Approved: Jan. 22, 1997
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Mike Harris at 10:00 a.m. on January 15, 1997 in Room 514-S of the Capitol.

All members were present except: Senator Bond (excused)

Committee staff present: Mike Heim, Legislative Research Department
Jerry Donaldson Legislative Research Department
Gordon Self, Revisor of Statutes
Mary Blair, Committee Secretary

Conferees appearing before the committee: Bud Grant, Kansas Chamber of Commerce and Industry (KCCI)
Randy Hearrell, Kansas Judicial Council

Others attending: See attached list

Senator Harris introduced the new members of the Judiciary Committee namely, Senator Nancey Harrington, Senator Don Steffes, Senator Mark Gilstrap, Senator Greta Goodwin and Senator Keith Schraad.

BILL INTRODUCTIONS:

Bud Grant, representing KCCI, presented three bill requests as follows: 1. re: shoplifting - an amendment to K.S.A. 60-3331 which would extend civil recovery statutes to include minors and make the parent or guardian of the minor responsible if the shoplifter apprehended was a minor. (Attachment 1) Senator Steffes made a motion to introduce the bill as presented by Conferee Grant, Senator Oleen seconded with a request to Mr. Grant that the bill read ".....in cases where the guardian is a state or federal agency." Mr. Grant agreed and Senator Oleen requested this change be included in the motion as such. Motion carried. 2. re: checks drawn on closed accounts - Mr. Grant stated the need for a bill to address the issue of these worthless checks and provided background on the preparation of the bill, specifically with regard to new language. (Attachment 2) Senator Emert made a motion to introduce the bill as presented by Conferee Grant, Senator Goodwin seconded. Motion carried. 3. re: flea market sales of certain health products - Mr. Grant requested the introduction of a proposed amendment to K.S.A. 29-2231 Transient Merchants Licensing Act which would prohibit flea markets from selling certain health products, particularly pharmaceuticals and baby food. (Attachment 3) Senator Petty moved to introduce the bill as presented by Conferee Grant, Senator Emert seconded. Motion carried.

Randy Hearrell, representing the Kansas Judicial Council, defined and summarized the history and purpose of the Kansas Judicial Council per Senator Harris' request. He then presented three bill requests as follows:
1. amendments to K.S.A. 60-3102 Protection From Abuse Act which, among other things addresses particularly, people who have a child in common and may or may not be living together. (Attachment 4)
2. amendments to the Care and Treatment Act for Mentally Ill Persons which Mr. Hearrell explained dealt mostly with technical language and clarification. (Attachment 5) 3. introduction of former SB468, which failed to pass the House in 1996. This bill would enable a judge to close certain small estates and/or conservatorships. (Attachment 6) Senator Petty moved to introduce all three bills as presented by Conferee Hearrell, Senator Steffes seconded. Motion carried.

Mr. Hearrell informed the committee of bills being introduced in the House: an amendment to the definition of valid settlement agreement; TOD Transfers of Motor Vehicles and TOD Transfers of Real Estate (out of a longtime study of the Missouri Nonprobate Transfer Act); inconsistencies in statutes relating to the effects of felony convictions on civil rights; creating a central office of administrative law judges; small probate amendment about transfer agents; recoupment of defense cost defending indigents at the county level and a bill on lend laws. Another bill that's not expected to be coming to Judiciary Committee but is of interest to the committee is a bill on the relationship between the Board of Indigents' Defense Services and The Judicial Branch. (Attachment 7) There was brief discussion on the latter bill.

Legislative Researchers Jerry Donaldson and Mike Heim gave a briefing on the 1996 Interim Special Committee. Ms. Donaldson summarized the study topics: Registration of Sex Offenders (Megan's Law), student Stalking and Juvenile Justice Reform Act. Mr. Heim reported on Civil Procedure Code Changes; Uniform Fraudulent Transfers; Uniform Partnership Act; Alternative Punishments (which would help reduce prison population); Description of Current Nonprison Sanctions categorized as: probation, parole and community corrections; Kansas Parole Board Chair's 1996 report and recommendations and a Prison Population Update as of October, 1996. Both researchers gave background information, committee activities and conclusions and recommendations on the above study topics. (see Committee Reports to the 1997 Kansas Legislature - filed at the Kansas Legislative Research Department dated December, 1996) Mr. Heim will continue his briefing at the 1/16 committee meeting.

Senator Harris informed the committee that there may be joint hearings with the House Judiciary Committee on more complicated and less controversial issues which would help to alleviate last minute complications near the end of session.

The Chair adjourned the meeting at 10:57 a.m.

The next meeting is scheduled for January 16, 1997.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1-15-97

NAME	REPRESENTING
Jolene Grabill	KTLA
Kelly Kultala	City of Overland Park
Natalie Bright	Sen. Oleen's Intern
Richard Wilson	Farmers Alliance
Bill Mitchell	Alliance
White, Damon	Kansas Bar Assn
Paul Shelby	OJA
Jim Clark	KCPAA
J. G. Newsell	Judicial Council
Ron Gaches	KCCI
Kathy Taylor	KBA
Marlin Hyurva	Hurwa's Capital Report
Helen Stephens	KPOA / KSA

60-3331. Civil penalty against shoplifter; amount; attorney fees and costs; demand for reimbursement; other remedies not precluded. (a) Except as otherwise provided, a merchant may file a civil action to receive a civil penalty against any adult or emancipated minor who shoplifts from that merchant. If the merchant does not recover the merchandise in merchantable condition, the merchant shall be entitled to a civil penalty for an amount equal to twice the retail cost of the merchandise, or $50, whichever is greater, but in no case shall such civil penalty be more than $500. If the merchant recovers the merchandise in merchantable condition, the merchant shall be entitled to a civil penalty of $50 or 50% of the retail cost of the merchandise, whichever is greater, but in no case shall such civil penalty be more than $350.

(b) If a minor shoplifts, the parent or guardian of the minor, except in cases where the guardian is a state agency, shall be civilly liable for the amount provided by subsection (a).

(c) ~~(b)~~ Unless the action is brought pursuant to the Kansas small claims act and a final judgment is rendered in small claims court, the prevailing party in such action brought pursuant to this section shall be entitled to reasonable attorney fees and costs. If the action is brought in small claims court and the judgment is appealed to district court pursuant to chapter 60 of the Kansas Statutes Annotated or K.S.A. 61-2709 and amendments thereto, the prevailing party on appeal shall be entitled to reasonable attorney fees and costs.

(d) ~~(c)~~ A conviction or a plea of guilty to the offense of theft of the merchandise is not a prerequisite to the filing of a civil action under this section.

(e) ~~(d)~~ Prior to filing a civil action under this section, a merchant damaged by shoplifting may demand that an individual alleged to be civilly liable under this act reimburse such merchant in an amount of the civil penalty as prescribed in subsection (a). Such demand, if made, shall be in writing and may be offered in consideration for the merchant's agreement not to commence a civil action under this section. Such demand shall not contain a threat of criminal prosecution against such individual. Any merchant who makes a demand with a threat of criminal prosecution against such individual shall be precluded from filing a civil action under this section and pursuing any other remedy at law or equity. A demand pursuant to this subsection is not a prerequisite to filing a civil action under this section, but no demand may be made which does not comply with this subsection.

(f) ~~(e)~~ Nothing contained in this act shall be construed to preclude a merchant from pursuing any other remedy at law or equity prior to filing an action under this act.

(g) ~~(f)~~ For purposes of this act, "shoplift" means any one or more of the following acts committed by a person without the consent of the merchant and with the intent of appropriating merchandise to that person's or another's own use without payment, obtaining merchandise at less than its stated sales price or otherwise depriving a merchant of all or any part of the value or use of merchandise:

(1) Removing any merchandise from the premises of the merchant's establishment;

(2) concealing any merchandise with intent to leave the premises with the merchandise;

(3) substituting, altering, removing or disfiguring any label or price tag;

(4) transferring any merchandise from a container in which that merchandise is displayed or packaged to any other container; or

(5) disarming any alarm tag attached to any merchandise.

History: L. 1993, ch. 98, § 1; July 1.

Law Review and Bar Journal References:

"Unauthorized Corporate Law Practices in Small Claims Court: Should Anybody Care?" Ron Smith, 33 W.L.J. 345, 360 (1994).

Attorney General's Opinions:

Civil penalty against shoplifters does not preclude a criminal prosecution. 94-33.

Senate Judiciary
Attachment 1
1-15-97

XX-XXXX. Giving a check drawn on a closed account.
(a). Giving a check drawn against a closed account is the making, drawing, issuing, or delivering, or causing or directing the making ,drawing, issuing, or delivering of any check, order or draft on any bank, savings and loan association, credit union, or any such depository for the payment of money or its equivalent with intent to defraud and knowing, at the time of making, drawing, issuing, or delivering of such check, order, or draft that the maker or drawer has not an active account with the drawee as that specified upon the instrument and that check, order, or draft will not be paid in full upon its presentation.

(b). In any prosecution against a maker or drawer of a check written upon a closed account, whether the account has been closed by the maker or drawer or the drawee, provided that the drawee has closed the account in accordance with established and accepted banking guidelines and principles, the act of making, drawing, issuing, or delivering of such check shall constitute prima facie evidence of intent to defraud and theft by conversion.

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

(1) Was drawn within thirty days of closing of the account by the drawee in which case it shall be prosecuted under KS 21-3707: or

(2) Was drawn after the account being closed by the drawee but before written notice to the drawer had been given by the drawee in which case it shall be prosecuted under KS 21-3707. Written notice shall be presumed to have been given when ten days have passed from the time in which notification of account closure by the drawee has been deposited as restricted matter in the United States mail, addressed to the person to be given such notice at such person's address as it appears on such check, draft, or order: or

(3) Was given to a payee who had knowledge or had been informed in writing when the payee accepted such check, draft, or order, that the maker was making, drawing, issuing, or delivering said instrument which had been drawn against a closed account and would not be honored by the drawee upon presentation.

(d) Giving a check drawn upon a closed account is a severity level 7, nonperson felony if the check, draft, or order is drawn for $300 or more. Giving a check drawn against a closed account is a severity level 9, nonperson felony if the check, draft, or order is drawn for $300 or less.

Senate Judiciary
attachment 2
1-15-97

Flea market: prohibited sales. No person at a flea market shall sell, offer for sale, or knowingly permit the sale of baby food, infant formula, or similar products, or any pharmaceuticals, over-the-counter drugs, cosmetics, or medical devices. This section does not apply to a person who keeps available for public inspection an identification card identifying his or her as an authorized representative of the manufacturer or distributor of any pharmaceuticals, over-the-counter drugs, cosmetics, or medical devices, as long as the card is not false, fraudulent, or fraudulently obtained.

For purposes of this section, "flea market" means any location, other than a permanent retail store, at which space is rented or othewise made available to others for the conduct of business as a transient merchant as defined in this act.

Proposed amendment to K.S.A. 29-2231 Transient Merchants Licensing Act

Senate Judiciary
attachment 3
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1-15-97 att #4

1/15/97

1997 JUDICIAL COUNCIL BILL REQUESTS

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Senate Judiciary
attachment 4
1-15-97

60-3101. Citation and construction of act. (a) K.S.A. 60-3101 through 60-3111, and amendments thereto, shall be known and may be cited as the protection from abuse act.

(b) This act shall be liberally construed to promote the protection of victims of domestic violence from bodily injury or threats of bodily injury and to facilitate access to judicial protection for the victims, whether represented by counsel or proceeding pro se.

60-3102. "Abuse" defined. As used in this act "abuse" means the occurrence of one or more of the following acts between persons who reside together, or who formerly resided together, or who have a child in common:

(a) Willfully attempting to cause bodily injury, or willfully or wantonly causing bodily injury.

(b) Willfully placing, by physical threat, another in fear of imminent bodily injury.

(c) Engaging in any of the following acts with a minor under 16 years of age who is not the spouse of the offender:

(1) The act of sexual intercourse.

(2) Any lewd fondling or touching of the person of either the minor or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the minor or the offender or both.

Sec. 5. K.S.A. 60-3103 is hereby amended to read as follows: 60-3103. ~~The~~ *Any* district court shall have jurisdiction over all proceedings under ~~this~~ *the protection from abuse* act. The right of a person to obtain relief under ~~this~~ *the protection from abuse* act shall not be affected by the person's leaving the residence or household to avoid further abuse.

Sec. 6. K.S.A. 60-3104 is hereby amended to read as follows: 60-3104. (a) A person may seek relief under ~~this~~ *the protection from abuse* act ~~or any parent of or adult residing with a minor child may seek relief under this act on behalf of the minor child~~ by filing a verified petition with any district judge ~~of the judicial district~~ or with the clerk of the court, alleging abuse by ~~another~~ with whom the person ~~or child~~ resides *or formerly resided*. ~~No docket fee or fee for service of summons and petition shall be required for proceedings under this act.~~

(b) A parent of or an adult residing with a minor child may seek relief under the protection from abuse act on behalf of the minor child by filing a verified petition with any district judge or with the clerk of the court alleging abuse by another with whom the child resides or formerly resided.

~~(b)~~ *(c)* The clerk of the court shall supply the forms for the petition and orders, which shall be prescribed by the supreme court.

~~(c)~~ *(d)* Service of process served under this section shall be by personal service and not by certified mail return receipt requested. *No docket fee shall be required for proceedings under the protection from abuse act.*

or has a child in common

(e) If plaintiff's address or telephone number needs to remain confidential for the protection of the plaintiff, plaintiff's minor children or minor children residing with the plaintiff, such information shall not be disclosed to the public, but only to authorized court or law enforcement personnel.

4-4-12

Sec. 7. K.S.A. 60-3105 is hereby amended to read as follows: 60-3105. (a) When the court is unavailable, a verified petition, accompanied by a proposed order, may be presented to any district judge ~~of the judicial district~~. The judge may grant relief in accordance with subsection (a)(1), (2), (4) or (5) of K.S.A. 60-3107 and amendments thereto, or any combination thereof, if the judge deems it necessary to protect the plaintiff or minor child or children from abuse. An emergency order pursuant to this subsection may be granted *ex parte*. Immediate and present danger of abuse to the plaintiff or minor child or children shall constitute good cause for the entry of the emergency order.

(b) An emergency order issued under subsection (a) shall expire when the court is available or within 72 hours, whichever occurs first. At that time, the plaintiff may seek a temporary order from the court.

(c) The judge shall note on the petition and any order granted, including any documentation in support thereof, the filing date, together with the judge's signature, and shall deliver them to the clerk of the court on the next day of the resumption of business of the court.

60-3106. Hearings; temporary orders pending hearing. (a) Within 20 days of the filing of a petition under this act a hearing shall be held at which the plaintiff must prove the allegation of abuse by a preponderance of the evidence and the defendant shall have an opportunity to present evidence on the defendant's behalf. Upon the filing of the petition, the court shall set the case for hearing. At the hearing, the court shall advise the parties of the right to be represented by counsel.

(b) Prior to the hearing on the petition and upon a finding of good cause shown, the court on motion of a party may enter such temporary relief orders in accordance with subsection (a)(1), (2), (4) or (5) of K.S.A. 60-3107 and amendments thereto, or any combination thereof, as it deems necessary to protect the plaintiff or minor children from abuse. Temporary orders may be granted ex parte. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause for purposes of this section. No temporary order shall have the effect of modifying an existing custody or residency or visitation order unless there is sworn testimony to support a showing of good cause.

(c) If a hearing under subsection (a) is continued, the court may make or extend such temporary orders under subsection (b) as it deems necessary.

