Approved: Jan 25, 00
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Emert at 10:11 a.m. on January 20, 2000 in Room 123-S of the Capitol.

All members were present except: Senator Bond (excused)

Committee staff present:
Gordon Self, Revisor
Mike Heim, Research
Jerry Donaldson, Research
Mary Blair, Secretary

Conferees appearing before the committee:
Charles Simmons, Secretary, Department of Corrections (DOC)
Laura Howard, SRS
Robert Casad, Professor Emeritus, University of Kansas
Jay Emler, Attorney, Judicial Council Municipal Court Manual Advisory Committee
Randy Hearrell, Kansas Judicial Council (KJC)
Kathy Olsen, Kansas Banker's Association (KBA)

Others attending: see attached list

The minutes of the January 19th meeting were approved on a motion by Senator Oleen and seconded by Senator Gilstrap. Carried.

SB 366–an act concerning the uniform commercial code; relating to secured transactions

The Chair appointed a subcommittee to hear **SB 366.** Members are: Senators Vratil (Chair), Goodwin, and Pugh. They will meet January 24 at 10:00 a.m. in 123S.

Bill introductions:

Conferee Simmons briefly summarized four bill proposals he wished to have introduced, three on behalf of the DOC and one on behalf of the Kansas Parole Board. He discussed the following topics: sentencing provisions for felony crimes committed by incarcerated offenders; sentencing provisions related to the period of post-incarceration supervision of offenders who commit new felony crimes while incarcerated; correction of statutory reference; and authorizing parole board discretion in determining the length of incarceration for offenders on postrelease supervision who are revoked because of a new misdemeanor conviction. (attachment 1) Senator Oleen moved to introduce the bills, Senator Goodwin seconded. Carried.

Conferee Howard briefly summarized a bill proposal to amend the Kansas Code for Care of Children which would clarify several sections of the Code including recently enacted changes to bring Kansas into compliance with the federal Adoption and Safe Families Act. She requested introduction of the bill amendments. (attachment 2) Senator Goodwin moved to introduce the bill, Senator Vratil seconded. Carried.

SB 425–concerning civil procedure; relating to uniform enforcement of foreign judgements.

Conferee Casad testified as a proponent of **SB 425**. In summarizing the bill he stated it would remove an exception to current law regarding the filing of foreign judgements in Kansas courts and provide that the statute of limitations on enforcement of foreign judgments is the same as enforcement of Kansas Judgments thus restoring uniformity between states and equal treatment of Kansas debtors and creditors. (attachment 3) Senator Petty made a motion to move the bill out favorably, Senator Vratil seconded. Carried.

SB 418-concerning municipal courts; relating to assessments

Conferee Emler testified as a proponent of **SB 418**. He stated the purpose of the amendment is to clarify the intent of the current law concerning which offenses are subject to assessments. This bill would require an assessment be made in all cases filed in municipal court except nonmoving traffic violations. (attachment 4) Following brief discussion, Senator Harrington made a motion to move the bill out favorably, Senator Goodwin seconded. Carried.

SB 421–concerning civil procedure; relating to subpoenas of records of a business not a party; notice

Conferee Hearrell testified as a proponent of **SB 421**. He briefly summarized the intent of the bill which is to provide clarification language with regard a subpoena of business records. (attachment 5) No action was taken at this time since a similar bill has been introduced and staff will investigate merging the two bills.

Conferee Olsen testified as a proponent of **SB 421** with amendments which would provide for recovery of the costs of researching records when a business complying with a subpoena of its records is not a party to the lawsuit. She discussed the results of a survey of nine Kansas banks which revealed the average cost to the bank for research of records. (attachment 6) Following discussion it was the consensus of the Committee and the conferee to have the bill amendment written to parallel the recovery of cost section in the Open Records Act.

The meeting adjourned at 10:41 a.m. The next scheduled meeting is January 25, 2000.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Jan 20, 2000

NAME	REPRESENTING
Judy M. Hearrell	Judicial Council
Christy Molzen	Judicial Council
Robert Casad	Judicial Council
Dale Jones	KSC
Kevin GRAHAM	KSC
Kelly Kultala	City of Overland Park
Stan Ramos	KGC
Nora Smith	Intern - Senator Feleciano
Vay Scott Emler	Judicial Council
Lana Howard	SRS
Vicki Lynn Idelsd	Budget
Kathy Porter	OJA
Charles Simmons	Dept. of Corrections
Jessica Connolan	Intern Senator Vratil
Jean Barbee	Ks Assn of Defense Counsel
ANNE BEEDLES	
ED JASKINIA	
Bill Henry	KS Gov. Consulting

STATE OF KANSAS

DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
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Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

To: Senate Judiciary Committee

From: Charles E. Simmons, Secretary

Subject: Request for Bill Introductions

Date: January 20, 2000

The Department of Corrections respectfully requests introduction of three bills by the Senate Judiciary Committee. The department has also prepared a bill draft at the request of the Kansas Parole Board, which we are also requesting be introduced on the board's behalf. A summary of each proposal is presented below.

Sentencing Provisions for Felony Crimes Committed by Incarcerated Offenders (KDOC request)

Current law provides that if an offender commits a new felony while on postrelease supervision, he or she must serve the remaining period of postrelease supervision imposed for the original crime for which they were under postrelease supervision before the new sentence is to begin. However, if an inmate commits a new felony while incarcerated serving the prison portion of a sentence, the new sentence is to commence when the prison portion of the original sentence has been served. Thus, such inmate is not required to serve the postrelease supervision period imposed for the original sentence. To address this disparity, it is proposed that when an offender commits a new felony crime while incarcerated, the sentencing court may consider that fact as an aggravating factor justifying a durational departure from the presumptive guidelines sentence when imposing the sentence for the new crime.

Sentencing Provisions Related to the Period of Post-Incarceration Supervision of Offenders Who Commit New Felony Crimes While Incarcerated (KDOC request)

Current law provides that when an offender on parole commits a new felony, the new sentence does not begin until the offender is reparoled on the original sentence. Additionally, the period

of supervision in the community is to be governed by the postrelease supervision provisions applicable to the new sentence. An exception is made, however, when the original sentence has a maximum term of life. In those situations, while the new sentence still begins upon the offender being reparoled, the offender will still be under supervision for life irrespective of the length of postrelease supervision normally prescribed for the new offense. It is proposed that the same provisions regarding the continuation of a lifetime supervision obligation be applicable to offenders who commit a new felony while incarcerated. It is also proposed that the lifetime supervision obligation for off-grid offenses be continued for offenders who commit new felonies while either incarcerated or on release.

