

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Vice Chairperson Ward Loyd at 3:30 p.m. on March 11, 2002 in Room 313-S of the Capitol.

All members were present except:

Representative Kathe Lloyd - Excused
Representative Dean Newton - Excused
Representative Michael O'Neal - Excused
Representative Jan Pauls - Excused
Representative Rick Rehorn - Excused
Representative Joe Shriver - Excused
Representative Clark Shultz - Excused

Committee staff present:

Jerry Ann Donaldson, Department of Legislative Research
Jill Wolters, Department of Revisor of Statutes
Sherman Parks, Department of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Secretary Charles Simmons, Kansas Department of Corrections
Pat Scalia, Kansas State Board of Indigent Defense Services
Sheila Walker, Director, Division of Motor Vehicles

Hearing on **SB 412 - application fee imposed on defendant entitled to indigent defense services**, was opened.

Pat Scalia, Kansas State Board of Indigent Defense Services, stated that they are afraid that there will be a lawsuit stating that persons are not getting representation in a timely manner. Therefore, they are requesting an increase in public defender fee to \$50. It would require a person requesting representation to pay the \$50 application fee up-front. (Attachment 1)

Hearing on **SB 412** was closed.

Hearing on **SB 392 - habitual violator**, was opened.

Sheila Walker, Director, Division of Motor Vehicles, commented that this would address an oversight to the habitual violator act. It would include the crime of "driving while revoked" under the habitual violator act. She requested a amendment that would eliminate the requirement for law enforcement to send a driver's license after they make a DUI related stop under K.S.A. 8-1002. (Attachment 2)

Hearing on **SB 392** was closed.

Hearing on **SB 95 - enacting the interstate compact for adult offenders supervision**, was opened.

Secretary Charles Simmons, Kansas Department of Corrections, explained that the proposed bill would adopt the Interstate Compact for Adult Offender Supervision. The Act would come into effect when 35 states have adopted it. All surrounding states, except Nebraska, has adopted it. (Attachment 3)

Senator David Adkins did not appear before the committee but see (Attachment 4) for his written testimony.

Hearing on **SB 95** was closed.

Representative Long made the motion to approve the committee minutes from February 6, 7, 11, and 12. Representative Crow seconded the motion. The motion carried.

The committee meeting adjourned at 5:00 p.m. The next meeting was scheduled for March 12, 2002.



BOARD OF INDIGENTS' DEFENSE SERVICES

**JAYHAWK WALK
714 SW JACKSON, SUITE 200
TOPEKA, KANSAS 66603-3714**

(785) 296-4505

March 11, 2002

2002 Legislative Proposal

Good morning Chairman O'Neil, Representatives and Staff:

It is my pleasure to appear before you today to offer testimony in support of Senate Bill Number 412. My name is Patricia A. Scalia and I serve as executive director of the Board of Indigents' Defense Services, a position I have held the last four years.

Senate Bill Number 412 would amend KSA 22-4529 to require persons requesting representation by a public defender to pay an application fee of \$50.00.

Summary: The present statute calls for an assessment of an "administrative fee" of \$35, in the discretion of the Court, as part of the court costs. For a number of reasons, this fee is received in only a fraction of cases. Those reasons include, the judge not addressing the issue, the repayment not being made a part of the court's order because of the form used for sentencing and the order specifying a hierarchy of payment with this payment being last.

Fiscal Impact: We estimate the potential increase to be in the range of \$70,000 to \$200,000 per fiscal year. This estimate is based on many assumptions regarding timeliness of court participation. We also estimate that the increase will not be fully realized until the second year of enactment.

Policy Implications and Impact on the Agency Strategic Plan: Despite its best efforts for several years, the agency has been able to negotiate a "Standing Order" for payment of the administrative fee from only one judicial district, Johnson County. The ability to receive the payment up front rather than last, if ever, will more than double the agency's payment receipts.

Enactment of legislation for an application fee seems to be the trend nationwide. As of 2001, twenty-eight jurisdictions had legislation requiring payment of an application fee for public defender services. The fees range from \$10.00 in New Mexico to \$200.00 in Tennessee and Massachusetts. Some states that require high application fees apply the application fee to the reimbursement of attorney fees. States that have enacted legislation requiring an application fee report that it has not only increased funds-since clients are better able to pay at the time they are charged than several months later when their case goes to trial. But they report that payment of the application fee improves the attorney/client

relationship. Defendants who pay something toward their defense feel that they have a “real lawyer” and a greater stake in the legal proceedings.

We believe this amendment will assist us in being responsible stewards of the taxpayer’s money.

If I may respond to any questions, I am at your service.

Yours truly,

A handwritten signature in black ink, appearing to read "Patricia A. Scalia". The signature is fluid and cursive, with the first name "Patricia" being more prominent.

Patricia A. Scalia
Executive Director

PAS:bc

Sheila J. Walker, Director
Division of Vehicles
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Division of Vehicles

TESTIMONY

TO: Chairman Mike O'Neal
Members of the House Judiciary Committee

FROM: Sheila J. Walker, Director of Vehicles *Sheila J. Walker*

DATE: March 11, 2002

SUBJECT: Senate Bill 392 – Habitual Violator

Mr. Chairman, members of the Committee, I am Sheila Walker, Director of the Kansas Division of Vehicles. Thank you for allowing me to appear today in support of Senate Bill 392, correcting an oversight in the Habitual Violator Act.

