

Approved: January 21, 1999
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Emert at 10:10 a.m. on January 20, 1999 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Gordon Self, Revisor
Mike Heim, Research
Jerry Donaldson, Research
Mary Blair, Secretary

Conferees appearing before the committee:

Pat Lehman, Kansas Fire Service Council
Judy Moler, Kansas Association of Counties
Pat Johnson, Kansas State Board of Nursing
Jerry Slaughter, Kansas Medical Society
Louis Hentzen, Court Administrator, 18th Judicial Court, Wichita

Others attending: see attached list

Minutes of the January 14 meeting were approved on a motion by Senator Bond and seconded by Senator Oleen. Carried.

Conferee Lehman requested reintroduction of **SB 607** which relates to criminal use of weapons, specifically explosives and **SB 633** which relates to arson. (attachment 1) Senator Harrington moved to introduce the bills and Senator Goodwin seconded. Carried.

Conferee Moler requested introduction of a bill "which would add language to K.S.A. 38-1616 concerning the expense of care and custody of a juvenile". (attachment 2) Senator Oleen moved to introduce the bill, Senator Donovan seconded. Carried.

The Chair requested introduction of a bill which would update the unclaimed property bill. Senator Goodwin moved to introduce the bill, Senator Donovan seconded. Carried.

SB 4 - An act concerning criminal procedure; relating to expungement

The Chair reviewed **SB 4** which was part of an interim study. Staff person Heim stated that the new bill clarified DUI diversion language with respect to expungement.

Conferee Johnson requested the addition of language to **SB 4** to allow the Kansas State Board of Nursing to be added to the list of those with the authority to get expungement information. (attachment 3)

Conferee Slaughter requested added language to **SB 4** which would allow the Kansas State Board of Healing Arts the authority to get expunged information. (attachment 4)

The Chair closed the hearing on **SB 4** stating the bill would be reconsidered at a later date.

SB 5 - An act concerning marriage; relating to marriage licenses; application and issuance by mail

Conferee Hentzen testified in opposition to **SB 5** in it's present form detailing three specific concerns which members of his association have identified. (attachment 5) Copies of a handbook designed to aid those responsible for completing and filing marriage licenses were distributed to Committee. (attachment 6) Discussion followed and included clarification of certain language in the bill by staff. The chair closed the hearing on **SB 5**.

The meeting adjourned at 10:49 a.m. The next scheduled meeting is Thursday, January 21, 1999.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: January 20, 1999

NAME	REPRESENTING
Shelak Katus	PPKM
Teresa Sillnauer	KPOA / KSA
Jim Clark	KCDAA
David DeBorhan	Attorney General
KETH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Christy Molzen	Judicial Council
Thye Jelder	KADCCA
Robin Becker	KADCCA
Charlene Bobuck	KDHE
Marsha Spangler	KADCCA
Rhonda Truhlar	KADCCA
Kathy Purcell	OJA
Louise Henty	KADCCA
Doby Hennings	KADCCA
Deborah Roberts	KADCCA
Jean Barber	KADC
Dulie Thomas	Division of the Budget
Kyle Smith	KBI
Meg Draper	KS Medical Society

35 1-20-99
att #1



KANSAS FIRE SERVICE COUNCIL

Dedicated to a Unified Fire Service in Kansas

January 18, 1999

Senator Tim Emert
State Capitol Room 356-E
Topeka, KS 66612

Dear Senator Emert:

On behalf of the Kansas Fire Service Council I respectfully request that the following be introduced. We are asking for your consideration of two issues which we believe would significantly improve public safety.

The first would eliminate an existing loophole between K.S.A. 214201(9)(a) which includes molotov cocktails and pipe bombs as "weapons" and makes possession or transportation a misdemeanor while K.S.A. 21-3731(a) makes possession or transportation of the components of molotov cocktails or pipe bombs a felony.

The second request would change arson in the case of a "dwelling" to a "person" felony crime since firefighters making emergency runs are at high risk of injury or worse especially in the case of dwelling fires.

Feel free to contact me 785-296-4239 if you need additional information or have questions. Consideration of these important issues is appreciated.

Sincerely,

Jim Keating
Kansas Fire Service Council

Sen. Emert
1-20-99
att 1

21-4201. Criminal use of weapons.

