

Approved: Feb 11, 1999
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Emert at 10:14 a.m. on February 10, 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:

Marilyn Nichols, Kansas Register of Deeds Association (KRDA)
Laura Johnson, Deputy Director, Property Valuation, Ks. Dept. of Revenue

Others attending: see attached list

The minutes of the February 9 meeting were approved on a motion by Senator Bond and seconded by Senator Petty. Motion carried.

SB 147—an act concerning taxation; relating to real estate sales validation questionnaires

Conferee Nichols testified as neutral on **SB 147** "until we understand the full intent of the amendment." She stated that KRDA's understanding of the bill is that it will simply strike from the existing language of Exemption No. 14 the phrase... "pursuant to judicial order." She discussed duplicate filing requirements and requested Committee add another exemption to the bill which would alleviate the need for this. (attachment 1). Discussion followed regarding the duplicate filing issue. There was discussion concerning the Kansas Real Estate Validation Questionnaire (attachment 2) with reference made by Acting Chair Pugh to K.A.R. 79-1537c, the statute that covers this. (attachment 3) Several guests, who are register of deeds in various counties in Kansas, offered support for the exemption Conferee Nichols spoke about. Mark Beck, Property Valuation Director was invited to comment but he deferred to his Deputy Director Laura Johnson.

Conferee Johnson provided information about the sales validation questionnaire and its purpose and provided input regarding K.S.A. 79-1537e. She expressed concern about transfers by the trustee of an estate and offered an example of how the language in the bill could be amended to address this concern. (attachment 4) Further discussion followed.

The acting Chair provided Committee with a copy of a certificate of value form that was used after 1967 (attachment 5) and a copy of a ratio study card used by county officials in furnishing information covering real estate sales to the Division of Property Valuation. (attachment 6) By invitation of the acting Chair Guest Pete Davis, Supervisor of Ratio Study gave a brief history of the development of the questionnaire.

The acting Chair summarized the issues being addressed in both K.S.A. 1437(e) and K.S.A. 1437(c) noting there was some confusion regarding the latter. There was general agreement that Director Beck and KRDA would work together to clarify these issues and "bring something back to the Committee."

Senator Emert resumed the Chair position at 10:40 a.m.

SB 81—an act concerning civil procedure; relating to the rules of evidence

SB 92—an act concerning criminal procedure; relating to parole hearings; comments of victims

SB 98—an act concerning criminal procedure; related to sentencing

SB 93—an act concerning juvenile offenders; relating to venue of proceedings

SB 119—an act concerning the Kansas code for care of children; relating to post-termination dispositional alternatives following voluntary relinquishment of parental rights

Senator Oleen reported on her subcommittee's hearings and recommendations on the above bills. (attachment 7 & 8) The following action was taken: Senator Oleen moved to pass SB 81 out favorably and place it on the consent calendar, Senator Donovan seconded, carried; following discussion, SB 92 was tabled temporarily to gather further technical language information; Senator Oleen moved to pass SB 98 out favorably as amended by subcommittee, Senator Donovan seconded, carried; Senator Oleen moved to pass SB 93 out favorably with the effective date upon publication in the Kansas Register, Senator Feleciano seconded, carried; and following discussion, no action was taken on SB 119, at this time.

The meeting adjourned at 11:04 a.m. The next scheduled meeting is Thursday, February 11, 1999.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb 10, 1999

NAME	REPRESENTING
PETE DAVIS	PVD / KDOR
MUS JOHNSON	PVD / KDOR
Linda R. Massey	Register of Deeds
Cynthia Dallas	Register of Deeds
Denny Prout	Register of Deeds
Rose Ann Ruff	Reg. of Deeds
Sharlene Wright	Reg. of Deeds
Marilyn L. Nichols	Reg. of Deeds
Yonnie Y. Wilker	Clerk II Reg. of Deeds
Christy Moten	Judicial Council
Charlotte Shawver	Riley Co. Reg. of Deeds
Jacqueline A. Webb	Allen County Reg. of Deeds
Mary Ann Holsapple	Nemaha County Reg. of Deeds
Kevin A. Graham	Kansas Sentencing Comm
J. L. M. Harrell	K. J. C.
Roy Smith	Ks Bar Assoc
Bill Perry	Ks Government Consulting
Marky B. L.	KDOR
Gene M. Sabell	KTLA

DAILY AGENDA

February 10, 1999

Hearing and possible action on:

SB 147—an act concerning taxation; relating to real estate sales validation questionnaires

Proponent

Opponent

SB 149 Marilyn Nichols, Ks. Register of Deeds

None

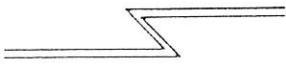

(Mark Beck, Property Valuation Director is present to answer questions or supply information prn)

Subcommittee reports and action

Approval of February 9 minutes

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 REGISTER OF DEEDS 
KANSAS ASSOCIATION

February 10, 1999

SENATE BILL 147

I am here today on behalf of the Kansas Register of Deeds Association. We thank you for the opportunity to provide input during your decision making process.

Our understanding of this bill is simply to have "...pursuant to judicial order" stricken from the existing language of Exemption No. 14. Our position on this bill is somewhat neutral, until we understand the full intent of the amendment. Some of the ramifications of this bill, as proposed, might need to be addressed before we may testify in support of this bill.

If this distinguished committee is looking at the questionnaire as a whole, I would like to take this opportunity to ask you to consider adding an Exemption No. 16, that would eliminate the need for a Sales Validation Questionnaire to accompany a deed coming out of escrow that has had a questionnaire previously filed with an Affidavit of Equitable Interest. In essence, it is the same transaction, not a new sale. The County Assistance Bureau Chief had previously created such an exemption in 1996, to state, " (16) made for the purpose of releasing an equitable lien on a previously recorded affidavit, and without additional consideration." We find this to be the situation quite often, and have no alternative but to ask for another questionnaire when recording said deed. This exemption would eliminate said duplication.

We want to assure the committee that our ultimate goal is to serve the Property Valuation Department in collecting data for all legitimate sales of real estate and to serve the public in helping to make said data collection "user friendly".

Thank you for giving me the opportunity to speak to this bill, and I would be happy to stand for any questions.

Sen Fred
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KANSAS REAL ESTATE SALES VALIDATION QUESTIONNAIRE

FOR COUNTY USE ONLY:		COV#	CO. NO.	MAP	SEC	SHEET	QTR.	BLOCK	PARCEL	OWN	
DEED BOOK _____	PAGE _____										
RECORDING DATE ____/____/____	TYPE OF INSTRUMENT CR _____ RA _____ DE _____	SPLIT <input type="checkbox"/>	MO _____	YR _____	TY _____	AMOUNT _____	S _____	V _____			
		CR _____	RA _____	DE _____	MULTI <input type="checkbox"/>						

SELLER (Grantor) NAME _____ BUYER (Grantee) NAME _____

MAILING _____ MAILING _____

CITY/ST/ZIP _____ CITY/ST/ZIP _____

PHONE NO. (____) _____ PHONE NO. (____) _____

IF AGENT SIGNS FORM, BOTH BUYER AND SELLER TELEPHONE NUMBERS MUST BE ENTERED.

BRIEF LEGAL DESCRIPTION _____

Property / Situs Address: _____
Name and Mailing Address for Tax Statements _____

CHECK ANY FACTORS THAT APPLY TO THIS SALE:

(See instructions on back of form.)