Sec. 8. K.S.A. 60-3107 is hereby amended to read as follows: 60-3107. (a) The court shall be empowered to approve any consent agreement to bring about a cessation of abuse of the plaintiff or minor children or grant any of the following orders:

(1) Restraining the parties from abusing, molesting or interfering with the privacy or rights of each other or of any minor children of the parties. Such order shall contain a statement that if such order is violated, such violation may constitute assault as provided in K.S.A. 21-3408, and amendments thereto, ~~or~~ battery as provided in K.S.A. 21-3412, and

amendments thereto, *and violation of a protective order as provided in section 2, and amendments thereto.*

(2) Granting possession of the residence or household to a party to the exclusion of the other party, and further restraining the party not granted possession from entering or remaining upon or in such residence or household, subject to the limitation of subsection (c). Such order shall contain a statement that if such order is violated, such violation shall constitute criminal trespass as provided in subsection (c) of K.S.A. 21-3721, and amendments thereto, *and violation of a protective order as provided in section 2, and amendments thereto.*

(3) Requiring a party to provide suitable, alternate housing for such party's spouse and any minor children of the parties.

(4) Awarding temporary custody and establishing temporary visitation rights with regard to minor children.

(5) Ordering a law enforcement officer to evict a party from the residence or household.

(6) Ordering support payments by a party for the support of a party's minor child or a party's spouse. Such support orders shall remain in effect until modified or dismissed by the court or until expiration and shall be for a fixed period of time not to exceed one year. On the motion of the plaintiff, the court may extend the effect of such order for 12 months.

(7) Awarding costs and attorney fees to either party.

(8) Making provision for the possession of personal property of the parties and ordering a law enforcement officer to assist in securing possession of that property, if necessary.

(9) Requiring the ~~parties~~ *person against whom the order is issued* to seek counseling to aid in the cessation of abuse.

(b) If, within the period that an order of support issued pursuant to subsection (a)(6) is in existence, a party files a petition for divorce, separate maintenance or annulment and an application for temporary support pursuant to K.S.A. 60-1601 *et seq.*, and amendments thereto, the order of support shall continue in effect until an order is issued on the application for temporary support or until such earlier time as ordered by the court on motion of either party at any time for good cause shown. If a party has previously commenced an action for divorce, separate maintenance or annulment prior to commencement of an action under ~~this~~ *the protection from abuse* act, the court may enter, pursuant to ~~this~~ *the protection from abuse* act, an order inconsistent with the order previously entered in the divorce, separate maintenance or annulment proceeding. If an inconsistent order is entered pursuant to ~~this~~ *the protection from abuse* act, the order previously entered in the other proceeding shall be vacated upon motion in the proceeding pursuant to ~~this~~ *the protection from abuse* act.

(c) If the parties to an action under ~~this~~ *the protection from abuse* act are not married to each other and one party owns the residence or household, the court shall not have the authority to grant possession of the residence or household under subsection (a)(2) to the exclusion of the party who owns it.

The court may grant an order restraining the party not granted possession from cancelling utility service to the residence or household.

and residency

Any order entered under the protection from abuse act shall not be subject to modification on ex parte application or on motion for temporary orders in any action filed pursuant to K.S.A. 60-1601 et seq. and amendments thereto. Orders previously issued in an action filed pursuant to K.S.A. 60-1601 et seq. and amendments thereto shall be subject to modification under the protection from abuse act only as to those matters subject to modification by the terms of K.S.A. 60-1610 et seq. and amendments thereto, and on sworn testimony to support a showing of good cause. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause. If an action is filed pursuant to K.S.A. 60-1610 et seq. and amendments thereto during the pendency of a proceeding filed under the protection from abuse act or while an order issued under the protection from abuse act is in effect, the court may, on final hearing or on agreement of the parties, issue final orders authorized by K.S.A. 60-1610 and amendments thereto that are inconsistent with orders entered under the protection from abuse act. Any inconsistent order entered pursuant to this subsection shall be specific in its terms, reference the protection from abuse order and parts thereof being modified and a copy thereof shall be filed in both actions. The court shall consider whether the actions should be consolidated in accordance with K.S.A. 60-242 and amendments thereto.

(d) Subject to the provisions of subsections (b) and (c), a ~~protection~~ *protective* order or approved consent agreement shall remain in effect until modified or dismissed by the court and shall be for a fixed period of time not to exceed one year, except that, on motion of the plaintiff, such period may be extended for one additional year.

(e) The court may amend its order or agreement at any time upon motion filed by either party.

(f) No order or agreement under ~~this~~ *the protection from abuse* act shall in any manner affect title to any real property.

(g) If a person enters or remains on premises or property violating an order issued pursuant to subsection (a)(2), such violation shall constitute criminal trespass as provided in subsection (c) of K.S.A. 21-3721, and amendments thereto, *and violation of a protective order as provided in section 2, and amendments thereto*. If a person abuses, molests or interferes with the privacy or rights of another violating an order issued pursuant to subsection (a)(1), such violation may constitute assault as provided in K.S.A. 21-3408, and amendments thereto, ~~or~~ battery as provided in K.S.A. 21-3412, and amendments thereto, *and violation of a protective order as provided in section 2, and amendments thereto*.

60-3108. Notice of protection orders. A copy of any order under this act shall be issued to the plaintiff, the defendant and the police department of the city where the plaintiff resides. If the plaintiff does not reside in a city or resides in a city with no police department, a copy of the order shall be issued to the sheriff of the county where the plaintiff resides.

60-3109. Procedure. Except as otherwise provided in this act, any proceeding under this act shall be in accordance with chapter 60 of the Kansas Statutes Annotated and shall be in addition to any other available civil or criminal remedies.

60-3110. Contempt. If, upon hearing, the court finds a violation of any order or consent agreement, the court may find the defendant in contempt pursuant to K.S.A. 20-1204a.

60-3111. Limit on use of act. No person may use the procedure provided for in this act more than twice in any twelve month period, except in the case of abuse of a minor.

New Sec. 13. (a) A verified petition to determine whether a person is a mentally ill person subject to involuntary commitment for care and treatment under this act may be filed in the district court of the county wherein that person resides or wherein such person may be found.

(1) The petition shall state:

(A) [~~(1)~~] The petitioner's belief that the named person is a mentally ill person subject to involuntary commitment and the facts upon which this belief is based;

(B) [~~(2)~~] to the extent known, the name, age, present whereabouts and permanent address of the person named as possibly a mentally ill person subject to involuntary commitment; and if not known, any information the petitioner might have about this person and where the person resides;

(C) [~~(3)~~] to the extent known, the name and address of the person's spouse or nearest relative or relatives, or legal guardian, or if not known, any information the petitioner might have about a spouse, relative or relatives or legal guardian and where they might be found;

(D) [~~(4)~~] to the extent known, the name and address of the person's legal counsel, or if not known, any information the petitioner might have about this person's legal counsel;

(E) [~~(5)~~] to the extent known, whether or not this person is able to pay for medical services, or if not known, any information the petitioner might have about the person's financial circumstances or indigency;

(F) [~~(6)~~] to the extent known, the name and address of any person who has custody of the person, and any known pending criminal charge or charges or of any arrest warrant or warrants outstanding or, if there are none, that fact or if not known, any information the petitioner might have about any current criminal justice system involvement with the person; and

(G) [~~(7)~~] the name or names and address or addresses of any witness or witnesses the petitioner believes has knowledge of facts relevant to the issue being brought before the court.

(2) The petition shall be accompanied by:

(A) [~~(1)~~] A signed certificate from a physician, licensed psychologist, or qualified mental health professional designated by the head of the treatment facility stating that such professional has personally examined the person and any available records and has found that the person, in such professional's opinion, is likely to be a mentally ill person subject to involuntary commitment for care and treatment under this act, unless the court allows the petition to be accompanied by a verified statement by the petitioner that the petitioner had attempted to have the person seen by a physician, licensed psychologist or such qualified mental health professional, but that the person failed to cooperate to such an extent that the examination was impossible to conduct;

(B) [~~(2)~~] if applicable because immediate admission to a state psychiatric hospital is sought, the necessary statement from a qualified mental health professional authorizing such admission; and

(C) [~~(3)~~] if applicable, a copy of any notice given pursuant to section 7 and amendments thereto in which the named person has sought discharge from a treatment facility into which they had previously entered voluntarily, or a statement from the treating physician or licensed psychologist that the person is a voluntary patient but is refusing reasonable treatment efforts, and including a description of the treatment efforts being refused.

(b) The petition may include a request that an ex parte emergency custody order be issued pursuant to section 14 and amendments thereto. If such request is made the petition shall also include:

(1) A brief statement explaining why the person should be immediately detained or continue to be detained;

(2) the place where the petitioner requests that the person be detained or continue to be detained;

(3) if applicable, because detention is requested in a treatment facility other than a state psychiatric hospital, a statement that the facility is willing to accept and detain such person; and

(4) if applicable, because admission to a state psychiatric hospital is sought, the necessary statement from a qualified mental health professional authorizing admission and emergency care and treatment.

(c) The petition may include a request that a temporary custody order be issued pursuant to section 15 and amendments thereto.

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attachment 5
1-15-97

Comment

K.S.A. 1996 Supp. 59-2957 (S.B. 469 New Sec. 13)

This section is proposed to be amended by "re-numbering" the paragraphs contained in subsection (a) to eliminate confusion. This section was re-written in S.B. 469 from old K.S.A. 59-2913 and in that process three additional paragraphs were added as a new subpart specifying the three attachments which need to accompany a petition. When the bill was prepared, however, the draft failed to separate the two subparts of subsection (a) into designated subjects (1) and (2) and that, in turn, caused the numbering of the paragraphs to result in the subsection containing repeating references. The amendment is purely technical.

of a person

Subject to involuntary commitment for care and treatment

New Sec. 14. (a) At the time ~~that~~ the petition for the determination of mental illness is filed, or any time thereafter prior to the trial upon the petition as provided for in section 21 and amendments thereto, the petitioner may request in writing that the district court issue either or both of the following: (1) An order directing any law enforcement officer to take the person named in the order into custody and transport the person to a designated treatment facility or other suitable place willing to receive and detain the person; (2) an order authorizing any named treatment facility or other place to detain or continue to detain the person until the further order of the court or until the ex parte emergency custody order shall expire.

an ex parte emergency order including

(b) No ex parte emergency custody order shall provide for the detention of any person at a state psychiatric hospital unless a written statement from a qualified mental health professional authorizing such admission and detention at a state psychiatric hospital has been filed with the court.

(c) No ex parte emergency custody order shall provide for the detention of any person in a nonmedical facility used for the detention of persons charged with or convicted of a crime.

(d) If no other suitable facility at which such person may be detained is willing to accept the person, then the participating mental health center for that area shall provide a suitable place to detain the person until the further order of the court or until the ex parte emergency custody order shall expire.

(e) An ex parte emergency custody order issued under this section shall expire at 5:00 p.m. of the second day the district court is open for the transaction of business after the date of its issuance, which expiration date shall be stated in the order.

(f) The district court shall not issue successive ex parte emergency custody orders.

(g) In lieu of issuing an ex parte emergency custody order, the court may allow the person with respect to whom the request was made to remain at liberty, subject to such conditions as the court may impose.

Comment

K.S.A. 1996 Supp. 59-2958 (S.B. 469 New Sec. 14)

This section is proposed to be amended in three places to provide additional clarification. The amendments are purely technical.

New Sec. 22. (a) Upon the completion of the trial, if the court or jury finds by clear and convincing evidence that the proposed patient is a mentally ill person subject to involuntary commitment for care and treatment under this act, the court shall order treatment for such person at a treatment facility, except that the court shall not order treatment at a state psychiatric hospital, unless a written statement from a qualified mental health professional authorizing such treatment at a state psychiatric hospital has been filed with the court. An order for treatment in a treatment facility other than a state psychiatric hospital shall be conditioned upon the consent of the head of that treatment facility to accepting the patient. In the event no other appropriate treatment facility has agreed to provide treatment for the patient, and no qualified mental health professional has authorized treatment at a state psychiatric hospital, the participating mental health center for the county in which the patient resides shall be given responsibility for providing or securing treatment for the patient or if no county of residence can be determined for the patient, then the participating mental health center for the county in which the patient was taken into custody or in which the petition was filed shall be given responsibility for providing or securing treatment for the patient.

(b) Within any order for treatment the court shall specify the period of treatment as provided for in section 25 and amendments thereto.

(c) When the court orders treatment, it shall retain jurisdiction to modify, change or terminate such order, unless venue has been changed pursuant to section 27 and amendments thereto and then the receiving court shall have continuing jurisdiction.

(d) If the court finds from the evidence that the proposed patient has not been shown to be a mentally ill person subject to involuntary commitment for care and treatment under this act the court shall release the person and terminate the proceedings.

A copy of the order for treatment shall be provided to the head of the treatment facility.

5-5

Comment

K.S.A. 1996 Supp. 59-2966 (S.B. 469 New Sec. 22)

This section is proposed to be amended by adding a requirement that an actual copy of the court's treatment order be provided to the head of the treatment facility (to which the person has been committed for treatment). The committee believes this is regularly done, but was requested to make an explicit requirement of this by representatives of treatment facilities, since the court order is the legal authority by which the treatment facility may detain the individual. Having a copy of the order in their files provides proof of the exact nature of the commitment and its duration. The committee considers the amendment to be principally technical.

(See also a similar amendment proposed to section 59-2969)

New Sec. 23. (a) An order for outpatient treatment may be entered by the court at any time in lieu of any type of order which would have required inpatient care and treatment if the court finds that the patient is likely to comply with an outpatient treatment order and that the patient will not likely be a danger to the community or be likely to cause harm to self or others while subject to an outpatient treatment order.

(b) No order for outpatient treatment shall be entered unless the head of the outpatient treatment facility has consented to treat the patient on an outpatient basis under the terms and conditions set forth by the court, except that no order for outpatient treatment shall be refused by a participating mental health center.

(c) If outpatient treatment is ordered, the order may state specific conditions to be followed by the patient, but shall include the general condition that the patient is required to comply with all directives and treatment as required by the head of the outpatient treatment facility or the head's designee. The court may also make such orders as are appropriate to provide for monitoring the patient's progress and compliance with outpatient treatment. Within any outpatient order for treatment the court shall specify the period of treatment as provided for in section 25 and amendments thereto.

(d) The court shall retain jurisdiction to modify or revoke the order for outpatient treatment at any time on its own motion, on the motion of any counsel of record or upon notice from the treatment facility of any need for new conditions in the order for outpatient treatment or of material noncompliance by the patient with the order for outpatient treatment. However, if the venue of the matter has been transferred to another court, then the court having venue of the matter shall have such jurisdiction to modify or revoke the outpatient treatment order. Revocation or modification of an order for outpatient treatment may be made ex parte by order of the court in accordance with the provisions of subsections (e) or (f).

(e) The treatment facility shall immediately report to the court any material noncompliance by the patient with the outpatient treatment order. Such notice may be verbal or by telephone but shall be followed by a verified written or facsimile notice delivered to the court, to counsel for all parties and, as appropriate, to the head of the inpatient treatment facility designated to receive the patient, by not later than 5:00 p.m. of the first day the district court is open for the transaction of business after the verbal or telephonic communication was made to the court. Upon receipt of verbal, telephone, or verified written or facsimile notice of material noncompliance, the court may enter an ex parte emergency custody order providing for the immediate detention of the patient in a designated inpatient treatment facility except that the court shall not order the detention of the patient at a state psychiatric hospital, unless a written statement from a qualified mental health professional authorizing such detention at a state psychiatric hospital has been filed with the court. Any ex parte emergency custody order issued by the court under this subsection shall

expire at 5:00 p.m. of the second day the district court is open for the transaction of business after the patient is taken into custody. The court shall not enter successive ex parte emergency custody orders.

