

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Senator Vratil at 9:34 a.m. on January 24, 2002 in Room 123-S of the Capitol.

All members were present except: Senator Pugh (excused)

Committee staff present:

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

Conferees appearing before the committee:

Senator Dwayne Umbarger  
Kathy Porter, Office of Judicial Administration (OJA)  
Janet Chubb, Office of Secretary of State  
Trudy Racine, SRS  
Charles Simmons, Secretary, Department of Corrections (DOC)  
Ron Hein, legislative counsel for Prairie Band Potawatomi Nation

Others attending: see attached list

**Bill Introductions:**

Conferee Umbarger requested introduction of a bill which would require both persons who enter into common law marriage to be 18 years old or greater. (no attachment) Senator Umbarger moved to introduce the bill, Senator Schmidt seconded. Carried.

Conferee Porter requested introduction of five bills as follows: a bill to clarify procedure in certain real estate law; a bill to facilitate transfer of documents between the clerk of district court and the DOC; a bill that would allow courts in Johnson and Sedgwick Counties autonomy in requisitioning supplies, equipment, and services; a bill that makes eviction summonses compliant with rules or orders of the Supreme Court; and a language update and clarification bill governing the Supreme Court Nominating Commission. (attachment 1) Senator O'Connor moved to introduce the bills, Senator Umbarger seconded. Carried.

Conferee Chubb requested introduction of a bill which would duplicate changes in the rewritten corporate code in other business entity acts. (attachment 2) Senator Schmidt moved to introduce the bill, Senator Haley seconded. Carried.

Conferee Racine requested introduction of three bills as follows: a bill to add State Security Hospital to the definition of a criminal justice agency; a bill to simplify the process for recovering public-paid medical expenses from a recipient's estate; and a bill that would transfer certain persons at Larned State Hospital to a more appropriate setting. (attachment 3) Senator Goodwin moved to introduce the bills, Senator Donovan seconded. Carried.

**SB 95-enacting the interstate compact for adult offenders supervision**

Conferee Simmons discussed concerns regarding **SB 95** referring to his testimony last year on the interstate compact (copy included in his handout). He stated, however, that if the compact is adopted by 35 states, Kansas should also adopt it so it can be part of the mechanism for interstate supervision of offenders. (attachment 4) Discussion followed.

Senator Adkins provided written testimony supporting **SB 95**. (attachment 5)(see article: "Interstate compact for adult offender supervision", Corrections Policy Profiler, A Publication of the Council of State Governments, Spring 2000, Vol.2, No.1, pp. 1-3)

**SB 383-amending the interlocal cooperation act**

Conferee Hein testified in support of **SB 383**, a bill which he stated would provide for any of the four Kansas Native American Indian Tribes to contract with agencies or political subdivisions for the limited purposes of joint or cooperative programs. (attachment 6) As Chair of the Joint Committee on State-Tribal Relations, Senator Oleen commented on recommendations made by the Committee regarding this bill. (attachment 7) Discussion followed.

**SB 384-concerning agreements with Native American Indian tribes**

Conferee Hein testified in support of **SB 384**, a bill which would authorize the Governor to negotiate and execute agreements with Native American Indian Tribes on behalf of the State of Kansas. He stated that there are opposing opinions about whether the bill is necessary or not and explained his position. He offered an amendment to the bill which would establish a process for legislative review of Governor/Tribal agreements. (attachment 8) Senator Oleen briefed Committee on the history, structure and function of the joint committee and its recommendation on this bill.

Written testimony supporting **SB 383** and **SB 384** was submitted by Kickapoo in Kansas. (attachment 9)

The meeting adjourned at 10:28 a.m. The next meeting is January 28, 2002.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: January 24, 2002

NAME	REPRESENTING
J. Chubb	SOS
Fariba Roumagan	SOS
Tudy Racine	SRS
Kate Hays	Intern
David Proger, III	Prairie Band Potawatomi Nation
Bunda Harmon	KSC
Joseph Harold	KSC
Michelle Peterson	K. Governmental Consulting
<del>Ron Johnson</del>	<del>Prairie Band Potawatomi Council</del>
Jeff Botenberg	KS Sher. AF's
Marsha Strickland	CWA of Mo.
Roger Burt	Judicial Branch
Mark Gleeson	Judicial Branch
Alanna H.	
Barb Conant	KTRA



State of Kansas

## Office of Judicial Administration

Kansas Judicial Center  
301 SW 10<sup>th</sup>  
Topeka, Kansas 66612-1507

(785) 296-2256

January 24, 2002

Senator John Vratil  
Chair, Senate Judiciary Committee  
Room 120-S, Statehouse  
Topeka, Kansas 66612

Dear Senator Vratil:

The Office of Judicial Administration requests the introduction of five bills, which are briefly summarized below.

- A bill that would clarify the procedure for making a Chapter 61 judgment a Chapter 60 judgment against real estate and for imposing the lien against real estate in other counties. This bill is identical to 2001 HB 2175 as amended by the Senate Judiciary Committee, which passed the Senate on a vote of 40-0, but had other provisions inserted in conference committee and was rejected by the House.
- A bill that would amend the requirement in K.S.A. 75-5218 that clerks of the district court notify the Secretary of Corrections within three days of the entry of an order of commitment. The clerk would instead send the order with the sheriff, who would deliver the form with the prisoner.
- A bill that would eliminate the requirement in K.S.A. 19-206b that the courts in Johnson and Sedgwick Counties make all requisitions for purchasing supplies, equipment, and services through the office of the county purchasing officer.
- A bill that would amend K.S.A. 2001 Supp. 61-3805, a statute that was not included in the 2000 revision of the Code of Civil Procedure for Limited Actions. The bill would specify that the summons used in eviction cases should be in compliance with rules or orders of the Supreme Court. Currently, the general Chapter 61 summons form is used, because K.S.A. 2001 Supp. 61-3805 states that the form of summons shall be the same as for other lawsuits filed under the Code of Civil Procedure for Limited Actions. However, that form specifies that the time specified for the defendant to appear in response to the petition shall be not less than 11 nor more than 50 days after the date the summons is issued, while the time to appear specific to eviction cases is not less than three nor more than 14 days after the date the summons is issued.