(a) Criminal use of weapons is knowingly:

(1) Selling, manufacturing, purchasing, possessing or carrying any bludgeon, sandclub, metal knuckles or throwing star, or any knife, commonly referred to as a switch-blade, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or any knife having a blade that opens or falls or is ejected into position by the force of gravity or by an outward, downward or centrifugal thrust or movement;

(2) carrying concealed on one's person, or possessing with intent to use the same unlawfully against another, a dagger, dirk, billy, blackjack, slung shot, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly weapon or instrument of like character, except that an ordinary pocket knife with no blade more than four inches in length shall not be construed to be a dangerous knife, or a dangerous or deadly weapon or instrument;

(3) carrying on one's person or in any land, water or air vehicle, with intent to use the same unlawfully, a tear gas or smoke bomb or projector or any object containing a noxious liquid, gas or substance;

(4) carrying any pistol, revolver or other firearm concealed on one's person except when on the person's land or in the person's abode or fixed place of business;

(5) setting a spring gun;

(6) possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm;

(7) selling, manufacturing, purchasing, possessing or carrying a shotgun with a barrel less than 18 inches in length or any other firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger;

(8) possessing, manufacturing, causing to be manufactured, selling, offering for sale, lending, purchasing or giving away any cartridge which can be fired by a handgun and which has a plastic-coated bullet that has a core of less than 60% lead by weight;
or

~~(9) possessing or transporting any incendiary or explosive material, liquid, solid or mixture, equipped with a fuse, wick or any other detonating device, commonly known as a molotov cocktail or a pipe bomb;~~

(b) Subsections (a)(1), (2), (3), (4) and (7) shall not apply to or affect any of the following:

(1) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(2) wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;

(3) members of the armed services or reserve forces of the United States or the Kansas national guard while in the performance of their official duty; or

(4) manufacture of, transportation to, or sale of weapons to a person authorized under subsections (b)(1), (2) and (3) to possess such weapons.

(c) Subsection (a)(4) shall not apply to or affect the following:

(1) Watchmen, while actually engaged in the performance of the duties of their employment;

(2) licensed hunters or fishermen, while engaged in hunting or fishing;

(3) private detectives licensed by the state to carry the firearm involved, while actually engaged in the duties of their employment;

(4) detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment;

(5) the state fire marshal, the state fire marshal's deputies or any member of a fire department authorized to carry a firearm pursuant to K.S. 31-157 and amendments thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S. 31-157 and amendments thereto; or

(6) special deputy sheriffs described in K.S. 1996 Supp. 19-827 who have satisfactorily completed the basic course of instruction required for permanent appointment as a part-time law enforcement officer under K.S. 74-5607a and amendments thereto.

(d) Subsections (a)(1), (6) and (7) shall not apply to any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. 5841 et seq. in the name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee's name by the transferor.

(e) Subsection (a)(8) shall not apply to a governmental laboratory or solid plastic bullets.

(f) It shall be a defense that the defendant is within an exemption.

(g) Violation of subsections (a)(1) through (a)(5) ~~or subsection (a)(9)~~ is a class A nonperson misdemeanor. Violation of subsection (a)(6), (a)(7) or (a)(8) is a severity level 9, nonperson felony.

(h) As used in this section, "throwing star" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond or other geometric shape, manufactured for use as a weapon for throwing.

21-3731. Criminal use of explosives.

(a) Criminal use of explosives is the possession, manufacture or transportation of commercial explosives; chemical compounds that form explosives; incendiary or explosive material, liquid or solid; detonators; blasting caps; military explosive fuse assemblies; squibs; ~~or~~ electric match or functional improvised fuse assemblies; *or any completed explosive device, including devices commonly known as pipe bombs and molotov cocktails.* For purposes of this section, explosives shall not include class "c" fireworks, legally obtained and transferred commercial explosives by licensed individuals and ~~ammunition and commercially available loading powders and products used as ammunition, including loading powders.~~

(b) (1) Criminal use of explosives as defined in subsection (a) is a severity level 8, person felony.

(2) Criminal use of explosives is a severity level 6, person felony if (A) the possession, manufacture, or transportation is intended to facilitate the commission of another crime; or (B) the explosive is transferred to another with knowledge of the other's intent to use the explosive to facilitate another crime; or (C) a law enforcement officer attempts to render any completed explosive device inoperable; or (D) an explosive is introduced into a building in which another human being is present.

21-3718. Arson.

(a) Arson is knowingly, by means of fire or explosive:

(1) Damaging any building or property in which another person has any interest without the consent of such other person; or

(2) damaging any building or property with intent to injure or defraud an insurer or lienholder.

(b) (1) Arson is a severity level 5 nonperson felony if the property is damaged to the extent of \$50,000 or more.

(2) Arson is a severity level 6, nonperson felony if the property is damaged to the extent of at least \$25,000 but less than \$50,000.

(3) Arson is a severity level 7, nonperson felony if the property is damaged to the extent of less than \$25,000.

(4) Arson is a person felon at the levels defined above if the damage is to any building, manufactured or mobile home, or other structure which is used as a dwelling.



KANSAS
ASSOCIATION OF
COUNTIES

SS att 2
1-20-99

**Testimony
Before Senate Judiciary
January 20, 1998**

Senator Emert and members of the Judiciary Committee, thank you for allowing me to appear here today. I am Judy Moler, Legislative Services Director for the Kansas Association of Counties. The Kansas Association of Counties has as its number one legislative priority several issues surrounding juvenile justice. I am here before your committee to request a bill which would add language to K.S.A. 38-1616 concerning the expense of care and custody of a juvenile.

