Approved: January 18, 2000
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Emert at 10:00 a.m. on January 13, 2000 in Room 123-S of the Capitol.

All members were present except: Senator Harrington (excused).

Committee staff present:

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

Conferees appearing before the committee:

Dan Hermes, Office of Governmental Affairs
Melissa Wangemann, Office of Secretary of State
Randy Hearrell, Kansas Judicial Council
Kathy Porter, Office of Judicial Administration
Kyle Smith, Kansas Bureau of Investigation (KBI)

Others attending: see attached list

Conferee Hermes submitted a bill proposal from the governor which amends the current "seat belt" law. The proposal requires all passengers in a vehicle wear seat belts, provides for primary enforcement for seat belt violations, and increases fines for seat belt violations.(no attachment) Senator Goodwin moved to introduce the proposed bill, Senator Vratil seconded. Carried.

Conferee Wangemann requested two bills be introduced which would clarify language relating to service of process on corporations and make the execution of corporate documents uniform with all other business entities.(noattachment) Senator Feleciano moved to introduce the bills, Senator Vratil seconded. Carried.

Conferee Hearrell requested introduction of seven bills which relate to the following subject matter:municipal court assessment; prejudgment interest; notice of issuance of subpoena; enforcement of foreign judgments; interspousal torts; child hearsay evidence; and juvenile adjudications in criminal history.(attachment 1) Following the conferee's summarization of each subject and discussion by Committee, Senator Goodwin moved to introduce the bills, Senator Oleen seconded. Carried.

Conferee Porter summarized two bills requested by the Kansas Association of District Court Clerks and Administrators relating to custody of business records for use in discovery and docket fees for moving violations.(attachment 2) Following discussion, Senator Goodwin moved to introduce the bills, Senator Donovan seconded. Carried.

Conferee Smith requested introduction of legislation "dealing with the forensic fee assessed against convicted criminals."(attachment 3) Following a brief summary by the conferee and discussion by Committee, Senator Gilstrap moved to introduce the bill, Senator Vratil seconded. Carried.

The Chair requested introduction of two bills which he summarized. The first bill, requested by several district court judges, makes certain language changes in the current permanent guardianship law so that Child In Need of Care cases are kept open for court management but terminate oversight and intervention by SRS.(attachment 4) Senator Bond moved to introduce the bill, Senator Goodwin seconded. Carried. The second bill makes procedural changes to the statute regarding adult abuse, neglect and exploitation hearings placing the hearings under the Kansas Administrative Procedures Act.(attachment 5) Senator Feleciano moved to introduce the bills, Senator Vratil seconded. Carried

Research Staffpersons Donaldson and Heim reviewed the following topics studied by the Special Committee on Judiciary (SCJ) during the interim: Uniform Child Custody Jurisdiction and Enforcement Act (HB2488); Ignition interlock devices(HB2183);Consolidation of field services performed by court service, parole, and community corrections officers; Article 9 - Uniform Commercial Code Lien Laws (SB366); Mechanic Liens; Identity theft and privacy issues; Review legislation to exclude physicians from jury duty; and Review recommendations of the Kansas Citizens Justice Initiative.(attachment 6)

The meeting adjourned at 11:00 a.m. The next scheduled meeting is Tuesday, January 18.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: January 13, 1999

NAME	REPRESENTING
Stan Parsons	KGC
Chuck Stones	KS Bankers Assn
Jeff Bottenberg	KS Sheriff's Assn
Kevin Graham	KSC
Melissa Wangemann	Sec of State
Nancy Bogina	KDOT
Rosalie Thornburgh	KDOT
Kathy Getto	Kansas Bar Assoc
Kathy Porter	OJA
Don Gordon	KCCI
Steve Kearney	Attorney General
Shirley Jacquot	League of Kansas Municipalities
John Eichkorn	KHP
Mark Gochnour	Hein + Weir
Dan Nemmers	CC
Nancy Lindberg	AG
Keith Rhodes	Christian Science Committee on Publication for Kansas
Whitney Damron	KS Bar Assn.
Bob Jones	KSC

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: January 13, 1999

NAME	REPRESENTING
Kathy Olsen	KS Bankers Assn
John Federico	Federico Consulting
Kyle Smith	KBI
Bill Henry	KS Gov Consulting
BARB Conant	KTLA
Lee Marshall-Linn	LWVK
Janis McMillan	LWV-K
Kathy Sachs	KS SOS

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Judicial Council Bill Requests
January 13, 2000

Sn Jud 1-13-00 att. 1

January 13, 2000

MUNICIPAL COURT ASSESSMENT

The Kansas Judicial Council respectfully requests the introduction of a Senate bill amending K.S.A. 12-4117. The bill was drafted by the Judicial Council's Municipal Court Manual Advisory Committee whose members are Jay Scott Emler, Chair, McPherson; J. Patrick Caffey, Manhattan; Geary N. Gorup, Wichita; Bette Lammerding, Marysville; Dorothy Reinert, Atwood; H. Neil Roach, Topeka; Connie Sams, Ottawa; and James W. Wilson, Wichita. The bill was then approved by the Kansas Judicial Council.

The Judicial Council Municipal Court Manual Committee recommends an amendment to K.S.A. 12-4117 which requires an assessment in any municipal court case "charging a criminal or public offense or charging an offense defined to be a moving violation by rules and regulations adopted pursuant to K.S.A. 8-249 and amendments thereto." The Committee notes that there is no statutory definition of the terms "criminal or public offense." Furthermore, the requirement of an assessment in any case charging a criminal or public offense *or a moving violation* is redundant because any traffic violation, whether moving or nonmoving, is considered to fall within the definition of a crime. See K.S.A. 21-3105 and *City of Prairie Village v. Eddy*, 14 Kan. App. 2d 661, 662, 798 P.2d 66 (1990) (holding that a municipal traffic infraction constitutes a crime under 21-3105). The Committee recommends that K.S.A. 12-4117 be amended to cure these ambiguities.

The proposed amendment would require an assessment in any case charging a "crime other than a nonmoving traffic violation." The term "crime" is statutorily defined at K.S.A. 21-3105. The amendment would make clear that no assessment is required in cases charging nonmoving traffic violations such as parking violations. This is consistent with the way most municipal courts have interpreted the current language of K.S.A. 12-4117.

12-4117. Municipal court assessments. (a) On and after July 1, 1996, in each case filed in municipal court charging a ~~criminal or public offense or charging an offense defined to be a moving violation by rules and regulations adopted pursuant to K.S.A. 8-249 and amendments thereto~~ crime other than a nonmoving traffic violation, where there is a finding of guilty or a plea of guilty, a plea of no contest, forfeiture of bond or a diversion, a sum in an amount of $7 shall be assessed and such assessment shall be credited as follows:

(1) During the period commencing July 1, 1996, and ending June 30, 1997, $1 to the local law enforcement training reimbursement fund established pursuant to K.S.A. 74-5620 and amendments thereto, $4 to the law enforcement training center fund established pursuant to K.S.A. 74-5619 and amendments thereto, $.50 to the protection from abuse fund established pursuant to K.S.A. 74-7325 and amendments thereto and $.50 to the crime victims assistance fund established pursuant to K.S.A. 74-7334 and amendments thereto;

(2) On and after July 1, 1997, $1 to the local law enforcement training reimbursement fund established pursuant to K.S.A. 74-5620 and amendments thereto, $2 to the law enforcement training center fund established pursuant to K.S.A. 74-5619 and amendments thereto, $2 to the juvenile detention facilities fund established pursuant to K.S.A. 79-4803 and amendments thereto to be expended for operational costs of facilities for the detention of juveniles, $.50 to the protection from abuse fund established pursuant to K.S.A. 74-7325 and amendments thereto and $.50 to the crime victims assistance fund established pursuant to K.S.A.

74-7334 and amendments thereto; and

(3) on and after July 1, 1999, $1 to the trauma fund established pursuant to section 8, and amendments thereto.

(b) The judge or clerk of the municipal court shall remit at least monthly the appropriate assessments received pursuant to this section to the state treasurer for deposit in the state treasury to the credit of the local law enforcement training reimbursement fund, the law enforcement training center fund, the juvenile detention facilities fund, the crime victims assistance fund and the trauma fund as provided in this section.

(c) For the purpose of determining the amount to be assessed according to this section, if more than one complaint is filed in the municipal court against one individual arising out of the same incident, all such complaints shall be considered as one case.

Comment

In preparing the 1999 supplement to the *Kansas Municipal Court Manual*, the Judicial Council Municipal Court Manual Committee reviewed K.S.A. 12-4117 which requires an assessment in any municipal court case "charging a criminal or public offense or charging an offense defined to be a moving violation by rules and regulations adopted pursuant to K.S.A. 8-249 and amendments thereto." The Committee has previously noted in the *Manual* that "there is no statutory definition of the terms 'criminal or public offense.' It is therefore not clear whether such offenses as parking violations or nonmoving violations require payment of an assessment." *Kansas Municipal Court Manual*, p. 16-4.

Furthermore, the requirement of an assessment in any case charging a criminal or public offense *or a moving violation* is redundant because any traffic violation, whether moving or nonmoving, is considered to fall within the definition

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of a crime. See K.S.A. 21-3105 and *City of Prairie Village v. Eddy*, 14 Kan. App. 2d 661, 662, 798 P.2d 66 (1990) (holding that a municipal traffic infraction constitutes a crime under 21-3105). The Committee recommends that K.S.A. 12-4117 be amended to cure these ambiguities.

The proposed amendment would require an assessment in any case charging a "crime other than a nonmoving traffic violation." The term "crime" is statutorily defined at K.S.A. 21-3105. The amendment would make clear that no assessment is required in cases charging nonmoving traffic violations such as parking violations. This is consistent with the way most municipal courts have interpreted the current language of K.S.A. 12-4117.

Use of the term "crime" instead of "criminal or public offense" is a clarification of, and not a change in the law. "Public offense" is an archaic term no longer in common use, but it means the same thing as "crime." While "public offense" is not currently defined in the Kansas Statutes, it was defined prior to the recodification of the criminal code in 1969. Before its repeal in 1969, K.S.A. 62-102 defined "public offense" as "any act or omission for which the laws of this state prescribe a punishment." (General Statutes of Kansas Annotated, 1949 Corrick). When the criminal code was revised in 1969, the term "crime" replaced "public offense," but was similarly defined. K.S.A. 21-3105 defines "crime" as "an act or omission defined by law and for which, upon conviction, a sentence of death, imprisonment or fine, or both imprisonment and fine, is authorized or, in the case of a traffic infraction or a cigarette or tobacco infraction, a fine is authorized. Crimes are classified as felonies, misdemeanors, traffic infractions and cigarette or tobacco infractions."

January 13, 2000

PREJUDGMENT INTEREST

The Kansas Judicial Council respectfully requests the introduction of a Senate bill relating to prejudgment interest. The bill was drafted by the Judicial Council's Civil Code Advisory Committee whose members at the time of drafting were J. Nick Badgerow, Overland Park; Susan S. Baker, Overland Park; Hon. Barry Bennington, St. John; Hon. Terry L. Bullock, Topeka; Professor Robert C. Casad, Lawrence; Hon. Jerry G. Elliott, Lawrence; Stan Hazlett, Topeka; Joseph W. Jeter, Hays; Phillip Mellor, Wichita; David Prager, Topeka; David M. Rapp, Wichita; Justice Fred N. Six, Topeka; and Donald W. Vasos, Fairway. The bill was then approved by the Kansas Judicial Council.

The Civil Code Committee believes that prejudgment interest is a good tool for promoting settlement of disputes and discouraging defendants from unreasonably delaying such settlement. This bill provides that prejudgment interest will be allowed only where the claimant has served a written offer of settlement in an amount no greater than the claimant's eventual recovery. If the defendant then files a counteroffer which is rejected, the defendant will only be required to pay interest on the amount of the judgment which exceeds that counteroffer.

16-205. Interest rates or charges; contract rates continue until payment in full; judgments; excess rates and charges void.

(a) When a rate of interest or charges is specified in any contract, that rate shall continue until full payment is made, and any judgment rendered on any such contract shall bear the same rate of interest or charges mentioned in the contract, which rate shall be specified in the judgment; but in no case shall such rate or charges exceed the maximum rate or amount authorized by law, and any bond, note, bill, or other contract for the payment of money, which in effect provides that any interest or charges or any higher rate of interest or charges shall accrue as a penalty for any default, shall be void as to any such provision.

(b) Judgments taken in accordance with the provisions of subsection (a) shall be expressed as follows:

(1) Judgments upon interest-bearing contracts shall provide (i) the unpaid principal balance, (ii) the date to which interest is paid, (iii) the contract rate of interest and (iv) that the unpaid principal balance shall draw the contract rate of interest from the date to which interest is paid until payment in full.

(2) Judgments upon precomputed interest-bearing contracts shall provide: (i) The unpaid principal balance shall be ascertained by deducting from the remaining total of payments owed on the contract that portion of the precomputed finance charges that are unearned as of the date of acceleration of the maturity of the contract, as provided in K.S.A. 16a-2-510 for computing the unearned portion of precomputed finance charges in the event of prepayment in full. Any delinquency or deferral charges added to the unpaid balance subsequent to the date of acceleration shall be first deducted

from the unpaid balance prior to any such acceleration. The contract shall be accelerated as of the date provided for in the provisions of the contract, or if the contract does not provide for the date on which the contract shall be accelerated, it shall be accelerated as of the actual date of any such acceleration; (ii) the date to which interest is paid, which date shall be the maturity date of the next installment due after the date of acceleration, except those contracts which are accelerated on an installment due date which shall be the date of acceleration; the date to which interest is paid for those contracts that have matured prior to judgment shall be calculated from maturity date of the contract; (iii) the contract rate of interest; and (iv) that the unpaid principal balance shall draw the contract rate of interest from the date to which interest is paid until payment in full.

(3) Judgments upon contracts where the finance charges are computed in dollars per hundred and added on to the original balance to be financed shall provide: (i) The unpaid principal balance shall be ascertained by deducting from the remaining total of payments owed on the contract that portion of the precomputed finance charges that are unearned as of the date of acceleration of the maturity of the contract as provided in K.S.A. 16a-2-510 for computing the unearned portion of precomputed finance charges in the event of prepayment in full. Any delinquency or deferral charges added to the unpaid balance subsequent to the date of acceleration shall be first deducted from the unpaid balance prior to any such acceleration. The contract shall be accelerated as of the date provided for in the provisions of the contract, or if the contract does not provide for the date on which the contract shall be accelerated, it shall be accelerated as of the actual date of any acceleration ; (ii) the date to which interest is paid, which date shall be the maturity date of the next installment due after the date of acceleration, except those contracts which are accelerated on an installment due date which shall be the date of acceleration; the date to which interest is paid for those contracts that have matured prior to judgment shall be calculated from the maturity date of the contract; (iii) the contract rate of

interest expressed as an annual percentage figure, which may be taken from the contract if it discloses the annual percentage rate, or it shall be ascertained in accordance with the constant ratio method which is mathematically expressed as follows:

$$R = \frac{2mc}{p(n\ 1)} \quad \text{where}$$

R = rate of charge

m = number of payment periods in one year

n = number of payments to discharge the debt

c = charge in dollars

p = principal or cash advanced

and (iv) that the unpaid principal balance shall draw the contract rate of interest as determined herein from the date to which interest is paid until payment in full.

(c) Upon the entry of any judgment after June 30, 2000, in which a claimant shall be adjudged to recover money, or be entitled to a setoff or counterclaim, the claimant shall be entitled to have simple interest at the rate of 10% per annum added to the amount of the compensatory portion of the recovery or credit in accordance with the following conditions:

(1) No interest shall be added pursuant to this subsection if interest on the claimant's recovery or credit is otherwise provided by law or contract.

