amount received and identify sources..... (Attach additional sheets, if necessary)

Sources	
	$
	$
Total Annual Income	$ A

OTHER ASSETS

CASH: Have you any available cash or money in savings or checking accounts, certificates of deposit or other funds? ☐ Yes ☐ No

	Value
	$

PROPERTY: Do you own a home, land or other property? (Do not include ordinary household furnishings and clothing) Yes ☐ No ☐

If yes, approximately how much is it worth? ..... $_____
Less amount still owed on it, approximately ..... $_____

	$
Total Other Assets	$ B
A + B = Total Liquid Assets	C

OBLIGATIONS & DEBTS

DEPENDENTS:
Check one:
☐ Single
☐ Married
☐ Widowed
☐ Separated/Divorced

Total No. Dependents _____
List their names, ages and relationship to you:
_____
_____
_____
_____

DEBTS/MONTHLY BILLS	
Rent/House Payment	$
Food/Clothing/Medicine	
Utilities.....	
Alimony/Child Support	
Installment Payments	
Other Payments.....	
TOTAL MONTHLY EXPENSES	$

STATEMENT OF DEFENDANT: I can afford to pay $_____ to the Clerk of District Court toward the costs of my defense at this time.

I, _____, of lawful age and under penalty of perjury, declare that I have read this affidavit, or that it has been read to me, about my financial condition and the statements contained therein are true.

_____ (Date) _____ (Signature)

Subscribed and sworn to before me this _____ day of _____, 19____

My commission expires _____ _____ (Notary Public)

OFFICE USE ONLY

APPLICANT ABOVE GUIDELINES:
☐ YES ☐ NO

Amount $_____ PER _____

REFUSED BY TWO PRIVATE ATTORNEYS
☐ YES ☐ NO

RECOMMENDATION TO THE COURT:
☐ ELIGIBLE
☐ NOT ELIGIBLE
☐ PARTIALLY INDIGENT, ABLE TO PAY $_____ PER MONTH FOR PUBLIC DEFENDER OR COUNSEL, TO BE REIMBURSED IF ACQUITTED.
☐ REQUIRES A HEARING BEFORE FINAL DETERMINATION.

ORDER:
☐ AS RECOMMENDED
☐ AS FOLLOWS:

_____ (Date) _____ (Eligibility Investigator)

_____ (Date) _____ (Judge)

Note: Table of reasonable and necessary living expenses and table of costs of legal representation are on the _____ of this form. These should be referred to in the determination of indigency or partial indigency.

BIOS-72

1-7

DETERMINATION OF ELIGIBILITY—K.A.R. 105-4-1(b): "An eligible indigent defendant is a person whose combined household income and liquid assets equal less than the sum of the defendant's reasonable and necessary living expenses plus the anticipated cost of private legal representation."

TABLE D
REASONABLE AND NECESSARY LIVING EXPENSES

Size of Family Unit	*Amount Allowed*
1	$ 9,338
2	12,538
3	15,738
4	18,938
5	22,138
6	25,338
7	28,538
8	31,738

Add $3,200 for each additional family member.

(K.A.R. 105-4-2)

TABLE E
COSTS OF LEGAL REPRESENTATION

Most Serious Offense	*Cost*
A	$9,000
B	3,500
C	2,000
D	1,800
E	1,500
Others	500
Appeals	3,000

Total Liquid Assets (Line C from front) _____ (1)

Amount from Table D above _____

Amount from Table E above _____

Sum of D and E _____ (2)

If defendant's Total Liquid Assets (Line 1) are less than the amount on Line 2, defendant should be determined to be indigent.

In all other cases, defendant may be determined to be indigent or partially indigent. If partially indigent, defendant should be ordered to reimburse the state for all or part of the expenditures made on his or her behalf. The court may take into account unusual debts or other circumstances in determining eligibility for defense services.

(See K.A.R. 105-4-1 through 105-4-5.)

TESTIMONY
BOARD OF INDIGENTS' DEFENSE SERVICES
BEFORE THE
HOUSE JUDICIARY COMMITTEE
MARCH 24, 1997
Natalie G. Haag, Executive Director

On behalf of the Board of Indigents' Defenses Services, I appear in support of Senate Bill 28. Current statutes do not clearly grant the District Court Judge the authority to order reimbursement of attorney fees for court appointed counsel. Thus, court orders to reimburse BIDS for attorney fees and costs expended by this agency in the defense of indigent defendants has been inconsistent from judicial district to judicial district. Senate Bill 28 would require courts to order defendants to reimburse the State of Kansas for expenditures by BIDS.

Kansas is currently second in the nation in total dollars per case recouped from indigent defendants. Thus, this agency is not opposed to seeking reimbursement from our clients. During fiscal year 1996, indigent defendants reimbursed the State of Kansas $864,703 for services provided by BIDS. A copy of the county by county reimbursement has been attached to my testimony (Exhibit A).

Senate Bill 28 will require the attorney to submit a billing statement at the time of sentencing. At sentencing the defendant will have the opportunity to raise any objections to the amount of time claimed by the attorney. The District Judge will have the option of assessing attorney fees based upon the billing statement or a reimbursement chart prepared by BIDS. A copy of a proposed reimbursement chart is attached as Exhibit B. A reimbursement chart is necessary because BIDS has limits on the amount it pays attorneys for the work performed. BIDS auditors also review billing statements and cut additional amounts out of the fee request. In fact, during fiscal year 1996, BIDS trimmed $368,870 from the fees requested by attorneys. During the first six months of fiscal year 1997 fee requests have been cut by $219,940. (Exhibit C) Consequently, the amount billed by the attorney is not always the amount actually paid by BIDS. The reimbursement charts are based an the average amount paid for each severity level case during fiscal year 1996. The charts will also provide a standard for determining the cost of a public defender.

BIDS has conducted research to determine other ways of recouping costs from indigent defendant. Last legislative session our agency proposed the assessment of an up-front administrative fee for any defendant with court appointed counsel. This proposal has now been incorporated into Senate Bill 28. A copy of a recent national survey by Spangenberg regarding the effectiveness of the collection of administrative fees is attached as Exhibit D. Last month BIDS conducted a follow-up survey with the results shown on Exhibit E. As you can see, other states have increased recoupment dollars by collecting an up-front administration fee. Other methods of collection are also shown in this survey and include attaching tax refunds. According to the collection data from other states and the most recent information from Spangenberg, the State of Kansas can expect to collect an administrative fee from approximately 10% of all defendants. Last year our agency defended 21,528 cases. At best, this fee will increase recoupment by $75,348. We recommend this

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proposal remain in the bill.

Senate Bill 28 allows the District Court Judge the option to review the defendant's circumstances and waive the administrative fee and/or attorney fees. This discretion is absolutely necessary to avoid any "chilling effect" on the defendant's constitutional right to counsel. A previous Kansas recoupment statute was declared unconstitutional for its chilling effect on the defendant's right to counsel. *James v. Stewart,* 407 U.S. 128 (1972).

The need to have statutory authority to order reimbursement of attorney fees and costs is paramount. The issue of improving recoupment to the State General Fund can not be adequately addressed without this statute.

The issue which most strongly affects the expenditures of BIDs and any potential recoupment is the determination of indigency. This is a determination made by the district court judge. Our agency has often heard complaints regarding the indigency affidavit. We have studied the affidavits used in other states and attempted to draft a user friendly affidavit. This task is very difficult. A completely user friendly form does not gather enough data to assist the court in making an informed decision.

Currently, BIDS has started a pilot project in Sedgwick county. We have hired an indigency screener to assist the court in investigating the financial status of persons who file indigency affidavits. The results of the investigation are made available to the district court judge making the indigency determination.

Despite attempts to address potential concerns regarding the finding of indigency, the indigency affidavit remains confusing to the defendant and court personnel. We recommend the Judicial Council study and propose revisions to the indigency affidavit to make a "Judge friendly" form. Not all judges in the state are using the current indigency affidavit. Senate Bill 28 will require the affidavit to be completed and placed in the defendant's permanent court file. Accordingly, judges will need a form which best suits their needs. The Judicial Council can certainly explore the concerns and needs of the judicial branch. BIDS will be glad to provide its research and assistance in any manner necessary to help with the revision process.

Assigned Counsel Recoupment for Fiscal Year 1996

County	Number of Defendants	Recoupment
ALLEN	41	$9,417
ANDERSON	26	$9,633
ATCHISON	31	$4,966
BARBER	5	$1,586
BARTON	42	$11,756
BOURBON	37	$13,233
BROWN	36	$11,579
BUTLER	104	$38,114
CHASE	6	$3,270
CHAUTAUQUA	11	$2,250
CHEROKEE	15	$3,584
CHEYENNE	7	$7,882
CLARK	7	$3,146
CLAY	3	$213
CLOUD	2	$432
COFFEY	40	$13,517
COMANCHE	1	$50
COWLEY	92	$22,202
CRAWFORD	28	$5,775
DECATUR	7	$2,881
DICKINSON	5	$1,120
DONIPHAN	19	$5,246
DOUGLAS	83	$22,925
EDWARDS	5	$1,736
ELK	8	$2,134
ELLIS	43	$13,898
ELLSWORTH	17	$5,274
FINNEY	30	$6,854
FORD	85	$28,044
FRANKLIN	40	$7,753
GEARY	23	$3,150
GOVE	0	$0
GRAHAM	7	$3,121
GRANT	10	$4,128
GRAY	5	$1,721
GREELEY	4	$1,413
GREENWOOD	35	$6,310
HAMILTON	1	$121
HARPER	11	$2,742
HARVEY	56	$34,722
HASKELL	11	$4,565
HODGEMAN	3	$644
JACKSON	4	$1,141
JEFFERSON	21	$4,689
JEWELL	0	$0
JOHNSON	69	$16,332
KEARNY	7	$2,368
KINGMAN	13	$3,025
KIOWA	3	$254
LABETTE	81	$39,893
LANE	1	$900
LEAVENWORTH	74	$13,740
LINCOLN	0	$0
LINN	11	$1,726
LOGAN	5	$1,545
LYON	100	$32,618
MARION	2	$400
MARSHALL	10	$2,151
MCPHERSON	54	$15,804
MEADE	11	$2,475
MIAMI	27	$6,397
MITCHELL	6	$1,365
MONTGOMERY	113	$24,632
MORRIS	0	$0
MORTON	4	$1,221
NEMAHA	8	$2,129
NEOSHO	65	$19,389
NESS	6	$1,607