Correction of Statutory Reference (KDOC request)

The crime of aggravated escape from custody was amended in L. 1999, Ch. 164 §11. However, in defining correctional facilities, an erroneous reference is made to KSA 75-5207. The correct citation should be KSA 75-5202.

Authorizing Parole Board Discretion in Determining the Length of Incarceration for Offenders on Postrelease Supervision Who Are Revoked Because of a New Misdemeanor Conviction (KPB request)

Current law provides that if a revocation of an offender's postrelease supervision results from either a new felony or misdemeanor conviction, the offender will be returned to prison for the remaining period of postrelease supervision. If the revocation does not result from either a new felony or misdemeanor conviction, the offender is to be returned to prison as a penalty for 180 days which is subject to a good time reduction of 90 days. It is proposed that the KPB be given the discretion to have offenders whose postrelease supervision is revoked due to a new misdemeanor conviction returned to prison for 180 days, which is not subject to reduction by good time credits, up to the remaining period of postrelease supervision, again not being subject to good time credits.

We have submitted balloon drafts to the Revisor's Office on each of these measures. I have also provided the committee secretary with a copy of the balloon drafts to accompany this testimony.

I appreciate your consideration of our request, and would be pleased to answer any questions you might have.

Aggravating Factors for Sentence Departure

21-4716 (1998 Supp)

21-4717

21-4717. Departure sentencing for drug crimes; finding substantial and compelling reasons for departure; aggravating factors considered in determining if reasons exist. (a) The following aggravating factors, which apply to drug crimes committed on or after July 1, 1993, under the sentencing guidelines system, may be considered in determining whether substantial and compelling reasons for departure exist:

(1) The crime was committed as part of a major organized drug manufacture, production, cultivation or delivery activity. Two or more of the following nonexclusive factors constitute evidence of major organized drug manufacture, production, cultivation or delivery activity:

(A) The offender derived a substantial amount of money or asset ownership from the illegal drug sale activity.

(B) The presence of a substantial quantity or variety of weapons or explosives at the scene of arrest or associated with the illegal drug activity.

(C) The presence of drug transaction records or customer lists that indicate a drug sale activity of major size.

(D) The presence of manufacturing or distribution materials such as, but not limited to, drug recipes, precursor chemicals, laboratory equipment, lighting, irrigation systems, ventilation, power-generation, scales or packaging material.

(E) Building acquisitions or building modifications including but not limited to painting, wiring, plumbing or lighting which advanced or facilitated the commission of the offense.

(F) Possession of large amounts of illegal drugs or substantial quantities of controlled substances.

(G) A showing that the offender has engaged in repeated criminal acts associated with the manufacture, production, cultivation or delivery of controlled substances.

(2) The offender possessed illegal drugs:

(A) With intent to sell, which were sold or were offered for sale to a person under 18 years of age; or

(B) with the intent to sell, deliver or distribute or which were sold or offered for sale in the immediate presence of a person under 18 years of age.

(3) The offender, 18 or more years of age, employs, hires, uses, persuades, induces, entices or coerces any individual under 16 years of age to violate or assist in avoiding detection or apprehension for violation of any provision of the uniform controlled substances act, K.S.A. 65-4101 et seq. and amendments thereto or any attempt, conspiracy or solicitation as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto to commit a violation of any provision of the uniform controlled substances act regardless of whether the offender knew the age of the individual under 16 years of age.

(4) The offender was incarcerated during the commission of the offense.

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

History: L. 1992, ch. 239, § 17; L. 1993, ch. 291, § 276; L. 1994, ch. 341, § 3; July 1.

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.

21-4716 con't

(iii) "Mental condition or personality disorder" means an emotional, mental or physical illness disease, abnormality, disorder, pathology or [illegible]ion which motivates the person, affects the p[illegible]sposition 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.

(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.

History: L. 1992, ch. 239, § 16; L. 1993, ch. 291, § 263; L. 1994, ch. 341, § 2; L. 1996, ch. 258, § 12; July 1.

Law Review and Bar Journal References:

"Criminal Procedure Review: Survey of Recent Cases," 44 K.L.R. 895 (1996).

"Delacruz: Following the Nichols Court Through the Looking Glass," Eric Lawrence, 44 K.L.R. 1045 (1996).

"The Constitutionality of Kansas Laws Targeting Sex Offenders," Stephen R. McAllister, 36 W.L.J. 419 (1997).

Survey of Recent Cases, 46 K.L.R. 919 (1998).

"The State's Response to Sexual Offenders," Carla Stovall, 7 Kan. J.L. & Pub. Pol'y, No. 2, 29, 39 (1998).

CASE ANNOTATIONS

7. Trial court's factual findings neither supported by evidence in record nor established by compelling reasons for upward [illegible]entence departure. State v. Cox, 258 K. 557, 574, 908 P [illegible] (1995).

[illegible]l court's factual findings not supported by evidence or [illegible]olished by compelling reasons justifying upward sentence departure. State v. Vincent, 258 K. 694, 695, 700, 908 P.2d 619 (1995).

9. Conversion of defendant's sentence to prison from nonimprisonment for offense committed on parole supported by substantial and compelling reasons. State v. Trimble, 21 K.A.2d 32, 38, 894 P.2d 920 (1995).

10. Mitigating factors sufficient to justify downward departure for involuntary manslaughter conviction. State v. Heath, 21 K.A.2d 410, 414, 901 P.2d 29 (1995).

11. Aggravated indecent liberties with a child is a severity level 3 person felony under 1993 KSGA (21-4701 et seq.). State v. Shaw, 21 K.A.2d 460, 462, 901 P.2d 49 (1995).

12. Trial court abused discretion by imposing a sentence including an upward durational departure without sufficient statutory justification. State v. Caldwell, 21 K.A.2d 466, 475, 901 P.2d 35 (1995).

13. Defendant has no right to request court to modify sentence after KSGA (21-4701 et seq.) effective date. State v. Bost, 21 K.A.2d 560, 903 P.2d 160 (1995).

14. Attempted rape of preteen alone not significantly different from usual conduct associated with statutory rape to justify departure. State v. Zuck, 21 K.A.2d 597, 600, 904 P.2d 1005 (1995).

15. Appellate review of reasons for departure are limited to court's findings stated at sentencing. State v. Keniston, 21 K.A.2d 818, 820, 908 P.2d 656 (1995).

16. Sentencing court may rely on oral argument in finding defendant's judgment impaired; subsection (c) controls over 21-4721(d)(1). State v. Favela, 259 K. 215, 222, 911 P.2d 792 (1996).

17. Imprisonment allowed for new offense committed while inmate on conditional release; conditional release defined. State v. Arculeo, 22 K.A.2d 91, 93, 911 P.2d 818 (1996).

