

Approved: Feb. 3, 1997
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Mike Harris at 10:09 a.m. on January 28, 1997 in Room 514-S of the Capitol.

All members were present except:

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: Randy Hearrell, Ks. Jud. Council
Kyle Smith, KBI
Brian Moline, Ks. Jud. Council
Greg DeBacker, Self
John House, Ks. Jud. Council

Others attending: See attached list

Minutes of the 1/22 and 1/23 meeting were approved on a motion by Senator Bond and seconded by Senator Oleen. Motion carried.

Bill Introductions

Conferee Randy Hearrell, representing the Kansas Judicial Council, stated that the current statutes that address the civil rights of persons with felony convictions are inconsistent with the constitution and with one another. He requested introduction of a bill that will rectify this problem. (Attachment 1) Mr. Hearrell introduced the subject of Lien Law Amendments and the efforts by his committee to make the filing, enforcement and foreclosure laws uniform. He stated his committee recognizes these changes will have an effect on certain people and he doesn't expect the Judiciary Committee to adopt the law but hopes that by "putting it on the table", input will be gained from people effected by the changes. He stated he hopes that it might become the subject of an interim study. (Attachment 2) Senator Emert moved to introduce the two bills. Senator Oleen seconded. Motion carried.

Conferee Kyle Smith, representing the Kansas Law Enforcement Training Commission, requested legislation regarding the commissioning of law enforcement officers, in particular, those who have not been actively employed for a period of time. He stated that current statutes allow a law enforcement officer to remain commissioned indefinitely. The legislation he is requesting would require an officer who has departed from the profession more than five years to either complete current basic training program; pass a written test or receive a special waiver. (Attachment 3) Mr. Smith also requested specific changes in the current laws regarding the following issues: a person convicted of a domestic violence misdemeanor crime would be disqualified from holding certain positions in law enforcement; auxiliary personnel working at a law enforcement agency who have been convicted of a felony are restricted in the use of communications systems and access to law enforcement records. (Attachment 4) Following discussion Senator Bond moved to introduce the bill, Senator Emert seconded. Motion carried.

SB 67 - Amendments to the protection from abuse act

Brian Moline appeared on behalf of the Family Law Advisory Committee to the Kansas Judicial Council as a proponent of **SB 67**. He stated that SB 67 represents a "clean-up" of the existing Protection From Abuse Act - K.S.A. 60-3102 et seq. and results from either complaints brought to the committee's attention by judges and practitioners or an attempt to conform the Kansas statute as much as possible to the Model State Code. He summarized various portions of the current bill and proposed amendments as follows: Sect 1 (a) adds a new classification-persons "who have a child in common" to the current classification; Sect 1(e) language changes; Sect 2(a) and (b) adds the new "or has a child in common"; Sect 1(e) validates commonly exercised discretion of district judges; Sect. 3(b) provides assurance that protection from abuse process cannot

be utilized to change an existing order; Sect. 4(2) prohibits canceling of utility services by the alleged abuser and Sect. 4 (9)(b)insures consistency in Orders if protection from abuse and divorce exist contemporaneously. (Attachment 5) Senator Steffes suggested the language be changed to read "has or *had* a child in common". No action was taken at this time.

A written letter of support from the Office of the Kansas Attorney General in favor of **SB 67** was presented. (Attachment 6)

Conferee Greg DeBacker, representing himself, stated that he is a member of the National Congress for Fathers and Children - Topeka Chapter and appeared as an opponent to various portions of **SB 67**. He asked for clarification of certain issues and asked for consideration of changes in Section 4. (2) pp. 2 and 3 of the bill. (Attachment 7)

Conferee John House appeared on behalf of the Care and Treatment Advisory Committee to the Kansas Judicial as a proponent of **SB 68**. He presented comments and proposed amendments on the following sections of the bill: Sect 1 (59-2957); Sect 2 (59-2958); Sect 3 (59-2966); Sect 4 (59-2967); Sect 5 (59-2969) and Sect 6 (59-2971) (Attachment 8) with technical changes on p. 2 and 5 of the bill, as well. (Attachment 9) Senator Oleen moved to adopt the amendments and report the bill out favorably for passage. Senator Emert seconded. Motion carried.

The Chair adjourned the meeting at 11:00 a.m.

The next meeting is scheduled for Wednesday January 29, 1997.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1-28-97

NAME	REPRESENTING
Ted Floyd	
Brian Moline	FAMILY LAW Committee
William Hearell	Jud Council
Paul Shellen	OIA
Dodie Lacey	Ks Children's Service League
Gudy Denton	Div of Budget
John House	SRS/Jud. Council
Charley Young	Via Christi Reg. Med. Center
Greg DeBacker	National Congress for ^{Fathers} children
PHIL ALQUIST	" " "
FLORA DEBACKER	" " "
CAROLYN ZIMMERMAN	MVER
Amy Slater	Senator Salisbury
Melissa Brunner	WISN-TV
Tessa Johnson	Topeka Ind. Living
Sharon Huffman	KCDC
Danielle Noe	Governor's Office
Julie Heim	Heim & Weir
Sherry Diehl	Kansas Advocacy & Protection Socy
Chip Wheeler	Ks Psychiatric Society

KATH R LAUDIS
 JAMES CHARLIE
 Fred Mertz

CHRISTIAN SCIENCE COMMITTEE
 ON PUBLICATION FOR KANSAS
 KCPAA
 Ricky Ricardo Enterprises

Gene M. Farrell
 Kyle Smith KIBI

KTLA

5,100 1-28-97 [unclear]

1/28/97

1997 JUDICIAL COUNCIL BILL REQUESTS

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Senate Judiciary
attachment 1
1-28-97

AN ACT concerning crimes, punishment and criminal procedure; relating to effects of felony conviction on civil rights of convicted felons; maintenance of expungement records; amending K.S.A. 22-3722 and 43-158 and K.S.A. 1996 Supp. 21-4603d, 21-4611, 21-4615 and 21-4619 and repealing the existing sections.

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

Section 1. K.S.A. 1996 Supp. 21-4603d is hereby amended to read as follows: 21-4603d.

(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 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) For persons convicted of felonies prior to July 1, 1997, 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.

Section 2. K.S.A. 1996 Supp. 21-4611 is hereby amended to read as follows: 21-4611.

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

(2) For persons convicted of felonies on and after July 1, 1997, an order of termination of

probation or assignment to community corrections shall have the effect of restoring the civil rights lost under subsection (a) of K.S.A. 21-4615 and amendments thereto, and such order of termination shall so state. Such order of termination shall also state that it does not relieve the defendant of complying with any state or federal law relating to the use or possession of firearms by persons convicted of a felony. A copy of such order of termination shall be provided to the defendant.

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

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

(1) For nondrug crimes:

(A) Thirty-six months for crimes in crime severity levels 1 through 5; and

(B) 24 months for crimes in crime severity levels 6 through 10; and

(2) for drug crimes:

(A) Thirty-six months for crimes in crime severity levels 1 through 3; and

(B) 24 months for crimes in crime severity level 4.

(3) Except as provided in subsections (c)(4) and (c)(5), the total period in all cases shall not exceed 60 months, or the maximum period of the prison sentence that could be imposed whichever is longer. Nonprison sentences may be terminated by the court at any time.

(4) If the defendant is convicted of nonsupport of a child, the period may be continued as long as the responsibility for support continues. If the defendant is ordered to pay full or partial restitution, the period may be continued as long as the amount of restitution ordered has not been paid.

(5) The court may modify, or extend the offender's period of supervision, pursuant to a modification hearing and a judicial finding of necessity. Such extensions may be made for a maximum period of five years or the maximum period of the prison sentence that could be imposed, whichever is longer, inclusive of the original supervision term.

Section 3. K.S.A. 21-4615 is hereby amended to read as follows: 21-4615. ~~(1)~~ (a) A person who has been convicted in any state or federal court of a felony shall, by reason of such conviction be ineligible to hold any public office under the laws of the state of Kansas, or to register as a voter or to vote in any election held under the laws of the state of Kansas or to serve as a juror in any civil or criminal case.

~~(2)~~ (b) The ineligibilities imposed by this section shall attach upon conviction and shall continue until such person is finally discharged from parole ~~or~~ conditional release, postrelease supervision, probation, a community correctional services program or other authorized disposition or is discharged from custody by reason of the expiration of the term of imprisonment to which the person was sentenced, at which time the rights lost under subsection (a) shall automatically be restored.

~~(3)~~ (c) The ineligibilities imposed upon a convicted person by this section shall be in addition to such other penalties as may be provided by law. Restoration of the rights lost under

subsection (a) shall not relieve a convicted person of complying with any state or federal law relating to use or possession of firearms by persons convicted of a felony.

(d) The provisions of this section apply to persons convicted of a felony on or after July 1, 1997.

Section 4. K.S.A. 1996 Supp. 21-4619 is hereby amended to read as follows: 21-4619.

(a) Except as provided in subsections (b) and (c), any person convicted in this state of a traffic infraction, cigarette or tobacco infraction, misdemeanor or a class D or E felony, or for crimes committed on or after July 1, 1993, nondrug crimes ranked in severity levels 6 through 10 or any felony ranked in severity level 4 of the drug grid, may petition the convicting court for the expungement of such conviction if three or more years have elapsed since the person: (1) Satisfied the sentence imposed; or (2) was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence.

(b) Except as provided in subsection (c), no person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a class A, B or C felony, or for crimes committed on or after July 1, 1993, if convicted of an off-grid felony or any nondrug crime ranked in severity levels 1 through 5 or any felony ranked in severity levels 1 through 3 of the drug grid, or:

(1) Vehicular homicide, as defined by K.S.A. 21-3405 and amendments thereto or as prohibited by any law of another state which is in substantial conformity with that statute;

(2) a violation of K.S.A. 8-1567 and amendments thereto, or a violation of any law of another state, which declares to be unlawful the acts prohibited by that statute;

(3) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262 and amendments thereto or as prohibited by any law of another state which is in substantial conformity with that statute;

(4) perjury resulting from a violation of K.S.A. 8-261a and amendments thereto or resulting from the violation of a law of another state which is in substantial conformity with that statute;

(5) violating the provisions of the fifth clause of K.S.A. 8-142 and amendments thereto, relating to fraudulent applications or violating the provisions of a law of another state which is in substantial conformity with that statute;

(6) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(7) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto, or required by a law of another state which is in substantial conformity with those statutes;

(8) violating the provisions of K.S.A. 40-3104 and amendments thereto, relating to motor vehicle liability insurance coverage; or

(9) a violation of K.S.A. 21-3405b, and amendments thereto.

