

Approved: 3-17-99
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Michael R. O'Neal at 3:30 p.m. on February 2, 1999 in Room 313-S of the Capitol.

All members were present except:

Representative Tim Carmody - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Avis Swartzman, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:

Terry Bullock, Shawnee County District Court Judge
Neil Woerman, Director of Budget & Special Projects, Attorney General's Office
Gene Johnson, Kansas Alcohol Safety Action Program
Jeanne Turner, Chief Clerk of the 5th Judicial District
Barbara Tombs, Kansas Sentencing Commission
Pam Moses, Chief Clerk of the 27th Judicial District
Kelli Newton, Assistant Attorney General, Litigation Division

Chairman O'Neal requested a committee bill be introduced regarding the Uniform Law Commission's Uniform Principal and Income Act. Representative Gregory made the motion to have the request introduced as a committee bill. Representative Loyd seconded the motion. The motion carried.

Hearings on **HB 2083 - court, debt and restitution collection, authority of attorney general**, were opened.

Terry Bullock, Shawnee County District Court Judge, appeared before the committee as a proponent of the bill. He stated that currently there is no penalty for those who do not pay court costs, debt and restitution. The proposed bill would ensure that payment is collected back in order to restore funds and that the person convicted would pay the cost associated with the collection.

Neil Woerman, Director of Budget & Special Projects, Attorney General's Office, appeared as a proponent of the bill. He explained that the Attorney General has been working to implement a program that would collect court debt and restitution. (Attachment 1)

Gene Johnson, Kansas Alcohol Safety Action Program, appeared before the committee in support of the legislation. He commented that they provide evaluation, monitoring and supervision of DUI and other alcohol offenders and that for this service a fee of \$125 is charged for these services. This proposed bill would help collect that fee. (Attachment 2)

Committee members asked if the bill would be retroactive and were concerned that it would be viewed by the courts as adding an additional punishment onto their sentence. Those who testified believed that it was simply an administrative fee, not an additional fine.

Hearings on **HB 2083** were closed.

Hearings on **HB 2101 - availability of presentencing reports**, were opened.

Jeanne Turner, Chief Clerk of the 5th Judicial District, appeared before the committee as a proponent of the proposed bill. She explained that the bill would simple make felony & misdemeanor presentencing investigations parallel, which would open misdemeanor records. (Attachment 3)

Barbara Tombs, Kansas Sentencing Commission, appeared in support of **HB 2101**. She stated that by passing the proposed bill it would be easier for the Sentencing Commission to calculate presentencing reports.

Hearings on **HB 2101** were closed.

Hearings on **HB 2102 - jury size and peremptory challenges in proceedings involving commitment of**

sexually violent predators, were opened.

Pam Moses, Chief Clerk of the 27th Judicial District, appeared before the committee in support of the bill. She commented that, if passed, it would clarify the number of jurors that are required and would create an opportunity for parties to agree to use smaller jury panels. (Attachment 4)

Kelli Newton, Assistant Attorney General, Litigation Division, also appeared in support of the bill.

Hearings on HB 2102 were closed.

HB 2092 - direct placement in conservation camps for certain offenders by the secretary of corrections

Representative Adkins made the motion to report HB 2092 favorably for passage and to be placed on the consent calendar. Representative Pauls seconded the motion. The motion carried.

The committee meeting adjourned at 4:40p.m. The next meeting is scheduled for Wednesday, February 3, 1999.

**HOUSE JUDICIARY COMMITTEE
GUEST LIST**

February 2, 1999

| NAME | REPRESENTING |
|--------------------|------------------------------------------|
| Gene Johnson | Ks. Community A.S.A.P. Coordinator Assn. |
| Stephanie Buchana | DOB |
| Tim Madden | KDOC |
| Fam Moses | Court Clerks & Admin (KADCCA) |
| Jeanne S. Turner | Court Clerks & Admin (KADCCA) |
| Stephanie M Turner | ~ na ~ |
| Dale Lomb | KSC |
| Jay Talley | KADCCA |
| James Clark | KCOAA |
| GREG DEBACKER | NCFC |
| Ramona Carpenter | KFB |
| Derek A. Blaylock | Intern for Teresa Sitterman |
| Jason Finson | Intern for Clay Award |
| Ron Smith | Ks Bar Assoc |
| Neil Woenman | Ks AG's office |
| Keele Newton | AG's office |
| Nancy Lindberg | AG's office |
| Holly Daus | AG's office |
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Office of the Attorney General