1. SPECIAL FACTORS
- Sale between immediate family members: SPECIFY THE RELATIONSHIP _____
 - Sale involved corporate affiliates belonging to the same parent company
 - Auction Sale
 - Deed transfer in lieu of foreclosure or repossession
 - Sale by judicial order (by a guardian, executor, conservator, administrator, or trustee of an estate)
 - Sale involved a government agency or public utility
 - Buyer (new owner) is a religious, charitable, or benevolent organization, school or educational association
 - Buyer (new owner) is a financial institution, insurance company, pension fund, or mortgage corporation
 - Would this sale qualify for one of the exceptions listed on the reverse side of this form? (Please indicate # _____)
 - Sale of only a partial interest in the real estate
 - Sale involved a trade or exchange of properties
 - NONE OF THE ABOVE

6. ARE YOU AWARE OF ANY CHANGES IN THE PROPERTY SINCE JAN. 1? YES NO
- Demolition New Construction Remodeling Additions
Date Completed _____

7. WERE ANY DELINQUENT TAXES ASSUMED BY THE PURCHASER? YES NO AMOUNT \$ _____

8. METHOD OF FINANCING (check all that apply):
- New loan(s) from a Financial Institution
 - Seller Financing Assumption of Existing Loan(s)
 - All Cash Trade of Property Not Applicable

9. WAS THE PROPERTY MADE AVAILABLE TO OTHER POTENTIAL PURCHASERS? YES NO If not, explain _____

(SEE #9 INSTRUCTION ON BACK)

10. DOES THE BUYER HOLD TITLE TO ANY ADJOINING PROPERTY? YES NO

11. ARE THERE ANY FACTS WHICH WOULD CAUSE THIS SALE TO BE A NON-ARMS LENGTH / NON-MARKET VALUE TRANSACTION? (SEE #11 INSTRUCTION ON BACK) YES NO

12. TOTAL SALE PRICE \$ _____
DEED DATE ____/____/____

13. I CERTIFY THAT THE ADDRESS TO WHICH TAX STATEMENTS FOR THE PROPERTY ARE TO BE SENT IS CORRECT.
I ALSO CERTIFY I HAVE READ ITEM NO. 13 ON THE REVERSE SIDE AND HEREBY CERTIFY THE ACCURACY OF THE INFORMATION AND THAT I AM AWARE OF THE PENALTY PROVISIONS OF K.S.A. 79-1437g.

PRINT NAME _____

SIGNATURE _____

GRANTOR (SELLER) GRANTEE (BUYER)
 AGENT DAYTIME PHONE NO. (____) _____

2. CHECK USE OF PROPERTY AT THE TIME OF SALE:
- Single Family Residence Agricultural Land
 - Farm/Ranch With Residence Mineral Rights Included? Yes No
 - Condominium Unit
 - Vacant Land Apartment Building
 - Other: (Specify) _____ Commercial/Industrial Bldg.

3. WAS THE PROPERTY RENTED OR LEASED AT THE TIME OF SALE? YES NO

4. DID THE SALE PRICE INCLUDE AN EXISTING BUSINESS? YES NO

5. WAS ANY PERSONAL PROPERTY (SUCH AS FURNITURE, EQUIPMENT, MACHINERY, LIVESTOCK, CROPS, BUSINESS FRANCHISE OR INVENTORY, ETC.) INCLUDED IN THE SALE PRICE? YES NO
If yes, please describe _____

Estimated value of all personal property items included in the sale price \$ _____

If Mobile Home Year _____ Model _____

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INSTRUCTIONS FOR COMPLETING THE SALES VALIDATION QUESTIONNAIRE

- ITEM 1** Please check all boxes which pertain.
- ITEM 2** Check the box which describes the current or most recent use of the property at the time of sale. Check all boxes which are applicable if the property has multiple uses.
- ITEM 3** Check yes; if the buyer assumed any long term lease(s) (more than 3 years remaining) at the time of sale.
- ITEM 4** Check yes; if the purchase price included an operating business, franchise, trade license, patent, trademark, stock, bonds, technology, and/or goodwill.
- ITEM 5** Check yes; if any tangible and portable items of property were included in the sale price. If possible, provide a brief description and your estimate of the total value of all personal property included in the sale price.
- ITEM 6** Check yes; if the property characteristics have been changed since January 1. Indicate what type of change(s) took place by marking the appropriate box. Indicate the date the change(s) took place.
- ITEM 7** Check yes; if any delinquent taxes were assumed by the purchaser and included as part of the sale price. Do not consider any prorated taxes for the year in which the property was sold that are part of normal escrow closings.
- ITEM 8** Check the predominate method of financing used to acquire the property. Check "Not Applicable" if no money exchanged hands or refinancing of an existing loan.
- ITEM 9** Check yes; if the property was either advertised on the open market, displayed a for sale sign, listed with a real estate agent or offered by word of mouth.
- ITEM 10** Check yes; if the buyer owns or controls the property adjoining or adjacent to the property being purchased.
- ITEM 11** Provide an explanation if you believe the buyer or seller did not act prudently, was not fully informed about the property or knowledgeable of the local market, poorly advised, did not use good judgement in the negotiations, was acting under duress, or compelled out of necessity. Use an additional sheet of paper if necessary.
- ITEM 12** Provide the total sale price and date of sale. The date should be the date that either the deed or the contract for deed was signed, not the date the deed was recorded.
- ITEM 13** Please sign the questionnaire and list your phone number. The county appraiser may need to make a follow up phone call to clarify unusual terms or conditions.

K.S.A. 79-1437g. Same; penalty for violations. Any person who shall falsify the value of real estate transferred shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$500. (L. 1991, ch. 162, sec. 7; L. 1992, ch. 159, sec. 3; April 30.)

TRANSFERS OF TITLE THAT DO NOT REQUIRE A SALES VALIDATION QUESTIONNAIRE ARE AS FOLLOWS:

- (1) Recorded prior to the effective date of this act, i.e., July 1, 1991.
- (2) made solely for the purpose of securing or releasing security for a debt or other obligation;
- (3) made for the purpose of confirming, correcting, modifying or supplementing a deed previously recorded, and without additional consideration;
- (4) by way of gift, donation or contribution stated in the deed or other instruments;
- (5) to cemetery lots;
- (6) by leases and transfers of severed mineral interests;
- (7) to a trust, and without consideration;
- (8) resulting from a divorce settlement where one party transfers interest in property to the other;
- (9) made solely for the purpose of creating a joint tenancy or tenancy in common;
- (10) by way of a sheriff's deed;
- (11) by way of a deed which has been in escrow for longer than five years;
- (12) by way of a quit claim deed filed for the purpose of clearing title encumbrances;
- (13) when title is transferred to convey right-of-way or pursuant to eminent domain;
- (14) made by a guardian, executor, administrator, conservator or trustee of an estate pursuant to judicial order; or
- (15) when title is transferred due to repossession.

- (b) When a real estate sales validation questionnaire is not required due to one or more of the exemptions provided in 1-15 above, the exemption shall be clearly stated on the document being filed.

If you have any questions or need assistance completing this form, please call the county appraiser's office.

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(d) Every person, firm or corporation bringing into any county of this state from outside of the state goods or merchandise after January 1 shall be deemed subject to the provisions of this section unless such goods or merchandise is exempt from taxation.

(e) No mistake in the name of the owner of the goods or merchandise shall affect the right to recover the penalty provided by this section.

History: L. 1915, ch. 367, § 1; R.S. 1923, 79-1434; L. 1959, ch. 365, § 27; L. 1986, ch. 370, § 3; March 27.

Cross References to Related Sections:

Merchants and manufacturers, see ch. 79, art. 10.

Research and Practice Aids:

Taxation = 350.

C.J.S. Taxation § 412.

CASE ANNOTATIONS

1. Cited in upholding validity of 79-306c. State, ex rel., v. Dwyer, 204 K. 3, 7, 460 P.2d 507.

79-1435.