(c) There shall be no expungement of convictions for the following offenses or of

convictions for an attempt to commit any of the following offenses: (1) Rape as defined in subsection (a)(2) of K.S.A. 21-3502 and amendments thereto; (2) indecent liberties with a child as defined in K.S.A. 21-3503 and amendments thereto; (3) aggravated indecent liberties with a child as defined in K.S.A. 21-3504 and amendments thereto; (4) criminal sodomy as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-3505 and amendments thereto; (5) aggravated criminal sodomy as defined in K.S.A. 21-3506 and amendments thereto; (6) indecent solicitation of a child as defined in K.S.A. 21-3510 and amendments thereto; (7) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511 and amendments thereto; (8) sexual exploitation of a child as defined in K.S.A. 21-3516 and amendments thereto; (9) aggravated incest as defined in K.S.A. 21-3603 and amendments thereto; (10) endangering a child as defined in K.S.A. 21-3608 and amendments thereto; (11) abuse of a child as defined in K.S.A. 21-3609 and amendments thereto; or (12) any conviction for any offense in effect at any time prior to the effective date of this act, that is comparable to any offense as provided in this subsection.

(d) When a petition for expungement is filed, the court shall set a date for a hearing thereon and shall give notice thereof to the prosecuting attorney. The petition shall state: (1) The defendant's full name; (2) the full name of the defendant at the time of arrest and conviction, if different than the defendant's current name; (3) the defendant's sex, race and date of birth; (4) the crime for which the defendant was convicted; (5) the date of the defendant's conviction; and (6) the identity of the convicting court. There shall be no docket fee for filing a petition pursuant to this section. All petitions for expungement shall be docketed in the original criminal action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the Kansas parole board.

(e) At the hearing on the petition, the court shall order the petitioner's conviction expunged if the court finds that:

(1) The petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;

(2) the circumstances and behavior of the petitioner warrant the expungement; and

(3) the expungement is consistent with the public welfare.

(f) When the court has ordered a conviction expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the conviction. After the order of expungement is entered, the petitioner shall be treated as not having been convicted of the crime, except that:

(1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;

(2) the petitioner shall disclose that the conviction occurred if asked about previous convictions (A) in any application for employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01 and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01 and amendments thereto; with a criminal justice

agency, as defined by K.S.A. 22-4701 and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01 and amendments thereto, of the department of social and rehabilitation services; (B) in any application for admission, or for an order of reinstatement, to the practice of law in this state; (C) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery; (D) to aid in determining the petitioner's qualifications for executive director of the Kansas racing commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission; (E) upon application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto; (F) the petitioner's qualifications to be an employee of the state gaming agency; or (G) the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

(3) the court, in the order of expungement, may specify other circumstances under which the conviction is to be disclosed;

(4) the conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged; and

(5) upon commitment to the custody of the secretary of corrections, any previously expunged record in the possession of the secretary of corrections may be reinstated and the expungement disregarded, and the record continued for the purpose of the new commitment.

(g) Whenever a person is convicted of a crime, pleads guilty and pays a fine for a crime, is placed on parole, postrelease supervision or probation, is assigned to a community correctional services program, is granted a suspended sentence or is released on conditional release, the person shall be informed of the ability to expunge the conviction.

(h) Subject to the disclosures required pursuant to subsection (f), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose conviction of a crime has been expunged under this statute may state that such person has never been convicted of such crime, but the expungement of a felony conviction does not relieve an individual of complying with any state or federal law relating to the use or possession of firearms by persons convicted of a felony.

(I) Whenever the record of any conviction has been expunged under the provisions of this section or under the provisions of any other existing or former statute, the custodian of the records of arrest, conviction and incarceration relating to that crime shall seal and maintain such records but shall not disclose the existence of such records, except when requested by:

(1) The person whose record was expunged;

(2) a criminal justice agency, private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;

(3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary of social and rehabilitation services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01 and amendments thereto, of the department of social and rehabilitation services of any person whose record has been expunged;

(5) a person entitled to such information pursuant to the terms of the expungement order;

(6) a prosecuting attorney, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;

(7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged;

(8) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(9) the governor or the Kansas racing commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission; or

(10) the Kansas sentencing commission; or

(11) the state gaming agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications: (A) To be an employee of the state gaming agency; or (B) to be employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact.

Section 5. K.S.A. 22-3722 is hereby amended to read as follows: 22-3722. The period served on parole or conditional release shall be deemed service of the term of confinement, and, subject to the provisions contained in K.S.A. 75-5217 and amendments thereto relating to an inmate who is a fugitive from or has fled from justice, the total time served may not exceed the maximum term or sentence. The period served on postrelease supervision shall vest in and be subject to the provisions contained in K.S.A. 75-5217 and amendments thereto relating to an inmate who is a fugitive from or has fled from justice. The total time served shall not exceed the postrelease supervision period established at sentencing.

When an inmate on parole or conditional release has performed the obligations of the release for such time as shall satisfy the Kansas parole board that final release is not incompatible with the best interest of society and the welfare of the individual, the parole board may make a final order of discharge and issue a certificate of discharge to the inmate but no such order of discharge shall be made in any case within a period of less than one year after the date of release except where the sentence expires earlier thereto. When an inmate has reached the end of the

postrelease supervision period, the parole board shall issue a certificate of discharge to the releasee. Such discharge, and the discharge of an inmate who has served the inmate's term of imprisonment, shall have the effect of restoring all the civil rights lost by operation of law upon commitment under the provisions of subsection (a) of K.S.A. 21-4615 and amendments thereto, and the certification certificate of discharge shall so state. The certificate of discharge shall also state that such certificate does not relieve the inmate of complying with any state or federal law relating to the use or possession of firearms by persons convicted of a felony. Nothing herein contained shall be held to impair the power of the governor to grant a pardon or commutation of sentence in any case.

Section 6. K.S.A. 43-158 is hereby amended to read as follows: 43-158. The following persons shall be excused from jury service: (a) Persons unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out a jury questionnaire form prepared by the commissioner;

(b) persons under adjudication of incompetency adjudicated as a disabled person, as defined in K.S.A. 59-3002 and amendments thereto;

(c) persons who within ten (10) years immediately preceding have been convicted of or pleaded guilty, or nolo contendere, to an indictment or information charging a felony, unless such person has been finally discharged from supervision for such felony conviction or has been discharged from custody by reason of the expiration of the term of imprisonment to which the person was sentenced for such felony conviction

Section 7. K.S.A. 22-3722 and 43-158 and K.S.A. 1996 Supp. 21-4603d, 21-4611, 21-4615 and 21-4619 are hereby repealed.

Section 8. This act shall take effect and be in force from and after its publication in the statute book.

7.5ud 1-28-97 att # 2
(12/3/96)

Kansas Statutory Lien Act
Proposed Language:
Draft as of December 3, 1996

Section 1. Sections one through 21, and amendments thereto, may be cited as the Kansas statutory lien act.

Section 2. Policy and subject matter of act.

(a) Except as otherwise provided in section 3 on excluded transactions, this act provides the sole means for creating, perfecting and enforcing statutory liens arising under section 5 on real or personal property (including leasehold interests). It applies to any transaction, regardless of its form, which gives rise to a lien under section 5.

(b) This act is intended to replace all types of statutory liens referred to in K.S.A. 84-9-310.

Section 3. Excluded transactions.

(a) This act shall not apply to creation, perfection or enforcement of the following types of liens:

- (1) any liens created by federal statute;
- (2) any lien created by state statute or attachment for the enforcement of taxes owed by one or more owners of real or personal property;
- (3) any lien under K.S.A. 7-108;
- (4) any lien imposed under K.S.A. 17-6910;
- (5) any lien under K.S.A. 36-201;
- (6) any lien imposed under K.S.A. 56-328 or 56-339(a) or charging orders against partnership interests under K.S.A. 56-1a-403;
- (7) any agricultural input liens created under K.S.A. 58-241 et seq.;
- (8) any lien created by agreement under an apartment, home or condominium owner's association contract or covenant including any lien imposed under K.S.A. 58-3710;
- (9) any lien on a mobile home created under K.S.A. 58-25,121;
- (10) any liens created by judicial attachment, levy or garnishment under K.S.A. 60-701 et seq or judgment liens arising under K.S.A. 60-2202;
- (11) any ~~lien created under K.S.A. 84-9-319~~ [security interest arising under article 9 of the UCC uniform commercial code, K.S.A. 84-9-101, et seq.], including any security interest or lien under K.S.A. 84-9-319;
- (12) any lien for medical treatment in a personal injury recovery imposed by

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agreement or under K.S.A. 65-406;

(13) any lien imposed under K.S.A. 68-2069 or 68-20,112;

(14) any lien arising under K.S.A. 55-180 relating to testing and investigation of pollution;

(15) any lien created under a real estate mortgage, contract for deed, escrow contract, or written agreement in which real estate is involved;

(16) any lien arising under K.S.A. 74-3210;

(17) any liens created and perfected under laws of another state on property moved into the state of Kansas after the lien is perfected; or

(18) any lien imposed by court order to secure payment of alimony, maintenance or child support;

(b) Nothing in this act shall be construed to limit a court of this state's inherent power to impose as a remedy an equitable mortgage or constructive or resulting trust on property subject to its jurisdiction after due process. The provisions of this act shall not apply to creation, attachment, priority or enforcement of such remedies.

[This will be in the repealer.

The following statutory provisions are specifically repealed:

K.S.A. 9-1506 the bank's lien on safe deposit box contents;

K.S.A. 34-266;

K.S.A. 47-836;

K.S.A. 55-207;

K.S.A. 55-201;

K.S.A. 58-203;

K.S.A. 58-207;

K.S.A. 58-208;

K.S.A. 58-209;

K.S.A. 58-218;

K.S.A. 58-220;

K.S.A. 58-222;

K.S.A. 58-227;

K.S.A. 58-813;

K.S.A. 58-2524; and

K.S.A. 60-1101 to 1110.]