This language would be: **When a juvenile is placed in SRS or KJJA custody by the court, financial responsibility, including payment for juvenile detention and sanction house services, medical care and any other residential care, shall remain with the agency designated by the court until the court relieves that agency of all responsibility for the juvenile.**

Since the responsibility for juveniles has shifted from SRS to KJJA, often the definition of state custody has been confusing, and counties have been charged with paying for a juvenile they thought was in state custody. One such example is a juvenile in state custody who is in out-patient treatment, commits another crime and is then considered by the state to be in the custody of the county.

If this is to be a state and county partnership, the details must be worked out so that it works for the best interest of all.

Thank you for your consideration of this bill.

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The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to the KAC by calling (785) 233-2271.

Sen. Joel
1-20-99
att 2

Kansas State Board of Nursing

Landon State Office Building
900 S.W. Jackson, Rm. 551 S
Topeka, Kansas 66612-1230
785-296-4929
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Patsy L. Johnson, R.N., M.N.
Executive Administrator
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To: The Honorable Senator Tim Emert, Chairperson
and Members of the Judiciary Committee

From: Patsy L. Johnson, M.N., A.R.N.P.
Executive Administrator
Kansas State Board of Nursing

Date: February 20, 1999

Re: SB 4

Thank you for allowing me to testify on SB 4 for the Board of Nursing. The Board would like the Judiciary Committee to consider adding the agency to the list of those with the authority to get expungement information. The proposed language is attached.

The rationale for obtaining expungement information is as follows:

- The agency already has access to arrest records under K.S.A. 65-1120 (f), so we want to avoid confusion at the court level in obtaining information. (See attachment of K.S.A. 65-1120.)
- There would be a reduction of staff time spent in determining the disposition of arrests.
- Staff looks for patterns of behavior during the investigation process. Expungement information can be utilized for that purpose.
- Types of expungement that are of concern include by are not limited to DUI, theft, battery, assault, forgery, embezzlement, perjury.

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Disciplinary Counsel

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Sen. Jud. 1-20-99
att. 3

- Some felonies, which may be expunged, are an absolute bar to licensure based on K.S.A. 65-1120 (a)(2). Without being able to ask for expungement information, some individuals may get licensed that should not.
- Patients such as children, the elderly, the mentally ill, and those receiving care in the home are very vulnerable to abuse or exploitation.

I have also listed some types of cases we have repeatedly investigated and subsequently took action on.

- Stealing home health, long-term care and hospital patients' narcotic medications;
- Stealing and forging checks of home health patients;
- Stealing jewelry, money, antiques from patients in all settings;
- Physically abusing pediatric and geriatric patients;
- Working in an impaired state;
- Duessing elderly clients into giving cars, money, and other possessions to a licensee;
- Altering or falsifying patient records to hide drug theft or mistakes that could bring harm to patients. The patient record/nurses notes are the primary source of communication to aid all health care licensees in making decisions for patient care.

The ability to learn the true background of all nurse applicants is an essential element in fulfilling the Board's duty to protect the public and to insure that all licensees are fully qualified. Without complete information, the Board may not be able to fulfill its duty to the public.

I hope the committee will pass SB 4 favorably as amended.

Thank you. I am available for questions.

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1 sentence to be imposed;

2 (2) *upon conviction for any subsequent violation of K.S.A. 8-1567,*

3 *and amendments thereto, the diversion that was expunged shall be con-*

4 *sidered as a prior conviction pursuant to K.S.A. 8-1567, and amendments*

5 *thereto, in determining the sentence to be imposed; and*

6 (3) the petitioner shall disclose that the arrest, conviction or diversion

7 occurred if asked about previous arrests, convictions or diversions:

8 (A) In any application for employment as a detective with a private

9 detective agency, as defined by K.S.A. 75-7b01, and amendments thereto;

10 as security personnel with a private patrol operator, as defined by K.S.A.

11 75-7b01, and amendments thereto; or with an institution, as defined in

12 K.S.A. 76-12a01, and amendments thereto, of the department of social

13 and rehabilitation services;

14 (B) in any application for admission, or for an order of reinstatement,

15 to the practice of law in this state;

16 (C) to aid in determining the petitioner's qualifications for employ-

17 ment with the Kansas lottery or for work in sensitive areas within the

18 Kansas lottery as deemed appropriate by the executive director of the

19 Kansas lottery;

20 (D) to aid in determining the petitioner's qualifications for executive

21 director of the Kansas racing commission, for employment with the com-

22 mission or for work in sensitive areas in parimutuel racing as deemed

23 appropriate by the executive director of the commission, or to aid in

24 determining qualifications for licensure or renewal of licensure by the

25 commission;

26 (E) upon application for a commercial driver's license under K.S.A.

