

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on January 16, 2001 in Room 313-S of the Capitol.

All members were present except:

Representative Kathe Lloyd - Excused

Committee staff present:

Jerry Ann Donaldson, Department of Legislative Research  
Jennifer Strait, Intern for Department of Legislative Research  
Jill Wolters, Department of Revisor of Statutes Office  
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Randy Hearrell, Kansas Judicial Council  
Susan Bechard, Kansas County & District Attorneys Association  
Kyle Smith, Director of Governmental & Public Affairs, Kansas Bureau of Investigation  
Marlee Carpenter, Kansas Chamber of Commerce

Randy Hearrell, Kansas Judicial Council, provided the Committee with an overview of the Judicial Council which is responsible for an ongoing study of the judicial branch and various substantive and procedural codes which are brought or used by the courts. (Attachment 1)

He requested several bills as follows (Attachment 2):

- ◆ Clarify that non-probate transfers are contractual arrangements which are non-testamentary in nature.
- ◆ Rewrite of the Guardianship & Conservatorship Act
- ◆ Enacting the Administrative Procedure Act
- ◆ A bill relating to the criminal defendant's competency to stand trial
- ◆ Child hearsay provisions contained in K.S.A. 22-2902 be moved from that statute into 22-2902a. This would clear up general principles regarding preliminary hearings.
- ◆ Requiring bail bondsman to show good cause for requesting the bond revocation.

Representative Loyd made the motion to have the bill requests introduced as committee bills. Representative DeCastro seconded the motion. The motion carried.

Susan Bechard, Kansas County & District Attorneys Association, stated that the Association was developed to promote justice in Kansas (Attachment 3). She had several bill requests. The first was to place a time limit in which actions must be filed following termination of jurisdiction on direct appeal. The second would include violations of municipal DUI ordinances in the enhanced sentencing provisions for involuntary manslaughter. Next request would create Gamma Hydroxybutyric Acid drug legislation and the last would allow officers to issue citations for habitual violators.

Representative Loyd made the motion to have the bill requests introduced as committee bills. Representative Williams seconded the motion. The motion carried.

Kyle Smith, Director of Governmental & Public Affairs, Kansas Bureau of Investigation, appeared before the committee with four bill requests:

- ◆ Amend the protection from abuse statute to allow law enforcement to immediately access and verify a protection from abuse order at any time. (Attachment 4)
- ◆ Restructure of the administration of the KBI (Attachment 5)
- ◆ Allow fingerprinting of juveniles who commit the person crime of assault (Attachment 6)
- ◆ Address a concern in K.S.A. 21-2501 regarding searches during a lawful arrest (Attachment 7)

Representative Long made the motion to have the bill requests introduced as committee bills. Representative Swenson seconded the motion. The motion carried.

Marlee Carpenter, Kansas Chamber of Commerce, appeared before the committee with three bill requests. The first would have a parent or guardian be responsible if their minor shoplifts (Attachment 8). Next request would change existing law so that if an individual is apprehended with goods stolen from three separate mercantile establishments in a continuing criminal episode, then they may be charged with a felony theft, regardless of the value of the goods (Attachment 9). The last request would impose a felony on any person who has one counterfeit UPC label or receipt (Attachment 10).

Representative Loyd made the motion to have the bill requests introduced as committee bills. Representative Howell seconded the motion. The motion carried.

The committee meeting adjourned at 4:10 p.m. The next meeting is scheduled for January 17, 2001.

# THE KANSAS JUDICIAL COUNCIL

## MISSION

The Judicial Council works to improve the administration of justice in Kansas by continuously studying the Judicial System and related areas of law, recommending changes when they are considered appropriate, and by preparing publications which further this mission.

## OPERATIONS

The Judicial Council is responsible for an ongoing study and review of the judicial branch of government and various substantive and procedural codes which are used by or before the judicial branch. The Council also identifies problem areas or areas of potential improvement and takes appropriate action. It recommends options for improvement in operations to both the Legislature and Supreme Court. The Council examines the volume and condition of business in the courts and recommends methods of simplifying civil and criminal procedures. Projects are assigned by the Legislature, requested by the Supreme Court and initiated by the Council. Council work may involve drafting legislation and court rules, writing books and manuals, publishing forms, preparing jury instructions, and making reports.