*Angie  
1-24-02  
att*

Senator John Vratil  
January 24, 2002  
Page 2

- A bill that would clarify and update the language in the statutes governing the Supreme Court Nominating Commission.

Thank you for the opportunity to request the introduction of these bills. I would be glad to provide any additional information that might be helpful to you.

Sincerely,



Kathy Porter  
Executive Assistant to Judicial Administrator

KP:mr

RON THORNBURGH  
Secretary of State



First Floor, Memorial Hall  
120 SW 10th Ave.  
Topeka, KS 66612-1594  
(785) 296-4564

## STATE OF KANSAS

### MEMO

TO: SENATE JUDICIARY COMMITTEE  
FROM: SECRETARY OF STATE RON THORNBURGH  
RE: BILL INTRODUCTION  
DATE: 24 JANUARY 2002

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The Kansas Bar Association and the Secretary of State worked jointly this last year to update the Kansas corporate code, and the KBA will be proposing a bill containing a rewrite of the corporate code.

The Secretary of State requests the introduction of a separate bill, which contains similar amendments as those outlined in the KBA corporate bill, for noncorporate business entities that register with our office. The purpose of the second bill is to duplicate changes within the corporate bill in the other business entity acts; the LLC Act, the LP Act, etc.

*Sen Jud  
1-24-02  
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KANSAS DEPARTMENT OF SOCIAL  
AND REHABILITATION SERVICES

915 SW HARRISON STREET, TOPEKA, KANSAS 66612

JANET SCHALANSKY, SECRETARY

January 23, 2002

Senator John Vratil, Chair  
Senate Judiciary Committee  
Room 120-S, Statehouse  
Topeka, Kansas 66612

Dear Senator Vratil:

I would like to request the introduction of three legislative proposals. The first of these contains statutory changes that would add the State Security Hospital to the definition of a criminal justice agency. This would allow access to the Kansas Bureau of Investigation's criminal history record information and to the federal National Crime Information Center records.

The second proposal is designed to strengthen the language in current statutes to help simplify the process for recovering public-paid medical expenses from a recipient's estate. The proposal would impose a lien on the real property of a recipient of medical assistance. The lien would be imposed primarily on medical assistance recipients who have been in long-term care for one year or more.

The third proposal would allow certain extremely ill or physically or mentally incapacitated persons to be considered for transfer out of the sexual predator treatment program at the Larned State Hospital to a more appropriate setting.

I appreciate your Committee's introduction of these bills, and will be glad to testify or provide additional information as requested.

Sincerely,

*Janet Roane*  
for Janet Schalansky, Secretary

cc: Audrey Nogle, KLRD  
Sherman Parks, KLRD

*sent  
1/24/02  
att3*

STATE OF KANSAS



DEPARTMENT OF CORRECTIONS  
OFFICE OF THE SECRETARY  
*Landon State Office Building*  
900 S.W. Jackson — Suite 400-N  
Topeka, Kansas 66612-1284  
(785) 296-3317

Bill Graves  
Governor

Charles E. Simmons  
Secretary

MEMORANDUM

To: Senate Judiciary Committee

From: Charles E. Simmons, Secretary *CE Simmons*

Subject: SB 95 - Interstate Compact for Adult Offender Supervision

Date: January 24, 2002

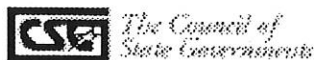
Enactment of SB 95 would constitute state approval of the Interstate Compact for Adult Offender Supervision. If approved by 35 states, the compact would supercede the Probation and Parole Compact Administration Association, of which Kansas is currently a member and active participant.

In testimony on SB 95 before this 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 January 16<sup>th</sup>, the Council of State Governments reports that 25 states have now approved the compact (*see attached list*). There is some indication by those monitoring this issue nationally that approval by the required 35 states may be reached during the early part of 2002. If this is the case, then Kansas should also approve the compact during the 2002 session 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

*9-24-02  
att4*



Contact: John J. Mountjoy at (859) 244-8256 or [jmountjoy@csg.org](mailto:jmountjoy@csg.org).

*Interstate Compact for Adult Offender Supervision*

***State-by-State Status***

*As of January 16, 2002*

***Back to the Interstate Compact for Adult Offender Supervision Homepage***

State	Bill / Statute Number	Primary Sponsor	Status
Alabama	<a href="#">HB 231</a>	Rep. John Robinson	Judiciary Committee
Alaska	<a href="#">HB 52</a>	Gov. Tony Knowles	Carried over to 2002
Alaska	<a href="#">SB 25</a>	Gov. Tony Knowles	Carried over to 2002
Arizona			
Arkansas	<a href="#">SB 252</a>	Sen. Mike Everett	Signed into law, 2/15/01
California	<a href="#">Cal. Penal Code 11180</a>	Sen. John Lewis	Signed into law, 9/24/00
Colorado	<a href="#">CRSA §§ 24-60-2802</a>	Sen. Norma Anderson	Signed into law, 4/10/00
Connecticut	<a href="#">SB 553</a>	Judiciary	Signed into law, 6/1/00
Delaware	<a href="#">HB 199</a>	Rep.'s Wagner	Carried over to 2002
Florida	<a href="#">SB 306</a>		Signed into law, 6/13/01
Georgia	<a href="#">HB 885</a>	Rep. Curtis Jenkins	Carried over to 2002
Hawaii	<a href="#">SB 2152</a>	Sen. Avery Chumbley	Signed into law, 6/7/00
Idaho	<a href="#">IC § 20-301</a>	Sen. Denton Darrington	Signed into law, 4/17/00
Illinois			
Indiana			
Iowa	<a href="#">HF 287</a>	Judiciary Committee	Signed into law, 3/26/01
Kansas	<a href="#">SB 95</a>	Sen. David Adkins	Carried over to 2002
Kentucky	<a href="#">KRS § 439.561</a>	Rep. Bob Damron	Signed into law, 4/21/00
Louisiana	<a href="#">HB 965</a>	Rep. Daniel Martiny	Signed into law, 6/22/01
Maine			
Maryland	<a href="#">SB 85</a>	S. Frosh & R. Dembrow	Signed into law, 4/20/01
Massachusetts			
Michigan	<a href="#">HB 4690</a>	Rep. Charles LaSata	Passed House, in Senate
Minnesota			
Minnesota			
Mississippi	<a href="#">HB 635</a>	Rep. Warner McBride	Judiciary B Committee
Missouri	<a href="#">VAMS § 589.500</a>	Rep. Randall Relford	Signed into law, 6/27/00
Montana	<a href="#">SB 40</a>	Sen. Chris Christiaens	Signed into law, 2/14/01
Nebraska	<a href="#">LB 895</a>	Sen. Diana Schimeck	Judiciary Committee
Nevada	<a href="#">SB 194</a>	Sen. Maurice Washington	Signed into law, 6/6/01
New Hampshire			