Habitual violators are drivers whose driving privileges are revoked for three years because they have been convicted of three or more violations outlined in K.S.A. 8-285 within a five year period. Those violations include:

- Vehicular homicide;
- Driving under the influence (DUI);
- Driving while suspended, canceled or revoked;
- Perjury;
- Fraudulent application for a vehicle title or registration;
- A felony conviction (if a motor vehicle was used in the crime);
- Failing to stop at the scene of an accident; or
- Failing to maintain vehicle liability insurance.

Adding "...or 8-287..." to Line 31 of this bill, simply allows driving while revoked under 8-287 to be used as an offense countable toward another habitual violator determination. Present law does not allow a conviction under 8-287 to be used as a basis for a subsequent habitual violator action.

That means the driving privileges for a driver convicted of three or more violations in 8-285 within five years are revoked for three years. If this driver is caught driving while revoked as a habitual violator under 8-287, the conviction currently does not count toward a subsequent habitual violator determination. Theoretically, a person whose driver's license is revoked under 8-287 could continue to get ticketed for driving on a revoked license, and none of those convictions would count toward another habitual violator status.

We respectfully ask that you consider amending the attached 12-page balloon into our bill. This amendment would eliminate the requirement for law enforcement to send us a driver's license after they make a DUI stop (under K.S.A. 8-1002).

- There would be no need for the driver to obtain a replacement identification card (ID card);
- Law enforcement checks the system to validate an individual's driving privileges anyway; and
- Driver Control would no longer have to receive, file and return hundreds of drivers' licenses, thus freeing up some administrative time to better handle more important processing functions.

This balloon was originally introduced in bill form last session (SB 225). Unfortunately, we ran out of time last year, and did not get to have a hearing on the bill.

Your favorable consideration of this bill and amendment would be appreciated.

PROPOSED AMENDMENT

Sec. ____ . K.S.A. 8-1002 is hereby amended to read as follows: 8-1002. (a) Whenever a test is requested pursuant to this act and results in either a test failure or test refusal, a law enforcement officer's certification shall be prepared. If the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, a separate certification pursuant to K.S.A. 8-2,145 and amendments thereto shall be prepared in addition to any certification required by this section. The certification required by this section shall be signed by one or more officers to certify:

(1) With regard to a test refusal, that: (A) There existed reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, or is under 21 years of age while having alcohol or other drugs in such person's system; (B) the person had been placed under arrest, was in custody or had been involved in a vehicle accident or collision; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; and (D) the person refused to submit to and complete a test as requested by a law enforcement officer.

(2) With regard to a test failure, that: (A) There existed reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, or is under 21 years of age while having alcohol or other drugs in such person's system; (B) the person had been placed under arrest, was in custody or had been involved in a vehicle accident or collision; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; and (D) the result of the test

showed that the person had an alcohol concentration of .08 or greater in such person's blood or breath.

(3) With regard to failure of a breath test, in addition to those matters required to be certified under subsection (a)(2), that: (A) The testing equipment used was certified by the Kansas department of health and environment; (B) the testing procedures used were in accordance with the requirements set out by the Kansas department of health and environment; and (C) the person who operated the testing equipment was certified by the Kansas department of health and environment to operate such equipment.

(b) For purposes of this section, certification shall be complete upon signing, and no additional acts of oath, affirmation, acknowledgment or proof of execution shall be required. The signed certification or a copy or photostatic reproduction thereof shall be admissible in evidence in all proceedings brought pursuant to this act, and receipt of any such certification, copy or reproduction shall accord the department authority to proceed as set forth herein. Any person who signs a certification submitted to the division knowing it contains a false statement is guilty of a class B nonperson misdemeanor.

(c) When the officer directing administration of the testing determines that a person has refused a test and the criteria of subsection (a)(1) have been met or determines that a person has failed a test and the criteria of subsection (a)(2) have been met, the officer shall serve upon the person notice of suspension of driving privileges pursuant to K.S.A. 8-1014, and amendments thereto. If the determination is made while the person is still in custody, service shall be made in person by the officer on behalf of the division of vehicles. In cases where a test failure is established by a subsequent analysis of a breath, blood or urine sample, the officer shall serve notice of such suspension in person or by another designated officer or by mailing the notice to the person at the address provided at the time of the test. Within five days after the date of service of a copy of the law enforcement officer's certification and notice of suspension,

the officer's certification and notice of suspension shall be forwarded to the division.

(d) In addition to the information required by subsection (a), the law enforcement officer's certification and notice of suspension shall contain the following information: (1) The person's name, driver's license number and current address; (2) the reason and statutory grounds for the suspension; (3) the date notice is being served and a statement that the effective date of the suspension shall be the 30th calendar day after the date of service; (4) the right of the person to request an administrative hearing; and (5) the procedure the person must follow to request an administrative hearing. The law enforcement officer's certification and notice of suspension shall also inform the person that all correspondence will be mailed to the person at the address contained in the law enforcement officer's certification and notice of suspension unless the person notifies the division in writing of a different address or change of address. The address provided will be considered a change of address for purposes of K.S.A. 8-248, and amendments thereto, if the address furnished is different from that on file with the division.