(2) Interest pursuant to this subsection shall be allowed to the claimant only if the claimant shall have served on the party adjudicated to be liable a written offer of settlement of the claim, setoff or counterclaim, in an amount no greater than the amount of the recovery or allowance as thereafter adjudicated. The offer shall be served either personally or by restricted mail if made before suit is filed, or pursuant to K.S.A. 60-205 if made after suit is filed. The offer shall not be subject to

revocation for a period of 30 days after service thereof on the party claimed to be liable, but shall be automatically deemed to be withdrawn unless accepted and payment made or credit given within such period of 30 days.

(3) If the party claimed to be liable has served on the claimant a counteroffer, any interest pursuant to this subsection shall be added only to that portion of the recovery or allowance which exceeds the amount of the counteroffer. The counteroffer shall be served either personally or by restricted mail if made before suit is filed, or pursuant to K.S.A. 60-205 if made after suit is filed. The counteroffer shall not be subject to revocation for a period of 30 days after service thereof on the claimant, but shall be automatically deemed to be withdrawn unless accepted and payment made or credit given within such period of 30 days.

(4) Interest to be added pursuant to this subsection shall be allowed by the court from 30 days after the date the claimant served such offer to the date of judgment, except that if the party claimed to be liable makes a counteroffer, such interest shall be allowed from 30 days after the date the counteroffer is served to the date of judgment.

(5) An offer or counteroffer made hereunder but not accepted shall not be filed in the case until relevant to the entry of judgment, and neither the offer, the counteroffer, nor a failure to accept shall be an admission against interest nor be evidence in the case until effect is to be given thereto in the entry of judgment by the court.

January 13, 2000

AMENDMENT TO K.S.A. 60-245a

The Kansas Judicial Council respectfully requests the introduction of a Senate bill amending K.S.A. 60-245a. The bill was drafted by the Judicial Council's Civil Code Advisory Committee whose members at the time of drafting were J. Nick Badgerow, Overland Park; Susan S. Baker, Overland Park; Hon. Barry Bennington, St. John; Hon. Terry L. Bullock, Topeka; Professor Robert C. Casad, Lawrence; Hon. Jerry G. Elliott, Lawrence; Joseph W. Jeter, Hays; Phillip Mellor, Wichita; David Prager, Topeka; David M. Rapp, Wichita; Justice Fred N. Six, Topeka; and Donald W. Vasos, Fairway. The bill was then approved by the Kansas Judicial Council.

The Civil Code Committee believes that the intent of K.S.A. 60-245a(e) is to give the parties to a lawsuit time to object to the issuance of a subpoena. The Committee agreed that the intent of this subsection would be more clearly conveyed by requiring notice of the issuance of the subpoena to be given 10 days prior to the date of service, rather than the date of issuance, of the subpoena.

60-245a. Subpoena of records of a business not a party.

(a) As used in this section:

(1) 'Business' means any kind of business, profession, occupation, calling or operation of institutions, whether carried on for profit or not.

(2) 'Business records' means writings made by personnel or staff of a business, or persons acting under their control, which are memoranda or records of acts, conditions or events made in the regular course of business at or about the time of the act, condition or event recorded.

(b) A subpoena duces tecum which commands the production of business records in an action in which the business is not a party shall inform the person to whom it is directed that the person may serve upon the attorney designated in the subpoena written objection to production of any or all of the business records designated in the subpoena within 14 days after the service of the subpoena or at or before the time for compliance, if the time is less than 14 days after service. If such objection is made, the business records need not be produced except pursuant to an order of the court upon motion with notice to the person to whom the subpoena was directed.

Unless the personal attendance of a custodian of the business records and the production of original business records are required under subsection (d), it is sufficient compliance with a subpoena of business records if a custodian of the business records delivers to the clerk of the court by mail or otherwise a true and correct copy of all the records described in the subpoena and mails a copy of the affidavit accompanying the records to the party or attorney requesting them within 14 days after receipt of the subpoena.

The records described in the subpoena shall be accompanied by the affidavit of a custodian of the

records, stating in substance each of the following: (1) The affiant is a duly authorized custodian of the records and has authority to certify records; (2) the copy is a true copy of all the records described in the subpoena; and (3) the records were prepared by the personnel or staff of the business, or persons acting under their control, in the regular course of the business at or about the time of the act, condition or event recorded.

If the business has none of the records described in the subpoena, or only part thereof, the affiant shall so state in the affidavit and shall send only those records of which the affiant has custody. When more than one person has knowledge of the facts required to be stated in the affidavit, more than one affidavit may be made.

The copy of the records shall be separately enclosed in a sealed envelope or wrapper on which the title and number of the action, name and address of the witness and the date of the subpoena are clearly inscribed. If return of the copy is desired, the words 'return requested' must be inscribed clearly on the sealed envelope or wrapper. The sealed envelope or wrapper shall be delivered to the clerk of the court.

The reasonable costs of copying the records may be demanded of the party causing the subpoena to be issued. If the costs are demanded, the records need not be produced until the costs of copying are advanced.

(c) The subpoena shall be accompanied by an affidavit to be used by the records custodian. The subpoena and affidavit shall be in substantially the following form:

Subpoena of Business Records

State of Kansas
County of _____

(1) You are commanded to produce the records listed below before

_____

(Officer at Deposition) (Judge of the District Court)

at _____
(Address)

in the City of _____, County of _____, on the _____ day of _____, 19___, at ____ o'clock __m., and to testify on behalf of the _____ in an action now pending between _____, plaintiff, and _____, defendant. Failure to comply with this subpoena may be deemed a contempt of the court.

(2) Records to be produced: _____

_____

_____

_____

(3) You may make written objection to the production of any or all of the records listed above by serving such written objection upon _____ at
(Attorney)

_____ (within 14 days after service of this
(Attorney's Address)

subpoena) (on or before _____, 19___). If such objection is made, the records need not be produced except upon order of the court.

(4) Instead of appearing at the time and place listed above, it is sufficient compliance with this subpoena if a custodian of the business records delivers to the clerk of the court by mail or otherwise a true and correct copy of all the records described above and mails a copy of the affidavit below to

_____ at _____
(Requesting Party or Attorney) (Address of Party or Attorney)

within 14 days after receipt of this subpoena.

(5) The copy of the records shall be separately enclosed in a sealed envelope or wrapper on which the title and number of the action, name and address of the witness and the date of this subpoena are clearly inscribed. If return of the copy is desired, the words "return requested" must be inscribed clearly on the sealed envelope or wrapper. The sealed envelope or wrapper shall be delivered to the clerk of the court.

(6) The records described in this subpoena shall be accompanied by the affidavit of a custodian of the records, a form for which is attached to this subpoena.

(7) If the business has none of the records described in this subpoena, or only part thereof, the affidavit shall so state, and the custodian shall send only those records of which the custodian has custody. When more than one

person has knowledge of the facts required to be stated in the affidavit, more than one affidavit may be made.

(8) The reasonable costs of copying the records may be demanded of the party causing this subpoena to be issued. If the costs are demanded, the records need not be produced until the costs of copying are advanced.

(9) The copy of the records will not be returned unless requested by the witness.

_____
Clerk of the District Court

[Seal of the District Court]
Dated _____, 19___

Affidavit of Custodian of Business Records

State of _____
County of _____

I, _____, being first duly sworn, on oath, depose and say that:

(1) I am duly authorized custodian of the business records of _____ and have the authority to certify those records.

(2) The copy of the records attached to this affidavit is a true copy of the records described in the subpoena.

(3) The records were prepared by the personnel or staff of the business, or persons acting under their control, in the regular course of the business at or about the time of the act, condition or event recorded.

_____
Signature of Custodian

Subscribed and sworn to before the undersigned on _____

_____
Notary Public

My Appointment Expires:

_____

Certificate of Mailing

I hereby certify that on _____, 19___, I mailed a copy of the above affidavit to

_____ at _____

(Requesting Party or Attorney) (Address of Party or Attorney)

by depositing it with the United States Postal Service for delivery with postage prepaid.

_____

Signature of Custodian

Subscribed and sworn to before the undersigned on _____

_____

Notary Public

My Appointment Expires:

_____

(d) Any party may require the personal attendance of a custodian of business records and the production of original business records by causing a subpoena duces tecum to be issued which contains the following statements in lieu of paragraphs (4), (5), (6), (7) and (8) of the subpoena form described in subsection (c):

The personal attendance of a custodian of business records and the production of original records is required by this subpoena. The procedure for delivering copies of the records to the clerk of the court shall not be deemed sufficient compliance with this subpoena and should be disregarded. A custodian of the records must personally appear with the original records.

(e) Notice of the issuance of a subpoena pursuant to this section where the attendance of the custodian of the business records is not required shall be given to all parties to the action at least 10 days prior to the ~~issuance~~ service thereof. A copy of the proposed subpoena shall also be served upon all parties along with such notice. In the event any party objects to the production of the documents sought by such subpoena prior to its issuance, the subpoena shall not be issued until further order of the court in which the action is pending.

(f) Upon receipt of business records the clerk of the court shall so notify the party who caused the subpoena for the business records to be issued. If receipt of the records makes the taking of a

deposition unnecessary, the party shall cancel the deposition and shall notify the other parties to the action in writing of the receipt of the records and the cancellation of the deposition.

After the copy of the record is filed, a party desiring to inspect or copy it shall give reasonable notice to every other party to the action. The notice shall state the time and place of inspection. Records which are not introduced in evidence or required as part of the record shall be destroyed or returned to the custodian of the records who submitted them if return has been requested.

January 13, 2000

ENFORCEMENT OF FOREIGN JUDGMENTS

The Kansas Judicial Council respectfully requests the introduction of a Senate bill relating to the enforcement of foreign judgments. The bill was drafted by the Judicial Council's Civil Code Advisory Committee whose members at the time of drafting were J. Nick Badgerow, Overland Park; Susan S. Baker, Overland Park; Hon. Barry Bennington, St. John; Hon. Terry L. Bullock, Topeka; Professor Robert C. Casad, Lawrence; Hon. Jerry G. Elliott, Lawrence; Joseph W. Jeter, Hays; Phillip Mellor, Wichita; David Prager, Topeka; David M. Rapp, Wichita; Justice Fred N. Six, Topeka; and Donald W. Vasos, Fairway. The bill was then approved by the Kansas Judicial Council.

The Civil Code Committee recommends this amendment, which strikes language added in 1999 by S.B. 306. After the 1999 amendment, a creditor seeking to enforce a foreign judgment in Kansas could do so as long as the judgment remained viable in the foreign state, even if the foreign period of viability was longer than Kansas' period of viability. In other words, the language allowed the application of a foreign state's longer statute of limitations on the enforceability of judgments, even if the Kansas statute of limitations had already run. This results in a different standard being applied to foreign judgments than to domestic judgments. The Civil Code Committee is of the opinion that a foreign judgment enforced in Kansas should have no longer life than a Kansas judgment would have. The Committee recommends that the language of the 1999 amendment be deleted and the Kansas statute of limitations on enforceability be restored.

60-3002. A copy of any foreign judgment authenticated in accordance with the act of congress, the statutes of this state or certified in accordance with the statutes of the state in which the judgment was rendered, may be filed in the office of the clerk of any district court of this state. Such copy must be filed by an attorney licensed to practice law in the state of Kansas. The clerk of the district court shall treat the foreign judgment in the same manner as a judgment of the district court of this state. A judgment filed as provided by this section has the same effect and is subject to the same procedures, defenses and proceedings as a judgment of a district court of this state and may be enforced or satisfied in like manner~~, except that, if, at the time of filing of the foreign judgment in this state, the judgment is enforceable in the state or jurisdiction where it was originally rendered, the statutes of limitations contained in article 5 of chapter 60 of the Kansas Statutes Annotated shall not be a defense to the judgment or the filing of the foreign judgment in this state~~.

Comment

The Civil Code Committee recommends this amendment, which strikes language added in 1999 by S.B. 306. After the 1999 amendment, a creditor seeking to enforce a foreign judgment in Kansas could do so as long as the judgment remained viable in the foreign state, even if the foreign period of viability was longer than Kansas' period of viability. In other words, the language allowed the application of a foreign state's longer statute of limitations on the enforceability of judgments, even if the Kansas statute of limitations had already run. This results in a different standard being applied to foreign judgments than to domestic judgments. The Civil Code Committee is of the opinion that a foreign judgment enforced in Kansas should have no longer life than a Kansas judgment would have. The Committee recommends that the language of the 1999 amendment be deleted and the Kansas statute of limitations on enforceability be restored.

January 13, 2000

INTERSPOUSAL TORTS

The Kansas Judicial Council respectfully requests the introduction of a Senate bill relating to interspousal torts. The bill was drafted by the Judicial Council's Family Law Advisory Committee whose members at the time of drafting were Hon. Nelson E. Toburen, Chair, Pittsburg; Sara S. Beezley, Girard; Hon. Sam K. Bruner, Olathe; Dr. David Ermer, Kansas City; Charles F. Harris, Wichita; John H. "Topper" Johntz, Jr., Overland Park; Senator Janis Lee, Kensington; Professor Nancy Maxwell, Topeka; Hon. Jerry L. Mershon, Manhattan; Brian J. Moline, Topeka; Dr. Alex Scott, Junction City; and Ardith Smith-Woertz, Topeka. The bill was then approved by the Kansas Judicial Council.

The Family Law Advisory Committee drafted this proposal in an attempt to set out the applicable civil procedure where marital partners anticipate filing both a divorce action (or action for separate maintenance) and an interspousal tort action. Kansas appellate courts have yet to decide any cases in this area, but other states have faced the problem of whether such cases should be consolidated and whether one type of action should preclude the other. The cases in those states demonstrate the complexity of the matter, and the Family Law Committee concluded it would be wise for Kansas to have a civil procedure statute in place that addresses the matter.

Subsection (a) of the bill provides that an interspousal tort claim and a divorce action may not be consolidated unless both parties agree and the court approves the arrangement. Subsections (b) and (c) deal with the issue of whether an action for divorce precludes the bringing of a separate interspousal tort action, and vice versa. If a party brings an action for divorce under K.S.A. 60-1601(a)(2) (the "fault" grounds divorce provision), then he or she would be precluded from bringing a separate interspousal tort action based upon the same factual allegations. However, if the party instead brings the action for divorce under K.S.A. 60-1601(a)(1) or (a)(3) (the non-fault grounds, or mental illness/incapacity, divorce provisions), then a separate action for interspousal tort is not precluded.

____ Bill No ____

K.S.A. 60-___. Interspousal Torts. The following Rules of Civil Procedure shall apply to interspousal tort actions. (a) *Consolidation.* An action for interspousal tort shall not be consolidated with an action under K.S.A. 60-1601, *et seq.*, unless the parties agree to consolidation and consolidation is approved by the court. (b) *Nonpreclusion.* A decree of divorce or separate maintenance granted under K.S.A. 60-1601(a)(1) or (3) shall not preclude an action for interspousal tort. (c) *Preclusion.* A decree of divorce or separate maintenance granted under K.S.A. 60-1601(a)(2) shall preclude an action for interspousal tort based upon the same factual allegations. An action for interspousal tort which has been finally determined shall preclude an action under K.S.A. 60-1601(a)(2) based upon the same factual allegations.

Comment

The Family Law Advisory Committee drafted this proposal in an attempt to set out the applicable civil procedure where marital partners anticipate filing both a divorce action (or action for separate maintenance) and an interspousal tort action. Kansas appellate courts have yet to decide any cases in this area, but other states have faced the problem of what should happen with regard to whether such cases should be consolidated and whether one type of action should preclude the other. The cases in those states demonstrate the complexity of the matter, and the Family Law Committee concluded it would be wise for Kansas to have a civil procedure statute in place that addresses the matter.

Regarding the specific proposal drafted by the Committee, the first issue addressed is whether there should be permissive or compulsory consolidation of an interspousal tort claim with a divorce action. The Committee decided that it would be best not to consolidate the two cases for the following reasons: (1) the factual situation in the divorce case is far more wide ranging than the specific factual situation of an interspousal tort case; and (2) the divorce action sounds in equity and its factual issues must be determined by the court, whereas the tort action sounds in law and a jury trial may be demanded to determine the factual issues. Accordingly, subsection (a) of the proposal states that the two actions may not be consolidated

unless both parties agree and the court approves the arrangement.