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New Jersey	<b>SB 166</b>	Sen. Richard Bagger	Law & Public Safety Committee
New Mexico	<b>HB 669</b>	Rep. Ken Martinez	Signed into law, 4/5/01
New York	<b>AB 7104</b>	Assem. Jeff Aubrey	Codes Committee
North Carolina			
North Dakota	<b>HB 1270</b>	Rep. Duane DeKrey	Signed into law, 4/6/01
Ohio	<b>HB 269</b>	Rep. Bob Latta	Signed into law, 10/26/01
Oklahoma	<b>22 Okl St Ann §§ 1091</b>	Sen. Brad Henry	Signed into law, 6/1/00
Oregon	<b>HB 2393</b>	Interim Judiciary Com.	Signed into law, 7/3/01
Pennsylvania	<b>SB 391</b>	Sen. Stewart Greenleaf	Pending 3rd Reading - Senate
Rhode Island	<b>SB 771</b>	Sen. Mary Parella	Carried over to 2002
South Carolina	<b>HB 3384</b>	Rep. George Campsen	Carried over to 2002
South Dakota	<b>SB 28</b>	State Affairs Comm.	Signed into law, 2/28/01
Tennessee	<b>SB 1682</b>	Sen. David Fowler	Carried over to 2002
Tennessee	<b>HB 1404</b>	Rep. Curry Todd	Carried over to 2002
Texas	<b>HB 2494</b>	Rep. Pat Haggarty	Signed into law, 6/11/01
Utah	<b>HB 18</b>	Rep. Gary Cox	Signed into law, 2/22/01
Vermont	<b>28 VSAT 22 § 1351</b>	Senate Institutions	Signed into law, 4/27/00
Virginia			
Washington	<b>SB 5118</b>	Sen. Jeri Costa	Signed into law, 4/16/01
West Virginia	<b>HB 2785</b>	Del. Roy Givens	Carried over to 2002
Wisconsin	<b>HB 481</b>	Rep. Scott Walker	Passed House, in Senate
Wyoming	<b>HB 90</b>	Judiciary Committee	Signed into law, 2/20/01
Amer. Samoa			
Dist. of Columbia			
Guam	<b>SB 528</b>	Sen. Marcel Camacho	
N. Mariana Is.			
Puerto Rico			
U.S. Virgin Islands			

If you would like information on the Interstate Compact for Adult Offender Supervision, please contact **John J. Mountjoy** at (859) 244-8256 or [jmountjoy@csg.org](mailto:jmountjoy@csg.org).

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**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**

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### **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**

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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

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### 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**

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### **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 superseded 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)*

1-2/01  
SJ



TOPEKA

SENATE CHAMBER

Testimony in Support of SB 95  
before the Senate Judiciary Committee  
January 30, 2001

Mr. Chairman and Members of the Committee:

It is my pleasure to join my colleague, Senator Greta Goodwin, as a proponent and sponsor of Senate Bill 95 which provides for our state's approval of the proposed Interstate Compact for Adult Offender Supervision.

This compact provides a much needed revision to the existing interstate compact and significantly enhances public safety by improving the process by which out of state criminals are accounted for in Kansas. Over 4 million people are on probation or parole in the United States and 250,000 of them are expected to cross state lines this year. The compact delineates the obligation and responsibility of the sending and receiving states.

To date, nine states have enacted the compact – including Missouri, Oklahoma and Colorado. The Kansas House passed House Bill 2939 approving the compact last year but the bill did not receive Senate consideration.

Some may urge delay in adopting the new compact. I believe such delay is unwarranted and potentially dangerous. Kansas should be at the table when regulations are being developed to operationalize the compact. Kansas can always withdraw from the compact should we determine regulations adopted to operationalize the compact are contrary to our best interests.

The existing compact is antiquated and obsolete. In the interest of protecting public safety a new compact is needed. With this testimony I am providing you with a copy of a resource manual compiled by the Council of State Governments. This manual provides a comprehensive review of the proposed compact.

I urge the committee to report SB 95 favorable for passage.

Respectfully submitted,

  
David Adkins

Signed  
1-24-02  
att 5

Sen. Goodwin  
SB 95

6/30/01  
S

STATE OF KANSAS

**GRETA H. GOODWIN**  
SENATOR, 32ND DISTRICT  
COWLEY AND SUMNER COUNTIES

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TOPEKA

SENATE CHAMBER

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CORRECTIONS/JUVENILE JUSTICE

MEMBER: ASSESSMENT AND TAXATION  
ENERGY AND NATURAL RESOURCES  
TRANSPORTATION AND TOURISM  
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HEALTH CARE REFORM LEGISLATIVE  
OVERSIGHT  
KANSAS SENTENCING COMMISSION  
JUDICIAL COUNCIL PROBATE  
LAW ADVISORY COMMITTEE

**TESTIMONY**

TO: Chairman John Vratil  
Members of the Senate Judiciary Committee  
RE: Senate Bill 95  
Dated: January 30, 2001

Thank you Mr. Chairman and Committee Members for the opportunity to speak in support of Senate Bill 95.