History: L. 1949, ch. 224, § 1; L. 1965, ch. 516, § 1; L. 1967, ch. 489, § 1; L. 1972, ch. 362, § 1; Repealed, L. 1992, ch. 131, § 10; July 1.

CASE ANNOTATIONS

1. Petition to recover protested taxes sufficiently alleged fraud in making unequal assessments. Kansas City Southern Rly. Co. v. Board of County Comm'rs, 183 K. 675, 677, 678, 683, 331 P.2d 899.

2. Ratio study reflects relationship of assessed value to sale price, not assessed value to "justifiable value" for ad valorem tax purposes. Northern Natural Gas Co. v. Williams, 208 K. 407, 413, 417, 419, 426, 493 P.2d 568.

3. Cited; party aggrieved by administrative ruling not free to pick and choose procedure in district court action to avoid administrative remedies. State ex rel. Smith v. Miller, 239 K. 187, 189, 190, 718 P.2d 1298 (1986).

79-1436.

History: L. 1949, ch. 224, § 2; L. 1965, ch. 516, § 2; L. 1967, ch. 489, § 2; L. 1972, ch. 362, § 2; L. 1974, ch. 428, § 1; L. 1982, ch. 397, § 1; L. 1989, ch. 2, § 7 (Special Session); L. 1991, ch. 162, § 8; Repealed, L. 1992, ch. 131, § 10; July 1.

CASE ANNOTATIONS

1. Ratio studies may be considered in determining necessity for a reappraisal of property. Board of County Commissioners v. Brookover 198 K. 70, 71, 77, 422 P.2d 906.

2. Assessment and valuation of property are administrative in character; absent evidence that assessment was arrived at fraudulently, arbitrarily or capriciously, a difference of opinion as to value doesn't warrant judicial interference. Cities Service Oil Co. v. Murphy, 202 K. 282, 291, 295, 447 P.2d 791.

3. Ratio study held not conclusive evidence in considering valuation of interstate gas pipeline and distribution property. Northern Natural Gas Co. v. Dwyer, 208 K. 337, 339, 492 P.2d 147.

4. Referred to; assessment of property at 43% of fair market value arbitrary and oppressive. Gordon v. Hiatt, 214 K. 690, 692, 522 P.2d 942.

79-1436a.

History: L. 1967, ch. 489, § 3; L. 1969, ch. 435, § 1; L. 1972, ch. 362, § 3; L. 1985, ch. 311, § 5; Repealed, L. 1992, ch. 131, § 10; July 1.

79-1436b.

History: L. 1969, ch. 435, § 2; L. 1972, ch. 363, § 1; L. 1974, ch. 428, § 2; L. 1976, ch. 423, § 1; L. 1978, ch. 396, § 2; Repealed, L. 1992, ch. 131, § 10; July 1.

79-1437.

History: L. 1949, ch. 224, § 3; L. 1965, ch. 516, § 3; L. 1967, ch. 489, § 4; L. 1972, ch. 362, § 4; L. 1974, ch. 428, § 3; L. 1982, ch. 397, § 2; L. 1985, ch. 311, § 6; L. 1986, ch. 374, § 1; L. 1989, ch. 2, § 8 (Special Session); Repealed, L. 1992, ch. 131, § 10; July 1.

CASE ANNOTATIONS

1. Ratio study reflects relationship of assessed value to sale price, not assessed value to "justifiable value" for ad valorem tax purposes. Northern Natural Gas Co. v. Williams, 208 K. 407, 413, 417, 419, 426, 493 P.2d 568.

79-1437a.

History: L. 1967, ch. 489, § 5; Repealed, L. 1992, ch. 131, § 10; July 1.

79-1437b.

History: L. 1971, ch. 298, § 1; Repealed, L. 1985, ch. 314, § 30; July 1.

79-1437c. Real estate sales validation questionnaires; required to accompany transfers of title; retention time; use of information. No deed or instrument providing for the transfer of title to real estate or affidavit of equitable interest in real estate shall be recorded in the office of the register of deeds unless such deed, instrument or affidavit shall be accompanied by a real estate sales validation questionnaire completed by the grantor or grantee or the agent of such grantor or grantee concerning the property transferred. Such questionnaire shall not be filed of record by the register of deeds but shall be retained for a period of five years at which time they shall be destroyed. The register of deeds shall in conjunction with the county clerk use the information derived from such questionnaires in cooperating with and assisting the director of property valuation in developing the information as provided for in K.S.A. 79-1487, and amendments thereto.

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159, § 1;
§ 25; Jan

Law Review
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History: L. 1991, ch. 162, § 3; L. 1992, ch. 159, § 1; L. 1992, ch. 282, § 18; L. 1995, ch. 252, § 25; Jan. 1, 1996.

Law Review and Bar Journal References:

"Survey of Kansas Law: Taxation," Sandra Craig McKenzie, 41 K.L.R. 727, 734 (1993).

Attorney General's Opinions:

Real estate appraisers and assessment of property; real estate sales questionnaire; what constitutes an agent. 91-105.

Open public records; real estate sales validation questionnaires; certified or licensed appraisers. 92-38.

Authority of register of deeds to reference exemption on face of deed. 92-122.

Public records; application of open records act; effect of review of record in executive session. 95-119.

79-1437d. Same; devised by director of property valuation; approval by legislature; information to be contained therein.

The real estate sales questionnaire shall be devised by the director of property valuation, and the director shall furnish copies thereof to the register of deeds. Upon proposing modifications or changes to the real estate sales validation questionnaire devised and used prior to 1992 or any validation questionnaire approved by the legislature in 1992 or thereafter, the director of property valuation shall submit such proposal to the legislature. Upon the failure of the legislature to enact legislation modifying the director's proposal within 60 days of submission thereof, such proposal shall be deemed to be approved, and the director's modified questionnaire may be utilized at anytime thereafter. The questionnaire shall be devised to obtain information regarding the identification and location of the property, name and address of the purchaser, sales price, date of sale, the classification and subclassification to which such property belongs, nature and circumstances peculiar to the sale, whether any personal property was included in the sales price, whether the purchaser assumed any mortgages or liens, loans, leases or taxes, the method of financing, whether any special assessments are levied against the property and such other information as the director of property valuation shall require. No information shall be requested in such questionnaire which would require the disclosure of the interest rate paid by the purchaser or the specific term of any mortgage.

History: L. 1991, ch. 162, § 4; July 1.

Attorney General's Opinions:

Real estate appraisers and assessment of property; real estate sales questionnaire; what constitutes an agent. 91-105.

79-1437e. Same; inapplicability to certain transfers of title. (a) The real estate sales validation questionnaire required by this act shall not apply to transfers of title:

- (1) Recorded prior to the effective date of this act;
- (2) made solely for the purpose of securing or releasing security for a debt or other obligation;
- (3) made for the purpose of confirming, correcting, modifying or supplementing a deed previously recorded, and without additional consideration;
- (4) by way of gift, donation or contribution stated in the deed or other instrument;
- (5) to cemetery lots;
- (6) by leases and transfers of severed mineral interests;
- (7) to a trust, and without consideration;
- (8) resulting from a divorce settlement where one party transfers interest in property to the other;
- (9) made solely for the purpose of creating a joint tenancy or tenancy in common;
- (10) by way of a sheriff's deed;
- (11) by way of a deed which has been in escrow for longer than five years;
- (12) by way of a quit claim deed filed for the purpose of clearing title encumbrances;
- (13) when title is transferred to convey right-of-way or pursuant to eminent domain;
- (14) made by a guardian, executor, administrator, conservator or trustee of an estate pursuant to judicial order; or
- (15) when title is transferred due to repossession.