~~(e) If a person refuses a test or if a person is still in custody when it is determined that the person has failed a test, the officer shall take any license in the possession of the person and, if the license is not expired, suspended, revoked or canceled, shall issue a temporary license effective until the 30th calendar day after the date of service set out in the law enforcement officer's certification and notice of suspension. If the test failure is established by a subsequent analysis of a breath or blood sample, the temporary license shall be served together with the copy of the law enforcement officer's certification and notice of suspension. A temporary license issued pursuant to this subsection shall bear the same restrictions and limitations as the license for which it was exchanged. Within five days after the date of service of a copy~~

~~of--the--law--enforcement--officer's--certification--and--notice--of--suspension--the--officer's--certification--and--notice--of--suspension, along--with--any--licenses--taken,--shall--be--forwarded--to--the division.~~

~~(f)~~ (e) Upon receipt of the law enforcement officer's certification, the division shall review the certification to determine that it meets the requirements of subsection (a). Upon so determining, the division shall proceed to suspend the person's driving privileges in accordance with the notice of suspension previously served. If the requirements of subsection (a) are not met, the division shall dismiss the administrative proceeding ~~and return any license surrendered by the person.~~

~~(g)~~ (f) The division shall prepare and distribute forms for use by law enforcement officers in giving the notice required by this section.

~~(h)~~ (g) The provisions of K.S.A. 60-206 and amendments thereto regarding the computation of time shall not be applicable in determining the effective date of suspension set out in subsection (d). "Calendar day" when used in this section shall mean that every day shall be included in computations of time whether a week day, Saturday, Sunday or holiday.

Sec. 1. K.S.A. 8-1020 is hereby amended to read as follows: 8-1020. (a) Any licensee served with an officer's certification and notice of suspension pursuant to K.S.A. 8-1002, and amendments thereto, may request an administrative hearing. Such request may be made either by:

(1) Mailing a written request which is postmarked 10 calendar days after service of notice, if such notice was given by personal service;

(2) mailing a written request which is postmarked 13 calendar days after service of notice, if such notice was given by mail;

(3) transmitting a written request by electronic facsimile which is received by the division within 10 calendar days after service of notice, if such notice was given by personal service;

or

(4) transmitting a written request by electronic facsimile which is received by the division within 13 calendar days after service, if such notice was given by mail.

~~(b) If the licensee makes a timely request for an administrative hearing, any temporary license issued pursuant to K.S.A. 8-1002 and amendments thereto, shall remain in effect until the 30th calendar day after the effective date of the decision made by the division.~~

~~(c)~~ (b) If the licensee fails to make a timely request for an administrative hearing, the licensee's driving privileges shall be suspended or suspended and then restricted in accordance with the notice of suspension served pursuant to K.S.A. 8-1002, and amendments thereto.

~~(d)~~ (c) Upon receipt of a timely request for a hearing, the division shall forthwith set the matter for hearing before a representative of the director and ~~provide notice of the extension of temporary driving privileges~~ the person's driving privileges shall remain in effect, until an order of suspension is entered at such hearing, unless otherwise restricted, suspended, revoked or canceled. Except for a hearing conducted by telephone or video conference call, the hearing shall be conducted in the county where the arrest occurred or a county adjacent thereto. If the licensee requests, the hearing may be conducted by telephone or video conference call.

~~(e)~~ (d) Except as provided in subsection ~~(f)~~ (e), prehearing discovery shall be limited to the following documents, which shall be provided to the licensee or the licensee's attorney no later than five calendar days prior to the date of hearing:

(1) The officer's certification and notice of suspension;

(2) in the case of a breath or blood test failure, copies of documents indicating the result of any evidentiary breath or blood test administered at the request of a law enforcement officer;

(3) in the case of a breath test failure, a copy of the

affidavit showing certification of the officer and the instrument; and

(4) in the case of a breath test failure, a copy of the Kansas department of health and environment testing protocol checklist.

~~(f)~~ (e) At or prior to the time the notice of hearing is sent, the division shall issue an order allowing the licensee or the licensee's attorney to review any video or audio tape record made of the events upon which the administrative action is based. Such review shall take place at a reasonable time designated by the law enforcement agency and shall be made at the location where the video or audio tape is kept. The licensee may obtain a copy of any such video or audio tape upon request and upon payment of a reasonable fee to the law enforcement agency, not to exceed \$25 per tape.

~~(g)~~ (f) Witnesses at the hearing shall be limited to the licensee, to any law enforcement officer who signed the certification form and to one other witness who was present at the time of the issuance of the certification and called by the licensee. The presence of the certifying officer or officers shall not be required, unless requested by the licensee at the time of making the request for the hearing. The examination of a law enforcement officer shall be restricted to the factual circumstances relied upon in the officer's certification.

~~(h)~~ (g) (1) If the officer certifies that the person refused the test, the scope of the hearing shall be limited to whether:

(A) A law enforcement officer had reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system;

(B) the person was in custody or arrested for an alcohol or drug related offense or was involved in a vehicle accident or collision resulting in property damage, personal injury or death;

(C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; and

(D) the person refused to submit to and complete a test as requested by a law enforcement officer.