Subsections (b) and (c) deal with the issue of whether an action for divorce precludes the bringing of a separate interspousal tort action, and vice versa. If a party brings an action for divorce under K.S.A. 60-1601(a)(2) (the "fault" grounds divorce provision), then he or she would be precluded from bringing a separate interspousal tort action based upon the same factual allegations. However, if the party instead brings the action for divorce under K.S.A. 60-1601(a)(1) or (a)(3) (the non-fault grounds, or mental illness/incapacity, divorce provisions), then a separate action for interspousal tort is not precluded.

Logically, if a party elects to bring his or her divorce action on a fault ground (thereby attempting to obtain a more favorable division of property or maintenance) the party should be precluded from "double dipping" by bringing a separate tort action in front of a jury and asking for what amounts to additional financial compensation for the same injury. On the other hand, if a party with an interspousal tort action brings a divorce action under a non-fault ground (or mental illness/incapacity), that party would not be "double dipping" by bringing the separate tort action.

January 13, 2000

CHILD HEARSAY EVIDENCE

The Kansas Judicial Council respectfully requests the introduction of a Senate bill relating to child hearsay evidence. The bill was drafted by the Judicial Council's Criminal Law Advisory Committee whose members are Hon. Marla J. Luckert, Chair, Topeka; Hon. Carol J. Bacon, Wichita; Professor Ellen Byers, Carbondale; James W. Clark, Topeka; Edward G. Collister, Lawrence; Representative Jim D. Garner, Coffeyville; Hon. Michael Malone, Lawrence; Debra Peterson, Wichita; Steven L. Opat, Junction City; Elwaine F. Pomeroy, Topeka; Mark J. Sachse, Kansas City; and Loren L. Taylor, Kansas City. The bill was then approved by the Kansas Judicial Council.

The Criminal Law Committee recommends that the child hearsay provisions contained in K.S.A. 22-2902 be moved from that statute into 22-2902a which currently deals with the admission of the results of forensic examinations at preliminary hearings. The Committee thought both statutes would be clearer if the general principles regarding preliminary hearings were contained in 22-2902, while the admission of various types of hearsay evidence in preliminary hearings was covered in 22-2902a. In proposing this amendment, the Committee did not intend to change current law, only to clarify it.

The bill also addresses the statutory conflict between K.S.A. 22-3433 and K.S.A. 60-460(dd) identified by the Court of Appeals in *State v. Correll*, 25 Kan. App. 2d 770 (1998). After reviewing the provisions of K.S.A. 22-3433, 60-460(dd) and 22-3434 (governing the admission of videotaped testimony of a child victim), the Committee agreed to recommend repeal of K.S.A. 22-3433. The Committee believes that K.S.A. 60-460(dd) adequately covers the field regarding hearsay statements of child victims and needs no amendment.

Bill to amend K.S.A. 22-2902, 22-2902a and to repeal 22-3433

Section 1. K.S.A. 22-2902 is hereby amended to read as follows: 22-2902. (1) Every person arrested on a warrant charging a felony or served with a summons charging a felony shall have a right to a preliminary examination before a magistrate, unless such warrant has been issued as a result of an indictment by a grand jury.

(2) The preliminary examination shall be held before a magistrate of a county in which venue for the prosecution lies within 10 days after the arrest or personal appearance of the defendant. Continuances may be granted only for good cause shown.

(3) The defendant shall not enter a plea at the preliminary examination. The defendant shall be personally present and except ~~for witnesses who are children less than 13 years of age~~ as provided in K.S.A. 22-2902a, the witnesses shall be examined in the defendant's presence. The defendant's voluntary absence after the preliminary examination has been begun in the defendant's presence shall not prevent the continuation of the examination. ~~Except for witnesses who are children less than 13 years of age,~~ the defendant shall have the right to cross-examine witnesses against the defendant and introduce evidence in the defendant's own behalf. If from the evidence it appears that a felony has been committed and there is probable cause to believe that a felony has been committed by the defendant, the magistrate shall order the defendant bound over to the district judge having jurisdiction to try the case; otherwise, the magistrate shall discharge the defendant. ~~When the victim of the felony is a child less than 13 years of age, the finding of probable cause as provided in this subsection may be based upon hearsay evidence in whole or in part presented at the preliminary examination by means of statements made by a child less than~~

~~13 years of age on a videotape recording or by other means.~~

(4) If the defendant waives preliminary examination, the magistrate shall order the defendant bound over to the district judge having jurisdiction to try the case.

(5) Any judge of the district court may conduct a preliminary examination, and a district judge may preside at the trial of any defendant even though such judge presided at the preliminary examination of such defendant.

(6) The complaint or information, as filed by the prosecuting attorney pursuant to K.S.A. 22-2905 and amendments thereto, shall serve as the formal charging document at trial. When a defendant and prosecuting attorney reach agreement on a plea of guilty or nolo contendere, they shall notify the district court of their agreement and arrange for a time to plead, pursuant to K.S.A. 22-3210 and amendments thereto.

(7) The district judge, when conducting the preliminary examination, shall have the discretion to conduct arraignment at the conclusion of the preliminary examination.

Section 2. K.S.A. 22-2902a is hereby amended to read as follows: 22-2902a. (a) At any preliminary examination in which the results of a forensic examination, analysis, comparison or identification prepared by the Kansas bureau of investigation, the federal bureau of investigation, the bureau of alcohol, tobacco and firearms of the United States department of the treasury, the state secretary of health and environment, the sheriff's department of Johnson, Shawnee or Sedgwick county, the police department of the cities of Overland Park, Topeka or Wichita, the Sedgwick county regional forensic science center, the drug enforcement administration, the air force of the United States, the navy of the United States, the army of the United States, the Missouri southern state college regional crime laboratory or Bethany medical center, inc. located

in Kansas City, Kansas are to be introduced as evidence, the report, or a copy of the report, of the findings of the forensic examiner shall be admissible into evidence in the preliminary examination in the same manner and with the same force and effect as if the forensic examiner who performed such examination, analysis, comparison or identification and prepared the report thereon had testified in person.

(b) The hearsay statements of a child victim less than 13 years of age shall be admissible in any preliminary examination.

Comment

The Judicial Council Criminal Law Advisory Committee recommends that the child hearsay provisions contained in K.S.A. 22-2902 be moved from that statute into 22-2902a which currently deals with the admission of the results of forensic examinations at preliminary hearings. The Committee thought both statutes would be clearer if the general principles regarding preliminary hearings were contained in 22-2902, while the admission of various types of hearsay evidence in preliminary hearings was covered in 22-2902a. In proposing this amendment, the Committee did not intend to change current law, only to clarify it.

Section 3. K.S.A. 22-3433 is hereby repealed.

~~22-3433. Recorded statement of child victim admissible in certain cases; limitations.~~

~~(a) In any criminal proceeding in which a child less than 13 years of age is alleged to be a victim of the crime, a recording of an oral statement of the child, made before the proceeding began is admissible in evidence if:~~

~~(1) The court determines that the time, content and circumstances of the statement provide sufficient indicia of reliability;~~

~~(2) no attorney for any party is present when the statement is made;~~

~~(3) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;~~

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~~(4) the recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;~~

~~(5) the statement is not made in response to questioning calculated to lead the child to make a particular statement or is clearly shown to be the child's statement and not made solely as a result of a leading or suggestive question;~~

~~(6) every voice on the recording is identified;~~

~~(7) the person conducting the interview of the child in the recording is present at the proceeding and is available to testify or be cross-examined by any party;~~

~~(8) each party to the proceeding is afforded an opportunity to view the recording before it is offered into evidence, and a copy of a written transcript is provided to the parties; and~~

~~(9) the child is available to testify.~~

~~(b) If a recording is admitted in evidence under this section, any party to the proceeding may call the child to testify and be cross-examined, either in the courtroom or as provided by K.S.A. 22-3434 and amendments thereto.~~

Comment

The Court of Appeals decision, *State v. Correll*, 25 Kan. App. 2d 770 (1998), identified a conflict between two statutes governing the admission of child hearsay evidence in a criminal trial: K.S.A. 22-3433 and K.S.A. 60-460(dd). After reviewing the provisions of K.S.A. 22-3433, 60-460(dd) and 22-3434 (governing the admission of videotaped testimony of a child victim), the Committee agreed to recommend repeal of K.S.A. 22-3433. The Committee believes that K.S.A. 60-460(dd) adequately covers the field regarding hearsay statements of child victims and needs no amendment.

January 13, 2000

JUVENILE ADJUDICATIONS IN CRIMINAL HISTORY

The Kansas Judicial Council respectfully requests the introduction of a Senate bill relating to the scoring of juvenile adjudications in criminal history. The bill was drafted by the Judicial Council's Criminal Law Advisory Committee whose members are Hon. Marla J. Luckert, Chair, Topeka; Hon. Carol J. Bacon, Wichita; Professor Ellen Byers, Carbondale; James W. Clark, Topeka; Edward G. Collister, Lawrence; Representative Jim D. Garner, Coffeyville; Hon. Michael Malone, Lawrence; Debra Peterson, Wichita; Steven L. Opat, Junction City; Elwaine F. Pomeroy, Topeka; Mark J. Sachse, Kansas City; and Loren L. Taylor, Kansas City. The bill was then approved by the Kansas Judicial Council.

The Criminal Law Committee has for some time considered the issue of how juvenile adjudications should be scored for criminal history purposes under the Kansas Sentencing Guidelines. Committee members have expressed concern over the unfairness of the current method of scoring juvenile adjudications in the same manner as adult convictions. The juvenile justice system was not originally intended to attach criminal consequences to an adjudication, but rather to bring the juvenile in contact with the available resources in the community for rehabilitation. The due process protections afforded in the adult criminal justice system are largely absent in the juvenile system. Problems with accuracy and accessability of juvenile records can result in disparity in sentencing, a result the sentencing guidelines were intended to prevent.

The consensus of the Committee is that a defendant's juvenile record is relevant and should be considered by the trial court at sentencing, but should not be scored in criminal history in the same manner as an adult record. Rather, the presence of a juvenile record should be an aggravating factor for consideration in determining whether a departure sentence is appropriate. The Committee also agreed that the trial court should be able to consider not only juvenile adjudications, but any prior criminal activity committed while a juvenile.

21-4703. Definitions.

As used in this act:

(a) 'Aggravating factors' mean substantial and compelling reasons justifying an exceptional sentence whereby the sentencing court may impose a departure sentence outside the standard sentencing range for a crime. Aggravating factors may result in dispositional or durational departures and shall be stated on the record by the court;

(b) 'commission' means the Kansas sentencing commission;

(c) 'criminal history' means and includes adult felony, class A misdemeanor, class B person misdemeanor, or select misdemeanor convictions ~~and comparable juvenile adjudications~~ possessed by an offender at the time such offender is sentenced;

(d) 'criminal history score' means the summation of the convictions described as criminal history that place an offender in one of the criminal history score categories listed on the horizontal axis of the sentencing guidelines grid for nondrug crimes and the sentencing guidelines grid for drug crimes;

(e) 'decay factor' means prior convictions that are no longer considered as part of an offender's criminal history score;

(f) 'departure' means a sentence which is inconsistent with the presumptive sentence for an offender;

(g) 'dispositional departure' means a sentence which is inconsistent with the presumptive

sentence by imposing a nonprison sanction when the presumptive sentence is prison or prison when the presumptive sentence is nonimprisonment;

(h) 'dispositional line' means the solid black line on the sentencing guidelines grid for nondrug crimes and the sentencing guidelines grid for drug crimes which separates the grid blocks in which the presumptive sentence is a term of imprisonment and postrelease supervision from the grid blocks in which the presumptive sentence is nonimprisonment which may include local custodial sanctions;

(i) 'durational departure' means a sentence which is inconsistent with the presumptive sentence as to term of imprisonment, or term of nonimprisonment;

(j) 'good time' means a method of behavior control or sanctions utilized by the department of corrections. Good time can result in a decrease of up to 20% of the prison part of the sentence.

(k) 'grid' means the sentencing guidelines grid for nondrug crimes as provided in K.S.A. 21-4704 or the sentencing guidelines grid for drug crimes as provided in K.S.A. 21-4705, or both;

(l) 'grid block' means a box on the grid formed by the intersection of the crime severity ranking of a current crime of conviction and an offender's criminal history classification;

(m) 'imprisonment' means imprisonment in a facility operated by the Kansas department of corrections;

(n) 'mitigating factors' means substantial and compelling reasons justifying an exceptional sentence whereby the sentencing court may impose a departure sentence outside of the standard sentencing range for an offense. Mitigating factors may result in dispositional or durational departures and shall be stated on the record by the court;

(o) 'nonimprisonment,' 'nonprison' or 'nonprison sanction' means probation, community

corrections, conservation camp, house arrest or any other community based disposition;

(p) 'postrelease supervision' means the release of a prisoner to the community after having served a period of imprisonment or equivalent time served in a facility where credit for time served is awarded as set forth by the court, subject to conditions imposed by the Kansas parole board and to the secretary of correction's supervision;

(q) 'presumptive sentence' means the sentence provided in a grid block for an offender classified in that grid block by the combined effect of the crime severity ranking of the current crime of conviction and the offender's criminal history;

(r) 'prison' means a facility operated by the Kansas department of corrections; and

(s) 'sentencing range' means the sentencing court's discretionary range in imposing a nonappealable sentence.

21-4709. Criminal history categories in criminal history scale.

The criminal history scale is represented in abbreviated form on the horizontal axis of the sentencing guidelines grid for nondrug crimes and the sentencing guidelines grid for drug crimes. The relative severity of each criminal history category decreases from left to right on such grids. Criminal history category A is the most serious classification. Criminal history category I is the least serious classification. The criminal history categories in the criminal history scale are:

Criminal History Category	Descriptive Criminal History
A	The offender's criminal history includes three or more adult convictions ~~or juvenile adjudications, in any combination,~~ for

person felonies.

B The offender's criminal history includes two adult convictions ~~or juvenile adjudications, in any combination,~~ for person felonies.

C The offender's criminal history includes one adult conviction ~~or juvenile adjudication~~ for a person felony, and one or more adult conviction ~~or juvenile adjudication~~ for a nonperson felony.

D The offender's criminal history includes one adult conviction ~~or juvenile adjudication~~ for a person felony, but no adult conviction ~~or juvenile adjudications~~ for a nonperson felony.

E The offender's criminal history includes three or more adult convictions ~~or juvenile adjudications~~ for nonperson felonies, but no adult conviction ~~or juvenile adjudication~~ for a person felony.

F The offender's criminal history includes two adult convictions ~~or juvenile adjudications~~ for nonperson felonies, but no adult conviction ~~or juvenile adjudication~~ for a person felony.

G The offender's criminal history includes one adult conviction ~~or juvenile adjudication~~ for a nonperson felony, but no adult conviction ~~or juvenile adjudication~~ for a person felony.

H The offender's criminal history includes two or more adult convictions ~~or juvenile adjudications~~ for nonperson and/or select misdemeanors, and no more than two adult convictions ~~or juvenile adjudications~~ for person misdemeanors, but no adult conviction ~~or~~

~~juvenile adjudication~~ for either a person or nonperson felony.

I The offender's criminal history includes no prior record; or, one adult conviction ~~or juvenile adjudication~~ for a person, nonperson, or select misdemeanor, but no adult conviction ~~or juvenile adjudication~~ for either a person or nonperson felony.

21-4710. Sentencing; criminal history categories, basis; determination of offenders classification; decay factors; prior convictions.