(b) When a real estate sales validation questionnaire is not required due to one or more of the exemptions provided in subsection (a), the exemption shall be clearly stated on the document being filed.

History: L. 1991, ch. 162, § 5; L. 1992, ch. 159, § 2; L. 1994, ch. 275, § 12; July 1.

Attorney General's Opinions:

Authority of register of deeds to reference exemption on face of deed. 92-122.

79-1437f. Same; disposition and use of contents thereof, to and by whom. The contents of the real estate sales validation questionnaire shall be made available only to the following people for the purposes listed hereafter:

- (a) County officials for cooperating with and assisting the director of property valuation in de-

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Mark S. Beck, Director
Kansas Department of Revenue
915 SW Harrison St.
Topeka, KS 66612-1588

(785) 296-2365
FAX (785) 296-2320
Hearing Impaired TTY (785) 296-3909
Internet Address: www.ink.org/public/kdor

Division of Property Valuation

MEMORANDUM

TO: Senator Tim Emert, Chairman, Judiciary Committee
FROM: Laura Johnson, Deputy Director
DATE: February 10, 1999
SUBJECT: Senate Bill 147 as Introduced - Sales Validation Questionnaires

Thank you for the opportunity to provide information about the sales validation questionnaire and its purpose and to provide input regarding one minor portion of the amendment proposed by Senate Bill 147.

The Sales Validation Questionnaire – its Design and Purpose

The sales validation questionnaire is designed to help collect enough information about a sale in order to determine whether it is potentially a sale that truly reflects the market; i.e., a sale between a willing, informed buyer and seller in an open and competitive market without undue compulsion. (K.S.A. 79-503a defines “fair market value” for property tax purposes). This division designs the sales validation questionnaire with the approval of the legislature. (K.S.A. 79-1437d). Approximately 100,000 sales validation questionnaires are completed each year. Follow-up phone calls are needed on only about 2% of the forms, indicating that the current form is effective.

In Kansas, a sales validation questionnaire is required before a deed or other instrument transferring title can be filed with the register of deeds, with a few statutory exceptions. (K.S.A. 79-1437c, K.S.A. 79-1437e). This procedure allows information to be collected on virtually all sales that may be potentially useful in determining the fair market value of similar property.

Completed sales validation questionnaires are used by: (1) appraisers in order to appraise property at its fair market value; and (2) the division of property valuation in order to annually measure and report how well each county is appraising property at its fair market value, in the interest of promoting statewide uniformity.

This division publishes its measurement of each county’s performance annually in a report called the “Sales Ratio Study,” which is provided to the legislature (K.S.A. 79-1490). This study provides needed feedback to counties and this division about how well property is being uniformly and accurately valued, so that appropriate corrective action can be taken where necessary.

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The sales validation questionnaire and accompanying statutory procedures help assure that the Kansas Sales Ratio Study is a highly reliable measurement tool. Legislative Post Audit found the Sales Ratio Study to be a reliable and accurate measurement tool in its March 1997 audit report.

The information collected on sales validation questionnaires helps assure that property is valued uniformly and accurately, as required by Article 11, Section 1 of the Kansas Constitution. When some property is valued accurately at its market value while other property is valued below market, the property that is valued accurately carries more than its fair share of local services such as fire and police protection, roads, parks, schools, etc. The mission of this division is to assure that Kansas property owners are provided a uniform, accurate and therefore fair bases for purposes of sharing in the cost of local governmental services.

Senate Bill 147 -- A Concern about Transfers by the *Trustee* of an *Estate*.

This division is interested in obtaining key information about sales transactions that may potentially reflect fair market value. We are not interested in requiring needless paperwork on anyone's part. Therefore, we fully support the amendments proposed by Senate Bill 147 with one exception—the provision pertaining to the transfer of property by the *trustee* of an *estate*.

We would prefer to continue to collect sales information when a trustee transfers the title of property in an inter vivos ("living") trust, a form of trust that is becoming increasingly more common. We believe that such transfers may potentially reflect the market. In a county with a small population and few sales, such transfers may provide valuable and very needed information. If the term "estate" in the proposed amendment to K.S.A. 79-1437e is interpreted broadly, a sales validation questionnaire would not be required when trustee transfers the title to property that is in an inter vivos trust.

It may appear initially that by using the word "estate," the transfers in the amendment would pertain to only those transfers made by a trustee of a decedent's estate. However, that may not be the case. The Kansas courts have interpreted the term "estate" broadly. For example, the Kansas courts have interpreted the term "estate" to be synonymous with the word "property." (*McVicar v. McVicar*, 128 Kan. 394 (1929)(when interpreting a prenuptial agreement contract). In addition, the Kansas courts have construed the term "estate" used in K.S.A. 58-2202 to mean "interest." (*Gotheridge v. Unified School District*, 212 Kan 798 (1973)(when addressing a quiet title action). Black's Law Dictionary provides two definitions of "estate." The broad definition of "estate" refers to the interest a person has in real or personal property; this definition equates the term "estate" with "right," "title," and "interest." The narrower definition of "estate" refers to a decedent's property prior to its distribution by will or the inheritance laws.

To avoid any confusion over the issue, we respectfully request that the bill language be amended, and offer the following example for consideration:

...K.S.A. 79-1437e. (a) The real estate sales validation questionnaire required by this act shall not apply to transfers of title: ...

(14) made by a guardian, executor, administrator, ~~or conservator or trustee~~ of an estate pursuant to judicial order; or **by a trustee of an absentee's estate or decedent's estate; or**

(15) when title is transferred due to repossession...

The register of deeds have verbally expressed a concern to us that transfers from a trust without consideration still require a sales validation questionnaire. We believe that most transfers of that nature are a gift, and would be excluded from having to file the questionnaire. However, to assure the matter is perfectly clear and that the unusual circumstance is covered, we would support a an amendment to the current language in K.S.A. 79-1437e as follows:

(7) to *or from* a trust, and without consideration.

Completed by Beyer

CERTIFICATE OF VALUE

Subsequent to July 1, 1967, a certificate of value was obtained from the purchaser and this provided the sale price as follows:

INFORMATION REQUESTED			COUNTY OFFICIALS USE ONLY	
Grantee: _____	PROPERTY LOCATION: (Condense lengthy legal descriptions)		Reg. of Deeds: Book _____ Page _____	
(City or Township)	(Add. or Sec.)	(Blk. or Twp.)	(Lots or Rng.)	
Street or R. F. D. No. _____			Co. Appraiser's Code No. _____	

CERTIFICATE OF VALUE

I hereby certify that the total consideration paid for the property transferred by the deed or instrument of which this certificate is appended covering is, to the best of my knowledge or belief as follows: \$ _____

I further certify that the present use of the property is _____ and its intended use is _____ and that as a result such property is properly classified for the purpose of determining the fair market value thereof as _____ (See back for list of classifications)

I further certify that the address to which tax statements for the property are to be sent is _____ (Mailing address for tax statements)

Given this _____ day of _____, 19____.

Signature: _____
 Grantor, Grantee or his agent

(Address)

PV-RE-8
 (Rev. 7/76)

K.S.A. 58-2223a-58-2223e Incl. 1975 Supplement

San Peck
 2-10-99
 275

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 606
 65

*Green Card
Completed by County*

*5522
2-10-99 # 6*

**FIGURE 1
RATIO STUDY CARD**

To facilitate obtaining necessary sale and assessment data and to insure uniform reporting, the Division of Property Valuation prescribes and furnished "ratio study cards" to be used by county officials in furnishing information covering real estate sales.