The Council has ten members, eight of whom are appointed by the Chief Justice of the Supreme Court as follows: one member from the Supreme Court, one from the Court of Appeals, two district court judges, and four practicing attorneys. The chairs of the House and Senate Judiciary Committees are *ex officio* members.

The Judicial Council uses advisory committees to assist in various projects. A member of the Council usually serves as chair of each advisory committee. Committees which will meet in 2001 include Administrative Procedure, Care and Treatment, Child in Need of Care, Civil Code, Guardian Ad Litem, Civil Procedure for Limited Actions, Criminal Law, Eminent Domain, Estate Tax, Family Law, Guardianship and Conservatorship, Municipal Court Manual, PIK-Civil (Pattern Instructions for Kansas), PIK-Criminal (Pattern Instructions for Kansas), and Probate Law.

The Council also sponsors legislation relating to court procedures and various areas of the law. Examples of legislation recommended recently by the Judicial Council include legislation recodifying the act for care and treatment of mentally ill persons; recodifying the criminal code; amending the civil code to conform more closely to the federal rules of procedure; adopting the Uniform Probate Code proposals on elective share of spouse; recodifying the act for care and treatment of persons with an alcohol or substance abuse problem; recodifying Kansas law relating to lesser included offenses; amending the Kansas expungement statutes; and a number of changes in the area of family law.

Publications by the Council include *Pattern Instructions for Kansas-Criminal 3d*, *Pattern Instructions for Kansas-Civil 3d*, *Kansas Judicial Council Probate Forms*, the *Kansas Municipal Court Manual*, and annual supplements to these publications.

## **GOALS AND OBJECTIVES**

The goal of the agency is to review the judicial branch of government and various substantive and procedural codes used by the judicial branch to identify problem areas or areas of potential improvement and to take appropriate action. An objective to meet this goal is to establish advisory committees to review specific areas and make recommendations for needed improvement to the Judicial Council. Upon approving those recommendations, the Judicial Council forwards them to the Supreme Court or to the Legislature for consideration and approval.

## **STATUTORY HISTORY**

The Judicial Council was created in 1927. It is established under K.S.A. 20-2201 et seq. Members of the Council and its Advisory Committees are authorized compensation and allowances under K.S.A. 20-2206.



## KANSAS JUDICIAL COUNCIL

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JOSEPH W. JETER, HAYS  
PHILLIP MELLOR, WICHITA

Kansas Judicial Center  
301 S.W. Tenth Street, Suite 262  
Topeka, Kansas 66612-1507

Telephone (785) 296-2498  
Facsimile (785) 296-1035

Judicial.Council@ksjc.state.ks.us  
www.kscourts.org/council

RANDY M. HEARRELL  
EXECUTIVE DIRECTOR  
CHRISTY R. MOLZEN  
RESEARCH ATTORNEY  
JANELLE L. WILLIAMS  
ADMINISTRATIVE ASSISTANT  
KARLA D. KEYS  
ADMINISTRATIVE ASSISTANT

January 16, 2001

### MEMORANDUM

**TO:** House Judiciary Committee  
**FROM:** Kansas Judicial Council  
**RE:** 2001 Judicial Council Bill Requests

The Kansas Judicial respectfully requests introduction of the following bills:

**1. Non-probate transfers.**

The Kansas Judicial Council respectfully requests the introduction of a House bill relating to non-probate transfers. The bill was recommended by the Judicial Council's Probate Law Committee whose members are Gerald Goodell, Chair, Topeka; Cheryl C. Boushka, Overland Park; Hon. Sam K. Bruner, Olathe; Representative Tim Carmody, Leawood; Mike Clutter, Topeka; Peter A. Cotorceanu, Topeka; Martin B. Dickinson, Jr., Lawrence; Jack R. Euler, Troy; Senator Greta Goodwin, Winfield; Mark Knackendoffel, Manhattan; Hon Edward Larson, Topeka; Philip D. Ridenour, Cimarron; and Willard Thompson, Wichita. The bill was then approved by the Kansas Judicial Council.