(a) Criminal history categories contained in the sentencing guidelines grid for nondrug crimes and the sentencing guidelines grid for drug crimes are based on the following types of prior convictions: Person felony adult convictions, nonperson felony adult convictions, ~~person felony juvenile adjudications, nonperson felony juvenile adjudications,~~ person misdemeanor adult convictions, nonperson class A misdemeanor adult convictions, ~~person misdemeanor juvenile adjudications, nonperson class A misdemeanor juvenile adjudications,~~ select class B nonperson misdemeanor adult convictions, ~~select class B nonperson misdemeanor juvenile adjudications~~ and convictions ~~and adjudications~~ for violations of municipal ordinances or county resolutions which are comparable to any crime classified under the state law of Kansas as a person misdemeanor, select nonperson class B misdemeanor or nonperson class A misdemeanor. A prior conviction is any conviction, other than another count in the current case which was brought in the same information or complaint or which was joined for trial with other counts in the current case pursuant to K.S.A. 22-3203 and amendments thereto, which occurred prior to sentencing in the current case regardless of whether the offense that led to the prior conviction occurred before

or after the current offense or the conviction in the current case.

(b) A class B nonperson select misdemeanor is a special classification established for weapons violations. Such classification shall be considered and scored in determining an offender's criminal history classification.

(c) Except as otherwise provided, all convictions, whether sentenced consecutively or concurrently, shall be counted separately in the offender's criminal history.

(d) Except as provided in K.S.A. 21-4716, and amendments thereto, the following are applicable to determining an offender's criminal history classification:

(1) Only verified convictions will be considered and scored.

(2) All prior adult felony convictions, including expungements, will be considered and scored.

(3) There will be no decay factor applicable for adult convictions.

~~(4) Except as otherwise provided, a juvenile adjudication, which would have been a nonperson class D or E felony if committed before July 1, 1993, or a nondrug level 6, 7, 8, 9 or 10, or drug level 4, nonperson felony if committed on or after July 1, 1993, or a misdemeanor if committed by an adult, will decay if the current crime of conviction is committed after the offender reaches the age of 25.~~

~~(5) For convictions of crimes committed before July 1, 1993, a juvenile adjudication which would constitute a class A, B or C felony, if committed by an adult, will not decay. For convictions of crimes committed on or after July 1, 1993, a juvenile adjudication which would constitute an off-grid felony, a nondrug severity level 1, 2, 3, 4 or 5 felony, or a drug severity level 1, 2 or 3 felony, if committed by an adult, will not decay.~~

~~(6) All juvenile adjudications which would constitute a person felony will not decay or be~~

~~forgiven.~~

(~~7~~ 4) All person misdemeanors, class A nonperson misdemeanors and class B select nonperson misdemeanors, and all municipal ordinance and county resolution violations comparable to such misdemeanors, shall be considered and scored.

(~~8~~ 5) Unless otherwise provided by law, unclassified felonies and misdemeanors, shall be considered and scored as nonperson crimes for the purpose of determining criminal history.

(~~9~~ 6) Prior convictions of a crime defined by a statute which has since been repealed shall be scored using the classification assigned at the time of such conviction.

(~~10~~ 7) Prior convictions of a crime defined by a statute which has since been determined unconstitutional by an appellate court shall not be used for criminal history scoring purposes.

(~~11~~ 8) Prior convictions of any crime shall not be counted in determining the criminal history category if they enhance the severity level or applicable penalties, elevate the classification from misdemeanor to felony, or are elements of the present crime of conviction. Except as otherwise provided, all other prior convictions will be considered and scored.

21-4711. Sentencing; determination of offender's criminal history classification in presumptive sentencing guidelines grid for nondrug and drug crimes.

In addition to the provisions of K.S.A. 21-4710 and amendments thereto, the following shall apply in determining an offender's criminal history classification as contained in the presumptive sentencing guidelines grid for nondrug crimes and the presumptive sentencing guidelines grid for drug crimes:

(a) Every three prior adult convictions ~~or juvenile adjudications~~ of class A and class B person

misdemeanors in the offender's criminal history~~, or any combination thereof,~~ shall be rated as one adult conviction ~~or one juvenile adjudication~~ of a person felony for criminal history purposes. Every three prior adult convictions ~~or juvenile adjudications~~ of assault as defined in K.S.A. 21-3408 and amendments thereto occurring within a period commencing three years prior to the date of conviction for the current crime of conviction shall be rated as one adult conviction ~~or one juvenile adjudication~~ of a person felony for criminal history purposes.

(b) A conviction of subsection (a)(1) of K.S.A. 21-4204 and amendments thereto, criminal possession of firearms by a person who is both addicted to and an unlawful user of a controlled substance, subsection (a)(4) of K.S.A. 21-4204 and amendments thereto, possession of a firearm on school grounds or K.S.A. 21-4218 and amendments thereto, possession of a firearm on the grounds or in the state capitol building, will be scored as a select class B nonperson misdemeanor conviction ~~or adjudication~~ and shall not be scored as a person misdemeanor for criminal history purposes.

(c) (1) If the current crime of conviction was committed before July 1, 1996, and is for subsection (b) of K.S.A. 21-3404, involuntary manslaughter in the commission of K.S.A. 8-1567 and amendments thereto driving under the influence, then, each prior adult conviction ~~or juvenile adjudication~~ for K.S.A. 8-1567 and amendments thereto shall count as one person felony for criminal history purposes.

(2) If the current crime of conviction was committed on or after July 1, 1996, and is for involuntary manslaughter while driving under the influence of alcohol and drugs, each prior adult conviction~~;~~ or diversion in lieu of criminal prosecution ~~or juvenile adjudication~~ for an act described in K.S.A. 8-1567 and amendments thereto shall count as one person felony for

criminal history purposes.

(d) Prior burglary adult convictions ~~and juvenile adjudications~~ will be scored for criminal history purposes as follows:

(1) As a prior person felony if the prior conviction ~~or adjudication~~ was classified as a burglary as described in subsection (a) of K.S.A. 21-3715 and amendments thereto.

(2) As a prior nonperson felony if the prior conviction ~~or adjudication~~ was classified as a burglary as described in subsection (b) or (c) of K.S.A. 21-3715 and amendments thereto.

The facts required to classify prior burglary adult convictions ~~and juvenile adjudications~~ must be established by the state by a preponderance of the evidence.

(e) Out-of-state convictions ~~and juvenile adjudications~~ will be used in classifying the offender's criminal history. An out-of-state crime will be classified as either a felony or a misdemeanor according to the convicting jurisdiction. If a crime is a felony in another state, it will be counted as a felony in Kansas. The state of Kansas shall classify the crime as person or nonperson. In designating a crime as person or nonperson comparable offenses shall be referred to. If the state of Kansas does not have a comparable offense, the out-of-state conviction shall be classified as a nonperson crime. Convictions ~~or adjudications~~ occurring within the federal system, other state systems, the District of Columbia, foreign, tribal or military courts are considered out-of-state convictions ~~or adjudications~~. The facts required to classify out-of-state adult convictions ~~and juvenile adjudications~~ must be established by the state by a preponderance of the evidence.

~~(f) Except as provided in subsections (4), (5) and (6) of K.S.A. 21-4710 and amendments thereto, juvenile adjudications will be applied in the same manner as adult convictions. Out-of-state juvenile adjudications will be treated as juvenile adjudications in Kansas.~~

(~~g~~ f) A prior felony conviction of an attempt, a conspiracy or a solicitation as provided in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, to commit a crime shall be treated as a person or nonperson crime in accordance with the designation assigned to the underlying crime.

(~~h~~ g) Drug crimes are designated as nonperson crimes for criminal history scoring.

21-4716. Imposition of presumptive sentence; departure sentencing; finding substantial and compelling reasons for departure; mitigating or aggravating factor considered in determining if reasons exist; reasons stated on record.

(a) The sentencing judge shall impose the presumptive sentence provided by the sentencing guidelines for crimes committed on or after July 1, 1993, unless the judge finds substantial and compelling reasons to impose a departure. If the sentencing judge departs from the presumptive sentence, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure.

(b) (1) Subject to the provisions of subsection (b)(3), the following nonexclusive list of mitigating factors may be considered in determining whether substantial and compelling reasons for a departure exist:

(A) The victim was an aggressor or participant in the criminal conduct associated with the crime of conviction.

(B) The offender played a minor or passive role in the crime or participated under circumstances of duress or compulsion. This factor is not sufficient as a complete defense.

(C) The offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed. The voluntary use of intoxicants, drugs or alcohol

does not fall within the purview of this factor.

(D) The defendant, or the defendant's children, suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(E) The degree of harm or loss attributed to the current crime of conviction was significantly less than typical for such an offense.

(2) Subject to the provisions of subsection (b)(3), the following nonexclusive list of aggravating factors may be considered in determining whether substantial and compelling reasons for departure exist:

(A) The victim was particularly vulnerable due to age, infirmity, or reduced physical or mental capacity which was known or should have been known to the offender.

(B) The defendant's conduct during the commission of the current offense manifested excessive brutality to the victim in a manner not normally present in that offense.

(C) The offense was motivated entirely or in part by the race, color, religion, ethnicity, national origin or sexual orientation of the victim.

(D) The offense involved a fiduciary relationship which existed between the defendant and the victim.

(E) The defendant, 18 or more years of age, employed, hired, used, persuaded, induced, enticed or coerced any individual under 16 years of age to commit or assist in avoiding detection or apprehension for commission of any person felony or any attempt, conspiracy or solicitation as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto to commit any person felony regardless of whether the defendant knew the age of the individual under 16 years of age.

(F) The defendant's current crime of conviction is a crime of extreme sexual violence and the

defendant is a predatory sex offender. As used in this subsection:

(i) 'Crime of extreme sexual violence' is a felony limited to the following:

(a) A crime involving a nonconsensual act of sexual intercourse or sodomy with any person;

(b) a crime involving an act of sexual intercourse, sodomy or lewd fondling and touching with any child who is 14 or more years of age but less than 16 years of age and with whom a relationship has been established or promoted for the primary purpose of victimization; or

(c) a crime involving an act of sexual intercourse, sodomy or lewd fondling and touching with any child who is less than 14 years of age.

(ii) 'Predatory sex offender' is an offender who has been convicted of a crime of extreme sexual violence as the current crime of conviction and who:

(a) Has one or more prior convictions of any crimes of extreme sexual violence. Any prior conviction used to establish the defendant as a predatory sex offender pursuant to this subsection shall also be counted in determining the criminal history category; or

(b) suffers from a mental condition or personality disorder which makes the offender likely to engage in additional acts constituting crimes of extreme sexual violence.

(iii) 'Mental condition or personality disorder' means an emotional, mental or physical illness, disease, abnormality, disorder, pathology or condition which motivates the person, affects the predisposition or desires of the person, or interferes with the capacity of the person to control impulses to commit crimes of extreme sexual violence.

In determining whether aggravating factors exist as provided in this section, the court shall review the victim impact statement.

(3) If a factual aspect of a crime is a statutory element of the crime or is used to subclassify the

crime on the crime severity scale, that aspect of the current crime of conviction may be used as an aggravating or mitigating factor only if the criminal conduct constituting that aspect of the current crime of conviction is significantly different from the usual criminal conduct captured by the aspect of the crime.

(G) The defendant has a history of prior juvenile adjudications or activity which if committed while an adult would be criminal.

(c) In determining aggravating or mitigating circumstances, the court shall consider:

(1) Any evidence received during the proceeding;

(2) the presentence report;

(3) written briefs and oral arguments of either the state or counsel for the defendant; and

(4) any other evidence relevant to such aggravating or mitigating circumstances that the court finds trustworthy and reliable.

21-4721. Departure sentence subject to appeal; confinement or release of defendant pending review; scope of review; action by court; written opinion, when; summary disposition; correction of arithmetic or clerical errors.

(a) A departure sentence is subject to appeal by the defendant or the state. The appeal shall be to the appellate courts in accordance with rules adopted by the supreme court.

(b) Pending review of the sentence, the sentencing court or the appellate court may order the defendant confined or placed on conditional release, including bond.

(c) On appeal from a judgment or conviction entered for a felony committed on or after July 1, 1993, the appellate court shall not review:

(1) Any sentence that is within the presumptive sentence for the crime; or

(2) any sentence resulting from an agreement between the state and the defendant which the sentencing court approves on the record.

(d) In any appeal from a judgment of conviction imposing a sentence that departs from the presumptive sentence prescribed by the sentencing grid for a crime, sentence review shall be limited to whether the sentencing court's findings of fact and reasons justifying a departure:

(1) Are supported by the evidence in the record; and

(2) constitute substantial and compelling reasons for departure.

(e) In any appeal, the appellate court may review a claim that:

(1) A sentence that departs from the presumptive sentence resulted from partiality, prejudice, oppression or corrupt motive;

(2) the sentencing court erred in either including or excluding recognition of a prior conviction ~~or juvenile adjudication~~ for criminal history scoring purposes; or

(3) the sentencing court erred in ranking the crime severity level of the current crime or in determining the appropriate classification of a prior conviction ~~or juvenile adjudication~~ for criminal history purposes.

(f) The appellate court may reverse or affirm the sentence. If the appellate court concludes that the trial court's factual findings are not supported by evidence in the record or do not establish substantial and compelling reasons for a departure, it shall remand the case to the trial court for resentencing.

(g) The appellate court shall issue a written opinion whenever the judgment of the sentencing court is reversed. The court may issue a written opinion in any other case when it is believed that

a written opinion will provide guidance to sentencing judges and others in implementing the sentencing guidelines adopted by the Kansas sentencing commission. The appellate courts may provide by rule for summary disposition of cases arising under this section when no substantial question is presented by the appeal.

(h) A review under summary disposition shall be made solely upon the record that was before the sentencing court. Written briefs shall not be required unless ordered by the appellate court and the review and decision shall be made in an expedited manner according to rules adopted by the supreme court.

(i) The sentencing court shall retain authority irrespective of any notice of appeal for 90 days after entry of judgment of conviction to modify its judgment and sentence to correct any arithmetic or clerical errors.

State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 Southwest 10th
Topeka, Kansas 66612-1507
(785) 296-2256

January 12, 2000

Senator Tim Emert
Chairperson, Senate Judiciary Committee
State Capitol, Room 356-E
Topeka, KS 66612

Dear Senator Emert:

The Kansas Judicial Branch respectfully requests the introduction of two bills, both at the request of the Kansas Association of District Court Clerks and Administrators (KADCCA).

Following are summaries of the two bills. If any additional information would be helpful to you, please let me know.

Sincerely,

Kathy Porter

Kathy Porter
Exec. Assistant to Judicial Administrator

KP:jlh

Sn Jud
att. 2
1-12-00

Custody of Business Records for Use in Discovery

The KADCCA Legislative Committee requests the amendment of two provisions in K.S.A. 1998 Supp. 60-245a. The first amendment would delete the requirement of giving a copy of the notice of the issuance of a subpoena at least ten days prior to issuing the subpoena. This section allows any party to object to the production of the documents sought by the subpoena prior to its issuance. The second amendment deletes a provision requiring the clerk to notify the party who caused the subpoena for the business records to be issued upon receipt of the business records.

The KADCCA Legislative Committee's rationale is that both of these provisions cause unnecessary steps for clerks. If a party objects to the production of certain documents, that party can object after the subpoena is issued, without causing the clerks the work of issuing a notice before the subpoena is issued. In many cases in which there is no objection to the production of the documents, the step of sending notice prior to issuing the subpoena is unnecessary. As to notifying the party who requested the records upon receipt of the records, the KADCCA Legislative Committee notes that the party issuing the subpoena knows the time within which the records are required to be produced, and they check with the clerk by phone to see if the clerk's office has received the records. In the clerks' experience, the sending of a written notice does not stop the phone calls, but adds one more step to their workload.

Docket Fees for Moving Violations

The 1999 Legislature amended K.S.A. 1998 Supp. 28-172a, the docket fee statute, to increase docket fees for moving violations from $45 to $46. The dollar increase goes to the Trauma Fund, which funds duties of the Secretary of Health and Environment related to the Advisory Committee on Trauma, regional trauma councils, and the trauma registry.