(f) (1) Upon the ~~entry of~~ an ex parte emergency custody order revoking a previously issued order for outpatient treatment and ordering the patient to involuntary inpatient care the court shall set the matter for hearing not later than the close of business on the second day the court is open for business after ~~the filing of the order~~. Notice of the hearing shall be given to the patient, the patient's attorney, the patient's legal guardian, the petitioner or the county or district attorney as appropriate, the head of the outpatient treatment facility and the head of the inpatient treatment facility, similarly as provided for in section 19 and amendments thereto.

taking of a patient into custody pursuant to

the patient is taken into custody

(2) Upon the entry of an ex parte order modifying a previously issued order for outpatient treatment, but allowing the patient to remain at liberty, a copy of the order shall be served upon the patient, the patient's attorney, the county or district attorney and the head of the outpatient treatment facility similarly as provided for in section 19 and amendments thereto. Thereafter, any party to the matter, including the petitioner, the county or district attorney or the patient, may request a hearing on the matter if the request is filed within 5 days from the date of service of the ex parte order upon the patient. The court may also order such a hearing on its own motion within 5 days from the date of service of the notice. If no request or order for hearing is filed within the 5-day period, the ex parte order and the terms and conditions set out in the ex parte order shall become the final order of the court substituting for any previously entered order for outpatient treatment. If a hearing is requested, a formal written request for revocation or modification of the outpatient treatment order shall be filed by the county or district attorney or the petitioner and a hearing shall be held thereon within 5 days after the filing of the request.

(g) The hearing held pursuant to subsection (f) shall be conducted in the same manner as hearings provided for in section 15 and amendments thereto. Upon the completion of the hearing, if the court finds by clear and convincing evidence that the patient violated any condition of the outpatient treatment order, the court may enter an order for inpatient treatment, except that the court shall not order treatment at a state psychiatric hospital unless a written statement from a qualified mental health professional authorizing such treatment at a state psychiatric hospital has been filed with the court, or may modify the order for outpatient treatment with different terms and conditions in accordance with this section.

(h) The outpatient treatment facility shall comply with the provisions of section 25 and amendments thereto concerning the filing of written reports for each 90- or 180-day period during the time the outpatient treatment order is in effect and the court shall receive and process such reports in the same manner as reports received from an inpatient treatment facility.

Comment — on subsection (f)

K.S.A. 1996 Supp. 69-2967 (S.B. 469 New Sec. 23)

This section is proposed to be amended by changing the "trigger point" upon which a patient's right to a hearing is fixed. The current provision triggers this hearing upon the issuance of an exparte emergency custody order. At that point, the patient will likely not be in custody and the committee was reminded that the patient may, in some instances, not be found and taken into custody until well after the time required for the hearing to have been scheduled to have occurred. It makes more sense to trigger the hearing by the taking of the patient into custody. While, in most cases, this will not significantly change when the hearing will actually occur from what is provided in the current section (since most patients will be immediately picked up after the issuance of the court's order), in those cases where there is a delay in taking the patient into custody, the hearing will technically also be delayed in being set if not held, but no violation of the patient's rights will have occurred since no greater time transpires under this new provisions than that was contemplated when the current section following the taking of the patient into custody. The committee considers the amendment to be principally technical.

The section is proposed to be amended in subsection (e) by inserting the word "material". It was intended that the "noncompliance" refered to in line 10, (which the amendment will modify) be "material and was technical in nature.

New Sec. 25. (a) At least 14 days prior to the end of each period of treatment, as set out in the court order for such treatment, the head of the treatment facility furnishing treatment to the patient shall submit to the court a written report summarizing the treatment provided and the findings and recommendations of the treatment facility concerning the need for further treatment for the patient. Upon the receipt of this written report, the court shall notify the patient's attorney of record that this written report has been received. If there is no attorney of record for the patient, the court shall appoint an attorney and notify such attorney that the written report has been filed.

(b) When the attorney for the patient has received notice that the treatment facility has provided the district court with its written report, the attorney shall consult with the patient to determine whether the patient desires a hearing. If the patient desires a hearing, the attorney shall file a written request for a hearing with the district court, which request shall be filed not later than the end of the 90-day or 180-day period of treatment as provided for herein. If the patient does not desire a hearing, the patient's attorney shall file with the court a written statement that the attorney has consulted with the patient; the manner in which the attorney has consulted with the patient; that the attorney has fully explained to the patient the patient's right to a hearing as set out in this section and that if the patient does not request such a hearing that further treatment will likely be ordered, but that having been so advised the patient does not desire a hearing. Thereupon, the court may renew its order for treatment and may specify the next period of treatment. ~~Notice thereof~~ A copy of the court's order shall be given to the patient, the attorney for the patient, the patient's legal guardian, the petitioner or the county or district attorney, as appropriate, and to the head of the treatment facility treating the patient as the court shall specify.

(c) Upon receiving a written request for a hearing, the district court shall set the matter for hearing and notice of such hearing shall be given similarly as provided for in section 19 and amendments thereto. Notice shall also be given to the head of the treatment facility treating the patient. The hearing shall be held as soon as reasonably practical, but in no event more than 10 days following the filing of the written request for a hearing. The patient shall remain in treatment during the pendency of any such hearing, unless discharged by the head of the treatment facility pursuant to section 29 and amendments thereto.

(d) The district court having jurisdiction of any case may, on its own motion or upon written request of any interested party, including the head of the treatment facility where a patient is being treated, hold a hearing to review the patient's status earlier than at the times set out in subsection (b) above, if the court determines it is in the best interests of the patient to have an earlier hearing, however, the patient shall not be entitled to have more than one hearing within the first 90 days after the date of the hearing at which the original treatment order was entered; one hearing within the second 90 days after the date of the hearing at which the original treatment order was entered and one hearing within each 180 days thereafter.

(e) The hearing shall be conducted in the same manner as hearings provided for in section 21 and amendments thereto, except that the hearing shall be to the court and the patient shall not have the right to demand a jury. At the hearing it shall be the petitioner's or county or district attorney's or treatment facility's burden to show that the patient remains a mentally ill person subject to involuntary commitment for care and treatment under this act.

(f) Upon completion of the hearing, if the court finds by clear and convincing evidence that the patient continues to be a mentally ill person subject to involuntary commitment for care and treatment under this act, the court shall order continued treatment at an inpatient treatment facility as provided for in section 22 and amendments thereto, or at an outpatient treatment facility if the court determines that outpatient treatment is appropriate under section 23 and amendments thereto, and a copy of the court's order shall be provided to the head of the treatment facility. If the court finds that it has not been shown by clear and convincing evidence that the patient continues to be a mentally ill person subject to involuntary commitment for care and treatment under this act, it shall release the patient. A copy of the court's order of release shall be provided to the patient, the patient's attorney, the patient's legal guardian or other person known to be interested in the care and welfare of a minor patient, and to the head of the treatment facility at which the patient had been receiving treatment.

Comment

K.S.A. 1996 Supp. 59-2969 (S.B. 469 New Sec. 25)

This section is proposed to be amended by allowing a requirement that an actual copy of the court's treatment order be provided to the interested parties rather than mere "notice" of such. The committee believes this is regularly done, but was requested to make an explicit requirement of the order by representatives of treatment facilities and of patients and their attorneys, in order to provide all parties with proof of the exact nature of the commitment and its duration. The committee considers the amendment to be principally technical.

(See also a similar amendment proposed to section 59-2966)

SECTION 27 REDRAFT

(a) At any time after the petition provided for in section 13 and amendments thereto has been filed venue may be transferred in accordance with this section.

(1) Prior to trial required by section 21. Before ~~up until~~ the expiration of two full working days following the probable cause hearing held pursuant to section 15 or 18 and amendments thereto, the district court then with jurisdiction, on its own motion or upon the written request of any person, may transfer the venue of the case to the district court ~~for~~ of the county where the patient is being detained, evaluated or treated in a treatment facility under the authority of an order issued pursuant to section 14, 15 or 20 and amendments thereto~~, issued prior to the trial required by section 21 and amendments thereto~~. Thereafter the district court may on its own motion or upon the written request of any person transfer venue to another district court only for good cause shown.

When ~~any~~ an order changing venue is issued, the district court issuing ~~such~~ the order shall immediately send to the district court to which venue is changed a facsimile of all pleadings and orders in the case. The district court shall also immediately send a facsimile of the order transferring venue to the treatment facility where the patient is being detained, evaluated or treated. ~~The district court issuing such order, if not in the county of residence of the proposed patient, shall transmit to the district court in the county of residence of the proposed patient a statement of any court costs incurred by the county of the district court issuing such order and a certified copy of all pleadings and orders in the case.~~

5-13

(2) After trial required by section 21. The district court may on its own motion or upon the written request of any person transfer venue to another district court for good cause shown. When an order changing venue is issued, the district court issuing the order shall immediately send to the district court to which venue is changed a facsimile of the Petition for Determination of Mental Illness subject to Involuntary Commitment for Care and Treatment, the most recent notice of hearing issued by the court, the order changing venue, the current order of treatment, the most recent written report summarizing treatment, and any order allowing withdrawal of the patient's attorney. The transferring district court shall also immediately send a facsimile of the order transferring venue to the treatment facility where the patient is being detained, evaluated or treated. No later than 5:00 p.m. of the second full day the district court transferring venue is open for business following the issuance of the order transferring venue, the district court transferring venue shall send to the receiving district court the entire file of the case by restricted mail.

(b) The district court issuing an order transferring venue, if not in the county of residence of the proposed patient, shall transmit to the district court in the county of residence of the proposed patient a statement of any court costs incurred by the county of the district court issuing the order and, if the county of residence is not the receiving county, a certified copy of all pleadings and orders in the case.

(c) Any district court to which venue is transferred shall proceed in the case as if the petition had been originally filed therein and shall cause notice of the change of venue to be given to the persons named in and in the same manner as provided for in section 19 and

amendments thereto. In the event that notice of a change of location of a hearing due to a change of venue cannot be served at least 48 hours prior to any hearing previously scheduled by the transferring court or because of scheduling conflicts the hearing can not be held by the receiving court on the previously scheduled date, then the receiving court shall continue the hearing for up to seven full working days to allow adequate time for notice to be given and the hearing held.

(d) Any district court to which venue is transferred, if not in the county of residence of the patient, shall transmit to the district court in the county of residence of the patient a statement of any court costs incurred and a certified copy of all pleadings and orders entered in the case after transfer ~~to the district court in the county of residence of the patient~~.

Comment

K.S.A. 1996 Supp. 59-2971 (S.B. 469 New Sec. 27)

This section is proposed to be amended by distinguishing requirements of what and how documents from a transferring court are transmitted to the court receiving venue. Literally following the current section would require a transferring court to fax the entire file of a case that may be many months old, for example: in the case where venue is transferred after a patient has been transferred from one treatment facility to another. That was not the original intent of the committee in its proposals which became S.B. 469. This redraft clarifies that faxing is required only in those instances where a patient's right to an upcoming hearing is at stake. Otherwise, mailing is certainly adequate.

The section is also amended by adding subsection lettering for ease of reference.

The committee considers the amendments to be principally technical.

Session of 1996

SENATE BILL No. 468

By Committee on Judiciary

1-17

AN ACT concerning conservators; relating to payment of demands; medical assistance; amending K.S.A. 59-3026 and repealing the existing section.

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

Section 1. K.S.A. 59-3026 is hereby amended to read as follows: 59-3026. *(a)* Any person having a demand, other than tort, against the estate of a conservatee, or against such person's conservator as such, may present ~~it~~ *such demand* to the district court for determination, and upon proof thereof procure an order for ~~its~~ *such demand's* allowance and payment.

(b) Upon the death of a conservatee, the conservator upon order of the district court may pay appropriate funeral expenses ~~and~~, the expenses of the conservatee's last illness *and any claim for medical assistance paid under subsection (e) of K.S.A. 39-709 and amendments thereto*, in such amounts as are reasonably necessary, with due regard to the rights of *a surviving spouse, if any, and* creditors. If there remain assets in the estate of the deceased conservatee after any such payments, ~~they~~ *such assets* shall be held by the conservator until the court directs the disposition thereof, and the conservator shall not be discharged until such funds are transferred as directed according to law by the court. If the funeral ~~and~~, last illness expenses, *medical expenses under subsection (e) of K.S.A. 39-709 and amendments thereto* and expenses of closing and final accounting will deplete the estate, the conservator shall ~~so~~ show *such depletion* on the hearing for final accounting and if the court finds the final account is correct, it may discharge the conservator and such conservator's sureties.

Sec. 2. K.S.A. 59-3026 is hereby repealed.

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

A STUDY OF THE INTERACTION BETWEEN THE JUDICIAL BRANCH AND THE BOARD OF INDIGENTS' DEFENSE SERVICES

Prepared by the Kansas
Judicial Council Judicial Branch/
Board of Indigents' Defense Services
Advisory Committee

Approved by the
Kansas Judicial Council
November 22, 1996

KANSAS JUDICIAL COUNCIL

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January 16, 1997

Senator Mike Harris, Chair
Senate Judiciary Committee
State Capitol. Room 449-N
Topeka, Kansas 66612

Dear Senator Harris:

Yesterday, as I was concluding my requests for bill introductions, the subject of the Judicial Council report on the interaction between the Judicial Branch and the Board of Indigents' Defense Services was discussed. A copy of that report is enclosed.

Late in the 1996 Legislative Session, the Senate Ways and Means Subcommittee which reviewed the budget of the State Board of Indigent's Defense Services requested that the Judicial Council undertake a study of the interaction between the Judicial Branch and the Board of Indigent's Defense Services. The Council reviewed the request, accepted the study, and appointed an advisory committee consisting of district judges, legislators, and practicing attorneys to conduct the study. On November 22, 1996, the report of the committee was approved by the Judicial Council and sent to the Senate Ways and Means Committee.

Please contact me if I can be of further assistance in this matter.

Very truly yours,

Randy M. Hearrell

RMH/ts
Enclosure

cc: Senate Judiciary Committee and staff

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A STUDY OF THE INTERACTION BETWEEN THE JUDICIAL BRANCH AND THE BOARD OF INDIGENTS' DEFENSE SERVICES

BACKGROUND

The 1996 Legislature requested the Kansas Judicial Council undertake a study of interaction between the Judicial Branch and the Board of Indigents' Defense Services. The request from the Legislature also included the following language:

> "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 defense costs at the time of sentencing."

The Judicial Council reviewed the request, accepted the study, and appointed an advisory committee consisting of district judges, legislators, and practicing lawyers. The following are the members of the Kansas Judicial Council Judicial Branch/Board of Indigents' Defense Services Advisory Committee: Judges: Honorable Marla J. Luckert, Chair, Topeka; Honorable Jack L. Burr, Goodland; Honorable William F. Lyle Jr., Hutchinson; Honorable Paul E. Miller, Manhattan; and Honorable Clark V. Owens II, Wichita. Legislators: Representative Gayle Mollenkamp, Russell Springs; and Senator Stephen R. Morris, Hugoton. Lawyers: Professor William Rich, Topeka; Mark J. Sachse, Kansas City; and Ronald E. Wurtz, Topeka.

The committee met five times and, in addition, the Chair of the committee reported on the work of the committee to the Kansas Judicial Conference, which is semi-annual meeting of all of the judges in Kansas.

