Approved: 1/28/98
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Carmody at 3:30 p.m. on January 21, 1998 in Room 313--S of the Capitol.

All members were present except: Representative Kline (excused)
Representative Shriver (excused)
Representative Wilk (excused)

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

Conferees appearing before the committee: Teresa Markowitz, SRS
Jim Clark, County and District Attorneys Assoc.
Tim Madden, Chief Counsel, Department of Corrections
Greg Debacker, National Congress of Fathers and Children
Elwaine Pomeroy, Kansas Collectors Association
Dave Debenham, Deputy Attorney General
Kathy Porter, Judicial Adminstration

Others attending: See attached list

The Chair called the meeting to order.

**Bill introductions:**

Teresa Markowitz, Commissioner for Children and Family Services, SRS, requested introduction of legislation that would amend the Kansas Code for Care of Children to address safety and permanency of children in situations effecting the re-integration of a child with his/her family. The conferee stated that the provision in the proposed legislation will enhance the safety and permanency of children. The conferee discussed the background and the major provisions for the proposed legislation. (Attachment 1)

The Committee members and conferee discussed the scope of the proposed bill request and funding issues.

A motion was made by Representative Swenson, second by Representative Carmody to introduce the SRS bill request. The motion carries.

The Chair stated that appointments to a family law subcommittee and a criminal law subcommittee will be made soon.

**HB 2208 Domestic battery penalties parallel DUI penalties.**

Jim Clark, County and District Attorneys Association, testified in support of **HB 2208.** The conferee stated that the bill amends K.S.A. 21-3412 to impose mandatory minimum penalties for domestic battery similar to DUI penalties. The conferee stated that the purpose of the bill is to recognize that domestic battery is as least as serious as driving with a blood alcohol content of .08. (Attachment 2)

The conferee and a Committee member discussed issues concerning the ability of municipalities to enforce the provisions in this bill which creates a felony. The conferee and Committee members discussed problems with the current DUI law which this bill mirrors.

The conferee discussed with Committee members issues concerning lack of jurisdiction for municipalities on third DUI charges and whether the mandatory 48 hour imprisonment requirement was to be maintained.

Mr. Tim Madden, DOC, testified on behalf of the Secretary of the Department of Corrections to request that the contents of **HB 2086** be amended into **HB 2208**. The conferee stated that **HB 2086** would change the place of incarceration for offenders convicted of felony domestic battery from the Department of

Corrections to local facilities. The conferee stated that the department has concerns with the current sentencing provisions of K.S. A. 21-3412. The conferee discussed the department's concerns involving the ability of the state corrections system to efficiently carry out the unique sentencing provisions if the statutes were amended pursuant to **HB 2208**. The conferee stated that in dealing with the short time periods of incarceration prescribed for this crime, it would be more efficient and economical for these sentences to be administrated at the local level. (Attachment 3)

The conferee stated that the act of criminal domestic battery does not fit into the sentencing guidelines. The conferee stated that **HB 2208** does not designate a severity level or post-release supervision guidelines for the felony established. The conferee discussed the issue of designating the third or subsequent offense as being a felony for the purpose of criminal history.

The conferee discussed concerns of the department regarding how good time provisions would be determined, and how the work release program provisions would be applied.

Greg Debacker, National Congress of Fathers and Children, testified that **HB 2208** would take away the discretion of the judges on line 30, by replacing the word "may" with "shall." The conferee expressed concerns with the phrasing of item (2) in Section 1. The conferee related an experience of someone who had been jailed because she had not filed charges on a domestic battery call. The conferee stated that the problem with this type of legislation is that those enforcing it can go too far. Referring to lines 16-19 on page one, the conferee suggested that there needs to be a distinction between what is battery and what is an argument between those who are or were in a domestic relationship. The conferee recommended that other alternatives should be investigated to address aspects of domestic violence. The conferee referred to newspaper and magazine articles supporting his position.

The Chair closed the hearing on **HB 2208.**

The Chair stated that in the last session the contents of **SB 216** had been placed in an other bill, and there was a committee motion to amend the contents of **HB 2206** into **SB 216**, however no further action was taken. The Chair stated that today's hearing will be on **HB 2206.**

**HB 2206** **Allowing costs of private process servers to be taxed as costs in civil procedure action.**

Elwaine Pomeroy, Kansas Collectors Association, testified in support of **HB 2206**. The conferee stated that this bill would add an allowable cost item to those specified in K.S.A. 20-2003. The conferee stated that the mileage, fees and expenses of private process servers should be included in the taxation of cost throughout the state. (Attachment 4)

The Chair closed the hearing on **HB 2206.**

**HB 2282** **Return of service on subpoena, require affidavit to be signed.**

Dave Debenham, Deputy Attorney General, testified in support of **HB 2282**. The conferee stated that this bill will amend the language in K.S.A. 60-312(a)(1) by requiring that when process is served by an office that the officer shall make an affidavit as to the time, place and manner of such service. The conferee related that this amendment is the result of an investigation by the KBI where a process server had marked the return of service of a subpoena as personally served, but the witness had not been served. The conferee stated that this incident was referred to the Attorney General's office, but the Attorney General's office was unable to prosecute, which resulted in the district judge's request for legislation to clarify that falsifying this type of document is a crime. (Attachment 5).

Kathy Porter, Judicial Administration, testified in support of **HB 2282.** The conferee stated that while the occurrence of false reporting is not a massive problem, but it does occur. The conferee stated that this bill will remedy the problem.

The Chair closed the hearing on **HB 2282.**

The Chair adjourned the meeting at 4:25 p.m.

The next meeting is scheduled for January 22, 1998.

# HOUSE JUDICIARY COMMITTEE
# GUEST LIST

DATE: 1-21-98

| NAME | REPRESENTING |
|---|---|
| Tara Markowitz | SRS |
| Rochelle Chronister | SRS |
| Marilyn Jacobson | SRS |
| Helen Stephens | KPOA / KSA |
| Tim Madden | KDOC |
| KEITH K LANDIS | CHRISTIAN SCIENCE COMM ON PUBLICATION FOR KS |
| Gary Carter | KDOR DMV |
| Betty McBride | KDOR DMV |
| Dan Morgan | Atty Gen |
| Clarence Tinney | KCAA / KCA |
| Jane Clark | KCDAA |
| Ken Dukes | DOB |
| GREG DEBACKER | NCFC |
| Wendy McRae | ACLU |
| Shayla Johnston | KTLA |
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# State of Kansas
# Department of Social & Rehabilitation Services


Rochelle Chronister, Secretary
Janet Schalansky, Deputy Secretary

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**House Judiciary**
**January 21, 1998**

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**Testimony: Kansas Code for Care of Children \ Adoption and Safe Families Act**

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**Children and Family Services**
**Teresa Markowitz, Commissioner**
**(785) 368-6448**


House Judiciary
1-21-98
Attachment 1

**KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES**
**Rochelle Chronister, Secretary**

**House Judiciary**

**January 21, 1998**

Mr. Chairman and members of the committee, I am Teresa Markowitz, thank you for the opportunity to appear before you today on behalf of Secretary Chronister. I am here today to request introduction of legislation that will enhance safety and permanency for children.