27 8-2,125 through 8-2,142, and amendments thereto;

28 (F) to aid in determining the petitioner's qualifications to be an em-

29 ployee of the state gaming agency;

30 (G) to aid in determining the petitioner's qualifications to be an em-

31 ployee of a tribal gaming commission or to hold a license issued pursuant

32 to a tribal-state gaming compact; or

33 (H) in any application for registration as a broker-dealer, agent, in-

34 vestment adviser or investment adviser representative all as defined in

35 K.S.A. 17-1252 and amendments thereto;

36 (3) the court, in the order of expungement, may specify other cir-

37 cumstances under which the arrest, conviction or diversion is to be dis-

38 closed; and

39 (4) the conviction may be disclosed in a subsequent prosecution for

40 an offense which requires as an element of such offense a prior conviction

41 of the type expunged.

42 (f) Whenever a person is convicted of an ordinance violation, pleads

43 guilty and pays a fine for such a violation, is placed on parole or probation

(I) in any application for a license as a nurse under K.S.A. 65-1115

and 65-1116 and amendments thereto; or

(J) in any application for a license as a mental health technician under

K.S.A. 65-4203 and amendments thereto;

1 the Kansas lottery as deemed appropriate by the executive director of the
2 Kansas lottery;

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

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

15 (11) the Kansas securities commissioner, or a designee of the com-
16 missioner, and the request is accompanied by a statement that the request
17 is being made in conjunction with an application for registration as a
18 broker-dealer, agent, investment adviser or investment adviser represen-
19 tative by such agency and the application was submitted by the person
20 whose record has been expunged.

21 Sec. 2. K.S.A. 1998 Supp. 21-4619 is hereby amended to read as
22 follows: 21-4619. (a) (1) Except as provided in subsections (b) and (c),
23 any person convicted in this state of a traffic infraction, cigarette or to-
24 bacco infraction, misdemeanor or a class D or E felony, or for crimes
25 committed on or after July 1, 1993, nondrug crimes ranked in severity
26 levels 6 through 10 or any felony ranked in severity level 4 of the drug
27 grid, may petition the convicting court for the expungement of such con-
28 viction or related arrest records if three or more years have elapsed since
29 the person: (A) Satisfied the sentence imposed; or (B) was discharged
30 from probation, a community correctional services program, parole, post-
31 release supervision, conditional release or a suspended sentence.

32 (2) Except as provided in subsections (b) and (c), any person who has
33 fulfilled the terms of a diversion agreement may petition the district court
34 for the expungement of such diversion agreement and related arrest re-
35 cords if three or more years have elapsed since the terms of the diversion
36 agreement were fulfilled.

37 (b) Except as provided in subsection (c), no person may petition for
38 expungement until five or more years have elapsed since the person sat-
39 isfied the sentence imposed, the terms of a diversion agreement or was
40 discharged from probation, a community correctional services program,
41 parole, postrelease supervision, conditional release or a suspended sen-
42 tence, if such person was convicted of a class A, B or C felony, or for
43 crimes committed on or after July 1, 1993, if convicted of an off-grid

3-4

(12) the Kansas state board of nursing, and the request is accompanied by a statement that is being made to aid in determination of fitness for licensure as a nurse or mental health technician.

1 secretary of corrections and any other criminal justice agency which may
 2 have a record of the arrest, conviction or diversion. After the order of
 3 expungement is entered, the petitioner shall be treated as not having been
 4 arrested, convicted or diverted of the crime, except that:

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

8 (2) *upon conviction for any subsequent violation of K.S.A. 8-1567,*
 9 *and amendments thereto, the diversion that was expunged shall be con-*
 10 *sidered as a prior conviction pursuant to K.S.A. 8-1567, and amendments*
 11 *thereto, in determining the sentence to be imposed; and*

12 (3) the petitioner shall disclose that the arrest, conviction or diversion
 13 occurred if asked about previous arrests, convictions or diversions: (A) In
 14 any application for employment as a detective with a private detective
 15 agency, as defined by K.S.A. 75-7b01 and amendments thereto; as se-
 16 curity personnel with a private patrol operator, as defined by K.S.A. 75-
 17 7b01 and amendments thereto; or with an institution, as defined in K.S.A.
 18 76-12a01 and amendments thereto, of the department of social and re-
 19 habilitation services;

20 (B) in any application for admission, or for an order of reinstatement,
 21 to the practice of law in this state;

22 (C) to aid in determining the petitioner's qualifications for employ-
 23 ment with the Kansas lottery or for work in sensitive areas within the
 24 Kansas lottery as deemed appropriate by the executive director of the
 25 Kansas lottery;

26 (D) to aid in determining the petitioner's qualifications for executive
 27 director of the Kansas racing commission, for employment with the com-
 28 mission or for work in sensitive areas in parimutuel racing as deemed
 29 appropriate by the executive director of the commission, or to aid in
 30 determining qualifications for licensure or renewal of licensure by the
 31 commission;