18. Excessive brutality of defendant provided separate and independent reason for durational departure. State v. Hunter, 22 K.A.2d 103, 105, 911 P.2d 1121 (1996).

19. Balancing test an appellate court must weigh in an appeal from a departure sentence discussed. State v. Valentine, 260 K. 431, 435, 921 P.2d 770 (1996).

20. Trial court did not err by imposing upward departure based in part on randomness of defendant's crime. State v. Alderson, 260 K. 445, 465, 922 P.2d 435 (1996).

21. Trial court erred by failing to state reasons for imposing departure sentence; double-double rule construed. State v. Peterson, 22 K.A.2d 572, 576, 920 P.2d 463 (1996).

22. District court procedure when defendant challenges criminal history score discussed. State v. Lakey, 22 K.A.2d 585, 587, 920 P.2d 470 (1996).

23. Court not required to state reasons for refusing to depart from imposing a presumptive sentence. State v. Windom, 23 K.A.2d 429, 430, 431, 932 P.2d 1019 (1997).

24. Prior state conviction qualified as punishable by imprisonment for a term exceeding one year for federal statute purposes. U.S. v. Arnold, 113 F.3d 1146, 1147 (1997).

25. Firing gun during aggravated assault not per se excessive brutality; sentencing departure not supported by substantial and compelling reason. State v. Eisele, 262 K. 80, 83, 84, 90, 936 P.2d 742 (1997).

26. Offense manifested excessive brutality to victim constituting substantial and compelling reasons for departure. State v. Jackson, 262 K. 119, 134, 135, 936 P.2d 761 (1997).

27. Upward departure improper since aggravating factors relied on not substantial or compelling reasons or supported by record. State v. Salcido-Corral, 262 K. 392, 413, 414, 940 P.2d 11 (1997).

28. Departure sentence justified where defendant committed crimes while on supervised parole and lied on court affidavits. State v. Mitchell, 262 K. 434, 445, 939 P.2d 879 (1997).

29. Appellate standard of review when defendant claims nonstatutory mitigating circumstance is abuse of discretion. State v. Spain, 263 K. 708, 720, 953 P.2d 1004 (1998).

30. Imposition of imprisonment sentence where defendant's offense committed while in custody pending felony trial requires departure. State v. Marsh, 263 K. 773, 776, 952 P.2d 933 (1998).

(G) The defendant was incarcerated during the commission of the offense.

Continuation of lifetime supervision obligation for crimes committed while incarcerated

L.1999 ch. 164 § 20 (amending 22-3717)

system, other state systems, the District of Columbia, foreign, tribal or military courts are considered out-of-state convictions or adjudications. T[illegible]acts required to classify out-of-state adult convictions and juvenile a[illegible]cations 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. ~~21-4705~~ *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) 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) Drug crimes are designated as nonperson crimes for criminal history scoring.

Sec. 20. K.S.A. 1998 Supp. 22-3717 is hereby amended to read as follows: 22-3717. (a) Except as otherwise provided by this section, K.S.A. 1993 Supp. 21-4628 prior to its repeal and K.S.A. 21-4635 through 21-4638 and amendments thereto, an inmate, including an inmate sentenced pursuant to K.S.A. 21-4618 and amendments thereto, shall be eligible for parole after serving the entire minimum sentence imposed by the court, less good time credits.

(b) (1) Except as provided by K.S.A. 21-4635 through 21-4638 and amendments thereto, an inmate sentenced to imprisonment for the crime of capital murder, or an inmate sentenced for the crime of murder in the first degree based upon a finding of premeditated murder, committed on or after July 1, 1994, shall be eligible for parole after serving 25 years of confinement, without deduction of any good time credits.

(2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993 Supp. 21-4628 prior to its repeal and K.S.A. 21-4635 through 21-4638, and amendments thereto, an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1993, *but prior to July 1, 1999*, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits *and an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1999, shall be eligible for parole after serving 20 years of confinement without deduction of any good time credits*.

(3) Except as provided by K.S.A. 1993 Supp. 21-4628 prior to its repeal, an inmate sentenced for a class A felony committed before July 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618 and amendments thereto, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits.

(4) An inmate sentenced to imprisonment for a violation of subsec-

tion (a) of K.S.A. 21-3402 and amendments thereto committed on or after July 1, 1996, *but prior to July 1, 1999*, shall be eligible for parole after serving 10 years of confinement without deduction of any good time cred-

(c) Except as provided in subsection (e), if an inmate is sentenced to imprisonment for more than one crime and the sentences run consecutively, the inmate shall be eligible for parole after serving the total of:

(1) The aggregate minimum sentences, as determined pursuant to K.S.A. 21-4608 and amendments thereto, less good time credits for those crimes which are not class A felonies; and

(2) an additional 15 years, without deduction of good time credits, for each crime which is a class A felony.

(d) (1) Persons sentenced for crimes, other than off-grid crimes, committed on or after July 1, 1993, will not be eligible for parole, but will be released to a mandatory period of postrelease supervision upon completion of the prison portion of their sentence as follows:

(A) Except as provided in subparagraphs (C) and (D), persons sentenced for nondrug severity level 1 through 6 crimes and drug severity levels 1 through 3 crimes must serve 36 months, plus the amount of good time earned and retained pursuant to K.S.A. 21-4722 and amendments thereto, on postrelease supervision.

(B) Except as provided in subparagraphs (C) and (D), persons sentenced for nondrug severity level 7 through 10 crimes and drug severity level 4 crimes must serve 24 months, plus the amount of good time earned and retained pursuant to K.S.A. 21-4722 and amendments thereto, on postrelease supervision.

(C) (i) The sentencing judge shall impose the postrelease supervision period provided in subparagraph (d)(1)(A) or (d)(1)(B), unless the judge finds substantial and compelling reasons to impose a departure based upon a finding that the current crime of conviction was sexually violent or sexually motivated. In that event, departure may be imposed to extend the postrelease supervision to a period of up to 60 months.

(ii) If the sentencing judge departs from the presumptive postrelease supervision period, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. Departures in this section are subject to appeal pursuant to K.S.A. 21-4721 and amendments thereto.

(iii) In determining whether substantial and compelling reasons exist, the court shall consider:

(a) Written briefs or oral arguments submitted by either the defendant or the state;

(b) any evidence received during the proceeding;

(c) the presentence report, the victim's impact statement and any psychological evaluation as ordered by the court pursuant to subsection (e) of K.S.A. 21-4714 and amendments thereto; and

(d) any other evidence the court finds trustworthy and reliable.