The committee has reviewed applicable statutes, rules and regulations, Attorney Generals' opinions, reports, research, practices in other states, proposed legislation, and legal writings. In addition, the following persons appeared before the committee: Kathy Estes, J. Patrick Lawless, and Scott Rothe, from the State Board of Indigents' Defense Services; Ed Collister, practicing lawyer in Lawrence; Ellyn Sipp and Trish Pfannenstiel, Legislative Division of Post Audit; Honorable James P. Buchele, Shawnee County District Court Judge; Kelly Lee, Shawnee County District Court Court Services Officer; Kathy Porter, Legislative Research Department and Terri Saiya, Kansas Parole Board.

INTRODUCTION

The Kansas Legislature is aware of, and willing to accept, its duty to provide defense services for indigent persons accused of felonies. Because of the expense of providing such constitutionally required services, the Legislature has long tried to be certain that those services are being provided in a cost-effective manner. The Legislature requested the Kansas Judicial Council study the interaction between the Judicial Branch and the Board of Indigents' Defense Services because it was thought that a study of the area could produce suggestions that would reduce costs.

In the past, much of the focus in making the delivery of defense services more efficient has centered on whether or not the defendant is indigent. The committee began with a similar focus. The "conventional wisdom" seems to be that about ten percent of the persons who receive defense services paid for by the state are not eligible for such services. This perception is partially a result of the Performance Audit Report Reviewing the Operations of the Board of Indigents' Defense Services, Legislative Division of Post Audit (September, 1994) which found: "About ten percent of the defendants whose cases we reviewed appeared to have income or property holdings which might disqualify them for free legal services." This finding is not consistent with what those committee members who are directly involved in the criminal justice system believe they have observed.

To better understand the report of Legislative Post Audit, the Committee invited the persons who conducted the audit to appear at a committee meeting to discuss the report. Two of the three auditors who worked on the audit still work for the division and they met with the committee.

The auditors explained their methodology in conducting the audit. They informed the Committee that they reviewed the affidavits of indigency in 192 cases. In 19 of those cases, there appeared to be sufficient questions to lead the auditors to conclude those persons might not be indigent. The auditors found income levels that were high enough that indigency could be questioned, ownership of real estate, and wages that were under-reported. The auditors explained to the Committee that they had access to privileged information, such as human resources wage records and SRS welfare files, that is not available to the court. The auditors acknowledged that while the 19 cases raised "red flags," they could not say with certainty which person or persons where not entitled to court-appointed counsel and agreed that it was possible that all 19 were indigent.

After better understanding the post audit report, the committee concluded that it would require additional resources to more accurately determine indigency prior to appointing counsel. The committee chose to not make such a recommendation because both the costs and results are uncertain. The committee is of the opinion that it will be more effective to put a system into place which requires that, after conviction, the defendant be responsible for repayment of the costs of defense services paid for by the state, if the defendant is able to do so. This suggested policy of focusing on collection after conviction does not mean the committee suggests less emphasis on determining indigency prior to appointing counsel.

The recommendations of the committee can be divided into four categories.

The first category contains recommendations implementing the committee's proposal to seek repayment of costs of defense services after conviction. These are recommendations numbers 1 through 6.

The second category contains a recommendation to improve the determination of indigency procedure at the beginning of a case and appears as recommendation 7. Also note recommendation 14, relating to determination of indigency.

The third category contains recommendations which answer the legislature's request that the committee suggest measures which will help to increase the recoupment efforts of BIDS. Recommendations 1, 2, 4, 5, 6, and 7 will directly increase recoupment and several other recommendations may assist in increasing recoupment.

The fourth category contains miscellaneous recommendations which the committee recommends as improvements to the present system. These recommendations came to the attention of the committee as it conducted the study and are numbered 8 through 13.

LIST OF RECOMMENDATIONS

1. **Statutes relating to sentencing (21-4603 and 21-4603d), probation or suspended sentence (21-4610), parole or postrelease supervision (22-3717), and conditional release (22-3718) be amended to make it mandatory that the defendant reimburse the state for expenditures for defense services and the amount to be reimbursed be the lesser of the amount claimed by the appointed counsel on the voucher for reimbursement or the amount allowed by the "Reimbursement Table in Public Defender Cases" prepared by BIDS. (The statutes provide an exception to defendant's obligation to pay in cases of "manifest hardship" an "compelling circumstances.")**

2. **K.S.A. 22-4513 be amended to provide that, if the defendant is convicted, expenditures on defendant's behalf for defense services become a civil judgment.**

3. **K.S.A. 22-4507 be amended to require claims for compensation and reimbursement of court-appointed counsel be presented to the court at sentencing.**

4. **The Legislature enact a statute which requires each judicial district to adopt an "own recognizance-cash deposit pretrial release program."**

5. **Chapter 195 of the 1996 Session Laws of Kansas be utilized to collect money expended by the Board of Indigents' Defense Services.**

6. **K.S.A. 22-4522 be amended to authorize the Board of Indigents' Defense Services to utilize the debt collection procedures authorized by K.S.A. 75-6201 et seq.**

7. **The current indigency affidavit be re-drafted to be more user-friendly, to focus more on the defendant's current income and assets rather than past earnings, to include additional information to be used in bond screening, be sworn to by the defendant, and K.S.A. 22-4504 be amended to require that the affidavit become part of the permanent file of the case.**

8. **The Board of Indigents' Defense Services study the subject of reimbursement of the costs of appeals and make recommendations on the subject to the legislature.**

9. **The Board of Indigents' Defense Services make information about attorneys' billings, statewide and district-wide costs for types of cases available to judges approving vouchers.**

10. **The Judicial Branch include the subjects of determination of indigency and approval of vouchers at the training for new judges and that additional training in these areas be offered judges when appropriate.**

11. **Community service be used as a way of "repaying" indigents' defense costs.**

12. **K.S.A. 20-350 be amended to provide that fifty percent (50%) of the amount of forfeited appearance bonds be paid into the county general fund.**

13. **The Board of Indigents' Defense Services amend Rule 105-3-9 which relates to "Duties of Trial Counsel Following Sentencing" in subsection (3) to read as follows:**

> **(3) file a notice of appeal, <u>when appropriate,</u> in a timely manner, unless a waiver of the right to appeal has been signed by the defendant.**

14. **The Board of Indigents' Defense Services report to the legislature on the results of the Sedgwick County indigency screening pilot project.**

DISCUSSION OF RECOMMENDATIONS

The Committee recommends:

1. **Statutes relating to sentencing (21-4603 and 21-4603d), probation or suspended sentence (21-4610), parole or postrelease supervision (22-3717), and conditional release (22-3718) be amended to make it mandatory that the defendant reimburse the state for expenditures for defense services and the amount to be reimbursed be the lesser of the amount claimed by the appointed counsel on the voucher for reimbursement or the amount allowed by the "Reimbursement Table" prepared by BIDS. (The statutes provide an exception to defendant's obligation to pay in cases of "manifest hardship" and "compelling circumstances.")**

The committee found that currently statutes relating to sentencing (21-4603 and 21-4603d), parole or postrelease supervision (22-3717), and conditional release (22-3718) are lacking specific language requiring the defendant to reimburse BIDS for expenditures made for defense services. Currently, K.S.A. 21-4610 relating to probation or suspended sentence contains such language.

The committee recommends that K.S.A. 21-4603, 21-4603d, 22-3717, and 22-3718 be amended to require the defendant to reimburse BIDS and that such amendments be drafted to recognize defendant's rights if they are unable to reimburse BIDS or if reimbursement is an undue hardship. The committee also recommends that the above listed statutes and K.S.A. 21-4610 be amended to state that the amount of such reimbursement be the lesser of the amount claimed by appointed counsel on the voucher for reimbursement or the amount allowed by the BIDS "Reimbursement Table."

This recommendation is one of several made by the committee which, while continuing current emphasis on determining indigency, places additional emphasis on repayment for defense services after conviction. There are several reasons the committee took this approach. The committee believes that the current system is doing a good job of determining indigency with the resources that are available; that increased recoupment efforts after conviction will be effective; that unlike the beginning of the case when the court is under time constraints, after conviction, the defendant will have contact with various components of the criminal justice system and the system will have leverage with respect to the defendant; that after conviction, the amount that has been spent on the defendant's defense services is known; and that if the recommended "own recognizance-cash deposit pretrial release program" is implemented on a statewide basis (see recommendation 4), it will provide additional assets for payment of court-ordered obligations, including reimbursement of BIDS.

See pages 4 through 24 of the Appendix for the proposed amendments.

2. **K.S.A. 22-4513 be amended to provide that, if the defendant is convicted, expenditures on defendant's behalf for defense services become a civil judgment.**

The committee heard testimony that under the present system there is little consistency in obtaining civil judgments requiring payment for defense services financed by BIDS. One of the

reasons for this is that the current statute sets out a procedure whereby BIDS may send notice to the county or district attorney in the county where the defendant was convicted and that the county or district attorney may petition the district court to require defendant to pay all or part of the expenses for defense services. Because this is at the option of the county or district attorney that there is little consistency in obtaining civil judgments in these cases.

The committee recommends that current language setting forth this procedure be stricken and that language be inserted in K.S.A. 22-4513 which follows the language of K.S.A. 22-3801a that makes court costs a civil judgment.

The committee is of the opinion that obtaining civil judgments in each case will allow more consistency in pursuing these amounts. It is the opinion of the committee that obtaining these civil judgments will allow the state to be more successful in collection of these debts.

See recommendations 5 and 6 relating to collection of debts owed to courts.

See page 28 of the Appendix for the proposed amendment.

3. **K.S.A. 22-4507 be amended to require claims for compensation and reimbursement of court-appointed counsel be presented to the court at sentencing.**

In discussing recoupment of expenditures by BIDS, it was observed that one of the reasons for inconsistency in courts ordering repayment of expenditures for defense services is that the costs are not known at the time of sentencing. The committee proposes K.S.A. 22-4507 be amended to require claims for compensation and reimbursement of court-appointed counsel be presented at sentencing and thus enable the court to enter orders and judgments for a liquidated amount.

The committee also recommends language be inserted in K.S.A. 22-4507 to state that if good cause is shown why the claim is not presented, a supplemental claim may be filed at a later time.

See page 27 of the Appendix for the proposed amendment.

4. **The Legislature enact a statute which requires each judicial district to adopt an "own recognizance-cash deposit pretrial release program."**

The committee recommends the legislature adopt a statute which requires each judicial district to adopt an "own recognizance-cash deposit pretrial release program." Such a program allows the defendant to post a cash bail deposit directly with the court rather. Generally, ten percent of the bond's face value is posted. If the defendant is found not guilty, nine percent of the bond's face value is returned to the defendant and one percent of the bond's face value is kept as an administrative fee and paid to the county general fund.

If the defendant is found guilty, the county keeps one percent of the face value of the bond as an administrative fee which is placed in the county general fund. The refundable portion of the bond (the remaining nine percent of the face value of the bond) is first allocated to pay court-ordered obligations such as court costs, fines, restitution of victims, and reimbursement of the state for

providing defense services. If all of the refundable portion is not required to pay court-ordered obligations, the balance is refunded to the defendant. If the defendant uses a bondsman and is found not guilty, none of the money is refunded to him or her and none of the money is paid into the county general fund. If the defendant uses a bondsman and is found guilty, none of the money goes to pay court-ordered obligations and none of the money is paid into the county general fund.

The experience in counties using the "own recognizance-cash deposit pretrial release program" has been the defendants' rate of appearance in court at least equals and may exceed that of bail bondsmen, and that the bond screening which is implemented as part of the program protects the public because it identifies dangerous persons. In addition, the collection of court-ordered obligations such as fees, fines, restitution, and reimbursement is increased. As an example, in Shawnee County, using 1994 as the base year, the increase over 1994 in 1995 was $280,000 for a ten month period. The increase over 1994 in 1996 was $400,000.

The committee was impressed with the Shawnee County "own recognizance-cash pretrial release program." In the Shawnee County program, a staff person does bond screening. The person goes to the jail each morning and, if necessary, assists in completing the bond screening form. The staff person verifies the information contained on the bond screening form and also checks the accused person's criminal history. At first appearance, the staff person makes a recommendation relating to bonding with the main focuses being the safety of the community and the appearance of the accused person in court. The committee believes that bonding and financial information relating to indigency can be gathered at the same time, and if staff is involved, with the assistance of the same person.

There have been court bonding programs in Kansas for a number of years. In 1995, the Kansas Supreme Court issued Administrative Order No. 96 which provides a model local rule and supporting materials for establishment of a "own recognizance-cash deposit pretrial release program." The administrative order requires that judicial districts which have such programs comply with the rule. The American Bar Association in the American Bar Association Standards for Criminal Justice, Pretrial Release Standard 10-5.4(a) and the National District Attorney's Association in the National Prosecution Standards, Second Edition, Pretrial, Section 45.6, Money bail, both recommend the ten percent cash deposit bail options.

The statute recommended by the committee is modeled after a statute recommended by the 1984 Interim Judiciary Committee.

See page 1 of the Appendix for the draft of proposed legislation

5. **Chapter 195 of the 1996 Session Laws of Kansas be utilized to collect money expended by the Board of Indigents' Defense Services.**

On July 1, 1996, Senate Substitute for House Bill 2012 became law. The legislation provides for collection of "debts owed to courts" which is defined as any assessment of court costs, fines, fee or other charges which a district court judgment has ordered to be paid to the court. It appears reimbursement for defense costs provided by BIDS may be included in the definition of "debts owed to courts". To clarify this, the committee recommends that Section 1 of Chapter 195 of the 1996

Session Laws of Kansas (K.S.A. 75-719) be amended to insert the phrase "defense costs paid by the state" in the definition of "debts owed to court."

See page 31 of the Appendix for the draft of proposed legislation.

6. **K.S.A. 22-4522 be amended to authorized the Board of Indigents' Defense Services to utilize the debt collection procedures authorized by K.S.A. 75-6201 et seq.**

Article 62 of K.S.A. Chapter 75 contains an act which establishes procedures for setting off against debtors the sum of any debt owed to the state. It is the opinion of the committee that debtors who owe for state provided defense services should be subject to this article and K.S.A. 22-4522 should be amended to so provide.

See page 30 of the Appendix for the draft of proposed legislation.

7. **The current indigency affidavit be re-drafted to be more user-friendly, to focus more on the defendant's current income and assets rather than past earnings, to include additional information to be used in bond screening, be sworn to by the defendant, and K.S.A. 22-4504 be amended to require that the affidavit become part of the permanent file of the case.**

The recommendation to focus more on defendant's current income and asserts rather than past earnings is made because the committee is of the opinion that information relating to current income and assets is more relevant in determining the defendant's ability to pay for defense costs. The committee notes that past earnings may or may not be an indication of current assets or future earnings. Private counsel focuses on the defendant's ability to pay either the entire fee or a retainer, and the financial affidavit should provide the court information on the defendant's ability to do so.

If the committee recommendation relating to "own recognizance-cash deposit pretrial release program" is enacted, the committee recommends that the financial affidavit be combined with a form for gathering bond screening information. Some of the information gathered on the bond screening form and the financial affidavit is similar.

The committee recommends that the affidavit be sworn to by the defendant and that K.S.A. 22-4504 be amended to require the affidavit to become part of the permanent file in the case. The committee heard from Legislative Post Audit Division auditors that many of the files they reviewed did not have the indigency affidavits in them. It was agreed by the committee members, from their personal experience, that there is no standard way these financial affidavits are filed. In addition, information requested on the revised affidavit could be helpful in pursuing recoupment. For these reasons, it is the opinion of the committee that the combined affidavit should become part of the permanent case file. In addition, it is recommended that the affidavit contain an agreement to repay defense costs and the defendant be required to sign the affidavit.