(2) If the officer certifies that the person failed a breath test, the scope of the hearing shall be limited to whether:

(A) A law enforcement officer had reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system;

(B) the person was in custody or arrested for an alcohol or drug related offense or was involved in a vehicle accident or collision resulting in property damage, personal injury or death;

(C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto;

(D) the testing equipment used was certified by the Kansas department of health and environment;

(E) the person who operated the testing equipment was certified by the Kansas department of health and environment;

(F) the testing procedures used substantially complied with the procedures set out by the Kansas department of health and environment;

(G) the test result determined that the person had an alcohol concentration of .08 or greater in such person's breath; and

(H) the person was operating or attempting to operate a vehicle.

(3) If the officer certifies that the person failed a blood test, the scope of the hearing shall be limited to whether:

(A) A law enforcement officer had reasonable grounds to believe the person was operating a vehicle while under the

influence of alcohol or drugs, or both, or had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system;

(B) the person was in custody or arrested for an alcohol or drug related offense or was involved in a vehicle accident or collision resulting in property damage, personal injury or death;

(C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto;

(D) the testing equipment used was reliable;

(E) the person who operated the testing equipment was qualified;

(F) the testing procedures used were reliable;

(G) the test result determined that the person had an alcohol concentration of .08 or greater in such person's blood; and

(H) the person was operating or attempting to operate a vehicle.

{+} (h) At a hearing pursuant to this section, or upon court review of an order entered at such a hearing, an affidavit of the custodian of records at the Kansas department of health and environment stating that the breath testing device was certified and the operator of such device was certified on the date of the test shall be admissible into evidence in the same manner and with the same force and effect as if the certifying officer or employee of the Kansas department of health and environment had testified in person. A certified operator of a breath testing device shall be competent to testify regarding the proper procedures to be used in conducting the test.

{+} (i) At a hearing pursuant to this section, or upon court review of an order entered at such a hearing, in which the report of blood test results have been prepared by the Kansas bureau of investigation or other forensic laboratory of a state or local law enforcement agency are to be introduced as evidence, the

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

~~(k)~~ (j) At the hearing, the licensee has the burden of proof by a preponderance of the evidence to show that the facts set out in the officer's certification are false or insufficient and that the order suspending or suspending and restricting the licensee's driving privileges should be dismissed.

~~(l)~~ (k) Evidence at the hearing shall be limited to the following:

- (1) The documents set out in subsection ~~(e)~~ (d);
- (2) the testimony of the licensee;
- (3) the testimony of any certifying officer;
- (4) the testimony of any witness present at the time of the issuance of the certification and called by the licensee;
- (5) any affidavits submitted from other witnesses;
- (6) any documents submitted by the licensee to show the existence of a medical condition, as described in K.S.A. 8-1001, and amendments thereto; and
- (7) any video or audio tape record of the events upon which the administrative action is based.

~~(m)~~ (l) After the hearing, the representative of the director shall enter an order affirming the order of suspension or suspension and restriction of driving privileges or for good cause appearing therefor, dismiss the administrative action. If the representative of the director enters an order affirming the order of suspension or suspension and restriction of driving privileges, the suspension or suspension and restriction shall begin on the 30th day after the effective date of the order of suspension or suspension and restriction. If the person whose privileges are suspended is a nonresident licensee, the license of the person shall be forwarded to the appropriate licensing

authority in the person's state of residence if the result at the hearing is adverse to such person or if no timely request for a hearing is received.

(m) (m) The representative of the director may issue an order at the close of the hearing or may take the matter under advisement and issue a hearing order at a later date. If the order is made at the close of the hearing, the licensee or the licensee's attorney shall be served with a copy of the order by the representative of the director. If the matter is taken under advisement or if the hearing was by telephone or video conference call, the licensee and any attorney who appeared at the administrative hearing upon behalf of the licensee each shall be served with a copy of the hearing order by mail. Any law enforcement officer who appeared at the hearing also may be mailed a copy of the hearing order. The effective date of the hearing order shall be the date upon which the hearing order is served, whether served in person or by mail.

(n) (n) The licensee may file a petition for review of the hearing order pursuant to K.S.A. 8-259, and amendments thereto. Upon filing a petition for review, the licensee shall serve the secretary of revenue with a copy of the petition and summons. Upon receipt of a copy of the petition for review by the secretary, the ~~temporary-license-issued-pursuant-to-subsection~~ (b) person's driving privileges under subsection (c) shall be extended until the decision on the petition for review is final.

(o) (o) Such review shall be in accordance with this section and the act for judicial review and civil enforcement of agency actions. To the extent that this section and any other provision of law conflicts, this section shall prevail. The petition for review shall be filed within 10 days after the effective date of the order. Venue of the action for review is the county where the person was arrested or the accident occurred, or, if the hearing was not conducted by telephone conference call, the county where the administrative proceeding was held. The action for review shall be by trial de novo to the court and the evidentiary

restrictions of subsection ~~(j)~~ (k) shall not apply to the trial de novo. The court shall take testimony, examine the facts of the case and determine whether the petitioner is entitled to driving privileges or whether the petitioner's driving privileges are subject to suspension or suspension and restriction under the provisions of this act. If the court finds that the grounds for action by the agency have been met, the court shall affirm the agency action.

~~(q)~~ (p) Upon review, the licensee shall have the burden to show that the decision of the agency should be set aside.