Section 4. Definitions.

(a) The following definitions found in the uniform commercial code shall apply in this act:

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(1) 1-201(3)	Agreement;
(2) 1-201(9)	Buyer in ordinary course of business;
(3) 1-201(12)	Creditor;
(4) 1-201(19)	Good faith;
(5) 1-201(27)	Notice;
(6) 1-201(29)	Party;
(7) 1-201(30)	Person;
(8) 1-201(32)	Purchase;
(9) 1-201(33)	Purchaser;
(10) 1-201(34)	Remedy;
(11) 1-201(36)	Rights;
(12) 1-201(37)	Security interest;
(13) 1-201(39)	Signed;
(14) 1-201(44)	Value;
(15) 1-201(45)	Warehouse receipt;
(16) 1-201(46)	Written;
(17) 3-104(j)	Certificate of deposit;
(18) 9-106	Accounts;
(19) 9-203	Attaches;
(20) 9-105	Collateral;
(21) 9-109	Consumer goods, provided, however, that consumer goods shall not include any vehicle or motor home or manufactured home;
(22) 9-105	Debtor;
(23) 9-105	Document;
(24) 9-105(1)(g)	Encumbrance;
(25) 9-109	Equipment;
(26) 9-313(1)(a)	Fixture;
(27) 9-313(1)(b)	Fixture filing;
(28) 9-109(3)	Farm products;
(29) 9-105	Goods;
(30) 9-109	Instrument;
(31) 9-109(4)	Inventory;
(32) 9-105(1)(j)	Mortgage;
(33) 9-107	Purchase money security interest;
(34) 9-105(1)(m)	Secured party;

(b) As used in this act, unless the context otherwise requires:

(1) "Custom farming" means any services or labor contracted for by the owner or lessee of farm ground real estate or the agent of the owner or lessee, incident to

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production of crops (including planting, harvesting or hauling), or farm products of all kinds on that ~~ground real estate~~. Custom farming shall not include the furnishing of agricultural inputs of any kind, including, but not limited to, fuel, fertilizer, chemicals and medicines, seed or other supplies used in the planting or production of crops or farm products. Nor does it include labor, services or materials provided, or performed in terracing, fencing, constructing buildings, storage facilities, fixtures, or other improvements, or any other work done to repair or improve the real estate itself.

(2) "Improvement of residential property" means:

(A) Improvement of a ~~preexisting~~ an existing structure in which the owner resides at the time the claimant first furnishes labor, equipment, material or supplies and which is not used or intended for use as a residence for more than two families or for commercial purposes ~~or~~ and improvement or construction of any addition, garage, fence, swimming pool, outbuilding or other improvement appurtenant to such a structure; or

(B) Any construction upon real property which is

(i) owned or acquired by an individual at the time the claimant first furnishes labor, equipment, material or supplies; and

(ii) intended to become and does become the principal personal residence of that individual upon completion; and

(iii) not used or intended for use as a residence for more than two families or for commercial purposes.

(3) "Harvesting" means all services, labor, and materials furnished in connection with the cutting, picking or gathering and transportation of crops severed from the real estate on which they were grown. It does not include any work or materials provided in connection with breeding, feeding, finishing, or transporting livestock.

(4) "Lien" means a charge on property created under this act to secure payment of a debt or performance of an obligation.

(5) "Lien holder" means a person claiming a lien on personal or real property under the provisions of this act. The assignee of a statutory lien is also a lien holder.

(6) "Lien statement" means the ~~properly completed~~ written document necessary to perfect a nonpossessory statutory lien. "Lien statement" means the original lien statement and any amendments thereto.

(7) "New residential property" means a new structure which is constructed for use

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as a residence and which is not used or intended for use as a residence for more than two families or for commercial purposes. "New residential property" does not include any improvement of a ~~preexisting~~ an existing structure or construction of any addition, garage or outbuilding appurtenant to a ~~preexisting~~ an existing structure.

(8) "Owner contractor" means any person, firm, partnership, limited partnership, limited liability corporation or corporation who:

(A) is the fee title owner of the real estate or a leasehold in real estate subject to the lien; and

(B) enters into contracts with more than one person, firm or corporation for labor, equipment, material or supplies used or consumed for the improvement of such real property or leasehold.

(9) "Operator" means any person or entity operating an oil and gas or other mineral or mining leasehold. Such person or entity shall be deemed to act for all interest holders and may subject the entire working interest whole of such leasehold to a lien under this act by contracting for services, labor, repairs, equipment, improvements or transportation.

(10) "Possession" means physical control of personal property (other than a leasehold interest). Provided that where personal property is covered by a nonnegotiable instrument, the lien holder shall be deemed to have perfected its lien by possession as of the time the lien holder serves written notice of the claimed lien together with any required lien statement on the bailee. And, provided further, where a third party, other than the owner/debtor or the lien holder is in possession of personal property (other than a leasehold), the lien holder may agree with the third party in writing that the third party has possession of the property subject to the lien as bailee for the lien holder.

(11) "Proceeds" means whatever is received upon the sale, exchange, collection or other disposition of property subject to a statutory lien. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the transaction giving rise to the statutory lien. Money, checks, deposit accounts, and the like are "cash proceeds." All other proceeds are "non-cash proceeds."

(12) "Single transaction" means any work on the same tract of real property or item of personal property, whether done under a single contract or a series of contracts unless a period of more than 90 days elapses between the dates of such

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work. It shall only be necessary for the claimant to file one lien statement of the work done and material furnished covering the transactions as a whole.

(13) "Statutory lien" means a lien created by this act.

(14) "Subcontractor" means:

(A) A person furnishing labor under an agreement with a contractor or owner contractor; or

(B) A person furnishing labor under an agreement with a person who is a subcontractor under (A); or

(C) A person furnishing equipment, material or supplies under an agreement with a contractor, owner contractor or person who is a subcontractor under (A).

(15) "Vehicle" means any means of transportation of goods or persons as defined under K.S.A. 8-126, and any vehicle which moves on stationary rails or tracks in interstate commerce.

(16) "Warning statement" the warning statement served by a subcontractor performing repairs, or improvements or furnishing labor, materials or supplies for the improvement of real property pursuant to section 6 of this act.

(17) "Work" means any of the acts giving rise to a lien under section 5.

Section 5.

(a) Creation of statutory lien:

(1) Any person who, at the request of, or with the consent of the owner, operator or spouse of an owner of personal or real property or the agent of the owner or other person in lawful possession of such property, shall perform or furnish labor (including custom farming and harvesting), furnish accessions, material, equipment, parts, supplies, feed (including pasturage), seed, veterinary services, provide transportation, bailment, warehousing or storage for, make improvements or repairs to real or personal property shall:

(A) in the case of a leasehold, (including an oil and gas or other mineral or mining leasehold), have a lien on the whole of such leasehold to secure the payment of the charges for such labor, equipment, parts, supplies, feed, seed, services, transportation, bailment, warehousing or storage.

(B) in the case of all other personal or real property, have a lien on the interest

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of the person, or spouse of the person, requesting the work, materials, repairs or improvements in that property to secure the payment of the charges for such labor, equipment, parts, supplies, feed, seed, services, transportation, bailment, warehousing or storage.

(2) Except where this act otherwise provides, a statutory lien continues in property subject to the lien notwithstanding sale, exchange or other disposition thereof unless the disposition was authorized by the holder of the lien in writing, and also continues in any identifiable proceeds including collections received by the debtor. The statutory lien in proceeds terminates 10 days after receipt of the proceeds by the debtor unless the proceeds are identifiable cash proceeds.

(b) Statutory lien of subcontractors. Any person who, acting as a subcontractor, at the request of a person performing work or improvements with the consent of the owner or spouse of an owner of personal or real property or the agent of the owner or other person in lawful possession of such property, shall perform labor, furnish accessions, material, equipment, parts, supplies, feed (including pasturage), seed, veterinary services, provide transportation or storage for, make improvements or repairs to real or personal property shall have a lien on the interest of the person, or spouse of the person, with whom the contractor has an agreement for the work, materials, repairs or improvements in that property to secure the payment of the charges for such labor, equipment, parts, supplies, feed, seed, services, transportation, bailment, warehousing or storage.

(c) Rights and liability of owner. The owner of real or personal property shall not become liable for a greater amount than the owner has contracted to pay the original contractor, except for any payments to the contractor made:

(1) Prior to the expiration of the period for filing lien statements under this act, if no warning statement is required by this act; or

(2) Subsequent to the date the owner received the warning statement, if a warning statement is required by this act and amendments thereto.

The owner may discharge any lien filed under this act which the contractor fails to discharge and credit such payment against the amount due the contractor.

Section 6. Attachment of statutory lien:

(a) Attachment. The statutory lien created by this act shall attach to the property on which the lien holder performed work or provided goods or services at the time the work, goods or services are first performed or provided. Provided, however, the lien for custom

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harvesting, farming, repairs to fixtures, equipment and accessions located on real property where the debtor is a lessee shall not attach to the real property but only to the debtor's interest in the leasehold or equipment located on the leasehold or real property or the farm products produced on the leasehold.

(b) Proceeds. A statutory lien continues in identifiable proceeds of the property subject to the lien as provided in ~~K.S.A. 84-9-306 and amendments thereto~~ subsection (a)(2) of section 5.

(c) Subcontractors' liens: improvement of residential real property; warning statement.

(1) A statutory lien by a subcontractor furnishing labor, equipment, materials or supplies for the improvement of residential property does not attach pursuant to this act unless the claimant has:

(A) Mailed to any one of the owners of the property a warning statement conforming with this act; or

(B) In the claimant's possession a copy of a statement signed and dated by any one owner of the property stating that the general contractor or the claimant had given the warning statement conforming with this section to one such owner of the property.