*Background:*
The federal Adoption and Safe Families Act, passed late this fall, it is landmark legislation for children who are abused or neglected. It puts to rest the debate over whether or not preservation of a family or safety of a child is paramount. The Act emphasizes that child safety is paramount, clarifies the re-unification efforts are not always reasonable and recognizes the urgency of making decisions related to children timely. It sends a clear message to all players in the child welfare system--families, social services, prosecutors, judges--that it is no longer acceptable to dawdle along in an adult sense of time when a child's future is at stake. For a long time we have talked the talk about the importance of permanency for child. This legislation is now asking us to walk the walk. In Kansas many of the provisions of the act are already in state law and we can be proud that once again Kansas has set the pace for federal initiatives. The bill I am asking to be introduced today enhances the safety and permanency provisions currently in the Kansas Code for Care of Children specifying when reintegration is not appropriate and termination of parental right actions should proceed.

*Major Provisions:*
The following are the major amendments to the Kansas Code for Care of Children which address safety and permanency of children.

1. Clarifies that child safety is paramount and that efforts to re-integrate a child with the family is not required when the court has found:
   - child has been subjected to torture, chronic abuse or sexual abuse;
   - the child has been abandoned;
   - a parent has assaulted this child or another child;
   - the parents have killed a child; or
   - the parents rights to a sibling have been involuntarily terminated.

2. When the court has found that any of the above is true or that the child has been in foster care for an extended time (defined as 15 out of the last 22 months), and no compelling reasons to the contrary have been offered, the court shall find that reintegration is not a viable option.

3. Upon such a finding the state or the guardian ad litem shall file a motion to terminate parental rights within 30 days.

4. Establishes "permanent guardianship" as a relationship between child and caretaker which is intended to be permanent and self-sustaining.

5. Provides that foster parents, pre-adoptive parents and relatives providing care for the child be given notices of hearings and granted the right to be heard, but such notice does not make them party to the action.

An amendment to K.S.A. 59-2132, is also offered to require a law enforcement background check for adoptive parents. This is currently a requirement for foster parents but not adoptive parents.

Attached to your copy of this testimony is a copy of the amended portions of the Code for Care of Children and a summary of the Adoption and Safe Families Act which outlines all the provisions of the act and notes what action is needed.

I believe you will agree that these amendments are right for children and I urge early passage.

Chapter 38.--MINORS
Article 15.--KANSAS CODE FOR CARE OF CHILDREN

***Statute # 38-1502*** **Definitions**
As used in this code, unless the context otherwise indicates:

(a) "Child in need of care" means a person less than 18 years of age who:

(1) Is without adequate parental care, control or subsistence and the condition is not due solely to the lack of financial means of the child's parents or other custodian;

(2) is without the care or control necessary for the child's physical, mental or emotional health;

(3) has been physically, mentally or emotionally abused or neglected or sexually abused;

(4) has been placed for care or adoption in violation of law;

(5) has been abandoned or does not have a known living parent;

(6) is not attending school as required by K.S.A. 72-977 or 72-1111, and amendments thereto;

(7) except in the case of a violation of K.S.A. 41-727 or subsection (j) of K.S.A. 74-8810 or, except as provided in subsection (a)(12), K.S.A. 21-4204a and amendments thereto, does an act which, when committed by a person under 18 years of age, is prohibited by state law, city ordinance or county resolution but which is not prohibited when done by an adult;

(8) while less than 10 years of age, commits any act which if done by an adult would constitute the commission of a felony or misdemeanor as defined by K.S.A. 21-3105 and amendments thereto;

(9) is willfully and voluntarily absent from the child's home without the consent of the child's parent or other custodian;

(10) is willfully and voluntarily absent at least a second time from a court ordered or designated placement, or a placement pursuant to court order, if the absence is without the consent of the person with whom the child is placed or, if the child is placed in a facility, without the consent of the person in charge of such facility or such person's designee;

Statute # 38-1502 - Continued

(11) has been residing in the same residence with a sibling or another person under 18 years of age, who has been physically, mentally or emotionally abused or neglected, or
sexually abused; or

(12) while less than 10 years of age commits the offense defined in K.S.A. 21-4204a, and amendments thereto.

(b) "Physical, mental or emotional abuse or neglect" means the infliction of physical, mental or emotional injury or the causing of a deterioration of a child and may include, but shall not be limited to, failing to maintain reasonable care and treatment, negligent treatment or maltreatment or exploiting a child to the extent that the child's health or emotional well-being is endangered. A parent legitimately practicing religious beliefs who does not provide specified medical treatment for a child because of religious beliefs shall not for that reason be considered a negligent parent; however, this exception shall not preclude a court from entering an order pursuant to subsection (a)(2) of K.S.A. 38-1513 and amendments thereto.

(c) "Sexual abuse" means any act committed with a child which is described in article 35, chapter 21 of the Kansas Statutes Annotated and those acts described in K.S.A. 21-3602 or 21-3603, and amendments thereto, regardless of the age of the child.

(d) "Parent," when used in relation to a child or children, includes a guardian, conservator and every person who is by law liable to maintain, care for or support the child.

(e) "Interested party" means the state, the petitioner, the child, any parent and any person found to be an interested party pursuant to K.S.A. 38-1541 and amendments thereto.

(f) "Law enforcement officer" means any person who by virtue of office or public employment is vested by law with a duty to maintain public order or to make arrests for rimes, whether that duty extends to all crimes or is limited to specific crimes.

(g) "Youth residential facility" means any home, foster home or structure which provides 24-hour-a-day care for children and which is licensed pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated.

Statute # 38-1502 - Continued

(h) "Shelter facility" means any public or private facility or home other than a juvenile detention facility that may be used in accordance with this code for the purpose of providing either temporary placement for the care of children in need of care prior to the issuance of a dispositional order or longer term care under a dispositional order.

(i) "Juvenile detention facility" means any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders which must not be a jail.

(j) "Adult correction facility" means any public or private facility, secure or nonsecure, which is used for the lawful custody of accused or convicted adult criminal offenders.

(k) "Secure facility" means a facility which is operated or structured so as to ensure that all entrances and exits from the facility are under the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeters of the facility, or which relies on locked rooms and buildings, fences or physical restraint in order to control behavior of its residents. No secure facility shall be in a city or county jail.

(l) "Ward of the court" means a child over whom the court has acquired jurisdiction by the filing of a petition pursuant to this code and who continues subject to that jurisdiction until the petition is dismissed or the child is discharged as provided in K.S.A. 38-1503 and amendments thereto.

(m) "Custody," whether temporary, protective or legal, means the status created by court order or statute which vests in a custodian, whether an individual or an agency, the right to physical possession of the child and the right to determine placement of the child, subject to restrictions placed by the court.

(n) "Placement" means the designation by the individual or agency having custody of where and with whom the child will live.

(o) "Secretary" means the secretary of social and rehabilitation services.

(p) "Relative" means a person related by blood, marriage or adoption but, when referring to a relative of a child's parent, does not include the child's other parent.

Statute # 38-1502 - Continued

(q) "Court-appointed special advocate" means a responsible adult other than an attorney guardian ad litem who is appointed by the court to represent the best interests of a child, as provided in K.S.A. 38-1505a and amendments thereto, in a proceeding pursuant to this code.

(r) "Multidisciplinary team" means a group of persons, appointed by the court or by the state department of social and rehabilitation services under K.S.A. 38-1523a and amendments thereto, which has knowledge of the circumstances of a child in need of care.