~~(r)~~ (q) Notwithstanding the requirement to ~~issue a temporary license in K.S.A. 8-1002 and amendments thereto, and the requirements to~~ extend the ~~temporary license~~ driving privileges in this section, any such ~~temporary~~ driving privileges are subject to restriction, suspension, revocation or cancellation as provided in K.S.A. 8-1014, and amendments thereto, or for other cause.

~~(s)~~ (r) Upon motion by a party, or on the court's own motion, the court may enter an order restricting or suspending the driving privileges allowed ~~by the temporary license provided for in K.S.A. 8-1002 and amendments thereto, and~~ in this section. ~~The temporary license also shall be subject to restriction, suspension, revocation or cancellation, as set out in K.S.A. 8-1014, and amendments thereto, or for other cause.~~

~~(t)~~ (s) The facts found by the hearing officer or by the district court upon a petition for review shall be independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect the suspension or suspension and restriction to be imposed under this section.

~~(u)~~ (t) All notices affirming or canceling a suspension under this section, and all notices of a hearing held under this section ~~and all issuances of temporary driving privileges pursuant to this section~~ shall be sent by first-class mail and a

United States post office certificate of mailing shall be obtained therefor. All notices so mailed shall be deemed received three days after mailing, except that this provision shall not apply to any licensee where such application would result in a manifest injustice.

~~(v)~~ (u) The provisions of K.S.A. 60-206, and amendments thereto, regarding the computation of time shall not be applicable in determining the time for requesting an administrative hearing as set out in subsection (a) but shall apply to the time for filing a petition for review pursuant to subsection ~~(e)~~ (n) and K.S.A. 8-259, and amendments thereto. "Calendar day" shall mean that every day shall be included in computations of time whether a weekday, Saturday, Sunday or holiday.

STATE OF KANSAS




DEPARTMENT OF CORRECTIONS
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Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

To: House Judiciary Committee

From: Charles E. Simmons, Secretary 

Subject: SB 95 - Interstate Compact for Adult Offender Supervision

Date: March 11, 2002

Enactment of SB 95 would constitute state approval of the Interstate Compact for Adult Offender Supervision. If approved by 35 states, the compact would supercede the Probation and Parole Compact Administration Association, of which Kansas is currently a member and active participant.

In testimony on SB 95 before the Senate Judiciary Committee last session, I noted some concerns regarding the proposed compact. (*See attached testimony on SB 95 dated January 30, 2001.*) These concerns raised questions about whether Kansas should adopt the compact. I have also consistently stated, however, that if the compact is adopted by 35 states, then Kansas should also approve the measure because we need to be part of the mechanism for interstate supervision of offenders.

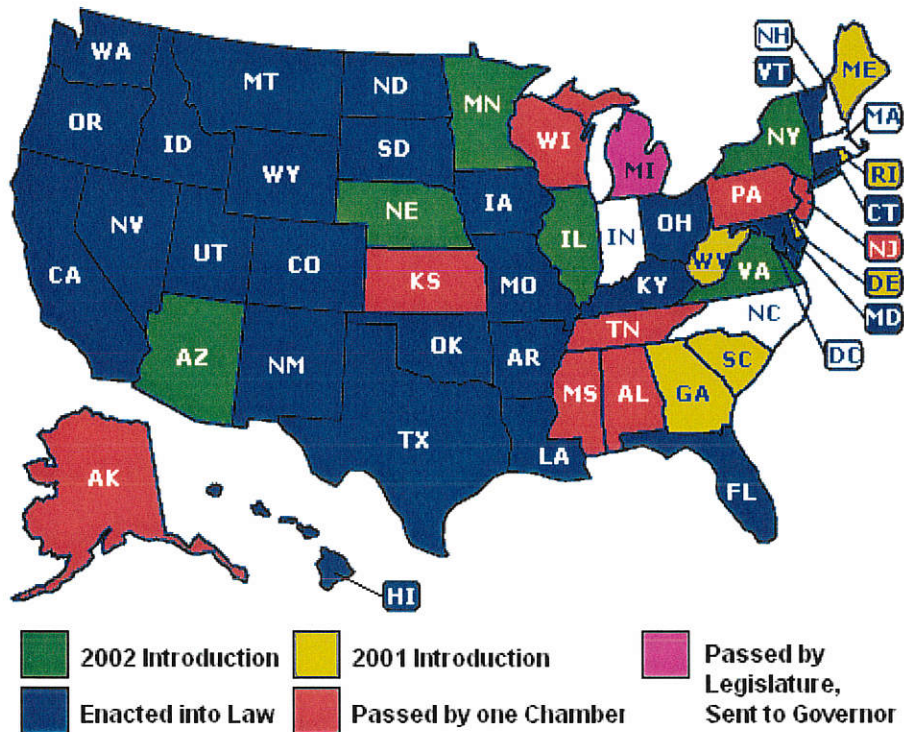
As of March 6th, the Council of State Governments reports that 25 states have now approved the compact (*see attached list*). Additionally, the legislature in Michigan has approved the measure, and it is on the governor's desk. Compact legislation has cleared one house in eight other states, including Kansas. Because it appears that the compact may be approved in 2002, Kansas should also approve it to ensure that we have a voice in developing the compact's policies and procedures. While I still have the same questions and concerns regarding the proposed compact that I raised earlier, I believe that it is in the state's interest to be a member if the compact is to be ratified anyway.