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Testimony on HB 2083
Prepared by Neil Woerman, Director of Budget & Special Projects
Office of Attorney General Carla J. Stovall
Before the House Judiciary Committee
February 2, 1999

Mr. Chairman & Members of the Committee:

In cooperation with the District Court Administrative Judges, court clerks, private contractors and district court trustees, Attorney General Stovall has been working to implement a program to attempt collection of what once was estimated to be \$100 million in unpaid court debt and restitution statewide. That was the amount existing court computer systems disclosed in a survey the Office of Judicial Administration and Attorney General performed in 1996. This program to collect court debt and restitution was authorized by 1996 legislation and was further amended in 1997. Kansas is a leader in this effort; no other state in the country has established such a program on a statewide basis.

The first collections under this program occurred approximately a year ago here in Shawnee County. To date over \$214,000 has been collected in 11 judicial districts by four different collectors, both court trustees and private collection and law firms. Of the state's 31 judicial districts, to date 20 have entered into work plans with collectors to participate in this program. I anticipate more districts to actually begin collection in the near future. Particularly of note, collections are beginning in Wyandotte County by the court trustee at this time. A chart attached to my testimony provides further detail regarding status of collection efforts.

Since this program was authorized, there have been two principal issues which have been difficult to overcome. While the lack of appropriate information systems within many of the district courts has made data transfer and the recording of transactions to and from the collectors difficult at best, I am confident this issue will be addressed in a new Judicial Branch information services plan and initiative now being developed.

The primary impediment to this program from Day One has been the policy issue which House Bill No. 2083 seeks to change. The legislation adopted in 1996 required the cost of collection (which averages about 26 percent of the amounts collected) to be paid from the court debt and restitution amounts owed. The defendant is not required to pay any additional fees for

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Attachment 1

leaving these debts unpaid. Instead it is the victim, in the case of restitution, who is again victimized by the defendant's failure to pay the debt. Many victims simply cannot understand why the cost of collection is being taken from the debts owed to them. It is the Attorney General's firm belief that it is the defendant, not the victim, who should be forced to pay these costs of collection. The Attorney General believes the goal of this program should be to make the victim whole. The current system cannot do that.

The need to show the full amount of court debt and restitution paid, but depositing a different net amount minus the cost of collection into a dozen or more different restitution, fine, fee and cost accounts, also has proved to be very difficult, complicated and confusing task for the clerks. This has been true both in many small counties with limited computer resources and in many large counties as well.

This bill was offered by Judge Terry Bullock, administrative judge in Shawnee County, to make the defendant, not the victim, pay the cost of collection, when the defendant's failure to pay requires the debt to be turned over to collectors. Unlike many counties, Shawnee County has an information system which has been an asset to this program rather than a hindrance. Administrative concerns were not the primary reason for offering this bill, although it will help many counties with administrative difficulties.

This bill will bring more money to victims and to the state. It will penalize the right person for failure to pay amounts ordered by the court as a result of the defendants' illegal acts. From working with them on this program, I know that many judges, clerks and the Attorney General herself, on behalf of victims, strongly endorse this bill. Those involved in this process, judges, clerks, trustees and victims simply believe this bill makes sense. By allowing more parties involved in our criminal justice system to fully endorse this program and by reducing administrative confusion, this bill will be of great assistance to the Attorney General in administering this program in a successful manner. I would be pleased to try to answer any questions, Mr. Chairman.