Although "moving violations" are defined by regulation, implementing this provision has proven to be more problematic than anticipated. The duty to designate a traffic violation as either "moving" or "nonmoving" falls upon the law enforcement officer issuing a ticket, and the clerks have noticed inconsistent application of this provision. Amending this statute to impose a uniform $46 docket fee for all traffic offenses would eliminate the discrepancies.

att 3
S Jud
1-13

Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

BILL REQUEST
BEFORE THE SENATE JUDICIARY COMMITTEE
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
JANUARY 13, 2000

Mr. Chairman and Members of the Committee:

On behalf of Kansas Bureau of Investigation (KBI) Director Larry Welch, I would request introduction of legislation dealing with the forensic fee assessed against convicted criminals, K.S.A. 28-176.

We are proposing striking five words that limit the test's application to DUI's where drugs or controlled substances are involved. By striking this language, the statute would apply to all DUI violations (K.S.A. 8-1567), thus shifting the cost of doing blood and urine alcohol tests being conducted by the KBI from the state taxpayers to those persons who are convicted by means of those tests while driving under the influence. The suggested language is attached to my testimony.

I would be happy to answer any questions.

1620 S.W. Tyler / Topeka, Kansas 66612-1837 / (785) 296-8200 FAX (785) 296-6781

Sn Jud
1-13-00 att. 3

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

28-176. (a) Any person convicted or diverted, or adjudicated or diverted under a preadjudication program, pursuant to K.S.A. 22-2906 *et seq.*, 38-1635 *et seq.*, or 12-4414 *et seq.*, and amendments thereto, of a misdemeanor or felony contained in chapters 21, 41 or 65 of the Kansas Statutes Annotated, or a violation of K.S.A. 8-1567 and amendments thereto, ~~involving drugs or controlled substances,~~ shall pay a separate court cost of $150 as a Kansas bureau of investigation laboratory analysis fee for each offense if forensic science or laboratory services are rendered or administered by the Kansas bureau of investigation in connection with the case.

(b) Such fee shall be in addition to and not in substitution for any and all fines and penalties otherwise provided for by law for such offense.

(c) Disbursements from the Kansas bureau of investigation laboratory analysis fee deposited into the forensic laboratory and materials fee fund of the Kansas bureau of investigation shall be made for the following:

(1) Providing criminalistic laboratory services;

(2) the purchase and maintenance of equipment for use by the laboratory in performing analysis;

(3) education, training and scientific development of Kansas bureau of investigation personnel; and

(4) the destruction of seized property and chemicals as prescribed in K.S.A. 22-2512 and K.S.A. 65-4135 and amendments thereto.

(d) Fees received into this fund shall be supplemental to regular appropriations to the Kansas bureau of investigation.

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SUGGESTED CHANGES IN REGARD TO PERMANENT GUARDIANSHIP AS PROVIDED IN CHAPTER 156 OF 1999 SESSION LAWS OF KANSAS

K.S.A. 38-1502(w) as amended in Chapter 156 of 1999 Session Laws of Kansas at page 1378:

> "'Permanent guardianship' means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining without ongoing state oversight or intervention. The permanent guardian stands in loco parentis and exercises all the rights and responsibilities of a parent. *Upon appointment of a permanent guardian, the child in need of care proceedings shall be dismissed. A permanent guardian may be appointed after termination of parental rights."*

SUGGESTED CHANGE:

> *"Permanent guardianship" means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining without ongoing oversight or intervention by the Secretary. The permanent guardian stands in loco parentis and exercises all the rights and responsibilities of a parent. A permanent guardian may be appointed after termination of parental rights or without termination of parental rights if the parents consent and agreed to the appointment of a permanent guardian. Upon appointment of a permanent guardian, the court will continue to have jurisdiction to review the placement and appoint successor or replacement guardians or guardian.*

K.S.A. 38-1502(g) as amended in Chapter 156 of 1999 Session Laws of Kansas at page 1388:

> "If, after finding the parent unfit, the court determines a compelling reason why it is not in the best interests of the child to terminate parental rights *or upon agreement of the parents*, the court may award permanent guardianship to an individual providing care for the child, a relative or other person with whom the child has a close emotional attachment. Prior to awarding permanent guardianship, the court shall receive and consider an assessment as provided in K.S.A. 59-2132 and amendments thereto of any potential

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permanent guardian. Upon appointment of a permanent guardian, the court shall enter an order discharging the child from the court's jurisdiction.

SUGGESTED CHANGE:

This sentence should be stricken: "Upon appointment of a permanent guardian, the court shall enter an order discharging the child from the court's jurisdiction." and the following sentence inserted:

Upon appointment of a permanent guardian, the court will continue to have jurisdiction to review the placement and appoint successor or replacement guardian or guardians.

New Sec. 3 at page 1375

"(a) A permanent guardian may be appointed after a finding of unfitness pursuant to K.S.A. 38-1583 and amendments thereto or with the consent and agreement of the parties."

"(b) Upon appointment of the permanent guardian, the child in need of care proceeding shall be dismissed."

SUGGESTED CHANGE:

Existing (b) should be stricken and replaced with the following:

(b) Upon appointment of a permanent guardian, the court will continue to have jurisdiction to review the placement and appoint successor or replacement guardians or guardian.

4-2

Jim,

We had a conversation recently about permanent guardianships. Here are some suggested changes that Judge Graber in Sumner County drew up that could help make the process easier to use i.e. keeping the CINC case open for court management (much like chapter 59 Gdnships) but terminating oversight & intervention by the Secretary & SRS. If you have any questions. Feel free to call

Rhea

Kansas Department of Health and Environment
Office of the Secretary
Administrative Appeals

Proposal. Placing Adult Abuse, Neglect, and Exploitation Hearings (resident abuse hearings) under the Kansas Administrative Procedure Act (KAPA), KSA 39-1401, et seq.

Summary. The secretary of health and environment is required to maintain a register of resident abuse findings pursuant to KSA 39-1411(a). That statute states that:

> The findings, evaluations and actions [of resident abuse investigations] shall be *subject to such notice and appeals procedures as may be adopted by rules and regulations* of the secretary of health and environment, which rules and regulations shall be consistent with any requirements of state or federal law relating thereto . . . (Emphasis mine)

KAPA only applies to hearings which specifically adopt it by statute. (KSA 77-503) Since resident abuse hearings do not specifically adopt KAPA, they may not support KAPA authority in matters of conducting prehearing conferences, issuing enforceable subpoenas, administering oaths, and making evidentiary rulings. Of greatest concern to the agency is the possibility that courts might refuse to enforce subpoenas issued by presiding officers. This might require dismissing otherwise meritorious actions upon allegations of due process denials.

In all likelihood, failure to adopt KAPA for abuse hearings was merely an oversight. I adopt KAPA in all prehearing orders unless objected to, in writing, by one of the parties. There has never been an objection since everyone generally agrees that KAPA is a fair, organized, and well-known method of conducting agency hearings. However, potential problems with judicial enforcement of subpoenas and judicial review could be avoided by making it clear that these hearings are to be conducted under KAPA. (A district court might refuse to enforce a subpoena, even with consent of the parties, since parties may not confer jurisdiction on a court in the absence of statutory authority.)

Placing resident abuse hearings under KAPA would be extremely easy as far as drafting is concerned. I think the following is all that would be necessary.

> **K.S.A. 39-1411. Duties of secretary of health and environment; register; notice and appeals procedures; findings forwarded to certain state regulatory authorities, consideration thereof; certain information confidential and not subject to open records act; disclosure of certain individuals prohibited.** (a) The secretary of health and environment shall maintain a register of the reports received and

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att 5

investigated by the department of health and environment under K.S.A. 39-1402 and 39-1403, and amendments to such sections, and the findings, evaluations and actions recommended by the department with respect to such reports. The findings, evaluations and actions shall be subject to ~~such notice and appeals procedures as may be adopted by rules and regulations of the secretary of health and environment, which rules and regulations shall be consistent with~~ the Kansas Administrative Procedures Act and any requirements of state or federal law relating thereto except that the secretary shall not be required to conduct a hearing in cases forwarded to the appropriate state authority under subsection (b). The register shall be available for inspection by personnel of the department of health and environment as specified by the secretary of health and environment and to such other persons as may be required by federal law and designated by the secretary of health and environment by rules and regulations. Information from the register shall be provided as specified in K.S.A. 1998 Supp. 65-6205 and amendments thereto. The secretary of health and environment shall forward a copy of any report of abuse, neglect or exploitation of a resident of an adult care home to the secretary of aging.

Fiscal Impact. There is no fiscal impact if the proposed legislation is adopted.

Policy Implications and Impact on the Agency Strategic Plan. The number of adult abuse hearings has been increasing in recent months. This legislation would better ensure that agency subpoenas are enforceable, that hearings will be supported by KAPA provisions, and that both parties will know what to expect procedurally.

Reports of the Special Committee on Judiciary to the 2000 Kansas Legislature

CHAIRPERSON: Senator Tim Emert

VICE-CHAIRPERSON: Representative Mike O'Neal

RANKING MINORITY MEMBER: Senator Greta Goodwin

OTHER MEMBERS: Senators Karin Brownlee, Paul Feleciano, Jr., and John Vratil; Representatives Tim Carmody, John Edmonds, Phill Kline, Ward Loyd, Rick Rehorn, Doug Spangler, and Dixie Toelkes

STUDY TOPICS:

- Uniform Child Custody Jurisdiction and Enforcement Act (HB 2488)
- Ignition interlock devices (HB 2183)
- Consolidation of field services performed by court service officers, parole officers, and community corrections officers
- Article 9—Uniform Commercial Code Lien Laws (SB 366)
- Mechanic Liens—extending the time for filing of such liens by contractors, subcontractors, and material suppliers
- Identity theft and privacy issues
- Review legislation to exclude physicians from jury duty
- Review recommendations of the Kansas Citizens Justice Initiative

December 1999

SPECIAL COMMITTEE ON JUDICIARY

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT*

CONCLUSIONS AND RECOMMENDATIONS

The Committee concluded that a change is necessary to replace the current law, the Uniform Child Custody Jurisdiction Act (UCCJA) with the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) which includes provisions regarding adoptions, guardianship proceedings, and protection from abuse proceedings as well as certain technical changes. The recommended bill reflects these changes.

BACKGROUND

Kansas had adopted the UCCJA which became effective in 1979 at KSA 38-1301 *et seq.* In 1980, Congress adopted the federal Parental Kidnapping Prevention Act (PKPA) which was enacted as a measure to address the situation in which a noncustodial parent engaged in interstate kidnapping of their children in an effort to locate a sympathetic court to reverse custody orders. One of the main differences between the UCCJA and the PKPA is that the UCCJA does not give primary jurisdiction to the home state of the child whereas the PKPA does. These differences can result in confusion regarding child custody disagreement. For example, there are other differences in the area of interstate enforcement of child custody orders.

The UCCJEA reconciles the differences between the UCCJA and the PKPA especially regarding the interstate civil enforcement for child custody orders. 1999 HB 2488 was drafted in an effort to reconcile the differences by making the home state the state with continuing exclusive jurisdiction.

COMMITTEE ACTIVITIES

During the hearing on HB 2488 an attorney with the Kansas Bar Association compared the UCCJA to the UCCJEA and indicated the UCCJEA is preferable due to the problematic nature of enforcement of jurisdiction in the current American mobile society. The Uniform Law Commissioners, which adopted the UCCJA, promote the UCCJEA as a needed improvement for uniformity among the states. The UCCJEA was cited as a remedy for competing child custody orders. Under the UCCJEA any state that is not the home state of the child will defer to the home state on a continuing basis. According to a conferee, additional changes are recommended for HB 2488 including the need for references of guardianship proceedings and protection from abuse proceedings.

A professor with the Washburn School of Law, who specializes in family law, suggested the adoption of the UCCJEA for the following reasons:

- To make clear that home state jurisdiction trumps all others;

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* SB 382 was recommended by the Committee.

- To make it clear that emergency orders are temporary orders;

- To provide that the state continues jurisdiction as long as one parent continues to live in that state;

- To provide a record of communication between the courts; and

- To award fees and costs against the nonprevailing party.

Conclusions and Recommendations

As a result of the hearing on HB 2488 and review of a draft that included the suggested changes to the bill, including the addition of adoptions, guardianship proceedings, and protection from abuse proceedings, as well as certain technical changes, the Committee recommends legislation that contains the suggested changes.

Ignition Interlock Devices

Conclusions and Recommendations

The Committee made no recommendation regarding ignition interlock devices.

Background

A request for the study of Ignition Interlock Devices was made by the Chairman of the Senate Judiciary Committee to examine 1999 HB 2183 which deals with the enhanced use of ignition interlock devices for repeat drunk driving offenders. A similar request for an interim study was made on behalf of the House Judiciary Committee. Most provisions of HB 2183 were amended into SB 4 which is currently in the Judiciary conference committee. The pertinent features contained in the amended version of SB 4 are as follows:

- If a person's alcohol concentration is less than .15 on a first occurrence, driving privileges will be suspended for 30 days and then restricted to driving to and from work or school and certain other allowances for 330 days.

- If the blood concentration is .15 or more on a first occurrence, the license is suspended for 30 days and restricted for 330 days to driving only with an ignition interlock device.

- On a second or subsequent occurrence, the person's driving privileges are suspended for one year, restricted for one year to driving to and from school or work and certain other allowances, and restricted for one year to driving only a motor vehicle equipped with an ignition interlock device.

- A person whose license is restricted to driving only with an interlock device will be able to operate an employer's vehicle without an interlock device during normal business activities as long as the employee does not partly or entirely own or control the business.

- Upon proper notification that a person has failed to comply with the required ignition interlock requirements, the Division of Motor Vehicles will suspend

driving privileges until it receives notice of compliance.

- There is imposed a $25 charge for a new driver's license indicating a restriction. A restricted license will only be issued upon a showing of proof of the installation of an approved ignition interlock device.

- The Secretary of Revenue must adopt rules and regulations that ensure that there is a reasonable statewide network whereby such interlock devices can be obtained, repaired, replaced, or serviced on a 24-hour basis and require calibration every 60 days.

- A vehicle with the interlock device must be maintained at the person's expense.

Committee Activities

There were several conferees who made presentations before the Committee. These included Richard Freund, LifeSafer Interlock; Rosalie Thornburgh, Kansas Department of Transportation; Sheila Walker, Kansas Department of Revenue; Dr. Robert Voas, Pacific Institute for Research and Evaluation; and Gene Johnson, Kansas Community Alcohol Safety Action Programs.

Richard Freund, LifeSafer Interlock, stated that Kansas has been at the forefront in addressing the issue of drunk drivers with the enactment of measures such as administrative license suspensions, lowered alcohol concentration levels, and mandatory alcohol assessments and treatment. According to the conferee, although Kansas was early in the implementation of ignition interlock devices, no recent legislation has enhanced the use of these devices. Washington was cited as a state that mandates an ignition interlock device as a condition of license reinstatement for a person who has an alcohol concentration of .15 or higher. Texas was mentioned as a state with provisions that mandate an ignition interlock as a condition of probation for drunk driving offenders. The conferee stated that California is a state that requires an ignition interlock as a condition of license reinstatement. The conferee expressed support for SB 4, as amended in conference committee.

Dr. Robert Voas, Pacific Institute for Research and Evaluation, presented testimony on his research regarding drunk driving offenders. He stated that, while it is good public policy to get drunk driving offenders off the street, most of these drivers who lose their license continue to drive. Dr. Voas indicated that California has an impoundment law that provides for the impoundment of a vehicle driven by a driver with a suspended license. According to the conferee these laws have been effective in reducing the recidivism rate of suspended drivers. Dr. Voas went on to say that his research indicates that, on the question of whether an ignition interlock device prevents a driver from driving after drinking, the interlock devices accomplish this better than simply suspending the driver's license as long as the interlock device is on the car.

Sheila Walker, Division of Motor Vehicles, Kansas Department of Revenue, expressed concern with ignition interlock devices. Her concerns centered on the following areas:

- installation of the device can be expensive and difficult to enforce;

- law enforcement does not always provide test results;

- certain provisions of SB 4 would be a paper nightmare for her agency;

- there is no provision in SB 4 for those drivers who do not pay the $25 fee for issuing a new restricted driver's license; and

- the offender could drive without an interlock device by driving another person's car.

