

Approved: January 22, 1997  
Date

## MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Acting Chairperson Keith Schraad at 10:10 a.m. on January 16, 1997 in Room 514-S of the Capitol.

All members were present except: Senator Harris (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: Paul Shelby, Judicial Administration  
Secretary Charles Simmons, Department of Corrections\  
Ron Smith, Kansas Bar Association

Others attending: See attached list

### **Bill Introductions:**

Acting Chair Senator Schraad called upon Conferee Paul Shelby from the Judicial Administration to begin the introduction of bills. Mr. Shelby requested an amendment to K.S.A. 9-1504 (unclaimed contents of safety deposit boxes), to strike district courts (Attachment 1); an amendment to K.S.A. 61-2401 (limited actions), to strike Clerk approval of the property bond and replace with judge's approval and to redo Forms 11,20,22 and 23 of the appendix to the article 2 of chapter 61 accordingly (Attachment 2); an amendment to 1996 Supp. K.S.A. 22-304, 22-3412 (a) (1) (D) and K.S.A. 22-3609a to ensure that cigarette or tobacco infractions and traffic infractions trials are to the court and not by jury; and a request to amend 59-29a06 to clarify jury provisions under the sexually violent predator act (Attachment 3). Senator Feleciano moved to introduce the bills as presented by Conferee Shelby. Senator Harrington seconded. Motion carried.

Conferee Secretary Charles Simmons from the Department of Corrections requested introduction of the following bills: amendment of K.S.A. 21-3826, Traffic in Contraband in a Correctional Facility, to increase the severity level for the introduction of firearms, ammunition, explosives and drugs to a level 5 (Attachment 4); and amendment of K.S.A. 75-6102(e), the Kansas Tort Claims Act, to provide governmental immunity for community service work performed by offenders pursuant to an order of the Kansas Parole Board or the Department of Corrections (Attachment 5); an amendment to K.S.A. 45-221(a)(29), the Open Records Act, and K.S.A. 22-3711 to provide for expanded release of information pertaining to offenders under postrelease supervision (Attachment 6); and an amendment to K.S.A. 75-7210, by deleting the requirements that standards for inmate health care, inmate security status, and the administration of oaths for investigations and disciplinary proceedings be established by rule and regulation (Attachment 7). Senator Steffes moved to introduce the bills as presented by Conferee Simmons. Senator Harrington seconded. Motion carried.

Conferee Ron Smith representing the Kansas Bar Association, requested the introduction of the following bills: a reintroduction of 1996 SB 514 which allows division of goodwill of professional practices during a divorce (Attachment 8); amendments to K.S.A. 60-1615(c) regarding who can access child placement investigator reports. Current law discriminates against those who cannot afford lawyers (Attachment 9); new legislation allowing conservators of trusts to make gifts under certain highly limited circumstances (Attachment 10); and new legislation allowing the creation of trusts by courts under certain circumstances (Attachment 11). Following discussion a motion was made by Senator Emert to introduce the bills as presented by Conferee Smith. Senator Goodwin seconded. Motion carried.

Senator Emert requested the introduction of a bill which would eliminate the illegality of windshield tinting for certain people working in high crime areas such as private investigators and law enforcement officers. Senator Oleen moved to introduce the bill as presented by Senator Emert. Senator Gilstrap seconded. Motion carried.

Legislative researcher, Mike Heim continued briefing the committee on the Interim Special Committee briefly touching on 1996 Drug Grid Border Boxes, Parole Services, Probation Services Officers-Probation, Boot Camp, Judicial Branch Alternative Sanctions Committee-Testimony, Kansas Parole Board, Prison Population update and Court of Appeals Caseload and gave the conclusions and recommendations of the committee on these issues. The final topic Mr. Heim covered was a Study of the Ability of Parole Officers to Supervise Parolees, and Comparisons with Other States and the committees conclusions and recommendations on this topic (see Committee Reports to the 1997 Kansas Legislature filed at the Kansas Legislative Research Department dated December, 1996).

The Acting Chair adjourned the meeting at 10:30 a.m. The next meeting is scheduled for January 21, 1997.



Bill Introductions  
Senate Judiciary Committee

Paul Shelby  
Assistant Judicial Administrator

Request from the Kansas Association of District Court Clerks/Administrators:

- ① • Unclaimed contents of safety deposit boxes. Amending K.S.A. 9-1504 to strike district courts. This statute was last amended in 1977. It states if no person claims the contents of a safety deposit box within 60 days after the death, the contents may be removed and delivered to the district court. K.S.A. 59-3949 and 59-3950 established in 1994, deal with unclaimed property in a safe deposit box that has been abandoned and requires that property to be turned over to the State Treasurer after the notice procedures for unclaimed property are followed.
- ② • Limited Actions - amending K.S.A. 61-2401 and Forms 11,20,22 and 23 of the appendix to the article 2 of chapter 61. To strike Clerk approval of the property bond and replace with judge's approval. *and forms*
- Trials - Amending 1996 Supp. K.S.A. 22-3404, 22-3412 (a) (1) (D) and K.S.A.22-3609a to ensure that cigarette or tobacco infractions and traffic infractions trials are to the court and not by jury. Also amending 59-29a06 to clarify jury provisions under the sexually violent predator act by setting forth that the trial will be to a jury of 12 unless parties stipulate to a lesser number, and to allow three peremptory challenges to each party. The current statutes do not specify how many jurors or challenges are allowed for sexually violent predator cases. Since this is a civil proceeding provided for under the probate code with jury selection references to the felony criminal code (K.S.A. 22-3403) there has been confusion as to whether to limit the juries to six under the probate code, give parties the options available under civil code that do not mandate a unanimous verdict, or follow the criminal code which is dependent upon the level of crime but is not available in the civil proceeding.

*about 59*

*Senate Judiciary  
Attachment 1  
1-16-97*

AN ACT concerning safe deposit boxes; amending K.S. A. 9-1504 and repealing the existing section.

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

Section 1. K.S.A. 9-1504 is hereby amended to read as follows: 9-1504. In the event the sole lessee or all lessees in joint tenancy named in the lease agreement covering a safe deposit box rental shall die, the safe deposit box may be opened, forcibly if necessary, at any time thereafter, in the presence of persons claiming to be interested in the contents thereof, by two employees of the lessor, one of whom shall be an officer of the lessor. Such employees may remove all instruments of a testamentary nature and deposit the same with the district court, taking its receipt therefor. The employees in their discretion may deliver life insurance policies therein contained to the beneficiaries named in such policies, and any deed to a cemetery lot and any burial instructions found therein to the appropriate parties.

Any and all other contents of such box so opened shall be kept and retained by the bank, trust company or safe deposit company and shall be delivered only to the parties legally entitled to the same. ~~In the event no person claims to be interested in the contents of such box within 60 days after the death of the lessee, the lessor may open the box by forcible entry and remove the contents and deliver the same to the district court, subject to the payment of rentals, of expenses, and repairs.~~

Sec. 2. K.S.A. 9-1504 is hereby repealed.