Last session SB 485, concerning non-probate transfer on death, was introduced at the request of Security Benefit Life and passed the Senate. The House Judiciary Committee had concerns with the bill and requested the Judicial Council to study the bill.

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Attachment 2



The Judicial council assigned the study to the Probate Law Advisory Committee. That Committee worked with representatives of Security Benefit to resolve the problems in the bill and meet the needs of Security Benefit Life. As drafted the bill meets Security Benefit Life's needs of clearly stating that certain contractual arrangements are nontestamentary in nature. The Probate Law Advisory Committee supports the bill as drafted.

## **2. Guardianship and Conservatorship Act.**

The Kansas Judicial Council respectfully requests the introduction of a House bill to enact a revised Act for Obtaining a Guardian or Conservator, or Both. The bill was drafted by the Judicial Council's Guardianship and Conservatorship Advisory Committee whose members are Hon. Sam K. Bruner, Olathe; Hon. Thomas H. Graber, Wellington; John H. House, Topeka; Jean Krahn, Manhattan; Hon. Philip T. Kyle, Jetmore; Hon. Hal B. Malone, Wichita; H. Philip Martin, Larned; Hon David P. Mikesic, Kansas City; Robert I. Nicholson, Jr., Paola; and Jane Rhys, Ph.D., Topeka. The bill was then approved by the Kansas Judicial Council.

This bill contains significant modifications to the current guardianship and conservatorship act. These amendments would significantly strengthen the act. The bill utilizes "person first" language to emphasize the rights and dignity of the persons whose lives the act is intended to assist. The bill is based on the concept of preserving to the ward or conservatee the greatest degree of personal independence possible, even in the face of disabling conditions.

The bill is built around the six circumstances under which the committee found these cases to be filed. Two of these circumstances are unprovided for in the current code. (The circumstances of minors with a permanent impairment, and that of an impaired person being moved into Kansas by a guardian who was appointed in another state.) The other four circumstances (voluntary conservatorships, adults with an impairment, minors and ancillary proceedings) are generally lumped together in the current law without much recognition that they derive from very different points. This bill separates out each of these six circumstances, provides for their own petitions, and makes clear what evidence must be shown before the law will allow involvement in a person's affairs.

The bill is further built upon a two prong formula for judicial involvement: 1) the showing of a serious impairment to a person's ability to meet for themselves basic needs for survival or for handling their estate, and 2) lack of some other non-judicial means of meeting those needs. Where persons can provide for themselves, even when unable to personally perform certain tasks on their own, no need exists for the state's courts to become involved, and under this bill, that concept of need for involvement takes equal footing with the fact of impairment.

**3. Administrative Procedure.**

The Kansas Judicial Council respectfully requests the introduction of a House bill to require state agencies subject to the Kansas Administrative Procedure Act utilize hearing officers from an independent panel of hearing examiners established in the legislation. The requirement would be phased-in over a period of five years. The bill was drafted by the Judicial Council's Administrative Procedure Advisory Committee whose members are David L. Ryan, Topeka; Alan F. Alderson, Topeka; Richard C. Byrd, Ottawa; L. Patricia Casey, Topeka; Carol L. Foreman, Topeka; Jack Graves, Wichita; Brian J. Moline, Topeka; John S. Seeber, Wichita; Mark W. Stafford, Topeka; and Kenneth M. Wilke, Topeka. The bill was then approved by the Kansas Judicial Council.

This bill would make changes to the Kansas Administrative Procedure Act (KAPA) concerning state agencies and presiding officers. The bill also expands the Office of Administrative Hearings (OAH) within the Department of Administration. The bill also establishes a Director of OAH. All powers and duties of the current Office of Administrative Hearings would be transferred. The new OAH would provide presiding officers to conduct administrative hearings. Existing presiding officers and all support personnel involved with KAPA hearings will be transferred to the new OAH. All property and records will also transfer.