(s) "Jail" means:

(1) An adult jail or lockup; or

(2) a facility in the same building or on the same grounds as an adult jail or lockup, unless the facility meets all applicable standards and licensure requirements under law and there is (A) total separation of the juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities; (B) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping, and general living activities; and (C) separate juvenile and adult staff, including management, security staff and direct care staff such as recreational, educational and counseling.

(t) "Kinship care" means the placement of a child in the home of the child's relative or in the home of another adult with whom the child or the child's parent already has a close emotional attachment.

(u) "Juvenile intake and assessment worker" means a responsible adult authorized to perform intake and assessment services as part of the intake and assessment system established pursuant to K.S.A. 1996 Supp. 75-7023.

***(v) "abandon" means to forsake, desert or cease providing care for the child without making appropriate provisions for substitute care.***

***w) "permanent guardianship" means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining without ongoing state oversight or intervention. The permanent guardian stands in loco parentis and exercises all the rights and responsibilities of a parent.***

Statute # 38-1502 - Continued

***(x) "aggravated circumstances" means the abandonment; torture; chronic abuse; sexual abuse or chronic, life threatening neglect of a child.***

***(y) "permanency hearing" means a notice and opportunity to be heard is provided the parties, interested, and the foster, preadoptive or relative providing care for the child. The court, after consideration of the evidence, determines whether progress toward the case plan goal is adequate or reintegration is a viable option.***

***(z) "extended out of home placement" means a child has been in the custody of the secretary and placed with neither parent for 15 of the most recent 22 months beginning 60 days after the date at which a child in the custody of the secretary was removed from the home.***

## *Statute # 38-1562*

Dispositional hearing.
(a) At any time after a child has been adjudicated to be a child in need of care and prior to disposition, the judge shall permit any interested parties, and any persons required to be notified pursuant to subsection

(b), to be heard as to proposals for appropriate disposition of the case.

(b) Before entering an order placing the child in the custody of a person other than the child's parent, the court shall require notice of the time and place of the hearing to be given to all the child's grandparents at their last known addresses or, if no grandparent is living or if no living grandparent's address is known, to the closest relative of each of the child's parents whose address is known , ***and to the foster parent, preadoptive parent, or relative providing care.*** uch notice shall be given by restricted mail not less than 10 business days before the hearing and shall state that the person receiving the notice shall have an opportunity to be heard at the hearing. The provisions of this subsection shall not require additional notice to any person otherwise receiving notice of the hearing pursuant to K.S.A. 38-1536 and amendments thereto. ***Individuals receiving notice pursuant to this subsection shall not be made a party to the action solely on the basis of this notice and opportunity to be heard.***

Statute # 38-1562 - Continued

(c) Prior to entering an order of disposition, the court shall give consideration to the child's physical, mental and emotional condition; the child's need for assistance; the manner in which the parent participated in the abuse, neglect or abandonment of the child; any relevant information from the intake and assessment process; and the evidence received at the dispositional hearing. ***The court shall specifically consider whether the parent has been found by a court to have committed murder or voluntary manslaughter of a child; aided or abetted, attempted, conspired or solicited to commit such a murder or such voluntary manslaughter; or committed a felony assault that results in serious bodily injury to the child or another child or has subjected the child or another child to aggravated circumstances as defined in K.S.A. 38-1502(x); or parental rights of the parent to another child have been terminated involuntarily. If reintegration is not a viable option, the court shall consider whether a compelling reason has been documented in the case plan to find neither adoption nor permanent guardianship are in the best interests of the child. If reintegration is not a viable option and either adoption or permanent guardianship might be in the child's best interests, the state or guardian ad litem shall file a motion to terminate parental rights within 30 days.***

*Statute # 38-1563*

Authorized dispositions.

(a) After consideration of any evidence offered relating to disposition, the court may retain jurisdiction and place the child in the custody of the child's parent subject to terms and conditions which the court prescribes to assure the proper care and protection of the child, including supervision of the child and the parent by a court services officer, or may order the child and the parent to participate in programs operated by the secretary or another appropriate individual or agency. The terms and conditions may require any special treatment or care which the child needs for the child's physical, mental or emotional health.

(b) The duration of any period of supervision or other terms or conditions shall be for an initial period of no more than 18 months. The court, at the expiration of that period, upon a hearing and for good cause shown, may make successive extensions of the supervision or other terms or conditions for up to 12 months at a time.

Statute # 38-1563 - Continued

(c) The court may order the child and the parents of any child who has been adjudged a child in need of care to attend counseling sessions as the court directs. The expense of the counseling may be assessed as an expense in the case. No mental health center shall charge a greater fee for court-ordered counseling than the center would have charged to the person receiving counseling if the person had requested counseling on the person's own initiative.

(d) If the court finds that placing the child in the custody of a parent will not assure protection from physical, mental or emotional abuse or neglect or sexual abuse or will not be in the best interests of the child, the court shall enter an order awarding custody of the child, until the further order of the court, to one of the following:

(1) A relative of the child or a person with whom the child has close emotional ties; (2) any other suitable person; (3) a shelter facility; or (4) the secretary.

In making such a custody order, the court shall give preference, to the extent that the court finds it is in the best interests of the child, first to granting custody to a relative of the child and second to granting custody of the child to a person with whom the child has close emotional ties. If the court has awarded legal custody based on the finding specified by this subsection, the legal custodian shall not return the child to the home of that parent without the written consent of the court.

(e) When the custody of the child is awarded to the secretary:

(1) The court may recommend to the secretary where the child should be placed.

(2) The secretary shall notify the court in writing of any placement of the child or, within 10 days of the order awarding the custody of the child to the secretary, any proposed placement of the child, whichever occurs first.

(3) The court may determine if such placement is in the best interests of the child, and if the court determines that such placement is not in the best interests of the child, the court shall notify the secretary who shall then make an alternative placement subject to the procedures established in this paragraph. In determining if such placement is in the best interests of the child, the court, after providing the parties with an opportunity to be heard, shall consider the health and safety needs f the child and the resources available to meet the needs of children in the custody of the secretary.

Statute # 38-1563- Continued

(f) If custody of a child is awarded under this section to a person other than the child's parent, the court may grant any individual reasonable rights to visit the child upon motion of the individual and a finding that the visitation rights would be in the best interests of the child.

(g) If the court issues an order of custody pursuant to this section, the court may enter an order restraining any alleged perpetrator of physical, sexual, mental or emotional abuse of the child from residing in the child's home; visiting, contacting, harassing or intimidating the child; or attempting to visit, contact, harass or intimidate the child.

(h) The court shall not enter an order removing a child from the custody of a parent pursuant to this section unless the court first finds from evidence presented by the petitioner that reasonable efforts have been made to prevent or eliminate the need for removal of the child or that an emergency exists which threatens the safety of the child and requires the immediate removal of the child ***or reintegration is not a viable option. Reintegration is not a viable option when the parent (1) has been found by a court to have committed murder or voluntary manslaughter of a child; (2 aided or abetted, attempted, conspired or solicited to commit such a murder or such voluntary manslaughter; or (3) committed a felony assault that resulted in serious bodily injury to the child or another child; or (4) has subjected the child or another child to aggravated circumstances as defined in K.S.A. 38-1502(x); or the parental rights of the parent to another child have been terminated involuntarily.*** Such findings shall be included in any order entered by the court.