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

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AN ACT concerning the code of civil procedure for limited actions; amending K.S. A. 61-2401 and Forms 11, 20, 22 and 23 of the appendix to article 2 of chapter 61 of the Kansas Statutes Annotated and repealing the existing sections.

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

Section 1. K.S.A. K.S.A. 61-2401 is hereby amended to read as follows: 61-2401. The plaintiff, in an action to recover possession of specific personal property, at any time before the judgment is rendered, may claim immediate possession thereof under the following procedure:

(a) Affidavit. The plaintiff shall file an affidavit, unless his or her petition shall have been verified, which in either event shall show:

(1) That the plaintiff is the owner of the property claimed, sufficiently describing it, or is lawfully entitled to the possession thereof,

(2) that it is wrongfully detained by the defendant, or if it is held by an officer under legal process, that demand for the same has been made and refused, and

(3) the estimated value thereof.

(b) Hearing notice; bond. Except as otherwise provided herein, after filing the affidavit or verified petition, the plaintiff shall apply to the court for an order for the delivery of the property to him or her in the manner prescribed by subsection (b) of K.S. 60-207, and the motion made thereunder shall be served upon the defendant pursuant to K.S. 60-205. After a hearing and presentation of evidence on plaintiff's motion, and if the judge is satisfied as to the probable validity of plaintiff's claim and that delivery of the property to the plaintiff is in the interest of justice and will properly protect the interests of all the parties, the judge may enter or cause to be entered an order for the delivery of the property to the plaintiff.

Notwithstanding the foregoing provisions of this subsection, the judge may enter or cause to be entered the order for delivery of property after an ex parte hearing and without notice to and the opportunity for a hearing by the defendant, only if the judge is satisfied as to the probable validity of the following allegations to be contained in plaintiff's affidavit or verified petition:

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attachment 2

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(1) Possession of the property by the plaintiff is directly necessary to secure an important governmental or general public interest; and

(2) There is a special need for very prompt action due to the immediate danger that the defendant will destroy or conceal the property.

Prior to the issuance of the order for delivery of the property, the plaintiff shall file with the clerk of the court in which the action is brought a bond in not less than double the amount of the value of the property as stated in the affidavit or verified petition, or as found by the court at the hearing on plaintiff's motion, with one or more sufficient sureties. It shall be to the effect that plaintiff shall duly prosecute the action, and pay all costs and damages that may be awarded against him or her, and that if plaintiff is given possession of the property he or she will return it to defendant if it be so adjudged. If the bond shall be found to be sufficient, the ~~clerk~~ judge shall approve the same and note his or her approval thereon. The defendant may challenge the sufficiency of the bond as provided in subsection (b) of K.S. 60-705.

(c) Property in custodia legis. If the property the possession of which is sought is in the custody of an officer under any legal process, it shall nevertheless be subject to replevin under this section, but if the same is in the custody of any officer under any process issued out of a judicial proceeding, the petition or affidavit and bond shall be filed in the same proceeding out of which such process issued.

(d) Order for delivery of property. The order for the delivery of the property to the plaintiff shall be delivered to the appropriate officer of any county in the state in which the property is located. The order shall state the names of the parties, the description of the property and the value as set out in plaintiff's affidavit or verified petition, or as found by the court at the hearing on plaintiff's motion pursuant to subsection (b). It shall command the appropriate officer to take immediate possession of the property and deliver it to plaintiff at the expiration of twenty-four (24) hours unless there is compliance with the requirements of subsection (f) of this section and make return of the order on the day named therein. If the officer to whom the order is delivered is a party defendant, then the order shall be served upon him or her by the clerk of the court.

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(e) Return and execution of order. (1) Obtaining possession. In the execution of the order the sheriff or marshal may break open any building or enclosure in which the property is located, if he or she cannot otherwise obtain possession of the property or entrance to the building on demand.

(2) Execution. The sheriff or marshal shall execute the order by taking possession of the property described therein, and serving a copy on the person charged with the unlawful detainer in the same manner as for personal or resident service if he or she can be found in the county.

(3) Return. The return day of the order of delivery shall be nine (9) days after it is issued, if the order is executed within the county where the court is situated. In all other cases, the return day shall be twenty (20) days after the order is issued.

(f) Redelivery bond. The defendant, within twenty-four (24) hours after service of a copy of the order, may deliver to the sheriff or marshal a bond to be approved by him or her, in not less than double the amount of the value of the property as stated in the order, with one or more sufficient sureties, and the sheriff or marshal shall return the property to the defendant. The bond shall be to the effect that the defendant will deliver the property to plaintiff if it be so adjudged, and will pay all costs and damages that may be adjudged against him or her. The sheriff or marshal shall file the bond with the clerk after noting his or her approval thereon. If the defendant is a public officer, board or government agency, such officer, board or agency, in lieu of giving a redelivery bond, may retain possession of the property seized by filing with the clerk within the time required for giving the redelivery bond a writing certifying that the public health, safety or welfare would be jeopardized or impaired if the plaintiff acquired possession of the property prior to final judgment, in which case hearing may be had on the issue of public interest at the instance of any party.

(g) Judgment in action. In an action to recover the possession of personal property, judgment for the plaintiff may be for possession or for the recovery of possession, or the value thereof in case a delivery cannot be had, and for damages for the detention. If the property has been delivered to the plaintiff and the defendant claims a return thereof, judgment for the defendant may be for a return of the property, or the value

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thereof in case a return cannot be had, and damages for taking and withholding the same.

Sec. 2 Form 11 as set forth in the appendix to article 2 of chapter 61 of the Kansas Statutes Annotated is hereby amended as follows:

**Form No. 11: GENERAL EXECUTION AND RETURN**

(Caption of Case)

**WRIT OF EXECUTION**

The State of Kansas to the Sheriff (Marshal) of \_\_\_\_\_ County:

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_, in an action then pending in this court, \_\_\_\_\_, plaintiff (or defendant), recovered judgment against \_\_\_\_\_, defendant (or plaintiff), for the sum of \_\_\_\_\_ dollars, and court costs, actual and estimated, in the sum of \_\_\_\_\_ dollars; that credits of \_\_\_\_\_ dollars have been received; and that there remains due the sum of \_\_\_\_\_ dollars, together with your fees for execution of this writ.

Now, Therefore, You are Hereby Commanded that of non-exempt personal property of the said judgment debtor, \_\_\_\_\_, you cause said judgment and costs to be satisfied, as provided by law. Make return of this execution showing the manner in which you have executed the same, within thirty (30) days from the time of your receipt thereof.

Dated \_\_\_\_\_

(Signature), ~~Clerk~~ Judge

[Seal of the court]

**SHERIFF'S (MARSHAL'S) RETURN**

On \_\_\_\_\_, 19\_\_, \_\_o'clock \_\_M., received this writ.

On \_\_\_\_\_, 19\_\_, \_\_o'clock \_\_M., levied on the non-exempt

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personal property of \_\_\_\_\_, described in the following schedules.

On \_\_\_\_\_, 19\_\_, advertised the same for sale.