The committee found the current affidavit provided by the Board of Indigents' Defense Services is not "user-friendly," especially when compared with the Los Angeles County's Indigency Affidavit, the Eighteenth Judicial District's Indigency Affidavit, and the Shawnee County Bond

Screening form. The committee believes the affidavit can be made more user-friendly by simplication of the material included in the affidavit, reorganization of the affidavit, and by changes in spacing and type style. In addition, it is the opinion of the committee members who are active in the practice of criminal law that "Table E" on the second page of the current BIDS Financial Affidavit is out-of-date and the costs of representation listed do not accurately reflect today's market.

See page 25 of the Appendix for the draft of proposed legislation.

8. **The Board of Indigents' Defense Services study the subject of reimbursement of the costs of appeals and make recommendations on the subject to the legislature.**

The committee has proposed a complete set of recommendations for recovering expenditures for defense services provided by the state at the trial level. However, the committee did not have adequate information to determine if it is appropriate to attempt to recoup expenditures for appellate costs, and if so, how it should be done. The committee suggests the Board of Indigents' Defense Services study the subject and make recommendations on the subject to the legislature.

9. **The Board of Indigents' Defense Services make information about attorneys' billings, statewide and district-wide costs for various types of cases available to judges approving vouchers.**

In discussing the subject of judges approving payment vouchers for indigents' defense services, it was agreed by the committee that additional information would be helpful to the judges. The committee is aware that as of recently BIDS has available to it additional staff positions which will be able to generate and provide information about attorneys' billings and statewide and district-wide costs for various types of cases to judges approving vouchers. The committee recommends that such information be provided to the judges.

10. **The Judicial Branch include the subjects of determination of indigency and approval of vouchers at the training for new judges and that additional training in these areas be offered judges when appropriate.**

The district judges on the committee are of the opinion that more information and training relating to the determination of indigency and approval of vouchers would be helpful to judges hearing criminal cases. The committee also suggests that these subjects be a part of the curriculum at the training for new judges.

11. **Community service be used as a way of "repaying" indigents' defense costs.**

The committee recognizes that while a indigent defendant who remains indigent cannot be required to repay BIDS, such person may be an appropriate subject for community service. It is the opinion of the committee that current statutes in the area of community service are adequate and that while it is not always possible for judges to require community service, if actual repayment is an undue financial hardship, the committee recommends consideration be given to this method of "repayment."

12. **K.S.A. 20-350 should be amended to provide that fifty percent (50%) of the amount of forfeited appearance bonds be paid into the county general fund.**

The reason for this recommendation is that the county incurs costs when a bail bond is forfeited. Among these costs are the time of the county or district attorney in forfeiting the bond and expenses of law enforcement in locating and returning the defendant to the county.

Under the current statute, none of the money from the forfeited bond goes to the county. This leaves the county officials with no incentive to pursue such forfeitures. After review of the subject of forfeiture of bonds, it is the opinion of the committee that payment of fifty percent (50%) of the amount of forfeited appearance bonds to the county general fund is appropriate. The Committee is of the opinion that increased collections will offset at least part of the loss due to the lower percentage the state will receive.

See pages 2 and 3 of the Appendix for the proposed amendment.

13. **The Board of Indigents' Defense Services should amend Rule 105-3-9 which relates to "Duties of Trial Counsel Following Sentencing" in subsection (3) to read as follows:**

> **(3) file a notice of appeal, when appropriate, in a timely manner, unless a waiver of the right to appeal has been signed by the defendant.**

The committee discussed the subject of appeals. After discussion, it was the opinion of the committee by inserting the language "when appropriate" might be effective in reducing appeals which defense counsel considers useless.

See page 34 of the Appendix for complete text of the proposed change in the rule.

14. **The Board of Indigents' Defense Services report to the legislature on the results of the Sedgwick County indigency screening pilot program.**

Currently BIDS is beginning a pilot program to study the cost effectiveness of having a staff person screen affidavits to determine indigency. In addition to closely reviewing the affidavit, the staff person will utilize a credit reporting service to check the affidavits.

The committee recommends that when the results of this study are available, they be provided to the legislature.

ANSWERS TO QUESTIONS RAISED IN LEGISLATURE'S REQUEST

In the request of the legislature, the Judicial Council was asked to undertake a study of the interaction between the Judicial Branch and the Board of Indigents' Defense Services. The Judicial Council has conducted such a study and its recommendations are contained in this report. This part of the report responds directly to questions raised by the legislature in its request.

(1) Suggestions on how to help judges determine indigency.

The committee concluded the determination of indigency may not be the problem. The committee suggests an improved affidavit form, possible assistance in completing the affidavit, awareness of the Sedgwick County pilot project when that information becomes available, and training for judges on determination of indigency.

(2) How to insure judges are actually scrutinizing the required affidavits of indigency.

The committee recommends that the statute be amended to require the indigency affidavit to be made a part of the permanent court file.

(3) Factors which are appropriate to examine in determining indigency.

The committee is of the opinion that the factor which is appropriate to examine in determining indigency is the defendant's current income and assets. It is the committee's opinion that without additional resources, there is little likelihood that judges will have increased ability to scrutinize the affidavit. It is hopeful that recommendations made in this report will lead to additional collections after convictions from those who were not indigent at the time of appointing counsel.

(4) Measures which would help to increase the recoupment efforts of the Board of Indigents' Defense Services.

A number of the proposals made by the committee consistent with its opinion that it is more effective to focus additional efforts in recovering expenditures for defense services after conviction are recommended throughout the report and include: amendment of the statutes directing orders to pay at various stages in the proceedings; amendment of the statute making the expenditures on defense services a civil judgment; the proposal to enact a statewide "own recognizance-cash deposit pretrial release program;" the amendment of L. 1996, Ch. 195 so it may be utilized to collect money BIDS spent in providing defense services; amendment to utilize the state "setoff" statutes; and proposed amendment of the indigency affidavit to include information which will be helpful in recovering expenditures for defense services.

(5) Examine issues regarding partially indigent defendant's reimbursement of defense services and costs.

Currently, there are those persons who are able to contribute part but not all of the indigents' defense cost. The new affidavit form and better screening procedures may find more of these

persons. In addition, the increased emphasis on recoupment after conviction may make a determination of partial indigency less important.

(6) Advise whether judges should order defendants to reimburse defense costs at time of sentencing.

It is the committee's opinion that judges should order defendants to reimburse defense costs at the time of sentencing. The committee found that one of the reasons this is not done is because the amount of the defense costs is not available at sentencing. The committee proposes statutory amendment to require claims for compensation and reimbursement of court-appointed counsel be presented to the court at sentencing. In addition, the recommended statutory amendment will cause expenditures on defendant's behalf for defense services to become a civil judgment, if the defendant is convicted.

JUDICIAL COUNCIL JUDICIAL BRANCH/BOARD OF INDIGENTS' DEFENSE SERVICES ADVISORY COMMITTEE

APPENDIX

_____ BILL NO. _____

New Section 1. On or before January 1, 1998, each judicial district shall provide by rule for an "own recognizance-cash deposit pretrial release program" which shall be in addition to the current statutory pretrial release system. The rule shall provide that in all misdemeanors; level 7, 8, 9 and 10 felonies; drug severity level 4 felonies and unranked or unclassified felonies except for off-grid felonies, the "own recognizance-cash deposit pretrial release program" is available as an alternative to the current statutory pretrial release system. The "own recognizance-cash deposit pretrial release program" shall provide that an accused person may deposit with the clerk of the court a cash sum not to exceed 10 percent of the amount of the appearance bond set by the court. If the defendant makes such a cash deposit, 90 percent of the deposit shall be returned to the defendant upon performance of all required appearances and payment of all court ordered obligations or a finding of not guilty. The remainder of the deposit and any interest thereon shall be deposited in the county treasury and credited to the county general fund.

New Section 2. The clerk of the district court shall remit at least monthly to the county treasurer of each county in the judicial district, for deposit in the county treasury and credit to the county general fund, the amount equal to 50% of total amount of bail forfeitures received in such county during the preceding calendar month.

PROPOSED AMENDMENT TO 20-350

20-350. Disposition of money received by clerk; investment of moneys held; disposition of interest. (a) Except for fines and penalties authorized to be paid to counties pursuant to K.S.A. 19-101e and amendments thereto and as provided for bail forfeitures in section 3 and amendments thereto, all moneys received by the clerk of the district court from the payment of fines, penalties and forfeitures shall be remitted to the state treasurer, in the manner provided by K.S.A. 20-2801 and amendments thereto, and the state treasurer shall deposit the same in the state treasury to the credit of the state general fund, except as provided in K.S.A. 74-7336, and amendments thereto.

(b) The administrative judge may invest any moneys on deposit in the district court account if the moneys are not immediately required for the purposes for which they were collected or received. Such moneys may be invested in: (1) Time deposits, open account or certificates of deposit, for periods not to exceed six months, or savings deposits, in commercial banks located in the county, except that amounts invested which are not insured by the United States government shall be secured in the manner and amounts provided by K.S.A. 9-1402 and amendments thereto; (2) United States treasury bills or notes with maturities not to exceed six months; or (3) savings and loan associations located in the county. No investment of more than the amount insured by the federal deposit insurance corporation shall be made in any one savings and loan association. Interest received from the investment of moneys pursuant to this subsection shall be paid to the state treasurer in the manner provided by K.S.A. 20-2801 and amendments thereto, and the state treasurer shall deposit the same in the state treasury to the credit of the state general fund.

(c) Upon application of a party to an action in which such party claims ownership of moneys held by the district court, the administrative judge may invest such moneys in the same manner as provided by subsection (b). Interest received from the investment of moneys pursuant to this subsection shall become the property of the person found to be the owner of the moneys.

History: L. 1976, ch. 146, 45; L. 1977, ch. 109, 16; L. 1978, ch. 108, 9; L. 1981, ch. 134, 1; L. 1989, ch. 239, 2; L. 1990, ch. 94, 1; July 1.

PROPOSED AMENDMENT TO K.S.A. 21-4603

21-4603. Authorized dispositions; crimes committed prior to July 1, 1993.

(a) Whenever any person has been found guilty of a crime and the court finds that an adequate presentence investigation cannot be conducted by resources available within the judicial district, including mental health centers and mental health clinics, the court may require that a presentence investigation be conducted by the Topeka correctional facility or by the state security hospital. If the offender is sent to the Topeka correctional facility or the state security hospital for a presentence investigation under this section, the correctional facility or hospital may keep the offender confined for a maximum of 60 days, except that an inmate may be held for a longer period of time on order of the secretary, or until the court calls for the return of the offender. While held at the Topeka correctional facility or the state security hospital the defendant may be treated the same as any person committed to the secretary of corrections or secretary of social and rehabilitation services for purposes of maintaining security and control, discipline, and emergency medical or psychiatric treatment, and general population management except that no such person shall be transferred out of the state or to a federal institution or to any other location unless the transfer is between the correctional facility and the state security hospital. The correctional facility or the state security hospital shall compile a complete mental and physical evaluation of such offender and shall make its findings and recommendations known to the court in the presentence report.

(b) Except as provided in subsection (c), whenever any person has been found guilty of a crime, the court may adjudge any of the following:

(1) Commit the defendant to the, custody of the secretary of corrections or, if confinement is for a term less than one year, to jail for the term provided by law;

(2) impose the fine applicable to the offense;

(3) release the defendant on probation subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution. In felony cases, the court may include confinement in a county jail not to exceed 30 days, which need not be served consecutively, as a condition of probation;

(4) suspend the imposition of the sentence subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution. In felony cases, the court may include confinement in a county jail not to exceed 30 days, which need not be served consecutively, as a condition of suspension of sentence;

(5) assign the defendant to a community correctional services program subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution;

(6) assign the defendant to a conservation camp for a period not to exceed 180 days;

(7) assign the defendant to a house arrest program pursuant to K.S.A. 21-4603b and amendments thereto;

(8) order the defendant to attend and satisfactorily complete an alcohol or drug education or training program as provided by subsection (3) of K.S.A. 21-4502 and amendments thereto; or

(9) impose any appropriate combination of subsections (b)(1) through (b)(8).

In addition to or in lieu of any of the above, the court shall order the defendant to submit to and complete an alcohol and drug evaluation, and pay a fee therefor, when required by subsection (4) of K.S.A. 21-4502 and amendments thereto.

In addition to any of the above, the court shall order the defendant to reimburse the state general fund for all or a part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment. The amount of attorneys fees to be included in the court order for reimbursement shall be equal to the lesser of the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount allowed by the Board of Indigents' Defense Services "Reimbursement Table."

In imposing a fine the court may authorize the payment thereof in installments. In releasing a defendant on probation, the court shall direct that the defendant be under the supervision of a court services officer. If the court commits the defendant to the custody of the secretary of corrections or to jail, the court may specify in its order the amount of restitution to be paid and the person to whom it shall be paid if restitution is later ordered as a condition of parole or conditional release.

The court in committing a defendant to the custody of the secretary of corrections shall fix a maximum term of confinement within the limits provided by law. In those cases where the law does not fix a maximum term of confinement for the crime for which the defendant was convicted, the court shall fix the maximum term of such confinement. In all cases where the defendant is committed to the custody of the secretary of corrections, the court shall fix the minimum term within the limits provided by law.

(c) Whenever any juvenile felon, as defined in K.S.A. 38-16,112, and amendments thereto, has been found guilty of a class A or B felony, the court shall commit the defendant to the custody of the secretary of corrections and may impose the fine applicable to the offense.

(d)(1) Except when an appeal is taken and determined adversely to the defendant as provided in subsection (d)(2), at any time within 120 days after a sentence is imposed, after probation or assignment to a community correctional services program has been revoked, the court may modify such sentence, revocation of probation or assignment to a community correctional services program by directing that a less severe penalty be imposed in lieu of that originally adjudged within statutory limits and shall modify such sentence if recommended by the Topeka correctional facility unless the court finds and sets forth with particularity the reasons for finding that the safety of members of the public will be jeopardized or that the welfare of the inmate will not be served by such modification.

(2) If an appeal is taken and determined adversely to the defendant, such sentence may be modified within 120 days after the receipt by the clerk of the district court of the mandate from the supreme court or court of appeals.

(e) The court shall modify the sentence at any time before the expiration thereof when such modification is recommended by the secretary of corrections unless the court finds and sets forth with particularity the reasons for finding that the safety of members of the public will be jeopardized or that the welfare of the inmate will not be served by such modification. The court shall have the power to impose a less severe penalty upon the inmate, including the power to reduce the minimum below the statutory limit on the minimum term prescribed for the crime of which the inmate has been convicted. The recommendation of the secretary of corrections, the hearing on the recommendation and the order of modification shall be made in open court. Notice of the recommendation of modification of sentence and the time and place of the hearing thereon shall be given by the inmate, or by the inmate's legal counsel, at least 21 days prior to the hearing to the county or district attorney of the county where the inmate was convicted. After receipt of such notice and at least 14 days prior to the hearing, the county or district attorney shall give notice of the recommendation of modification of sentence and the time and place of the hearing thereon to any victim of the inmate's crime who is alive and whose address is known to the county or district attorney or, if the victim is deceased, to the victim's next of kin if the next of kin's address is known to the county or district attorney. Proof of service of each notice required to be given by this subsection shall be filed with the court.