(i) In addition to or in lieu of any other order authorized by this section, if a child is adjudged to be a child in need of care by reason of a violation of the uniform controlled substances act (K.S.A. 65-4101 et seq. and amendments thereto) or K.S.A. 41-719, 41-804, 41-2719, 65-4152, 65-4153, 65-4154 or 65-4155, and amendments thereto, the court shall order the child to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008 and amendments thereto and to pay a fee not to exceed the fee established by that statute for such evaluation. If the court finds that the child and those legally liable for the child's support are indigent, the fee may be waived. In no event shall the fee be assessed against the secretary or the department of social and rehabilitation services.

Statute # 38-1563- Continued

(j) In addition to any other order authorized by this section, if child support has been requested and the parent or parents have a duty to support the child, the court may order one or both parents to pay child support and, when custody is awarded to the secretary, the court shall order one or both parents to pay child support. The court shall determine, for each parent separately, whether the parent is already subject to an order to pay support for the child. If the parent is not presently ordered to pay support for any child who is a ward of the court and the court has personal jurisdiction over the parent, the court shall order the parent to pay child support in an amount determined under K.S.A. 38-1595 and amendments thereto. Except for good cause shown, the court shall issue an immediate income withholding order pursuant to K.S.A. 23-4,105 et seq. and amendments thereto for each parent ordered to pay support under this subsection, regardless of whether a payor has been identified for the parent. A parent ordered to pay child support under this subsection shall be notified, at the hearing or otherwise, that the child support order may be registered pursuant to K.S.A. 38-1597 and amendments thereto. The parent shall also be informed that, after registration, the income withholding order may be served on the parent's employer without further notice to the parent and the child support order may be enforced by any method allowed by law. Failure to provide this notice shall not affect the validity of the child support order.

*Statute # 38-1565*

Plan for reintegration of child into family or other alternative placement; reports by foster parents; inadequacy of plan, commencement of proceedings pursuant to this code, hearing; new or modified plan.

(a) If a child is placed outside the child's home and no plan is made a part of the record of the dispositional hearing, a written plan shall be prepared which provides for reintegration of the child into the child's family or, if reintegration is not a viable alternative, for other placement of the child. ***Reintegration is not a viable alternative when the parent (1) has been found by a court to have committed murder or voluntary manslaughter of a child; (2) aided or abetted, attempted, conspired or solicited to commit such a murder or such voluntary manslaughter; or (3) committed a felony assault that resulted in serious bodily injury to the child or another child; or (4) has subjected the child or another child to aggravated circumstances as defined in K.S.A. 38-1502(x) or the parental rights of the parent to another child have been terminated involuntarily.***

Statute # 38-1565 - Continued

If the goal is reintegration into the family, the plan shall include measurable objectives and time schedules for reintegration. The plan shall be submitted to the court not later than 30 days after the dispositional order is entered. If the child is placed in the custody of the secretary, the plan shall be prepared and submitted by the secretary. If the child is placed in the custody of a facility or person other than the secretary, the plan shall be prepared and submitted by a court services officer.

(b) A court services officer or, if the child is in the secretary's custody, the secretary shall submit to the court, at least every six months, a written report of the progress being made toward the goals of the plan submitted pursuant to subsection (a). If the child is placed in foster care, the foster parent or parents shall submit to the court, at least every six months, a report in regard to the child's adjustment, progress and condition. The department of social and rehabilitation services shall notify the foster parent or parents of the foster parent's or parent's duty to submit such report, on a form provided by the department of social and rehabilitation services, at least two weeks prior to the date when the report is due, and the name of the judge and the address of the court to which the report is to be submitted. Such report shall be confidential and shall only be reviewed by the court and the child's guardian ad litem. The court shall review the progress being made toward the goals of the plan and the foster parent report and, if the court determines that progress is inadequate or that the plan is no longer viable, the court shall hold a hearing, within 30 days, pursuant to subsection (c). If the secretary has custody of the child, such hearing shall be held no more than 12 months after the child is placed outside the child's home and at least every 12 months thereafter. If the goal of the plan submitted pursuant to subsection (a) is reintegration into the family and the court determines after 12 months from the time such plan is first submitted that progress is inadequate, the court shall hold a hearing pursuant to subsection (c). Nothing in this subsection shall be interpreted to prohibit termination of parental rights prior to the expiration of 12 months.

Statute # 38-1565 - Continued

(c) Whenever a hearing is required under subsection (b), the court shall notify all interested parties and ***the foster parents, preadoptive parents or relative providing care for the child and hold a hearing. After providing the foster parents, preadoptive parents or relative providing care for the child an opportunity to be heard, the court shall determine whether the child's needs are being adequately met and whether reintegration continues to be a viable option. If the court finds reintegration is no longer a viable option, the court shall consider whether compelling reasons are documented in the case plan to support a finding that neither adoption nor permanent guardianship are in the child's best interest. If reintegration is not a viable option and either adoption or permanent guardianship might be in the child's best interests, the state or guardian ad litem shall file a motion to terminate parental rights within 30 days. When the court finds reintegration continues to be a viable option,*** ~~hold a hearing to determine whether proceedings shall be commenced pursuant to this code to terminate the parental rights of either or both parents. If, after hearing, the court determines that the child's needs are not adequately being met, the court shall order commencement of proceedings pursuant to this code to terminate the parental rights of either or both parents unless the court finds good cause why the plan should be modified or a new plan adopted. If the court finds good cause why the plan should be modified or a new plan adopted~~ the court may rescind any of its prior dispositional orders and enter any dispositional order authorized by this code or may order that a new plan for the reintegration be prepared and submitted to the court.

*Statute # 38-1581*

Request for termination.
(a) Either in the petition filed under this code or in a motion made in proceedings under this code, any interested party may request that the parental rights of either or both parents be terminated. (b) Whenever a pleading is filed requesting termination of parental rights, the pleading shall contain a statement of specific facts which are relied upon to support the request, including dates, times and locations to the extent known. ***(c) The state or guardian ad litem shall file pleadings alleging a parent is unfit and requesting termination of parental rights when: (1) within 30 days when the court has determined reintegration is not a viable option and has not found a compelling reason why adoption or permanent guardianship are not in the child's best interest; (2) on and after July 1, 1998 a child has been in extended out of home placement as defined in K.S.A. 38-1502(y); or (3) for children in the secretary's custody***

***Statute # 38-1582***

Procedure upon receipt of request.
(a) Upon receiving a petition or motion requesting termination of parental rights the court shall set the time and place for the hearing on the request.

(b) (1) The court shall give notice of the hearing: (A) As provided in K.S.A. 38-1533 and 38-1534 and amendments thereto; and (B) to all the child's grandparents at their last known addresses or, if no grandparent is living or if no living grandparent's address is known, to the closest relative of each of the child's parents whose address is known, ***and to the foster parent, preadoptive parent, or relative providing care,*** which notice shall be given by restricted mail not less than 10 business days before the hearing.

(2) The provisions of subsection (b)(1)(B) shall not require additional notice to any person otherwise receiving notice of the hearing pursuant to K.S.A. 38-1536 and amendments thereto.

(3) Prior to the commencement of the hearing the court shall determine that due diligence has been used in determining the identity of the interested parties and in accomplishing service of process.

(c) In any case in which a parent of a child cannot be located by the exercise of due diligence, service shall be made upon the child's nearest blood relative who can be located and upon the person with whom the child resides. Service by publication shall be ordered upon the parent.