**Background**

According to The Council of State Governments there will be four million adults on parole or probation. 250,000 of those parolees will cross state lines throughout this year. In Kansas there are 3,248 offenders who travel in and out of the state. States that have already enacted legislation to be in an Interstate Compact for Adult Offender Supervision include: Colorado, Missouri, Oklahoma, Kentucky, Idaho, California, Connecticut, Hawaii and Vermont. According to the National Institute of Corrections the provisions of the 1937 compact are now out of date to control the offender population. We presently do not have a method of collection of standardized information. The legislation before you will update the 1937 compact to enable states to better manage, monitor and supervise adult parolees and probationers in states other than where they were sentenced. The new compact can be ready to take place by July 1, 2001 if passed by 35 states or upon passage by the 35<sup>th</sup> state.

**Need For Joining of the Compact**

As stated above the current compact between the states is out of date, and a new compact needs to be put into place to help control the amount of traffic that goes in and out of states. Three questions need to be asked when dealing with this new compact. Who are they? Where are they? Who is responsible for them?

First, who are they? They are the four million adults in this country who are on parole. The current situation does not let us effectively follow who is where, and what possible threat they pose. So this legislation will help the promotion of public safety and protect the rights of victims.

Where are they? 3,248 offenders will travel in and out of the state of Kansas by the end of the year. This relates to the first question in that safety is an important matter for our citizens. This Compact will create an Interstate Commission which will establish uniform procedures to

5-2



manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections or other criminal justice agencies which will promulgate rules to achieve the purpose of this compact. There are about 3,285 different local parole and probation offices. Because it is so fragmented it makes it nearly impossible to account for all offenders, making a uniform procedure necessary.

Who is responsible for them? The states that decide to join the compact recognize that each state is responsible for the supervision of the adult offenders. States who put people on parole or probation have a clear duty to the general public to make sure that it can monitor those individuals.

### **Conclusion**

The annual cost for Kansas will be a concern as the dues to each state are calculated according to the state population. I would propose that an amendment be offered to the bill similar to that of Colorado's legislation in that our state set a cap on the dollar amount for the enactment of the compact and should the state find that the funding is to exceed the cap amount, the state will withdraw from the Compact.

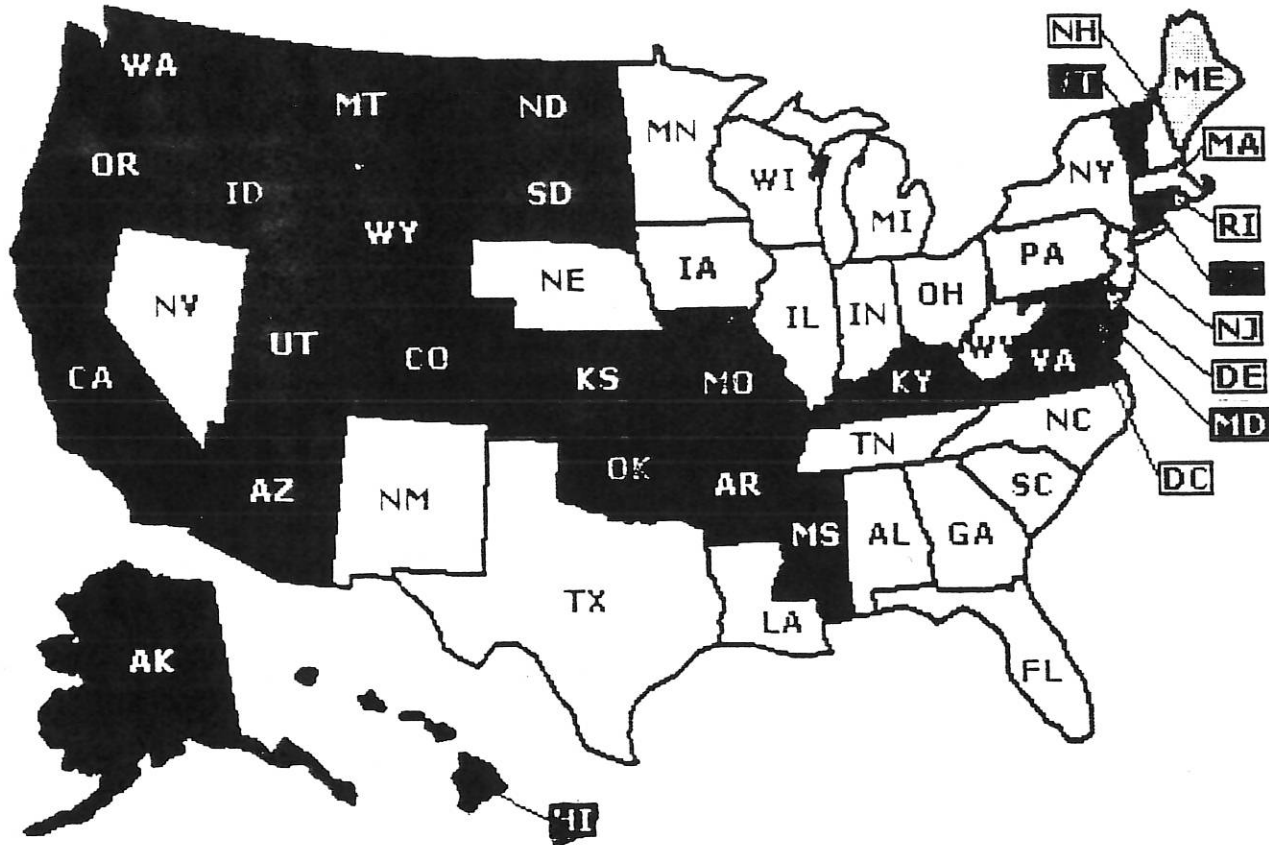
Senate Bill No. 95 also has the provision that a compacting state may withdraw from the Compact by enacting a statute specifically repealing the state which enacted the Compact into law.