(f) After such defendant has been assigned to a conservation camp but prior to the end of 180 days, the chief administrator of such camp shall file a performance report and recommendations with the court. The court shall enter an order based on such report and recommendations modifying the sentence, if appropriate, by sentencing the defendant to any of the authorized dispositions provided in subsection (b), except to reassign such person to a conservation camp as provided in subsection (b)(6).

(g) Dispositions which do not involve commitment to the custody of the secretary of corrections and commitments which are revoked within 120 days shall not entail the loss by the defendant of any civil rights.

(h) This section shall not deprive the court of any authority conferred by any other Kansas statute to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty as a result of conviction of crime.

(I) An application for or acceptance of probation, suspended sentence or assignment to a community correctional services program shall not constitute an acquiescence in the judgment for purpose of appeal, and any convicted person may appeal from such conviction, as provided by law, without regard to whether such person has applied for probation, suspended sentence or assignment to a community correctional services program.

(j) When it is provided by law that a person shall be sentenced pursuant to K.S.A. 21-4628, and amendments thereto, the provisions of this section shall not apply.

(k) The provisions of this section shall apply to crimes committed before July 1, 1993.

PROPOSED AMENDMENTS TO K.S.A. 21-4603d

21-4603d. Authorized dispositions, crimes committed on or after July 1, 1993.

(a) Whenever any person has been found guilty of a crime, the court may adjudge any of the following:

(1) Commit the defendant to the custody of the secretary of corrections if the current crime of conviction is a felony and the sentence presumes imprisonment, or the sentence imposed is a dispositional departure to imprisonment; or, if confinement is for a misdemeanor, to jail for the term provided by law;

(2) impose the fine applicable to the offense;

(3) release the defendant on probation if the current crime of conviction and criminal history fall within a presumptive nonprison category or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate. In felony cases except for violations of K.S.A. 8-1567 and amendments thereto, the court may include confinement in a county jail not to exceed 30 days, which need not be served consecutively, as a condition of probation or community corrections placement;

(4) assign the defendant to a community correctional services program in presumptive nonprison cases or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution;

(5) assign the defendant to a conservation camp for a period not to exceed 180 days as a condition of probation followed by a 180-day period of follow-up through adult intensive supervision by a community correctional services program, if the offender successfully completes the conservation camp program. If the defendant was classified in grid blocks 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, the court may impose a nonprison sanction on the condition that the offender complete the program at the Labette correctional conservation camp. Such a placement decision shall not be considered a departure and shall not be subject to appeal;

(6) assign the defendant to a house arrest program pursuant to K.S.A. 21-4603b and amendments thereto;

(7) order the defendant to attend and satisfactorily complete an alcohol or drug education or training program as provided by subsection (3) of K.S.A. 21-4502 and amendments thereto;

(8) order the defendant to repay the amount of any reward paid by any crime stoppers chapter, individual, corporation or public entity which materially aided in the apprehension or conviction of the defendant; or repay the amount of any public funds utilized by a law enforcement agency to purchase controlled substances from the defendant during the investigation which leads to the defendant's conviction. Such repayment of the amount of any public funds utilized by a law enforcement agency shall be deposited and credited to the same fund from which the public funds were credited to prior to use by the law enforcement agency;

(9) impose any appropriate combination of (1), (2), (3), (4), (5), (6), (7) and (8); or

(10) suspend imposition of sentence in misdemeanor cases.

In addition to or in lieu of any of the above, the court shall order the defendant to pay restitution, which shall include, but not be limited to, damage or loss caused by the defendant's crime, unless the court finds compelling circumstances which would render a plan of restitution unworkable. If the court finds a plan of restitution unworkable, the court shall state on the record in detail the reasons therefor.

If the court orders restitution, the restitution shall be a judgment against the defendant which may be collected by the court by garnishment or other execution as on judgments in civil cases. If, after 60 days from the date restitution is ordered by the court, a defendant is found to be in noncompliance with the plan established by the court for payment of restitution, and the victim to whom restitution is ordered paid has not initiated proceedings in accordance with K.S.A. 60-4301 et seq. and amendments thereto, the court shall assign an agent procured by the attorney general pursuant to section 1 and amendments thereto to collect the restitution on behalf of the victim. The administrative judge of each judicial district may assign such cases to an appropriate division of the court for the conduct of civil collection proceedings.

In addition to or in lieu of any of the above, the court shall order the defendant to submit to and complete an alcohol and drug evaluation, and pay a fee therefor, when required by subsection (4) of K.S.A. 21-4502 and amendments thereto.

In addition to any of the above, the court shall order the defendant to reimburse the state general fund for all or a part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive

payment of all or part of the amount due or modify the method of payment. The amount of attorneys fees to be included in the court order for reimbursement shall be equal to the lesser of the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount allowed by the Board of Indigents' Defense Services "Reimbursement Table."

In imposing a fine the court may authorize the payment thereof in installments. In releasing a defendant on probation, the court shall direct that the defendant be under the supervision of a court services officer. If the court commits the defendant to the custody of the secretary of corrections or to jail, the court may specify in its order the amount of restitution to be paid and the person to whom it shall be paid if restitution is later ordered as a condition of parole or conditional release.

When a new felony is committed while the offender is incarcerated and serving a sentence for a felony or while the offender is on probation, assignment to a community correctional services program, parole, conditional release, or postrelease supervision for a felony, a new sentence shall be imposed pursuant to the consecutive sentencing requirements of K.S.A. 21-4608, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

Prior to imposing a dispositional departure for a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes, or prior to revocation of a nonprison sanction of a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes, the court shall consider placement of the defendant in the Labette correctional conservation camp. Pursuant to this paragraph the defendant shall not be sentenced to imprisonment if space is available in the conservation camp and the defendant meets all of the conservation camp's placement criteria unless the court states on the record the reasons for not placing the defendant in the conservation camp.

The court in committing a defendant to the custody of the secretary of corrections shall fix a term of confinement within the limits provided by law. In those cases where the law does not fix a term of confinement for the crime for which the defendant was convicted, the court shall fix the term of such confinement.

(b) Dispositions which do not involve commitment to the custody of the secretary of corrections shall not entail the loss by the defendant of any civil rights.

(c) This section shall not deprive the court of any authority conferred by any other Kansas statute to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty as a result of conviction of crime.

(d) An application for or acceptance of probation or assignment to a community correctional services program shall not constitute an acquiescence in the judgment for purpose of appeal, and any convicted person may appeal from such conviction, as provided by law, without regard to whether such person has applied for probation, suspended sentence or assignment to a community correctional services program.

(e) The secretary of corrections is authorized to make direct placement to the Labette correctional conservation camp of an inmate sentenced to the secretary's custody if the inmate: (1) Has been sentenced to the secretary for a probation revocation or as a departure from the presumptive nonimprisonment grid block of either sentencing grid; and (2) otherwise meets admission criteria of the camp. If the inmate successfully completes the 180-day conservation camp program, the secretary of corrections shall report such completion to the sentencing court and the county or district attorney. The inmate shall then be assigned by the court to 180 days of follow-up supervision conducted by the appropriate community corrections services program. The court may also order that supervision continue thereafter for the length of time authorized by K.S.A. 21-4611 and amendments thereto.

(f) When it is provided by law that a person shall be sentenced pursuant to K.S.A. 1993 Supp. 21-4628, prior to its repeal the provisions of this section shall not apply.

PROPOSED AMENDMENT TO K.S.A. 21-4610

21-4610. Conditions of probation or suspended sentence.

(a) Except as required by subsection (d), nothing in this section shall be construed to limit the authority of the court to impose or modify any general or specific conditions of probation, suspension of sentence or assignment to a community correctional services program, except that the court shall condition any order granting probation, suspension of sentence or assignment to a community correctional services program on the defendant's obedience of the laws of the United States, the state of Kansas and any other jurisdiction to the laws of which the defendant may be subject.

(b) The court services officer or community correctional services officer may recommend, and the court may order, the imposition of any conditions of probation, suspension of sentence or assignment to a community correctional services program. For crimes committed on or after July 1, 1993, in presumptive nonprison cases, the court services officer or community correctional services officer may recommend, and the court may order, the imposition of any conditions of probation or assignment to a community correctional services program. The court may at any time order the modification of such conditions, after notice to the court services officer or community correctional services officer and an opportunity for such officer to be heard thereon. The court shall cause a copy of any such order to be delivered to the court services officer and the probationer or to the community correctional services officer and the community corrections participant, as the case may be.

(c) The court may impose any conditions of probation, suspension of sentence or assignment to a community correctional services program that the court deems proper, including but not limited to requiring that the defendant:

(1) Avoid such injurious or vicious habits, as directed by the court, court services officer or community correctional services officer;

(2) avoid such persons or places of disreputable or harmful character, as directed by the court, court services officer or community correctional services officer;

(3) report to the court services officer or community correctional services officer as directed;

(4) permit the court services officer or community correctional services officer to visit the defendant at home or elsewhere;

(5) work faithfully at suitable employment insofar as possible;

(6) remain within the state unless the court grants permission to leave;

(7) pay a fine or costs, applicable to the offense, in one or several sums and in the manner as directed by the court;

(8) support the defendant's dependents;

(9) reside in a residential facility located in the community and participate in educational, counseling, work and other correctional or rehabilitative programs;

(10) perform community or public service work for local governmental agencies, private corporations organized not for profit, or charitable or social service organizations performing services for the community;

(11) perform services under a system of day fines whereby the defendant is required to satisfy fines, costs or reparation or restitution obligations by performing services for a period of days determined by the court on the basis of ability to pay, standard of living, support obligations and other factors;

(12) participate in a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto; or

(13) in felony cases, except for violations of K.S.A. 8-1567 and amendments thereto, be confined in a county jail not to exceed 30 days, which need not be served consecutively.

(d) In addition to any other conditions of probation, suspension of sentence or assignment to a community correctional services program, the court shall order the defendant to comply with each of the following conditions:

(1) Make reparation or restitution to the aggrieved party for the damage or loss caused by the defendant's crime, in an amount and manner determined by the court and to the person specified by the court, unless the court finds compelling circumstances which would render a plan of restitution unworkable. If the court finds a plan of restitution unworkable, the court shall state on the record in detail the reasons therefor;

(2) pay the probation or community correctional services fee pursuant to K.S.A. 21-4610a, and amendments thereto; and

(3) reimburse the state general fund for all or a part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment. <u>The amount of attorneys fees to be included in the court order for reimbursement shall be equal to the lesser of the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount allowed by the Board of Indigents' Defense Services "Reimbursement Table."</u>

PROPOSED AMENDMENT TO K.S.A. 22-2802

22-2802. Release prior to trial.

(1) Any person charged with a crime shall, at the person's first appearance before a magistrate, be ordered released pending preliminary examination or trial upon the execution of an appearance bond in an amount specified by the magistrate and sufficient to assure the appearance of such person before the magistrate when ordered and to assure the public safety. If the person is being bound over for a felony, the bond shall also be conditioned on the person's appearance in the district court or by way of a two-way electronic audio-video communication as provided in subsection (11) at the time required by the court to answer the charge against such person and at any time thereafter that the court requires. The magistrate may impose such of the following additional conditions of release as will reasonably assure the appearance of the person for preliminary examination or trial:

(a) Place the person in the custody of a designated person or organization agreeing to supervise such person;

(b) place restrictions on the travel, association or place of abode of the person during the period of release;

(c) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody during specified hours; or

(d) place the person under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto.

(2) In addition to any conditions of release provided in subsection (1), for any person charged with a felony, the magistrate may order such person to submit to a drug abuse examination and evaluation in a public or private treatment facility or state institution and, if determined by the head of such facility or institution that such person is a drug abuser or incapacitated by drugs, to submit to treatment for such drug abuse, as a condition of release.

(3) The appearance bond shall be executed with sufficient solvent sureties who are residents of the state of Kansas, unless the magistrate determines, in the exercise of such magistrate's discretion, that requiring sureties is not necessary to assure the appearance of the person at the time ordered.

(4) A deposit of cash in the amount of the bond <u>or in the amount set by the court pursuant to section one of this act</u> may be made in lieu of the execution of the bond by sureties.

(5) In determining which conditions of release will reasonably assure appearance and the public safety, the magistrate shall, on the basis of available information, take into account the nature and circumstances of the crime charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, mental condition, length of residence in the community, record of convictions, record of appearance or failure to appear at court proceedings or

of flight to avoid prosecution; the likelihood or propensity of the defendant to commit crimes while on release, including whether the defendant will be likely to threaten, harass or cause injury to the victim of the crime or any witnesses thereto; and whether the defendant is on probation or parole from a previous offense at the time of the alleged commission of the subsequent offense.

(6) The appearance bond shall set forth all of the conditions of release.

(7) A person for whom conditions of release are imposed and who continues to be detained as a result of the person's inability to meet the conditions of release shall be entitled, upon application, to have the conditions reviewed without unnecessary delay by the magistrate who imposed them. If the magistrate who imposed conditions of release is not available, any other magistrate in the county may review such conditions.

(8) A magistrate ordering the release of a person on any conditions specified in this section may at any time amend the order to impose additional or different conditions of release. If the imposition of additional or different conditions results in the detention of the person, the provisions of subsection (7) shall apply.

(9) Statements or information offered in determining the conditions of release need not conform to the rules of evidence. No statement or admission of the defendant made at such a proceeding shall be received as evidence in any subsequent proceeding against the defendant.

(10) The appearance bond and any security required as a condition of the defendant's release shall be deposited in the office of the magistrate or the clerk of the court where the release is ordered. If the defendant is bound to appear before a magistrate or court other than the one ordering the release, the order of release, together with the bond and security shall be transmitted to the magistrate or clerk of the court before whom the defendant is bound to appear.

(11) Proceedings before a magistrate as provided in this section to determine the release conditions of a person charged with a crime including release upon execution of an appearance bond may be conducted by two-way electronic audio-video communication between the defendant and the judge in lieu of personal presence of the defendant or defendant's counsel in the courtroom in the discretion of the court. The defendant may be accompanied by the defendant's counsel. The defendant shall be informed of the defendant's right to be personally present in the courtroom during such proceeding if the defendant so requests. Exercising the right to be present shall in no way prejudice the defendant.

PROPOSED AMENDMENT TO K.S.A. 22-3717

22-3717. Parole or postrelease supervision; eligibility; interviews, notices and hearings; rules and regulations; conditions of parole or postrelease supervision.

(a) Except as otherwise provided by this section, K.S.A. 1993 Supp. 21-4628 prior to its repeal and K.S.A. 1994 Supp. 21-4635 through 21-4638 and amendments thereto, an inmate, including an inmate sentenced pursuant to K.S.A. 21-4618 and amendments thereto, shall be eligible for parole after serving the entire minimum sentence imposed by the court, less good time credits.

(b) (1) Except as provided by K.S.A. 1994 Supp. 21-4635 through 21-4638 and amendments thereto, an inmate sentenced to imprisonment for the crime of capital murder, or an inmate sentenced for the crime of murder in the first degree based upon a finding of premeditated murder, committed on or after July 1, 1994, shall be eligible for parole after serving 25 years of confinement, without deduction of any good time credits.

(2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993 Supp. 21-4628 prior to its repeal and K.S.A. 1994 Supp. 21-4635 through 21-4638, and amendments thereto, an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1993, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits.

(3) Except as provided by K.S.A. 1993 Supp. 21-4628 prior to its repeal, an inmate sentenced for a class A felony committed before July 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618 and amendments thereto, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits.

(4) An inmate sentenced to imprisonment for a violation of subsection (a) of K.S.A. 21-3402 and amendments thereto committed on or after July 1, 1996, shall be eligible for parole after serving 10 years of confinement without deduction of any good time credits.