(2) The warning statement provided for by this subsection, to be effective, shall contain substantially the following statement:

"Notice to owner:

(name of supplier or subcontractor) is a supplier or subcontractor providing materials or labor on Job No. _____ at _____
_____ (residence address) under an agreement with
_____ (name of contractor). Kansas law will allow this
supplier or subcontractor to file a lien against your property for materials or labor not paid for by your contractor unless you have a waiver of lien signed by this supplier or subcontractor. If you receive a notice of filing of a lien statement by this supplier or subcontractor, you may withhold from your contractor the amount claimed until the dispute is settled."

(3) The warning statement provided for by this subsection shall not be required if the claimant's total claim does not exceed \$250.

(d) New residential property, notice of intent to perform.

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(1) A lien for the furnishing of labor, equipment, materials or supplies for the construction of new residential property may be claimed pursuant to this act after the passage of title to such new residential property to a good faith purchaser for value only if the claimant has filed a notice of intent to perform prior to the recording of the deed effecting evidencing passage of title to such new residential property. Such notice shall be filed in the office of the register of deeds in the county where the property is located.

(2) The notice of intent to perform and release thereof provided for in this subsection, to be effective, shall contain substantially the following statement, whichever is applicable:

NOTICE OF INTENT TO PERFORM

"I _____
(name of supplier, subcontractor or contractor)
of _____
(address of supplier, subcontractor or contractor)

do hereby give public notice that I am a supplier, subcontractor or contractor or other person providing materials or labor on property owned by _____
(name of property owner)
and having the legal description as follows:

RELEASE OF NOTICE OF INTENT TO PERFORM No. _____
AND WAIVER OF LIEN

"I _____ (name of supplier, subcontractor or contractor) of _____
(address of supplier, subcontractor or contractor) do hereby acknowledge that I filed notice of intent to perform no. _____ covering property owned by _____ (name of property owner) and having the legal description as follows: _____

In consideration of the sum of \$ _____, the receipt of which is hereby acknowledged, I hereby direct the register of deeds of _____, Kansas to release the subject notice of intent to perform and do hereby waive and relinquish any statutory right to a lien for the furnishing of labor, equipment, materials or supplies to the above-described real estate under the statutes of the state of Kansas."

(3) When any claimant who has filed a notice of intent to perform has been paid in full, such claimant shall be required to file in the office in which the notice of intent

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to perform was filed, and to pay any requisite filing fee, a release of such notice and waiver of lien which shall be executed by the claimant, shall identify the property as set forth in the notice of intent to perform, and state that it is the intention of the claimant to waive or relinquish any statutory right to a lien for the furnishing of labor or material to the property. Upon such filing, the notice of intent to perform previously filed by such claimant shall be of no further force or effect, and such claimant's right to a statutory lien under this act shall be extinguished.

(4) Any owner of the real estate upon which a notice of intent to perform has been filed, or any owner's heirs or assigns, or anyone acting for such owner, heirs or assigns, and after payment in full to the claimant, may make demand upon the claimant filing the notice of intent to perform, for the filing of a release of the notice and waiver of lien as provided for in subsection (d)(3), unless the same has expired by virtue of the provisions set forth in subsection (d)(5). If the claimant fails to file such a release within 10 days after written demand, the claimant shall be liable to the owner, or the owner's heirs and assigns, for \$500, and in addition for any loss caused to the owner, or the owner's heirs and assigns, by such failure.

(5) Notwithstanding the requirements of subsections (d)(3) and (4), a notice of intent to perform shall be of no further force or effect after the expiration of 18 months from the date of filing the same, unless within such time the claimant has perfected a statutory lien under this act.

Section 7.

Bond to secure payment of claims. The contractor or owner may execute a bond to the state of Kansas for the use of all persons in whose favor liens might accrue by virtue of this act, conditioned for the payment of all claims which might be the basis of liens in a sum not less than the contract price, with good and sufficient sureties, to be approved by a judge of the district court and filed with the register of deeds in the county where the work is to be performed. When bond is approved and filed, no lien shall attach under this act; and if when such bond is filed liens have already been filed, such liens are discharged. Suit may be brought on such bond by any person interested.

Section 8. Public works bond.

(a) Bond by contractor. Except as provided in subsection (c), whenever any public official, under the laws of the state, enters into a contract in any sum exceeding \$10,000 with any person or persons for the purpose of making any public improvements, or constructing any public building or making repairs on the same, such officer shall take, from the party contracted with, a bond to the state of Kansas with good and sufficient

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sureties in a sum not less than the sum total in the contract, conditioned that such contractor or the subcontractor of such contractor shall pay all indebtedness incurred for labor furnished, materials, equipment or supplies, used or consumed in connection with or in or about the construction of such public building or in making such public improvements.

(b) Filing and Limitations. The bond required under subsection (a) shall be filed with the register of deeds of the county in which such public improvement is to be made. When such bond is filed, no statutory lien shall attach under this act, and if, when such bond is filed, liens have already been filed, such liens shall be discharged. Any person to whom there is due any sum for which a statutory lien under this act might attach, or such person's assigns, may bring an action on such bond for the recovery of such indebtedness but no action shall be brought on such bond after six months from the completion of such public improvements or public buildings.

(c) In any case of a contract for construction, repairs or improvements for the state or a state agency under K.S.A. 75-3739 or 75-3741, and amendments thereto, a certificate of deposit payable to the state may be accepted in accordance with and subject to section 9, and amendments thereto. When such certificate of deposit is so accepted, no lien shall attach under this article, and if when such certificate of deposit is so accepted, liens have already been filed, such liens shall be discharged. Any person to whom there is due any sum for labor furnished, materials, equipment or supplies used or consumed in connection with or for such contract for construction, repairs or improvements, shall make a claim therefor with the director of purchases under section 9, and amendments thereto.

Section 9. Certificate of deposit authorized for state capital improvement projects.

(a) The director of purchases may accept a certificate of deposit payable to the state instead of any required surety bond from a bidder or contractor in the case of any contract for construction, repairs or improvements under K.S.A. 75-3739, 75-3741 or section 8 and amendments thereto. Each such certificate of deposit shall be in an amount which is at least equal to the contract price, shall be subject to forfeiture to the state and shall be in a form and under such other conditions as may be applicable and prescribed by the director of purchases for surety bonds and in accordance with this section.

(b) Each such certificate of deposit shall be retained by the state for at least six months after the final acceptance of the construction, repairs or improvements for which the contract was entered into. At the end of such period, the certificate of deposit may be endorsed back to the vendor or bidder if there are no claims by the state under the contract for which the certificate of deposit was accepted under this section or by any

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person making a claim against the certificate of deposit under subsection (c). All interest accruing under, any such certificate of deposit shall belong to the bidder or contractor unless the certificate of deposit is forfeited to the state or as otherwise provided under subsection (c).

(c) (1) In any case of a breach of performance under a contract for construction repairs or improvements for which a certificate of deposit was accepted under this section, the director of purchases shall determine the amount of money needed to remedy such breach and may set off the amount from the moneys on deposit under the certificate of deposit, after notice to the contractor of such breach and the amount determined by the director therefor.

(2) In any case of a claim against a certificate of deposit accepted under this section for labor furnished, materials, equipment or supplies, used or consumed in connection with or for the contract for construction, repairs or improvements, the director of purchases may pay such claim from the moneys on deposit under the certificate of deposit if the contractor does not dispute such claim or the amount thereof. If the contractor disputes any such claim or the amount thereof, the director of purchases may interplead such claim or claims in the district court for a county where the construction, repairs or improvements are located. The director of purchases may file an original action to resolve such claim or claims, if necessary, and pay any moneys remaining from the certificate of deposit into the district court therefor.

Section 10. Perfection of statutory lien.

(a) Personal property.

(1) Except as provided hereafter, any statutory lien created under this act may be perfected by possession of personal property or the filing of a lien statement, as provided in this section and section 11, in a form approved by the secretary of state.

(2) Perfection by possession. A person holding a statutory lien on personal property may perfect the lien by retaining possession thereof. A statutory lien on consumer goods having a fair market value of \$1,000 or less at the time of the attachment of the lien may only be perfected by possession.

(3) Perfection by filing lien statement. A person holding a statutory lien on personal property (other than an interest in a leasehold or consumer goods having a fair market value of \$1,000 or less at the time of the attachment of the lien) may continue perfection of that lien by filing a lien statement, within the time prescribed by section 11, as follows:

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(A) If the personal property is a titled motor vehicle, a lien statement shall be filed with the secretary of state in a form prescribed by the secretary of state.

(B) If the personal property is consumer goods having a fair market value of greater than \$1,000 as of the date the lien attaches, the lien statement shall be filed with the register of deeds in the county of the owner's residence if the debtor is a Kansas resident or in the county where the property is located if the debtor is not a resident of Kansas. If the lien holder is unable to determine where the owner is resident, the lien statement shall be filed in the county where the property is located when the lien attaches.

(C) If the personal property is farm products, other than growing or harvested crops, the lien statement shall be filed with the register of deeds in the county where the debtor is resident as of the date of attachment and with the secretary of state. If the debtor is not a resident of Kansas, the lien statement shall be filed with the register of deeds in the county where the farm products are located as of the date of attachment of the lien and with the secretary of state. If the lien holder is unable to determine where the owner is resident, the lien statement shall be filed in the county where the property is located when the lien attaches and with the secretary of state.

(D) If the property is growing or harvested crops the lien statement shall be filed with the register of deeds in the county where the crops are located as of the date of attachment and with the secretary of state.

(E) If the property is an interest in a leasehold, including but not limited to oil or gas or other mineral or mining leases, the lien statement shall be filed with the register of deeds in the county where the real estate subject to the lease is located and with the secretary of state

(F) In all other cases, the lien statement shall be filed with the secretary of state.

(4) Perfection of a statutory lien in personal property by possession continues in the property upon the filing of the lien statement.

(b) Real property and fixtures. A person holding a statutory lien on real property or fixtures shall file the lien statement required by this act with the secretary of state and the register of deeds in the county where the real property is located.

Section 11. Time for filing lien statement.

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(a) Personal property. (1) Except as provided in subsection (a)(2), a lien holder claiming a lien on personal property shall file a lien statement as provided in this act not later than 90 days after the later of (A) delivery of possession of the property subject to the lien to the debtor or some other person entitled to possession or (B) the date material, equipment or supplies were last furnished or work was last performed.