Cabinet level agencies as well as small boards or commissions would be phased in under the new provisions each year. In the fifth year, the OAH will become an independent agency within the executive branch of government..

**4. Competency to stand trial.**

The Kansas Judicial Council respectfully requests the introduction of a House bill relating to a criminal defendant's competency to stand trial. The bill was drafted by the Judicial Council's Criminal Law Advisory Committee. Current members of that Committee 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; Jessica Kunen, Topeka; Patrick Lewis, Olathe; Hon. Michael Malone, Lawrence; Debra Peterson, Wichita; Steven L. Opat, Junction City; Elwaine F. Pomeroy, Topeka; and Loren L. Taylor, Kansas City. The bill was then approved by the Kansas Judicial Council.

This bill attempts to address the problem that occurs when a criminal defendant is found incompetent to stand trial and yet is not subject to involuntary commitment because he or she does not fall under the definition of a mentally ill person subject to involuntary commitment for care and treatment found at K.S.A. 59-2936(f)(1). That statute excludes from the definition of mentally ill person those persons "whose diagnosis is not solely one of the following mental disorders: Alcohol or chemical substance abuse; antisocial personality disorder; mental retardation; organic

personality syndrome; or an organic mental disorder.” Under this bill, if a criminal defendant is found to be incompetent to stand trial and unlikely to attain competency in the foreseeable future, the definition of mental illness to be used in determining whether that person may be committed under the mental illness code will not include the limiting language of K.S.A. 59-2936(f)(1) described above.

**5. Child hearsay evidence.**

The Kansas Judicial Council respectfully requests the introduction of a House bill relating to child hearsay evidence. The bill was drafted by the Judicial Council’s Criminal Law Advisory Committee. Current members of that Committee 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; Jessica Kunen, Topeka; Patrick Lewis, Olathe; Hon. Michael Malone, Lawrence; Debra Peterson, Wichita; Steven L. Opat, Junction City; Elwaine F. Pomeroy, Topeka; 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.

**6. Revocation of bond.**

The Kansas Judicial Council respectfully requests the introduction of a House bill relating to the revocation of bond. The bill was drafted by the Judicial Council’s Criminal Law Advisory Committee. Current members of that Committee 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; Jessica Kunen, Topeka; Patrick Lewis, Olathe; Hon. Michael Malone, Lawrence; Debra Peterson, Wichita; Steven L. Opat, Junction City; Elwaine F. Pomeroy, Topeka; and Loren L. Taylor, Kansas City. The



bill was then approved by the Kansas Judicial Council.

The Committee proposes a bill which amends K.S.A. 22-2809 to require the bail bondsman to show good cause for requesting the bond revocation. If the court does not find good cause for the surety to return the accused person to custody, the court may require the surety to return some or all of the consideration provided for the issuance of the bond.

David L. Miller, President  
 Jerome A. Gorman, Vice-President  
 John M. Settle, Secretary-Treasurer  
 Julie McKenna, Past President  
 Steven F. Kearney, Executive Director



Edmond D. Brancart  
 Thomas J. Drees  
 Christine K. Tonkovich  
 Gerald W. Woolwine

## Kansas County & District Attorneys Association

1200 W. 10th Street  
 Topeka, KS 66604  
 (785) 232-5822 • Fax: (785) 234-2433

January 16, 2001

Chairman O'Neal and members of the House Judiciary Committee,

The Kansas County and District Attorneys Association would like thank you for taking time for us today and we would like to request the following bill introductions.