County	Number of Defendants	Recoupment
NORTON	16	$7,555
OSAGE	27	$7,338
OSBORNE	5	$1,396
OTTAWA	2	$193
PAWNEE	20	$5,239
PHILLIPS	7	$2,578
POTTOWATOMIE	27	$6,670
PRATT	21	$6,748
RAWLINS	5	$5,360
RENO	55	$11,407
REPUBLIC	0	$0
RICE	6	$884
RILEY	14	$2,555
ROOKS	38	$14,784
RUSH	5	$3,176
RUSSELL	15	$3,810
SALINE	21	$2,691
SCOTT	5	$937
SEDGWICK	99	$25,889
SEWARD	61	$14,821
SHAWNEE	43	$6,317
SHERIDAN	0	$0
SHERMAN	28	$12,860
SMITH	0	$0
STAFFORD	18	$7,841
STANTON	11	$5,236
STEVENS	6	$2,335
SUMNER	46	$10,166
THOMAS	22	$10,154
TREGO	12	$4,864
WABAUNSEE	6	$3,472
WALLACE	0	$0
WASHINGTON	1	$163
WICHITA	2	$889
WILSON	33	$7,998
WOODSON	6	$1,798
WYANDOTTE	2	$1,335

Defendant Total 2,422.00 Recoupment Total $ 718,361

Exhibit A

BOARD OF INDIGENTS' DEFENSE SERVICES

REIMBURSEMENT TABLES

March 7, 1997

NON-DRUG
(Tried/Non-Tried)

SEVERITY LEVEL	ASSIGNED COUNSEL	PUBLIC DEFENDER
10	$1,300/$390	$905/$255
9	$870/$460	$595/$305
8	$1,070/$455	$730/$300
7	$1,260/$515	$865/$340
6	$1,500/$530	$1,500/$360
5	$1,480/$640	$1,020/$430
4	$1,170/$545	$800/$360
3	$2,270/$740	$1,570/$500
2	$2,580/$790	$1,790/$540
1	$3,190/$970	$2,215/$660

OTHER

	ASSIGNED COUNSEL	PUBLIC DEFENDER
Habeas Corpus & 60-1507	$400	$280
Post-Sentencing	$200	$140
Appeals	$750	$705

DRUG
(Tried/Non-Tried)

SEVERITY LEVEL	ASSIGNED COUNSEL	PUBLIC DEFENDER
4	$1,160/$520	$795/$345
3	$1,685/$670	$1,160/$450
2	$2,000/$590	$1,500/$395
1	$1,530/$780	$1,050/$530

OFF-GRID
(Tried/Non-Tried)

ASSIGNED COUNSEL	PUBLIC DEFENDER
5000/5000	4000/2500

STATE BOARD OF INDIGENTS' DEFENSE SERVICES

Amounts Saved through Voucher Audit

FY 1996

Claims were reduced for a total savings of $368,870

FY 1997 (Half-year)

1165 Claims were reduced for a total savings of $219,940

The Board's new policy of reviewing all "exceptional cases" has saved about $30,000 so far this year. Eleven claims which had been allowed by judges were completely denied by the Board, and six claims were allowed with reduced amounts.

THE SPANGENBERG GROUP

DRAFT

Up-Front Application/Registration Fee Rates (Updated December 1996)

State (Authority)	Current Fee	Revenues from Fee: FY 1996	Implementation Date	Recipient of Revenue	Agency responsible for Screening/collections	% of clients from which fee is collected	Overhead expenditure for fee collections	Mechanism for partial payment
California (County adopted state statute)	$25	N/A	Legislation enacted in August 1996. Implementation dates dependent on county.	County general fund	Varies from county to county.	N/A	Varies from county to county.	Defendant may be assessed a portion of the fee.
Colorado (State Statute)	$25[1]	$161,928	1990	State treasury	The courts	N/A	None	Fee may be reduced to $10 or waived completely.
Connecticut (State Statute)	$25[2]	$87,280	July 1, 1993	Public Defender Services	Public Defender Services.	Fee is collected from 20% of those defendants who are assessed. The Public Defender Services assesses 30% of their clientele (incarcerated defendants are not assessed). They collect the reimbursement from approximately 6% of all indigent defendants.	None	Defendant may be assessed a portion of the fee.
Florida (State Statute)	$40	N/A	January 1, 1997	Indigent Criminal Defense Fund	The courts	N/A	None	Defendant may be assessed a portion of the fee.
Kentucky (State Statute)	$40	$620,831	July 15, 1994	Department of Public Advocacy	The courts	Approximately 45%[3]	None	Defendant may be assessed a portion of the fee.
Massachusetts (State statute)	$100[4]	$1,884,604	July 1, 1991	State general fund	Probations Department does screening and collections. Judge makes final assessment.	N/A	None	Defendant may be assessed a portion of the fees.

[1] The Colorado fee was originally $10. It was raised to $25 in 1993.

[2] Connecticut's program is called "client reimbursement." State law states that all fees must be returned to the general fund while collections from reimbursements return directly to the agency providing services.

[3] The estimate is based on projected revenues of $1,200,000 to be collected from 60% of indigent defendants. The estimate also represents an statewide average. Some urban counties report that collection rate range as high as 75% - 90%.

[4] Originally, Massachusetts instituted a $40 fee effective on July 1, 1990. The fee was then raised to $75 to be effective on July 1, 1992. The current $100 fee went into effect on July 1, 1994.

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DRAFT

Up-Front Application/Registration Fee Rates (Updated December 1996)

State (Authority)	Current Fee	Revenues from Fee: FY 1996	Implementation Date	Recipient of Revenues	Agency responsible for Screening/collections	% of clients from which fee is collected	Overhead expenditure for fee collections	Mechanism for partial payment
New Jersey (State statute)	$50	$203,500	July 1, 1991	State Public Defender	State Public Defender	6-7%	None	Defendant may be assessed a portion of the fee.
New Mexico (State statute)	$10	$78,000	July 1, 1993	Public Defender's Automation Account	Indigency screenings and collections are conducted by public defenders in the six district that have PD services. The courts are responsible in the other seven districts.	Approximately 15%[5]	The collection overhead costs averages out to be about the same as the revenues generated.	If the defendant cannot pay the full $10, then the fee is waived.
Oklahoma (State statute)	$40[6]	$5,000	July 1, 1992	First $20 to Oklahoma Indigent Defense System. Second $20 to the courts.	The courts	4-5%	None	Partial payments are allow. First $20, or any portion thereof, is dedicated to Oklahoma's indigent defense system. Next $20 goes to courts.
South Carolina (State statute)	$25	$160,000	July 1, 1993	Office of Indigent Defense	Screenings/Collections are left up to the counties. All but four counties have court clerks collect the fee. Three counties have PDs collect the fee, and one county has the magistrate's office perform the function.	Approximately 10%[7]	None	Defendant may be assessed a portion of the fee.
Washington (King County)	$5[8]	$15,000	1991	Indigent Defense Expense Fund	Office of Public Defender[9]	N/A	N/A	Fee is waived if defendant cannot pay the $5.

[5] This estimate represents widely disparate numbers from county to county. The New Mexico Public Defender Department has offices in 6 of the 13 judicial districts. In these six districts, fees are collected from 25% of the defendants. The collections rates in the other seven districts stand at less than eight percent.

[6] From July 1, 1992 to June 30, 1996, Oklahoma's fee was $15. At that time, 10% of the fee went to the courts ($1.50) while 90% ($13.50) went to Oklahoma Indigent Defense System (OIDS).

[7] Currently, the South Carolina Office of Indigent Defense has no means to track the number of cases in which the fee is waived. The estimation is based on projected revenues of $1,400,000.

[8] On January 1, 1997 the fee will be raised to $25.

[9] The Finance Office pursues non-collected fees without a charge to the Office of Public Defense. After two years, a collection agency is contracted to collect the fees.

Prepared for the American Bar Association Bar Information Program - November 1996

THE SPANGENBERG GROUP

DRAFT

Up-Front Application/Registration Fee Rates (Updated December 1996)

State (Authority)	Current Fee	Revenues from Fee: FY 1996	Implementation Date	Recipient of Revenues	Agency responsible for Screening/collections	% of clients from which fee is collected	Overhead expenditure for fee collections	Mechanism for partial payment
Wisconsin (State statute)	Varies[10]	$626,000	August 1, 1995	Wisconsin Public Defender	Wisconsin Public Defender	Approximately 8%[11]	Two positions had to be transferred from public defender field office to the central office to handle the payments.	Defendant can elect to pay the defense services in installments, but he/she loses out on the prepayment discount.[12]

[10] The prepayment fee is based upon a detailed matrix that takes into account the type and number of charges brought against the defendant. The client can elect to prepay the charges at a reduced rate within 30 days of the application for counsel.

[11] Estimate is based on the projected revenues of $7,000,000.

[12] Wisconsin Public Defender contracts with a collection agency to collect these payments.

February 12, 1997

To: Natalie Haag
From: Glenn Adamson
Re: Recoupment

IOWA -
Total Recoupment: $2,283,000
Total Cases: Unavailable
Comments: a. Collection Unit exists in Revenue Dept.
b. State income tax refunds are used to pay debts.
c. Person who owes money can not get driver's licence renewed.
d. County attorneys may keep up to 35% of recoupment for their county.

MARYLAND -
Total Recoupment: $1,417,507
Total Cases: 160,000
Comments: a. Service fee of $50 for adult and $25 for juvenile.
b. Court ordered recoupment of $417,963.
c. Service fee recoupment of $999,544.

NEW JERSEY -
Total Recoupment: $1,250,000
Total Cases: 76,000
Comments: a. Service fee of $50.
b. State income tax refunds are used to pay debts.
c. Accounts receivable department sends quarterly billings.
d. Court ordered recoupment of $500,000.
e. Remainder is recoupment of service fees and tax refund money.