(c) Except as provided in subsection (e), if an inmate is sentenced to imprisonment for more than one crime and the sentences run consecutively, the inmate shall be eligible for parole after serving the total of:

(1) The aggregate minimum sentences, as determined pursuant to K.S.A. 21-4608 and amendments thereto, less good time credits for those crimes which are not class A felonies; and

(2) an additional 15 years, without deduction of good time credits, for each crime which is a class A felony.

(d) (1) Persons sentenced for crimes, other than off-grid crimes, committed on or after July 1, 1993, will not be eligible for parole, but will be released to a mandatory period of postrelease supervision upon completion of the prison portion of their sentence as follows:

(A) Except as provided in subparagraphs (C) and (D), persons sentenced for nondrug severity level 1 through 6 crimes and drug severity levels 1 through 3 crimes must serve 36 months, plus the amount of good time earned and retained pursuant to K.S.A. 1994 Supp. 21-4722 and amendments thereto, on postrelease supervision.

(B) Except as provided in subparagraphs (C) and (D), persons sentenced for nondrug severity level 7 through 10 crimes and drug severity level 4 crimes must serve 24 months, plus the amount of good time earned and retained pursuant to K.S.A. 1994 Supp. 21-4722 and amendments thereto, on postrelease supervision.

(C) (I) The sentencing judge shall impose the postrelease supervision period provided in subparagraph (d)(1)(A) or (d)(1)(B), unless the judge finds substantial and compelling reasons to impose a departure based upon a finding that the current crime of conviction was sexually violent or sexually motivated. In that event, departure may be imposed to extend the postrelease supervision to a period of up to 60 months.

(ii) If the sentencing judge departs from the presumptive postrelease supervision period, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. Departures in this section are subject to appeal pursuant to K.S.A. 1994 Supp. 21-4721 and amendments thereto.

(iii) In determining whether substantial and compelling reasons exist, the court shall consider:

(a) Written briefs or oral arguments submitted by either the defendant or the state;

(b) any evidence received during the proceeding;

(c) the presentence report, the victim's impact statement and any psychological evaluation as ordered by the court pursuant to subsection (e) of K.S.A. 1994 Supp. 21-4714 and amendments thereto; and

(d) any other evidence the court finds trustworthy and reliable.

(iv) The sentencing judge may order that a psychological evaluation be prepared and the recommended programming be completed by the offender. The department of corrections or the parole board shall ensure that court ordered sex offender treatment be carried out.

(v) In carrying out the provisions of subparagraph (d)(1)(C), the court shall refer to K.S.A. 1994 Supp. 21-4718 and amendments thereto.

(vi) Upon petition, the parole board may provide for early discharge from the postrelease supervision period upon completion of court ordered programs and completion of the presumptive

postrelease supervision period, as determined by the crime of conviction, pursuant to subparagraph (d)(1)(A) or (B). Early discharge from postrelease supervision is at the discretion of the parole board.

(vii) Persons convicted of crimes deemed sexually violent or sexually motivated, shall be registered according to the habitual sex offender registration act, K.S.A. 1994 Supp. 22-4901 through 22-4910 and amendments thereto,

(D) The period of postrelease supervision provided in subparagraphs (A) and (B) may be reduced by up to 12 months based on the offender's compliance with conditions of supervision and overall performance while on postrelease supervision. The reduction in the supervision period shall be on an earned basis pursuant to rules and regulations adopted by the secretary of corrections.

(E) In cases where sentences for crimes from more than one severity level have been imposed, the highest severity level offense will dictate the period of postrelease supervision. Supervision periods will not aggregate.

(2) As used in this section, ``sexually violent crime" means: (A) Rape, K.S.A. 21-3502, and amendments thereto;

(B) indecent liberties with a child, K.S.A. 21-3503, and amendments thereto;

(C) aggravated indecent liberties with a child, K.S.A. 21-3504, and amendments thereto;

(D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505 and amendments thereto;

(E) aggravated criminal sodomy, K.S.A. 21-3506, and amendments thereto;

(F) indecent solicitation of a child, K.S.A. 21-3510, and amendments thereto;

(G) aggravated indecent solicitation of a child, K.S.A. 21-3511, and amendments thereto;

(H) sexual exploitation of a child, K.S.A. 21-3516, and amendments thereto;

(I) aggravated sexual battery, K.S.A. 21-3518, and amendments thereto;

(J) any conviction for a felony offense in effect at any time prior to the effective date of this act, that is comparable to a sexually violent crime as defined in subparagraphs (A) through (I), or any federal or other state conviction for a felony offense that under the laws of this state would be a sexually violent crime as defined in this section;

(K) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302, 21-3303, and amendments thereto, of a sexually violent crime as defined in this section; or

(L) any act which at the time of sentencing for the offense has been determined beyond a reasonable doubt to have been sexually motivated. As used in this subparagraph, ``sexually motivated'' means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

(e) If an inmate is sentenced to imprisonment for a crime committed while on parole or conditional release, the inmate shall be eligible for parole as provided by subsection (c), except that the Kansas parole board may postpone the inmate's parole eligibility date by assessing a penalty not exceeding the period of time which could have been assessed if the inmate's parole or conditional release had been violated for reasons other than conviction of a crime.

(f) If a person is sentenced to prison for a crime committed on or after July 1, 1993, while on probation, parole, conditional release or in a community corrections program, for a crime committed prior to July 1, 1993, and the person is not eligible for retroactive application of the sentencing guidelines and amendments thereto pursuant to K.S.A. 21-4724 and amendments thereto, the new sentence shall not be aggregated with the old sentence, but shall begin when the person is paroled or reaches the conditional release date on the old sentence. If the offender was past the offender's conditional release date at the time the new offense was committed, the new sentence shall not be aggregated with the old sentence but shall begin when the person is ordered released by the Kansas parole board or reaches the maximum sentence expiration date on the old sentence, whichever is earlier. The new sentence shall then be served as otherwise provided by law. The period of postrelease supervision shall be based on the new sentence, except that those offenders whose old sentence is a term of imprisonment for life, imposed pursuant to K.S.A. 1993 Supp. 21-4628 prior to its repeal, or an indeterminate sentence with a maximum term of life imprisonment, for which there is no conditional release or maximum sentence expiration date, shall remain on postrelease supervision for life or until discharged from supervision by the Kansas parole board.

(g) Subject to the provisions of this section, the Kansas parole board may release on parole those persons confined in institutions who are eligible for parole when: (1) The board believes that the inmate should be released for hospitalization, for deportation or to answer the warrant or other process of a court and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate; or (2) the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a and amendments thereto, or any revision of such agreement, and the board believes that the inmate is able and willing to fulfill the obligations of a law abiding citizen and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate. Parole shall not be granted as an award of clemency and shall not be considered a reduction of sentence or a pardon.

(h) The Kansas parole board shall hold a parole hearing during the month prior to the month an inmate will be eligible for parole under subsections (a), (b) and (c). At least the month preceding the parole hearing, the county or district attorney of the county where the inmate was convicted shall give written notice of the time and place of the public comment sessions for the inmate to any victim

of the inmate's crime who is alive and whose address is known to the county or district attorney or, if the victim is deceased, to the victim's family if the family's address is known to the county or district attorney. Except as otherwise provided, failure to notify pursuant to this section shall not be a reason to postpone a parole hearing. In the case of any inmate convicted of a class A felony the secretary of corrections shall give written notice of the time and place of the public comment session for such inmate at least one month preceding the public comment session to any victim of such inmate's crime or the victim's family pursuant to K.S.A. 74-7338 and amendments thereto. If notification is not given to such victim or such victim's family in the case of any inmate convicted of a class A felony, the board shall postpone a decision on parole of the inmate to a time at least 30 days after notification is given as provided in this section. Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section. If granted parole, the inmate may be released on parole on the date specified by the board, but not earlier than the date the inmate is eligible for parole under subsections (a), (b) and (c). At each parole hearing and, if parole is not granted, at such intervals thereafter as it determines appropriate, the Kansas parole board shall consider: (1) Whether the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a and amendments thereto, or any revision of such agreement; and (2) all pertinent information regarding such inmate, including, but not limited to, the circumstances of the offense of the inmate; the presentence report; the previous social history and criminal record of the inmate; the conduct, employment, and attitude of the inmate in prison; the reports of such physical and mental examinations as have been made; comments of the victim and the victim's family; comments of the public; official comments; and capacity of state correctional institutions.

(I) In those cases involving inmates sentenced for a crime committed after July 1, 1993, the parole board will review the inmates proposed release plan. The board may schedule a hearing if they desire. The board may impose any condition they deem necessary to insure public safety, aid in the reintegration of the inmate into the community, or items not completed under the agreement entered into under K.S.A. 75-5210a and amendments thereto. The board may not advance or delay an inmate's release date. Every inmate while on postrelease supervision shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary.

(j) Within a reasonable time after an inmate is committed to the custody of the secretary of corrections, a member of the Kansas parole board, or a designee of the board, shall hold an initial informational hearing with such inmate and other inmates.

(k) Before ordering the parole of any inmate, the Kansas parole board shall have the inmate appear before it and shall interview the inmate unless impractical because of the inmate's physical or mental condition or absence from the institution. Every inmate while on parole shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary. Whenever the Kansas parole board formally considers placing an inmate on parole and no agreement has been entered into with the inmate under K.S.A. 75-5210a and amendments thereto, the board shall notify the inmate in writing of the reasons for not granting parole. If an agreement has been entered under K.S.A. 75-5210a and amendments thereto and the inmate has not satisfactorily

completed the programs specified in the agreement, or any revision of such agreement, the board shall notify the inmate in writing of the specific programs the inmate must satisfactorily complete before parole will be granted. If parole is not granted only because of a failure to satisfactorily complete such programs, the board shall grant parole upon the secretary's certification that the inmate has successfully completed such programs. If an agreement has been entered under K.S.A. 75-5210a and amendments thereto and the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by such agreement, or any revision thereof, the board shall not require further program participation. However, if the board determines that other pertinent information regarding the inmate warrants the inmate's not being released on parole, the board shall state in writing the reasons for not granting the parole. If parole is denied for an inmate sentenced for a crime other than a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than one year after the denial unless the parole board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next three years or during the interim period of a deferral. In such case, the parole board may defer subsequent parole hearings for up to three years but any such deferral by the board shall require the board to state the basis for its findings.. If parole is denied for an inmate sentenced for a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than three years after the denial unless the parole board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next 10 years or during the interim period of a deferral. In such case, the parole board may defer subsequent parole hearings for up to 10 years but any such deferral shall require the board to state the basis for its findings.

(l) Parolees and persons on postrelease supervision shall be assigned, upon release, to the appropriate level of supervision pursuant to the criteria established by the secretary of corrections.

(m) The Kansas parole board shall adopt rules and regulations in accordance with K.S.A. 77-415 et seq., and amendments thereto, not inconsistent with the law and as it may deem proper or necessary, with respect to the conduct of parole hearings, postrelease supervision reviews, revocation hearings, orders of restitution, reimbursement of expenditures by the state board of indigents' defense services and other conditions to be imposed upon parolees or releasees. Whenever an order for parole or postrelease supervision is issued it shall recite the conditions thereof.

(n) Whenever the Kansas parole board orders the parole of an inmate or establishes conditions for an inmate placed on postrelease supervision, the board:

(1) Unless it finds compelling circumstances which would render a plan of payment unworkable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision pay any transportation expenses resulting from returning the parolee or the person on postrelease supervision to this state to answer criminal charges or a warrant for a violation of a condition of probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision;

(2) to the extent practicable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision make progress towards or successfully complete the equivalent of a secondary education if the inmate has not previously completed such educational equivalent and is capable of doing so; and

(3) may order that the parolee or person on postrelease supervision perform community or public service work for local governmental agencies, private corporations organized not-for-profit or charitable or social service organizations performing services for the community.

(4) Unless it finds compelling circumstances which would render a plan of payment unworkable, shall order that the parolee or person on postrelease supervision reimburse the state for all or a part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the person. In determining the amount and method of payment of such sum, the parole board shall take account of the financial resources of the person and the nature of the burden that the payment of such sum will impose.

(o) If the court which sentenced an inmate specified at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole or postrelease supervision, the Kansas parole board shall order as a condition of parole or postrelease supervision that the inmate pay restitution in the amount and manner provided in the journal entry unless the board finds compelling circumstances which would render a plan of restitution unworkable. If the parolee was sentenced before July 1, 1986, and the court did not specify at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole, the parole board shall order as a condition of parole that the parolee make restitution for the damage or loss caused by the parolee's crime in an amount and manner determined by the board unless the board finds compelling circumstances which would render a plan of restitution unworkable. If the parolee was sentenced on or after July 1, 1986, and the court did not specify at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole or postrelease supervision, the parole board shall not order restitution as a condition of parole or postrelease supervision unless the board finds compelling circumstances which justify such an order.

(p) Whenever the Kansas parole board grants the parole of an inmate, the board, within 10 days of the date of the decision to grant parole, shall give written notice of the decision to the county or district attorney of the county where the inmate was sentenced.

(q) When an inmate is to be released on postrelease supervision, the secretary, within 30 days prior to release, shall provide the county or district attorney of the county where the inmate was sentenced written notice of the release date.

(r) Inmates shall be released on postrelease supervision upon the termination of the prison portion of their sentence. Time served while on postrelease supervision will vest.

(s) An inmate who is allocated regular good time credits as provided in K.S.A. 22-3725 and amendments thereto may receive meritorious good time credits in increments of not more than 90

days per meritorious act. These credits may be awarded by the secretary of corrections when an inmate has acted in a heroic or outstanding manner in coming to the assistance of another person in a life threatening situation, preventing injury or death to a person, preventing the destruction of property or taking actions which result in a financial savings to the state.

PROPOSED AMENDMENT TO K.S.A. 22-3718

22-3718. Conditional release; notice.

An inmate who has served the inmate's maximum term or terms, less such work and good behavior credits as have been earned, shall, upon release, be subject to such written rules and conditions as the Kansas parole board may impose, until the expiration of the maximum term or terms for which the inmate was sentenced or until the inmate is otherwise discharged. If the court which sentenced an inmate specified at the time of sentencing the amount and the recipient of any restitution ordered as a condition of release pursuant to this section, the parole board may set aside restitution as a condition of release payment of restitution, if the board finds compelling circumstances which would render a plan of restitution unworkable. If the court which sentenced an inmate specified reimbursement of all or part of the expenditures by the state board of indigents' defense services as a condition of release the parole board may set aside such reimbursement, if the board finds compelling circumstances which would render a plan of reimbursement unworkable. If the inmate was sentenced before July 1, 1986, and the court did not specify at the time of sentencing the amount and the recipient of any restitution ordered as a condition of release, the parole board shall order as a condition of release that the inmate make restitution for the damage or loss caused by the inmate's crime in an amount and manner determined by the board unless the board finds compelling circumstances which would render a plan of restitution unworkable. If the inmate was sentenced before July 1, 1986, and the court did not specify at the time of sentencing the amount of any reimbursement of all or part of the expenditures by the state board of indigents' defense services as a condition of release, the parole board may set aside such reimbursement unless the board finds compelling circumstances which would render a plan of reimbursement unworkable. If the inmate was sentenced on or after July 1, 1986, and the court did not specify at the time of sentencing the amount and the recipient of any restitution ordered as a condition of release pursuant to this section, the parole board shall not order restitution as a condition of release unless the board finds compelling circumstances which justify such an order. If the inmate was sentenced on or after July 1, 1986, and the court did not specify at the time of sentencing the amount of any reimbursement of all or part of the expenditures by the state board of indigents' defense services as a condition of release, the parole board may set aside such reimbursement unless the board finds compelling circumstances which would render a plan of reimbursement unworkable. Prior to the release of any inmate on parole, conditional release or expiration of sentence, if an inmate is released into the community under a program under the supervision of the secretary of corrections, the secretary shall give written notice of such release to any victim or victim's family as provided in K.S.A. 1994 Supp. 22-3727, and amendments thereto.