County	Co. No.	School Dist.	Date Deed Recorded	Certificate of Value	Total Assessed Value	Ratio: Total Assessed Value Divided by Certificate of Value																																								
Grantor & Address			Date of Sale	Price Shown by Deed	Assumed Mortgage																																									
Grantee & Address																																														
City or Township Name		Number-Range	Should this transaction be used in the sales-assessment ratio study? <input type="checkbox"/> Yes <input type="checkbox"/> No If the answer is "no" give brief explanation.		Property Classification																																									
Addition/Section			Reject Code <input type="checkbox"/>		<table border="1"> <tr> <td colspan="2">1 <input type="checkbox"/> URBAN</td> <td colspan="2">2 <input type="checkbox"/> RURAL</td> </tr> <tr> <td colspan="2"> 1 Residential. Prior to Sale After Sale 1 <input type="checkbox"/> Single Family <input type="checkbox"/> 2 <input type="checkbox"/> Multifamily <input type="checkbox"/> 3 <input type="checkbox"/> Condo <input type="checkbox"/> 4 <input type="checkbox"/> Vacant Lot <input type="checkbox"/> </td> <td colspan="2"> 3 Commercial. Prior to Sale After Sale 1 <input type="checkbox"/> Commercial <input type="checkbox"/> 2 <input type="checkbox"/> Industrial <input type="checkbox"/> 3 <input type="checkbox"/> Vacant Lot <input type="checkbox"/> </td> </tr> <tr> <td colspan="2"> 2 Agricultural. Prior to Sale After Sale 1 <input type="checkbox"/> Improved with Residence <input type="checkbox"/> 2 <input type="checkbox"/> Improved no Residence <input type="checkbox"/> 3 <input type="checkbox"/> Unimproved <input type="checkbox"/> </td> <td colspan="2"> 4 State Appraised. Prior to Sale After Sale 1 <input type="checkbox"/> 5 Public Service. Prior to Sale After Sale 1 <input type="checkbox"/> </td> </tr> <tr> <td>Block Lot/Quarter</td> <td></td> <td></td> <td colspan="2">234688 District Supervisor</td> <td colspan="2"># Acres <input type="text"/></td> </tr> <tr> <td>Book No.</td> <td>Page No.</td> <td></td> <td colspan="2">County officials are urged to comment if they have knowledge about this sale. Use back of this original for additional space.</td> <td colspan="2">Were the conditions of this sale verified? <input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> <tr> <td>Appraiser's Code No.</td> <td></td> <td></td> <td colspan="2">Signed _____</td> <td colspan="2">If yes Name of person or persons contacted _____</td> </tr> <tr> <td colspan="2">PV-RE-4 (Rev. 9/82)</td> <td></td> <td colspan="2">Ratio Study K.S.A. 79-1435 etc. (Original—Division of Property Valuation. Duplicate—To be retained by County.</td> <td colspan="2">Phone number () Signed _____</td> </tr> </table>		1 <input type="checkbox"/> URBAN		2 <input type="checkbox"/> RURAL		1 Residential. Prior to Sale After Sale 1 <input type="checkbox"/> Single Family <input type="checkbox"/> 2 <input type="checkbox"/> Multifamily <input type="checkbox"/> 3 <input type="checkbox"/> Condo <input type="checkbox"/> 4 <input type="checkbox"/> Vacant Lot <input type="checkbox"/>		3 Commercial. Prior to Sale After Sale 1 <input type="checkbox"/> Commercial <input type="checkbox"/> 2 <input type="checkbox"/> Industrial <input type="checkbox"/> 3 <input type="checkbox"/> Vacant Lot <input type="checkbox"/>		2 Agricultural. Prior to Sale After Sale 1 <input type="checkbox"/> Improved with Residence <input type="checkbox"/> 2 <input type="checkbox"/> Improved no Residence <input type="checkbox"/> 3 <input type="checkbox"/> Unimproved <input type="checkbox"/>		4 State Appraised. Prior to Sale After Sale 1 <input type="checkbox"/> 5 Public Service. Prior to Sale After Sale 1 <input type="checkbox"/>		Block Lot/Quarter			234688 District Supervisor		# Acres <input type="text"/>		Book No.	Page No.		County officials are urged to comment if they have knowledge about this sale. Use back of this original for additional space.		Were the conditions of this sale verified? <input type="checkbox"/> Yes <input type="checkbox"/> No		Appraiser's Code No.			Signed _____		If yes Name of person or persons contacted _____		PV-RE-4 (Rev. 9/82)			Ratio Study K.S.A. 79-1435 etc. (Original—Division of Property Valuation. Duplicate—To be retained by County.		Phone number () Signed _____	
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Senator Oleen's Subcommittee

1. S.B. 81 would clean-up K.S.A. 60-466.

Conferees

Proponents of the bill included: Roger Walter, Securities Commissioner's Office, recommended to insert "Clauses (1) (2) or (3)."

Opponents of the bill included: None

Subcommittee Action

The Subcommittee recommended the full Senate Judiciary Committee pass the bill favorably.

2. S.B. 92 would make comments of victims and victims' families made on videotape admissible in parole hearings.

Conferees

Proponents of the bill included: Paul Morrison, Johnson County District Attorney; Marilyn Scafe, Chairperson, Kansas Parole Board

Opponents of the bill included: None

Subcommittee Action

The Subcommittee recommends the bill favorably for passage along with the following concerns:

- a. Technologically up-to-date recording devices need to be utilized.
- b. Prosecutors should be responsible for maintaining custody of the recording devices.

3. S.B. 98 would provide that a person who commits a new felony while they are on release for a prior felony to be issued a new sentence pursuant to the consecutive sentencing requirements of K.S.A. 21-4608.

Conferees

Proponents of the bill included: Jim Clark, Kansas County and District Attorneys Association; Judge Marla Luckert, Shawnee County District Court Judge

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Opponents of the bill included: None

Subcommittee Action

The Subcommittee supported an amended version of the bill as contained in 1998 S.B. 435 as modified by Judge Luckert's language which is attached.

**Comments in Support of
Senate Bill 92**

February 2, 1999

I'm here today to testify in support of the amendments to K.S.A. 22-3717 concerning the Parole Board's Public Comment Sessions. As a prosecutor, it is common to see the anguish that people touched by crime at the Parole Board's Public Comment Sessions. A common concern of families of victims is that they will not live to voice their concerns when defendants become parole eligible. This is particularly common in homicide cases where long mandatory prison terms are present. This change in the law would allow for the Parole Board to consider videotaped comments which would be archived by prosecutors' offices for future use. It is a small change that would propose great benefits for crime victims in this state.