I have attached to my testimony a map showing those nine states which have enacted the Interstate Compact into law (blue), as well as the fourteen states which have 2001 legislation pending (yellow). You will observe that Kansas is almost surrounded by the mentioned 22 states. Should all the pending legislation be passed during the 2001 session, Kansas could have offenders seek Kansas as a haven due to our not having in place the Interstate Compact.

Again, I thank you for the opportunity to address the Committee. I urge your favorable consideration of this legislation.

# State Legislative Activity

*Click on your state for more information*



- |                       |                       |
|-----------------------|-----------------------|
| Enacted Into Law      | American Samoa        |
| 2001 Introduction     | Guam                  |
| 2000 Activity         | Northern Mariana Isl. |
| Passed by Legislature | Puerto Rico           |
|                       | U.S. Virgin Islands   |

## What Can You Do?

The new Compact must be adopted by at least 35 states. This means that there is still work to be done, and a part that every responsible individual can play:

- *Go public with your support for the new Compact*—Talk to lawmakers, candidates for office, victims' rights groups and other citizens' groups.
- *Contact the media*—Call a press conference, issue a press release, call attention to the Compact by any means available to you.
- *Remind your colleagues and the public that the Compact is ready to be enacted and can be officially in place as soon as July 1, 2001*—or upon passage by the 35th state.

*"Get this enacted in your state...your citizens—and more importantly, potential victims of crime—will not be able to thank you enough..."*

—Mike Lawlor, State Representative, Connecticut



## The Difference It Will Make

This is a substantial and historic undertaking designed to promote public safety, increase the effectiveness of our justice system, and ensure accountability throughout the parole/probation systems of all 50 states.

*"For the first time, we will have an organization with the ability and the authority to monitor offenders across state lines..."*

—Odie Washington, Director, Department of Corrections



*This is what Americans expect of their justice system—it is what they deserve.*

*Want more information? Call Kermit Humphries 1-800-995-6423 ext. 136 or John Mountjoy 606-244-8256, or visit [www.csg.org](http://www.csg.org)*

*"I would not want to be a legislator who voted against adopting this Compact, and have to be in a position to explain to the public why an individual from another state was able to come into my state and commit some horrible crime..."*

—Mike Buenger, State Court Administrator for Unified Judicial System, South Dakota

# 4 Million

adults are on parole or probation in the U

# 250 Thousand

will cross state lines this year

# Who

are they?

# Where

are they?

# Who

is responsible for them?

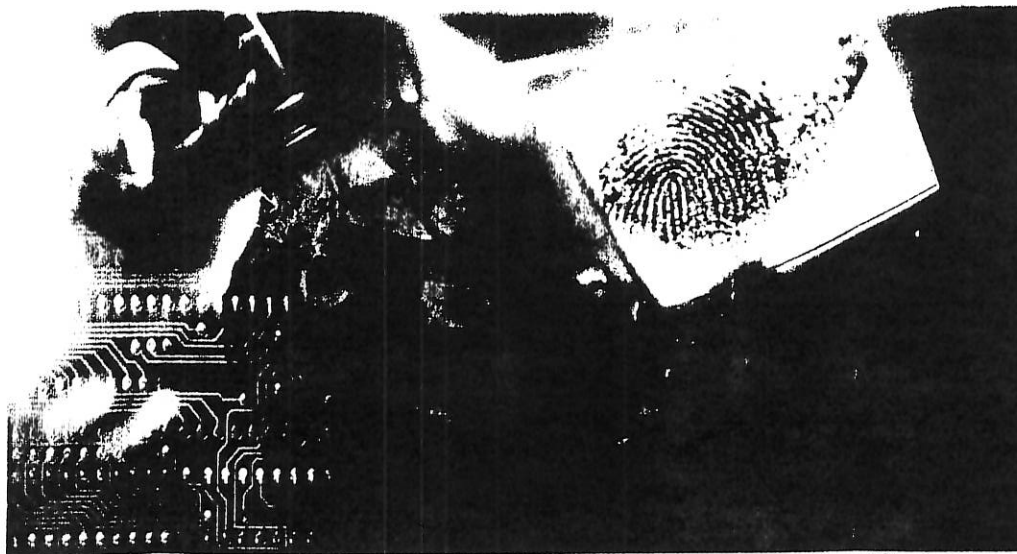
# Why

is change necessary?

## The Way It Is Now

Even among those who know of the Interstate Compact for Supervision of Parolees and Probationers, very few fully understand it; and some even ignore it. Actually, the Compact as it exists is outdated and ineffective.

- The current Compact was written in 1937.
- Its entire content is expressed in only two pages.
- In more than 60 years, it has never been revised or rewritten.
- Yet, with over 4 million offenders on parole or probation in the United States today—and interstate travel and transportation being convenient and inexpensive—the need for the Compact is greater than ever before.



*It establishes a National Commission*—A national body composed of voting members from all 50 member states and US territories. The Commission will develop the means to identify, track and account for the controlled movement of offenders. The Commission will have the authority to create and enforce rules, as well as resolve conflicts between states.

*It mandates more efficient communication among states*—The overall effect of the Compact is an increased level of communication across the spectrum of concerned agencies.

*It compels creation of a National Database*—Finally, the Compact takes advantage of current communications technology by promoting a database of information on offenders in all member states.