On \_\_\_\_\_, 19\_\_, sold the following items of personal property at prices indicated, and the moneys received from said sale are herewith delivered to the court.

_____	\$ _____	\$ _____
\$ _____	_____	_____
_____	\$ _____	\$ _____
\$ _____	_____	_____
Total received _____		_____
\$ _____	_____	_____

The following goods remain unsold \_\_\_\_\_ for want of bidders.

(Signature and Title of Officer)

**FEES**

Levy under execution .....	\$ _____
Advertising property .....	\$ _____
Offering for sale or selling .....	\$ _____
Issuing certificates of sale .....	\$ _____
No property found .....	\$ _____
Mileage: ____ miles .....	\$ _____
Total .....	\$ _____

Sec. 3. Form No. 20 as set forth in the appendix to article 2 of chapter 61 of the Kansas Statutes Annotated is hereby amended as follows:

**Form No. 20: ORDER FOR DELIVERY OF PROPERTY IN REPLEVIN AND RETURN**

(Caption of Case)

**ORDER FOR DELIVERY OF PROPERTY**

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To the Sheriff (Marshal) of \_\_\_\_\_ County, Kansas:

WHEREAS, the above-named plaintiff has commenced an action in this court against the above-named defendant for the recovery of certain personal property and has filed his or her affidavit and bond, as required by law, to obtain an order for the immediate delivery of said personal property;

You are therefore commanded to take immediate possession of the following described personal property and deliver it to said plaintiff at the expiration of twenty-four hours unless prior to said time you receive a redelivery bond from the defendant, with one or more sufficient sureties, in not less than double the value of the property taken, as provided by law. Which property is described and valued as follows: (State description and value of each item claimed as alleged.)

You shall also serve a copy of this order on the defendant in the same manner as the service of summons and make your return within \_\_\_\_\_ days hereof.

(Signature), ~~Clerk~~ Judge

Dated \_\_\_\_\_

[Seal of the court]

RETURN ON ORDER

(MANNER OF EXECUTION)

On \_\_\_\_\_, 19\_\_, at \_\_\_ o'clock, \_\_M., I received this order and executed the same as follows:

\*(1) Property Taken Into Possession. On \_\_\_\_\_, 19\_\_, I took into possession the following articles of personal property, to wit:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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\* (2) Property Delivered to Plaintiff. On \_\_\_\_\_, 19\_\_, I delivered the above-described property to the plaintiff.

\* (3) Redelivery Bond Received. On \_\_\_\_\_, 19\_\_, I received from the defendant, with \_\_\_\_\_ as sureties thereon, a bond in the amount of \$\_\_\_\_\_, double the amount of the alleged value of the articles taken, and I returned the above-described articles of personal property to the defendant. Said bond has been by me determined to be sufficient and is herewith filed with the court.

\* (4) Property Not Found. I was unable to locate any of the articles of personal property described in the order within this county.

\* (The officer should delete or omit those portions not applicable to the manner of executing of this order.)

(MANNER OF SERVICE ON DEFENDANTS)

I hereby certify that I served a copy of this order on the defendant at the time and in the manner following, to wit:

\_\_\_\_\_.

I was unable to locate the following defendant \_\_\_\_\_ within this county.

(Signature), Sheriff

Dated: \_\_\_\_\_

Sec.4. Form No. 22 as set forth in the appendix to article 2 of chapter 61 of the Kansas Statutes Annotated is hereby amended as follows:

**Form No. 22: ORDER FOR POSSESSION OF PROPERTY AND FORECLOSURE OF SECURED INTEREST AND RETURN**

(Article 24)

(Caption of Case)

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ORDER TO TAKE POSSESSION OF PERSONAL PROPERTY

To the Sheriff (Marshal) of \_\_\_\_\_ County, Kansas:

WHEREAS, the above-named plaintiff has commenced an action in this court against the above-named defendant for foreclosure of his or her security interest in certain personal property and has filed his or her affidavit and bond, as required by law, to obtain an order that said personal property be immediately taken into your possession and kept by you until further order of the court;

You are therefore commanded to take immediate possession of the following described personal property and hold the same in your possession, unless prior to the expiration of twenty-four hours you receive a redelivery bond from the defendant, with one or more sufficient sureties, in not less than double the value of the property taken, as provided by law. The description and estimated value of each article you are to take into possession is as follows: (State description and value of each item as alleged in the plaintiff's affidavit.)

You shall also serve a copy of this order on the defendant in the same manner as the service of summons and make your return within \_\_\_\_\_ days of the date hereof.

(Signature), ~~Clerk~~ Judge

Dated: \_\_\_\_\_

[Seal of the court]

RETURN ON ORDER (MANNER OF EXECUTION)

On \_\_\_\_\_, 19\_\_, at \_\_ o'clock, \_\_ M., I received this order and executed the same as follows:

\* (1) Property Taken Into Possession. On \_\_\_\_\_, 19\_\_, I took into possession the following articles of personal property, to wit:

\_\_\_\_\_  
\_\_\_\_\_

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\* (2) Property in Possession of Officer. The property listed and itemized above is held in my possession subject to the further order of the court.

\* (3) Redelivery Bond Received. On \_\_\_\_\_, 19\_\_\_\_, I received from the defendant, with \_\_\_\_\_ as surety thereon, a bond in the amount of \$\_\_\_\_\_, double the amount of the estimated value of the articles taken, and I returned the above-described articles of personal property to the defendant. Said bond has been by me determined to be sufficient and is herewith filed with the court.

\* (4) Property Not Found. I attempted to execute this order, but was unable to locate any of the articles of personal property described in the order within this county.

\* (The officer should delete or omit those portions not applicable to the manner of executing this order.)

(MANNER OF SERVICE ON DEFENDANTS)

I hereby certify that I served a copy of this order on the defendant at the time and in the manner following, to wit:\_\_\_\_\_.

I was unable to locate the following defendant \_\_\_\_\_ within this county.

(Signature), Sheriff

Dated: \_\_\_\_\_

Sec. 5. Form No. 23 as set forth in the appendix to article 2 of chapter 61 of the Kansas Statutes Annotated is hereby amended as follows:

**Form No. 23: EXECUTION ON FORECLOSURE OF SECURED INTEREST AND RETURN**

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(Caption of Case)

SPECIAL EXECUTION AND ORDER OF SALE

The State of Kansas to the Sheriff (Marshal) of \_\_\_\_\_ county:

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_, in an action then pending in this court \_\_\_\_\_, plaintiff, recovered judgment against \_\_\_\_\_, defendant, for the sum of \_\_\_\_\_ dollars, and court costs, actual and estimated, in the sum of \_\_\_\_\_ dollars;

AND WHEREAS, on the same day, this court granted judgment foreclosing the security interest of the plaintiff and charging certain articles of personal property with the payment of said debt and costs and that if said judgment be not satisfied within ten days from the date thereof, said articles be sold, which articles of personal property are described as follows, to wit: \_\_\_\_ .

Now, therefore, you are hereby commanded to cause the above-described articles of personal property to be advertised and sold according to law and the proceeds of said sale to be delivered to the court to be disbursed as the court shall direct. You will make return of this execution showing the manner in which you have executed the same, within thirty days from the time of your receipt thereof.