(iv) The sentencing judge may order that a psychological evaluation be prepared and the recommended programming be completed by the offender. The department of corrections or the parole board shall ensure that court ordered sex offender treatment be carried out.

(v) In carrying out the provisions of subparagraph (d)(1)(C), the court shall refer to K.S.A. 21-4718 and amendments thereto.

(vi) Upon petition, the parole board may provide for early discharge from the postrelease supervision period upon completion of court ordered programs and completion of the presumptive postrelease supervision period, as determined by the crime of conviction, pursuant to subparagraph (d)(1)(A) or (B). Early discharge from postrelease supervision is at the discretion of the parole board.

(vii) Persons convicted of crimes deemed sexually violent or sexually motivated, shall be registered according to the habitual sex offender registration act, K.S.A. 22-4901 through 22-4910 and amendments thereto.

(D) The period of postrelease supervision provided in subparagraphs (A) and (B) may be reduced by up to 12 months based on the offender's compliance with conditions of supervision and overall performance while on postrelease supervision. The reduction in the supervision period shall be on an earned basis pursuant to rules and regulations adopted by the secretary of corrections.

(E) In cases where sentences for crimes from more than one severity level have been imposed, the offender shall serve the longest period of postrelease supervision as provided by this section available for any crime upon which sentence was imposed irrespective of the severity level of the crime. Supervision periods will not aggregate.

(2) As used in this section, "sexually violent crime" means:

(A) Rape, K.S.A. 21-3502, and amendments thereto;

(B) indecent liberties with a child, K.S.A. 21-3503, and amendments thereto;

(C) aggravated indecent liberties with a child, K.S.A. 21-3504, and amendments thereto;

(D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505 and amendments thereto;

(E) aggravated criminal sodomy, K.S.A. 21-3506, and amendments thereto;

(F) indecent solicitation of a child, K.S.A. 21-3510, and amendments thereto;

(G) aggravated indecent solicitation of a child, K.S.A. 21-3511, and amendments thereto;

(H) sexual exploitation of a child, K.S.A. 21-3516, and amendments thereto;

(I) aggravated sexual battery, K.S.A. 21-3518, and amendments thereto;

(J) any conviction for a felony offense in effect at any time prior to the effective date of this act, that is comparable to a sexually violent crime defined in subparagraphs (A) through (I), or any federal or other state conviction for a felony offense that under the laws of this state would be a sexually violent crime as defined in this section;

(K) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302, 21-3303, and amendments thereto, of a sexually violent crime as defined in this section; or

(L) any act which at the time of sentencing for the offense has been determined beyond a reasonable doubt to have been sexually motivated. As used in this subparagraph, "sexually motivated" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

(e) If an inmate is sentenced to imprisonment for a crime committed while on parole or conditional release, the inmate shall be eligible for parole as provided by subsection (c), except that the Kansas parole board may postpone the inmate's parole eligibility date by assessing a penalty not exceeding the period of time which could have been assessed if the inmate's parole or conditional release had been violated for reasons other than conviction of a crime.

(f) If a person is sentenced to prison for a crime committed on or after July 1, 1993, while on probation, parole, conditional release, ~~or~~ in a community corrections program, for a crime committed prior to July 1, 1993, and the person is not eligible for retroactive application of the sentencing guidelines and amendments thereto pursuant to K.S.A. 21-4724 and amendments thereto, the new sentence shall not be aggregated with the old sentence, but shall begin when the person is paroled or reaches the conditional release date on the old sentence. If the offender was past the offender's conditional release date at the time the new offense was committed, the new sentence shall not be aggregated with the old sentence but shall begin when the person is ordered released by the Kansas parole board or reaches the maximum sentence expiration date on the old sentence, whichever is earlier. The new sentence shall then be served as otherwise provided by law. The period of postrelease supervision shall be based on the new sentence, except that those offenders whose old sentence is a term of imprisonment for life, imposed pursuant to K.S.A. 1993 Supp. 21-4628 prior to its repeal, or an indeterminate sentence with a maximum term of life imprisonment, for which there is no conditional release or maximum sentence expiration date, shall remain on postrelease supervision for life or until discharged from supervision by the Kansas parole board.

(g) Subject to the provisions of this section, the Kansas parole board may release on parole those persons confined in institutions who are eligible for parole when: (1) The board believes that the inmate should be released for hospitalization, for deportation or to answer the warrant or

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or incarcerated,

; or on postrelease supervision or incarcerated for an off grid crime committed after July 1, 1993,

or an off grid sentence, for which there is no maximum sentence expiration date,

other process of a court and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate; or (2) the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a and amendments thereto, or any revision of such agreement, and the board believes that the inmate is able and willing to fulfill the obligations of a law abiding citizen and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate. Parole shall not be granted as an award of clemency and shall not be considered a reduction of sentence or a pardon.

(h) The Kansas parole board shall hold a parole hearing at least the month prior to the month an inmate will be eligible for parole under subsections (a), (b) and (c). At least the month preceding the parole hearing, the county or district attorney of the county where the inmate was convicted shall give written notice of the time and place of the public comment sessions for the inmate to any victim of the inmate's crime who is alive and whose address is known to the county or district attorney or, if the victim is deceased, to the victim's family if the family's address is known to the county or district attorney. Except as otherwise provided, failure to notify pursuant to this section shall not be a reason to postpone a parole hearing. In the case of any inmate convicted of a class A felony the secretary of corrections shall give written notice of the time and place of the public comment session for such inmate at least one month preceding the public comment session to any victim of such inmate's crime or the victim's family pursuant to K.S.A. 74-7338 and amendments thereto. If notification is not given to such victim or such victim's family in the case of any inmate convicted of a class A felony, the board shall postpone a decision on parole of the inmate to a time at least 30 days after notification is given as provided in this section. Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section. If granted parole, the inmate may be released on parole on the date specified by the board, but not earlier than the date the inmate is eligible for parole under subsections (a), (b) and (c). At each parole hearing and, if parole is not granted, at such intervals thereafter as it determines appropriate, the Kansas parole board shall consider: (1) Whether the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a and amendments thereto, or any revision of such agreement; and (2) all pertinent information regarding such inmate, including, but not limited to, the circumstances of the offense of the inmate; the presentence report; the previous social history and criminal record of the inmate; the conduct, employment, and attitude of the inmate in prison; the reports of such physical and mental examinations as have been made; comments of the

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victim and the victim's family; comments of the public; official comments; and capacity of state correctional institutions.