Rosalie Thornburgh, Bureau Chief of Traffic Safety, Kansas Department of Transportation, reviewed the federal law, the Transportation Equity Act for the 21st Century, which encourages states to establish and enforce specific penalties for repeat convictions for driving under the influence (DUI). These penalties include the following:

- a one-year driver's license suspension (Kansas is in compliance);
- the impoundment or immobilization of or installation of an interlock device on the offender's vehicle;
- assessment of the repeat offender's degree of alcohol abuse and appropriate treatment; and
- the sentencing of the repeat offenders to a minimum number of days of imprisonment or community service.

According to the conferee, if Kansas does not comply with the federal requirements, the state will lose millions of dollars in highway construction funds as of October 1, 2000 (FFY 2001). The penalty would be $3.3 million for the first two years. Beginning in FFY 2003 the penalty would be $6.9 million per year.

Gene Johnson, Kansas Community Alcohol Safety Action Project, reviewed the history of DUI laws in Kansas and stated these laws have impacted the rate of alcohol related crash fatalities to a downward rate of over 50 percent. The conferee indicated that since the alcohol consumption rate has not dropped, the alcohol awareness programs, education, and treatment are working. In recounting the development of the use of ignition interlock devices, Mr. Johnson said that his organization, citing a number of concerns, is opposed to the use of interlock devices.

Conclusions and Recommendations

After discussion, the Committee made no recommendation regarding ignition interlock devices.

CONSOLIDATION OF FIELD SERVICES*

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends a bill to repeal the portion of KSA 21-4727 which contains a directive that probation, parole, and community corrections services shall be consolidated on or before January 1, 1994. The Committee believes it is time to put the consolidation of services issue aside due to the inability of the parties involved to arrive at a consensus on the need for consolidation or how best to achieve it.

The Committee also recommends that the appropriate committees of the 2000 Legislature more fully investigate the following recommendations proposed during the interim:

- Clarify the responsibilities of the community corrections programs to require that these programs focus solely on providing intermediate sanctions programs for offenders as a stage between probation and prison. Define the offender populations that should utilize the community corrections programs to determine the high risk probationers. Change the name of this program to "regional intermediate sanction" programs for Kansas.
- Add 50 more court services officers in Kansas to meet public safety needs.
- Fund the pay reclassification plan proposed by the Kansas Association of Court Services Officers and establish a court services supervision fee to help fund this plan.
- Consider the idea of abolishing community corrections programs and requiring that all felony probation supervision be placed under court services officers.

BACKGROUND

The study called for a review of the issue of the consolidation of field services performed by court services officers, parole officers, and community corrections officers.

1999 HB 2398

The study was prompted by the introduction of 1999 HB 2398 by Representative Shari Weber. HB 2398 would create the Unified Field Services Commission. This Commission would be given the following responsibilities:

- Develop a plan for the consolidation of the activities, funding, and administration of court service probation, parole, post-release supervision, and community corrections services with the Kansas Department of Corrections (KDOC) as the central agency with responsibility and oversight of all such field services;
- Report to the Joint Committee on Corrections and Juvenile Justice Oversight on a monthly basis;
- Prepare and present a final report to the Joint Committee and to the Governor by September 30, 2000;

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* HB 2595 was recommended by the Committee.

- Consult and advise the Joint Committee, and any other legislative committee and the Governor with reference to the implementation, management, monitoring, maintenance, and operation of such consolidation of field services; and

- Make recommendations to the Joint Committee in regard to any needed legislation.

The Unified Field Services Commission would have ten members: the Chief Justice; the Secretary of KDOC; the Commissioner of the Juvenile Justice Authority (JJA); the Chief Court Service Officer; the Chairperson of the Kansas Parole Board; the Executive Director of the Kansas Sentencing Commission; the President of the Community Corrections Association; a facilitator from a community planning team; and two members of the Legislature, one from the House and one from the Senate. The Secretary of KDOC would be the Chair of the Commission. The provisions of HB 2398, regarding the Commission, would sunset on October 1, 2000.

HB 2398 would charge the Joint Committee on Corrections and Juvenile Justice Oversight with monitoring and reviewing the development of the plan for consolidation of field services which is developed by the Unified Field Services Commission. The Joint Committee would also be responsible for the introduction of legislation necessary in the implementation of the consolidation of field services. HB 2398 also amends KSA 46-4801 to extend the life of the Joint Committee on Corrections and Juvenile Justice Oversight until December 1, 2001.

The concept in HB 2398 is patterned after prior legislation for the Sentencing Commission (KSA 74-9101 *et seq.*), which provided that the Sentencing Commission would develop a sentencing guideline model. These recommendations resulted in the enactment of the Kansas Sentencing Guidelines Act (KSA 21-4701 *et seq.*).

Field Services Consolidation Issue in the 1990s

In 1991, the Kansas Legislature directed the Criminal Justice Coordinating Council (CJCC) to form a task force to study consolidation of field services. The task force consisted of 18 members, appointed as representatives of the Kansas Sentencing Commission, community corrections programs, parole services, and the courts. The task force conducted hearings and a state survey, and analyzed statistics, statutes, and descriptions of the current system. The task force's recommendation in January 1992 was for the consolidation of field services.

The CJCC presented the task force's report and recommendations to the 1992 Kansas Legislature. The report triggered among other things the passage of SB 479, which required the appointment of another task force to consider implementation of consolidation and a requirement which is codified as part of KSA 21-4727 as follows:

"On or before January 1, 1994, probation, parole and community corrections services shall be consolidated after review of the recommendation of a task force to be appointed by the Kansas Sentencing Commission."

The 1992 Interim Special Committee on Judiciary was charged to review the recommendations of the second task force which in December 1992, had also recommended consolidation, but proposed the consolidation to be placed under KDOC. The 1992 interim committee recommended that the 1993 Senate Judiciary Committee introduce a bill that reflected the second task force recommendations for the field services consolidation under KDOC.

The 1993 Senate Judiciary Committee introduced SB 21 which would have implemented the consolidation of field services, as directed by KSA 21-4727. The bill included provisions for consolidation of field services under KDOC with a revised implementation

date of July 1, 1994. Both houses of the 1993 Legislature passed SB 21, but a conference committee could not resolve House and Senate versions. Despite the language of KSA 21-4727, the 1993 Legislature failed to pass legislation to implement consolidation.

The Attorney General was asked to rule on the status of the consolidation language in KSA 21-4727, as related to the provision for consolidation. In Opinion No. 93-72, the Attorney General stated the following:

"The obvious intent of the consolidation provision in (KSA 21-4727) was that the legislature would review the recommendations of the second task force and pass legislation required to implement the consolidation . . . . This prerequisite never occurred and, therefore, the provision requiring the consolidation has no legal effect because legislation is necessary to implement any consolidation. Consequently, it is our opinion that in the absence of legislation implementing the consolidation of probation, parole and community correction services, the 'consolidation' provision (KSA 21-4727) is a nullity."

In November 1994, the Executive Director of the Kansas Sentencing Commission asked the Koch Crime Institute to review and make recommendations pertaining to the 1992 Task Force report. The Koch Crime Institute consulted with its Corrections Task Force and agreed to examine the report.

The Koch Crime Institute's Task Force on Corrections, Prisons, Jails, and Parole, under the leadership of the Secretary of KDOC, requested that the Institute retain a consultant to undertake the consolidation project review. The Kansas CJCC and KDOC supported the project.

The Koch Crime Institute contracted with MJM Consulting Services of Boulder, Colorado. MJM was directed to conduct a study of Kansas' field services and the feasibility of reorganization to improve their efficiency and effectiveness, and make recommendations detailing a method for any alterations needed. The consultant conducted a study of correctional field services in Kansas, provided an updated analysis of the current system, and made recommendations for improvements. The consultant's report was published as the *Kansas Field Services Consolidation*, in April 1996 after being released the previous December.

The *MJM Consulting Services Report* recommended the following:

"The administration of correctional field services in Kansas should be reorganized within the next two years. A central state office should be established, under the direction of a committee of the Criminal Justice Coordinating Council, which provided state oversight of state-funded, county-managed field services agencies."

"A field services transition team should be formed by September 1996. If reorganization is adopted by the Legislature, the committee will assist in transition planning. If reorganization is not enacted, the committee should be formed and function as an interagency, organization team to plan for fuller collaboration and coordination among field services systems."

While the report recommended a centralized state office under the direction of the CJCC, it also suggested that other options were available.

The CJCC declined to act on the consultant's report indicating that they did not envision themselves as a management entity. Shortly thereafter the Chief Justice of the Kansas Supreme Court and Secretary of KDOC appointed a joint Field Services Coordination Committee to identify and implement measures to increase efficiency and effectiveness of field services in lieu of consolidation.

In January 1997, the Field Services Coordination Committee generated a report focusing on identification of a lead agency in cases

of multiple supervision; cooperative training, uniform offender risk/needs instrument; interagency transfer criteria; uniform database; and offender assignment staffing conferences. A uniform database was established for community corrections and parole services and substantial progress has been made toward validating risk/needs instruments for those two entities.

In January 1998, KDOC's ten-year corrections master plan recommended field services unification through establishment of local and regional community supervision departments to plan, develop, operate, and evaluate community supervision services for one or more counties. In December 1998, the Koch Crime Institute issued a White Paper Report entitled *Kansas Field Services Consolidation Report* noting that consolidation has been repeatedly recommended and that a decision to either consolidate or streamline the current organizational structure needs to be made.

Field Services Review

Parole. KDOC parole officer staffing statewide consists of 11 Parole Supervisors; 29 Parole Officer IIs; and 79 Parole Officer Is. The average caseload is 62 offenders. Only Parole Officer Is and IIs have caseloads. As of December 31, 1998, the in-state parole population numbered 5,764 with 4,585 being Kansas offenders and 1,179 offenders from other states supervised as a result of an interstate compact. The total parole budget for FY 1999 was $97 million.

Community Corrections. The FY 1999 expenditures for community corrections grants are estimated at $14,093,638 which does not include Byrne Grant match funds of $220,393; condition violator grant funds of $700,000; or substance abuse and mental health grant funds of $250,000. The average daily population of adults supervised by local community corrections programs for FY 1998 was 4,535 and for adults at the Sedgwick and Johnson County residential centers, 184. There are approximately 220 community corrections officers with caseloads.

Court Services Officers. A total of 342 court services officers are employed by the Kansas Judicial Branch. The total includes all court services officers and supervisors. In FY 1999, court services officers undertook the supervision of a total of 20,010 adult felony, misdemeanor, and traffic cases, and a total of 7,724 juvenile cases. court services officers perform a variety of other functions in addition to supervision. Statewide, court services officers collected approximately $2.8 million in restitution for victims of crimes during that same time period, and prepared a total of 29,977 reports to the court in criminal cases (including presentence investigation, transfers reports, violation investigations, and progress reports, among others). In domestic cases, they prepared a total of 7,190 reports to the court, providing services to judges in child custody, visitation, and divorce cases. A total of 1,231 diversion cases required investigative and supervision services from court services officers, and court services officers monitored 669 interstate compact cases. The FY 1999 budget cost for salaries and wages for all court services officers was $12,919,626, including fringe benefits and family health insurance. Other operating expenses for court services officers are paid by the counties.

COMMITTEE ACTIVITIES

The Committee heard from representatives of KDOC, the Kansas Sentencing Commission, the Kansas Parole Board, the Office of Judicial Administration, the Kansas Association of Court Services Officers, the Kansas JJA, the Kansas District Judges Association, the Kansas Community Corrections Association, the Koch Crime Commission, a regional supervisor of the Missouri Probation and Parole Board, the Sedgwick County Corrections Advisory Board, several parole officers,

several district court judges, a second community corrections director, and Representative Shari Weber.

Consolidation of field services was supported by representatives of the Kansas Sentencing Commission, the Kansas Parole Board, the Koch Crime Commission, the Missouri Probation and Parole Board regional administrator, the director of the Emporia Court Services and Community Corrections program, the Kansas Community Corrections Association (under an independent field service agency), and Representative Shari Weber.

Consolidation was opposed by the Kansas Association of Court Services Officers. The representative of the Sedgwick County Community Corrections Advisory Board opposed consolidation under KDOC unless some mechanism was provided for local needs to be considered. The representative of the Office of Judicial Administration opposed consolidation under the Judicial Branch. The representatives of the Kansas District Judges Association recommended that the community corrections program be abolished and that all adult felony probationers be placed under the direction of the local judicial district with adequate funding for added court services officers.

Conclusions and Recommendations

The Committee recommends a bill to repeal the portion of KSA 21-4727 which contains a directive that probation, parole, and community corrections services shall be consolidated on or before January 1, 1994. The Committee believes it is time to put the consolidation of services issue aside due to the inability of the parties involved to arrive at a consensus on the need for consolidation or how best to achieve it.

The Committee also recommends that the appropriate committees of the 2000 Legislature more fully investigate the following recommendations proposed during the interim:

- Clarify the responsibilities of the community corrections program to require that these programs focus solely on providing intermediate sanctions programs for offenders as a stage between probation and prison. Define the offender populations that should utilize the community corrections programs to determine the high risk probationers. Change the name of this program to "regional intermediate sanction" programs for Kansas.

- Add 50 more court services officers in Kansas to meet public safety needs.

- Fund the pay reclassification plan proposed by the Kansas Association of Court Services Officers and establish a court services supervision fee to help fund this plan.

- Consider the idea of abolishing community corrections programs and requiring that all felony probation supervision be placed under court services officers.

UNIFORM COMMERCIAL CODE

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends the 2000 Legislature enact provisions of SB 366 with the exception of any provisions in the bill which may affect statutory agricultural liens. The Committee further recommends that the Senate Judiciary Committee appoint a subcommittee to review the issue of whether the current law regarding agricultural liens should be changed as proposed in the revision to Article 9 as recommended by the National Conference of Commissioners on Uniform State Laws.

BACKGROUND

SB 366, introduced on the last day of the 1999 Legislative Session, incorporates major revisions to Article 9 of the Uniform Commercial Code recommended in 1998 by the National Conference of Commissioners on Uniform State Laws. The changes are intended to address the fact that paper-based commercial transactions are giving way to electronic transactions; that filing systems need to be revised to handle increased volumes; that new kinds of property and transactions need to be recognized in the law; that statutory nonpossessory liens have proliferated and need to be dealt with in the Article 9 context; that certain rules of Article 9 need to be clarified; that certain consumer issues need to be addressed in Article 9; and that amendments to Article 9 in the various states have created differences that impair interstate transactions.

Summary of Major Changes to Article 9 by the Uniform Law Commissioners

The Scope Issue. The 1998 revision expands the "scope" of Article 9 by increasing the kinds of property in which a security interest can be taken by a creditor. New kinds of collateral that are included in revised Article 9 include: sales of payment intangibles and promissory notes; security interests created by governmental debtors; health insurance receivables; consignments; and commercial tort claims. Also, certain other kinds of transactions now will come under Article 9 such as nonpossessory, statutory agricultural liens for determination of perfection and priority.

Perfection. Filing a financing statement remains the dominant way to perfect a security interest in most kinds of property. It is made clearer in the revised Article 9 that filing a financing statement will perfect a security interest, even if there is another method of perfection. "Control" is made the method of perfection for letter of credit rights and deposit accounts, as well as for investment property. Control was available only to perfect security interests in investment property under old Article 9. A creditor has control when the debtor cannot transfer the property without the creditor's consent. Possession, as an alternative method to filing a financing statement to perfect a security interest, is the only method for perfecting a security interest in money that is not proceeds of a sale from property subject to a security interest. Automatic perfection for a purchase money security interest is increased from ten days in old Article 9 to 20 days in revised Article 9.