(Signature), ~~Clerk~~ Judge

Dated: \_\_\_\_\_

[Seal of the court]

SHERIFF'S (MARSHAL'S) RETURN

(The return on this execution should be similar to the return on the general execution, Form No. 12.)

Sec. 6. K.S.A. 61-2401 and Forms 11, 20, 22, & 23 of the appendix to article 2 of chapter 61 of the Kansas Statutes Annotated are hereby

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repealed.

Sec. 7. This act will take effect and be in force from and after January 1, 1998.

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AN ACT concerning trials; amending K.S. A. 1996 Supp. 22-3404, 22-3412, 22-3609a and 59-29a06 and repealing the existing sections.

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

Section 1. K.S.A. 1996 Supp. 22-3404 is hereby amended to read as follows: 22-3404. (1) The trial of misdemeanor, ~~cigarette or tobacco infraction~~ and traffic ~~offense infraction~~ cases shall be to the court unless a jury trial is requested in writing by the defendant not later than seven days after first notice of trial assignment is given to the defendant or such defendant's counsel. The time requirement provided in this subsection regarding when a jury trial shall be requested may be waived in the discretion of the court upon a finding that imposing such time requirement would cause undue hardship or prejudice to the defendant.

(2) A jury in a misdemeanor, ~~cigarette or tobacco infraction~~ or traffic ~~offense infraction~~ case shall consist of six members.

(3) Trials in the municipal court of a city shall be to the court.

(4) Except as otherwise provided by law, the rules and procedures applicable to jury trials in felony cases shall apply to jury trials in misdemeanor, ~~cigarette or tobacco infraction~~ and traffic ~~offense infraction~~ cases.

(5) The trial of cigarette or tobacco infraction or traffic infraction cases shall be to the court.

Sec. 2. K.S.A. 1996 Supp. 22-3412 is hereby amended to read as follows:

22-3412. (a)(1) For crimes committed before July 1, 1993, peremptory challenges shall be allowed as follows:

(A) Each defendant charged with a class A felony shall be allowed 12 peremptory challenges.

(B) Each defendant charged with a class B felony shall be allowed eight peremptory challenges.

(C) Each defendant charged with a felony other than class A or class B felony shall be allowed six peremptory challenges.

(D) Each defendant charged with a misdemeanor, ~~cigarette or tobacco infraction~~ or traffic ~~infraction~~ ~~offense~~ shall be allowed three peremptory challenges.

(E) Additional peremptory challenges shall not be allowed on account of separate counts charged in the complaint, information or indictment.

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*Attachment 3*  
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(F) The prosecution shall be allowed the same number of peremptory challenges as all the defendants.

(2) For crimes committed on or after July 1, 1993, peremptory challenges shall be allowed as follows:

(A) Each defendant charged with an off-grid felony or a nondrug or drug felony ranked at severity level 1 shall be allowed 12 peremptory challenges.

(B) Each defendant charged with a nondrug felony ranked at severity level 2, 3, 4, 5 or 6, or a drug felony ranked at severity level 2 or 3, shall be allowed 8 peremptory challenges.

(C) Each defendant charged with an unclassified felony, a nondrug severity level 7, 8, 9 or 10, or a drug severity level 4 felony shall be allowed six peremptory challenges.

(D) Each defendant charged with a misdemeanor shall be allowed three peremptory challenges.

(E) The prosecution shall be allowed the same number of peremptory challenges as all defendants.

(F) The most serious penalty offense charged against each defendant furnishes the criterion for determining the allowed number of peremptory challenges for that defendant.

(G) Additional peremptory challenges shall not be allowed when separate counts are charged in the complaint, information or indictment.

(H) Except as otherwise provided in this subsection, the provisions of this section shall apply. In applying the provisions of this section, the trial court may determine the number of peremptory challenges to allow by reviewing the classification for the crime charged, or nearest comparable felony, as it was classified under the criminal law in effect prior to July 1, 1993. If the severity level of the most serious crime charged raises the potential penalty above that of another crime which was classified higher under the criminal law in effect prior to July 1, 1993, the defendant shall be allowed the number of peremptory challenges as for that higher classified crime under the prior system.

(I) The trial court shall resolve any conflicts with a liberal construction in favor of allowing the greater number of peremptory challenges.

(b) After the parties have interposed all of their challenges to jurors, or have waived further challenges, the jury shall be sworn to try the case.

(c) Immediately after the jury is empaneled and sworn, a trial judge may empanel one or more alternate or additional jurors whenever, in the judge's discretion, the judge believes it advisable to have such jurors

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available to replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable to perform their duties. Such jurors shall be selected in the same manner, have the same qualifications, and be subject to the same examination and challenges and take the same oath and have the same functions, powers and privileges as the regular jurors. Each party shall be entitled to one peremptory challenge to such alternate jurors. Such alternate jurors shall be seated near the other jurors, with equal power and facilities for seeing and hearing the proceedings in the case, and they must attend at all times upon the trial of the cause in company with the other jurors. They shall obey the orders of and be bound by the admonition of the court upon each adjournment, but if the regular jurors are ordered to be kept in custody during the trial of the cause, such alternate jurors also shall be kept in confinement with the other jurors. Upon final submission of the case to the jury, the alternate jurors may be discharged or they may be retained separately and not discharged until the final decision of the jury. If the alternate jurors are not discharged on final submission of the case and if any regular juror shall be discharged from jury service in any such action prior to the jury reaching its verdict, the court shall draw the name of an alternate juror who shall replace the juror so discharged and be subject to the same rules and regulations as though such juror had been selected as one of the original jurors.

Sec. 3. K.S.A. 22-3609a is hereby amended to read as follows: 22-3609a. (1) A defendant shall have the right to appeal from any judgment of a district magistrate judge. The administrative judge shall be responsible for assigning a district judge for any such appeal. The appeal shall stay all further proceedings upon the judgment appealed from.

(2) An appeal to a district judge shall be taken by filing a notice of appeal with the clerk of the court. No appeal shall be taken more than 10 days after the date of the judgment appealed from.

(3) The clerk of the district court shall deliver the complaint, warrant and any appearance bond to the district judge to whom such appeal is assigned. The case shall be tried de novo before the assigned district judge.

(4) No advance payment of a docket fee shall be required when the appeal is taken.

(5) All appeals taken by a defendant from a district magistrate judge in traffic ~~infraction~~ offense, ~~cigarette or tobacco infraction~~ and misdemeanor cases shall be tried by the court unless a jury trial is requested in writing by

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the defendant.

(6) Notwithstanding the other provisions of this section, appeal from a conviction rendered pursuant to subsection (c) of K.S.A. 22-2909 and amendments thereto shall be conducted only on the record of the stipulation of facts relating to the complaint.

