

Approved: 4.2-99  
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 March 15, 1999 in Room 313-S of the Capitol.

All members were present except:

Representative David Adkins - Excused  
Representative Peggy Long - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department  
Jill Wolters, Revisor of Statutes  
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:

Senator Tim Emert  
Marla Luckert, Judge, Judicial Council, Criminal Law Advisory Committee  
Senator John Vratil  
Kathy Porter, Office of Judicial Administration  
Chris Mecler, 3<sup>rd</sup> Judicial District, Court Services Officer

Hearings on **SB 4 - clarifying that a DUI diversion is to be considered as a prior conviction for any subsequent DUI conviction**, were opened.

Senator Tim Emert appeared before the committee as a proponent of the bill. He explained that the Legislature has provided for the expungement of arrest records but it did not carry over as to the disclosure of arrest records under the exceptions provided by law. This proposed bill would simply do that. (Attachment 1)

Hearings on **SB 4** were closed.

Hearings on **SB 90 - arrest of persons released on appearance bonds**, were opened.

Marla Luckert, Judge, Judicial Council, Criminal Law Advisory Committee, appeared before the committee as a proponent of the bill. The proposed bill would delete the mandatory requirement that magistrate judges commit into custody any person who has been released on bond and who has subsequently been arrested by his or her surety or bondsman and brought before the magistrate and the requirement that the magistrate judge release the surety from liability on the bonds. (Attachment 2)

Hearings on **SB 90** were closed.

Hearings on **SB 92 - allowing videotaped comments of victims and family at parole hearings**, were opened.

Senator John Vratil appeared before the committee in support of the bill. He commented that this would allow the use of video taped, audio taped or other pre-recorded comments at parole board hearings. This would allow victims to record their statements and never have to appear before the parole board again. (Attachment 3)

Hearings on **SB 92** were closed.

Hearings on **SB 93 - venue of sentencing procedures for juvenile offenders**, were opened.

Kathy Porter, Office of Judicial Administration, appeared before the committee in support of the bill. She explained the bill would allow venue of sentencing procedures for juvenile offenders. The bill would provide that when the sentencing hearing is held in a county other than the county where the offense was committed, upon adjudication, the judge shall contact the judge of the sentencing court and advise the judge of the transfer. (Attachment 4)

Hearings on **SB 93** were closed.

Hearings on **SB 95 - power of arrest of juvenile by court service officers**, were opened.

Chris Mecler, 3<sup>rd</sup> Judicial District, Court Services Officer, appeared before the committee as a proponent of the bill. She stated that the bill would allow in emergency situations for a court services officer to arrest a juvenile that is in violation of his/her probation. (Attachment 5)

Hearings on **SB 95** were closed.

**SB 92 - allowing videotaped comments of victims and family at parole hearings**

Representative Carmody made the motion to report SB 92 favorably for passage. Representative Crow seconded the motion.

Representative Gregory made the substitute motion to allow victims to appear in person or by any technical means. Representative Adkins seconded the motion. The motion carried.

Representative Adkins was concerned that over time the pre-recorded comments might not reflect the victims views and in those instances who would have the last say as to whether the pre-recorded comments could be used.

Representative Carmody made the motion to report SB 92 favorably for passage, as amended. Representative Crow seconded the motion. The motion carried.

**SB 93 - venue of sentencing procedures for juvenile offenders**

Representative Carmody made the motion to report SB 93 favorably for passage. Representative Long seconded the motion.

Representative Carmody made the substitute motion to strike in line 27 "the judge shall contact the sentencing court" and change "immediately" to "forthwith". Representative Lightner seconded the motion. The motion carried.

Representative Carmody made the motion to report SB 93 favorably for passage, as amended. Representative Long seconded the motion. The motion carried.

**SB 91 - expanding jurisdiction of district magistrate judges to hear protection from abuse act actions**

Representative Adkins made the motion to report SB 91 favorably for passage. Representative Ruff seconded the motion. The motion carried.

**SB 311 - filing of corporate documents**

Representative Adkins made the motion to report SB 311 favorably for passage and be placed on the Consent Calendar. Representative Ruff seconded the motion. The motion carried.