(2) A lien holder claiming a lien on a vehicle or consumer goods shall file a lien statement as provided in this act not later than 30 days after the later of (A) delivery of possession of the property subject to the lien to the debtor or some other person entitled to possession or (B) the date material, equipment or supplies were last furnished or work was last performed.

(b) Real property, leaseholds, fixtures. (1) Except as provided in subsection (b)(2), a lien holder claiming a lien on an interest in fixtures, a leasehold or any other interest in real estate shall file a lien statement as provided in this act not later than 90 days after material was last furnished or labor last performed by the lien claimant.

(2) If the lien holder is a subcontractor, the lien holder shall file a lien statement as provided in this act not later than 60 days after material was last furnished or labor last performed by the lien claimant.

Section 12. Contents of lien statement; formal requisites of lien statement; amendments.

(a) A lien statement shall conform substantially to a form prescribed by the secretary of state and shall contain: (1) the names of the debtor and the lien holder; (2) an address of the lien holder from which information concerning the lien may be obtained; (3) a mailing address of the debtor; (4) a statement of the date the lien attached; (5) a statement describing the property subject to the lien; (6) a reasonably itemized statement of the amount of the lien and the work, storage and/or materials for which the lien is claimed; but if the amount of the claim is evidenced by a written instrument, a copy thereof may be attached to the claim in lieu of the itemized statement; (7) a legal description of the real estate when the lien statement covers an interest in real estate or fixtures; (8) the name of the record owner of the real estate where the debtor is a lessee of the real estate; (9) the name of the contractor when the lien claimant is a subcontractor; (10) a serial or vehicle identification number for the vehicle subject to the lien when the lien statement covers a titled vehicle, mobile or manufactured home; and shall be signed by the lien holder under penalty of perjury pursuant to K.S.A. 53-601 and amendments thereto.

If a warning statement is required to be given pursuant to subsection (c) of section 6, there shall be attached to the lien statement the affidavit of the subcontractor that such

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warning statement was properly given.

(b) For the purposes of this section:

(1) A description of the location of the property subject to the lien is not necessary except where a description of location is specifically required by this act.

(2) When the lien statement covers growing crops, the statement shall contain a description of the real estate concerned. When the lien statement covers a leasehold interest (including an oil and gas or other mineral or mining leasehold), real estate or fixtures (as defined in K.S.A. 84-9-313, and amendments thereto), the statement shall contain a legal description of the real property subject to the lien.

(c) The secretary of state shall prescribe a form substantially as follows to comply with subsections (a) and (b) of this section:

Name of debtor (or assignor)

Address

Name of lien holder (or assignee)

Address

1. This lien statement covers the following property:
(Describe)

_____ [VIN _____]

2. (If collateral is growing crops, describe real estate)

3. This lien statement covers real estate or fixtures, or a leasehold interest (including an oil and gas or other mineral or mining leasehold) located on: (Legal description of real estate)

4. (Name(s) of record owner(s))

5. Date of attachment of lien: _____.

6. Amount of lien claimed: \$ _____ (Attached is a statement of the service, repair, labor, storage or material charges)

I declare under penalty of perjury under the laws of the state of Kansas that the foregoing is true and correct and reflects work performed, storage provided or material furnished and that the lien holder identified above is entitled to a lien on the property described pursuant to K.S.A.

Signature of lien holder (or assignor) _____ Date _____

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(d) A lien statement may be amended by filing a writing signed by the lien holder or the lien holder's assignee. An amendment does not extend the period of effectiveness of a lien statement and does not relate back to the date of the original lien statement. If any amendment adds property subject to the lien, it is effective as to the added property only from the filing date of the amendment.

(e) A lien statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor as of the date of attachment, whether or not it adds other trade names or the names of all partners. A filing listing only the trade names of the debtor is insufficient as against third parties.

(f) A filed lien statement remains effective with respect to property transferred by the debtor unless the lien holder consents to the transfer in writing.

(g) A description of property subject to the lien is adequate if it reasonably identifies the personal property subject to the lien. A legal description of real property is sufficient if it identifies the property or affords the means of identification within the instrument itself or by specific reference to other instruments recorded in the office of the register of deeds where the lien statement is filed.

(h) A lien statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

Section 13. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer; fees.

(a) Filing. Presentation for filing of a lien statement and tender of the filing fee to the filing officer constitutes filing under this act.

(b) ~~Real estate property, leaseholds, fixtures.~~ Except as provided in subsection (d), a filed lien statement covering an interest in ~~real estate property, a leasehold or fixtures~~ is effective for a period of one year from the date of filing. If a promissory notes has been attached to the lien statement in lieu of an itemized statement, the lien statement shall be effective for a period of one year from the maturity of the note.

(c) Personal property. Except as provided in subsection (d) ~~of this act~~, a filed lien statement covering an interest in personal property is effective for a period of 90 days from the date of filing.

(d) The effectiveness of a filed lien statement lapses on the expiration of the period specified in subsection (b) or (c) unless the lien holder has commenced an action to

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foreclose the lien prior to the lapse. If a statutory lien perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the lien remains perfected until termination of the insolvency proceedings and thereafter for a period of 60 days. Upon lapse the lien becomes unperfected, unless it is perfected without filing. If the lien becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(e) Relation back. Where a lien statement must be filed with both a register of deeds and the secretary of state to perfect a lien under this act, if the filing with the second office is accomplished within 20 days of the filing with the first office to receive the lien statement, perfection relates back to the date the first lien statement was received for filing. In all other cases, perfection is effective from the date the lien statement is received by the second office.

(f) The fee for filing and indexing and for stamping a copy furnished by the lien holder to show the date and place of filing for an original lien statement, or for any amendments thereto shall be \$____, plus \$____ for each additional page, or an amount fixed by rules and regulations adopted by the secretary of state on or after the effective date of this act of not to exceed \$____, plus \$____ for each additional page.

(g) Except as provided in subsection () a filing officer shall mark each lien statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection.

(1) Debtor Index. In addition the filing officer shall index all statements according to the names of the debtors but shall not index the names of corporate officers or signatures of the debtors, shall note in the index the file number, the address of the debtor given in the statement, the date of filing and a general description of the collateral, and shall cause the index to be accessible to the public.

(2) Real estate index. In addition the filing officer shall index all statements by legal description where the lien statement contains a legal description and shall note in the index the file number, the address of the debtor given in the statement, the date of filing and the legal description of the collateral, and shall cause the index to be accessible to the public.

(3) Record owner index. When a lien statement covers minerals or the like (including oil and gas), real property or indicates that it covers goods which are or are to become fixtures and contains the information required by K.S.A. 84-9-402 and amendments thereto, the filing officer shall also index the statement according to the name of the record owner of the real estate and shall cause the index to be accessible

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to the public.

Section 14. Service of file stamped copy of lien statement:

(a) The holder of a statutory lien on personal property perfected by the filing of a lien statement shall serve a file stamped copy of the lien statement on the debtor by first class mail, postage prepaid, by mailing the file stamped copy to the individual debtor's dwelling, residence or place where the debtor conducts a business or profession, or if the debtor is an entity, to either the place where the debtor conducts its business or profession or the debtor's registered agent.

(b) The holder of a statutory lien on real property or fixtures perfected by filing a lien statement shall: (1) cause a file stamped copy of the lien statement to be served upon any one owner and any party obligated to pay the lien by any of the methods provided by K.S.A. 60-303, and amendments thereto, for the service of process within the state, or by K.S.A. 60-308, and amendments thereto, for service outside of the state or (2) if the address of any one owner or such party is unknown and cannot be ascertained with reasonable diligence, post a copy of the lien statement in a conspicuous place on the premises.

(c) The provisions of this section requiring that the claimant serve a copy of the lien statement shall be deemed to have been complied with, notwithstanding some irregularity or omission, if it is proven that the person to be served actually received a copy of the lien statement.

Section 15. Termination of statutory liens; termination statement; destruction, when.

(a) Within one month, or within ten days following written demand by the debtor, after satisfaction of the debt, the lien holder must file with each filing officer with whom the lien statement was filed, a termination statement identified by file number thereof to the effect that the lien holder no longer claims a lien under the statement. A termination statement signed by a person other than the lien holder of record must be accompanied by a separate written statement of assignment signed by the lien holder of record. If the lien holder fails to file such a termination statement as required by this subsection within ten days after proper demand therefore the lien holder shall be liable to the debtor for \$500, and in addition for any loss caused to the debtor by such failure.

(b) On presentation of such a termination statement, the filing officer must note it in the index. If the filing officer has received the termination statement in duplicate, the filing officer shall return one copy of the termination statement to the lien holder stamped to show the time of receipt thereof. If the filing officer has a microfilm or other

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photographic record of the lien statement, and of any related amendment, statement of assignment and statement of release, the filing officer may remove the originals from the files at any time after receipt of the termination statement, or if the filing officer has no such record, the filing officer may remove them from the files at any time after one year after receipt of the termination statement.

(c) Termination statements may be destroyed after such statements have been on file for five years.

Section 16. Assignment of lien statements; duties of filing officer; fees.

(a) A lien holder may assign a statutory lien. An assignment of a statutory lien shall contain the name and address of the assignee, shall identify the file or other number of the lien statement and shall contain the signature of the assignor. The assignment shall be filed in all locations where the original lien statement was filed. On presentation to the filing officer of an assignment, the filing officer shall mark the same as provided in this act and amendments thereto. The fee for filing, indexing and furnishing filing data for a lien statement so indicating an assignment shall be the amount fixed for filing original lien statements.

(b) After the filing of an assignment under this section, the assignee is the lien holder of record.

Section 17. Furnishing information; information from filing officer; fees; approval of fees for certain copies; immunity for filing officer and employees.