Attachments

House Judiciary
Attachment 3
3-11-02

Interstate Compact for Adult Offender Supervision

2002 State Legislative Activity



State-by-State Status as of March 6, 2002

<u>State</u>	<u>Bill / Statute Number</u>	<u>Status</u>
Alabama	HB 231	Passed House, in Senate
Alaska	HB 52	Passed House, in Senate
Arizona	HB 2338	Passed House Judiciary
Arkansas	SB 252	Signed into law, 2/15/01
California	Cal. Penal Code 11180	Signed into law, 9/24/00
Colorado	CRSA §§ 24-60-2802	Signed into law, 4/10/00
Connecticut	SB 553	Signed into law, 6/1/00
Delaware	HB 199	To be considered (March 2002)
Florida	SB 306	Signed into law, 6/13/01
Georgia	HB 885	Carried over to 2002
Hawaii	SB 2152	Signed into law, 6/7/00
Idaho	IC § 20-301	Signed into law, 4/17/00
Illinois	SB 1780	Senate Rules Committee
Illinois	HB 4936	Awaiting 3rd Reading
Indiana		
Iowa	HF 287	Signed into law, 3/26/01
Kansas	SB 95	Passed Senate, in House

Source: Council of State Governments
<http://www.statesnews.org/clip/policy/isc.htm>

State	Bill / Statute Number	Status
Kentucky	KRS § 439.561	Signed into law, 4/21/00
Louisiana	HB 965	Signed into law, 6/22/01
Maine	LD 1081	Hearing, 2/27/02
Maryland	SB 85	Signed into law, 4/20/01
Massachusetts		
Michigan	HB 4690	Sent to Governor, 2/21/02
Minnesota	SF 2611	Senate Judiciary Committee
Minnesota	HF 2662	House Judiciary Finance Comm.
Mississippi	HB 636	Passed House, in Senate
Missouri	VAMS § 589.500	Signed into law, 6/27/00
Montana	SB 40	Signed into law, 2/14/01
Nebraska	LB 895	Judiciary Committee
Nevada	SB 194	Signed into law, 6/6/01
New Hampshire		
New Jersey	SB 166	Passed Senate, in Assembly
New Mexico	HB 669	Signed into law, 4/5/01
New York	AB 7104	Codes Committee
North Carolina		
North Dakota	HB 1270	Signed into law, 4/6/01
Ohio	HB 269	Signed into law, 10/26/01
Oklahoma	22 Okl St Ann §§ 1091	Signed into law, 6/1/00
Oregon	HB 2393	Signed into law, 7/3/01
Pennsylvania	SB 391	Passed Senate, in House
Rhode Island	SB 771	Carried over to 2002
South Carolina	HB 3384	Carried over to 2002
South Dakota	SB 28	Signed into law, 2/28/01
Tennessee	SB 1682	Carried over to 2002
Tennessee	HB 1404	Carried over to 2002
Texas	HB 2494	Signed into law, 6/11/01
Utah	HB 18	Signed into law, 2/22/01
Vermont	28 VSAT 22 § 1351	Signed into law, 4/27/00
Virginia	SB 649	Comm. on Finance
Washington	SB 5118	Signed into law, 4/16/01
West Virginia	HB 2785	Carried over to 2002
Wisconsin	HB 481	Passed House, in Senate
Wyoming	HB 90	Signed into law, 2/20/01
Amer. Samoa		
Dist. of Columbia		
Guam	SB 528	
N. Mariana Is.		
Puerto Rico		
U.S. Virgin Islands		

Testimony on SB 95
before the Senate Judiciary Committee

by

Charles E. Simmons, Secretary of Corrections

January 30, 2001

SB 95 Interstate Compact for Adult Offender Supervision

Background

Enactment of SB 95 would constitute state approval of the Interstate Compact for Adult Offender Supervision. If approved by 35 states, the compact would supercede the Probation and Parole Compact Administration Association, of which Kansas is currently a member and active participant.

Under provisions of KSA 22-4101, the Department of Corrections is empowered to administer the movement of all offenders subject to the jurisdiction of the existing compact. The department's Interstate Compact Unit is located in the central office and consists of the Interstate Compact Administrator, who is appointed by the Governor, two parole officers and an office assistant.

Offenders permitted to transfer their supervision from Kansas to other states are supervised by probation or parole officers of the receiving state. Offenders from other states permitted to reside in Kansas, whether on probation or parole, are supervised by the department's Parole Services staff. All offenders transferred under the provisions of the Interstate Compact are required to follow the conditions of both the sending and receiving states.

The Interstate Compact Unit currently monitors approximately 593 probationers supervised in other states. Additionally, there are 1,018 parole and postrelease offenders under KDOC jurisdiction who are under supervision in other states. There are 249 parolees and 717 probationers from other states residing in Kansas.

Considerations

General Policy

If the new compact is adopted by 35 states, I believe Kansas should also approve the measure because we need to be part of the mechanism for interstate transfer of responsibility in supervision of offenders. As of January 2001, nine states have enacted laws to approve the compact. However, I have reservations about some of the provisions of the compact and believe the Legislature should be fully aware of those provisions before it acts on the issue.