## The Way It Can Be

The design for a new Compact is already complete. This new document is the result of months of public hearings and informed dialogue among *legislators, attorneys general, parole and probation officials and victims' rights groups.*

Here are a few of the new Compact's significant components:

*It establishes State Councils*—Each member state will appoint its own State Council to oversee the interests of all three branches of government in that particular state. The Council will ensure that state-level officials are aware of the Compact, and that the state is taking full advantage of the Compact's structure and benefits, while honoring their contractual obligations to other states.

*"If the public knew about this movement of offenders across state lines, and issues of non-compliance...I think they would be truly alarmed."*

—Gail Hughes, Retired  
Correctional Administrator



*"Victims feel that supervision of offenders is a crime prevention issue. Crime prevention is victim prevention..."*

—Ellen Halbert, Director of the Victim Witness Division, County Prosecutor's Office, Texas



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## **Testimony before Senate Judiciary**

**Re: SB 383**

**Presented by Ronald R. Hein**

**on behalf of**

**Prairie Band Potawatomi Nation**

**January 24, 2002**

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for Prairie Band Potawatomi Nation. The Prairie Band Potawatomi Nation is one of four Kansas Native American Indian Tribes.

The Prairie Band Potawatomi support SB 383. The addition of the Native American Indian Tribes to the provisions of the Interlocal Cooperation Act provide for the Tribe to enter into agreements with any county, township, city, school district, or any other political subdivision, or any other state or any state agency or state officer of the State of Kansas pursuant to the terms of that act.

The bill would provide for the Tribes to contract with agencies or political subdivisions for the limited purposes of joint or cooperative programs. Any such agreement would be recognized by the State of Kansas with the same degree of recognition of such cooperative agreements that are entered into between political subdivisions of the state.

There are many areas where the tribes and various local units of government would benefit from having such agreements.

It is important that the mechanisms exist that would permit cooperation and agreement between the Indian Nations and the State and its agencies or officers and local government and their agencies. In the absence of such ability to communicate and to come to agreement, there will be a natural tendency to be confrontational and to let litigation solve disputes that arise.

In light of this, the Prairie Band Potawatomi expresses its support of SB 383. Thank you very much for permitting me to testify, and I will be happy to yield to questions.

*SWW  
1-24-02  
att 6*

# Joint Committee on State-Tribal Relations

## THIRD ANNUAL REPORT (2001)

### CONCLUSIONS AND RECOMMENDATIONS

The Joint Committee notes issues of concern regarding relations with tribal entities at the state level. The Joint Committee makes the following conclusions and recommendations:

- The Joint Committee recommends the introduction of two bills for consideration during the 2002 Session.
  - The first bill would amend the Interlocal Cooperation Act to allow Native American Indian Tribes to enter into interlocal agreements with public agencies.
  - The second bill would authorize the Governor to negotiate and execute agreements with Native American Indian Tribes on behalf of the State of Kansas.
- The Joint Committee supports the decision of the current Committee Chair to invite the four resident Tribal Chairs (or a Tribal Council designee) to sit at the Committee table, and fully participate in Committee discussion. The Joint Committee encourages this policy to enhance discussion and cooperation between the Joint Committee and the Tribal Chairs.
- The Joint Committee is aware that the Governor's Interstate Indian Council will be hosted by Kansas on August 24-28, 2002 in Topeka. The Joint Committee strongly supports this national conference and stands ready to provide whatever support and participation which the Office of Native American Affairs believes would be appropriate.
- The Joint Committee notes that Chairman Oleen and Vice Chairman Powell served as panelists at the Native Nations Law Symposium held on September 27-28, 2001 in Topeka. The Joint Committee feels that this symposium is an excellent forum for state-tribal relations discussions, and will be happy to participate in the 2002 symposium.
- The Joint Committee is in full agreement with the decision to name the new state office building after Charles Curtis. The Joint Committee plans to participate in the dedication ceremony in some appropriate manner in cooperation with the Department of Administration.

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- The Joint Committee reaffirms its support for the Pikitanoi/Northeast Kansas water project and urges the principals involved to resolve the problem areas in order to get the project in motion again.
- The Joint Committee recommends that the State-Tribal Affairs Committee study the tax proposal presented by the Prairie Band Potawatomi Nation during the coming year.
- The Joint Committee commends the Prairie Band Potawatomi Nation for creation of the documentary film and hopes the video will receive widespread distribution in Kansas schools and other organizations.
- The Joint Committee also commends the Prairie Band for its decision to donate \$50,000 to Topeka schools to cover transportation costs and other program activities. The Joint Committee is aware that the Prairie Band has made a number of charitable donations in recent months, including a donation of \$100,000 to the victims of the terrorist attacks in New York and Washington. Such generosity is to be applauded.

**Proposed Legislation:** The Joint Committee recommends two bills.

### BACKGROUND

The Joint Committee on State-Tribal Relations was created through the enactment of 1999 HB 2065. The responsibilities and organization of the Joint Committee are summarized below.

- The Joint Committee is authorized by statute to:
  - Establish and transmit to the Governor proposed guidelines reflecting the public policies and state interests that the Joint Committee will consider in reviewing proposed compacts;
  - Recommend to the Governor that any gaming compact provide for the imposition and collection of state sales and excise taxes on sales of nongaming goods and services to persons other than tribal members and imposition and collection of state income tax on reve-

nues derived from sales of nongaming goods and services;

- Hold public hearings on proposed gaming compacts submitted to the Joint Committee by the Governor;
- Recommend modification of proposed gaming compacts submitted by the Governor, introduce resolutions approving proposed gaming compacts, recommend that such resolutions be adopted or be not adopted, report such resolutions without recommendation, and notify the Governor, in writing, of the Joint Committee's action;
- Meet, discuss, and hold hearings on issues concerning state and tribal relations;
- Make recommendations on issues of state-tribal relations; and
- Introduce such legislation as

22

deemed necessary in performing its functions.