WISCONSIN -
Total Recoupment: $933,000
Total Cases: 120,000
Comments: a. Service fee of $50.
b. Court ordered recoupment of $160,000.
c. Parents of juveniles paid recoupment of $100,000.
d. Recoupment of partial indigence $27,000.
e. Service fee recoupment of $620,000.
f. If service fee is paid up front then no other payment is required.

#3

Language Of Proposed Amendment to SB 28
Concerning Bail Bond Agents

New Section 1. No surety or bonding company shall employ or contract with any person for the purpose of arresting, recapturing, returning to custody or surrendering any defendant or fugitive, except as provided in this section and subject to the restrictions of this section.

A. No surety or bonding company, or any of its employees or agents, shall be immune or exempt from any law or cause of action by virtue of their surety relationship to any defendant or fugitive except that such surety or bonding company, and its employees and agents, may use reasonable force to retake a defendant or fugitive for whom a warrant has been issued for the purpose of surrender on such warrant.

B. No employee or agent of a surety or bonding company shall forcibly enter or remain within any inhabited structure without valid consent, or use deadly force or the threat of deadly force, for the purpose of retaking a defendant or fugitive who is not charged with a felony violation, or when such acts are otherwise unreasonable.

C. A surety or bonding company shall be civilly liable to any person who sustains damages as a result of any act by its employee or agent, including punitive damages when allowed by law and reasonable attorney fees and expenses of litigation. Any surety or bonding company charging a fee for services shall maintain a minimum insurance insuring for such damages of $1,000.000.00 per occurrence, and otherwise shall not enter into any agreement with any person to insure, compensate or hold harmless such surety or bonding company for such liability.

D. Any surety or bonding company shall maintain a list of all employees and agents and file a copy of such list with the Sheriff in each county where it operates at least once every sixty days. No attempt shall be made to retake any defendant or fugitive until notice shall be given to the police department of the city where the defendant or fugitive is located (or, if not within a city, the sheriff of the county).

House Judiciary
Attachment 3
3/24/97

To Rep. Carnahan Missouri's Version

FIRST REGULAR SESSION

HOUSE BILL NO. 260

89TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SKAGGS, COOPER, FRANKLIN (Co-sponsors), WILLIAMS (121), THOMPSON (37), HOPPE AND DANIEL (42).

Read 1st time January 14, 1997 and 1000 copies ordered printed.

ANNE C. WALKER, Chief Clerk

L0900.011

AN ACT

To repeal section 374.770, RSMo 1994, relating to bail bond forfeitures, and to enact in lieu thereof seventeen new sections for the purpose of licensing bounty hunters.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 374.770, RSMo 1994, is repealed and seventeen new sections enacted in lieu thereof, to be known as sections 374.770, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16, to read as follows:

374.770. 1. If there is a breach of the contract of the bond, the court in which the case is pending shall declare a bond forfeiture, unless the surety upon such bond informs the court that the defendant is incarcerated somewhere within the United States **in which case the court may declare a bond forfeiture**. If forfeiture is not ordered because the defendant is incarcerated somewhere within the United States, the surety is responsible for the return of the defendant. If bond forfeiture is ordered and the surety can subsequently prove the defendant is incarcerated somewhere within the United States, then the bond forfeiture [shall] **may** be set aside and the surety be responsible for the return of the defendant. When the surety notifies the court of the whereabouts of the defendant, a hold order shall be placed by the court having jurisdiction on the defendant in the state in which the defendant is being held.

2. In all instances in which a bail bond agent or general bail bond agent duly licensed by sections 374.700 to 374.775 has given his bond for bail for any defendant who has absented himself in violation of the condition of such bond, the bail bond agent or general bail bond agent

EXPLANATION—Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

3-2

shall have the first opportunity to return such defendant to the proper court. If he is unable to return such defendant, the state of Missouri shall return such defendant to the proper court for prosecution, and all costs incurred by the state in so returning a defendant may be levied against the bail bond agent or general bail bond agent in question.

Section 1. Sections 1 to 16 of this act shall be known as "The Bounty Hunter Licensure Act".

Section 2. As used in sections 1 to 16 of this act, the following terms mean:

(1) "Board", the state board of bounty hunters in the state of Missouri;

(2) "Bounty hunt", the recapturing of suspects released on bail;

(3) "Bounty hunter", any bail bond agent, as defined in section 374.700, RSMo, any employee or agent of a bail bond agent or any person who recaptures suspects released on bail;

(4) "Licensed bounty hunter", a person who is licensed as a bounty hunter by the board.

Section 3. No person shall hold himself or herself out as being a bounty hunter in this state, unless such person is licensed and registered in accordance with the provisions of sections 1 to 16 of this act.

Section 4. There is hereby created and established a "State Board of Bounty Hunters" in the division of professional registration of the department of economic development for the purpose of licensing all persons engaged in the practice of bounty hunting in this state. The board shall have control and supervision of the licensed occupation, and enforcement of the terms and provisions of this chapter.

Section 5. 1. The state board of bounty hunters shall be composed of seven members, appointed by the governor with the advice and consent of the senate. The term of office of each member shall be four years.

2. The members of the board shall receive as compensation for their services the sum set by the board not to exceed fifty dollars for each day actually spent in attendance at meetings of the board, within the state, not to exceed forty-eight days in any calendar year, and in addition thereto they shall be reimbursed for all necessary expenses incurred in the performance of their duties as members of the board.

3. All members shall be United States citizens and shall have been residents of this state for at least one year next preceding their appointments.

Section 6. The governor shall, by and with the advice and consent of the senate, fill any vacancies caused by the expiration of the term of office of any member of the board, and the governor shall also fill any vacancy caused by death, resignation or removal which may occur when the general assembly is not in session, but all such appointees shall

continue in office only until the meeting of the general assembly next following such appointment and until their successors shall be appointed and qualified. All vacancies which may exist at or during the meeting of the general assembly caused by death, resignation or removal shall be filled in like manner as those created by the expiration of official terms and shall be only for the unexpired term of the person whose vacancy is to be filled.

Section 7. 1. The board shall have power to:

(1) Prescribe by rule for the inspection of establishments and schools for firearms training and to appoint the necessary inspectors and, if necessary, examining assistants; and set the amount of the fees which sections 1 to 16 of this act authorizes and requires, by rules and regulations promulgated pursuant to section 536.021, RSMo. The fees shall be set at a level sufficient to produce revenue which shall not substantially exceed the cost and expense of administering sections 1 to 16 of this act;

(2) Employ and remove board personnel, as may be necessary for the efficient operation of the board, within the limitations of its appropriation;

(3) Elect one of its members president, one vice president and one secretary; and

(4) Determine the sufficiency of the qualifications of applicants.

2. The board shall create no expense exceeding the sum received from time to time from fees imposed pursuant to sections 1 to 16 of this act.

3. No rule or portion of a rule promulgated under the authority of sections 1 to 16 of this act shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

Section 8. At all meetings of the board, four members shall be necessary to constitute a quorum for the transaction of business but no official action may be taken unless a majority of the whole board may vote for such action.

Section 9. 1. There is hereby established in the office of the state treasurer a fund to be known as the "State Board of Bounty Hunters Fund". All fees of any kind and character authorized to be charged by the board shall be collected by the director of the division of professional registration and shall be transmitted to the department of revenue for deposit in the state treasury for credit to this fund, to be disbursed only in payment of expenses of maintaining the board and for the enforcement of the provisions of law concerning professions regulated by the board; and no other money shall be paid out of the state treasury for carrying out these provisions. Warrants shall be issued on the state treasurer for payment out of said fund.

2. The provisions of section 33.080, RSMo, to the contrary notwithstanding, money in this fund shall not be transferred and placed to the credit of general revenue until the

amount in the fund at the end of the biennium exceeds two times the amount of the appropriation from the board's funds for the preceding fiscal year or, if the board requires by rule permit renewal less frequently than yearly, then three times the appropriation from the board's funds for the preceding fiscal year. The amount, if any, in the fund which shall lapse is that amount in the fund which exceeds the appropriate multiple of the appropriations from the board's funds for the preceding fiscal year.

3. The board shall charge each person applying to and appearing before it for a license to bounty hunt, a licensing fee.

Section 10. The board shall license all bounty hunters in this state, who meet the requirements of sections 1 to 16 of this act.

Section 11. 1. A candidate for a bounty hunter's license shall be at least twenty-one years of age. A candidate shall furnish evidence of such person's qualifications by submitting satisfactory evidence of completion of a program of at least fifty-six hours of firearms training approved as reputable by the board.

2. No license shall be granted unless the candidate has obtained a one million dollar bond insuring against any damages to persons or property caused by the bounty hunter.

Section 12. 1. The board shall issue a license to any bounty hunter who is licensed in another jurisdiction and who has had no violations, suspensions or revocations of a license to bounty hunt in any jurisdiction, provided that, such person is licensed in a jurisdiction whose requirements are substantially equal to, or greater than, the requirements for licensure of bounty hunters in Missouri at the time the applicant applies for licensure and that the applicant has proof of a one million dollar bond.

2. Every applicant for a license pursuant to this section, upon making application and showing the necessary qualifications as provided in subsection 1 of this section, shall be required to pay the same fee as the fee required to be paid by resident applicants. Within the limits provided in this section, the board may negotiate reciprocal compacts with licensing boards of other states for the admission of licensed bounty hunters from Missouri in other states.

3. A nonlicensed, nonresident bounty hunter shall register with the local highway patrol and the local law enforcement agency and upon proof of firearms training and a one million dollar bond as required by sections 1 to 16 of this act, may bounty hunt in this state for one suspect.

4. A person registered pursuant to subsection 3 of this section shall inform the local law enforcement agency who the suspect is and where the person believes such suspect to be before attempting to apprehend the suspect.

Section 13. 1. Every person licensed under sections 1 to 16 of this act shall, on or

before the registration renewal date, apply to the board for a certificate of registration for the ensuing licensing period. The application shall be made on a form furnished to the applicant and shall state the applicant's full name and the address at which the person practices and the address at which the person resides and the date and number of such person's license.