My basic concern about the compact is that it requires making a commitment to unknowns which could prove to be very significant. Compact provisions involve a broad delegation of state policy and fiscal decision-making authority to the compact's interstate commission. If the state approves the compact, we are agreeing to accept policies that are not yet written, some of which may be viewed by state policymakers as contrary to the state's best interests and/or state budgetary priorities. If that situation arises, there appears to be little room for discretion on the part of participating states. The commission's rules would be binding, and there are strong provisions for punitive action against states that are non-compliant—including fines and legal action in the federal court system.

Fiscal Implications

Annual assessment. The compact authorizes the commission to levy and collect annual assessments from the member states to finance the operations and activities of the commission. Estimates prepared by the Council of State Governments indicate that Kansas could anticipate an annual assess-

SB 95 Interstate Compact for Adult Offender Supervision

ment of approximately \$25,000 (based on the assumption that costs would be assessed against 50 member states). Under the existing compact, there are no annual dues assessed against the member states.

Data systems. The compact explicitly addresses the development of uniform standards for the reporting, collection and exchange of data. Depending on the specifications eventually developed, this could require extensive modification to our existing automated information systems. This could place the state in the position of having to expend scarce IT resources on an application that we would have little control in defining and that might not be a priority when weighed against other needs.

Supervision of Misdemeanants. Because of resource limitations, the Department of Corrections has been very restrictive about the number of misdemeanants accepted for supervision under the existing interstate agreement. Our reading of the proposed compact is that member states would be subject to sanctions if their policies were as restrictive as our current practice. If this proved to be the case, the state would need to determine the most appropriate agency for supervision of compact misdemeanants, whether it be KDOC or court services. Although we have no reliable basis for estimating the number of misdemeanants who might be referred under the proposed compact, it is probable that staffing levels and caseloads would be impacted.

State Council. The compact requires the establishment of a state council. Its provisions set minimum requirements for responsibilities and representation, but discretion is left to the states as to the size of the council and the full extent of its duties. There would be some costs associated with support of the council and its activities, although these cannot be quantified until more specifics are known regarding its composition and scope.

Other Operational Implications

The compact requires the commission to establish rules in a number of substantive operational areas, such as victim notification, offender registration, collection of fees and restitution, and level of supervision to be provided. While these rules would apply only to compact offenders, it is possible that they could pose operational issues relative to implementation of state policy in the supervision of Kansas offenders. If we are required to implement different procedures or use different standards for compact offenders in areas that are currently governed by uniform policies and procedures, then equity and/or administrative considerations may prompt consideration of changes that would not otherwise occur.

A summary of the bill's major provisions is attached.

SB 95 Interstate Compact for Adult Offender Supervision

Major Provisions of SB 95

PURPOSES OF THE COMPACT

1. Provide the framework for promotion of public safety;
2. Protect the rights of victims through the control and regulation of the interstate movement of offenders in the community;
3. Provide effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states;
4. Equitably distribute the costs, benefits and obligations of the compact among the compacting states.

POWERS OF THE COMPACT COMMISSION

- Establishes an interstate commission to: develop procedures for the transfer of offender supervision responsibilities from one compact state to another; ensure opportunity for victim notification and input; establish a system for uniform data collection and access to information; monitor compliance; and coordinate training and education. *(page 3)*
- Empowers the commission to promulgate rules which will have the force and effect of statutory law and which will be binding on the member states. *(page 4 and pages 9-11)*
- Requires that the compact promulgate rules to govern member state procedures in the following areas, at a minimum, as they relate to interstate compact offenders *(page 10)*:

*Victim notification and opportunity for victim input;
Offender registration and compliance;
Violations and returns;
Transfer procedures and forms;
Transfer eligibility;
Collection of restitution and fees;
Uniform standards for data collection and reporting;
Supervision levels to be provided by the receiving state;
Transition rules;
Mediation, arbitration and dispute resolution.*

COMPLIANCE AND ENFORCEMENT

- Authorizes the commission to enforce compliance with compact provisions, commission rules and by-laws, using all necessary and proper means, including but not limited to, initiation of legal action through the federal court system. *(pages 5 and 14)*
- Requires courts and executive agencies in each compacting state to enforce the compact and to take all necessary and appropriate actions to effectuate the compact's purposes and intent. *(page 11)*
- Authorizes the commission to impose penalties on states determined by the commission to have defaulted in the performance of any of

SB 95 Interstate Compact for Adult Offender Supervision

COMPLIANCE AND ENFORCEMENT (CONT)

their compact obligations or responsibilities. Penalties may include: fees, fines and costs; remedial training and technical assistance; and suspension and termination of membership. *(page 13)*

- Provides that all compacting states' laws conflicting with the compact are superceded to the extent of the conflict. *(page 15)*

FINANCE

- To finance its operations and activities, authorizes the commission to levy and collect an annual assessment from each member state. *(pages 11-12)*

STATE COUNCIL

- Provides that each member state shall create a State Council for Interstate Adult Offender Supervision, which shall be responsible for appointment of the commissioner to represent the state on the compact commission. The state council would also be responsible for oversight and advocacy concerning the state's participation in the compact. *(page 4)*
- Provides that the state compact administrator be appointed either by the Governor or the state council. *(page 4)*