PROPOSED AMENDMENT TO K.S.A. 22-4504

22-4504. Same; determination of indigency; partial indigency, effect; disposition of payments for appointed counsel services.

(a) When any defendant who is entitled to have the assistance of counsel, under the provisions of K.S.A. 22-4503 and amendments thereto, claims to be financially unable to employ counsel, the court shall require that the defendant file an affidavit containing such information and in the form as prescribed by rules and regulations adopted by the state board of indigents' defense services. This affidavit shall become a part of the permanent file of the case. The court may interrogate the defendant under oath concerning the contents of the affidavit and may direct the county or district attorney, sheriff, marshal or other officer of the county to investigate and report upon the financial condition of the defendant and may also require the production of evidence upon the issue of the defendant's financial inability to employ counsel.

(b) Upon the basis of the defendant's affidavit, the defendant's statements under oath, and such other competent evidence as may be brought to the attention of the court, which shall be made part of the record in the case, the court shall determine whether the defendant is financially unable to employ counsel. In making such determination the court shall consider the defendant's assets and income; the amount needed for the payment of reasonable and necessary expenses incurred, or which must be incurred to support the defendant and the defendant's immediate family; the anticipated cost of effective representation by employed counsel; and any property which may have been transferred or conveyed by the defendant to any person without adequate monetary consideration after the commission of the alleged crime. If the defendant's assets and income are not sufficient to cover the anticipated cost of effective representation by employed counsel when the length and complexity of the anticipated proceedings are taken fully into account, the defendant shall be determined indigent in full or in part and the court shall appoint an attorney as provided in K.S.A. 22-4503 and amendments thereto. If the court determines that the defendant is financially able to employ counsel, the court shall so advise the defendant and shall give the defendant a reasonable opportunity to employ an attorney of the defendant's own choosing. All determinations by a court as to whether a defendant is financially unable to employ counsel shall be subject to and in accordance with rules and regulations adopted by the state board of indigents' defense services under this act.

(c) The court shall inform the defendant for whom counsel is appointed that the amount expended by the state in providing counsel and other defense services may be entered as a judgment against the defendant if the defendant is convicted and found to be financially able to pay the amount, and that an action to recover such amount may be brought against any person to whom the defendant may have transferred or conveyed any of the defendant's property without adequate monetary consideration after the date of the commission of the alleged crime. A determination by the court that the defendant is financially unable to employ counsel or pay other costs of the defendant's defense may preclude a recovery from the defendant but may not preclude recovery from any person to whom the defendant may have transferred or conveyed any property without adequate monetary consideration after the date of the commission of the alleged crime.

(d) If found to be indigent in part, the defendant shall be promptly informed of the terms under which the defendant may be expected to pay for counsel. Any payments pursuant to such terms shall apply upon any judgment entered pursuant to K.S.A. 22-4513 and amendments thereto.

Payments made for services of appointed counsel provided under K.S.A. 22-4503 and amendments thereto shall be paid to the clerk of the district court. The clerk of the district court shall remit all moneys received as payment for services of appointed counsel under this section to the state board of indigents' defense services at least monthly and the board shall remit all moneys received under this section to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury to the credit of the state general fund.

(e) The determination that a defendant is indigent or partially indigent shall be subject to review at any time by any court before whom the cause is then pending.

(f) The state board of indigents' defense services shall adopt rules and regulations in accordance with K.S.A. 77-415 et seq., and amendments thereto, relating to the income, assets and anticipated costs of representation for the purpose of determining whether a defendant is financially able to employ counsel and the ability of a defendant to contribute to the cost of the defendant's legal defense services.

PROPOSED AMENDMENT TO K.S.A. 22-4507

22-4507. Same; entitlement to compensation and reimbursement of expenses for services to indigents; standards; claims, approval; filing with director; payment; proration of payments, when; rules.

(a) An attorney, other than a public defender or assistant public defender or contract counsel, who performs services for an indigent person, as provided by this act, shall at the conclusion of such service or any part thereof be entitled to compensation for such services and to be reimbursed for expenses reasonably incurred by such person in performing such services. Compensation for services shall be paid in accordance with standards and guidelines contained in rules and regulations adopted by the state board of indigents' defense services under this section.

(b) Claims for compensation and reimbursement shall be certified by the claimant and shall be presented to the court at sentencing. Provided, however, if good cause is shown why the claim is not presented, a supplemental claim may be filed at a later time.. In accordance with standards and guidelines adopted by the state board of indigents' defense services under this section, all such claims shall be reviewed and approved by one or more judges of the district court before whom the service was performed, or, in the case of proceedings in the court of appeals, by the chief judge of the court of appeals and in the case of proceedings in the supreme court, by the departmental justice for the department in which the appeal originated. Each claim shall be supported by a written statement, specifying in detail the time expended, the services rendered, the expenses incurred in connection with the case and any other compensation or reimbursement received. When properly certified and reviewed and approved, each claim for compensation and reimbursement shall be filed in the office of the state board of indigents' defense services. If the claims meet the standards established by the board, the board shall authorize payment of the claim.

(c) If the state board of indigents' defense services determines that the appropriations for indigents' defense services or the moneys allocated by the board for a county or judicial district will be insufficient in any fiscal year to pay in full claims filed and reasonably anticipated to be filed in such year under this section, the board may adopt a formula for prorating the payment of pending and anticipated claims under this section.

(d) The state board of indigents' defense services may make expenditures for payment of claims filed under this section from appropriations for the current fiscal year regardless of when the services were rendered.

(e) The state board of indigents' defense services shall adopt rules and regulations prescribing standards and guidelines governing the filing, processing and payment of claims under this section.

PROPOSED AMENDMENT TO K.S.A. 22-4513

22-4513. Liability of defendant for expenditures by state board; determination of amount and method of payment; liability of others for expenditures.

(a) ~~Within 30 days after any expenditure has been made by the state board of indigents' defense services to provide counsel and other defense services to any defendant and such defendant has been convicted, the state director of indigents' defense services may send to the county or district attorney of the county where the defendant was convicted a notice stating the name of the defendant and the amount of the expenditure. The county or district attorney, in such attorney's discretion, may petition the district court to require the defendant to repay to the state all or a part of the amount expended by the state board of indigents' defense services on behalf of such defendant. Subject to the provisions of subsection (b), the procedure for the filing of the petition and subsequent procedure to be followed in the action shall be the same as in other civil actions pursuant to chapter 60 of the Kansas Statutes Annotated, except that no docket fee shall be charged for the filing of the petition. At the hearing on the petition the court shall determine whether or not the defendant is or will be able to repay all or a part of the expenditures paid by the state board of indigents' defense services on behalf of the defendant.~~ If the defendant in a criminal case is convicted, the lesser of any expenditure that has been made by the state board of indigents' defense services to provide counsel and other defense services to that defendant or the amount allowed by the Board of Indigents' Defense Services "Reimbursement Table" shall be taxed against the defendant and shall be a judgment against the defendant which may be enforced as judgments for payment of money in civil cases.

(b) In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment.

(c) Whenever any ~~expenditure has been made by the state board of indigents' defense services to provide counsel and other defense services to any defendant~~ judgment has been entered pursuant to subsection (a) of this section, a sum equal to such judgment ~~expenditure~~ may be recovered by the state of Kansas for the benefit of the state general fund from any persons to whom the indigent defendant shall have transferred any of the defendant's property without adequate monetary consideration after the commission of the alleged crime, to the extent of the value of such transfer, and such persons are hereby made liable to reimburse the state of Kansas ~~for such expenditures~~ with interest at 6% per annum. Any action to recover judgment for such expenditures shall be prosecuted by the attorney general, who may require the assistance of the county attorney of the county in which the action is to be filed, and such action shall be governed by the provisions of the code of civil procedure relating to actions for the recovery of money. No action shall be brought against any

person under the provisions of this section to recover for sums expended on behalf of an indigent defendant, unless such action shall have been filed within two years after the date of the expenditure by the state board of indigents' defense services.

PROPOSED AMENDMENT TO K.S.A. 22-4522

22-4522. Same; powers and duties.

The state board of indigents' defense services shall:

(a) provide, supervise and coordinate, in the most efficient and economical manner possible, the constitutionally and statutorily required counsel and related services for each indigent person accused of a felony and for such other indigent persons as prescribed by statute;

(b) establish, in each county or combination of counties designated by the board, a system of appointed counsel, contractual arrangements for providing contract counsel or public defender offices, or any combination thereof, on a full- or part-time basis, for the delivery of legal services for indigent persons accused of felonies;

(c) approve an annual operating budget for the board and submit that budget as provided in K.S.A. 75-3717;

(d) collect payments from indigent defendants as ordered by the court including, but not limited to, utilization of debt collection procedures authorized in K.S.A. 75-6201 et seq. And amendments thereto.

(e) adopt rules and regulations in accordance with K.S.A. 77-415 et seq., and amendments thereto, which are necessary for the operation of the board and the performance of its duties and for the guidance of appointed counsel, contract counsel and public defenders, including but not limited to:

(1) Standards for entitlement to legal representation at public expense;

(2) standards and guidelines for compensation of appointed counsel and investigative, expert and other services within the limits of appropriations;

(3) criteria for employing contract counsel; and

(4) qualifications, standards and guidelines for public defenders, appointed counsel and contract counsel;

(e) prepare and submit to the governor and legislature an annual report on the operations of the board; and

(f) hold a hearing before changing the system for providing legal services for indigent persons accused of felonies in any county or judicial district if such a hearing is requested by two or more members of the board.

History: L. 1982, ch. 142, 4; July 1.

PROPOSED AMENDMENT TO 75-719

75-719.

(a) The attorney general is authorized to enter into contracts in accordance with this section for collection services for debts owed to courts or restitution owed under an order of restitution.

(b) As used in this section:

(1) "Beneficiary under an order of restitution" means the victim or victims of a crime to whom a district court has ordered restitution be paid;

(2) "contracting agent" means a person, firm, agency or other entity who contracts hereunder to provide collection services;

(3) "cost of collection" means the fee specified in contracts hereunder to be paid to or retained by a contracting agent for collection services. "Cost of collection" also includes any filing fee required under K.S.A. 60-4303 and amendments thereto or administrative costs prescribed by the attorney general pursuant to rules and regulations; and

(4) "debts owed to courts" means any assessment of court costs, fines, fees, defense costs paid by the state or other charges which a district court judgment has ordered to be paid to the court, and which remain unpaid in whole or in part, and includes any interest or penalties on such unpaid amounts as provided for in the judgment or by law. "Debts owed to courts" also includes the cost of collection when collection services of a contracting agent hereunder are utilized.

(c) (1) Contracts authorized by this section may be entered into with state or federal agencies or political subdivisions of the state of Kansas, including contracts for participation in the collection program authorized by K.S.A. 75-6201 *et seq.* and amendments thereto. Such contracts also may be entered into with private firms or individuals selected by a procurement negotiation committee in accordance with K.S.A. 75-37,102 and amendments thereto, except that the attorney general shall designate a representative to serve as the chief administrative officer member of such committee and that the other two members of such committee shall be designated by the director of purchases and the judicial administrator.

(2) Prior to negotiating any contract for collection services, this procurement negotiation committee shall advertise for proposals, negotiate with firms and individuals submitting proposals and select among those submitting such proposals the party or parties to contract with for the purpose of collection services.

(3) The attorney general may adopt rules and regulations as deemed appropriate for the administration of this section, including procedures to be used in the negotiation and execution of contracts pursuant to this section and procedures to be followed by those who utilize collection services under such contracts.

(4) For purposes of this section, the agencies, firms or individuals with whom contracts are entered under this section shall be known as contracting agents. The attorney general shall publish a list of the contracting agents for use by courts or beneficiaries under orders of restitution who desire to utilize the collection services of such agents.

(5) Each contract entered pursuant to this section shall provide for a fee to be paid to or retained by the contracting agent for collection services. Such fee shall be designated as the cost of collection hereunder, and shall not exceed 33% of the amount of the debt to be collected. The cost of collection shall be deducted from the amount collected and shall not be in addition to the debts owed to the courts or restitution.

(d) Judicial districts of the state of Kansas are authorized to utilize the collection services of contracting agents pursuant to this section for the purpose of collecting all outstanding debts owed to courts. Subject to rules and orders of the Kansas supreme court, each judicial district may establish by local rule guidelines for the compromise of court costs, fines, attorney fees and other charges assessed in district court cases.

(e) Any beneficiary under an order of restitution entered by a court after this section takes effect is authorized to utilize the collection services of contracting agents pursuant to this section for the purpose of collecting all outstanding amounts owed under such order of restitution.

(f) Contracts entered hereunder shall provide for the payment of any amounts collected to the clerk of the district court for the court in which the debt being collected originated. In accounting for amounts collected from any person pursuant to this section, the district court clerk shall credit the person's amount owed in the amount of the gross proceeds collected and shall reduce the amount owed by any person by that portion of any payment which constitutes the cost of collection pursuant to this section.

(g) With the appropriate cost of collection paid to the contracting agent as agreed upon in the contract hereunder, the clerk shall then distribute amounts collected hereunder as follows:

(1) When collection services are utilized pursuant to subsection (d), all amounts shall be applied against the debts owed to the court as specified in the original judgment creating the debt;

(2) when collection services are utilized pursuant to subsection (e), all amounts shall be paid to the beneficiary under the order of restitution designated to receive such restitution, except where that beneficiary has received recovery from the Kansas crime victims compensation board and such board has subrogation rights pursuant to K.S.A. 74-7312 and amendments thereto, in which case all amounts shall be paid to the board until its subrogation lien is satisfied.

(h) Whenever collection services are being utilized against the same debtor pursuant to both subsections (d) and (e), any amounts collected by a contracting agent shall be first applied to satisfy subsection (e) debts, debts pursuant to an order of restitution. Upon satisfaction of all such debts, amounts received from the same debtor shall then be applied to satisfy subsection (d) debts, debts owed to courts.

PROPOSED AMENDMENT TO K.A.R. 105-3-9

105-3-9. Duties of trial counsel following sentencing.

(a) In order to protect a convicted defendant's right to appeal, it shall be the duty of each trial counsel to:

(1) file a motion for modification of sentence pursuant to K.S.A. 1991 Supp. 21-4603(2), when appropriate;

(2) file a motion for release on appeal bind pursuant to K.S.A. 22-2804, when appropriate;

(3) file a notice of appeal, when appropriate, in a timely manner, unless a waiver of the right to appeal has been signed by the defendant;

(4) upon filing the notice of appeal, obtain a court order for the trial transcript, and a transcript of any pretrial or posttrial proceedings from which a claim of error may arise;

(5) upon filing the notice of appeal, obtain an order from the district court appointing the state appellate defender as counsel for the appeal and file the order of appointment with the clerk of the district court within five days of the filing of the notice of appeal; and

(6) submit a draft of the docketing statement and all documents necessary to docket the appeal required by Supreme Court Rule 2.041 to the appellate defender within 10 days of the filing of the notice of appeal.

(b) Requests for compensation for services set forth in subsection (a) shall be included in the claim filed with the board.

(Amended May 1, 1987; January 11, 1992.)