Sec. 4. K.S.A. 59-29a06 is hereby amended to read as follows: 59-29a06. Within 60 days after the completion of any hearing held pursuant to K.S. 59-29a05 and amendments thereto, the court shall conduct a trial to determine whether the person is a sexually violent predator. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced. At all stages of the proceedings under this act, any person subject to this act shall be entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist such person. Whenever any person is subjected to an examination under this act, such person may retain experts or professional persons to perform an examination of such person's behalf. When the person wishes to be examined by a qualified expert or professional person of such person's own choice, such examiner shall be permitted to have reasonable access to the person for the purpose of such examination, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court, upon the person's request, shall determine whether the services are necessary and reasonable compensation for such services. If the court determines that the services are necessary and the expert or professional person's requested compensation for such services is reasonable, the court shall assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf. The court shall approve payment for such services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the person and compensation received in the same case or for the same services from any other source. The person, the attorney general, or the judge shall have the right to demand that the trial be before a jury. Such demand for the trial to be before a jury shall be filed, in writing, at least four days prior to trial. *The jury shall consist of 12 persons, unless the parties have stipulated to a lesser number. Each party shall be entitled to three (3) peremptory challenges. The verdict shall be by agreement of all the jurors.* ~~Number and~~

DRAFT  
November 23, 1996

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3-4

~~selection of jurors shall be determined as provided in K.S. 22-3403, and amendments thereto.~~ If no demand *for a jury* is made, the trial shall be before the court.

Sec. 5. K.S.A. 1996 Supp. 22-3404, 22-3412, 22-3609a, and 59-29a06 are hereby repealed.

Sec. 6. *This act will take effect and be in force from and after its publication in the Kansas registry.*

DRAFT  
November 23, 1996  
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Samuel #4 1-16-97



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

Bill Graves  
Governor

Charles E. Simmons  
Secretary

**MEMORANDUM**

Date: January 16, 1997  
To: Senate Judiciary Committee  
From: Charles E. Simmons, Secretary  
Subject: Request for Bill Introductions

I am respectfully requesting introduction of the following measures:

- Amendment of KSA 21-3826, Traffic in Contraband in a Correctional Facility, to increase the severity level for the introduction of firearms, ammunition, explosives and drugs. Traffic in these contraband items would be increased to a severity level 5, while traffic in other contraband items would remain a severity level 6.
- Amendment of KSA 75-6102(e), the Kansas Tort Claims Act, to provide governmental immunity for community service work performed by offenders pursuant to an order of the Kansas Parole Board or the Department of Corrections.
- Amendment of KSA 45-221(a)(29), the Open Records Act, and KSA 22-3711 to provide for expanded release of information pertaining to offenders under postrelease supervision, including: conditions of supervision (excluding requirements pertaining to mental health or substance abuse counseling); violations of conditions that have been subject to preliminary or final revocation hearings; photographs and other identifying information; and address (only for offenders whose offense is committed after the effective date).
- Amendment of KSA 75-5212 and 75-5210, by deleting the requirements that standards for inmate health care, inmate security status, and the administration of oaths for investigations and disciplinary proceedings be established by rule and regulation.

Copies of bill drafts are attached. Thank you for your consideration of this request.

CES:jj  
Attachments

*Senate Judiciary  
Attachment 4*

1-16-97

BILL NO. \_\_\_\_\_

By

AN ACT concerning crimes and punishment; relating to traffic in contraband in a correctional institution; amending K.S.A. 21-3826, as amended by section 26 of chapter 229 of the 1996 Session Laws of Kansas, and repealing the existing section.

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

Sec. 1. K.S.A. 21-3826, as amended by section 26 of chapter 229 of the 1996 Session Laws of Kansas, is hereby amended to read as follows: 21-3826. (a) Traffic in contraband in a correctional institution is introducing or attempting to introduce into or upon the grounds of any correctional institution or taking, sending, attempting to take or attempting to send from any correctional institution or any unauthorized possession while in any correctional institution or distributing within any correctional institution, any item without the consent of the administrator of the correctional institution.

(b) For purposes of this section, "correctional institution" means any state correctional institution or facility, conservation camp, state security hospital, juvenile correctional facility, community correction center or facility for detention or confinement, juvenile detention facility or jail.

(c) Traffic in contraband in a correctional institution ~~is a severity level 6, nonperson felony~~ of firearms, ammunition, explosives or a controlled substance which is defined in subsection (e) of K.S.A. 65-4101, and amendments thereto, is a severity level 5, nonperson felony.

(d) Except as provided in subsection (c), traffic in contraband in a correctional institution is a severity level 6, nonperson felony.

Sec. 2. K.S.A. 21-3826, as amended by section 26 of chapter 229 of the 1996 Session Laws of Kansas, is hereby repealed.

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

BILL NO. \_\_\_\_\_

By

AN ACT concerning the Kansas tort claims act; expanding the definition of community service work; amending K.S.A. 1996 Supp. 75-6102 and repealing the existing section.

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

Section 1. K.S.A. 1996 Supp. 75-6102 is hereby amended to read as follows: 75-6102. As used in K.S.A. 75-6101 through 75-6118, and amendments thereto, unless the context clearly requires otherwise:

(a) "State" means the state of Kansas and any department or branch of state government, or any agency, authority, institution or other instrumentality thereof.

(b) "Municipality" means any county, township, city, school district or other political or taxing subdivision of the state, or any agency, authority, institution or other instrumentality thereof.

(c) "Governmental entity" means state or municipality.

(d) "Employee" means any officer, employee, servant or member of a board, commission, committee, division, department, branch or council of a governmental entity, including elected or appointed officials and persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation and a charitable health care provider. Employee includes any steward or racing judge appointed pursuant to K.S.A. 74-8818, and amendments thereto, regardless of whether the services of such steward or racing judge are rendered pursuant to contract as an independent contractor, but does not otherwise include any independent contractor under contract with a governmental entity except (1) employees of the United States marshal's service engaged in the transportation of inmates on behalf of the secretary of corrections and (2) a person who is an

*Senate Judiciary  
Attachment 5  
1-16-97*



employee of a nonprofit independent contractor, other than a municipality, under contract to provide educational or vocational training to inmates in the custody of the secretary of corrections and who is engaged in providing such service in an institution under the control of the secretary of corrections provided that such employee does not otherwise have coverage for such acts and omissions within the scope of their employment through a liability insurance contract of such independent contractor. "Employee" also includes an employee of an indigent health care clinic. "Employee" also includes former employees for acts and omissions within the scope of their employment during their former employment with the governmental entity.

(e) "Community service work" means public or community service performed by a person (1) as a result of a contract of diversion entered into by such person as authorized by law, (2) pursuant to the assignment of such person by a court to a community corrections program, (3) as a result of suspension of sentence or as a condition of probation pursuant to court order, (4) in lieu of a fine imposed by court order ~~or~~, (5) as a condition of placement ordered by a court pursuant to K.S.A. 38-1663, and amendments thereto, or (6) pursuant to the assignment of such person by the Kansas parole board or the department of corrections.