2. A blank form for application for registration shall be mailed to each person licensed in this state at the person's last known address. The failure to mail the form of application or the failure to receive it does not, however, relieve any person of the duty to register and pay the fee required by sections 1 to 16 of this act nor exempt such person from the penalties provided by sections 1 to 16 of this act for failure to register.

Section 14. Each applicant for registration shall accompany the application for registration with a registration fee to be paid to the director of division of professional registration for the licensing period for which registration is sought.

Section 15. Any person who holds himself or herself out to be a bounty hunter or a licensed bounty hunter within this state or any person who advertises as a bounty hunter or claims that the person can render bounty hunter services or any person who bounty hunts in this state and who, in fact, does not hold a valid bounty hunter license or is not registered pursuant to section 13 of this act is guilty of a class D felony and, upon conviction, shall be punished as provided by law.

Section 16. 1. Any person who bounty hunts in this state and wrongfully causes damage to any person or property, including, but not limited to, trespass, unlawful arrest, unlawful detainment or assault, shall be liable for such damages and may be liable for punitive damages.

2. The one million dollar bond required for licensure of the bounty hunter shall be used to pay any damages found pursuant to this section.

Bounty hunter bill introduced

KC shooting prompts representative to seek some state regulations.

By KEVIN MURPHY
Mid-America Correspondent

JEFFERSON CITY — Personal experience tells Rep. Bill Skaggs that Missouri needs a law regulating bounty hunters. So does the recent shooting of a young Kansas City man mistaken for a fugitive.

Skaggs, a Kansas City Democrat, filed a bounty hunter registration bill Monday with the Missouri House and recalled how he was wrongly pursued three years ago as a wanted man of the same name.

"They called my house and threatened to pick me up," Skaggs said. "If I had been home, I might be in the same boat as that kid in Kansas City."

Skaggs had finished a hiking trip in the Grand Canyon when he called home. Sandy Skaggs, his wife, told him a bail bondsman had called demanding to

See **BOUNTY, C-4,** Col. 1.

Bounty hunter proposal filed

Continued from C-1

know if he was at his Northland home.

"She said, 'You're wanted for jumping bond. Where have you been?' She thought it was a joke, but they were serious. She wouldn't tell them anything, and that's when they got pushy and threatened to get me," Skaggs said.

When Skaggs got home the next day, he called the bounty hunter and convinced him he had the wrong man. But that incident and the wounding of Martin Tong of Kansas City two weeks ago prompted Skaggs to file the bill.

"Over the years, there have been other instances like this," Skaggs said. "One mistake is too many. They shot an innocent person."

Jackson County prosecutors have charged Terry A. Woods, 25, and Donnell Phillips, 22, with assault and trespassing in the shooting of Tong, 20, on Jan. 2.

Tong, whose wound was not severe, had been mistaken for fugitive William Hernandez. Tong had moved into an apartment Hernandez vacated.

Although bonding companies say the Kansas City shooting was a rare case, Jackson County Prosecutor Claire McCaskill plans to work with Skaggs on his bill.

"It's unusual someone gets shot. It's not unusual that they kick doors down," McCaskill said.

Bonding companies post bail for arrested persons who cannot afford it. The companies normally charge the defendant a 10 percent fee and guarantee the person will appear in court. The company forfeits the money if the person doesn't show up in court.

Missouri already requires bail-bond agents to take examinations and obtain licenses. But there is no training or license required for bounty hunters, who are paid 10 percent of the bond amount for bringing in a fugitive.

The Skaggs bill, which has six co-sponsors in the House, would require bounty hunters to be at least 21 years old and have 56 hours of firearms training and a $1 million insurance bond.

The bill also would create a state Board of Bounty Hunters to license bounty hunters. License fees would cover board expenses and an administrator, Skaggs said.

"This is a start, and I'm not sure what the final product will be," he said. The bill will be referred to a House committee for a hearing.

The head of a state bonding association said the Skaggs bill doesn't go far enough and that a more extensive bill is being drafted.

"We certainly don't condone the type of thing that happened in Kansas City," said Cody W. Ice, president of the Missouri Professional Surety Association and of C & M Bail Bonds Inc. in Houston, Mo. "We want to get it fixed."

Ice said he wants Missouri to pattern its law after an Arkansas bill that then-Gov. Bill Clinton signed into law in 1988. It created a bail-bond commission that oversees bonding agents as well as bounty hunters.

"We do have some people in this industry that should not be in there," Ice said. "But the (Missouri) Department of Insurance has no ability to take them out."

Ice said persons with convictions on charges of prostitution and theft have been in the bonding business. Background checks should be required for licensing agents and bounty hunters, he said.

Under an 1874 Supreme Court ruling, bounty hunters have a right to force their way into a residence to find someone who has violated a contract to appear in court.

But Skaggs said he would like the new law to limit search and seizure authority of bounty hunters to felony cases, not misdemeanors.

Rep. Bill Skaggs
. . . would license bounty hunters

3-7

623 words 207 Words Pt

They kick down your door. They hold you at gunpoint. They terrorize your family. And when you call 911, the police tell you that there is nothing they can do about it, because these particular "terrorists" are above the law.

Hitler's SS? Stalin's KGB? No. Just some hired muscle for a bonding company.

Bounty Hunters.

Of course, they must be in hot pursuit of a serial killer -- a Bob Berdella skipping bond, heading for the border. Or maybe a particularly vicious rapist. Right?

Wrong. Some guy didn't pay a traffic ticket.

This month, people in the Kansas City area were treated to the story of a man minding his own business in his own apartment, who ended up shot -- allegedly by local bounty hunters who forced their way into his home looking for a long-gone traffic court absconder. They were shocked by the arrogance with which these mere errand persons for a bonding company claimed to be above the law. And they were astonished that local law enforcement seemed to support their claims of immunity.

Are they above the law that governs the rest of us? Should they be. The answer to both questions is NO.

Bounty hunters -- as agents for bonding companies -- base their claim of immunity from the law on an obscure, century-old Supreme Court case that spoke to the rights they have with regard to the person who is on bond, and for whom they have responsibility to insure appearance in court. Based on that narrow foundation, they have constructed a fabulous claim to powers that any fascist state would envy, claiming immunity from anything short of murder.

What's worse, law enforcement has found it convenient to support these claims. By pretending to accept this claim of immunity -- and thus encouraging this "cowboy" behavior -- police save themselves a lot of the dirty work of hunting down people who failed to show up in court. And they are able to avoid those messy technicalities like search warrants and suits for violating the civil rights of innocent people wrongly terrorized.

Rarely have actions by bounty hunters been reviewed by prosecutors, and such review has generally been perfunctory. Bounty hunters have been successful in portraying themselves as a necessary arm of law enforcement, and no elected prosecutor wants to be painted as "pro-criminal" by a well-organized and well-funded bondsman's lobby.

In a case that may still be valid law the Supreme Court granted some narrow rights to bondsmen and their agents -- rights that must be exercised in a limited and reasonable manner. But with a nod and a wink, legitimate law enforcement has allowed those narrow rights to inflate beyond all reason. They have allowed bounty hunters to believe that they are above the law.

But that marriage of convenience may be in trouble. To her credit -- both ethically and politically -- Jackson County Prosecutor Claire McCaskill has said "Enough!" in very clear terms by indicting the alleged shooters. If the facts are as alleged, they must be punished. But they must not be scapegoats -- men singled out for punishment while a bad system goes unchallenged.

State Representative Bill Skaggs has also introduced legislation to delineate the powers of bondsmen. Of course, we should not be too surprised if any actual law ends up being written by the bondsmen's powerful lobby.

Consider this: The law in Missouri requires that those charged with a crime be released on signature bonds unless a judge finds that there is reason to believe a person will not appear in court. But so successful have bondsmen been in lobbying judges -- and using the media to influence the bonding decisions that judges make -- that signature bonds for any charge more serious than speeding are the exception. Judges fear (alas, correctly) that neither the press nor the public understand that a defendant is no more likely to appear for court -- or commit another crime -- if he has been forced to pay money to a bondsman to obtain his freedom. Judges are under pressure to "play it safe". Secured (i.e. cash or bondman posted) bonds remain the rule in municipal courts for minor offenses where there is no serious likelihood of flight to avoid prosecution.

There's a lot of money involved. Bondsmen are paid 10 to 20% of a bond amount -- sometimes fees in the thousands. For the most part, the only thing they need to do is provide a defendant with a wake-up call, and remind him to come to court.

But the recent actions of their agents -- the bounty hunters -- should be a wake-up call for all of us. Putting some legal restraints on this hired muscle would be a good start. Recognizing that "law enforcement" run amok can be more of a threat to life and liberty than most "criminals" would also help.

Better a society where speeders miss their court date than one where doors are kicked in at midnight.

#4

MEMORANDUM

TO: The Honorable Tim Carmody, Chairman
House Judiciary Committee

FROM: William W. Sneed, Legislative Counsel
AmVestors Financial Corporation
American Investors Life Insurance Company

DATE: March 24, 1997

RE: S.B. 31

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I represent AmVestors Financial Corporation and its wholly-owned subsidiary, American Investors Life Insurance Company. S.B. 31 amends K.S.A. 40-414, which sets out exemptions of interest in life insurance policies. Our amendment would provide the same exemptions for contracts of annuity as well.

K.S.A. 40-414 in its present form provides that a policy of insurance issued by a life insurance company and the policy's reserves or its present value shall be free from the claims of the insured's creditors, the policyholder's creditors, or the beneficiary's creditors. The amendment we offer would extend similar treatment to a similar product: the contract of annuity.

K.S.A. 40-414 is designed to protect the most basic mechanism of personal financial security -- the life insurance policy. Individuals purchase such insurance to ensure that somewhere down the road, the policy will provide contractual benefits in time of need. The simple investment in such a policy is protected by law from creditors' claims. The Kansas Legislature at some point decided that keeping this basic protection intact outweighed the need for creditors to reach the asset in satisfaction of a judgment. Annuities, in fact, share many characteristics of a life insurance policy. Like life insurance, annuities provide an individual the opportunity to pay money today in consideration for

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a benefit return at some point in the future. Annuities allow an individual to provide some measure of financial security for themselves or others.