1. Amend KSA 60-1507 (concerning a prisoner in custody under sentence) to place a time limit within which actions must be filed following termination of jurisdiction on direct appeal.
2. Amend KSA 21-4711(c) (concerning sentencing; determination of offender's criminal history classification in presumptive sentencing guidelines grid for non-drug and drug crimes.) to include violations of municipal DUI ordinances in the enhanced sentencing provisions for involuntary manslaughter resulting from the commission of a violation of 8-1567 (concerning driving under the influence of alcohol or drugs; blood alcohol concentration; penalties).
3. Creation of GHB (Gamma hydroxybutyric acid) "date rape" drug legislation to mirror federal law. In February 2000, a new federal law was enacted to recognize the differences between illicit GHB, the industrial chemicals that convert to GHB and the benefit of medical GHB for narcolepsy.
4. Amend KSA 8-2106 (concerning written traffic citations) and 8-287 (concerning habitual violator statute) to allow officers to issue citations for habitual violator cases.

This is simply a "clean up" measure designed to allow officers to issue tickets to habitual violators rather than having to make long-form complaints.

Thank You,

Susan Bechard  
 KCDA



## Kansas Bureau of Investigation

Larry Welch  
*Director*

Carla J. Stovall  
*Attorney General*

Bill Request  
Before the House Judiciary Committee  
Kyle G. Smith  
Kansas Bureau of Investigation  
January 16, 2001

Chairman O'Neal and members of the Committee,

I am pleased to appear today on behalf of Director Larry Welch and the KBI to request legislation to help protect the victims of domestic abuse.

Kansas law, K.S.A. 60-3101, *et seq.*, provides for the issuance of protection from abuse orders under K.S.A. under certain circumstances. However, such orders can only provide protection and be enforced by law enforcement if they are accessible to law enforcement. We would request the attached language be an amendment to the protection from abuse act which would require such orders be entered into the national crime information center (NCIC) protection order file. This would allow law enforcement officers to immediately access and verify such orders in the middle of the night, when many of these conflicts occur. Currently, while it is a crime to violate such order, it is very difficult for the officer to verify the existence of such order when the courts are closed.

Second, the definition of 'abuse' under the PFA would also be amended to include the crime of stalking. This is needed as there are victims of stalking who need the protection afforded by a PFA order but since many stalking victims do not know the offender, let alone live with them, the current law does not apply.

Proposed language has been provided to the Revisor's office. I would be happy to address any questions.

Thank you for your consideration.

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Attachment 4



## Kansas Bureau of Investigation

Larry Welch  
*Director*

Carla J. Stovall  
*Attorney General*

Bill Request  
Before the House Judiciary Committee  
Kyle G. Smith  
Kansas Bureau of Investigation  
January 16, 2001

Chairman O'Neal and Members of the Committee,

I am pleased to appear today on behalf of Director Larry Welch and the KBI to request legislation to slightly restructure the administration of the KBI.

Currently the Director, the deputy director and the assistant attorneys general of the KBI are the only employees at the KBI in the unclassified service. The requested legislation would make unclassified 4 additional directors: the associate director, who is second in command, and the 3 assistant directors. Such a change would have the double benefit of giving the agency increase flexibility salary issues as well as allowing future directors more options in putting his or her team in place. The proposed language would also remove some obsolete language. We've met with representatives of the Department of Personnel Services and they have no objections to the changes.

Thank you for your consideration of the request. I would be happy to answer any questions about the proposal.

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## Kansas Bureau of Investigation

Larry Welch  
Director

Bill Request  
Before the House Judiciary Committee  
Kyle G. Smith  
Kansas Bureau of Investigation  
January 16, 2001

Carla J. Stovall  
Attorney General

Chairman O'Neal and members of the Committee,

I am pleased to appear today on behalf of Director Larry Welch and the KBI to request a minor change to K.S.A. 38-1611 (see below) to allow fingerprinting of juveniles who commit the person crime of assault.

All criminal history records are based on fingerprints, as names, appearance, dates of birth, etc. have proven unreliable. Kansas law states a conviction or adjudication for assault, a person offense, can be the basis for enhancing sentences for future crimes as well as affect licensing for certain jobs. However, without a fingerprint card to prove the identity of the person to the record of the offense, there is, for all practical purposes, no criminal record.