(f) "Charitable health care provider" means a person licensed by the state board of healing arts as an exempt licensee or a federally active licensee, a person issued a limited permit by the state board of healing arts, a physician's assistant registered by the state board of healing arts or a health care provider as the term "health care provider" is defined under K.S.A. 65-4921, and amendments thereto, who has entered into an agreement with:

(1) The secretary of health and environment under K.S.A. 1996 Supp. 75-6120, and amendments thereto, who, pursuant to such agreement, gratuitously renders professional services to a person who has provided information which would reasonably lead the

health care provider to make the good faith assumption that such person meets the definition of medically indigent person as defined by this section or to a person receiving medical assistance from the programs operated by the department of social and rehabilitation services, and who is considered an employee of the state of Kansas under K.S.A. 1996 Supp. 75-6120, and amendments thereto; or

(2) the secretary of health and environment and who, pursuant to such agreement, gratuitously renders professional services in conducting children's immunization programs administered by the secretary; or

(3) a local health department or indigent health care clinic, which renders professional services to medically indigent persons or persons receiving medical assistance from the programs operated by the department of social and rehabilitation services gratuitously or for a fee paid by the local health department or indigent health care clinic to such provider and who is considered an employee of the state of Kansas under K.S.A. 1996 Supp. 75-6120 and amendments thereto. Professional services rendered by a provider under this paragraph (3) shall be considered gratuitous notwithstanding fees based on income eligibility guidelines charged by a local health department or indigent health care clinic and notwithstanding any fee paid by the local health department or indigent health care clinic to a provider in accordance with this paragraph (3).

(g) "Medically indigent person" means a person who lacks resources to pay for medically necessary health care services and who meets the eligibility criteria for qualification as a medically indigent person established by the secretary of health and environment under K.S.A. 1996 Supp. 75-6120, and amendments thereto.

(h) "Indigent health care clinic" means an outpatient medical care clinic operated on a not-for-profit basis which has a contractual agreement in effect with the secretary of health and environment to provide health care services to medically

indigent persons.

(i) "Local health department" shall have the meaning ascribed to such term under K.S.A. 65-241 and amendments thereto.

Sec. 2. K.S.A. 1996 Supp. 75-6102 is hereby repealed.

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

PROPOSED BILL NO. \_\_\_\_\_

By

AN ACT concerning public records; relating to records not required to be open; amending K.S.A. 1996 Supp. 45-221 and repealing the existing section; also repealing K.S.A. 1996 Supp. 45-221d.

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

Section 1. K.S.A. 1996 Supp. 45-221 is hereby amended to read as follows: 45-221. (a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court to restrict or prohibit disclosure.

(2) Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure.

(3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.

(4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such.

(5) Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law.

(6) Letters of reference or recommendation pertaining to the

*Senate Judiciary*  
*attachment 6*  
*1-16-97*

character or qualifications of an identifiable individual.

(7) Library, archive and museum materials contributed by private persons, to the extent of any limitations imposed as conditions of the contribution.

(8) Information which would reveal the identity of an individual who lawfully makes a donation to a public agency, if anonymity of the donor is a condition of the donation.

(9) Testing and examination materials, before the test or examination is given or if it is to be given again, or records of individual test or examination scores, other than records which show only passage or failure and not specific scores.

(10) Criminal investigation records, except that the district court, in an action brought pursuant to K.S.A. 45-222, and amendments thereto, may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure:

(A) Is in the public interest;

(B) would not interfere with any prospective law enforcement action;

(C) would not reveal the identity of any confidential source or undercover agent;

(D) would not reveal confidential investigative techniques or procedures not known to the general public;

(E) would not endanger the life or physical safety of any person; and

(F) would not reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

(11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or

undercover agent.

(12) Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.

(13) The contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition of property, prior to the award of formal contracts therefor.

(14) Correspondence between a public agency and a private individual, other than correspondence which is intended to give notice of an action, policy or determination relating to any regulatory, supervisory or enforcement responsibility of the public agency or which is widely distributed to the public by a public agency and is not specifically in response to communications from such a private individual.

(15) Records pertaining to employer-employee negotiations, if disclosure would reveal information discussed in a lawful executive session under K.S.A. 75-4319, and amendments thereto.

(16) Software programs for electronic data processing and documentation thereof, but each public agency shall maintain a register, open to the public, that describes:

(A) The information which the agency maintains on computer facilities; and

(B) the form in which the information can be made available using existing computer programs.

(17) Applications, financial statements and other information submitted in connection with applications for student financial assistance where financial need is a consideration for the award.

(18) Plans, designs, drawings or specifications which are

prepared by a person other than an employee of a public agency or records which are the property of a private person.

(19) Well samples, logs or surveys which the state corporation commission requires to be filed by persons who have drilled or caused to be drilled, or are drilling or causing to be drilled, holes for the purpose of discovery or production of oil or gas, to the extent that disclosure is limited by rules and regulations of the state corporation commission.

(20) Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

(21) Records of a public agency having legislative powers, which records pertain to proposed legislation or amendments to proposed legislation, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(22) Records of a public agency having legislative powers, which records pertain to research prepared for one or more members of such agency, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(23) Library patron and circulation records which pertain to

identifiable individuals.

(24) Records which are compiled for census or research purposes and which pertain to identifiable individuals.

(25) Records which represent and constitute the work product of an attorney.

(26) Records of a utility or other public service pertaining to individually identifiable residential customers of the utility or service, except that information concerning billings for specific individual customers named by the requester shall be subject to disclosure as provided by this act.

(27) Specifications for competitive bidding, until the specifications are officially approved by the public agency.

(28) Sealed bids and related documents, until a bid is accepted or all bids rejected.

(29) Correctional records pertaining to an identifiable inmate or releasee, except that:

(A) The name, sentence--data,--parole--eligibility--date, disciplinary-record, custody-level--and--location--of--an--inmate photograph and other identifying information, sentence data, custody or supervision level, disciplinary record, supervision violations, conditions of supervision (excluding requirements pertaining to mental health or substance abuse counseling), location of facility where incarcerated or location of parole office maintaining supervision and address of a releasee whose crime was committed after the effective date of this act shall be subject to disclosure to any person other than another inmate or releasee, except that disclosure of the location of an inmate transferred to another state pursuant to the interstate corrections compact shall be at the discretion of the secretary of corrections;

(B) the ombudsman of corrections, the attorney general, law enforcement agencies, counsel for the inmate to whom the record pertains and any county or district attorney shall have access to correctional records to the extent otherwise permitted by law;

(C) the information provided to the law enforcement agency



pursuant to the sex offender registration act, K.S.A. 22-4901, et seq., and amendments thereto, shall be subject to disclosure to any person; and

(D) records of the department of corrections regarding the financial assets of an offender in the custody of the secretary of corrections shall be subject to disclosure to the victim, or such victim's family, of the crime for which the inmate is in custody as set forth in an order of restitution by the sentencing court.

(30) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

(31) Public records pertaining to prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the state. This exception shall not include those records pertaining to application of agencies for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.

(32) The bidder's list of contractors who have requested bid proposals for construction projects from any public agency, until a bid is accepted or all bids rejected.

(33) Engineering and architectural estimates made by or for any public agency relative to public improvements.