More specifically, annuities are taxed like life insurance. Some annuities offer a death benefit, much like a life insurance policy, whereby in the event an annuitant dies before the annuitization date, the annuity pays a sum equal to the total accumulated value to a designated beneficiary. Conversely, the value of a life insurance policy is not available solely upon the death of the insured. The insured may, for instance, borrow against the value of the life insurance policy during his or her lifetime. This potential to access the value of the life insurance policy during the lifetime of the insured is similar to the characteristics of many annuities, which pay the value of the annuity to the annuitant during his or her lifetime.

Though annuities share many characteristics of a life insurance policy, the United States Bankruptcy Court, District of Kansas, has held that the language of K.S.A. 40-414 exempting "any policy of insurance" issued by a life insurance company does not include contracts of annuity. See *In re Stutterheim*, 109 B.R. 1006 (Bkrtcy.D.Kan. 1988). In *Stutterheim,* the debtors attempted to claim an annuity as an exemption in bankruptcy proceedings. The court held that the plain language of K.S.A. 40-414(a) did not encompass annuities. The court also noted that the nature of the annuity contract at issue did not mesh with the traditional notion of a policy of life insurance.

Since this 1988 decision, sweeping changes have taken place in the annuities market. The structure and nature of annuities themselves have changed, moving them closer to the fold of the traditional concept of life insurance. Since the late 1980s, the similarities between annuities and life insurance have been recognized in the taxation and securities arenas. As I mentioned earlier, the similarities between the two led to similar tax treatment for both products. The Securities and Exchange Commission has recognized the resemblance between the two products as well.

K.S.A. 40-414 was designed to protect individuals' long-term investments in personal financial security, much like the Kansas statutes containing the Homestead and personal property exemptions. The life insurance policy, very similar in form and function to an annuity, has long been protected from the claims of creditors. There is no reason not to clarify the language of the statute to protect a nearly identical product.

Our research indicates that more than 40 states have statutes similar to K.S.A. 40-414. Additionally, more than 20 states, including Nebraska and Oklahoma, have provisions similar to that which my client proposes in S.B. 31.

The bill was amended in the Senate Financial Institutions and Insurance committee to provide a limitation on protection of the annuity from the claims of creditors. The amendment provides that the nonforfeiture value of an annuity policy is not exempt from the claims of creditors if judgment is entered on the claim within two years after the issuance of the contract of annuity. This amendment addresses the concern that unscrupulous parties may use an annuity to "hide money" as part of a planned bankruptcy.

As amended, S.B. 31 clarifies the language of K.S.A. 40-414 to include contracts of annuity, which is consistent with the spirit of the original act and is proper and necessary to help protect the basic possessions of an individual facing the claims of creditors. We respectfully request your favorable action on S.B. 31.

We appreciate the opportunity to present our testimony. Please feel free to contact me if you have any questions.

Respectfully submitted,

William W. Sneed

D:\CORRES\SB31.TES

#5

Kansas Bankers Association

800 SW Jackson, Suite 1500
Topeka, KS 66612
913-232-3444 Fax - 913-232-3484 E-Mail - kbacs@ink.org

1-24-97

To: House Judiciary Committee
From: Chuck Stones, Director of Research

RE: SB 31

Mr. Chairman and Members of the Committee,

Thank you for the opportunity to appear before you today in opposition to SB 31. SB 31 would add annuities to the list of financial assets that could be shielded from creditors in bankruptcy proceedings. We think there are several considerations this body must make before passing SB 31.

Exemptions to bankruptcy have been carefully crafted over the years. They have been put into place to allow persons filing bankruptcy to be assured of having the essentials in life, and the ability to make a living after filing bankruptcy. Bankruptcy exemption laws have also tried to eliminate the ability to shield assets from creditors. They have done this by limiting the exemptions to essential assets, placing dollar limitations on the exemptions and placing time limits on acquiring certain assets prior to filing bankruptcy. Additional exemptions should not be added only to make a product more marketable.

In the marketplace, annuities have always been considered an investment alternative, rather than an alternative to an essential insurance product. Other non-essential investment products, such as CD's, Treasury Securities, etc., are not exempt. The Supreme Court apparently agreed that annuities were different when said that annuities were investment products, not an insurance product. Any erosion in the secured creditors ability to collect debt could have a negative effect on credit availability. This will only put creditors, such as small business owners, banks etc., at another disadvantage when attempting to collect on a secured loan in bankruptcy proceedings.

While the two year exclusion, added in the Senate, helps make this a little more palatable, we all know that shrewd people and their attorneys can come up with very creative ways to shield assets.

The non-essential, investment nature of annuities should preclude them from becoming exempt in bankruptcy proceedings. We urge you to vote NO on SB 31.

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SENATE CHAMBER, TOPEKA,KANSAS
Wednesday, February 12, 1997--2:30 p.m.

EXPLANATION OF VOTE

Mr. President: I an unable to vote to create another statutory assets shelter, against creditors, during a bankruptcy proceeding. I don't accept the argument that this bill ``just levels the playing field" and neither did a judge in ruling that annuities and life insurance companies are not the same in bankruptcy cases, which, of course, prompted this bill request by a major annuity company. I believe this to be an ``unleveling" bill because it places creditors at a lower level of importance than annuity companies.--Christine Downey

Senators Feleciano, Harrington, Karr, Lee and Petty request the record to show they concur with the ``Explanation of Vote" offered by Senator Downey on SB 31.

Mr. President: I vote no on SB 31.

I feel this action is another tool for shielding assets with the outcome being to not make a creditor in a bankruptcy action whole.

There are enough dissimilar characteristics between annuities and life insurance policies that we should not recognize nor treat them the same in a bankruptcy situation.--Greta Goodwin

Senator Harrington requests the record to show she concurs with the ``Explanation of Vote" offered by Senator Goodwin on SB 31.

5-3

There are many ways to shield assets from creditors and taxes

NEW YORK — The next O.J. Simpson court battle — O.J.3 — will be over whether the Browns and the Goldmans can collect any of the money they're owed. Even if the damages are reduced, Simpson's assets appear to be pretty well squirreled away.

Jane Bryant Quinn

Staying ahead

On the evidence, he has had wise financial counsel for many years. Choices he made to secure his future, such as building a large pension fund, are keeping him safely away from his creditors today. Other asset-protection decisions may put his remaining money beyond the reach of the civil courts.

The moves Simpson is known to have made are entirely legal. But they shine a spotlight on an industry that also has a smudgy side.

A lot of wealthy people don't want to pay their debts. Fearing trouble, they spirit their money into trusts, often out of the country, never to be seen again. Or they lock it in family limited partnerships that creditors can't crack.

There are some defensible uses of asset-protection plans. A meticulous doctor, for example, might worry that one disputed decision could bury her, unfairly, under a catastrophic malpractice suit. An entrepreneur might be shocked by a frivolous lawsuit filed against a friend.

To protect themselves, they stash their money in hidey-holes, sometimes in countries that don't enforce judgments awarded by U.S. or other foreign courts. For this secret service, clients pay lawyers $15,000 to $30,000 a pop plus $2,000 to $7,000 a year in maintenance fees.

But let's face it: Many asset-protectors are playing a dirtier game. They're laundering money, evading taxes, hiding assets in divorces, cheating business partners or ducking out on legitimate debts. Initiates whisper knowingly about the Cook Islands, Cayman, Liechtenstein, Gibraltar, Belize, Costa Rica, Guernsey, Vanuatu and Turks and Caicos (look 'em up).

There are many different ways of ducking creditors. One popular choice is a family limited partnership, which acquires your business or investments. Typically, you retain a small interest — just 1 percent or 2 percent. The rest of the ownership rights are transferred to limited partners — say, your children. But you're the general partner, so you keep control.

Used this way, partnerships are a legitimate way of saving income and estate taxes, while passing assets to your heirs.

But they're also debt-evasion schemes. After winning a judgment against you in court, a creditor might be able to seize a partnership interest. But nothing compels you to distribute any partnership money. So all the creditor really holds is the doughnut's hole.

Some lawyers think family trusts can be cracked — especially when structured in ways more aggressive than I've described. If they're obvious tax dodges, or sham redouts against honest debts, some judge, somewhere, may say "enough."

The real paranoids (or debt dodgers) buy foreign trusts. Your assets don't have to leave the country. But because of the way the trusts are set up, they probably cannot be reached by U.S. courts.

Foreign trusts are taxable, but many owners try to duck that obligation, too.

There are many simpler ways of dodging creditors. For example, take O.J.'s $4.1 million pension fund. It's unreachable by lawyers, but he can add to it, borrow against it, and use it in retirement at will, says Chicago bankruptcy lawyer Keith Shapiro of Holleb & Coff.

In this respect, O.J. lucked out. Some states — but not California — allow creditors to seize pension-fund withdrawals that exceed what you need for basic living expenses.

Some states protect married couples by letting them own real estate as "tenants by the entirety." That prevents one spouse's creditors from selling the house, in order to satisfy a judgment against the other.

Where that's not an option, people vulnerable to lawsuits — doctors, for example — often move assets into their spouse's name. Cash-value life insurance may also be exempt from seizure.

Bankruptcy normally isn't considered an asset-protection strategy. But it can be in states like Texas and Florida, that let bankrupts keep enormously valuable homes. Florida has another attraction. If you're a family head, your wages cannot be garnisheed for debt, Shapiro says.

If Simpson went bankrupt under Chapter 11, he'd retain control over how his finances were rearranged. He has borrowed against his major assets — house, car, artwork — using them as security. So even if the assets were sold, unsecured creditors like the Goldmans and Browns probably wouldn't get a dime.

People subject to lawsuits complain that American juries award judgments far in excess of the damage done. But creditors have a different view. They say shrewd debtors duck their obligations much more often than people think.

Washington Post Writers Group

SB 31--Am.