32 (E) upon application for a commercial driver's license under K.S.A.
 33 8-2,125 through 8-2,142, and amendments thereto;

34 (F) to aid in determining the petitioner's qualifications to be an em-
 35 ployee of the state gaming agency;

36 (G) to aid in determining the petitioner's qualifications to be an em-
 37 ployee of a tribal gaming commission or to hold a license issued pursuant
 38 to a tribal-state gaming compact; or

39 (H) in any application for registration as a broker-dealer, agent, in-
 40 vestment adviser or investment adviser representative all as defined in
 41 K.S.A. 17-1252 and amendments thereto;

42 (3) the court, in the order of expungement, may specify other cir-
 43 cumstances under which the conviction is to be disclosed;

(I) in any application for a license as a nurse under K.S.A. 65-1115
and 65-1116 and amendments thereto; or

(J) in any application for a license as a mental health technician under
K.S.A. 65-4203 and amendments thereto;

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1 statement that the request is being made in conjunction with a prosecu-
2 tion of an offense that requires a prior conviction as one of the elements
3 of such offense;

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

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

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

22 (10) the Kansas sentencing commission;

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

28 (12) the Kansas securities commissioner or a designee of the com-
29 missioner, and the request is accompanied by a statement that the request
30 is being made in conjunction with an application for registration as a
31 broker-dealer, agent, investment adviser or investment adviser represen-
32 tative by such agency and the application was submitted by the person
33 whose record has been expunged.

34 ~~Sec. 3. K.S.A. 1998 Supp. 12-4516 and 21-4619 are hereby repealed.~~

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

(13) the Kansas state board of nursing, and the request is accompanied
by a statement that is being made to aid in determination of fitness for
licensure as a nurse or mental health technician.

3-6

(b) Proceedings. Upon filing of a sworn complaint with the board charging a person with having been guilty of any of the unlawful practices specified in subsection (a), two or more members of the board shall investigate the charges, or the board may designate and authorize an employee or employees of the board to conduct such investigation. After investigation, the board may institute charges. If an investigation, in the opinion of the board, reveals reasonable grounds for believing the applicant or licensee is guilty of the charges, the board shall fix a time and place for proceedings, which shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(c) Witnesses. No person shall be excused from testifying in any proceedings before the board under this act or in any civil proceedings under this act before a court of competent jurisdiction on the ground that such testimony may incriminate the person testifying, but such testimony shall not be used against the person for the prosecution of any crime under the laws of this state except the crime of perjury as defined in K.S.A. 21-3805 and amendments thereto.

(d) Costs. If final agency action of the board in a proceeding under this section is adverse to the applicant or licensee, the costs of the board's proceedings shall be charged to the applicant or licensee as in ordinary civil actions in the district court, but if the board is the unsuccessful party, the costs shall be paid by the board. Witness fees and costs may be taxed by the board according to the statutes relating to procedure in the district court. All costs accrued by the board, when it is the successful party, and which the attorney general certifies cannot be collected from the applicant or licensee shall be paid from the board of nursing fee fund. All moneys collected following board proceedings shall be credited in full to the board of nursing fee fund.

(e) Professional incompetency defined. As used in this section, "professional incompetency" means:

(1) One or more instances involving failure to adhere to the applicable standard of care to a degree which constitutes gross negligence, as determined by the board;

(2) repeated instances involving failure to adhere to the applicable standard of care to a degree which constitutes ordinary negligence, as determined by the board; or

(3) a pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice nursing.

→ (f) Criminal justice information. The board upon request shall receive from the Kansas bureau of investigation such criminal history record information relating to arrests and criminal convictions as necessary for the purpose of determining initial and continuing qualifications of licensees of and applicants for licensure by the board.

65-1120. Denial, revocation, limitation or suspension of license or certification of qualification; costs; professional incompetency defined. (a) Grounds for disciplinary actions. The board may deny, revoke, limit or suspend any license, certificate of qualification or authorization to practice nursing as a registered professional nurse, as a licensed practical nurse, as an advanced registered nurse practitioner or as a registered nurse anesthetist that is issued by the board or applied for under this act or may publicly or privately censure a licensee or holder of a certificate of qualification or authorization, if the applicant, licensee or holder of a certificate of qualification or authorization is found after hearing:

(1) To be guilty of fraud or deceit in practicing nursing or in procuring or attempting to procure a license to practice nursing;

(2) to have been guilty of a felony or to have been guilty of a misdemeanor involving an illegal drug offense unless the applicant or licensee establishes sufficient rehabilitation to warrant the public trust, except that notwithstanding K.S.A. 74-120 no license, certificate of qualification or authorization to practice nursing as a licensed professional nurse, as a licensed practical nurse, as an advanced registered nurse practitioner or registered nurse anesthetist shall be granted to a person with a felony conviction for a crime against persons as specified in article 34 of chapter 21 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto;