(d) Prior to a hearing on a petition or a motion requesting termination of parental rights, the court shall appoint an attorney to represent any parent who fails to appear and may award a reasonable fee to the attorney for services. The fee may be assessed as an expense in the proceedings.

***Statute # 38-1583***

Considerations in termination of parental rights.

(a) When the child has been adjudicated to be a child in need of care, the court may terminate parental rights when the court finds by clear and convincing evidence that the parent is unfit by reason of conduct or condition which renders the parent unable to care properly for a child and the conduct or condition is unlikely to change in the foreseeable future. (b) In making a determination hereunder the court shall consider, but is not limited to, the following, if applicable:

(1) Emotional illness, mental illness, mental deficiency or physical disability of the parent, of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental and emotional needs of the child; (2) conduct toward a child of a physically, emotionally or sexually cruel or abusive nature; (3) excessive use of intoxicating liquors or narcotic or dangerous drugs; (4) physical, mental or emotional neglect of the child; (5) conviction of a felony and imprisonment; (6) unexplained injury or death of another child or stepchild of the parent; (7) reasonable efforts by appropriate public or private child caring agencies have been unable to rehabilitate the family; and (8) lack of effort on the part of the parent to adjust the parent's circumstances, conduct or conditions to meet the needs of the child.

(c) In addition to the foregoing, when a child is not in the physical custody of a parent, the court, in proceedings concerning the termination of parental rights, shall also consider, but is not limited to the following:

(1) Failure to assure care of the child in the parental home when able to do so;

(2) failure to maintain regular visitation, contact or communication with the child or with the custodian of the child;

(3) failure to carry out a reasonable plan approved by the court directed toward the integration of the child into the parental home; and

(4) failure to pay a reasonable portion of the cost of substitute physical care and maintenance based on ability to pay. In making the above determination, the court may disregard incidental visitations, contacts, communications or contributions.

Statute # 38-1583 - Continued

(d) The rights of the parents may be terminated as provided in this section if the court finds that the parents have abandoned the child or the child was left under such circumstances that the identity of the parents is unknown and cannot be ascertained, despite diligent searching, and the parents have not come forward to claim the child within three months after the child is found.

(e) The existence of any one of the above standing alone may, but does not necessarily, establish grounds for termination of parental rights. The determination shall be based on an evaluation of all factors which are applicable. In considering any of the above factors for terminating the rights of a parent, the court shall give primary consideration to the physical, mental or emotional condition and needs of the child. If presented to the court and subject to the provisions of K.S.A. 60-419, and amendments thereto, the court shall consider as evidence testimony from a person licensed to practice medicine and surgery, a licensed psychologist or a licensed social worker expressing an opinion relating to the physical, mental or emotional condition and needs of the child. The court shall consider any such testimony only if the licensed professional providing such testimony is subject to cross-examination.

(f) A termination of parental rights under the Kansas code for care of children shall not terminate the right of the child to inherit from or through the parent. Upon such termination, all the rights of birth parents to such child, including their right to inherit from or through such child, shall cease.

***(g) If, after finding the parent unfit, the court determines a compelling reason why it is not in the best interests of the child to terminate parental rights, the court may award permanent guardianship to an individual providing care for the child, a relative or other person with whom the child has close emotional ties.***

*Statute # 59-2132*

Same; assessment, investigation and report; waiver.

(a) Except as provided in subsection (h), in independent and agency adoptions, the court shall require the petitioner to obtain an assessment by a court approved social worker licensed to practice social work in Kansas or by a licensed child-placing agency of the advisability of the adoption.

(b) The petitioner shall file with the court, not less than 10 days before the hearing on the petition, a report of the

Statute # 59-2132 - Continued

(c) If there is no licensed social worker or licensed child-placing agency available to make the assessment and report to the court, the court may use the department of social and rehabilitation services for that purpose.

(d) The costs of making the assessment and report may be assessed as court costs in the case as provided in article 20 of chapter 60 of the Kansas Statutes Annotated and amendments thereto.

(e) In making the assessment, the social worker, child-placing agency or department of social and rehabilitation services is authorized to observe the child in the petitioner's home, verify financial information of the petitioner, shall clear the name of the petitioner with the child abuse and neglect registry through the department of social and rehabilitation services; ***shall determine whether petitioner has been convicted of a felony for any act described in articles 34, 35 or 36 of Chapter 21 of the Kansas Statutes Annotated or, within the last five years been convicted of a felony violation of the controlled substance act,*** and to contact the agency or individuals consenting to the adoption and confirm and, if necessary, clarify any genetic and medical history filed with the petition. This information shall be made a part of the report to the court. The report to the court by the social worker, child-placing agency or department of social and rehabilitation services shall include the results of the investigation of the petitioner, the petitioner's home and the ability of the petitioner to care for the child.

(f) In the case of a nonresident who is filing a petition to adopt a child in Kansas, the assessment and report required by this section must be completed in the petitioner's state of residence by a licensed social worker, a licensed child-placing agency or a comparable entity in that state and filed with the court not less than 10 days before the hearing on the petition.

(g) The assessment and report required by this section must have been completed not more than one year prior to the filing of the petition for adoption.

(h) The assessment and report required by this section may be waived by the court upon review of a petition requesting such waiver by such child's grandparent or grandparents or upon the court's own motion.

## ADOPTION AND SAFE FAMILIES ACT OF 1997

| Summary | Action Needed |
|---|---|
| **Title I: Reasonable Efforts and Child Safety Provisions** | |
| *Child Health and Safety Paramount*: In making decisions the child's health and safety must be paramount. | Implement actions below |
| *Reasonable Efforts to Preserve and Reunify Families:* When the court finds that reunification is not reasonable, based on specified facts such as:<br>aggravated circumstances defined in state law including abandonment, torture, chronic abuse and sexual abuse;<br>parent has killed another child or has assaulted this child or another of their children; or<br>parent's rights to a sibling has been involuntarily terminated,<br>The court must conduct a permanency hearing within 30 days of the finding that reunification is not reasonable and the state must make reasonable efforts for adoption or guardianship. | Amend K.S.A. 38-1563, 1565 |
| Reunification and adoption efforts may be concurrent. | Train foster care and adoption contractors |
| *Documentation of Efforts to Adopt:* When permanency plan is adoption the state must document steps taken to:<br>find an adoptive home or relative home;<br>make a permanent placement; and<br>finalize the adoption/guardianship.<br>Additionally the state must document child specific recruitment plans. | Specify in the IV-B state plan and policy how the state will document steps taken. Modify the Case Planning Document. The adoption contractor is currently required to develop a child specific recruitment plan if an adoptive home is not identified within 90 days of the referral.. |
| *Termination of Parental Rights:* States are required to file a petition or join a petition to terminate parental rights when:<br>a child has been in foster care for 15 of most recent 22 months;<br>court has determined abandonment;<br>court has determined that a parent assaulted the child or killed or assaulted another of their children. | Amend the Kansas Code for Care of Children to provide court must make finding of fact that the child was abused or neglected and petition for termination of parental rights must be filed within 30 days.<br>Training for prosecutors on the act. |
| Concurrently state is to identify, recruit, process and approve a qualified adoptive family unless:<br>the child is cared for by a relative; | Adoption contract covers the identification, recruitment of qualified families and is in place. |
| the state has documented to the court compelling reasons a petition is not in the best interest of the child; | Through policy establish guidelines for compelling reasons a petition is not in the best interest of a specific child. |
| the state has failed to provide services deemed necessary for reunification when reasonable efforts to | |