In those cases involving inmates sentenced for a crime committed a[illegible]uly 1, 1993, the parole board will review the inmates proposed release plan. The board may schedule a hearing if they desire. The board may impose any condition they deem necessary to insure public safety, aid in the reintegration of the inmate into the community, or items not completed under the agreement entered into under K.S.A. 75-5210a and amendments thereto. The board may not advance or delay an inmate's release date. Every inmate while on postrelease supervision shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary.

(j) Before ordering the parole of any inmate, the Kansas parole board shall have the inmate appear before either in person or via a video conferencing format and shall interview the inmate unless impractical because of the inmate's physical or mental condition or absence from the institution. Every inmate while on parole shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary. Whenever the Kansas parole board formally considers placing an inmate on parole and no agreement has been entered into with the inmate under K.S.A. 75-5210a and amendments thereto, the board shall notify the inmate in writing of the reasons for not granting parole. If an agreement has been entered under K.S.A. 75-5210a and amendments thereto and the inmate has not satisfactorily completed the programs specified in the agreement, or any revision of such agreement, the board shall notify the inmate in writing of the specific programs the inmate must satisfactorily complete before parole will be granted. If parole is not granted only because of a failure to satisfactorily complete such programs, the board shall grant parole upon the secretary's certification that the inmate has successfully completed such programs. If an agreement has been entered under K.S.A. 75-5210a and amendments thereto and the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by such agreement, or any revision thereof, the board shall not require further program participation. However, if the board determines that other pertinent information regarding the inmate warrants the inmate's not being released on parole, the board shall state in writing the reasons for not granting the parole. If parole is denied for an inmate sentenced for a crime other than a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than one year after the denial unless the parole board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next three years or during the interim period of a deferral. In such case, the parole board may defer subsequent parole hearings for up to three years but any such deferral by the board shall require the board to state the basis for its findings. If parole is denied

for an inmate sentenced for a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than three years after the denial unless the parole board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next 10 years or during the interim period of a deferral. In such case, the parole board may defer subsequent parole hearings for up to 10 years but any such deferral shall require the board to state the basis for its findings.

(k) Parolees and persons on postrelease supervision shall be assigned, upon release, to the appropriate level of supervision pursuant to the criteria established by the secretary of corrections.

(l) The Kansas parole board shall adopt rules and regulations in accordance with K.S.A. 77-415 *et seq.*, and amendments thereto, not inconsistent with the law and as it may deem proper or necessary, with respect to the conduct of parole hearings, postrelease supervision reviews, revocation hearings, orders of restitution, reimbursement of expenditures by the state board of indigents' defense services and other conditions to be imposed upon parolees or releasees. Whenever an order for parole or postrelease supervision is issued it shall recite the conditions thereof.

(m) Whenever the Kansas parole board orders the parole of an inmate or establishes conditions for an inmate placed on postrelease supervision, the board:

(1) Unless it finds compelling circumstances which would render a plan of payment unworkable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision pay any transportation expenses resulting from returning the parolee or the person on postrelease supervision to this state to answer criminal charges or a warrant for a violation of a condition of probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision;

(2) to the extent practicable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision make progress towards or successfully complete the equivalent of a secondary education if the inmate has not previously completed such educational equivalent and is capable of doing so;

(3) may order that the parolee or person on postrelease supervision perform community or public service work for local governmental agencies, private corporations organized not-for-profit or charitable or social service organizations performing services for the community;

(4) may order the parolee or person on postrelease supervision to pay the administrative fee imposed pursuant to K.S.A. 1998 Supp. 22-4529 unless the board finds compelling circumstances which would render payment unworkable; and

(5) unless it finds compelling circumstances which would render a plan of payment unworkable, shall order that the parolee or person on

postrelease supervision reimburse the state for all or part of the expenditures by the state board of indigents' defense services to provide counsel ther defense services to the person. In determining the amount and od of payment of such sum, the parole board shall take account of the financial resources of the person and the nature of the burden that the payment of such sum will impose. Such amount shall not exceed the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522 and amendments thereto, whichever is less, minus any previous payments for such services.

(n) If the court which sentenced an inmate specified at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole or postrelease supervision, the Kansas parole board shall order as a condition of parole or postrelease supervision that the inmate pay restitution in the amount and manner provided in the journal entry unless the board finds compelling circumstances which would render a plan of restitution unworkable.

(o) Whenever the Kansas parole board grants the parole of an inmate, the board, within 10 days of the date of the decision to grant parole, shall give written notice of the decision to the county or district attorney of the county where the inmate was sentenced.

(p) When an inmate is to be released on postrelease supervision, the secretary, within 30 days prior to release, shall provide the county or district attorney of the county where the inmate was sentenced written notice of the release date.

(q) Inmates shall be released on postrelease supervision upon the termination of the prison portion of their sentence. Time served while on postrelease supervision will vest.

(r) An inmate who is allocated regular good time credits as provided in K.S.A. 22-3725 and amendments thereto may receive meritorious good time credits in increments of not more than 90 days per meritorious act. These credits may be awarded by the secretary of corrections when an inmate has acted in a heroic or outstanding manner in coming to the assistance of another person in a life threatening situation, preventing injury or death to a person, preventing the destruction of property or taking actions which result in a financial savings to the state.

Section 21. K.S.A. 22-4001 is hereby amended to read as follows: 22-4001. (a) ~~Subject to the provisions of this act,~~ The mode of carrying out a sentence of death in this state shall be by intravenous injection of a substance or substances in a quantity sufficient to cause death in a swift and humane manner.

(b) The secretary of corrections shall supervise the carrying out of each sentence of death and shall determine the procedures therefor,

Correction of reference in Agg Escape statute
L.1999, Ch. 164 § 11

Sec. 11. K.S.A. 1998 Supp. 21-3810 is hereby amended to read as follows: 21-3810. Aggravated escape from custody is:

(a) Escaping while held in lawful custody *(1)* upon a charge or conviction of a felony or *(2)* upon a charge or adjudication as a juvenile offender as defined in K.S.A. 38-1602, and amendments thereto, where the act, if committed by an adult, would constitute a felony; *or (3)* prior to or upon a finding of probable cause for evaluation as a sexually violent predator as provided in K.S.A. 59-29a05 and amendments thereto; *or (4)* upon commitment to a treatment facility as a sexually violent predator as provided pursuant to K.S.A. 59-29a01 et seq. and amendments thereto or *(5)* upon a commitment to the state security hospital as provided in K.S.A. 22-3428 and amendments thereto based on a finding that the person committed an act constituting a felony; or *(6)* by a person 18 years of age or over who is being held ~~in lawful custody~~ on an adjudication of a felony *or (7) upon incarceration at a state correctional institution as defined in K.S.A. ~~75-5207~~ and amendments thereto, while in the custody of the secretary of corrections*; or — 75-5202