The committee adjourned at 5:30 p.m. The next meeting is scheduled for March 16, 1999.



**TIM EMERT**  
 SENATOR, 15TH DISTRICT  
 ALLEN, CHAUTAUQUA, SE COFFEY,  
 MONTGOMERY, WILSON, WOODSON COUNTIES  
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CHAIRMAN:  
 CONFIRMATIONS OVERSIGHT  
 JUDICIARY

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 ORGANIZATION, CALENDAR & RULES  
 JOINT COMMITTEE ON GAMING COMPACTS

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 INTERSTATE COOPERATION COMMISSION  
 LEGISLATIVE COORDINATING COUNCIL  
 STATE FINANCE COUNCIL  
 UNIFORM LAW COMMISSION

**KANSAS SENATE**  
 OFFICE OF THE MAJORITY LEADER

**House Judiciary Committee**  
**March 15**  
**3:30 p.m. - 3:13S**  
**Testimony**

Mr. Chairman, thank you for the opportunity to testify on S.B. 4.

I can best explain the present condition of the bill by setting out its background in the Senate.

The original S.B. 4 was the work product of the interim Judiciary Committee and the bill was written to clarify that previously expunged DUI records are to be used as prior convictions in cases of repeated DUIs.

The interim bill was heard by the full Senate Judiciary Committee, at which time numerous groups requested amendments. The Kansas Board of Healing Arts requested an amendment to require disclosure of expungement on licensure applications. A similar amendment was offered by the Kansas Medical Society. The Kansas State Board of Nursing also requested disclosure of expungement of licensure applications for nurses. The Kansas State Nurses Association opposed the amendment by the Board of Nursing.

As a result of the offered amendments, I referred the bill to a subcommittee chaired by Senator Pugh with Senators Bond and Steineger serving on that committee. After more hearings at the subcommittee level, its recommendations were as follows:

1. The original bill is not needed in as much as K.S.A. 8-1567 now provides that expunged DUI diversion agreements shall be counted as convictions for subsequent DUI convictions.
2. The subcommittee recommended no further action be taken by the full committee as to the bill or the amendments offered.

However, as committee discussions progressed on the bill in general, it was pointed out that even though the Legislature in the last session provided for the expungement of arrest records, that language was not carried over as to disclosure of arrest records under exceptions provided by law. It was the strong feeling of the committee that while it is appropriate to disclose expungement of convictions and diversions in certain circumstances, it should be the policy of the state of Kansas that arrests not be disclosed in those circumstances. One is still innocent until proven guilty under the Constitution. The principle amendment to the law is found on page 7 of the bill beginning on line 19, and that language is repeated in the four sections of the amended law of last year.

That in essence is the background of the bill. I will stand for any questions.

**JUDICIAL COUNCIL TESTIMONY  
IN SUPPORT OF SENATE BILL 90  
BEFORE THE  
HOUSE JUDICIARY COMMITTEE  
March 15, 1999**

The Criminal Law Subcommittee of the Judicial Council originated this bill which was approved by the Judicial Council. Members of the Criminal Law Subcommittee include district court judges, prosecutors, defense attorneys, law professors and counsel to law enforcement agencies.

Senate Bill 90 amends K.S.A. 22-2809 which relates to the surrender of an obligor by a surety. The bill contains several changes in wording to clarify the meaning of bill. The most substantive change is at line 21 where the word "shall" is deleted and the words "may, for good cause" are added. This proposal strikes the mandatory language requiring a magistrate to commit an obligor to jail and discharge the bondsman from the surety if the bondsman brings the obligor before the magistrate. Under this mandatory language, the bondsman may bring the obligor before the court for no reason at all or for a reason which the court finds not to be good cause. The court has no choice but to release the surety and commit the obligor to jail.

The issue was presented to the committee by a district judge who found himself in such a situation and felt strongly that the surrender was not justified. The committee unanimously agreed that an amendment was appropriate with other members able to recall situations where the application of the mandatory language was unjust.