## ADOPTION AND SAFE FAMILIES ACT OF 1997

| Summary | Action Needed |
|---|---|
| *Termination of parental Rights:* - Continued | |
| For children who enter foster care after the date of enactment (November 1997) states are required to comply with the 15 of 22 months rule within three months of the end of the states first regular legislative session. (For Kansas July, 1998) | Ensure that information system can identify children related to the 15/22 rule. Develop policy related to Administrative Reviews.<br>Train foster care contractors.<br>Develop procedures for requesting motion by county/district attorney. |
| For children in foster care at the time of enactment states must comply in three phases:<br>1/3 of the children with in 6 months of the close of the legislative session (Oct. 1998);<br>1/3 within 12 months (April, 1999); and<br>full compliance by Oct, 1999. | Training for county/district attorneys and courts on the requirements. |
| *Criminal Record Checks:* State must do CRC prior to approval for foster and adoptive families for children eligible for IV-E foster care and adoption support. Foster or adoptive parent cannot be approved if there is a felony conviction for: child abuse/neglect; spousal abuse; crimes against children, including child pornography; or crimes of violence, rape, sexual assault or homicide. Also, parent cannot be approved if in the last 5 years there has been a felony conviction for physical assault, battery or a drug related offence. The Governor or legislature can opt out of this requirement. | Amend statutes to add adoptive families to the statues requiring the K.B.I. to do criminal background checks child care providers.<br><br>Or, opt out of the requirement. |
| *Quality Standard of Care:* By Jan. 1999 states must implement standards to ensure foster children receive quality services. | No Action required<br>Foster Care outcomes are in place<br>Foster parents are required to have MAPP training and annual training. |

## ADOPTION AND SAFE FAMILIES ACT OF 1997

| Summary | Action Needed |
|---|---|
| **Title II Adoption Promotion Provisions** | |
| *Adoption Incentive Payments:* States are eligible for incentive payments when:<br>the number of children placed in FY 1998 exceed the average number for FY's 1995-1997;<br>in FY 1999 and subsequently, when adoptions are higher than in any previous FY after 1996. | Determine baseline data |
| Incentive payment is $4,000 for each child above the base number plus an additional $2,000 for foster children with special needs. | Develop policy about sharing the incentive payments with the adoption contractor. |
| To be eligible for incentive payments in FY 2001 and 2002 states must provide heath insurance for any special needs child receiving adoption assistance. | Kansas would be required to provide a medical card for children in Kansas from states which are not ICMA reciprocal. |
| *Technical Assistance to Promote Adoption:* HHS will provide<br>T.A. to states for:<br>guidelines for expediting TPR;<br>concurrent planning;<br>specialized units to more toward adoption;<br>tools for determining risk of harm if child is returned home;<br>fast tracking children under 1; and<br>legal risk adoption. | No action required |
| *Eligibility for Adoption Assistance in Cases of Dissolved Adoptions:* Federal adoption assistance follows a child to a new adoptive placement. | Revise the eligibly and payment manual to reflect this change.<br>Include in state plan |
| *Health Care for Adopted Children with Special Needs:* States must provide medical care for adoption assistance children. | No action required. Provision currently in place |
| *Interjurisdictional Adoption:* States could lose IV-E eligibility if the Secretary finds a state has denied or delayed | Adoption contractor is required to conduct a national search |

## ADOPTION AND SAFE FAMILIES ACT OF 1997

| Summary | Action Needed |
|---|---|
| **Title III: System Accountability and Reform Provisions** | |
| *Permanency Hearings*: Must have permanency hearing within 12 months form date of entry into foster care.<br>Entry into foster care is defined as:<br>date of first judicial finding of child abuse/neglect, or<br>60 days after a child's removal from the home. | Amend Kansas Code for Care of Children to provide hearing must be "permanency" hearing.<br>Amend Kansas Code for Care of Children to require court finding of fact regarding CA\N. |
| The purpose of the permanency hearing is to determine permanent plan for the child and includes time table for:<br>1. returning home;<br>2. placement for adoption/state filing of TPR;<br>3. referral for legal guardianship; or<br>4. other permanent plan based on compelling reason 1,2, or 3 are not options. | Training for contractors, court and prosecutors.<br>Amend Kansas Code for Care of Children. |
| *Participation in Case Reviews/Hearings:* Foster parents, pre adoptive parents and relatives providing care of a child must be given notice of hearing and have a right to be heard. Receiving notice does not equal being a party to the action. | Amend Kansas Code for Care of Children<br><br>Develop policy and procedure to provide up to date information to the court for proper notices. |
| *Performance Measures for State Child Welfare Programs:* HHS with assistance from states and advocates must develop outcome measures for states and report to Congress by May, 1999. | Outcome measures are in place.<br>Volunteer to participate with HHS in establishing outcome measures. |
| Measures are to be developed from AFCARS, in as much as possible and measure:<br>length of stay in foster care;<br>number of foster care placements;<br>number of adoptions. | No action required. Outcome measures are currently in place<br><br>Determine if FACTS\SACWIS can provide the data |
| Additionally HHS, with assistance from states and advocates must study and make recommendations to Congress for performance based incentive funding for IV-B and IV-E. Feasibility study due by May 1999. | No action required |
| *Child Welfare Demonstrations:* HHS may approve 10 demonstration programs for FY 1998-2002.<br>Demonstrations must consider and address:<br>barriers resulting in delays in adoption;<br>identify and address parental substance abuse problems that endanger children and result in foster care | Plan to submit a project. Preliminary work begun. |

## ADOPTION AND SAFE FAMILIES ACT OF 1997

| Summary | Action Needed |
|---|---|
| **Title IV: Additional Provisions** | |
| *Reauthorization and Expansion of Family Preservation Program:*..IV-B, part 2, FP and FS and Court Improvements Projects is re-authorized. Part 2 is expanded and must include:<br>community based family support services;<br>family preservation;<br>time-limited reunification services (no more than 15 months);<br>adoption promotion support services (pre and post adoption services, activities designed to expedite the adoption process) | Update state plan to include the additional services and add an assurance that safety of the child is paramount. Develop policy and procedure |
| State plan must assure that the safety of the child is the paramount concern. | Add documentation of the assurances to case planning document. |
| *Kinship Care Report:* HHS to convene an advisory panel on the extent to which foster care children are placed with relatives. HHS is to report to the panel by 6-98, panel reviews and submits comments by 10-98. HHS to submit final report to Committees on Ways and Means and Finance by 6-99. | No action required. Foster Care and Adoption contractors currently utilize Kinship Care |
| *Federal Parent Locator Service:* Child welfare agencies are authorized to use FPLS to locate absent parents. | Current practice in many areas. Ensure that CSE is aware of the federal authorization. |
| *Coordination of Substance Abuse and CPS:* HHS is to report to the committees on Ways and Means and Finance on the out comes of substance abuse by November 1998. | No action required. Enhance effort to coordinate and exchange information with ADAS. |
| *Eligibility for Independent Living Services:* Revised to include children no longer eligible for IV-E because of assets up to $5000. | Develop policy changes. Coordinate with IM/EPS to ensure policy change does not render the child ineligible for a medical card. |
| *Standby Guardianship:* States should (not mandatory) have laws/procedures permitting chronically ill or near death parents to designate a standby guardian to take effect upon parents death/incapacity. | Can do under Kansas current laws. Training concerning the option is needed. |
| *Purchase of American Made Equipment:* To the extent possible equipment and products purchased under ASFA should be American made. | Inform purchasing |