Because assault is the only class C misdemeanor that is a person crime under the sentencing guidelines, current law, which covers only A and B misdemeanors, does not allow for the taking of the fingerprints of juveniles charged with that crime. If the KBI is charged with tracking such a record we need the ability to do so.

Thank you for your consideration and I would be happy to answer any questions.

**38-1611.** (a) Fingerprints or photographs shall not be taken of any juvenile who is taken into custody for any purpose, except that:

- (1) Fingerprints or photographs of the juvenile may be taken if authorized by a judge of the district court having jurisdiction;
- (2) a juvenile's fingerprints shall be taken, and photographs of a juvenile may be taken, immediately upon taking the juvenile into custody or upon first appearance or in any event before final sentencing, before the court for an offense which, if committed by a person 18 or more years of age, would make the person liable to be arrested and prosecuted for the commission of a felony as defined by K.S.A. 21-3105 and amendments thereto ~~or~~ , a class A or B misdemeanor or assault, as defined by K.S.A. 21-3409 and amendments thereto; and

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## Kansas Bureau of Investigation

Larry Welch  
*Director*

Bill Request  
Before the House Judiciary Committee  
Kyle G. Smith  
Kansas Bureau of Investigation  
January 16, 2001

Carla J. Stovall  
*Attorney General*

Chairman O'Neal and members of the Committee,

I am pleased to appear today on behalf of Director Larry Welch and the KBI to request legislation to address a nagging problem with one word in K.S.A. 21-2501.

Obviously, when an officer has placed a suspect under arrest there are legitimate concerns for both safety and the loss of evidence that suggest a search of the suspect and the area immediately surrounding the suspect would be a good idea. The U.S. Supreme Court agreed with this and set out the rules in *New York v Belton*. K.S.A. 21-2501 *almost* repeats the U.S. Supreme court language about when an officer may constitutionally conduct searches done after an arrest has been made.

I say 'almost' because of one word that is different and causing all of Kansas's law enforcement a headache and letting some criminals go free. The U.S. Supreme court has held that, after an arrest, officers can search for evidence of crimes but our statute says we can search for evidence of "the " crime. In a 1996 case the Kansas Supreme Court decided that difference meant that evidence of a meth lab found in a car had to be suppressed because the officer was only allowed to search for evidence of the crime the defendant for which the defendant had been arrested. In no other state would the evidence have been suppressed.

As can be seen in the proposed language, we could like to return the Kansas rules on search incident to an arrest to what the Supreme Court says the rules are, and what were the rules prior to the 1996 decision, by simply changing the word "the" to "a".

Thank you for your consideration. I would be happy to answer any questions.

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Attachment 7

## SENATE BILL No. 156

By Committee on Judiciary

1-30

9 AN ACT concerning civil actions; relating to shoplifting; parents or guard-  
10 ians of minors; amending K.S.A. 60-3331 and repealing the existing  
11 section.

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

14 Section 1. K.S.A. 60-3331 is hereby amended to read as follows: 60-  
15 3331. (a) Except as otherwise provided, a merchant may file a civil action  
16 to receive a civil penalty against any adult or emancipated minor who  
17 shoplifts from that merchant. If the merchant does not recover the mer-  
18 chandise in merchantable condition, the merchant shall be entitled to a  
19 civil penalty for an amount equal to twice the retail cost of the merchan-  
20 dise, or \$50, whichever is greater, but in no case shall such civil penalty  
21 be more than \$500. If the merchant recovers the merchandise in mer-  
22 chantable condition, the merchant shall be entitled to a civil penalty of  
23 \$50 or 50% of the retail cost of the merchandise, whichever is greater,  
24 but in no case shall such civil penalty be more than \$350.