EFFECTIVE DATE

- The compact would become effective July 1, 2001 or upon enactment by the 35th state, whichever is later. *(page 12)*



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 Vice Chair, Committee on Ways and Means
 Chair, Joint Committee on Corrections
 and Juvenile Justice Oversight
 Member, Committee on Judiciary
 Member, Kansas Children's Cabinet
 Member, Executive Committee,
 Council of State Governments and
 Midwestern Legislative Conference

INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

TALKING POINTS

- Interstate compacts are not new or unique. There are more than 200 interstate compacts in existence today, and 17 are Corrections and Crime Control compacts. While all states, the District of Columbia, Puerto Rico and the Virgin Islands are party to the existing Parole and Probation Interstate Compact, it is actually rather rare to have that many party states.
- Interstate compacts are:
 - (a) Agreements between two or more states that bind them to the compact's provisions.
 - (b) Subject to the substantive principles of contract law.
 - (c) Protected by the constitutional prohibition against laws that impair the obligations of contracts.
 - (d) This means that:
 - Compacting states are bound to observe the terms of the agreements -- even if those terms are inconsistent with other state laws.
 - Compacts have the force and effect of statutory law.
 - Compacts take precedence over conflicting state laws.
- There are over 4 million offenders on probation and parole in the United States today. 250,000 will cross state lines this year.
- Offenders who travel from state to state are currently overseen by about 3,285 different local parole and probation offices, which operate within 860 different agencies. This fragmented system makes it nearly impossible to adequately account for all offenders.
- Managing offender populations is becoming increasingly complex. State and local governments are passing measures dealing with special offender and high-risk groups such as registration of sex offenders and notification to victims regarding offender locations. Probation and parole must be able to satisfy compliance requirements, track the location of offenders, smoothly transfer supervision authority, and when necessary return offenders to the originating jurisdictions. Interstate activity involving offenders must be governed by public policies that ensure equity and justice for all involved parties, including victims of crime.

- States are responsible and can be held liable for the movement and actions of offenders who move in and out of their state. This should be of increasing concern for states, given the ease of interstate travel we currently enjoy.
- The existing compact has been in existence, unchanged, since 1937. It is two pages long and currently costs states about \$400 per year to participate.
- The existing Compact authority and structure are seriously outdated. Symptoms include: the rule making group is not specifically created in compact language and is not legally empowered to carry out certain key activities; it is difficult to create new rules; there is limited ability to enforce rule compliance; and exchange of case information is slow and unreliable.
- The current Compact has no provisions for staff and no national system or agency to monitor the flow of offenders from state to state.
- Under the existing compact, violations are frequent. There is simply not a structure presently in place that can effectively monitor the movement of parolees and probationers across state lines.
- Primary goals of the revised Interstate Compact include:
 - (a) The establishment of an independent compact operating authority to administer ongoing compact activity, including a provision for staff support.
 - (b) Policymaking level appointment representations of all member states on a national governing commission which meets annually to elect the compact operating authority members, and to attend to general business and rule making procedures.
 - (c) Rule making authority, provision for significant sanctions to support essential compact operations.
 - (d) Mandatory funding mechanism sufficient to support essential compact operations (staffing, data collection, training/education, etc.)
 - (e) Compel collection of standardized information.
- The revised Compact is the result of nearly a year of public hearings, research and informed dialogue among legislators, attorneys general, parole and probation officials and victims' rights groups.
- The Compact can be in place, ready to work, by July 1, 2001 if passed by 35 states or upon passage by the 35th state.

- The revised Compact is a contract between states. As such, states wishing to participate in a compact must adopt identical Compact provisions.
- The Compact mandates more efficient communications between states and state agencies. It compels creation of National Database, utilizing current communications technology that will allow states to share critical offender information.
- The revised Compact facilitates state autonomy **AND** national cooperation:
 - (a) By establishing State Councils, a state appointed group which will oversee the interests of all three branches of government in that state, states can ensure that state officials are aware of the Compact and that the state is taking full advantage of the Compact's structure and benefits.
 - (b) By participating in the National Commission, composed of voting members from all member states and territories, states will help to develop the means to identify, track and account for the controlled movement of offenders. The Commission would also promulgate rules for states as well as resolve disputes between states.
- States determine the structure, composition and budget of the State Councils.
- State Council membership must include at least one representative from the legislative, executive and judicial branches of government, victim groups and the Compact Administrator.
- Each state determines the qualifications of the Compact Administrator who shall be appointed either by the Governor in consultation with the Legislature and the Judiciary; or by the State Council.
- State dues in support of the National Commission are based on a formula to be developed by the state within the National Commission. Key components will include a state's population and a state's volume of interstate movement of offenders. Smaller states with a lower volume of offender movement could expect to pay less and a larger state with a higher volume of offender movement could expect to pay proportionately more.
- Rules and bylaws for the National Commission are developed and passed by the Commission and have the effect of law upon states. However, should a majority of states reject a rule, it will have no further force and effect in any Compacting State. Existing rules and bylaws under the current compact will remain in effect during the first year until the Commission promulgates rules and bylaws which supercede the previous rules.
- The National Commission will have an Executive Committee, composed of Compact Administrators from member states.