(a) If the person filing any lien statement, termination statement, statement of assignment or statement of release furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(b) Upon written or electronic request of any person and tender of the proper fee, the filing officer shall inform the person, in writing or electronically, of whether there is on file on the date and hour stated, any presently effective lien statement naming a particular debtor and any related statement and, if there is, the date and hour of filing of each such statement and the names and addresses of each lien holder therein. The fee for providing the information shall be \$8 or an amount, not to exceed \$10, fixed by rules and regulations adopted by the secretary of state. Upon request, the filing officer shall furnish a copy of any filed lien statement or related statement after payment of a fee of \$1 per page except that, if the filing officer is the secretary of state, the fee shall be in an amount fixed by the secretary of state and approved by the director of accounts and reports under

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K.S.A. 45-219 and amendments thereto.

(c) Except with respect to willful misconduct, the state, counties and filing officers, and their employees and agents, are immune from liability for damages resulting from errors or omissions in information supplied pursuant to this section.

Section 18. Providing filing information by secretary of state and register of deeds; methods; fees.

(a) The secretary of state shall provide information concerning filings under the Kansas statutory lien act to persons with an interest in the information that is related exclusively to the purposes of that article.

(b) The secretary of state or a register of deeds may adopt one or more of the following methods of providing information concerning filings under the Kansas statutory lien act to persons with an interest in the information that is related exclusively to the purposes of that article:

- (1) telecopier access by interested parties and offices of registers of deeds to filings in the office of the secretary of state;
- (2) subscription periodic written summaries;
- (3) copies of microfilm;
- (4) data storage material;
- (5) access to data processing functions; or
- (6) any other appropriate method of disseminating the information.

(c) The secretary of state or a register of deeds may charge a reasonable fee for the information on file in that office provided pursuant to this section. In establishing the fees, the secretary of state or register of deeds may take into account the costs incurred in establishing and maintaining the information system as well as other costs.

(d) If information regarding filings in the office of the secretary of state is provided by a register of deeds pursuant to this section, the fee to be collected from the customer shall be an amount fixed by rules and regulations adopted by the secretary of state. The rules and regulations adopted by the secretary of state shall specify the amount the register of deeds shall remit to the county treasurer for deposit into the county general

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fund. The register of deeds shall remit at least monthly the remainder of all such fees collected to the state treasurer. The state treasurer shall deposit the entire amount in the state treasury and shall credit 20% of the amount to the state general fund and the remainder to the uniform commercial code fee fund.

(e) Except with respect to willful misconduct, the state, counties and filing officers, and their employees and agents, are immune from liability for damages resulting from errors or omissions in information supplied pursuant to this section.

(f) Any fees in effect on the day preceding the effective date of this act shall continue in effect until the secretary of state or the register of deeds establishes different fees, as the case may be.

Section 19. Providing filing information by telephone; fees.

(a) On or before _____ the secretary of state shall provide information concerning filings under the Kansas statutory lien act upon request by telephone to persons who have received prior approval of the secretary of state.

(b) Information provided under this section shall not include the text descriptive of the collateral.

(c) The secretary of state may charge a reasonable fee in addition to the fee specified in ~~K.S.A. section 17~~ and amendments thereto to the requesting party for information provided pursuant to this section.

(d) Except with respect to willful misconduct, the state and its employees and agents are immune from liability for damages resulting from errors or omissions in information supplied pursuant to this section.

Section 20. Priorities among statutory liens and security interests in the same property.

(a) Consumer goods with a fair market value of \$1,000 or less. A perfected statutory lien in personal property with a fair market value of \$1,000 or less has priority over a person who has or takes a security interest in the property subject to the lien.

(b) Leasehold interests.

(1) A perfected statutory lien in a leasehold interest is subordinate to any assignment of the leasehold interest and any interest created in a mortgage or deed of trust duly filed of record in the appropriate county prior to attachment of the

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statutory lien.

(2) A perfected statutory lien in a leasehold interest, has priority over:

(A) any interest created through attachment by judicial process after the statutory lien attaches;

(B) any interest created by an assignment, mortgage or deed of trust unrecorded as of the time of attachment of the statutory lien.

(3) Conflicting perfected statutory liens in a leasehold interest have equal priority.

(c) Other personal property.

(1) A perfected statutory lien in other personal property has priority over:

(A) Any perfected or unperfected security interest in the property subject to the lien even where the lien holder had actual or constructive notice of the security interest; and

(B) Any interest created through attachment by judicial process after the statutory lien attaches.

(2) Conflicting perfected statutory liens in other personal property have equal priority.

(d) Real property and fixtures.

(1) A perfected statutory lien in real property and fixtures is subordinate to any assignment of the leasehold interest and any interest created in a mortgage or deed of trust duly filed of record in the appropriate county at the time of the attachment of the statutory lien.

(2) A perfected statutory lien in real property and fixtures, has priority over:

(A) any interest created through attachment by judicial process after the statutory lien attaches;

(B) any interest created by a mortgage or deed of trust unrecorded as of the time of the attachment of the statutory lien.

(3) Conflicting perfected statutory liens in real property and fixtures have equal priority.

Section 21. Enforcement and foreclosure.

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Statutory liens shall be enforced as follows:

(a) Personal property.

(1) A perfected statutory lien in personal property with a fair market value of \$1,000 or less may be enforced by the lien holder in any manner specified in K.S.A. 84-9-504 and proceeds of any sale shall be applied first to satisfaction of the sale expenses and thereafter to the statutory lien. Any surplus shall be applied to junior liens and security interests in the order they are perfected.

(2) Perishable goods; live stock. Goods which are subject to rapid deterioration may be sold without advance notice to the owner if sold in a recognized public market for goods of that type and proceeds of any sale shall be applied first to satisfaction of the sale expenses and thereafter to the statutory lien. Any surplus shall be applied to junior liens and security interests in the order they are perfected.

(3) In all other instances, statutory liens in personal property shall be foreclosed in the manner prescribed for judicial foreclosure under K.S.A. 60-1006 et seq., and amendments thereto.

(b) Real property, leasehold interests and fixtures.

(1) Parties. In actions to foreclose statutory liens on real property, leasehold interests and fixtures, all persons whose liens are filed as provided in this act, and other encumbrancers of record, shall be made parties, and issues shall be made and trials had as in other cases. Where such an action is brought by a subcontractor, or person other than the original contractor, such original contractor shall be made a party defendant, and shall at the contractor's own expense defend against the claim of every subcontractor, or other person claiming a lien under this act, and if the contractor fails to make such defense the owner may make the same at the expense of such contractor; and until all such claims, costs and expenses are finally adjudicated, and defeated or satisfied, the owner shall be entitled to retain from the contractor the amount thereof, and such costs and expenses as he or she may be required to pay. If the sheriff of the county in which such action is pending shall make return that the sheriff is unable to find such original contractor, the court may proceed to adjudicate the liens upon the land and render judgment to enforce the same with costs.

(2) Stay of proceedings. In any action to foreclose a lien under this subsection if the building or other improvement is still in course of construction, the judge on application of any party engaged in furnishing labor or materials for such building or

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improvement, may stay the trial thereof for a reasonable time to permit the filing of a lien statement by such party under the provisions of this act.

(3) Amendment. The lien statement may be amended by leave of the judge in furtherance of justice, except to increase the amount claimed.

(4) Pro rata distribution. If the proceeds of the sale be insufficient to pay all the claimants, then the court shall order them to be paid in proportion to the amount due each.

(5) Leasehold interest, redemption. After sale of property pursuant to foreclosure of a statutory lien on a leasehold interest, there shall be no redemption and the sheriff shall make a formal conveyance of all the property so sold to the purchaser, in one ~~deed of conveyance~~ leasehold assignment.

(6) Action by landowner for adjudication, cancellation. If any lien or liens are filed under the provisions of this act and no action to foreclose any of such liens is commenced, the owner of the land may file such owner's petition in the district court of the county in which such land is situated, making such lien claimants defendants therein, and praying for an adjudication of such lien or liens so claimed. If any such lien claimant shall fail to establish such claimant's lien, the court may tax against such claimant the whole or such portion of the costs of such action as may be just. If no action to foreclose or adjudicate any lien filed under the provisions of this act shall be instituted within the time provided in section 13, and amendments thereto, the lien shall be considered canceled by limitation of law.

Repealer and Effective Date:

SJ 6-1-28-97 att # 3



Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

TESTIMONY
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
ATTORNEY FOR KANSAS LAW ENFORCEMENT TRAINING COMMISSION
BEFORE THE SENATE JUDICIARY COMMITTEE
REQUEST FOR LEGISLATION
JANUARY 28, 1997

Mr. Chairman and Members of the Committee:

I appear today on behalf of the Kansas Law Enforcement Training Commission to request legislation regarding the commissioning of law enforcement officers, in particular, those who have not been actively employed for a period of time. Unlike most professional licenses, current statutes allow a law enforcement officer to remain commissioned indefinitely even if they have been employed in some other capacity for a number of years.

The legislation which I have attached, in the form of balloons, would require an officer who has departed from the profession more than five years to either satisfactorily complete the currently mandated basic training program; pass a written proficiency and competency test developed and administered by the Law Enforcement Training Center; or receive a special waiver from the director of police training based on the past training, experience and special circumstances of that applicant.

The legislation would be in keeping with the Commission's efforts to improve the professionalism of law enforcement in Kansas. We appreciate your consideration and I would be happy to answer any questions.

Senate Judiciary
Attachment 3

New section [(74-5608(b)?)] Certification by the commission will remain active for a period of (five) years after leaving employment as a law enforcement officer. Certification which has lapsed due to more than (five) years since employment as a law enforcement officer may be reinstated if the applicant:

- a) satisfactorily completes the current basic training required under K.S.A. 74-5607a and amendments thereto; or
- b) passes a written competency test and firearms proficiency qualification course developed and administered by the Kansas Law Enforcement Training Center; or
- c) obtains from the Director pursuant to K.S.A. 74-5608a(b) and amendments thereto, a waiver based on the training, experience and circumstances of the applicant.