The proposed amendment substitutes a "may" for the "shall", but also includes a requirement of "good cause." Such an amendment will most likely not affect the usual conduct of most proceedings. Usually the bondsman presents good cause for the commitment and the release of the surety. However, the magistrate will not be mandated to release a surety in the rare case where, for example, the bondsman does not and apparently cannot or will not articulate a reason for surrendering the defendant, but still presents for commitment the obligor who has kept his side of the contract by paying the surety, appearing in court, and doing nothing which raised issues of risk.

While the proposal is not a major change in language or a change which will bring about a different result in most cases, it is a change which is necessary to correct injustices in some circumstances which were sufficiently compelling to cause an outcry for change. The Judicial Council requests your support for the passage of Senate Bill 90.

**JOHN VRATIL**  
SENATOR, ELEVENTH DISTRICT  
JOHNSON COUNTY  
LEGISLATIVE HOTLINE  
1-800-432-3924



COMMITTEE ASSIGNMENTS  
VICE CHAIRMAN: JUDICIARY  
MEMBER: ENERGY AND NATURAL RESOURCES  
FEDERAL AND STATE AFFAIRS  
SPECIAL CLAIMS AGAINST THE STATE

TOPEKA

**SENATE CHAMBER**

STATE CAPITOL  
TOPEKA, KANSAS 66612-1504  
(785) 296-7361

**March 15, 1999**

**Testimony of Senator John Vratil  
Before the House Judiciary Committee  
on S.B. 92**

Mr. Chairman and Members of the Committee, I appreciate the opportunity to testify on S.B. 92. This is a bill which I initiated at the request of the Johnson County District Attorney.

The only change occurs on page 6, lines 4 and 5. The purpose of that change is to permit the use of video tape, audio tape, or other prerecorded comments to be used in Parole Board hearings. On many occasions a Parole Board hearing concerning a specific individual occurs many years after the crime in question, and it is difficult, if not impossible, to obtain the live testimony of victims, or victims families and friends, at those Parole Board hearings. This bill will allow the testimony of those persons to be prerecorded at or about the time of the incident in question, to be used later at a parole hearing. The purpose for this bill is to facilitate the introduction of evidence before the Parole Board which might not otherwise be available unless prerecorded comments are allowed.

This bill is supported by the Kansas Parole Board and has no fiscal impact.

HOME

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DISTRICT OFFICE

1050/40 CORPORATE WOODS  
9401 INDIAN CREEK PKWY.  
OVERLAND PARK, KS 66210  
(913) 451-5100  
FAX (913) 451-0875

House Judiciary  
3-15-99  
Attachment 3





State of Kansas

## Office of Judicial Administration

Kansas Judicial Center  
301 West 10th  
Topeka, Kansas 66612-1507

(785) 296-2256

March 15, 1999

### House Judiciary Committee Testimony in Support of SB 93

Kathy Porter  
Office of Judicial Administration

Thank you for the opportunity to appear in support of 1999 SB 93. The bill is the product of the Court, Education, Juvenile Justice Authority, and Department of Social and Rehabilitation Services Liaison Committee. The purpose of the bill is to facilitate the handling of juvenile matters in multiple jurisdictions, to increase communications between courts, and to make the notification procedures in juvenile offender cases the same as those found in child in need of care cases.

When a sentencing hearing is to be held in a county other than the county where the offense was committed, current law requires the trial judge to transmit the record of the trial and recommendations as to sentencing to the court where the sentencing hearing is to be held. The requested amendment would require that, upon adjudication, the adjudicating judge is to contact the judge of the sentencing court to advise the judge of the transfer. The court adjudicating the juvenile is to send by facsimile to the sentencing court the complaint, the adjudication journal entry or judges' minutes, if available, and any recommendations as to sentencing. These documents are to be for purposes of notification. A complete copy of the official file in the case is to be mailed to the sentencing court within five working days.

Thank you again, and I would be glad to stand for any questions that you might have.