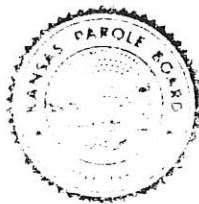
Paul J. Morrison,
District Attorney
Johnson County, Kansas

Marilyn Scafe
Chairperson

Leo "Lee" Taylor
Vice Chairperson

Bob J. Mead
Member

Larry D. Woodward
Member



KANSAS PAROLE BOARD
LANDON STATE OFFICE BUILDING
900 SW JACKSON STREET, 4TH FLOOR
TOPEKA, KANSAS 66612-1236
(913) 296-3469

Teresa L. Saiya
Administrator

MEMORANDUM

**TO: Lana Oleen, Chair
Judiciary Subcommittee**

**FROM: Marilyn Scafe, Chair
Kansas Parole Board** MS

DATE: February 2, 1999

RE: SB 92

The Kansas Parole Board is in agreement with the provision of SB 92 to allow victims of crime to submit their comments to the Board by means of a recorded videotape. There are several advantages:

1. Presently, victims are encouraged to attend any of the three public comment sessions held each month in Wichita, Kansas City, and Topeka. This is a public forum, and each person or party must appear before the Board in the open setting. It is often difficult for the victims to relate their pain and suffering before the rest of the public audience. It is not unusual for media to be present. It is also possible that the inmate's family or other support is in the audience. Videotape would provide necessary privacy and may allow more open testimony.
2. The Board takes notes at the public comment sessions, however, they are necessarily brief due to the lack of clerical support at the sessions. The recording would allow a more thorough record which could be filed and reviewed as the Board found necessary. Taped testimony from the victim would also ensure that every Board member, including new members, had consistent information regarding the victim.
3. One of the most common problems expressed by victims is the ordeal of reliving the offense each time the inmate is parole eligible. In some cases, victims do not come to the comment sessions or submit written testimony, because it is too painful to discuss one more time.
4. Since public comment sessions are only available at three locations on three dates each month, there can be conflicts for victims' schedules, such as work or illness. Transportation may be an issue if victims do not live in one of the cities where sessions are held. It is not unusual to have individuals traveling from out of state to make comments before the Board. Taped testimony would eliminate the burden of the victim to meet the public comment schedule.

**TESTIMONY OF THE
KANSAS DISTRICT JUDGES' ASSOCIATION
IN SUPPORT OF SB 98
BEFORE SENATE JUDICIARY SUBCOMMITTEE
FEBRUARY 2, 1999**

The Kansas District Judges' Association supports the enactment of Senate Bill 98. The bill proposes an amendment to K.S.A. 21-4603d. The amendment would allow a sentencing judge to impose a sentence a defendant to prison to serve a sentence consecutive to another sentence if an offender commits a felony while released on bond before trial or sentencing in another case.

K.S.A. 21-4603d provides for the sentencing options and defines when sentences may or shall be imposed for consecutive or concurrent terms when multiple crimes are involved. When sentencing guidelines were enacted, the K.S.A. 21-4603d included a sentence (found at page 3, lines 30-37 of SB 98) which allowed the court to sentence an offender to prison for consecutive sentences even if the new crime was presumptive probation if the new crime was committed while the offender was on probation, assignment to a community correctional services program, parole, conditional release, or postrelease supervision for a felony. Some trial courts interpreted "conditional release" to mean while released on bond conditions. In *State v. Arculeo*, 261 Kan. 286 (1997), the Supreme Court held that conditional release did not include release on bond pending sentencing. Focusing on the statutory scheme of K.S.A. 21-4603d, the Court noted each of the other five categories under that statute designated a status in which the offender was under sentence for a felony when the new felony was committed. The Court held that expanding "conditional release" under K.S.A. 21-4603d to include an offender not yet sentenced was inconsistent with the statutory scheme and contrary to the definition of the term in K.S.A. 22-3718.

Kansas district judges have experienced cases where the judge felt that a prison sanction was appropriate when the defendant committed a new crime while on bond awaiting sentencing in another case. A defendant's conduct while on bond is often a good indicator of the defendant's ability to abide by the conditions of probation. However, there are also circumstances where the nonprison sanction remains inappropriate. Thus, the Kansas District Judges urge your support for the language (found at page 3, lines 37-41 of SB 98) which states that a defendant **may** be sentenced consecutively for a new crime committed while on bond. The Kansas District Judges also support the amendment in lines 42-43 which would allow the imposition of a prison sanction even if the crime might otherwise be presumptive probation. Some question was raised as to the ambiguity of the use of the word "either" since six options are covered under the paragraph. But we believe the intent is to allow the court to consider a prison option when the crime is committed while the defendant is on bond. If that is not the intent of the amendment, then we encourage you to adopt language which would create the prison option without the need to make departure findings.

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Jim Cl -
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1 any order for restitution has been paid in full. In determining the amount
2 and method of payment of such sum, the court shall take account of the
3 financial resources of the defendant and the nature of the burden that
4 payment of such sum will impose. A defendant who has been required
5 to pay such sum and who is not willfully in default in the payment thereof
6 may at any time petition the court which sentenced the defendant to
7 waive payment of such sum or any unpaid portion thereof. If it appears
8 to the satisfaction of the court that payment of the amount due will im-
9 pose manifest hardship on the defendant or the defendant's immediate
10 family, the court may waive payment of all or part of the amount due or
11 modify the method of payment.

12 In imposing a fine the court may authorize the payment thereof in
13 installments. In releasing a defendant on probation, the court shall direct
14 that the defendant be under the supervision of a court services officer. If
15 the court commits the defendant to the custody of the secretary of cor-
16 rections or to jail, the court may specify in its order the amount of res-
17 titution to be paid and the person to whom it shall be paid if restitution
18 is later ordered as a condition of parole or conditional release.

19 When a new felony is committed while the offender is incarcerated
20 and serving a sentence for a felony, *while the offender is on release for a*
21 *felony pursuant to the provisions of article 28 of chapter 22 of the Kansas*
22 *Statutes Annotated* or while the offender is on probation, assignment to
23 a community correctional services program, parole, conditional release,
24 or postrelease supervision for a felony, a new sentence shall be imposed
25 pursuant to the consecutive sentencing requirements of K.S.A. 21-4608,
26 and amendments thereto, and the court may sentence the offender to
27 imprisonment for the new conviction, even when the new crime of con-
28 viction otherwise presumes a nonprison sentence. In this event, imposi-
29 tion of a prison sentence for the new crime does not constitute a depart-
30 ure.

31 Prior to imposing a dispositional departure for a defendant whose of-
32 fense is classified in the presumptive nonprison grid block of either sen-
33 tencing guideline grid, prior to sentencing a defendant to incarceration
34 whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing
35 guidelines grid for nondrug crimes, or prior to revocation of a nonprison
36 sanction of a defendant whose offense is classified in the presumptive
37 nonprison grid block of either sentencing guideline grid or grid blocks
38 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes, the
39 court shall consider placement of the defendant in the Labette correc-
40 tional conservation camp. Pursuant to this paragraph the defendant shall
41 not be sentenced to imprisonment if space is available in the conservation
42 camp and the defendant meets all of the conservation camp's placement
43 criteria unless the court states on the record the reasons for not placing



KANSAS DISTRICT COURT

SHAWNEE COUNTY COURTHOUSE
DIVISION THREE

200 S.E. 7TH, SUITE 411
TOPEKA, KANSAS 66603-3922
(913) 233-8200 Ext. 4130

CHAMBERS OF
MARLA J. LUCKERT
JUDGE OF THE DISTRICT COURT

OFFICERS:
CHERYL J. KARNS
ADMINISTRATIVE ASSISTANT
RICHARD R. CUEVAS, CSR-RPR
OFFICIAL COURT REPORTER

February 2, 1999

FAX & U.S. MAIL

Jerry Donaldson
State House
Room 545-N
Topeka, KS 66612

RE: Senate Bill 98

Dear Jerry:

After trying several versions, I decided there was no short cut. Everything I attempted created ambiguities. I finally determined the attached approach was the clearest, although longest. The lack of subparagraph references makes the entire statute difficult to reference. But in following the current format, I have drafted a new provision as a separate paragraph.

I would be more than willing to assist with other drafting ideas.

Very truly yours,

Marla Luckert

MJL:ck

cc: Kathy Porter (w/enc.)