Court Debt and Restitution Collections

| Districts with Workplans | Counties | Vendor | Collected to Date* |
|--------------------------------|-----------------------------------------------------------|-------------------------------|-----------------------|
| 3rd | Shawnee | Vopat & Rowe | \$94,538.12 |
| 4th | Anderson, Coffey, Franklin, Osage | Municipal Services Bureau | \$4,008.00 |
| 6th | Bourbon, Linn, Miami | Municipal Services Bureau | \$0.00 |
| 7th | Douglas | Court Trustee (Brian Farley) | \$46,790.85 |
| 9th | Harvey, McPherson | Municipal Services Bureau | \$37,445.00 |
| 10th | Johnson | Municipal Services Bureau | \$0.00 |
| 12th | Cloud, Jewell, Lincoln, Mitchell, Republic, Washington | Court Trustee (Mark Noah) | \$0.00 |
| 14th | Chautauqua, Montgomery | Municipal Services Bureau | \$938.00 |
| 16th | Clark, Comanche, Ford, Gray, Kiowa, Meade | Municipal Services Bureau | \$10,145.00 |
| 18th | Sedgwick | Municipal Services Bureau | \$0.00 |
| 20th | Barton, Ellsworth, Rice, Russell, Stafford | Municipal Services Bureau | \$2,023.00 |
| 21st | Clay, Riley | Municipal Services Bureau | \$0.00 |
| 22nd | Brown, Doniphan, Marshall, Nemaha | Municipal Services Bureau | \$2,894.00 |
| 24th | Edward, Hodgeman, Lane, Ness, Pawnee, Rush | Court Trustee (Larry Tittel) | \$0.00 |
| 25th | Finney, Greeley, Hamilton, Kerny, Scott, Wichita | Municipal Services Bureau | \$8,060.00 |
| 26th | Grant, Haskell, Morton, Seward, Stanton, Stevens | Robert Miles | \$4,221.65 |
| 27th | Reno | Municipal Services Bureau | \$0.00 |
| 29th | Wyandotte | Court Trustee (Anne McDonald) | \$0.00 |
| 30th | Barber, Harper, Kingman, Pratt, Sumner | Municipal Services Bureau | \$3,293.00 |
| 31st | Allen, Neosho, Wilson, Woodson | Municipal Services Bureau | \$0.00 |
| TOTAL: | | | \$214,356.62 |

*Includes amounts reported to the Attorney General through February 1, 1999.

Testimony
House Judiciary Committee
Chairperson, Representative Mike O'Neal
House Bill 2083
February 2, 1999

Good Morning, Mr. Chairman, and members of the Committee,

My name is Gene Johnson and I represent the Kansas Community Alcohol Safety Action Project Coordinators Association. We provide the evaluation, monitoring and supervision of DUI and other alcohol and drug offenders for all the courts in the State of Kansas. For this service, the law provides a fee of up to \$125.00, payable by the offender to the courts, as part of their probation agreement. In addition, the offender, by statute, is responsible for any cost incurred for their education and/or treatment.

The majority of offenders that we supervise comply with their agreements with the courts and pay their fines, fees, and costs, in full, within the court ordered time period. However, a certain portion of our offenders seem to think it is okay to push the courts to the limit in paying their debt. These offenders realize there is a fairly good chance that a judge will not put them in jail for just not paying their debt. We find this same portion of DUI and alcohol/drug offenders are more likely recidivate for the same offense, over and over building up larger debt to our court system. These offenders are "wise" in their own way, realizing they weren't held responsible on their first offense and just assume that is the way the system works.

This legislation would put more "teeth" in the collection process. The offender who doesn't pay on time as they agreed to in their probation agreement, is then held responsible for the collection fee not to exceed 33%.

Our organization supports this proposed legislation as positive in the rehabilitation of

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alcoholics and drug addicts, as it requires the alcoholic, or addict, to be responsible for their own behavior. If they don't, a penalty of a collection fee will be added to their debt to the court. Also, by adding the collection fee to the offenders debt, our organization would be receiving their full fee for services provided rather than the amount after the collection fee is subtracted.