5 sub. 1-28-97 attached

19-301b. Qualifications for office; attendance at law enforcement academy required; exception; status and salary while in attendance. (a) No person shall be eligible for nomination, election or appointment to the office of sheriff unless such person:

- (1) Is a citizen of the United States and a qualified elector of the county;
- (2) possesses a high-school education or its recognized equivalent; and
- (3) has never been convicted of or pleaded guilty or entered a plea of *nolo contendere* to any

~~felony charge or to any violation of any federal or state laws or city ordinances relating to gambling, liquor or narcotics.~~

_____ , a misdemeanor crime of domestic violence as defined in K.S.A. 74-5602 and amendments thereto

(b) Every person elected to the office of sheriff for the first time, or anyone reelected or appointed to the office after having been out of the office for ~~xxx~~ years or more shall be required to attend the law enforcement training academy as established by K.S.A. 74-5601 *et seq.*, and amendments thereto, and satisfactorily complete the required training course of not less than 320 hours, unless such person has satisfactorily completed such training course within the ~~xxx~~ years prior to election or appointment, or unless the director, as defined in subsection (d) of K.S.A. 74-5602, and amendments thereto, waives the requirements of this subsection as provided in K.S.A. 74-5608a and amendments thereto. Unless the requirements are waived, any person elected or appointed to the office of sheriff who has not attended the law enforcement training academy shall hold office on a provisional basis, and such person shall attend the next scheduled training program at the law enforcement training academy and satisfactorily complete such training program or the one subsequent to it, or shall forfeit such office.

_____ five

_____ five

_____ , passes a written competency test and firearms proficiency qualification course developed and administered by the Kansas Law Enforcement Training Center.

(c) Each newly elected sheriff of each county who is required to attend the law enforcement training academy shall be hired as a deputy sheriff and shall be paid a salary as deputy sheriff while attending the law enforcement training center and the tuition, board, room and travel expense for the sheriff-elect at the law enforcement training center shall be paid by the county.

Sheriff Judge
Attachment of
1-28-97

74-5617. Same; penalties for failure to meet requirements; enforcement of act. (a) Every candidate for permanent appointment to a position as a police officer or law enforcement officer shall meet the minimum training criteria specified in K.S.A. 74-5605 and amendments thereto and shall have attained 21 years of age.

(b) For the purpose of determining the eligibility of an individual for certification under this act, the commission may require the submission of training and education records, and experience history, medical history, medical examination reports and records, and interview appraisal forms.

(c) Law enforcement agencies in Kansas shall be responsible for their agency's observance of the hiring requirements of this section.

(d) No law enforcement agency head or other appointing authority shall knowingly permit the hiring of any person in violation of the requirements of this act, or knowingly permit the continued employment of any person as a law enforcement officer after receiving written notice from the commission that the person has had such person's certification revoked as provided for under this act. ~~Any violation of the requirements of this act shall be deemed to constitute misconduct in office and shall subject the agency head or appointing authority to:~~

(1) Removal from office pursuant to K.S.A. 60-1205 and amendments thereto; or (2) a civil penalty in a sum set by the court of not to exceed \$500 for each occurrence of noncompliance in an action brought in the district court by the attorney general or by the county or district attorney, which penalty shall be paid to the state treasurer for deposit in the state treasury and credit to the state general fund, if the action is brought by the attorney general, or paid to the county treasurer for deposit in

No law enforcement agency head or other appointing authority shall knowingly permit any auxiliary personnel who have been convicted of a felony offense under the laws of Kansas or any other jurisdiction access to law enforcement records or communication systems that are restricted under state or federal law or appoint as a reserve officer any person who does not meet the requirements of K.S.A. 74-5605 and amendments thereto.

74-5616. Eligibility for appointment as officer; certification by commission required; suspension, revocation or denial of certification; judicial review. (a) To be eligible for permanent appointment as a police officer or law enforcement officer, a person must first be certified to perform the function of law enforcement by the Kansas law enforcement training commission. The commission's certification shall be awarded to persons who:

(1) Are at least 21 years of age, have successfully completed or satisfied the training requirements specified by subsection (a) of K.S.A. 74-5607a and amendments thereto and meet the requirements of K.S.A. 74-5605 and amendments thereto; (2) received a permanent appointment as a police officer or law enforcement officer prior to July 1, 1969; or (3) hold a permanent appointment as a police officer or law enforcement officer on July 1, 1983

(b) The commission may suspend, revoke or deny the certification of a police officer or law enforcement officer who fails to meet the requirements of K.S.A. 74-5605 or 74-5607a, and amendments thereto, or has met such requirements by falsifying documents or failing to disclose information required for certification.

(c) The commission shall immediately institute proceedings to revoke the certification of any police officer or law enforcement officer convicted of, or on or after the effective date of this act, diverted for a felony under the laws of this state, another state or the United States or of its equivalent under the uniform code of military justice or a misdemeanor crime of domestic violence.

(d) The procedure for the public or private censure, reprimand, probation, suspension, revocation and denial of certification of a person as a police officer or law enforcement officer or an applicant for certification shall be in accordance with the Kansas administrative procedure act.

(e) Any action of the commission pursuant to subsection (d) is subject to review in accordance with the act for judicial review and civil enforcement of agency actions. The attorney general shall prosecute or defend any action for review on behalf of the state, but the county or district attorney of the county where the police or law enforcement officer has been employed as such shall appear and prosecute or defend such action upon request of the attorney general.

4-4

74-5605. Qualifications of applicant for training course; requirements. Every applicant for admission to a course for police officers or law enforcement officers conducted by the training center shall be an employee of a state, county or city law enforcement agency, a municipal university police officer, a railroad policeman appointed pursuant to K.S.A. 66-524, and amendments thereto, or a school security officer designated as a school law enforcement officer pursuant to K.S.A. 72-8222, and amendments thereto. Prior to admission to a course conducted at the training center or at a certified state or local law enforcement agency, the applicant shall furnish to the director a statement from the applicant's appointing authority or agency head certifying the applicant's fulfillment of the following requirements. The applicant:

- (a) Is a United States citizen;
- (b) has been fingerprinted and a search of local, state and national fingerprint files has been made to determine whether the applicant has a criminal record;
- (c) has not been convicted, does not have an expunged conviction, and on and after the effective date of this act, has not been placed on di-

version by any state or the federal government for a crime which is a felony or its equivalent under _____ or a misdemeanor crime of domestic violence the uniform code of military justice:

- (d) is the holder of a high-school diploma or furnishes evidence of successful completion of an examination indicating an equivalent achievement;
- (e) is of good moral character;
- (f) has completed a psychological test approved by the commission;
- (g) is free of any physical or mental condition which might adversely affect the applicant's performance of a police officer's or law enforcement officer's duties; and
- (h) is at least 21 years of age.

History: L. 1968, ch. 81, § 5; L. 1982, ch. 322, § 6; L. 1983, ch. 256, § 4; L. 1986, ch. 301, § 1; L. 1987, ch. 277, § 4; L. 1995, ch. 180, § 4; July 1.

74-5608a. Certification of persons completing training in other jurisdictions; waiver of courses. (a) The director may, in the exercise of discretion, award a certificate attesting to the satisfactory completion of a basic course of instruction to any person who has been duly certified under the laws of another state or territory if, in the opinion of the director, the requirements for certification in such other jurisdiction equal or exceed the qualifications required to complete satisfactorily the basic course of instruction at the training center.

(b) The director may waive any number of the hours or courses required to complete the basic course of instruction at the training center, ~~80 hour~~ , part-time school, reciprocity school or for the hours required for annual continuing education for any person who, in the opinion of the director, has received sufficient training or experience that such hours of instruction at the training center would be, unless waived, unduly burdensome or duplicitous.

7. 2. Definitions. [See Revisor's Not. used in the Kansas law enforcement training act:

(a) "Training center" means the law enforcement training center within the division of continuing education of the university of Kansas, created by K.S.A. 74-5603 and amendments thereto.

(b) "Commission" means the Kansas law enforcement training commission, created by K.S.A. 74-5606 and amendments thereto.

(c) "Dean" means the dean of the division of continuing education of the university of Kansas.

(d) "Director," as created in K.S.A. 74-5603 and amendments thereto, means the director of police training at the law enforcement training center.

(e) "Police officer" or "law enforcement officer" means a full-time or part-time salaried officer or employee of the state, a county or a city, whose duties include the prevention or detection of crime and the enforcement of the criminal or traffic laws of this state or of any municipality thereof. Such terms shall include, but not be limited to, the sheriff, undersheriff and full-time or part-time salaried deputies in the sheriff's office in each county; conservation officers of the Kansas department of wildlife and parks; campus police officers

deputy sheriffs deputized pursuant to K.S.A. 19-2858 and amendments thereto;

at all state educational institutions or a municipal university; law enforcement agents of the director of alcoholic beverage control; law enforcement agents of the Kansas lottery; law enforcement agents of the Kansas racing commission; deputies and assistants of the state fire marshal having law enforcement authority; capitol area security guards, existing under the authority of K.S.A. 75-4503 and amendments thereto. Such terms shall also include railroad policemen appointed pursuant to K.S.A. 66-524 and amendments thereto; and school security officers designated as school law enforcement officers pursuant to K.S.A. 72-8222 and amendments thereto. Such terms shall not include any elected official, other than a sheriff, serving in the capacity of a law enforcement or police officer solely by virtue of such official's elected position; any attorney-at-law having responsibility for law enforcement and discharging such responsibility solely in the capacity of an attorney; any employee of the secretary of corrections or the secretary of social and rehabilitation services; any deputy conservation officer of the Kansas department of wildlife and parks; or any employee of a city or county who is employed solely to perform correctional duties related to jail inmates and the administration and operation of a jail; or any full-time or part-time salaried officer or employee whose duties include the issuance of a citation or notice to appear provided such officer or employee is not vested by law with the authority to make an arrest for violation of the laws of this state or any municipality thereof, and is not authorized to carry firearms when discharging the duties of such person's office or employment. Such term shall include any officer appointed or elected on a provisional basis.

(f) "Full-time" means employment requiring at least 1,000 hours of work per year.

(g) "Part-time" means employment on a regular schedule or employment which requires a minimum number of hours each payroll period, but in any case requiring less than 1,000 hours of work per year.

(h) "Misdemeanor crime of domestic violence" means a violation of domestic battery as defined by K.S.A. 21-3412(c) (4) and amendments thereto, or any other misdemeanor under Federal, municipal or state law that has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

(i) "Auxiliary personnel" means members of organized non-salaried groups which operate as an adjunct to a police or sheriff's department, including reserve officers, posses and search and rescue groups.