As Amended by Senate Committee

Session of 1997

SENATE BILL No. 31

By Committee on Financial Institutions and Insurance

1-15

AN ACT concerning exemption of interest in contracts of annuity; amending K.S.A. 40-414 and repealing the existing section.

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

Section 1. K.S.A. 40-414 is hereby amended to read as follows: 40-414. (a) If a life insurance company or fraternal benefit society issues any policy of insurance, *including a contract of annuity*, or beneficiary certificates upon the life of an individual and payable at the death of the insured, or in any given number of years, to any person or persons having an insurable interest in the life of the insured, the policy and its reserves, or their present value, shall inure to the sole and separate use and benefit of the beneficiaries named in the policy and shall be free from:

(1) The claims of the insured or the insured's creditors and representatives;

(2) the claims of any policyholder or the policyholder's creditors and representatives, subject to the provisions of subsection (b);

(3) all taxes, subject to the provisions of subsection (d); and

(4) the claims and judgments of the creditors and representatives of any person named as beneficiary in the policy of insurance.

New (b) - re-lettering accordingly:

The policyholders of or beneficiaries named in a policy of insurance or in an annuity contract may claim the exemption listed above for either the policy of insurance or the annuity, but not both.

(b) The nonforfeiture value of a life insurance ***or annuity*** policy shall not be exempt from:

(1) Claims of the creditors of a policyholder who files a bankruptcy petition under 11 U.S.C. (section) 101 et seq. on or within one year after the date the ***life insurance*** policy is issued ***on or within two years after the date the annuity policy is issued***; or

(2) the claim of any creditor of a policyholder if execution on judgment for the claim is issued on or within one year after the date that the ***life insurance*** policy is issued ***or on or within two years after the date the annuity policy is issued.***

(c) Nothing in this section shall be construed as restricting the right of the insured to change the beneficiary if the policy reserves that right to the insured.

(d) Nothing in this section shall be construed as exempting from taxation any real estate which may at any time be carried by any life insurance

company as a part of its legal reserve.
(e) The provisions of subsection (b) shall apply only to life insurance
or annuity policies purchased on or after July 1, 1988.
(f) The provisions of subsection (b) shall not apply to that portion of
the nonforfeiture value of a life insurance policy, issued on or within one
year of the filing of a bankruptcy petition under 11 U.S.C. (section) 101 et seq.
or an execution on judgment for the claim of the creditor, which is derived
from the surrender of a life insurance policy issued more than one year
prior to such bankruptcy petition or such execution.
(g) The provisions of subsection (b) shall not apply to that portion of the nonforfeiture value of an annuity policy, issued on or within two years of the filing of a bankruptcy petition under 11 U.S.C. (section) 101 et seq. or an execution on judgment for the claim of the creditor, which is derived from the surrender of an annuity policy issued more than two years prior to such bankruptcy petition or such execution.
Sec. 2. K.S.A. 40-414 is hereby repealed.
Sec. 3. This act shall take effect and be in force from and after its
publication in the statute book.

Statute # 60-2313
Chapter 60.--PROCEDURE, CIVIL
Article 23.--EXEMPTIONS
Title Exemptions from legal process.

(a) Except to the extent otherwise provided by law, every person residing in this state shall have exempt from seizure and sale upon any attachment, execution or other process issued from any court in this state:

(1) Any pension, annuity, retirement, disability, death or other benefit exempt from process pursuant to K.S.A. 12-111a, 12-5005, 13-1246a, 13-14,102, 13-14a10, 14-10a10, 20-2618, 72-1768, 72-5526, 74-4923, 74-4978g, 74-49,105 or 74-49,106, and amendments thereto.

(2) Any public assistance benefits exempt pursuant to K.S.A. 39-717 and amendments thereto.

(3) Any workers' compensation exempt from process pursuant to K.S.A. 44-514 and amendments thereto.

(4) Any unemployment benefits exempt from process pursuant to K.S.A. 44-718 and amendments thereto.

(5) Any partnership property exempt from process pursuant to K.S.A. 56-325 and amendments thereto.

(6) Any crime victims compensation award exempt from process pursuant to K.S.A. 74-7313 and amendments thereto.

(7) Any liquor license, club license or cereal malt beverage wholesaler's or distributor's license exempt from process pursuant to K.S.A. 41-326, 41-2629 or 41-2714, and amendments thereto.

(8) Any interest in any policy of insurance or beneficiary certificates upon a person's life exempt from process pursuant to K.S.A. 40-414 and amendments thereto.

, not to exceed a cash value or purchase price of $50,000,

(9) Any fraternal benefit society benefit, charity, relief or aid exempt from process pursuant to K.S.A. 40-711 and amendments thereto.

(10) Any trust funds held in a cemetery merchandise trust and exempt from process pursuant to K.S.A. 16-328 and amendments thereto.

(11) Any funds held in an account or trust established pursuant to a prearranged funeral agreement, plan or contract and exempt from process pursuant to K.S.A. 16-310 and amendments thereto.

(b) This section shall be part of and supplemental to article 23 of chapter 60 of the Kansas Statutes Annotated.

History

History: L. 1987, ch. 225, S. 1; L. 1989, ch. 239, S. 8; July 1.

Case Annotations

Research and Practice Aids: Exemptions $YKY 31 et seq.

C.J.S. Exemptions S. 26 et seq.

#6

Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

TESTIMONY
KYLE G. SMITH
SPECIAL AGENT AND ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
LEGAL COUNSEL, KANSAS LAW ENFORCEMENT TRAINING COMMISSION
BEFORE THE HOUSE JUDICIARY COMMITTEE
IN SUPPORT OF SENATE BILL 214
MARCH 24, 1997

Mr. Chairman and Members of the Committee:

I am pleased to appear here today in support of SB 214, a bill which is designed to improve the professionalism of law enforcement officers in Kansas and support the public's trust in their law enforcement officers.

Present to testify today are Darrell Wilson, Chairman of the Kansas Law Enforcement Training Commission and Lee Doehring, Chief of Police of Leavenworth and a member of the Commission. They can give you concrete examples as to why this legislation is needed, so I'll limit this testimony to a quick review of the three changes incorporated in this legislation.

First, under current law, once a person is certified as a law enforcement officer, that certification continues for life unless specific action is taken by the Kansas Law Enforcement Training Commission to revoke that certification.

The concern this creates is where individuals have been out of law enforcement, but are allowed under current law to be hired and put back out on the streets as a certified law enforcement officer, even if they have been out of the profession 20

years. Due to the awesome authority of utilizing lethal force, it is imperative that officers be

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1620 S.W. Tyler / Topeka, Kansas 66612-1837 / (913) 296-8200 FAX (913) 296-6781

well-trained and proficient. Section 7 of SB 214 would require any LEO who has been out of the profession for over five years to meet one of three criteria:

1. Re-attend the basic academy;

2. Pass a written competency test and firearms proficiency qualifications developed by the law enforcement training center; or

3. Obtain from the director of the center a waiver based on the training, experience and past circumstances of the applicant.

Similar language is incorporated in section 1 for sheriffs.

Second, SB 214 also incorporates a change in federal law last fall which prohibits a person convicted of a misdemeanor domestic violence offense from possessing a firearm. In section 2 we have added the federal definition of "misdemeanor crimes of domestic violence" so that persons who have such a conviction would be prohibited from being law enforcement officers. Sections 3 and 4 adopt such a conviction as a disqualification from attending an academy or appointment as a LEO, or in section 1 serving as a sheriff.

The third change deals with the addition of a definition for "auxiliary personnel" and the prohibition found at the bottom of page 5, section 6(d). This language prohibits a law enforcement agency head from permitting auxiliary personnel who have a felony conviction from having access to law enforcement records or communication systems. Again, this is an effort to comply with federal standards as far as access to NCIC terminals being restricted to persons who do not have felony records.

If the committee has particular questions, I would be happy to respond, but I would like to defer at this time to Mr. Wilson and Chief Doehring. Thank you for your attention.

#7

March 24, 1997

Testimony in support of Senate Bill #214
House Judiciary Committee
State of Kansas
Capitol Bldg.
Topeka, KS

Please accept this testimony as my professional endorsement of Senate Bill #214. As Chief of Police of Leavenworth, Kansas, and as a Commissioner on the Law Enforcement Training Commission, I strongly endorse the changes proposed in this bill; specifically the portion relating to proficiency testing or retraining of officer applicants who have not served as law enforcement officers for a period exceeding five years. The state of Kansas currently requires certification of officers who have no previous experience by having them attend a certified police academy. Once certified, the officer must attend at least 40 hours of inservice training each year to retain that certification.

The certification process and continuing education are necessary due to the rapid changes that have evolved and continue to evolve in the area of law enforcement. These changes run the gamut from investigative techniques to complex legal procedures. We feel very strongly that it is necessary for officers to continue their education so they may stay abreast of these changes. Conversely, we feel it very important for someone who has been out of law enforcement for a period of five years or more to either regain the knowledge through attendance at the academy or to demonstrate his or her knowledge through proficiency testing. We share the common goal of creating and maintaining high quality law enforcement services throughout the state of Kansas. Passage of Senate Bill #214 will help enhance and ensure that all officers have a working, contemporary knowledge of law enforcement issues and are capable of judicious application of them.

Sincerely,

Lee Doehring
Chief of Police
Leavenworth, KS

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Leavenworth Police Department
100 N. 5th Street • Leavenworth, Kansas 66048-1970 • (913) 651-2260

#8

STATE OF KANSAS
LAW ENFORCEMENT TRAINING COMMISSION
P. O. Box 632
Hutchinson KS 67504-0632

Testimony Before The House Judiciary Committee March 24, 1997

Chairperson and Committee Members:

My name is Darrell Wilson and I am the Chairperson of the Kansas Law Enforcement Training Commission. Thank you for the opportunity to appear before you today in support of S. B. 214. The Kansas Law Enforcement Training Commission unanimously supports this proposed legislation.