(b) Escaping *effected or facilitated by the use of violence or the threat of violence against any person* while held in *lawful* custody *(1)* on a charge or conviction of any crime or *(2)* on a charge or adjudication as a juvenile offender as defined in K.S.A. 38-1602, and amendments thereto, where the act, if committed by an adult, would constitute a felony; *or (3)* prior to or upon a finding of probable cause for evaluation as a sexually violent predator as provided in K.S.A. 59-29a05 and amendments thereto; *or (4)* upon commitment to a treatment facility as a sexually violent predator as provided in K.S.A. 59-29a01 et seq. and amendments thereto or *(5)* upon a commitment to the state security hospital as provided in K.S.A. 22-3428 and amendments thereto based on a finding that the person committed an act constituting any crime or *(6)* by a person 18 years of age or over who is being held ~~in lawful custody or~~ *on* a charge or adjudication of a misdemeanor or felony ~~when such escape is effected or facilitated by the use of violence or the threat of violence against any person~~ *or (7) upon incarceration at a state correctional institution as defined in K.S.A. ~~75-5207~~ and amendments thereto, while in the custody of the secretary of corrections.* — 75-5202

(c) (1) Aggravated escape from custody as described in subsection (a)*(1)*, *(a)(3)*, *(a)(4)*, *(a)(5)* or *(a)(6)* is a severity level 8, nonperson felony.

(2) Aggravated escape from custody as described in subsection (a)(2) or (a)(7) is a severity level 5, nonperson felony.

~~(2)~~ *(3)* Aggravated escape from custody as described in subsection (b)*(1)*, *(b)(3)*, *(b)(4)*, *(b)(5)* or *(b)(6)* is a severity level 6, person felony.

(4) Aggravated escape from custody as described in subsection (b)(2))(7) is a severity level 5, person felony.

Sec. 12. K.S.A. 1998 Supp. 21-4201 is hereby amended to read as follows: 21-4201. (a) Criminal use of weapons is knowingly:

Parole Board/misdemeanor penalty
L.1999 ch 164§ 35 (amends 75-5217)

other duty prescribed under this act for any conviction which has not been set aside.

(e) Any person required to register as an offender pursuant to the nsas offender registration act, K.S.A. 22-4901 et seq., and amendments ereto, who has a second or subsequent conviction for an offense which requires registration pursuant to such act, and any person who has been convicted of an aggravated offense, shall not be granted an order relieving the offender of further registration under this act. The provisions of this subsection shall expire on June 30, 2009.

Sec. 35. K.S.A. 1998 Supp. 75-5217, as amended by section 1 of 1999 House Bill No. 2137, is hereby amended to read as follows: 75-5217. (a) At any time during release on parole, conditional release or postrelease supervision, the secretary of corrections may issue a warrant for the arrest of a released inmate for violation of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be served personally upon the released inmate. The warrant shall authorize any law enforcement officer to arrest and deliver the released inmate to a place as provided by subsection (g). Any parole officer may arrest such released inmate without a warrant, or may deputize any other officer with power of arrest to do so by giving such officer a written arrest and detain order setting forth that the released inmate, in the judgment of the parole officer, has violated the conditions of the inmate's release. The written arrest and detain order delivered with the released inmate by the arresting officer to the official in charge of the institution or place to which the released inmate is brought for detention shall be sufficient warrant for detaining the inmate. After making an arrest the parole officer shall present to the detaining authorities a similar arrest and detain order and statement of the circumstances of violation. Pending a hearing, as provided in this section, upon any charge of violation the released inmate shall remain incarcerated in the institution or place to which the inmate is taken for detention.

(b) Upon such arrest and detention, the parole officer shall notify the secretary of corrections, or the secretary's designee, within five days and shall submit in writing a report showing in what manner the released inmate had violated the conditions of release. After such notification is given to the secretary of corrections, or upon an arrest by warrant as herein provided, and the finding of probable cause pursuant to procedures established by the secretary of a violation of the released inmate's conditions of release, the secretary shall cause the released inmate to be brought before the Kansas parole board, its designee or designees, for a hearing on the violation charged, under such rules and regulations as the board may adopt. It is within the discretion of the Kansas parole board whether such hearing requires the released inmate to appear personally before the board when such inmate's violation results from a conviction

for a new felony or misdemeanor. *An offender under determinant sentencing whose violation does not result from a conviction of a new felony or misdemeanor may waive the right to a final revocation hearing before the Kansas parole board under such conditions and terms as may be prescribed by rules and regulations promulgated by the Kansas parole board.* Relevant written statements made under oath shall be admitted and considered by the Kansas parole board, its designee or designees, along with other evidence presented at the hearing. If the violation is established to the satisfaction of the Kansas parole board, the board may continue or revoke the parole or conditional release, or enter such other order as the board may see fit. ~~Revocations~~ *The revocation* of release of inmates who are on a specified period of postrelease supervision shall be for a six-month period of confinement from the date of the revocation hearing before the board *or the effective date of waiver of such hearing by the offender pursuant to rules and regulations promulgated by the Kansas parole board*, if the violation does not result from a conviction for a new felony or misdemeanor. Such period of confinement may be reduced by not more than three months based on the inmate's conduct, work and program participating during the incarceration period. The reduction in the incarceration period shall be on an earned basis pursuant to rules and regulations adopted by the secretary of corrections.

(c) If the violation does result from a conviction for a new felony ~~or misdemeanor,~~ upon revocation the inmate shall serve the entire remaining balance of the period of postrelease supervision even if the new conviction did not result in the imposition of a new term of imprisonment.

~~(d)~~ In the event the released inmate reaches conditional release date as provided by K.S.A. 22-3718 and amendments thereto after a finding of probable cause, pursuant to procedures established by the secretary of corrections of a violation of the released inmate's conditions of release, but prior to a hearing before the Kansas parole board, the secretary of corrections shall be authorized to detain the inmate until the hearing by the Kansas parole board. The secretary shall then enforce the order issued by the Kansas parole board.

~~(e)~~ If the secretary of corrections issues a warrant for the arrest of a released inmate for violation of any of the conditions of release and the released inmate is subsequently arrested in the state of Kansas, either pursuant to the warrant issued by the secretary of corrections or for any other reason, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the secretary's warrant to the date of the released inmate's arrest.