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## ADOPTION AND SAFE FAMILIES ACT OF 1997

| Summary | Action Needed |
|---|---|
| *Use of AFCARS Data:*..To the extent possible information required by this act would be supplied through AFCARS.<br><br>*Temporary Reduction of Contingency Fund:* $40 million will be taken from the $2 billion TANF contingency fund.<br><br>**Title V: Effective Date**<br><br>Provision are effective on the date of enactment except for:<br>provisions dealing with termination of parental rights, and<br>legislation required by states to comply with state plan requirements (the first quarter following the end of the next state legislative session). | Determine availability of data in FACTS\SACWIS |

# Kansas County & District Attorneys Association

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EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

January 21, 1998

TO: House Judiciary Committee

FROM: James Clark, KCDAA Executive Director

RE: **HB 2208**, penalty for domestic battery

KCDAA requested House Bill No. 2208, which amends K.S.A. 21-3412, to impose mandatory minimum penalties similar to DUI penalties. These include 48 hours confinement or 100 hours public service before probation or parole is granted to first offenders; and house arrest for second and subsequent convictions.

The purpose of the legislation is simply to recognize that domestic battery is at least as serious as driving with a blood alcohol content of .08.

The policy issue of imposing mandatory penalties minimum penalties for domestic violence is not a new one. For example, the criminal trespass statute, K.S.A. 21-3721 (excerpt attached), already imposes similar penalties where the trespass is due to violation of domestic violence-related court orders.

SB 674 passed trespass

House Judiciary
1-21-98
Attachment 2

**8-1567. Driving under influence of alcohol or drugs; blood alcohol concentration; penalties.** (a) No person shall operate or attempt to operate any vehicle within this state while:

(1) The alcohol concentration in the person's blood or breath as shown by any competent evidence, including other competent evidence, as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amendments thereto, is .08 or more;

(2) the alcohol concentration in the person's blood or breath, as measured within two hours of the time of operating or attempting to operate a vehicle, is .08 or more;

(3) under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle;

(4) under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle; or

(5) under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely driving a vehicle.

(d) Upon a first conviction of a violation of this section, a person shall be guilty of a class B, nonperson misdemeanor and sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and fined not less than $200 nor more than $500. The person convicted must serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. In addition, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or treatment program as provided in K.S.A. 8-1008, and amendments thereto, or both the education and treatment programs.

(g) On a second or subsequent conviction of a violation of this section, the court may place the person convicted under a house arrest program, pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment.

**21-3721. Criminal trespass.** (a) Criminal trespass is:

(1) Entering or remaining upon or in any land, nonnavigable body of water, structure, vehicle, aircraft or watercraft other than railroad property as defined in K.S.A. 1996 Supp. 21-3761 and amendments thereto by a person who knows such person is not authorized or privileged to do so, and:

(A) Such person enters or remains therein in defiance of an order not to enter or to leave such premises or property personally communicated to such person by the owner thereof or other authorized person; or

(B) such premises or property are posted in a manner reasonably likely to come to the attention of intruders, or are locked or fenced or otherwise enclosed, or shut or secured against passage or entry; or

(C) such person enters or remains therein in defiance of a restraining order issued pursuant to K.S.A. 60-1607, 60-3105, 60-3106 or 60-3107 or K.S.A. 38-1542, 38-1543 or 38-1563, and amendments thereto, and the restraining order has been personally served upon the person so restrained; or

(2) entering or remaining upon or in any public or private land or structure in a manner that interferes with access to or from any health care facility by a person who knows such person is not authorized or privileged to do so and such person enters or remains thereon or therein in defiance of an order not to enter or to leave such land or structure personally communicated to such person by the owner of the health care facility or other authorized person.

(2) Upon a conviction of a violation of subsection (a)(1)(C), a person shall be sentenced to not less than 48 consecutive hours of imprisonment which must be served either before or as a condition of any grant of probation or suspension, reduction of sentence or parole.

History: L. 1969, ch. 180, § 21-3721; L. 1979, ch. 92, § 13; L. 1980, ch. 99, § 1; L. 1986, ch. 161, § 3; L. 1992, ch. 183, § 6; L. 1993, ch. 291, § 79; L. 1996, ch. 30, § 2; L. 1996, ch. 211, § 2; July 1.

-att 3

STATE OF KANSAS

DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
*Landon State Office Building*
*900 S.W. Jackson — Suite 400-N*
*Topeka, Kansas 66612-1284*
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Bill Graves
*Governor*

Charles E. Simmons
*Secretary*

# Memorandum

DATE: January 21, 1998

TO: House Judiciary Committee

Madden

FROM: Charles E. Simmons
Secretary of Corrections

RE: HB 2208

The Department of Corrections requested introduction of HB 2086 which would change the place of incarceration for offenders convicted of felony domestic battery. Pursuant to HB 2086, any period of incarceration imposed for felony domestic battery would be served in local jails or in community corrections facilities rather than in a state correctional facility. The department believes the same concerns that prompted introduction of HB 2086 apply to the pending bill, HB 2208.

HB 2208 amends the provisions of K.S.A. 21-3412, which defines the crime of felony domestic battery. This crime currently carries a "non grid" punishment of not less than 90 days nor more than one year's imprisonment and a fine of not less than $1,000 nor more than $2,500. Furthermore, the person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The mandatory 90 days imprisonment may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided the work release program requires the offender to return to confinement at the end of each day in the work release program.

The amendments proposed by HB 2208 expand the definition of felony domestic battery, and add a sentence disposition option of house arrest after the offender has served 48 consecutive hours of imprisonment.



House Judiciary
1-21-98
Attachment 3

The department's concerns involve the ability of the state corrections system to efficiently carry out the unique sentencing provisions of K.S.A. 1997 Supp. 21-3412 either as it currently exists or as it would be amended pursuant to HB 2208. Additionally, neither K.S.A. 21-3412 nor HB 2208 identify the length of post release supervision, if any, that is required. Finally, placement of these offenders in the custody of the Department of Corrections would entail that any sentence of imprisonment imposed would be eligible for reduction by "good time" awards.

The unique sentencing provided for offenders convicted of felony domestic battery is better suited for incarceration within local jails rather than a state correctional facility. For all other felony crimes for which incarceration is with the Department of Corrections, a period of post release supervision is specified, the jurisdiction to parole offenders with an indeterminate sentence is vested in the Kansas Parole Board, and the placement of offenders in the department's work release facilities rests with the secretary of corrections. Under the Sentencing Guidelines Act, district courts no longer have jurisdiction to modify the sentence. The provisions of K.S.A. 1997 Supp 21-3412 and HB 2208 are either contrary or not well suited to these general statutory provisions.

It is the department's opinion that adjustment and supervision of short periods of detention is most appropriate when the district court retains jurisdiction over offenders in the local jail or community corrections. The district courts are better able to respond in a more timely manner to information regarding the offender's behavior which may justify modification of the sentence. Execution of short sentences of 90 days through local detention would also remove those sentences from the eligibility for reduction by "good time" awards.