The Commission has identified an immediate need to rectify problems posed by persons who return to professional law enforcement after extended absences. Indeed, in just the past few years, several persons who left law enforcement as many as 25 years ago have resumed working as officers. Under current law, those officers retain their original certification (unless, of course, they have been "de-certified" for disciplinary reasons, *and are not subject to ANY re-entry training requirements–despite the fact that they have received no training for years.* Against the backdrop of the ever-changing legal, tactical, and practical aspects of this profession, the problems posed by this situation are obvious and ominous.

Accordingly, the Commission intends to seek legislation creating new standards for continuing certification. The proposal establishes:

- ***Following an officer's departure from the profession, certification will remain active for up to five years;***
- ***Officers returning to the profession after more than five years' absence, MUST satisfy one of the following requirements to retain certification:***
    - ***Satisfactorily complete the current mandated basic training program required of previously uncertified officers; OR,***

(Please See Reverse Side)

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- *Pass a written competency test to be developed by KLETC and a firearms proficiency qualification; OR,*

- *Based on past training, experience, and special circumstances, obtain, from the Director of Police Training, and pursuant to K.S.A. 74-5608a(b), a waiver from completing either of the two previous requirements.*

The Commission believes this legislation will enhance professionalism and substantially reduce problems posed by the current lack of continuing certification requirements.

S.B. 214 has been endorsed and is supported by the following organizations:

- Kansas Peace Officers' Association
- Kansas Sheriffs' Association
- Kansas Association of Chiefs of Police
- Kansas Attorney General's Law Enforcement Advisory Group

#9

Senate Bill No. 269
House Judiciary Committee
March 24, 1997

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Mr. Chairman and members of the Committee:

We appreciate the opportunity to appear in support of Senate Bill No. 269 which relates to the admission to practice law.

The bill authorizes the collection of fingerprints from those applying for regular admission to practice law in Kansas from local and state law enforcement agencies. It also authorizes the Kansas Bureau of Investigation and the Federal Bureau of Investigation to provide criminal history information concerning the applicants, upon request by the Kansas Supreme Court or the State Board of Law Examiners. The language in the bill is drawn, in principal part, from Alaska and has been approved by the Chief Justice, Kansas Bureau of Investigation and the Federal Bureau of Investigation.

The State Board of Law Examiners, appointed by the Supreme Court, already conducts a general background check in connection with the Court's determination of an applicant's character and fitness to practice law. However, until now that background check has been based primarily on information furnished by the applicant on an application to take the bar examination. It has not included a criminal history background check.

The Disciplinary Administrator of the Kansas Supreme Court, who initially reviews every application for the board of law examiners, requested permission take fingerprints in order to:)1 provide a positive means of identification of applicants, should that be necessary; and, 2) to conduct a criminal history background check on all applicants.

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Specific language is necessary because Section 902 of Public Law 92-184 permits the exchange of federal criminal history information with state and local governments for purposes of employment and licensing if authorized by state statue. Since Kansas does not presently have a state statute authorizing the collection of fingerprints and the request of the Federal Bureau of Investigation for criminal history information for licensing of prospective lawyers, specific legislation to that effect is required.

The Senate floor amendment on lines 15 and 16 of the bill states that the cost of the finger printing and background check will be borne by the applicant which we support.

We urge your favorable consideration for this bill and to pass it favorably.

#10

LEGISLATIVE PROPOSAL BY THE STATE BOARD OF LAW EXAMINERS

A REVIEW AND STATEMENT OF NEED AND PURPOSE FOR SENATE BILL NO. 269, 1997 LEGISLATIVE SESSION

BILL TITLE: An act concerning attorneys; relating to admission to practice law; requirements; fingerprints and criminal history.

BILL TEXT: *Section 1. (a) The supreme court may require all applicants for regular admission to practice law in this state to be fingerprinted. The fingerprints shall be used to identify the applicant and to determine whether the applicant has a record of criminal arrests and convictions in this state or other jurisdictions. The supreme court and the state board of law examiners are authorized to submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The state board of law examiners and the supreme court may use the information obtained from fingerprinting and the applicant's criminal history only for purposes of identification of any applicant and in its official determination of character and fitness of the applicant for regular admission to practice law in this state.*

(b) Local and state law enforcement officers and agencies shall assist the supreme court in the taking and processing of fingerprints of applicants seeking admission to practice law in this state and shall release all records of an applicant's arrests and convictions to the supreme court and the state board of law examiners.

Section 2. This act shall take effect and be in force from and after its publication in the statute book.

BILL SUMMARY: The state board of law examiners, appointed by the Supreme Court, already conducts a general background check in connection with the Court's determination of an applicant's character and fitness to practice law. See Supreme Court Rule 704, 1996 Kan. Ct. R. 456. However, until now that background check has been based primarily on information furnished by the applicant on an application to take the bar examination. It has not included a criminal history background check.

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The disciplinary administrator of the Kansas Supreme Court, who initially reviews every application for the board of law examiners, requested permission to take fingerprints, pursuant to the authority already granted by the Kansas Supreme Court in Supreme Court Rule 704, 1996 Kan. Ct. R. 456, in order to: 1) provide a positive means of identification of applicants, should that be necessary; and, 2) to conduct a criminal history background check on all applicants to verify the information provided by the applicants. The state board of law examiners recommended such action to the Supreme Court and the Court has allowed us to proceed to secure the necessary legislation.

Specific legislation is necessary because Public Law 92-544, and 28 C. F. R. 20.33 permits the exchange of federal criminal history information with state and local governments for purposes of employment and licensing <u>if authorized by state statute and approved by the Attorney General of the United States</u>. Since Kansas does not presently have a state statute authorizing the request of the Federal Bureau of Investigation for criminal history information for licensing of prospective lawyers, specific legislation to that effect is required. This legislative proposal, Senate Bill No. 269, is submitted to satisfy that requirement.

Presently, pursuant to K.S.A. 22-4701, *et. seq.*, we can request the Kansas Bureau of Investigation to provide a report of Kansas arrests and if the applicant has such a record then the KBI can get further information from the FBI about arrests and convictions elsewhere. However, if the applicant does not have a Kansas arrest record, then the KBI cannot get such further information from the FBI. A separate FBI report is necessary for those applicants who apply for admission to practice law from outside the state. Over the past six years applicants from outside the state total from 43% to 51% of all applicants.

The language proposed is drawn, in principal part, from Alaska Statutes, Sec. 08.08.136 and 137.

FISCAL IMPACT: The proposed legislation will have no material effect on any state agency operations. The cost of the background check will be borne by the applicants.

POLICY IMPLICATIONS/BACKGROUND: The policy implications and background have been stated in the bill summary.

IMPACT ON OTHER STATE AGENCIES: This bill has no material impact on other state agencies. The Kansas Bureau of Investigation advises that these criminal history background requests can and will be handled in the ordinary course of business.

TO: Mark Anderson

FROM: Carolyn Bennett

DATE: February 18, 1997

RE: Applicants to the Kansas Bar Examination

Below is information regarding the number of individuals who have taken the Kansas bar examination with law degrees from schools outside of Kansas.

	From UMKC & all other schools			Total from KU & WU
	February	July	Total	
1990	125	80	205	264
1991	112	105	217	298
1992	138	111	249	293
1993	131	118	249	269
1994	161	112	273	304
1995	162	110	272	301
1996	171	128	299	288

Below is information regarding individuals that transferred an MBE score from another jurisdiction (they are licensed in the other jurisdiction) and only sat for the essay portion of the bar exam.

1990	103	34	137
1991	103	59	162
1992	106	65	171
1993	117	64	181
1994	135	52	187
1995	132	63	195
1996	146	69	215

This appears to be the only information we have that will accommodate your request. Please call me if you have questions.

#11

AMERICAN CIVIL LIBERTIES UNION

Wendy McFarland / Lobbyist (913) 575-5749

TESTIMONY IN OPPOSITION TO SB 269
DELIVERED MARCH 24, 1997

I APPEAR TODAY TO OPPOSE SB 269 WHICH WOULD REQUIRE FINGERPRINTING OF ALL WHO WISH TO PRACTICE LAW IN THE STATE OF KANSAS. MY ARGUMENTS ARE BASED SOLELY UPON AN INDIVIDUALS RIGHT TO PRIVACY, A RIGHT THAT IS BEING GIVEN SHORT SHRIFT IN MANY PIECES OF LEGISLATION BEFORE YOU THIS YEAR.

THE TARGET OF THE INVESTIGATIVE TECHNIQUE KNOWN AS FINGERPRINTING HAS HISTORICALLY BEEN ONE WHO WAS ARRESTED AND CHARGED WITH A CRIME, THUS MEETING THE STANDARD OF REASONABLE SUSPICION TO ESTABLISH PROBABLE CAUSE FOR THE PROCEDURE.

NOW COMES THE GOVERNMENT, AND NOT JUST ANY ARM OF GOVERNMENT, BUT THE KANSAS SUPREME COURT NO LESS. THEY HAVE LENT THEIR SUPPORT TO A REQUEST BY THE STATE BOARD OF LAW EXAMINERS THAT WILL FORCE EVERY SINGLE MAN OR WOMAN WHO WANTS TO PRACTICE LAW IN OUR STATE TO ROLL UP THEIR COLLECTIVE SHIRTSLEEVES FOR THE KBI TO ESTABLISH A PERMANENT GOVERNMENT RECORD, IN INK, OF THEIR IDENTIFY.

NEVER MIND THAT THEY HAVE NO REASONABLE SUSPICION TO REQUIRE THIS TYPE OF IDENTIFYING RECORD OTHER THAN THE FACT THAT CRIMINAL HISTORIES CAN BE USED TO PRECLUDE A PERSON FROM PRACTICING LAW IN KANSAS.

AND NEVER MIND THAT OTHER LESS INVASIVE BUT EQUALLY RELIABLE METHODS OF RUNNING CRIMINAL BACKGROUND CHECKS EXIST FOR THIS PURPOSE.

A STRONG ARGUMENT CAN BE MADE THAT FINGERPRINTING WILL MAKE THE BACKGROUND CHECKS MORE CONVENIENT FOR THOSE CHARGED TO RUN THEM.