(3) to have committed an act of professional incompetency as defined in subsection (e);

(4) to be unable to practice with skill and safety due to current abuse of drugs or alcohol;

(5) to be a person who has been adjudged in need of a guardian or conservator, or both, under the act for obtaining a guardian or conservator, or both, and who has not been restored to capacity under that act;

(6) to be guilty of unprofessional conduct as defined by rules and regulations of the board;

(7) to have willfully or repeatedly violated the provisions of the Kansas nurse practice act or any rules and regulations adopted pursuant to that act, including K.S.A. 65-1114 and 65-1122 and amendments thereto; or

(8) to have a license to practice nursing as a registered nurse or as a practical nurse denied, revoked, limited or suspended, or to be publicly or privately censured, by a licensing authority of another state, agency of the United States government, territory of the United States or country or to have other disciplinary action taken against the applicant or licensee by a licensing authority of another state, agency of the United States government, territory of the United States or country. A certified copy of the record or order of public or private censure, denial, suspension, limitation, revocation or other disciplinary action of the licensing authority of another state, agency of the United States government, territory of the United States or country shall constitute prima facie evidence of such a fact for purposes of this paragraph (8).

(9) to have assisted suicide in violation of K.S.A. 21-3406 and amendments thereto as established by any of the following:

(A) A copy of the record of criminal conviction or plea of guilty for a felony in violation of K.S.A. 21-3406 and amendments thereto.

(B) A copy of the record of a judgement of contempt of court for violating an injunction issued under section 5 and amendments thereto.

(C) A copy of the record of a judgement assessing damages under section 6 and amendments thereto.

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1 secretary of corrections and any other criminal justice agency which may
2 have a record of the arrest, conviction or diversion. After the order of
3 expungement is entered, the petitioner shall be treated as not having been
4 arrested, convicted or diverted of the crime, except that:

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

8 (2) upon conviction for any subsequent violation of K.S.A. 8-1567,
9 and amendments thereto, the diversion that was expunged shall be con-
10 sidered as a prior conviction pursuant to K.S.A. 8-1567, and amendments
11 thereto, in determining the sentence to be imposed; and

12 (3) the petitioner shall disclose that the arrest, conviction or diversion
13 occurred if asked about previous arrests, convictions or diversions: (A) In
14 any application for employment as a detective with a private detective
15 agency, as defined by K.S.A. 75-7b01 and amendments thereto; as se-
16 curity personnel with a private patrol operator, as defined by K.S.A. 75-
17 7b01 and amendments thereto; or with an institution, as defined in K.S.A.
18 76-12a01 and amendments thereto, of the department of social and re-
19 habilitation services;

20 (B) in any application for admission, or for an order of reinstatement,
21 to the practice of law in this state;

22 (C) to aid in determining the petitioner's qualifications for employ-
23 ment with the Kansas lottery or for work in sensitive areas within the
24 Kansas lottery as deemed appropriate by the executive director of the
25 Kansas lottery;

26 (D) to aid in determining the petitioner's qualifications for executive
27 director of the Kansas racing commission, for employment with the com-
28 mission or for work in sensitive areas in parimutuel racing as deemed
29 appropriate by the executive director of the commission, or to aid in
30 determining qualifications for licensure or renewal of licensure by the
31 commission;

32 (E) upon application for a commercial driver's license under K.S.A.
33 8-2,125 through 8-2,142, and amendments thereto;

34 (F) to aid in determining the petitioner's qualifications to be an em-
35 ployee of the state gaming agency;

36 (G) to aid in determining the petitioner's qualifications to be an em-
37 ployee of a tribal gaming commission or to hold a license issued pursuant
38 to a tribal-state gaming compact; or

39 (H) in any application for registration as a broker-dealer, agent, in-
40 vestment adviser or investment adviser representative all as defined in
41 K.S.A. 17-1252 and amendments thereto;

42 (3) the court, in the order of expungement, may specify other cir-
43 cumstances under which the conviction is to be disclosed;



(I) in any application for, or renewal or reinstatement
of licensure to practice any branch of the healing arts
pursuant to K.S.A. 65-2801 et seq.

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

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

8 (g) Whenever a person is convicted of a crime, pleads guilty and pays
9 a fine for a crime, is placed on parole, postrelease supervision or proba-
10 tion, is assigned to a community correctional services program, is granted
11 a suspended sentence or is released on conditional release, the person
12 shall be informed of the ability to expunge the arrest records or convic-
13 tion. Whenever a person enters into a diversion agreement, the person
14 shall be informed of the ability to expunge the diversion.