Choice of Law. In interstate secured transactions, it is necessary to determine which state's laws apply to perfection, the effect of perfection, and the priority of security interests. The 1998 revisions to Article 9

make two fundamental changes from old Article 9. In old Article 9, the law of the state in which the collateral is found is made the law that governs perfection, effect of perfection, and a creditor's priority. In revised Article 9, the new rule chooses the state that is the location of the debtor. Further, if the debtor is an entity created by registration in a state, the location of the debtor is the location in which the entity is created by registration.

The Filing System. Improvements in the filing system are made in the 1998 revisions to Article 9 which include a full commitment to centralized filing—one place in every state in which financing statements are filed, and a filing system that transforms filing from the world of filed documents to the world of electronic communications and records. Under revised Article 9, the only local filing of financing statements occurs in the real estate records for fixtures. Fixtures are items of personal property that become physically part of the real estate, and are treated as part of the real estate until severed from it. It is anticipated that electronic filing of financing statements will replace the filing of paper. Paper filing of financing statements is already disappearing in many states, as revised Article 9 becomes available to them. Revised Article 9 definitions and provisions allow this transition from paper to electronic filing without further revision of the law. Revised Article 9 also makes filing office operations more ministerial since the office that files financing statements has no responsibility for the accuracy of information on the statements and is fully absolved from any liability for the contents of any statements received and filed. Finally, there is no signature requirement, for example, for a financing statement.

Consumer Transactions. Revised Article 9 makes a clearer distinction between transactions in which the debtor is a consumer. Enforcement of a security interest that is included in a consumer transaction is handled differently in certain respects as a result. Examples of consumer provisions are: a consumer cannot waive redemption rights in a financing agreement; a consumer buyer of goods who prepays, in whole or in part, has an enforceable interest in the purchased goods and may obtain the goods as a remedy; a consumer is entitled to disclosure of the amount of any deficiency assessed against him or her, and the method for calculating the deficiency; and, a secured creditor may not accept collateral as partial satisfaction of a consumer obligation, so that choosing strict foreclosure as a remedy means that no deficiency may be assessed against the debtor. Although it governs more than consumer transactions, the good faith standard becomes the objective standard of commercial reasonableness in the 1998 revisions to Article 9.

Default and Enforcement. Article 9 provisions on default and enforcement deal generally with the procedures for obtaining property in which a creditor has a security interest and selling it to satisfy the debt, when the debtor is in default. Normally, the creditor has the right to repossess the property. Revised Article 9 includes new rules dealing with "secondary" obligors (guarantors), special rules for some of the new kinds of property subject to security interests, new rules for the interests of subordinate creditors with security interests in the same property, and new rules for aspects of enforcement when the debtor is a consumer debtor. Some of the new rules include: a secured party (creditor with security interest) is obliged to notify a secondary obligor when there is a default, and a secondary obligor generally cannot waive rights by becoming a secondary obligor; a secured party who repossesses goods and sells them is subject to the usual warranties that are part of any sale; junior secured creditors (subsequent in priority) and lienholders who have filed financing statements, must be notified when a secured party repossesses collateral; and, if a secured party sells collateral at a low price to an inside buyer, the price that the goods should have obtained in a commercially reasonable sale, rather than the actual price, is the price that will be used in calculating the deficiency.

COMMITTEE ACTIVITIES

The Committee heard testimony from representatives of the National Conference of Commissioners on Uniform State Laws, the Kansas Secretary of State's Office, and the Kansas Bankers Association. In addition, a University of Kansas law professor testified and written testimony was submitted by a Kansas expert in Article 9 matters who now practices law in Washington, D.C.

The representative of the Uniform Law Commissioners said six states had adopted the 1998 revision of Article 9. He said the revisions reflect a great advance in these areas of the law and that it was the goal that all states adopt the revisions to Article 9 by July 1, 2001. He gave a detailed explanation of the major suggested changes.

The Secretary of State's Office representative supported the revisions. Note was made that the revision does not require signatures on filings and it was suggested that nonconsensual and unauthorized filings may result. The revision sets out performance standards for the central filing office which the representative said could be met including the two-day time limit in responding to information requests approximately 80 percent of the time if the office implements an imaging system by the effective date of the bill.

The representative of the Kansas Bankers Association said that certain minor changes to the revision may be needed.

The University of Kansas law school professor said that if the revision is adopted agricultural lien statutes will become obsolete and that it is not clear what impact the suggested changes may have on the amount of credit that financiers make available to agricultural producers. He also discussed the Model Production-Money Security Interests law that is attached to the 1998 suggested revisions. No consensus was reached by the Uniform Law Commissioners on this latter issue, so it was included as a model law.

The Washington D.C. attorney in written testimony endorsed the revision and urged the Legislature to adopt the proposed changes.

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends the 2000 Legislature enact provisions of SB 366 with the exception of any provisions in the bill which may affect statutory agricultural liens. The Committee further recommends that the Senate Judiciary Committee appoint a subcommittee to review the issue of whether the current law regarding agricultural liens should be changed as proposed in the revision to Article 9 as recommended by the National Conference of Commissioners on Uniform State Laws.

MECHANICS LIENS*

CONCLUSIONS AND RECOMMENDATIONS

The Committee concluded that current law regarding the time to file a mechanics lien needs to be changed regarding commercial property. The Committee recommends passage of a bill that would extend the filing time for the commercial property to six months.

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* HB 2594 was recommended by the Committee.

BACKGROUND

Under KSA 60-1102 there are four months from the date materials, equipment, or supplies are used, consumed, or furnished for a contractor to file a lien on real property. The four-month time limit also applies to the date when labor was last performed. Subcontractor liens, KSA 60-1103, must be filed within three months after the date supplies, materials, or equipment were last furnished or labor performed by the claimant. According to the decision in *Security Benefit Life v. Fleming Companies, Inc.*, 21 KanApp 841 (1996), the test to determine when a piece of work is completed thereby thus starting the time running for filing a lien under KSA 60-1101 *et seq.*, is "whether the unfinished work was a part of the work necessary to be performed under the terms of the original contract to complete the job and comply in good faith with the requirements of the contract."

COMMITTEE ACTIVITIES

The Committee held a hearing on the topic to investigate the possibility of extending the time frame for filing mechanics liens.

Several conferees testified in support of the extension for filing to 180 days or six months in the commercial construction arena. Those who testified in favor of the six-month filing period included a Kansas City, Missouri attorney, representatives of Western Extralite Company and Continental Grain. A letter of support was received from an official with the National Association of Credit Management.

A delegate with the Kansas Building Industry Association indicated the residential construction industry is not in favor of an extended time for filing a mechanics lien. An official with the Kansas Land Title Association stated the current law is balanced between the rights of contractors and subcontractors and an extended filing time would cause uncertainty regarding titles to real estate. The conferee representing MidAmerica Lumbermen's Association indicated the Association has not taken a formal position on extending the time frame to file a mechanics lien.

CONCLUSIONS AND RECOMMENDATIONS

After discussion and deliberation on the topic of extending the time to file mechanics liens, the Committee reached the conclusion that the time frame for filing a mechanics lien should be extended to six months for commercial property. A bill that reflects this change is recommended for passage to the 2000 Legislature.

INTERNET ISSUES, INCLUDING PRIVACY, USE OF ALIASES, STALKING, AND DISPENSING OF DRUGS*

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends a bill that would add computer crime to the list of crimes under KSA 22-3101 dealing with prosecutor inquisitions where the Attorney General or county or district attorney is authorized to issue subpoenas to investigate alleged commission of these crimes.

The Committee recommends a bill that would add the crime of using a computer for the purpose of indecent solicitation of a child and aggravated indecent solicitation of a child to current law (KSA 21-3510 and KSA 21-3511) and would create the new crime of electronic harassment.

The Committee also recommends a bill that would address the sale of prescription drugs over the Internet.

BACKGROUND

Senator Brownlee requested an interim committee study Internet issues dealing with privacy, use of aliases, stalking, and dispensing of drugs over the Internet.

Concerns have been raised regarding private and confidential information that is electronically collected, shared, and disseminated by government and private entities, in their daily business activities. For example, in the private sector, some banks sell collected confidential account information to Internet telemarketing groups who in turn contact the consumer trying to sell financial products such as insurance and securities. Also, many companies who sell goods and services to consumers often collect information on the buying habits of its customers, *e.g.*, music preferences, and then sell this information to telemarketing companies. Concerns also have been expressed about the kinds and quantity of information that should be collected, shared, and distributed by government and private entities, and whether there should be laws allowing individuals to have the right to "opt-in" or "opt-out" of such information gathering and distribution.

Additional concerns have been raised about how easy it is to have access to personal information about individuals and whether protections should be in place to deter criminal elements from using such information for criminal purposes.

Current Criminal Provisions Dealing with Computer Crimes and Related Issues

Computer crime is defined in KSA 21-3755 as intentionally and without authorization, accessing, damaging, modifying, or other means of taking possession of a computer, computer system, or computer network and using such entities with the intent to defraud or obtain things of value by false

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* SB 384, SB 385, and SB 386 were recommended by the Committee.

or fraudulent means. Computer crime is a severity level 8 nonperson felony.

The law also prohibits the unauthorized or intentional disclosure of a computer password or other means of access to a computer or computer network.

Computer password disclosure is a class A nonperson misdemeanor. Computer trespass is defined under computer crime as intentionally or without authorization accessing or attempting to access any computer or computer system. Computer trespass is a class A nonperson misdemeanor. Current computer crime law provisions do not address accessibility to private and confidential information on the Internet.

KSA 21-3510 and KSA 21-3511 prohibit acts of, and impose penalties for, indecent solicitation of a child and aggravated indecent solicitation of a child, respectively; however, neither statute deals specifically with computer on-line solicitation of a child. A perpetrator can communicate with a potential victim via the computer while assuming an anonymous identity and may eventually convince the victim to meet the perpetrator in order to satisfy that person's sexual gratification.

Also, anonymity of the Internet provides opportunities for would-be cyber-stalkers from revealing their true identities. Current Kansas law (KSA 21-3438) defines and establishes penalties for stalking, but the law does not address cyber-stalking. In addition, Kansas has a law which addresses harassment using technological devices such as facsimile machines (KSA 21-4113), but does not have a law that addresses harassment by electronic mail.

Further, KSA 22-3101, dealing with prosecutor inquisitions grants subpoena powers to the Attorney General, county and district attorneys if they are aware of alleged violations pertaining to gambling, intoxicating liquors, racketeering, and other acts in the state. However, this subpoena power authority does not apply to computer crime investigations.

Drug Dispensing and the Internet

There have been three lawsuits filed by the Attorney General's Office in the State of Kansas against doctors and pharmacies who prescribe and dispense prescription drugs over the Internet. Consumers in Kansas may obtain drugs prescribed by physicians and dispensed by pharmacies that are not registered with the Kansas Board of Healing Arts. The consumer who obtains drugs over the Internet is not required to have a physical examination or complete case history. Prescribed medicines obtained over the Internet may be dangerous to the health of the consumer. The Attorney General, who enforces the pharmacy and medical practice law protecting consumers, may not be able to prosecute doctors and pharmacies conducting such business if those entities are not located within the State of Kansas.

COMMITTEE ACTIVITIES

The Committee heard testimony from the State Policy Director of Internet Alliance, a trade association which serves as a resource for industry and for legislators who seek to regulate the governance of the Internet. The Director recommended that the Committee incorporate two Internet sites as part of the Kansas site to enable the state to better protect citizens' privacy.

Representative Jim Morrison recommended the encryption of private and confidential information on the Internet. He testified that current law does not protect the consumer from Internet "hackers" obtaining confidential information from the Internet.

A police sergeant from the Overland Park Police Department and a detective from the Olathe Police Department recommended creating statutory laws and penalties to address on-line indecent solicitation of children, cyber-stalking, e-mail harassment, and

the deliberate introduction of computer contamination such as viruses. They also recommended funding of a multi-jurisdictional task force to fight high technology crime.

Conferees from the Kansas Pharmacists Association, the Kansas Medical Society, and the Consumer Protection Division of the Attorney General's Office recommended enactment of state legislation similar to proposed federal legislation that would require Internet pharmacies and physicians providing Internet prescriptions, to disclose specific information prior to dispensing and prescribing drugs over the Internet. In addition, they recommended requiring physicians to meet all the necessary requirements applied to physicians practicing in the State of Kansas.

The Committee recommended that conferees draft specific recommendations for the Committee to discuss at its November 22, 1999 meeting.

Conclusions and Recommendations

The Committee recommends the introduction of a bill to the 2000 Legislature that would add computer crime to the prosecutorial inquisition law. The bill would authorize the Attorney General, county and district attorney to issue subpoenas compelling testimony regarding the possible commission of computer crimes in addition to other crimes listed in the law.

The Committee also recommends a bill be introduced to the 2000 Legislature that would add the crime of using a computer for the purpose of indecent solicitation of a child and aggravated indecent solicitation to current law (KSA 21-3510 and KSA 21-3511). The bill also would create the new crime of electronic harassment.

Indecent solicitation of a child using a computer system would be a severity level 6 person felony crime. The crime of aggravated indecent solicitation of a child would be a severity level 5 person felony. The crime of electronic harassment would be a severity level 10 nonperson felony if there is a threat of physical injury or damage to property. It would be a class A misdemeanor if the electronic harassment was obscene, lewd, lascivious, filthy, or indecent.

The Committee recommends a bill be introduced to the 2000 Legislature that would address the sale of prescription-only drugs on the Internet. The bill would be cited as the Kansas Internet Pharmacy Consumer Protection Act, and it would be part of the Kansas Consumer Protection Act.

The bill would require disclosure of the name, address, and phone numbers of persons and companies selling prescription drugs on the Internet, the name of each individual pharmacist serving on the website, and the license number and registration number issued by the Kansas Board of Pharmacy. The bill also applies to electronic mail or email solicitations and sales of prescription-only drugs.

Finally, provisions in the bill would make a violation of this proposed act, a violation of the Board of Pharmacy Act and the Kansas Board of Healing Arts Act.

IDENTITY THEFT AND PRIVACY ISSUE*

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends a bill to update the Kansas Fair Credit Reporting Act (KFCRA) by incorporating the provisions of the federal Fair Credit Reporting Act (FCRA) into the Kansas Act.

The Committee recommends a bill to upgrade the crime of identity theft (KSA 21-4716) from a class A misdemeanor to a level 7 person felony and add language to allow a sentencing judge to depart from the presumptive sentencing guidelines if the degree of economic harm or loss attributed to the conviction was significantly greater than normal for such an offense.

BACKGROUND

In 1998, HB 2739 was enacted which made the crime of identity theft a class A person misdemeanor. As the bill was introduced it would have made the crime a severity level 10 person felony (KSA 21-4018). Identity theft, as defined by this statute, is "knowingly and with intent to defraud for economic benefit, obtaining, possessing, transferring, using or attempting to obtain, possess, transfer or use, one or more identification documents or personal identification number of another person other than that issued lawfully for the use of the possessor."

Typically, a criminal will use a victim's personal information, *e.g.*, Social Security number, date of birth, or mother's maiden name, to fraudulently establish credit, run up debt, or take over existing financial accounts. Victims of identity theft usually become aware of their losses when they receive a poor credit report, and often they have a difficult time clearing these reports. In response to this growing problem in Kansas and nationwide, Senator Stan Clark and Representative Bonnie Sharp requested this interim study. Identity theft can be dealt with under both civil and criminal law. The Kansas Attorney General's Office investigates identity theft criminal complaints, but prosecution of violators is difficult because identity theft is only a class A misdemeanor.

Kansas Fair Credit Reporting Act

Under the KFCRA, KSA 50-701 *et seq.*, consumer reporting agencies are required to assemble and evaluate: credit worthiness, credit standing, credit capacity, character and general reputation of consumers, and to adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to confidentiality, accuracy, relevancy, and proper use of such information. When KFCRA was enacted in 1973, it was never contemplated that problems would arise regarding identity theft. KFCRA currently is enforced by the Kansas Consumer Credit Commissioner and Office of the Kansas Bank Commissioner. The KFCRA which was based upon the federal FCRA, has not been amended since its enactment in 1973.