When a new felony is committed while the offender is incarcerated and serving a sentence for a felony or while the offender is on probation, assignment to a community correctional services program, parole, conditional release, or postrelease supervision for a felony, a new sentence shall be imposed pursuant to the consecutive sentencing requirements of K.S.A. 21-4609, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

When a new felony is committed while the offender is on release for a felony pursuant to the provisions of article 28 of chapter 22 of the Kansas Statutes Annotated a new sentence may be imposed pursuant to the consecutive sentencing requirements of K.S.A. 21-4609, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

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Senator Oleen's Judiciary Subcommittee

1. S.B. 93 deals with transfer of venue in juvenile offender cases when the sentencing court is different from the court where the adjudication occurred to require notification procedures (transfer of documents) similar to those in child in need of care cases.

Conferees

Proponents of the bill included: Kathy Porter, Office of Judicial Administration (Attachment)

Opponents of the bill included: None

Subcommittee Action

The Subcommittee recommends passage of S.B. 93 to the full committee with an amendment so the effective date is publication in the *Kansas Register*.

2. S.B. 119 deals with dispositional alternatives in situations when parents have voluntarily relinquished their parental rights to permit continued contact by the relinquishing parent or parents if agreed to by all parties and for the continued jurisdiction of the court in these situations.

Conferees

Proponents of the bill included: Judge Jean Shepherd, Douglas County District Court Judge (Attachment), who suggested an amendment. Judge Sam Bruner, Johnson County, suggested an amendment also.

Opponents of the bill included: None

Subcommittee Action

The Subcommittee recommends to the full Committee the passage of the bill with the following changes:

- a. The effective date is publication in the *Kansas Register*.
- b. A provision that would ensure that the action would be considered a Child in Need of Care action and the court would hear the adoption petition filed under Chapter 38.

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2-3-99
JUDGE JEAN SHEPHERD

Session of 1999

SENATE BILL No. 119

By Committee on Judiciary

1-22

P. 2
FAX NO. 9133687119
SENATORS 143N
FEB-1-99 MON 10:32 AM

9 AN ACT concerning the Kansas code for care of children; relating to
10 post-termination dispositional alternatives following voluntary relin-
11 quishment of parental rights.

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

13 Section 1. The purpose of this section is to provide stability in the
14 life of a child who must be removed from the home of a parent or parents,
15 in those particular situations in which the child's parent or parents have
16 voluntarily relinquished their parental rights and in which the court ap-
17 proved case plan provides: (1) That the child will be or is placed in an
18 identified preadoptive home; and (2) that continued contact with the re-
19 relinquishing parent or parents is in the best interests of the child, while
20 recognizing that the relinquishing parent or parents are unable, by reason
21 of conduct or condition, to care properly for a child and the conduct or
22 condition is unlikely to change in the foreseeable future. This section also
23 acknowledges that time perception of a child differs from that of an adult
24 and that the ongoing physical, mental and emotional needs of the child
25 are decisive considerations in proceeding under this section. The primary
26 goal for all children whose parent or parents have voluntarily relinquished
27 their parental rights is placement in a permanent family setting.

*any agreement
for
adoption
shall
contain
a clause
stating
that
the
parties
agree
to
the
continuing
jurisdiction
of
the
court
and
that
any
disagreement
or
litigation
regarding
the
terms
of
the
agreement
after
the
entry
of
the
decree
of
adoption
shall
not
be
grounds
for
setting
aside
an
adoption
decree
or
for
the
revocation
of
the
voluntary
relinquishment
of
parental
rights
or
written
consent
to
the
adoption
after
the
court
has
accepted
the
voluntary
relinquishment
or
consent,
or
both.*

28 (b) When a child's parent or parents have voluntarily and condition-
29 ally consented to an adoption or have voluntarily and conditionally relin-
30 quished their parental rights to the secretary of social and rehabilitation
31 services pursuant to this section, the court shall enter an order granting
32 custody of the child to the proposed adoptive parents, pursuant to the
33 following: (1) The court shall on the record inform the relinquishing par-
34 ent or parents of the consequences of a conditional consent to adoption
35 or a conditional relinquishment, and shall make a finding regarding the
36 voluntariness of the conditional consent to adoption or conditional
37 relinquishment.

38 (2) The relinquishing parent or parents and the proposed adoptive
39 parents, and the child, if over 14 years of age and of sound intellect, have
40 agreed, in either a separate written agreement, signed by all interested
41 parties, which is to be submitted to the guardian ad litem and the court
42 at least 14 days prior to the hearing, or in a court approved case plan, to

1 oral or written communication, or both, between the child and the relin-
2 quishing parent or parents, or contact between the child and relatives of
3 the relinquishing parent or parents. The communication may also include
4 exchange of information or visitation between the relinquishing parent or
5 parents or their relatives, or both, and the adoptive parents, or visitation
6 between the relinquishing parent or parents, their relatives, or both, and
7 the child. The guardian ad litem shall have the opportunity to state ob-
8 jections or recommendations to the court within seven calendar days from
9 receipt of the proposed agreement. In making any determination regard-
10 ing communication agreements as provided in this subsection, the court
11 shall make such determination which is in the best interests of the child.

12 (3) Every agreement of case plan entered into pursuant to provisions
13 of this section shall contain a clause stating that the parties agree to the
14 continuing jurisdiction of the court and that any disagreement or litigation
15 regarding the terms of the agreement after the entry of the decree of
16 adoption shall not be grounds for setting aside an adoption decree or for
17 the revocation of the voluntary relinquishment of parental rights or writ-
18 ten consent to the adoption after the court has accepted the voluntary
19 relinquishment or consent, or both.

20 (4) On approval by the court, the terms of the case plan or open
21 adoption agreement shall be incorporated into the decree of adoption.

22 (5) The court shall retain jurisdiction after the decree of adoption is
23 entered for purposes of hearing motions brought to enforce or modify an
24 agreement entered into pursuant to the provisions of this section. The
25 terms of the adoption decree may be enforced by motions based on the
26 decree of adoption. The prevailing party in that action may be awarded,
27 as part of the costs of the action, a reasonable amount to be fixed by the
28 court as attorney fees.

29 (6) The court shall not modify an agreed order unless it finds that
30 modification is necessary to serve the best interests of the child, and that:
31 (A) The modification is agreed to by the relinquishing parent or parents
32 and the adoptive parents and the child, if the child is over 14 years of age
33 and of sound intellect; or (B) exceptional circumstances have arisen since
34 the agreed order was entered that justify modification of the order. When
35 the parties are not in agreement regarding a proposed modification, the
36 court shall not hear a contested motion under this section unless it finds
37 that the parties have made a good faith effort to mediate the contested
38 issues. If the child is over 14 years of age and of sound intellect, the child
39 shall also participate in the mediation if such child desires to do so. If the
40 court determines that a guardian ad litem should be appointed under this
41 subsection, the guardian ad litem shall conduct an independent investi-
42 gation of the basis for the proposed modification and shall prepare rec-
43 ommendations to the court. The costs of the guardian ad litem shall be

P. 02
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FEB-01-1999 MON 10:22 AM 9133687119

1 assessed by the court.
 2 (7) All interested parties shall agree that the court granting the adop-
 3 tion shall retain jurisdiction of the case until the child reaches majority,
 4 and this agreement shall be made part of the order of the court.
 5 (C) The provisions of this section shall be part of and supplemental
 6 to the Kansas code for care of children.
 7 Sec. 2. This act shall take effect and be in force from and after its
 8 publication in the statute book.

*The court with jurisdiction
 over the child in regard
 of care and custody in
 these children
 shall be the court
 to hear the adoption
 petition filed
 under Chap. 10.*

K-25-461
Kathy Porter



State of Kansas

Office of Judicial Administration

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

(785) 296-2256

Senate Judiciary Subcommittee Testimony in Support of SB 93

Senator Oleen's Subcommittee

Kathy Porter
Office of Judicial Administration
February 4, 1999

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 similar to 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.