Under currently law, the appropriate severity level and thus the corresponding period of postrelease supervision to be applied to felony domestic battery offenders is not clear. K.S.A. 21-3412 defines the crime as being a person felony, but does not designate a severity level. K.S.A. 21-4707 provides that when considering an unranked offense in relation to the crime severity scale, the sentencing judge should refer to comparable offenses on the crime severity scale, and all unclassified felonies shall be scored as a level 10 nonperson felonies. Thus it is unclear whether a felony domestic battery should be classified as severity level 10 albeit a person crime or a severity level 7 offense that corresponds to the classification provided for battery against a correctional officer, or a juvenile detention officer.

The current law is also unclear as to the disposition of an offender for whom the court orders placement in work release after 48 consecutive hours of imprisonment. Since the current law allows for sentencing to the department, the question is whether the offender must be placed in the department's work release program or whether the offender is to be placed in a community corrections or jail work release program. The same confusion would exist in regard to HB 2208 and the use of house arrest.

Finally, the issue of whether "good time" credits can reduce the mandatory 90 days of imprisonment is unclear. The Attorney General has opined in opinion number 96-59 that offenders in the custody of the department for felony domestic battery are eligible to be awarded "good time" credits. However, K.S.A. 21-3412 provides that persons convicted of felony domestic battery shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment.

The expense and commitment of resources involved in the transfer of an offender from the local jail or community corrections to the department is not economical since the offender must be imprisoned for only 48 hours before being eligible for work release, or house arrest; or a complete release after 90 days. Additionally, more work release opportunities would exist in the community in which the offender committed the crime. It is anticipated that most offenders who would be participating in work release programs would return to their pre conviction employment or at least have a better opportunity to obtain new employment in the community with which they are familiar. The department, unlike community corrections and local jails, has work release facilities in only two counties with a total of 219 beds.

Unlike the Department of Corrections, local detention facilities have historically imprisoned offenders convicted of domestic battery. Prior to the 1996 amendment of K.S.A. 21-3412, making domestic battery a felony for the third offense, those offenders would have been confined in a county jail for up to six months. Even after the 1996 amendment, persons convicted of domestic battery for a second time are to be confined in the county jail for up to one year.

The range of dispositions available for felony domestic battery are similar to the sentencing provisions for Driving under the Influence (K.S.A. 8-1567) and K.S.A. 21-3705 (criminal deprivation of a motor vehicle). Imprisonment for both of these felonies is in the local jail or community corrections facility.

The department recommends that any action taken on HB 2208 include the provisions of HB 2086, designating that the department of corrections not be used for the incarceration of these offenders. If the place of confinement is not changed through passage of HB 2086, the Department requests the committee amend the Sentencing Guidelines Act to address the concerns raised regarding the severity level, "good time" eligibility, and authority of the department and Kansas Parole Board relative to the unique sentence provisions for felony domestic battery.

CES:TGM/nd

#4

REMARKS CONCERNING SENATE BILL 216

HOUSE JUDICIARY COMMITTEE

JANUARY 21, 1998

Thank you for giving me the opportunity to appear before your Committee on behalf of Kansas Credit Attorneys Association, which is a state-wide organization of attorneys whose practice includes considerable collection work, and Kansas Collectors Association, Inc., which is an association of collection agencies in Kansas.

On March 13, 1997, I had the opportunity to appear before your Committee on your hearing on SB 216, and at that time I respectfully requested your Committee to amend SB 216 by adding the contents of HB 2206 to SB 216. It is my understanding that your Committee took action to amend SB 216 by removing the original contents of SB 216 and inserting the provisions of HB 2206. However, there apparently was no further action on SB 216, and no Committee report was made concerning it.

SB 216 as it appears in the present version is no longer needed, because the contents of SB 216 were amended into the final version of HB 2007 by the Conference Committee on HB 2007, and HB 2007 was enacted into law.

We would urge the Committee to pass the contents of HB 2206, either by reporting HB 2206 favorably, or by concluding the process of amending the contents of HB 2206 into SB 216, and reporting SB 216 favorably as amended.

Elwaine F. Pomeroy

Elwaine F. Pomeroy

House Judiciary
1-21-98
Attachment 4

F&5

State of Kansas
Office of the Attorney General
301 S.W. 10th Avenue, Topeka 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

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STATEMENT OF
DEPUTY ATTORNEY GENERAL DAVID B. DEBENHAM
BEFORE THE HOUSE JUDICIARY COMMITTEE
RE: HOUSE BILL 2282
JANUARY 21, 1998

Chairman Tim Carmody and Members of the Committee:

I appear before you today on behalf of Attorney General Carla J. Stovall, to ask for your support of House Bill 2282. This bill would amend the language of K.S.A. 60-312(a)(1) by requiring that when process is served by an officer that the officer shall make an affidavit as to the time, place and manner of such service. This change would mirror the manner of return of service, whether the individual serving the process was an officer or an individual other than an officer.

This amendment is the direct result of an investigation by the Kansas Bureau of Investigation into the activities of an investigator associated with a prosecutor's office. During a court hearing on a murder case, it was discovered that although the investigator had marked the return of service of a subpoena as personally served, the witness had not been served with the subpoena.

The case was referred to the Kansas Bureau of Investigation for further investigation. During this investigation it was discovered that there were 10 other instances in which this investigator had marked subpoenas as having been personally served, when in fact the investigator had either tacked the subpoena to the door of the witness's address or left the subpoena with another person at the address.

After the investigation was completed, the matter was referred to the Attorney General's office for criminal charges of making a false writing. The substance of making a false writing would require, in this case, not only that the subpoena contained a false statement but also that the false statement was done with the intent to induce official action. An analysis of the facts led to the opinion that criminal charges could not be brought due to an inability to identify with specificity the official action that the investigator had intended on the part of the district court judge.

As a result, the district court judge has requested a correction to this problem by clarifying that falsifying this type of document is a crime.

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One way to correct this problem would be to amend K.S.A. 60-312, the proof of service statute, by requiring an affidavit be signed by the person making the service regardless of whether the individual is an officer or not. Currently an affidavit is required only if the individual making the service of process is not an officer. K.S.A. 60-303(c)(3) defines an "officer" for the purpose of this statute as a sheriff, a sheriff's deputy, an attorney admitted to the practice of law before the supreme court of Kansas or an individual who has been appointed as a process server by a judge or clerk of the district court.

The return would not be required to be given under oath or affirmation by a notary public, in order to make a proper return, since K.S.A. 53-601 would allow the officer to make the affidavit by an unsworn declaration in substantially the following form:

RETURN OF SERVICE

I declare (or verify, certify or state ) under penalty of perjury that, I received this subpoena on _____, 1997, and served it by _____ on _____, 1997 at _____ ( a.m.) ( p.m.) at _____, the foregoing is true and correct. Executed on ( date ).

_____
( Signature )

or

RETURN OF SERVICE

I received this subpoena on _____, 1997, and served it by _____.

_____
(Signature)

I declare (or verify, certify or state ) under penalty of perjury that the foregoing is true and correct. Executed on (date).

_____
(signature)

If a false statement is intentionally and knowingly made in the return of the subpoena, criminal charges of perjury, a severity level 9 nonperson felony, could then be filed.

On behalf of Attorney General Stovall, I would urge your favorable consideration of Senate Bill 2282.