**Kansas State Department of Education**

120 S.E. 10th Avenue  
Topeka, Kansas 66612-1182

TO: Senator O'Leen and Judiciary Sub Committee

FROM: Judi Miller

SUBJECT: Senate Bill 93

DATE: February 2, 1999

Senate Bill 93 offers a unique opportunity to the different agencies serving juvenile offenders. This opportunity will enhance communication between service providers and encourage a more collaborative effort to serve this population. Services will be enhanced and provide agencies the opportunity to provide a broader array of services designed to meet those particular youth's needs. Senate Bill 93 challenges all agencies to improve their services and provide them in a timely manner.



**BILL GRAVES,  
GOVERNOR**

**STATE OF KANSAS**

**ALBERT MURRAY,  
COMMISSIONER  
(785) 296-4213**



**JUVENILE JUSTICE AUTHORITY**

JAYHAWK WALK  
714 SW JACKSON, STE 300  
TOPEKA, KS 66603

February 3, 1999

Cathy Porter  
Office of Judicial Administration  
Kansas Judicial Center  
Topeka, KS 66612

Re: SB 93

Dear Ms. Porter:

The purpose of this letter is to indicate this agency's support of SB 93, a bill concerning juvenile venue. SB 93 amends K. S. A. 38-1605 providing further procedural clarification for the District Courts on how to transfer a juvenile offender case to another District Court. The change in the law also indicates the specific documents that must be sent to the District Court that receives the transfer. While the change in the law does not specifically impact this agency, it will provide guidance to our case managers and other practitioners. Therefore, we support this amendment. Please contact me if I may be of further assistance.

Sincerely,

A handwritten signature in black ink that reads "Albert Murray".

Albert Murray  
Commissioner



## KANSAS ASSOCIATION OF COURT SERVICES OFFICERS

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TESTIMONY TO HOUSE COMMITTEE ON JUDICIARY  
CHRIS MECHLER, LEGISLATIVE CHAIRPERSON  
KANSAS ASSOCIATION OF COURT SERVICES OFFICERS  
ON 1999 HOUSE BILL 95  
MARCH 15, 1999

Chairman O'Neal and Members of the Committee:

I am Chris Mechler, Legislative Chairperson for the Kansas Association of Court Services Officers. I am here today to ask the committee to consider Senate Bill 95. This bill would make much needed changes to the Juvenile Code.

The first change is on page 1, line 42 and following, this would allow a Court Services Officer to issue a written statement to immediately arrest a juvenile for a violation of that juvenile's probation. The second change is on page 4, line 23 and 24, this would provide for the secure detention of the juvenile that has been arrested.

As the committee is aware, the courts are presented with an ever increasing stream of challenging juveniles. By making these changes, a Court Services Officer could in an emergency situation arrest a juvenile. As an example, I will use the case of Susie. Susie is 16 years old and is on probation for misdemeanor theft, she stole some clothing from a local store. During Susie's probation, it became apparent that she has some psychological problems, including chemical

addiction. She violated her probation by refusing to attend school, missing curfew, and having a positive drug test. Her probation officer requested a hearing on her case and she was ordered to undergo inpatient treatment at a local hospital to address the psychological and addiction issues. On a Saturday morning, Susie got into a fight with another patient and injured his ankle. The police were called, Susie was arrested for misdemeanor battery, and transported to the juvenile intake facility. Susie does not meet the criteria outlined in K.S.A. 38-1640 to be detained at a locked facility, so she was placed at the shelter. Everyone could probably agree that a shelter is not the best placement for Susie as she is at risk to harm herself or others. Had the Court Services Officer been able to arrest Susie, she would have been immediately detained at a secure detention facility until an appropriate placement was found.

The situation in which a juvenile is arrested would be extremely rare. The Office of Judicial Administration has policies by which Court Services Officers can arrest their adult probationers. The guidelines specifically state that the authority to arrest be used only when absolutely necessary to ensure personal or public safety and then only with discretion and caution. A similar policy would be written for juvenile arrests.

The Kansas Association of District Judges Executive Board has reviewed the proposed changes and has expressed their support for this legislation.

On behalf of the Kansas Association of Court Services Officers, we appreciate your consideration of this matter.