25 (b) *If an unemancipated minor shoplifts, the parent or guardian of*  
26 *such minor, shall be civilly liable in an amount of the civil penalty as*  
27 *prescribed in subsection (a), except that the provisions of this subsection*  
28 *shall not apply in cases where the guardian is a state agency.*

29 (c) Unless the action is brought pursuant to the Kansas small claims  
30 act and a final judgment is rendered in small claims court, the prevailing  
31 party in such action brought pursuant to this section shall be entitled to  
32 reasonable attorney fees and costs. If the action is brought in small claims  
33 court and the judgment is appealed to district court pursuant to chapter  
34 60 of the Kansas Statutes Annotated or K.S.A. 61-2709 and amendments  
35 thereto, the prevailing party on appeal shall be entitled to reasonable  
36 attorney fees and costs.

37 ~~(d)~~ A conviction or a plea of guilty to the offense of theft of the  
38 merchandise is not a prerequisite to the filing of a civil action under this  
39 section.

40 ~~(d)~~(e) Prior to filing a civil action under this section, a merchant dam-  
41 aged by shoplifting may demand that an individual alleged to be civilly  
42 liable under this act reimburse such merchant in an amount of the civil  
43 penalty as prescribed in subsection (a). Such demand, if made, shall be

1 in writing and may be offered in consideration for the merchant's agree-  
2 ment not to commence a civil action under this section. Such demand  
3 shall not contain a threat of criminal prosecution against such individual.  
4 Any merchant who makes a demand with a threat of criminal prosecution  
5 against such individual shall be precluded from filing a civil action under  
6 this section and pursuing any other remedy at law or equity. A demand  
7 pursuant to this subsection is not a prerequisite to filing a civil action  
8 under this section, but no demand may be made which does not comply  
9 with this subsection.

10 ~~(e)(f)~~ Nothing contained in this act shall be construed to preclude a  
11 merchant from pursuing any other remedy at law or equity prior to filing  
12 an action under this act.

13 ~~(f)(g)~~ For purposes of this act, "shoplift" means any one or more of  
14 the following acts committed by a person without the consent of the  
15 merchant and with the intent of appropriating merchandise to that per-  
16 son's or another's own use without payment, obtaining merchandise at  
17 less than its stated sales price or otherwise depriving a merchant of all or  
18 any part of the value or use of merchandise:

19 (1) Removing any merchandise from the premises of the merchant's  
20 establishment;

21 (2) concealing any merchandise with intent to leave the premises with  
22 the merchandise;

23 (3) substituting, altering, removing or disfiguring any label or price  
24 tag;

25 (4) transferring any merchandise from a container in which that mer-  
26 chandise is displayed or packaged to any other container; or

27 (5) disarming any alarm tag attached to any merchandise.

28 Sec. 2. K.S.A. 60-3331 is hereby repealed.

29 Sec. 3. This act shall take effect and be in force from and after its  
30 publication in the statute book.

**THEFT FROM THREE SEPARATE  
MERCANTILE ESTABLISHMENTS LEGISLATION**

**POSITION STATEMENT**

Position Requested: Support

The proposed Theft From Three Separate Mercantile Establishments legislation deals with a type of fraud that is growing in frequency and sophistication.

There has been an increase in retail theft offenses committed in mercantile establishments. A large number of the subjects are involved in the use of illegal drugs and retail theft provides a low risk and high reward way to support their drug habits. An increasing number of the subjects involved in retail theft offenses are very sophisticated and are "professionals" who travel city-to-city. These subjects are cognizant of the existing dollar value in the statute required to commit a felony retail theft offense and have attempted to evade felony charges by committing these thefts from several establishments and taking less than the minimum felony amount.

This bill would change the existing law so that if an individual is apprehended with goods stolen from three separate mercantile establishments in a continuing criminal episode, then they may be charged with felony theft, regardless of the value of the goods.