- Six members of the Committee constitute a quorum. However, actions of the Committee regarding approval of state-tribal gaming compacts require the affirmative vote of at least eight members—at least four senators and four representatives. The Committee could report a compact without recommendation on the affirmative vote of any five legislative members.
- Annually, the Committee elects its chair and vice chair. The chair alternates between the House (even years) and Senate (odd years). The ranking minority member will be of the same chamber as the chair.
- The Committee is authorized to appoint subcommittees and members may be paid and reimbursed for travel and subsistence for attendance at subcommittee or full Committee meetings. This Joint Committee may meet at any time and at any place within the state at the call of the chair.
- The 2001 Legislature enacted SB 75 which amends several sections of the enabling legislation concerning the Joint Committee. SB 75 amends the law to provide that the Governor (or designee) and the Attorney General (or designee) shall be voting members, except for approval or disapproval of gaming compacts. The bill also provides that the Governor (or designee) would serve as the temporary chairperson and call an organizational meeting of the Joint Committee at the start of each legislative session. The Joint Committee is given the additional responsibility of making recommendations on issues of state-tribal

relations. New language provides that the ranking minority member shall be of the same chamber as the chairperson, *i.e.* a Senate member in odd years and a House member in even years.

### 2001 Session Bills

During the 2001 Legislative Session, several bills pertaining to state-tribal relations were introduced. SB 75, which was enacted and signed by the Governor, made several procedural changes in the statutes which establish the authority of the Joint Committee. The procedural changes clarified that the non-legislative members have the right to vote, except for approval or disapproval of gaming compacts; provided for an organizational meeting at the start of each legislative session; and established a procedure for selecting the ranking minority member. SCR 1611, which was adopted, expresses the Kansas Legislature's opposition to proposed amendments to the federal Indian Gaming Regulatory Act which would eliminate the Governor's right to concur in acquisitions of land for tribal gaming purposes in Kansas.

None of the bills discussed below were enacted, but are still under consideration. SB 74 would provide tribal law enforcement officers and agencies with the same powers, duties, and immunities held by state, county, or city law enforcement officers and agencies, under certain circumstances. SB 76 would establish procedures for the Governor to negotiate state-tribal agreements on topics other than gaming with the four resident tribes. HB 2224 would modify the procedure for approval of a tribal gaming compact by deleting the authority of the Legislative Coordinating Council and requiring the calling of a special session to consider the proposed compact. HB 2216, which was



requested by the State Gaming Agency, would amend the Tribal Gaming Oversight Act in several areas.

### COMMITTEE ACTIVITIES

The Joint Committee met for five days during the 2001 Interim: three days in Topeka, one day at the Prairie Band Potawatomi Reservation, and one day at the Iowa Tribe Reservation. The Joint Committee received input on various issues from the four resident Kansas tribes: the Prairie Band Potawatomi Nation of Kansas, the Kickapoo Tribe, the Sac and Fox Nation of Missouri in Kansas and Nebraska, and the Iowa Tribe of Kansas and Nebraska.

The Joint Committee reviewed the status of tribal-related bills considered during the 2001 Session, and received a staff briefing on pending federal legislation that could impact Kansas. The Joint Committee also was given updates on the status of tribal-related litigation in Kansas by M.J. Willoughby and Brian Johnson, representatives of the Attorney General's Office.

The Executive Directors of the State Gaming Agency, Tracy Diel, and the Kansas Office of Native American Affairs, Brad Hamilton, also provided updated information of the activities of these two agencies.

Mr. Hamilton apprised the Joint Committee that the State of Kansas would host the 53<sup>rd</sup> Governor's Interstate Indian Council on August 24-28, 2002 in Topeka. He briefly reviewed the agenda for the council meeting and invited the members of the Joint Committee to participate fully in this national conference.

Representative Lana Gordon reviewed

the successful effort to name the new state office building after former Vice President Charles Curtis. Representative Gordon noted that the leadership of Topeka and Shawnee County, the Kansas Legislature, and the Topeka Public Building Commission had all gone on record in support of this effort. She stated that a dedication ceremony to name the new building would be scheduled sometime in January, 2002, and she invited the Joint Committee members to participate in this ceremony.

At the July meeting, the Kickapoo Tribal Chair, Nancy Bear, reviewed the efforts of the tribe to develop a long-term project to supply adequate water to the Kickapoo Reservation and to other areas in Northeast Kansas. The Pikitanoi/Northeast Kansas water project is currently in Phase I of development, and funding of \$92,000 has been made available for project planning. The funding comes from the State Water Plan Fund (\$40,000), wholesale water supply districts (\$6,000), and the U.S. Corps of Engineers (\$46,000).

John White, Engineer for the Kickapoo Tribe, briefly reviewed the Pikitanoi/Northeast Kansas water project and its current status. He noted that recently there had been some apparent confusion between the two federal agencies involved, the Bureau of Reclamation and the U.S. Corps of Engineers. He stated that a meeting had been scheduled for early January, 2002, to work out the problems.

David Prager III, Counsel for the Prairie Band Potawatomi Nation, presented information on the lawsuit concerning the issuance of tribal license plates by the Prairie Band. The counsel stated that Kansas recognizes Oklahoma tribal tags

as being legal in Kansas, however Kansas does not accept tags from the four resident tribes as being valid.

At the Joint Committee's December meeting, Mr. Prager presented a proposal for legislation concerning tribal taxes and tribal license plates. The proposal contains three features:

- An excise tax credit would be allowed to the extent a tribal excise tax is imposed with respect to Indian businesses in Indian country.
- State and local tax exemptions would be allowed for the Indian Tribes.
- The State of Kansas would recognize vehicle titles, registrations, and license plates issued by Indian Tribes.

Ron Hein, a representative of Indian Nations in Kansas, presented copies of resolutions signed by the four resident tribes in opposition to any expansion of Indian gaming in Kansas by out-of-state Indian Nations. The tribal councils of all four resident tribes had adopted these resolutions opposing any expansion of Indian gaming by non-resident tribes.