(34) Financial information submitted by contractors in qualification statements to any public agency.

(35) Records involved in the obtaining and processing of intellectual property rights that are expected to be, wholly or partially vested in or owned by a state educational institution, as defined in K.S.A. 76-711, and amendments thereto, or an assignee of the institution organized and existing for the benefit of the institution.

(36) Any report or record which is made pursuant to K.S.A. 65-4922, 65-4923 or 65-4924, and amendments thereto, and which is

privileged pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

(37) Information which would reveal the precise location of an archeological site.

(38) Any financial data or traffic information from a railroad company, to a public agency, concerning the sale, lease or rehabilitation of the railroad's property in Kansas.

(39) Risk-based capital reports, risk-based capital plans and corrective orders including the working papers and the results of any analysis filed with the commissioner of insurance in accordance with K.S.A. 1996 Supp. 40-2c20, and amendments thereto.

(40) Memoranda and related materials required to be used to support the annual actuarial opinions submitted pursuant to subsection (b) of K.S.A. 40-409, and amendments thereto.

(41) Disclosure reports filed with the commissioner of insurance under subsection (a) of K.S.A. 1996 Supp. 40-2,156, and amendments thereto.

(42) All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the commissioner by the national association of insurance commissioners' insurance regulatory information system.

(43) Any records the disclosure of which is restricted or prohibited by a tribal-state gaming compact.

(44) Market research, market plans, business plans and the terms and conditions of managed care or other third party contracts, developed or entered into by the university of Kansas medical center in the operation and management of the university hospital which the chancellor of the university of Kansas or the chancellor's designee determines would give an unfair advantage to competitors of the university of Kansas medical center.

(b) Except to the extent disclosure is otherwise required by law or as appropriate during the course of an administrative proceeding or on appeal from agency action, a public agency or officer shall not disclose financial information of a taxpayer

which may be required or requested by a county appraiser to assist in the determination of the value of the taxpayer's property for ad valorem taxation purposes; or any financial information of a personal nature required or requested by a public agency or officer, including a name, job description or title revealing the salary or other compensation of officers, employees or applicants for employment with a firm, corporation or agency, except a public agency. Nothing contained herein shall be construed to prohibit the publication of statistics, so classified as to prevent identification of particular reports or returns and the items thereof.

(c) As used in this section, the term "cited or identified" shall not include a request to an employee of a public agency that a document be prepared.

(d) If a public record contains material which is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record which is subject to disclosure pursuant to this act. If a public record is not subject to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the requester any remaining portions which are subject to disclosure pursuant to this act, unless the request is for a record pertaining to a specific individual or to such a limited group of individuals that the individuals' identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record which pertain to such individual or individuals.

(e) The provisions of this section shall not be construed to exempt from public disclosure statistical information not descriptive of any identifiable person.

(f) Notwithstanding the provisions of subsection (a), any public record which has been in existence more than 70 years shall be open for inspection by any person unless disclosure of

the record is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and amendments thereto.

Sec. 2. K.S.A. 1996 Supp. 45-221 and 45-221d are hereby repealed.

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

PROPOSED BILL NO. \_\_\_\_\_

By

AN ACT concerning the department of corrections; relating to the treatment of inmates; amending K.S.A. 1996 Supp. 75-5210 and repealing the existing section.

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

Section 1. K.S.A. 1996 Supp. 75-5210 is hereby amended to read as follows: 75-5210. (a) Persons committed to the institutional care of the secretary of corrections shall be dealt with humanely, with efforts directed to their rehabilitation and return to the community as safely and promptly as practicable. For these purposes, the secretary shall establish programs of classification and diagnosis, education, casework, mental health, counseling and psychotherapy, chemical dependency counseling and treatment, sexual offender counseling, prerelease programs which emphasize re-entry skills, adjustment counseling and job placement, vocational training and guidance, work, library, physical education and other rehabilitation and recreation services; the secretary may establish facilities for religious worship; and the secretary shall institute procedures for the study and classification of inmates. The secretary shall maintain a comprehensive record of the behavior of each inmate reflecting accomplishments and progress toward rehabilitation as well as charges of infractions of rules and regulations, punishments imposed and medical inspections made.

(b) Programs of work, education or training shall include a system of promotional rewards entitling inmates to progressive transfer from high security status to a lesser security status. The secretary shall have authority at any time to transfer an inmate from one level of status to another level of status. Inmates may apply to the secretary for such status privileges. The secretary shall adopt rules--and-regulations-establishing

*Senate Judiciary*  
*Attachment 7*  
*1-16-97*

standards relating to the transfer of an inmate from one status to another, and in developing such standards the secretary shall take into consideration progress made by the inmate toward attaining the educational, vocational and behavioral goals set by the secretary for the individual inmate.

(c) The secretary, with the cooperation of the department of health and environment, shall adopt ~~rules--and--regulations~~ ~~establishing--and--prescribing~~ standards for health, medical and dental services for each institution, including preventive, diagnostic and therapeutic measures on both an outpatient and a hospital basis, for all types of patients. An inmate may be taken, when necessary, to a medical facility outside the institution.

(d) Under rules and regulations adopted by the secretary, directors of institutions may authorize visits, correspondence and communication, under reasonable conditions, between inmates and appropriate friends, relatives and others.

(e) The secretary shall adopt rules and regulations under which inmates, as part of a program anticipating their release from minimum security status, may be granted temporary furloughs from a correctional institution or contract facility to visit their families or to be interviewed by prospective employers.

(f) The secretary shall adopt rules and regulations for the maintenance of good order and discipline in the correctional institutions, including procedures for dealing with violations. Disciplinary rules and regulations may provide a system of punishment including segregation, forfeitures of good time earned, ~~finer,--extra-work,--loss-of-privileges,--restrictions~~ and payment of restitution. The secretary may adopt standards for the imposition of extra work, granting of privileges and imposition of restrictions.

The secretary and any persons designated by rules and regulations of the secretary may administer oaths for the purpose of conducting investigations and disciplinary proceedings pursuant to rules and regulations adopted by the secretary under

this subsection and under K.S.A. 75-5251, and amendments thereto. ~~For this purpose, the secretary shall adopt rules and regulations designating those persons who may administer oaths in such investigations and proceedings and the form and manner of administration of the oaths.~~

(g) A copy of the rules and regulations adopted pursuant to subsection (f) shall be provided to each inmate. Other rules and regulations of the secretary which are required to be published pursuant to K.S.A. 77-415 through 77-437, and amendments thereto, shall be made available to inmates by placing a copy in the inmate library at the institution or by some other means providing reasonable accessibility to inmates.

(h) Any inmate participating in work and educational release programs under the provisions of K.S.A. 75-5267 and amendments thereto shall continue to be in the legal custody of the secretary of corrections, notwithstanding the inmate's absence from a correctional institution by reason of employment, education or for any other purpose related to such work and educational release programs, and any employer or educator of that person shall be considered the representative or agent for the secretary.