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

23 (i) Whenever the record of any arrest, conviction or diversion has
24 been expunged under the provisions of this section or under the provi-
25 sions of any other existing or former statute, the custodian of the records
26 of arrest, conviction, diversion and incarceration relating to that crime
27 shall not disclose the existence of such records, except when requested
28 by:

29 (1) The person whose record was expunged;

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

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

36 (4) the secretary of social and rehabilitation services, or a designee of
37 the secretary, for the purpose of obtaining information relating to em-
38 ployment in an institution, as defined in K.S.A. 76-12a01 and amend-
39 ments thereto, of the department of social and rehabilitation services of
40 any person whose record has been expunged;

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

43 (6) a prosecuting attorney, and such request is accompanied by a

1 statement that the request is being made in conjunction with a prosecu-
2 tion of an offense that requires a prior conviction as one of the elements
3 of such offense;

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

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

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

22 (10) the Kansas sentencing commission;

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

28 (12) the Kansas securities commissioner or a designee of the com-
29 missioner, and the request is accompanied by a statement that the request
30 is being made in conjunction with an application for registration as a
31 broker-dealer, agent, investment adviser or investment adviser represen-
32 tative by such agency and the application was submitted by the person
33 whose record has been expunged.

34 ~~Sec. 3. K.S.A. 1998 Supp. 12-4516 and 21-4619 are hereby repealed.~~

35 ~~Sec. 4. This act shall take effect and be in force from and after its~~
36 ~~publication in the statute book.~~

(13) the Kansas state board of healing arts, and the request is accompanied by a statement that the request is being made to aid in determining qualifications to practice any branch of the healing arts.

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TESTIMONY OF THE KANSAS ASSOCIATION OF DISTRICT COURT CLERKS
AND ADMINISTRATORS ON 1999 SENATE BILL 5

January 20, 1999

Senate Judiciary Committee

Thank You, Chairman Emert, and members of the Committee. I am Louis Hentzen, Court Administrator for the 18th Judicial District in Sedgwick County. I am here today representing the Kansas Association of District Court Clerks and Administrators.

As you know, the clerks of the district court are, by statute, the persons authorized to issue marriage licenses. District Court Clerks and Administrators believe that the intent behind SB 5 is to provide a convenient, cost-effective way to obtain a marriage license, particularly for applicants who live out-of-state. However, we note below three concerns that we hope you will consider in your discussion of this bill:

- **The Oath Required by K.S.A. 1998 Supp. 23-106 and K.S.A. 23-114.** K.S.A. 1998 Supp. 23-106 states that "the judge or the clerk [of the district court] may issue a license upon the affidavit of the party personally appearing and applying therefore, to the effect that the parties to whom such license is to be issued are of lawful age, as required by this section, and the judge or clerk is hereby authorized to administer oaths for that purpose." (Emphasis added.) K.S.A. 23-114 provides as follows:

"In all cases, before granting a marriage license the judge or clerk of the district court shall require the applicant for such license to take and subscribe to an oath to the effect that none of the reasons set forth in K.S.A. 23-102 exist why such applicant should not be granted a marriage license; and the judge or clerk may in his or her discretion examine witnesses under oath concerning matters referred to in K.S.A. 23-102, as applied to the applicant for such marriage license, and for the purpose of this act shall have power to administer oaths. If the judge or clerk fails to examine such applicant for license as provided in this section, he or she shall be liable to fine for granting license to parties not legally entitled thereto, in any sum not exceeding one thousand dollars (\$1,000). . . ."

- **Errors in the Application Required by K.S.A. 1998 Supp. 23-106.** K.S.A. 1998 Supp. 23-106 requires the filing of an application for a marriage license three calendar days before the issuance of the license, except under certain circumstances. Information requested on the form includes such items as the names and ages of the applicants and the names of the parents of the applicants, including the maiden names of the applicants' mothers. Without sounding flippant, it is surprising to us how often, across the state, an

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applicant for a license will not know even the full name of his or her intended spouse, much less the maiden name of his or her mother. Spaces on the application form are often left blank, or are completed with obviously inaccurate information. When the applicants return to pick up their license, there is an opportunity to correct this. There would be no such opportunity if the license were issued by mail.

- **Timing.** If people are allowed to apply for marriage licenses by mail, it would seem that there must be some mechanism in the law requiring the parties to apply for a license by mail far enough in advance for the parties to receive their license at the time and address they intend. Parties from other locations applying for a license by mail obviously intend to return to the district from which they are requesting a license for their wedding. However, we would have no idea of when they would return, and by what date we must mail the application to their out-of-district address so that they will receive it before traveling home for the wedding. Even with such a provision, the issue of errors or omissions on the application form exists. It could take weeks to months, depending upon the speed of the parties and the postal service, to return incomplete applications to the applicants and have them return them to the appropriate clerk's office. Allowing an application for a marriage license by mail, but requiring an applicant to pick up the license in person, would solve this concern in some but probably not all instances.

Rather than simply pointing out our concerns, we attempted to find out if other states have addressed the issue of marriage licenses by mail, and, if so, how they have dealt with the concerns noted above. Staff of the Office of Judicial Administration (OJA) did a Westlaw computer search using various forms and combinations of the terms "marriage," "license," "application," and "mail." The search located no states that allow persons to apply for marriage licenses by mail.