If a released inmate for whom a warrant has been issued by the secretary of corrections for violation of the conditions of release is subsequently arrested in another state, and the released inmate has been authorized as a condition of such inmate's release to reside in or travel to the state in which the released inmate was arrested, and the released

(d) **If the violation does result from a conviction for a new misdemeanor, upon revocation the inmate shall serve a period of confinement not less than six months nor more than the remaining balance of the period of postrelease supervision as determined by the Kansas parole board. The incarceration period shall not be subject to reduction by good time credits.**

(e)

(f)

inmate has not absconded from supervision, the released inmate's sentence shall not be credited with the period of time from the date of the ıance of the warrant to the date of the released inmate's arrest. If the ɔased inmate for whom a warrant has been issued by the secretary of corrections for violation of the conditions of release is subsequently arrested in another state for reasons other than the secretary's warrant and the released inmate does not have authorization to be in the other state or if authorized to be in the other state has been charged by the secretary with having absconded from supervision, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the warrant by the secretary to the date the released inmate is first available to be returned to the state of Kansas. If the released inmate for whom a warrant has been issued by the secretary of corrections for violation of a condition of release is subsequently arrested in another state pursuant only to the secretary's warrant, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the secretary's warrant to the date of the released inmate's arrest, regardless of whether the released inmate's presence in the other state was authorized or the released inmate had absconded from supervision.

The secretary may issue a warrant for the arrest of a released inmate for violation of any of the conditions of release and may direct that all reasonable means to serve the warrant and detain such released inmate be employed including but not limited to notifying the federal bureau of investigation of such violation and issuance of warrant and requesting from the federal bureau of investigation any pertinent information it may possess concerning the whereabouts of the released inmate.

~~(f)~~ (g) Law enforcement officers shall execute warrants issued by the secretary of corrections pursuant to subsection (a) or ~~(d)~~ (e), and shall deliver the inmate named in the warrant to the jail used by the county where the inmate is arrested unless some other place is designated by the secretary, in the same manner as for the execution of any arrest warrant.

~~(g)~~ (h) For the purposes of this section, an inmate or released inmate is an individual under the supervision of the secretary of corrections, including, but not limited to, an individual on parole, conditional release, postrelease supervision, probation granted by another state or an individual supervised under any interstate compact in accordance with the provisions of the uniform act for out-of-state parolee supervision, K.S.A. 22-4101 *et seq. and amendments thereto*.

New Sec. 36. Nothing in the Kansas offender registration act shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of requiring an offender to register or an offender's failure to register.

New Sec. 37. (a) Any offender who was required to be registered pursuant to the Kansas offender registration act K.S.A. 22-4901 *et seq.*

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
2000 Legislative Proposal

Program Area: Children and Family Services Proposal No: 1

Contact Person: Donavon Rutledge or Sue McKenna Phone No: 368-8195 or 296 6848

1. PROPOSAL SUMMARY - Provide a brief summary of the proposal including statutory citations and any legislative history the proposal may have. Also describe whether the proposal will impact other state agencies or other units of government.

   It is proposed that the department submit amendments to the Kansas Code for Care of Children which would clarify several sections of the Code including recently enacted changes to bring Kansas into compliance with the federal Adoption and Safe Families Act (ASFA). The proposal would also incorporate concepts from bills submitted by legislative committees in the 1999 session which sought to explicate responsibilities of the department. Some technical corrections are included.

   Sections specifically targeted for revision include: K.S.A 38-1502; K.S.A 38-1507; K.S.A 38-1507b; K.S.A 38-1513; K.S.A 38-1523a; K.S.A 38-1544; K.S.A 38-1562; K.S.A 38-1563; K.S.A 38-1565; K.S.A 38-1581; K.S.A 38-1582; and K.S.A 38-1591.

2. FISCAL IMPACT - Indicate clearly whether the budget impact of the proposal was included in your budget request. Summarize costs for a three-year period, position requirements, financing source and other pertinent fiscal information.

   Two of the proposed amendments, one requiring a judge to set a date for reintegration of an child and the child's family upon a finding that reintegration is in the child's best interest, and a second, removing a restriction in the statutes defining private children's home as non-profit only, will allow the State to remain eligible for Federal IV-E funding.

   The remainder of the proposed bill is programatic, not fiscal. Fiscal impact, if any, would be positive and would result from greater efficiencies in the use of staff time, and expedited permanency for children in the custody of the state.

3. POLICY IMPLICATIONS AND IMPACT ON AGENCY STRATEGIC PLAN - Summarize the purpose of the legislation and its policy implications. Provide information on how the proposal fits with the mission and strategic plan of the agency. If the proposal has been necessitated by changes by the federal government, describe the federal action.

   Several changes are made to clarify and simplify Kansas compliance with the requirements of the Adoption and Safe Families Act. Although Kansas is believed to be in compliance with ASFA under current statutes, there is confusion and some duplication of effort which results

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The University of Kansas

School of Law

January 19, 2000

To: Members of the Judiciary Committee

From: Robert C. Casad

Ladies and Gentlemen:

I am writing to support Senate Bill 425, recommended by the Kansas Judicial Council, which would restore K.S.A. 60-3002 to the way it was before last year's probably inadvertent amendment. From the bill you can see that it simply repeals the final clause that was added last year as part of the legislative package of the Kansas Credit Attorneys' Association and the Kansas Collectors' Association.

K.S.A. 60-3002 is part of the Uniform Enforcement of Foreign Judgments Act, promulgated by the Commissioners on Uniform State Laws, and adopted in at least 46 states. Before last year, the wording of the section was nearly identical to that of the Uniform Act. It is that wording that S.B. 425 seeks to restore.

K.S.A. 60-3002 provides that a foreign judgment – and "foreign judgment" here means a judgment of a sister state of the United States, not a foreign country judgment – can be enforced in Kansas by merely filing it with the clerk of any district court of the state. It will then be enforceable like a Kansas judgment, and be subject to the same procedures and defenses as a Kansas judgment. That meant, before last year's amendment, that if a foreign judgment had remained unenforced for a period of time longer than Kansas law would allow a Kansas judgment to remain enforceable, then the foreign judgment could not be enforced in Kansas, even if it was still enforceable in the state where it was rendered. That meant that the Kansas period of limitations on enforceability of judgments applied to foreign judgments as well as to Kansas judgments, even if the period of limitations of the state where the judgment was rendered was longer than ours.

Last year's amendment to K.S.A. 60-3002 added an exception, which you can see in the stricken language of SB 425. In effect, it said that the Kansas period of limitations would no longer apply to foreign judgments. If the limitation period of the state where the judgment was rendered was longer than that of Kansas, then the foreign judgment would be enforceable here even though the judgment creditor delayed longer than our statute deems appropriate to take steps to enforce the judgment.

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The effect of this change was to make Kansas the only state in the union that treated foreign judgments more favorably than our own. This is not good policy.