The Kansas District Judges Association Executive Board reviewed this bill, and voted to support it.

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

8-4



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 cursive script that reads "Albert Murray".

Albert Murray
Commissioner

DOUGLAS COUNTY DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
JUDICIAL CENTER, 111 E. 11TH
LAWRENCE, KANSAS 66044-2966

ROBERT W. FAIRCHILD, Judge
First Division

JACK A. MURPHY, Judge
Second Division

JEAN F. SHEPHERD, Judge
Third Division

MICHAEL J. MALONE, Judge
Fourth Division

PAULA B. MARTIN, Judge
Fifth Division

785-841-7700
Fax # 785-832-5174

LINDA KOESTER - VOGELSANG
Court Administrator
785-832-5264

JAY E. COFFMAN
Clerk of District Court
785-832-5256

KEVIN L. JOHNSON
Chief Court Services Officer
785-832-5218

FAX COVER SHEET

DATE: 2/3/99
TO: Judge for Sen. Lanna O'Brien

Room # 136-N
FAX NO.: 785-368-7119
FROM: Jean Shepherd

PHONE NO: 785-832-5000

NO. OF PAGES INCLUDING THIS COVER SHEET: 4

MESSAGE AND/OR SPECIAL INSTRUCTIONS

~~These are Judge Murphy's~~
~~specific suggestions for~~
~~the 11/11/98~~
~~Trust~~
~~1000~~

If you did not receive the number of pages indicated above,
please contact me as soon as possible at the phone number set out
above.

Section of 1997

SENATE BILL No. 119

By Committee on Judiciary

1-22

9 AN ACT concerning the Kansas code for care of children; relating to
10 post-termination dispositional alternatives following voluntary relin-
11 quishment of parental rights.
12

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

14 Section 1. The purpose of this section is to provide stability in the
15 life of a child who must be removed from the home of a parent or parents
16 in those particular situations in which the child's parent or parents have
17 voluntarily relinquished their parental rights and in which the court ap-
18 proved case plan provides: (1) That the child will be or is placed in an
19 identified preadoptive home; and (2) that continued contact with the re-
20 relinquishing parent or parents is in the best interests of the child, while
21 recognizing that the relinquishing parent or parents are unable, by reason
22 of conduct or condition, to care properly for a child and the conduct or
23 condition is unlikely to change in the foreseeable future. This section also
24 acknowledges that time perception of a child differs from that of an adult
25 and that the ongoing physical, mental and emotional needs of the child
26 are decisive considerations in proceeding under this section. The primary
27 goal for all children whose parent or parents have voluntarily relinquished
28 their parental rights is placement in a permanent family setting.

PURSUANT TO THE
KANSAS CODE FOR CARE
OF CHILDREN AND

29 (b) When a child's parent or parents have voluntarily and condition-
30 ally consented to an adoption or have voluntarily and conditionally relin-
31 quished their parental rights to the secretary of social and rehabilitation
32 services pursuant to this section, the court shall enter an order granting
33 custody of the child to the proposed adoptive parents, pursuant to the
34 following: (1) The court shall on the record inform the relinquishing par-
35 ent or parents of the consequences of a conditional consent to adoption
36 or a conditional relinquishment, and shall make a finding regarding the
37 voluntariness of the conditional consent to adoption or conditional
38 relinquishment.

within the Kansas Code
for the care of
children,

OR OTHER UCCARD
child placement
agency,
may

39 (2) The relinquishing parent or parents and the proposed adoptive
40 parents, and the child, if over 14 years of age and of sound intellect, have
41 agreed, in either a separate written agreement, signed by all interested
42 parties, which is to be submitted to the guardian ad litem and the court
43 at least 14 days prior to the hearing, or in a court approved case plan, to

SB 119

2

1 oral or written communication, or both, between the child and the relin-
 2 quishing parent or parents, or contact between the child and relatives of
 3 the relinquishing parent or parents. The communication may also include
 4 exchange of information or visitation between the relinquishing parent or
 5 parents or their relatives, or both, and the adoptive parents, or visitation
 6 between the relinquishing parent or parents, their relatives, or both, and
 7 the child. The guardian ad litem shall have the opportunity to state ob-
 8 jections or recommendations to the court within seven calendar days from
 9 receipt of the proposed agreement. In making any determination regard-
 10 ing communication agreements as provided in this subsection, the court
 11 shall make such determination which is in the best interests of the child.

12 (3) ~~Every agreement or case plan entered into pursuant to provisions~~
 13 of this section shall contain a clause stating that the parties agree to the
 14 continuing jurisdiction of the court and that any disagreement or litigation
 15 regarding the terms of the agreement after the entry of the decree of
 16 adoption shall not be grounds for setting aside an adoption decree or for
 17 the revocation of the voluntary relinquishment of parental rights ~~con-~~
 18 ~~sent to the adoption after the court has accepted the voluntary~~
 19 ~~relinquishment or consent or both.~~

20 (4) On approval by the court, the terms of the case plan or open
 21 adoption agreement shall be incorporated into the decree of adoption.

22 (5) ~~The court shall retain jurisdiction after the decree of adoption is~~
 23 entered for purposes of hearing motions brought to enforce or modify an
 24 agreement entered into pursuant to the provisions of this section. The
 25 terms of the adoption decree may be enforced by motions based on the
 26 decree of adoption. The prevailing party in that action may be awarded,
 27 as part of the costs of the action, a reasonable amount to be fixed by the
 28 court as attorney fees.

29 (6) The court shall not modify an agreed order unless it finds that
 30 modification is necessary to serve the best interests of the child, and that

31 (A) The modification is agreed to by the relinquishing parent or parents
 32 and the adoptive parents and the child, if the child is over 14 years of age
 33 and of sound intellect; or (B) exceptional circumstances have arisen since
 34 the agreed order was entered that justify modification of the order. When
 35 the parties are not in agreement regarding a proposed modification, the
 36 court shall not hear a contested motion under this section unless it finds
 37 that the parties have made a good faith effort to mediate the contested
 38 issues. If the child is over 14 years of age and of sound intellect, the child
 39 shall also participate in the mediation if such child desires to do so. If the
 40 court determines that a guardian ad litem should be appointed under this
 41 subsection, the guardian ad litem shall conduct an independent investi-
 42 gation of the basis for the proposed modification and shall prepare rec-
 43 ommendations to the court. The costs of the guardian ad litem shall be

WRITTEN
OR

HEARING THE ACTION
AS FILED PURSUANT TO
THE KANSAS CODE FOR
THE CARE OF CHILDREN
SHALL EXERCISE
JURISDICTION TO
CONSIDER ENTERING
A DECREE OF ADOPTION
AND IF A DECREE
OF ADOPTION IS
ENTERED

ARE ALL ORDERS
"AGREED" ORDERS
?

[Handwritten signature]

SB 119

3

1 assessed by the court.

2 (7) All interested parties shall agree that the court granting the adop-
3 tion shall retain jurisdiction of the case until the child reaches majority,
4 and this agreement shall be made part of the order of the court.

5 (C) The provisions of this section shall be part of and supplemental
6 to the Kansas code for care of children.

7 Sec. 2. This act shall take effect and be in force from and after its
8 publication in the statute book.

→ I ASSUME THAT
WOULD BE TRUE
EVEN IF ALL
PARTIES LEFT
THE STATE OF
KANSAS - ?

2/2/99-

Judge Shepherd:

I have tried to do a better job of
inserting my proposals in the text
of S.B. 119.

I believe that the proposal should
be modified in this manner and
would be happy to discuss with you
at any time.

Sam L. Blum