We would also like to point out, that sometimes these offenders cause damage to property or injury to individuals and are required to make restitution. We would hope this committee would make it possible for the innocent victim to receive 100% of their loss.

Again, our organization positively supports this legislation as a step forward in making the alcohol and drug offenders fiscally responsible for their actions.

Thank you, I'll try and answer any questions.

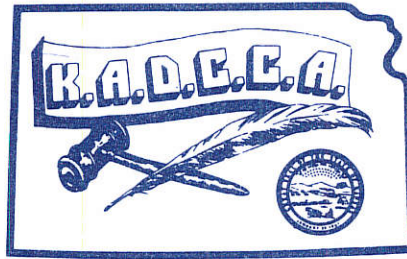
Respectfully,



Gene Johnson, Legislative Liaison
Kansas Community Alcohol Safety Action Project Coordinators

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**House Bill No. 2101
MISDEMEANOR PRESENTENCE INVESTIGATION REPORTS
K.S.A. 21-4605**

TESTIMONY

**By: Jeanne S. Turner, Chief Clerk of the District Court
Fifth Judicial District**

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear before you today on behalf of the Kansas Association of District Court Clerks and Administrators to discuss House Bill No. 2101.

Felony presentence investigation reports became part of the court record and accessible to the public as of July 1, 1993, per K.S.A. 21-4714, except "that the official version, defendant's version and the victim's statement, any psychological reports and drug and alcohol reports shall be accessible only to the parties, the sentencing judge, the department of corrections, and if required, the Kansas sentencing commission." K.S.A. 21-4605 refers to misdemeanor presentence investigation reports and "these reports shall be part of the record but shall be sealed and opened only on order of the court."

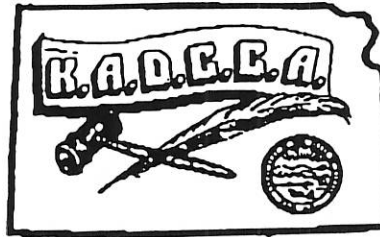
We are respectfully requesting K.S.A. 21-4605 which references misdemeanor presentence investigation reports parallel K.S.A. 21-4714, which would make them open records and treat them the same as felony presentence investigation reports.

The changes are contained in the copy of House Bill No. 2101 which you have. With these changes the presentence investigation reports on misdemeanors would be consistent with the law regarding presentence investigation reports in felony cases. This would allow the clerks consistency in dealing with these reports.

Thank you for allowing me the opportunity to speak to you today on this issue. I would be happy to answer any questions you might have.

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HOUSE BILL 2102

Pam Moses
Clerk of the District Court
27th Judicial District
Reno County, Kansas

February 2, 1999

I am here speaking on the behalf of The Kansas Association of District Court Clerks and Administrators. We appreciate the opportunity to state our views on HB2102. The requested change in the bill is to clarify the size of the jury panel for Sexual Predator cases.

Since these cases are filed as probate cases (K.S.A. 59-29a06), there has been confusion as to the jury size, even though the statute indicates the "jurors shall be determined as provided in K.S.A. 22-3403". Jury trials in probate cases call for a six-person jury while in criminal it is a twelve-person jury.

We are asking for the following to be included:

"A jury shall consist of 12 jurors unless the parties agree in writing with the approval of the court that the jury shall consist of any number of jurors less than 12 jurors. The person and the attorney general or the prosecuting attorney in the county where the person was convicted shall each have six peremptory challenges, or in the case of a jury of less than 12 jurors, a proportionally equal number of peremptory challenges".

**(HB2102 cont., Kansas Association of District Court Clerks and Administrators,
Pam Moses, Clerk of the District Court)**

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This change would clarify what size of jury panel is required and also create an opportunity for parties to agree to use a smaller jury panel in lieu of a 12-person jury panel.

The District Court Judges Association Executive Board has voted to support this change.

Please, take this information into consideration. It would be helpful for all to understand this statute in the same manner to avoid confusion and possible problems, appeals, etc., if the wrong size jury panel is used for such a trial.

I will be glad to answer questions you may have.

Thank you.