No plausible Kansas policy purpose could be served by such an exception. It allowed foreign judgment creditors to receive more favorable treatment in our courts than those judgment creditors holding Kansas judgments. And it subjected Kansas judgment debtors to enforcement of judgments that our legislature otherwise would consider too stale to be enforced. A judgment creditor should act with due diligence to enforce a judgment, and Kansas generally says that means the creditor must act within 5 years. After 5 years the judgment becomes dormant. K.S.A. 60-2403. A judgment that has become dormant can be revived by the creditor within two further years, and once revived it remains enforceable for a further period of 5 years. The same procedure should apply to foreign judgments, and the Kansas Supreme Court has so held. Johnson Bros. Wholesale Liquor Co. v. Clemmons, 233 Kan. 405, 661 P.2d 1242 (1983). If the foreign judgment is older than 5 years, the creditor should get it revived in the state where it was rendered.

It is true that every state owes full faith and credit to the judgments of every other state, and that generally means giving the judgment the same effect that is has in the state where it was rendered. But as early as 1839 the Supreme Court of the United States ruled that it was not a denial of full faith and credit for a state where a judgment is sought to be enforced to apply its own statute of limitations on the enforceability of judgments rather than that of the state where the judgment was rendered. McElmoyle for the use of Bailey v. Cohen, 13 Pet. 312 (1839). See also Union Nat. Bank of Wichita v. Lamb, 337 U.S. 38 (1949). All states, except Kansas for the past year, have followed that practice, applying their own statutes of limitations to foreign judgments. There is utterly no reason why a state should want to keep alive a foreign judgment that would be considered too stale if it were its own domestic judgment.

I asked one of the promoters of last year's amendment why they did it. The only answer that made any sense was that they thought that the Federal Fair Debt Collection Practices Act applied to suits to enforce foreign judgments, and that the venue provisions of that Act prevented suing on a judgment in any state other than the one in which the debtor resided. This argument, however, is not valid. A judgment, once obtained in a court that did meet the venue requirements of the FDCPA, is no longer a debt subject to the act. The Federal Trade Commission (the agency charged with enforcing the FDCPA) has published commentaries on the act that serve as guidelines for the enforcement of the act. The commentary to section 811, the venue section, specifically states

> "5. Enforcement of judgments. If a judgment is obtained in a forum that satisfies the requirements of this section, it may be enforced in another jurisdiction, because the consumer previously has had the opportunity to defend the original action in a convenient forum."

So the only impediment to a foreign judgment creditor enforcing the judgment in Kansas during the 5 years that it is viable is the creditor's own failure to act.

Accordingly, I urge the committee to recommend SB 425 for passage so that Kansas can

once again provide equal treatment for Kansas and foreign judgments, so that a judgment creditor who has rested on his, her or its rights for more than 5 years cannot find a haven for the stale judgment in Kansas.

Robert G. Casad

John H. and John M. Kane
Professor of Law Emeritus

JUDICIAL COUNCIL TESTIMONY
BEFORE THE SENATE JUDICIARY COMMITTEE
ON 2000 S.B. 418

JANUARY 20, 2000

Chairman Emert, members of the Senate Judiciary Committee, thank you for allowing me the opportunity to appear before you this morning.

My name is Jay Scott Emler. I am an attorney and currently in private practice in McPherson, Kansas. Since 1985 I have served on the Judicial Council Municipal Court Manual Advisory Committee and have acted as chairman for several years. Additionally, I have served on the Supreme Court Municipal Judges Testing and Education Committee since 1989.

Part of the function of both committees is to assist judges, especially lay judges, in understanding the laws which they are charged with administering in municipal courts throughout this state. Another function of both committees is to listen to the concerns of the judges. I appear today to testify in favor of the proposed changes to K.S.A. 12-4117 which the Municipal Court Manual Committee believes will clarify the intent of the law and will provide for uniform administration of the law throughout Kansas.

Municipal judges have expressed uncertainty regarding which offenses are subject to the assessments set forth in K.S.A. 12-4117. The terms "criminal or public offense" are not defined by law. Additionally, if "criminal or public offense" is defined to be a "crime," the term "or a moving violation" is redundant because traffic violations, whether moving or nonmoving, have been defined by case law to constitute crimes under K.S.A. 21-3105.

The Municipal Court Manual Committee believes the proposed amendment will cure the ambiguities and is consistent with the intent of the current statute.

Once again, thank you for allowing me the opportunity to testify this morning.

I will be happy to stand for any questions this Committee may have.

S Jud 1-20-00 att 5

JUDICIAL COUNCIL TESTIMONY
ON SB 421
JANUARY 20, 2000

In 1985 the Legislature passed K.S.A. 60-245a which is a procedure for issuance of a business record subpoena to obtain and authenticate documents in the hands of a third party, without requiring the personal attendance of a custodian. The procedure generally functioned well, but there were complaints that documents in the possession of non-parties were being obtained without giving a party the right to object. Thus in 1997, the Legislature amended the statute by inserting subsection (e) to provide a ten-day notice to parties to allow the parties time to object prior to the issuance of the subpoena.

It was called to the attention of the Civil Code Advisory Committee that subsection (e) is unclear.

The proposed amendment contained in SB 421 does not solve the problem and subsection (e) should have been amended as follows:

> **(e) Notice of intent to request 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 ~~thereof~~ of such subpoena. 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.**

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The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

January 20, 2000

TO: Senate Judiciary Committee

FROM: Kathleen Taylor Olsen

RE: SB 421: Subpoena of business records not a party

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today regarding **SB 421** relating to the subpoena of business records when the business is not a party to the lawsuit. We are appearing today to request an amendment to the bill.

It has come to our attention that while this section of the statutes provides that a business complying with a subpoena of its records when it is not a party to the lawsuit can recover the reasonable costs of copying the records, it does not provide for the recovery of the costs of researching those records.

Banks are often served with subpoenas "duces tecum" to produce bank records of someone involved in a lawsuit. Researching records takes time away from an employee's normal banking duties. Therefore, we are asking that the Committee amend **SB 421** on page two, lines 16 and 18, to include recovery for the reasonable costs of researching the records.

Regarding what is a reasonable charge, in 1998, we conducted a survey of nine banks of varying asset size and geographic location around the state and found that generally, they were charging from $15 per hour to $25 per hour for researching records. We believe recovery of such costs is reasonable and is an acceptable expense to the party requesting the records.

Thank you for your attention and we hope you will act favorably on our request for an amendment to **SB 421**.

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ness not a party. (a) As used in this section:

(1) "Business" means any kind of business, ession, occupation, calling or operation of in-utions, 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.

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(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: _____

_____

_____

_____