OJA staff also contacted Mr. George Gates, Special Assistant for Registration Methods, with the National Center for Health Statistics of the Department of Health and Human Services in Washington, D.C. Mr. Gates stated that he has worked with the states in the area of marriage licenses and vital statistics for more than 30 years. He is not aware of any states that allow persons to apply for marriage licenses by mail, precisely for the reasons we have cited above. In his experience, all states require some sort of oath stating that none of the impediments to marriage included in that state's laws exist. He also said that Kansans are not unique in including errors and omissions in their marriage license applications, and that correcting these would be difficult and time consuming by mail.

Because of the difficulties cited, we oppose the bill in its present form. We would, however, be glad to provide any additional information that would be helpful to you, or to comment on any amendments to SB 5 that might be offered.

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INTRODUCTION

Purpose

This handbook is designed as an aid to court officials, clergy and others with responsibilities related to completing and filing marriage licenses. It includes background information on the importance of these documents for legal and statistical purposes as well as specific instructions for recording entries.

Importance of Marriage Registration

The registration of a marriage provides documentary proof that a marriage has been performed. Individuals are frequently faced with the need to prove that a particular marriage has been performed. For example, the right to inheritance, pension, insurance, or other benefits may depend upon official documentation of a marriage.

The legal requirements for obtaining a marriage license and filing a certificate of marriage are set forth in each individual state's statutes. In most states the law requires that a record of each marriage be filed with the state office of vital statistics for statistical purposes and for issuance of certified copies. Proof of marital status is often required by a variety of governmental and private agencies.

Data from marriage records are used for many worthwhile statistical purposes. Data are used to analyze and interpret current levels and changes in marriage and divorce, to identify fertility and population changes, and to relate the results of those investigations to social and economic problems. Government agencies and legislative groups use marriage statistics to develop, implement, and evaluate public programs and policies. Scholars, researchers, writers, and journalists follow trends and differentials in family formation, dissolution, and reformation. Religious bodies and voluntary organizations study the quality and stability of family life. Many businesses use marriage data in forecasting markets for goods and services, and in developing new products.

Confidentiality of Vital Records

The State Registrar protects the vital statistics data from unwarranted or indiscriminate disclosure by adhering to the laws and regulations that stipulate who may obtain copies of individual records, and for what purposes the files may be accessed. For example, it is unlawful for any officer or employee of the state to disclose data contained in vital records files unless the applicant has a direct interest in the information recorded and that information is needed for the determination of personal or property rights.

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The format of the marriage record is designed to assure confidentiality of information. The upper part of the license contains information identifying the bride and groom. The lower portion of the record contains information for statistical use only.

The Marriage Registration System in Kansas and the United States

The registration of marriages in the United States is a state and local function. The civil laws of all states provide for a continuous and permanent marriage registration system. Marriages are registered and filed in centralized files in most states. Comprehensive, accurate registration depends upon the conscientious efforts of local officials, clergy, or other officiants in obtaining the information needed to complete the original record and in certifying to the information on the record.

Most states have local court districts with courts empowered to provide marriage licenses to applicants entitled to receive them. These districts may be townships, villages, towns, cities, counties, or other geographic areas.

In Kansas, the clerk of the district court is responsible for obtaining the personal data necessary to complete the marriage license. After a marriage ceremony, the marriage officiant returns the marriage license to the clerk of the district court who issued it. The clerk of the district court transmits the completed license to the Office of Vital Statistics.

The Office of Vital Statistics inspects each license for completeness and accuracy; queries for missing or inconsistent information; codes certain information for entry into the state computer system; assigns a state file number; microfilms the license for future issuance of certified copies; and then, stores the original license at an off-site facility for permanent preservation. From the information entered into the computer system, indexes are prepared for use by the Office of Vital Statistics in locating and retrieving records needed to produce certified copies. In addition, statistical information from the license is available.

The National Center for Health Statistics (NCHS) is vested with the authority for administering vital statistics functions at the national level. Data tapes of information derived from individual records registered in the state offices and microfilmed copies of the individual records are transmitted to NCHS by those states participating in the marriage registration area (MRA). The MRA, which includes Kansas, is comprised of those states that maintain central marriage registration files and meet certain minimum standards of record completeness and reporting accuracy. Monthly, annual, and special statistical reports are prepared from the data for the United States, MRA, states, counties, and regions. Reports can be compiled and sorted to show age, race, sex, or other characteristics that may be needed. Statistics are essential to the fields of social welfare, public health, and demography. They are also used for business and government program planning and evaluation. NCHS serves as a focal point exercising leadership in establishing uniform practices through model laws, standard certificate forms, handbooks, and other instructional materials for the continued improvement of the marriage registration system in the United States and Kansas.