(i) The secretary shall establish administrative and fiscal procedures to permit the use of regional or community institutions, local governmental or private facilities or halfway houses for the placement of inmates released for the purposes of this act and for the work and educational release programs under K.S.A. 75-5267 and amendments thereto.

(j) The secretary may establish correctional work facilities and select inmates to be assigned to such facilities.

(k) The secretary may acquire, in the name of the state, by lease, purchase or contract additional facilities as may be needed for the housing of persons in the secretary's custody.

(l) The secretary is hereby authorized to use any of the inmates assigned to the secretary's custody in the construction and repair of buildings or property on state owned or leased

grounds.

(m) For the purposes of establishing and carrying out the programs provided for by subsection (a) and by K.S.A. 75-5267 and amendments thereto, the secretary may contract with qualified individuals, partnerships, corporations or organizations; with agencies of the state; or with the United States or any political subdivision of the state, or any agency thereof.

Sec. 2. K.S.A. 1996 Supp. 75-5210 is hereby repealed.

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

7-4





**KANSAS BAR ASSOCIATION**

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Public Services Director

1-16-97 #8 Sen Jus  
January 15, 1997

The Hon. Mike Harris  
Chair, Senate Judiciary Committee  
Statehuse  
Topeka, Kansas 66612

Dear Mike,

Enclosed are several bills the KBA would request be introduced as committee bills. They are:

1. A reintroduction of 1996 SB 514, which allows division of goodwill of professional practices during a divorce.
2. Amendments to KSA 60-1615(c) regarding who can access child placement investigator reports. Current law discriminates against those persons who cannot afford lawyers.
3. New legislation allowing conservators of trusts to make gifts under certain highly limited circumstances.
4. New legislation allowing the creation of trusts by courts under certain circumstances.

A draft of each proposal is enclosed.

I have several other bills on which I do not yet have final authority from my association. I'd like your indulgence to request the committee introduce them next week or shortly thereafter.

Copies of this letter and attachments for the committee are enclosed. Thank you.

Best regards,

Ron Smith  
General Counsel

Senate Judiciary  
attachment 8  
1-16-97

Bill No. \_\_\_\_\_  
Gifts by Conservators

AN ACT \*\*\*

Be it enacted...

New Section 1. (a) The conservator may, upon the order of the district court, make gifts of a conservatee's property to the conservatee's spouse, issue, lineal ascendants, siblings, or an entity or entities which are income tax-exempt under section 501(c) (3) of the internal revenue code of 1986, provided the court finds:

(1) the conservatee is a disabled person and is unlikely to cease to be a disabled person in the reasonably foreseeable future;

(2) the conservatee's remaining property after such gift or gifts is likely to be sufficient to provide for the conservatee's needs;

(3) the conservatee, had the conservatee not been a disabled person, under the circumstances existing at the time of such gift or gifts would have made such gift or gifts to such person or entity, and

(4) with respect to a gift to such entity tax exempt under section 501(c) (3) of the internal revenue code of 1986, such gift is consistent with the practice of the conservatee prior to the time such conservatee was a disabled person.

(b) In the event the person or entity who received, or which would receive any such gift or gifts of the conservatee's property, is not the same person or entity who would or which would have received such property had the conservatee died at the time of such gift or gifts, notice shall be given to any and all adversely affected parties.

Sec. 2. Standard July 1 effective date.

Bill No. \_\_\_\_\_  
Creation of Trusts by Conservators

AN ACT \*\*\*

Be it enacted...

New Section 1. (a) The conservator may, with or without notice, upon the order of the district court, transfer property of the conservatee to a trust created by the conservator for the benefit of he conservatee, provided the court finds:

- (1) such transfer will enable the conservatee to qualify for benefits from any federal, state or local governmental program or will accelerate such qualification;
- (2) the conservator is to serve as sole trustee of such trust;
- (3) the conservatee is the sole beneficiary of such trust during its term;
- (4) the term of such trust does not extend beyond the conservatee's lifetime;
- (5) the provisions of such trust provide for the distribution of the trust estate for the benefit of the conservatee to the extent not satisfied from governmental benefits, in the same manner and under the same circumstances the property of the conservatee would have been distributed for the benefit of the conservatee under this chapter and article had such transfer not occurred;

(6) upon the termination of such trust, the provisions of the trust require the entire trust estate, to the extent not required to be expended to reimburse governmental entities for benefits provided as a condition for qualification for such benefits, is to be paid over and assigned to the conservatorship, should such termination occur during the conservatee's lifetime, and to the legal representative of the conservatee's estate, should such termination occur by virtue of the conservatee's death.

(b) To the full extent not inconsistent with the foregoing, any such trust so created and the trustee thereof shall be subject to the statutory provisions of Article 30 of Chapter 59, including but not limited to, investment authority, bonding and annual and final accounting requirements and appointment f successor trustees, in the same manner such statutory provisions would have applied had the property of the conservatee not been transferred to such trust.

Sec. 2. Standard July 1 effective date.

*Senate Judiciary*  
*attachment 9*  
*1-16-97*

**SENATE BILL No. 514**  
**By Committee on Judiciary**

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AN ACT concerning domestic relations; relating to marital property; professional goodwill; amending K.S.A. 23-201 and repealing the existing section.

*Be It Enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 23-201 is hereby amended to read as follows: 23.

(a) The property, real and personal, which any person in this state may own at the time of the person's marriage, and the rents, issues, profits or proceeds thereof, and any real, personal or mixed property which shall come to a person by descent, devise or bequest, and the rents, issues, profits or proceeds thereof, or by gift from any person except the person's spouse, shall remain the person's sole and separate property, notwithstanding the marriage, and not be subject to the disposal of the person's spouse or liable for the spouse's debts.

(b) All property owned by married persons, including the present value of any vested or unvested military retirement pay, *or, for divorce matters filed on or after July 1, 1997, professional goodwill to the extent that it is marketable for that particular professional*, whether described in subsection (a) or acquired by either spouse after marriage, and whether held individually or by the spouses in some form of co-ownership, such as joint tenancy or tenancy in common, shall become marital property at the time of commencement by one spouse against the other of an action in which a final decree is entered for divorce, separate maintenance, or annulment. Each spouse has a common ownership in marital property which vests at the time of commencement of such action, the extent of the vested interest to be determined and finalized by the court, pursuant to K.S.A. 60-1610 and amendments thereto.

Sec. 2. K.S.A. 23-201 is hereby repealed.

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

*Senate Judiciary*  
*Attachment 10*  
*1-16-97*

**Amendments to the Divorce code  
regarding dissemination of child placement investigator's testimony**

KBA recommends amendment to KSA 60-1615(c) as follows:

(c) Use of report and investigator's testimony. The court shall make the investigator's report available prior to the hearing to counsel ~~or to any party not represented by counsel~~. *Upon motion the report can be disseminated to the parties unless the court finds that distribution would be harmful to the parties, the child or other witnesses.* Any party to the proceeding may call the investigator and any person whom the investigator has consulted for cross-examination. In consideration of the mental health or best interests of the child, the court may approve a stipulation that the interview records not be divulged to the parties.

Senate Judiciary  
Attachment 11  
1-16-97