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* SB 383 was recommended by the Committee. Other proposed legislation was not available at time of publication.

Federal Fair Credit Reporting Act

The federal FCRA, 15 USC Section 1681-601 *et seq.*, was enacted in 1971, and was amended to authorize the Consumer Protection Division of the state Attorney General's Office to enforce the federal act in 1997. The federal FRCA sets damages of not more than $1,000 for each willful or negligent violation.

COMMITTEE ACTIVITIES

The Committee heard from Senator Clark who testified that credit reporting firms have reported fraud inquiry increases from less than 12,000 in 1992, to more than 500,000 a year today. In addition, he said the cost of investigating identity theft fraud cases has increased from $450 million in 1996 to $745 million in 1997. The senator recommended amending the KFCRA to make credit reporting agencies more accountable for notifying consumers of negative information added to their credit reports, to require credit reporting agencies to provide consumers with a yearly free copy of their credit report, to require credit reporting agencies to notify consumers if any negative credit information would occur, to provide a better mechanism for consumers to correct credit reports, and to adopt stricter penalties for credit reporting agencies that do not comply with correction procedures. Many of these recommendations also were recommended by the Acting Deputy Commissioner of the Office of the State Banking Commissioner. The senator also recommended that the Committee determine if the enforcement of the KFCRA should be transferred from the Office of the Banking Commissioner to the Consumer Protection Division of the Attorney General's Office.

Two individuals, who were victims of identity theft, provided the Committee with their personal stories of problems they incurred trying to clear their credit ratings and their efforts to get their lives back in order as a result of identity theft.

The Committee also heard from the Johnson County District Attorney, and an Assistant District Attorney from Wyandotte County, two representatives from the Attorney General's Office, and Representative Bonnie Sharp.

All conferees recommended that penalties associated with identity theft be strengthened from a misdemeanor, to a person felony crime. Recommendations also were made by some conferees to update the KFCRA by incorporating the provisions of the federal act into the Kansas act.

The Committee requested the Attorney General's Office to report back to the Committee at its November 3, 1999, meeting with proposed language that would update the KFCRA by incorporating language from the federal Fair Credit Reporting Act and would take into consideration the recommendations made by the conferees. At the November meetings the Committee reviewed the proposed language presented by representatives from the Attorney General's Office. The Committee recommended a bill be drafted, incorporating that language, for discussion at its November 22, 1999, meeting.

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends a bill to be considered by the 2000 Legislature that would update the KFCRA by incorporating the provisions of the federal FCRA into the Kansas act. The major provisions of the federal act include: requiring a consumer reporting agency to furnish consumer reports on request by the head of a state or local child enforcement agency or an agency administering a state-modified child support system; requiring a consumer reporting agency to furnish and disclose consumer reports for specific employment purposes and conditions; providing for "opting-out" provisions by the consumer for reports released in connection with credit or insurance transactions; prohibiting consumer reporting agencies from disclosure of investigative con-

sumer reports to persons requesting such reports under certain conditions; prohibiting the reselling of consumer reports except as stated in the act; allowing the consumer one free consumer report a year; providing procedures to resolve cases of disputed accuracy of consumer credit reports; and providing penalties for violation of the act.

The act establishes the Attorney General's Office as the agency to enforce the KFCRA.

The Committee recommends upgrading the crime of identity theft from a class A misdemeanor to a level 7 person felony.

The Committee recommends adding language to KSA 21-4716 that would allow a sentencing judge to depart from the presumptive sentencing guidelines if the degree of economic harm or loss attributed to the conviction was significantly greater than normal for such an offense.

JURY DUTY AND PHYSICIANS

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends no changes be made at this time.

Note: See the Conclusions and Recommendations section of the study entitled Citizens Justice Initiative regarding jury panels in this publication. The recommendation in that report would implement a one day/one jury policy.

BACKGROUND

A Leawood physician who practices in Missouri appeared before the Committee to request a mandatory exemption from jury duty for doctors in Kansas. In Kansas the statutes involved include KSA 43-155 which states that jury service is a solemn obligation of all qualified citizens and that all litigants entitled to trial by jury shall have a right to juries selected at random from a fair cross section of the community in the district where the court is located and that all citizens must have the opportunity for services on juries in Kansas. For these reasons, under KSA 43-158 the only persons mandatorily excluded from jury duty include the following:

- persons unable to understand the English language proficiently enough to respond to a jury questionnaire;
- persons who are incompetent; and
- persons who, within the past ten years, have been convicted of or pleaded guilty or *nolo contendere* to a felony.

KSA 43-159 contains provisions for court discretion in excusing the following persons from jury duty:

- Persons so physically or mentally infirm as to be unable to perform the tasks involved in jury duty;
- Persons who have served as a juror in the county during the last year immediately preceding;
- Persons whose presence is required elsewhere for the public welfare, health, or safety;

- Persons for whom jury service would cause extraordinary or compelling personal hardships; and

- Persons whose personal relationship to the parties or whose information or interest in the case is such that there is a probability such persons would find it difficult to be impartial.

Committee Activities

A hearing was held on the issue to explore the possibility of allowing a mandatory exemption for physicians. The doctor from Leawood indicated that the mere fact of being called for jury duty can cause doctors to cancel appointments. A district court judge indicated that judges try their best to accommodate doctors on the issue of jury service. The judge recommended exclusions for physicians need to be determined on a case-by-case basis. The district court judge also discussed the practice in many courts to excuse potential jurors when the juror has been called as a juror during the previous year. A conferee representing the Kansas Medical Society indicated the Society does not support the mandatory exemption for physicians but instead, the discretion needs to be left to the judges.

Conclusions and Recommendations

The Committee recommends no changes be made at this time.

Note: See the Conclusions and Recommendations section of the study entitled Kansas Citizens Justice Initiative regarding jury panels in this publication. The recommendation in that report would implement a one day/one jury policy.

KANSAS CITIZENS JUSTICE INITIATIVE*

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends the introduction of a concurrent resolution to amend the Kansas Constitution to require the nonpartisan selection of district court judges statewide.

The Committee recommends a bill to establish a Kansas Judicial Evaluation Commission which would prepare and make available to the public evaluations of each judge prior to each judicial retention election.

The Committee recommends that a bill be introduced to expand the Kansas Court of Appeals from 10 to 14 members.

The Committee recommends a bill to provide for a mandatory exclusion from jury service for any person who has been called to jury duty within the past 12 months and which would implement a one day/one jury service system whereby a person would only need to report for jury duty on the first day specified and if the person was not placed on a jury at the time then the person would be dismissed and not be subject to any further jury service obligation.

Further, the Committee endorses the idea of establishment a unified family court system.

The Committee also urges the 2000 Legislature to enact HB 2450 which would provide for the Judicial Branch to submit its budget directly to the Legislature without first submitting it to the Executive Branch for evaluation and recommendation.

Finally, the Committee recommends that the appropriate standing committees of the 2000 Legislature review the Kansas Citizens Justice Initiative recommendations regarding district magistrate judges; allocation of judicial resources; judicial branch compensation issues; technology issues; and the creation of a Child Protection Authority.

BACKGROUND

The Special Committee on Judiciary was assigned to review the recommendations of the Kansas Citizens Justice Initiative, a product of the Kansas Justice Commission. The final report of the Commission was approved on June 11, 1999.

Kansas Citizens Justice Initiative

The Kansas Citizens Justice Initiative was authorized by order of the Supreme Court of Kansas on June 3, 1997. Members of the Kansas Justice Commission were appointed to undertake the Initiative's work by Chief Justice Kay McFarland of the Kansas Supreme Court, Governor Bill Graves, and the leaders of the Judiciary committees of the Kansas Legislature. In all, 46 members were appointed, including co-chairs Jill Docking of

* Proposed legislation was not available at time of publication.

Dean Michael Hoeflich of the University of Kansas School of Law.

The Commission was charged by the Chief Justice to inquire into the state of the justice system in Kansas and to make recommendations as to its improvement. Funds for the expenses of the Commission have been provided by grants and private donations. No public funding supported the Commission's work.

The Commission met for the first time on September 29, 1997. This meeting was followed by subsequent meetings of the whole Commission on February 9, May 18, October 12, November 16, and December 14 of 1998, and February 15, March 26, and April 23 of 1999.

The Commission engaged the Docking Institute of Fort Hays State University to provide technical support for the Commission and to prepare and administer two surveys for the Commission evaluating the Kansas judicial system. The first of these surveys was of Kansas citizens randomly selected by the Docking Institute. There were 1,226 of the surveys returned. The second survey was of Kansas lawyers and judges—435 lawyers and 191 judges returned the survey. The results of these two surveys were presented to the Commission at its meeting on May 18, 1998. In addition, the Commission held a number of public hearings evaluating the Kansas judicial system throughout the state hosted by Commission members. Hearings were held at Topeka, Leavenworth, Junction City, Wellington, Wichita, Lecompton, Iola, Pittsburg, Hutchinson, Hays, Independence, Kansas City, Overland Park, and Olathe. The communities of Garden City, Dodge City, Liberal, and Pratt had public hearings together through videoconferencing technology. All of these public hearings occurred during the period of October through December 1997. Nearly 600 Kansans attended the hearings and more than 125 individuals submitted written comments. The results of the various hearings were presented to the Commission at its meeting on February 9, 1998. All of the submissions made to the Commission as a result of the public hearings are on deposit at the Docking Institute.

After the public hearings and the surveys were completed, the Commission divided itself into five committees in order to prepare preliminary recommendations and rationales therefore. The committees were chaired by the Honorable Steve Leben, the Honorable Nelson Toburen, Ms. Gloria Farha Flentje, Mr. John Jurcyke, Jr., and Ms. Marilyn Scafe. The reports of these committees were presented to the Commission at its meetings in October and November 1998 and its meetings in February and March 1999. During the course of these four meetings, the Commission as a whole discussed and voted upon the recommendations and rationales developed by the committees. In January 1999, the reporters presented to the Commission an "interim report" on recommendations discussed and approved by the Commission during 1998. At its meeting in March 1999, the Commission finished the preliminary approval process of the various committee reports and directed the reporters to prepare a draft incorporating all of the recommendations and rationales approved by the Commission. That draft was presented to the Commission at its meeting on April 23, 1999, at which various amendments were approved. The draft final report adopted at that meeting was then submitted to the general public for written comment. Public comments were considered at the Commission's final meeting on June 11, 1999, in Wichita.

The final report contains 23 recommendations, some of which require action by the Kansas Supreme Court, the Kansas Legislature, or by the Kansas Bar Association and other groups.

Commission Recommendations Requiring Action by the Kansas Legislature

The following are nine recommendations of the total of 23 recommendations made by the Commission that will require legislative

action to implement. The Commission's numbering of the recommendations is retained for sake of clarity.

Recommendation 1: Methods of Selecting and Evaluating District Court Judges

(a) Kansas should adopt a constitutional amendment to provide a uniform method of nonpartisan selection of district court judges statewide.

(b) To increase the information available to voters, the constitutional amendment adopting non-partisan selection of district court judges should authorize creation of a Kansas Judicial Evaluation Commission. The Commission would prepare and make available to the public evaluations of each judge prior to each judicial retention election. The Commission should include lawyer and non-lawyer members, appointed in equal numbers by the Governor and by the Kansas Supreme Court.

Recommendation 4: District Magistrate Judges.

(a) The position of District Magistrate Judge should be retained and the current training program should be maintained.

(b) District Magistrate Judges should be required to have a bachelor's degree but this requirement should apply only to new District Magistrate Judges selected after a date determined by the Legislature.

(c) The jurisdiction of District Magistrate Judges should be expanded in felony cases, when approved by the Chief Judge of the district, to include arraignments, pleas, and orders for pre-sentence investigations.

Recommendation 5: Allocation of Judicial Resources.

(a) The Legislature should fund the court system adequately. On the issue of one county, one judge, there is no need to require one judge to reside in each county for Kansas to have a properly functioning judicial system that provides all citizens, wherever located, adequate access to the courts and delivery of high quality justice. It is sufficient to require that every county have a judge assigned to the county and that specified services be available at the courthouse. Judges may be assigned so that they serve more than one county. However, the Legislature may choose to retain the requirement of a resident judge in each county for political, social, or other reasons. Such a choice should be made only if the Legislature provides funding for additional judges and nonjudicial personnel.

(b) The Kansas Supreme Court should be granted authority to allocate all judicial resources, including the location of judges and judges' offices where the one county, one judge requirement is not implicated.

(c) The Legislature should fund a weighted caseload study as suggested by the Legislative Post Audit report.

Recommendation 6: Compensation of Judges and Non-Judicial Personnel.

(a) The salaries of Kansas judges, both trial and appellate, should be increased by $10,000 ($5,000 for magistrates) beyond current salaries, in addition to any cost-of-living increases that otherwise will be given to government employees.

(b) The salary for the Chief Judge in each judicial district should be set halfway between that of a regular district judge and that of a member of the Kansas Court of Appeals.

(c) The number of non-judicial personnel should be increased to reflect increased caseloads. Historic staff turnover rates should be used in funding non-judicial personnel budgets. Increases to competi-

tive levels of compensation needed to reduce staff turnover should be implemented immediately and a study of compensation for unclassified non-judicial personnel should be completed.

Recommendation 7: Appellate Court.

(a) The Court of Appeals should be increased in size from ten to 14 judges.

(b) The number of research attorneys for each Justice of the Kansas Supreme Court and for the Court of Appeals Central Staff should be increased to meet needs.

(c) The Legislature should authorize a study to determine whether the Court of Appeals should have authority to decline to consider certain appeals.

Recommendation 8: Judicial Notes.

"Judicial notes" describing the impact legislation will have upon the operations and caseloads of the courts should accompany proposed legislation.

Recommendation 9: Technology.

Funds should be appropriated to provide the courts with modern technology required for them to function effectively. Systems should be compatible among counties in multiple county districts and among districts to the extent possible.

Recommendation 10: Unified Family Courts.

Unified family courts should be evaluated, beginning with pilot programs in designated districts, to improve the quality of justice and to increase public access to and satisfaction with the court system.

Recommendation 11. Child Protection Authority.

A Child Protection Authority should be created to provide better access to children's services.

COMMITTEE ACTIVITIES

The Committee heard from five representatives of the Kansas Citizens Justice Initiative including former Governor Bennett and Ms. Docking, who presented the recommendations of the Commission to the Committee. Other conferees included a representative of the Office of Judicial Administration who expressed gratitude for the hard work and efforts of the Commission, saying it had provided a fresh look at the Judicial Branch. The conferee also noted the Supreme Court already had implemented some of the Commission's recommendations.

A resident of Wichita supported, among other recommendations, No. 10 which calls for a unified family court. A representative of the National Congress for Fathers and Children also appeared and supported the recommendations.

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends the introduction of a concurrent resolution to amend the Kansas Constitution to require the nonpartisan selection of district court judges statewide.

The Committee recommends a bill be drafted to establish a Kansas Judicial Evaluation Commission which would prepare and make available to the public evaluations of each judge prior to each judicial retention election.

The Committee recommends that a bill be introduced to expand the Kansas Court of Appeals from 10 to 14 members.

The Committee recommends a bill to provide for a mandatory exclusion from jury service for any person who has been called to jury duty within the past 12 months and which would implement a one day/one jury service system whereby a person would only need to report for jury duty on the first day specified and if the person was not placed on

a jury at the time then the person would be dismissed and not be subject to any further jury service obligation.

Further, the Committee endorses the idea of establishment a unified family court system.

The Committee also urges the 2000 Legislature to enact HB 2450 which would provide for the Judicial Branch to submit its budget directly to the Legislature without first submitting it to the Executive Branch for evaluation and recommendation.

Finally, the Committee recommends that the appropriate standing committees of the 2000 Legislature review the Kansas Citizens Justice Initiative recommendations regarding district magistrate judges; allocation of judicial resources; judicial branch compensation issues; technology issues; and, the recommendation regarding the creation of a Child Protection Authority.