**Theft From Three Establishments Update  
State Laws Passed and Pending  
(Updated 7-14-00)**

**State Laws Addressing Theft From Three Establishments Legislation:**

1. Arizona
2. Delaware
3. Georgia
4. Idaho

**Theft From Three Establishments are pending in the following states :**

1. Arkansas
2. Florida
3. Missouri
4. Pennsylvania
5. South Carolina
6. Tennessee
7. Texas



## **BOGUS RECEIPTS & UNIVERSAL PRODUCT CODES LEGISLATION POSITION STATEMENT**

Position Requested: Support

The proposed Bogus Receipts & Universal Product Codes legislation deals with a type of fraud that is growing in frequency and sophistication. Individuals and organized rings are traveling state-to-state utilizing counterfeit UPC labels which they place on products, buy those products, and then using counterfeit receipts refund those products, usually for money to purchase drugs. A typical operation follows this pattern: an individual enters a store and marks, for example, a \$300 sewing machine. The same individual places a counterfeit UPC label, which may ring up as a sewing kit, over the real UPC label on the sewing machine. That individual leaves the store. A short while later, a second individual enters the store, picks up the marked sewing machine, a few other items and checks out. The counterfeit UPC label rings up for \$30 instead of \$300. The total, with other items may come to \$50. The second individual then takes the sewing machine, with a fraudulent receipt, and takes it to another store in the same chain. The fraudulent UPC label is removed, the sewing machine is returned and the individual walks away with a \$250 profit.

Groups are literally working several states at a time moving from state-to-state. For example, one ring was tracked working Indiana, Illinois, Minnesota, Nebraska, Iowa, Missouri, Ohio, Michigan, and back to Indiana. There are individuals putting together packages of fraudulent UPC labels and receipts. For example, in Florida an individual was packaging this material together, selling it for \$2000 while the package allowed the buyer to steal \$10,000. In January of 1999, a ring was cracked that was operating throughout the entire United States.

Existing forgery laws do not deal adequately with this problem. Forgery laws deal with documents. This legislation deals with documents, machines used to make the documents, and individuals. The type of retail theft we are talking about is very specific, whereas forgery is more general, and growing in popularity among those seeking easy money or drug money or both.

The proposed legislation would impose a felony on any person who has one counterfeit UPC label or receipt. A next higher degree of felony would be imposed upon any person who has more than one counterfeit UPC label or receipt or possesses the device which purpose is to produce fraudulent UPC labels or receipts.

The Federal Bureau of Investigation (FBI) estimates over \$26 Billion was lost to retail theft in 1998 excluding internal and vendor theft. The FBI estimates it costs consumers 4 cents on every dollar. The Interstate Fencing Strategic Initiative conference in February of 1997 reported that U.S. grocery chains work approximately 10 months out of the year to support losses due to theft; pharmacy and discount stores work six months out of the year. This despite hundreds of millions spent on surveillance, bar-code development, product markers, and other efforts to stem the increasing tide of retail theft.

## **“BOGUS RECEIPTS & UNIVERSAL PRODUCT CODES” MODEL BILL**

An Act relating to acts constituting making certain use of retail sales receipts or Universal Product Code Labels an unlawful act; providing penalty; and providing an effective date.

### Section I

(All definitions used in this Model Bill may be changed to conform to state laws or regulations.)

- A. A person who, with intent to cheat or defraud a retailer, possesses, uses, utters, transfers, makes, alters, counterfeits, or reproduces a retail sales receipt or a Universal Product Code Label, commits a [state level of crime].
- B. A person who, with intent to cheat or defraud a retailer, possesses \*fifteen (15) or more fraudulent retail sales receipts, Universal Product Code Labels or possesses the device which purpose is to manufacture fraudulent retail sales receipts or Universal Product Code Labels, will be guilty of [state level of crime one degree higher].

### Section II.

This Act shall become effective [date].

\*from Federal Access Code.

**Bogus Receipts**  
(Updated 7-14-00)  
**State Laws Passed and Pending**

**State Laws Addressing Bogus Receipts Legislation:**

1. Arizona
2. Arkansas
3. Georgia
4. Illinois
5. Iowa
6. Nevada
7. New Hampshire
8. Oklahoma
9. Washington

**Bogus Receipts Bills Pending in the Following States:**

1. Colorado
2. Connecticut
3. Delaware
4. Florida 2001
5. Louisiana
6. Maine
7. Maryland
8. Missouri
9. New York
10. Texas 2001