TESTIMONY OF BRIAN J. MOLINE ON SB67

Good morning.

My name is Brian Moline, and I appear today on behalf of the Family Law Advisory Committee to the Kansas Judicial Council. I have served on the Committee for over 20 years and most of the current statutory domestic law of the state is a product of Committee deliberations.

SB67 represents a clean-up of the existing Protection From Abuse Act - K.S.A. 60-3102 et seq. - and results from either complaints brought to the Committee's attention by judges and practitioners or an attempt to conform the Kansas statute as much as possible to the Model State Code.

Section 1-16-18 simply adds a new classification - persons "who have a child in common" - to the current classification of persons who reside together or who formerly resided together within the purview of the Protection From Abuse Act.

Several Kansas judges complained of this omission and, in fact, there is evidence that persons who may never have resided together but have a child in common are among the most frequent fact situations coming to court.

Section 1(a) simply substitutes the words "intentionally" and "intentionally and recklessly" for "willfully" and "willfully and wantonly," respectively. This conforms the language to the criminal where "intentionally" and "intentionally and recklessly" have been systematically replaced with the suggested language.

Section 2(a) and (b) simply adds the new "or has a child in common" language to the existing sub-sections.

Section 1(e) is an attempt to provide statutory underpinning for a commonly exercised discretion of the district judges and is adopted at the request of several district judges around the state.

Section 3(b) attempts to address a problem brought to the Committee's attention by Mr. Charles Harris, an active family law practitioner in Wichita. According to Mr. Harris, there have been more than a few cases where attempts have been made to utilize the summary and ex parte protection from abuse process to amend an existing custody, residency or visitation order. This provision is meant to assure that the protection from abuse process cannot be utilized to change an existing order.

Section 4(2) is proposed to be amended to insure that a party not granted possession of a common residence by the court but in whose name the utilities are registered cannot retaliate against the abused party by canceling utility service. This situation was brought to the Committee's attention by Judge Nelson Toburen of Pittsburgh.

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Section 4 (9)(b) is proposed to be amended to attempt to insure consistency and that the appropriate Order controls when both a protection from abuse action under K.S.A. 60-3102 and a divorce or other action under K.S.A. 60-1601 exist contemporaneously.

These suggested amendments will, in the belief of the Committee and the Judicial Council, strengthen and improve the Protection From Abuse Act.



State of Kansas

Office of the Attorney General

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CARLA J. STOVALL
ATTORNEY GENERAL

January 28, 1997

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Honorable Michael Harris
Chairman, Senate Judiciary Committee
State Capitol
Topeka, Kansas

Re: Senate Bill 67

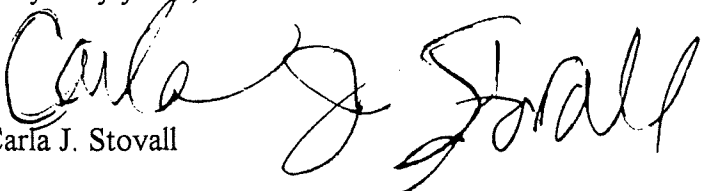
Dear Senator Harris and Members of the Committee:

Please consider this letter support for Senate Bill 67 which amends the Protection from Abuse statutes. Specifically, it addresses some of the problems experienced by the district courts in situations where a divorce is filed either prior to the filing of a protection from abuse (PFA) petition or subsequent to the granting of such petition which results in inconsistent orders.

More importantly, however, this bill expands the scope of the PFA statutes to provide relief to a person who has a child in common with the abuser in a situation where the abuser has never resided with the petitioner. Under current law, a person who finds herself in this position has no viable civil remedy unless she is able to retain counsel and apply for a restraining order pursuant to K.S.A. 60-903.

I know you will give this bill serious consideration in light of the benefit it will provide to those persons who are currently not eligible to apply for protection under the PFA statutes.

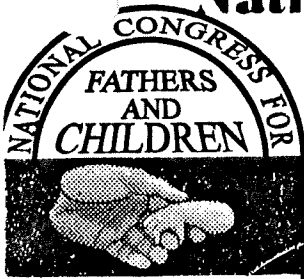
Very truly yours,


Carla J. Stovall

CJS/JLM/MF/mf

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National Congress For Fathers and Children Topeka Chapter



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In opposition to SB 67 as written.

1) Sec 4. (2) page 3, lines 1-3. Delete and change to "the court shall order the party awarded custody of the house to immediately contact the utilities and to have the utilities installed in the name of the person occupying the residence or household." This will prevent the excluded party from a blemished credit report.

2) page 3, line 10. This needs to be worded so that the excluded party will not be liable for stepchildren or other children other than their own. The current wording could allow a custodial parent to receive child support from two or more excluded parties.

3) page 2, line 7. Replace 20 days within 7 days or 48 hours. I have talked to many excluded parties who have been denied their children from 3 months to a year. This is court ordered kidnapping and extortion.

4) page 2, line 37. Granting possession of the residence. Is this temporary? It does not seem to be worded that way. Does this allow confiscation of property similar to the confiscation of alleged drug monies and property? What happens if you run a business out of your home?

5) Needs to be a penalty for false reports.

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Children Need Fathers not Visitors

A cat that scratches a child is thrown outdoors. Who is the victim the child or the cat? The cat needs to accept and allow the child to pull it's tail and ears.

A dogs snout is slapped after he nips at a child. Who is the victim the child or the dog? The dog needs to accept having the child take his food away or being hit over the head with a plastic ball bat.

My 15 year old son that yells at his 6 year old sister and chases her. She fears him. Who is the victim my daughter or my son? My son needs to accept that women can come into his life and take his possessions or hit him in the head with thrown plastic toys or dishes.

Why do children do the things they do? for attention.

Why do many alleged victims do what they do. For attention or if filing for divorce, control.

Four years ago a lie was perpetuated for attention and control. Super Bowl Sunday was labeled the biggest day for violence against women. It was a lie. Beware of lies and statistics.

COMMENTS OF THE CARE & TREATMENT COMMITTEE
ON 1997 SENATE BILL 68
January 28, 1997

Section 1 (59-2957)

This section is proposed to be amended by "re-lettering" the paragraphs to eliminate confusion. This section was re-written in S.B. 469 from old K.S.A. 59-2913 and in that process three paragraphs were added specifying the three attachments which need to accompany a petition. The bill failed to separate the two subparts of subsection (a) and that, in turn, caused the numbering of the paragraphs to result in the subsection containing repeating references. The amendment is technical.

Section 2 (59-2958)

This section is proposed to be amended in to provide clarification. The amendments are technical.

Section 3 (59-2966)

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.

A similar amendment is proposed to K.S.A. 59-2969.

Section 4 (59-2967)

This section is proposed to be amended in Section 4, subsection (e), line 22 by inserting the word "material." It is intended that the "noncompliance" referred to be "material" and not technical in nature.

This section is proposed to be amended in subsection (f) 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

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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. 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.

Section 5 (59-2969)

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.

A similar amendment is proposed to K.S.A. 59-2966.

Section 6 (59-2971)

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 adequate.

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

(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.

(c) The petition shall be accompanied by:

(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;

a participating mental health center,

(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

(3) if applicable, a copy of any notice given pursuant to K.S.A. 1996 Supp. 59-2951 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.

(d) The petition may include a request that an ex parte emergency custody order be issued pursuant to K.S.A. 1996 Supp. 59-2958 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.

(e) The petition may include a request that a temporary custody order be issued pursuant to K.S.A. 1996 Supp. 59-2959 and amendments thereto.

Sec. 2. K.S.A. 1996 Supp. 59-2958 is hereby amended to read as

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1 Supp. 59-2969 and amendments thereto.

2 (d) The court shall retain jurisdiction to modify or revoke the order
3 for outpatient treatment at any time on its own motion, on the motion of
4 any counsel of record or upon notice from the treatment facility of any
5 need for new conditions in the order for outpatient treatment or of ma-
6 terial noncompliance by the patient with the order for outpatient treat-
7 ment. However, if the venue of the matter has been transferred to an-
8 other court, then the court having venue of the matter shall have such
9 jurisdiction to modify or revoke the outpatient treatment order. Revo-
10 cation or modification of an order for outpatient treatment may be made
11 ex parte by order of the court in accordance with the provisions of sub-
12 sections (e) or (f).

13 (e) The treatment facility shall immediately report to the court any
14 material noncompliance by the patient with the outpatient treatment or-
15 der. Such notice may be verbal or by telephone but shall be followed by
16 a verified written or facsimile notice ~~delivered~~ to the court, to counsel for
17 all parties and, as appropriate, to the head of the inpatient treatment
18 facility designated to receive the patient, by not later than 5:00 p.m. of
19 the first day the district court is open for the transaction of business after
20 the verbal or telephonic communication was made to the court. Upon
21 receipt of verbal, telephone, or verified written or facsimile notice of
22 *material* noncompliance, the court may enter an ex parte emergency cus-
23 tody order providing for the immediate detention of the patient in a
24 designated inpatient treatment facility except that the court shall not or-
25 der the detention of the patient at a state psychiatric hospital, unless a
26 written statement from a qualified mental health professional authorizing
27 such detention at a state psychiatric hospital has been filed with the court.
28 Any ex parte emergency custody order issued by the court under this
29 subsection shall expire at 5:00 p.m. of the second day the district court is
30 open for the transaction of business after the patient is taken into custody.
31 The court shall not enter successive ex parte emergency custody orders.

sent

32 (f) (1) Upon the ~~entry~~ of taking of a patient into custody pursuant
33 to an ex parte emergency custody order revoking a previously issued order
34 for outpatient treatment and ordering the patient to involuntary inpatient
35 care the court shall set the matter for hearing not later than the close of
36 business on the second day the court is open for business after ~~the filing~~
37 ~~of the order~~ the patient is taken into custody. Notice of the hearing shall
38 be given to the patient, the patient's attorney, the patient's legal guardian,
39 the petitioner or the county or district attorney as appropriate, the head
40 of the outpatient treatment facility and the head of the inpatient treat-
41 ment facility, similarly as provided for in K.S.A. 1996 Supp. 59-2963 and
42 amendments thereto.

43 (2) Upon the entry of an ex parte order modifying a previously issued