AS I HAVE TESTIFIED BEFORE, AS I WILL TESTIFY TODAY AND AS I WILL TESTIFY AGAIN IN ANOTHER BILL ON ITS WAY TO THIS COMMITTEE, ADMINISTRATIVE CONVENIENCE SHOULD NEVER BE USED BY GOVERNMENT AS A REASON TO DENY AN INDIVIDUALS RIGHT TO REASONABLE EXPECTATIONS OF PRIVACY.

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THE FINGERPRINTS PRODUCED BY THIS BILL ALONG WITH THE DOSSIERS KEPT BY THE FBI AND KBI, WILL BE PROVIDED TO THE SUPREME COURT AND THE BOARD OF LAW EXAMINERS TO DETERMINE THE CHARACTER AND FITNESS OF ONE TO PRACTICE LAW IN OUR STATE.

I HAVE BEEN FINGERPRINTED BEFORE. ONCE UPON ARREST, AND ONCE IN UNDERGOING A BACKGROUND CHECK REQUIRED TO SERVE ON THE GOVERNOR'S STAFF.

I MAY BE THE ONLY PERSON IN ATTENDANCE TODAY WHO CAN ACTUALLY STATE THAT THERE IS VERY LITTLE DIFFERENCE IN THE EMOTION ONE FEELS IN BEING FINGERPRINTED WHILE UNDER ARREST AS OPPOSED TO BEING FINGERPRINTED FOR ELIGIBILITY OF EMPLOYMENT. THEY ARE BOTH INVASIVE AND DEMEANING.

AND BEFORE MY CANDID REVELATION OF HAVING BEEN ARRESTED BECOMES THE OBJECT OF RUMOR, I WILL TELL YOU THAT THE OCCASION FOR THOSE FINGERPRINTS AND THE FBI FILE THAT NOW CONTAINS THEM, CAME ABOUT AS A RESULT OF CHALLENGING THE CONSTITUTIONALITY OF THOSE IN LAW ENFORCEMENT TO DEMAND MY IDENTIFICATION WHEN I WAS STOPPED MID-AFTERNOON ON A HOT JULY DAY IN A CHECKLANE.

I DECIDED TO TEST THE SAME FOURTH AMENDMENT RIGHT TO PRIVACY THAT I AM HERE TO ASK YOU TO UPHOLD TODAY BY VOTING AGAINST THIS BILL. I WON MY COURT CHALLENGE BUT THE PRICE I PAID FOR IT WAS THE LOSS OF PRIVACY. THE FBI WILL ALWAYS HAVE A FILE CONTAINING MY FINGERPRINTS THAT THEY SHARE WITH ALMOST ANY GOVERNMENT AGENCY WHO WANTS IT.

THIS WILL BE THE PENALTY EXACTED UPON ANY PERSON WHO WISHES TO PRACTICE LAW IN KANSAS. A PERMANENT FILE CONTAINING THEIR FINGERPRINTS WILL BE KEPT BY THE FBI OR THE KBI, OR BOTH...WHETHER OR NOT ANY CRIME IS DISCOVERED IN THE BACKGROUND CHECK. THIS BILL LIKE ANOTHER YOU WILL BE HEARING SOON, REPRESENT THE KIND OF RECORD KEEPING AND IDENTIFICATION DATA BASES GEORGE ORWELL SOUGHT TO WARN US ABOUT.

THIS BILL TREATS ALL APPLICANTS TO PRACTICE LAW LIKE CRIMINALS AND SHOULD BE PROFOUNDLY OFFENSIVE TO ALL WHO VALUE THEIR PRIVACY.

THREE WEEKS AGO IT WAS THE PRIVACY OF KANSAS DRIVERS AND THE SELLING OF THEIR MOTOR VEHICLE RECORDS.

LAST WEEK AND SOON TO BE IN FRONT OF YOU IT WILL BE THE PRIVACY SALE OF EVERY NEWLY HIRED KANSAN IN AN EFFORT TO LOCATE ABSENTEE PARENTS.

EARLIER TODAY IT WAS THE PRIVACY OF EVERY HOMEOWNER WITH OR WITHOUT A SMOKE DETECTOR.

NOW IT IS LAWYERS WHO WISH TO PRACTICE LAW IN OUR STATE, AND TOMORROW IT REMAINS A CERTAINTY THAT SOMEONE IN GOVERNMENT WILL AGAIN SUGGEST A MEANS TO AN END WHERE PRIVACY IS THE METHOD OF PAYMENT.

WE RESPECTFULLY ASK YOU TO SAY NO WHEN OTHER MEANS ARE AVAILABLE FOR GOVERNMENT TO GET THE SAME RESULTS WITHOUT REMOVAL OF ALL REASONABLE EXPECTATIONS OF PRIVACY.

#12
Bump

Amelia McIntyre

STATE OF KANSAS
DEPARTMENT OF WILDLIFE & PARKS
Office of the Secretary
900 SW Jackson, Suite 502
Topeka, KS 66612
913/296-2281 FAX 913/296-6953

Testimony on Senate Bill 292 Presented to House Judiciary Committee on March 24, 1997

Senate Bill 292 would define the authority of certified law enforcement personnel employed by the Kansas Department of Wildlife and Parks. These personnel include 57 field officers primarily responsible for wildlife law enforcement, 54 park rangers and managers, and 27 public wildlife area managers, all of which are trained through KLETC, and receive a minimum of 40 hours of annual training thereafter. Under an October 1996 Attorney General's opinion, conservation officers may enforce all laws of the state, but only on lands managed by the department. On all other lands, conservation officers may enforce only wildlife and park laws, which are found primarily in Chapter 32 of the Kansas Statutes, as well as a small number of provisions found in other statutes, such as criminal hunting, which is cited in Chapter 21. Since the last statutory amendment to K.S.A. 32-808 in 1993, department employees operated with the understanding that they held legal authority to enforce all Kansas laws, anywhere in the state.

Kansans rightfully expect recognize uniformed department law enforcement employees as public servants, and rightfully expect our personnel to assist and protect them in cases where there is a threat to people or property. Conservation officers encounter serious violations of other criminal statutes while in the routine pursuit of their duties, including DUI, drug related violations and assaults in progress. Habitual wildlife criminals are often involved in other crimes, such as drug trafficking and burglary.

Conservation officers provide important supplemental support to understaffed local law enforcement agencies in most of rural Kansas. Upon request, our personnel assist with felonies in progress, man hunts, and civil emergencies. The department needs to rely upon local law enforcement personnel to aid in responses to illegal activities in parks and wildlife areas. There is an increased likelihood of reciprocity by local law enforcement, if our officers can respond to local agencies dispatchers' requests for assistance. Without the passage of S.B. 292, if department officers, even those deputized by local law officials, pursue violations of non-wildlife laws off of department controlled land, arguably lack normal Tort Claims Act protection from possible law suits related to their actions regarding non-wildlife violations.

The department has not and does not intend for its law enforcement personnel to routinely conduct general police work, and will continue to direct them to focus on wildlife and park resource protection and public safety, as well as other duties. These officers' additional duties emphasize hunter education, boating safety education, outdoor skills education, wildlife resource management, public programs, and constituent involvement.

It is very important that department law enforcement personnel have authority to enforce all of the laws of the state, regardless of location, for public safety, for officer safety, and for efficiency in the use of the state work force. In an era when a more visible presence of law enforcement is needed, department law enforcement personnel need the authority to enforce state laws for the safety of law abiding Kansans. The Department of Wildlife and Parks supports Senate Bill 292 and respectfully requests its favorable passage.

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4-13

KANSAS PEACE OFFICERS ASSOCIATION
and
KANSAS SHERIFFS ASSOCIATION

House Judiciary Committee
Senate Bill No. 292
March 24, 1997

Mr. Chairman and Members of the Committee:

I am Helen Stephens, representing the Kansas Peace Officers Association and Kansas Sheriffs Association. We are here to support SB 292.

KPOA sponsored a bill 3 or 4 years ago to return statewide law enforcement powers to these officers. That bill was passed by the legislature. As you know, the recent AG's opinion states their powers are for enforcement only on park property.

As mentioned then, criminal activity does occur in the parks of our state. If the criminal is about to leave park property, which is the case many times, a sheriff or his deputy cannot always be dispatched to the scene in a timely matter. Hence, the criminal gets away with his/her criminal behavior.

Rural sheriffs, with very small departments, do not have the manpower nor the budget to respond in the fashion they desire. Rural sheriffs, especially, support passage of SB 292.

Drug crimes, DUIs, and domestic battery are more than common occurrences in our parks today. Most Kansas citizens come to our parks and recreation areas to relax and enjoy themselves. By limiting the powers of these officers, some visitors could be in potential danger by those criminals who are leaving the park under less than perfect circumstances.

Please return the law enforcement powers to these officers, help sheriff's around the state, and insure the safety of Kansas citizens in our parks and recreation areas by passing SB 292 favorably.

Thank you for this opportunity. I would stand for questions.

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#14

March 24, 1997

Representative Tim Carmody
Chairman, House Judiciary Committee
State Capitol, Rm. 115-S
Topeka, Ks 66612

TESTIMONY ON SENATE BILL 292

Mr. Chairman and members of the committee. The Kansas Community Alcohol Safety Action Project Coordinators Association support Senate Bill 292 as another positive measure in enforcing our State's DUI and other alcohol and drug violations. Our organization feels this legislation will help promote highway safety in our State.

The Department of Wildlife and Parks in the past have demonstrated their ability to detect alcohol and drug violators when performing their principle duties as conservation officers. It is our belief the conservation officer should have the power to apprehend and arrest an individual that is operating a vehicle on our roads and highways in an impaired condition.

We in the State of Kansas have become quite recreational minded. We fish, hunt and boat as part of our relaxation time, many times with our families. Unfortunately, some individuals use this time to consume alcoholic beverages and violate our drug laws. These individuals not only are endangering themselves and their passengers, but the public in general who might be on that same highway or road.

Our organization urges you to pass the proposed legislation out favorably in order for full approval by the House during this session.

Thank you for your consideration.

Gene Johnson

Gene Johnson
Lobbyist
Kansas Community Alcohol Safety
Action Project Coordinator Association

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