Mr. Hein noted that the four resident tribes had joined with the Governor's office in opposing the efforts of an out-of-state tribe to establish a gaming operation in Kansas.

Also, at the July meeting, the Kickapoo Tribal Chair, Nancy Bear, requested that the tribal chairs be allowed a higher level of participation at meetings of the Joint Committee. In response, the Chair of the Joint Committee invited the four resident tribal chairs to sit with the Joint Committee and be a part of the discussion at future Committee meetings during the

term she serves as Chair of the Joint Committee.

The current tribal chairs are:

Prairie Band Potawatomi Nation: Badger Wahwasuck  
Kickapoo Tribe: Bobbie Darnell  
Sac and Fox Nation: Sandra Keo  
Iowa Tribe: Louis DeRoin

Ron Parks, Administrator of the Kaw Mission State Historic Site in Council Grove, reviewed the history of the outdoor pageant "Voices of the Wind People" which he authored in 1992. He stated that the pageant had been performed on five occasions: 1992, 1993, 1996, 1999, and 2001. He noted the high level of cooperation on the pageant between the citizens of Council Grove, the Kaw Nation of Oklahoma, and the State Historical Society. Mr. Parks presented a short film showing several acts of the play.

The Committee also received a review by Shirley Sicilian and Michael Hale from the Kansas Department of Revenue on the status of current litigation regarding the Prairie Band license plate issue.

The Committee also received a presentation by Susan Johnson, a representative of the National Conference of State Legislatures on the State-Tribal Project which is a joint effort by NCSL and the National Congress of American Indians.

Ms. Johnson's presentation included a review of the efforts in other states to improve relations between state legislatures and the tribes, as well as the important lessons learned in recent years with the rise of Indian gaming. She noted that neither state governments nor tribal governments are going anywhere, and states and tribes are both forced to deal with

each other on governance issues. Ms. Johnson also reviewed the current status of Indian gaming revenue payments to state and local governments in other states. Ms. Johnson briefly discussed an upcoming NCSL publication on state-tribal relations which she will provide to the Joint Committee. Lastly, she reviewed two recent publications: *Government to Government: Understanding State and Tribal Governments*, and a compilation of papers from the 2000 Midyear Session of the National Congress of American Indians.

Ron Hein, representative of Indian Nations in Kansas, spoke in support of legislation by the Joint Committee for consideration during the 2002 Session.

Mr. Hein stated that Indian Nations in Kansas, which is composed of the Kickapoo Tribe, the Prairie Band Potawatomi Nation, and the Sac and Fox Nation, still supports the enactment of 2001 SB 74, relating to the powers of tribal law enforcement officers. Mr. Hein also proposed several amendments to 2001 SB 76, concerning the power of the Governor to enter into non-gaming compacts and agreements with tribes.

The Joint Committee also reviewed a documentary film prepared by the Prairie Band Potawatomi Nation, entitled *Keepers of the Fire*. The film reviews the history of the tribe, as well as recent improvements and programs implemented on the Prairie Band reservation.

Other topics reviewed by the Joint Committee included: pending litigation involving tribal-related issues, payments in lieu of taxes, activities of the State Gaming Agency and the Kansas Office of Native American Affairs, deputization of tribal law enforcement personnel, and the

manner of making the state's assessment on the tribes for operation of the State Gaming Agency.

As noted above, the Joint Committee also visited the Prairie Band Potawatomi and Iowa Reservations and toured areas of the reservations and the casinos.

## CONCLUSIONS AND RECOMMENDATIONS

The Joint Committee notes issues of concern regarding relations with tribal entities at the state level. The Joint Committee makes the following conclusions and recommendations:

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  - The first bill would amend the Interlocal Cooperation Act to allow Native American Indian Tribes to enter into interlocal agreements with public agencies.
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24-28, 2002 in Topeka. The Joint Committee strongly supports this national conference and stands ready to provide whatever support and participation which the Office of Native American Affairs believes would be appropriate.

- The Joint Committee notes that Chairman Oleen and Vice Chairman Powell served as panelists at the Native Nations Law Symposium held on September 27-28, 2001 in Topeka. The Joint Committee feels that this symposium is an excellent forum for state-tribal relations discussions, and will be happy to participate in the 2002 symposium.
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- The Joint Committee reaffirms its support for the Pikitanoi/Northeast

Kansas water project and urges the principals involved to resolve the problem areas in order to get the project in motion again.

- The Joint Committee recommends that the State-Tribal Affairs Committee study the tax proposal presented by the Prairie Band Potawatomi Nation during the coming year.
- The Joint Committee commends the Prairie Band Potawatomi Nation for creation of the documentary film and hopes the video will receive widespread distribution in Kansas schools and other organizations.
- The Joint Committee also commends the Prairie Band for its decision to donate \$50,000 to Topeka schools to cover transportation costs and other program activities. The Joint Committee is aware that the Prairie Band has made a number of charitable donations in recent months, including a donation of \$100,000 to the victims of the terrorist attacks in New York and Washington. Such generosity is to be applauded.

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\*Admitted in Kansas & Texas

**Testimony re: SB 384  
Senate Judiciary Committee  
Presented by Ronald R. Hein  
on behalf of  
Prairie Band Potawatomi Nation  
January 24, 2002**

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for Prairie Band Potawatomi Nation. The Prairie Band Potawatomi Nation is one of four Kansas Native American Indian Tribes.

The four resident Indian Tribes in Kansas are sovereign governments with a special relationship to state and federal government. The four Native American Indian Tribes in Kansas have a primary relationship with the federal government which is based in federal law and federal treaties.

It is because of this unique relationship that it would be important to have a process by which the Tribes and state government could enter into agreements to deal with issues such as taxes, education, healthcare, social services, and other matters.

The Prairie Band Potawatomi supports SB 384 to the extent that it authorizes the Governor to enter into non-gaming agreements with the Indian Nations in Kansas. This bill provides a process by which the Governor can negotiate agreements with the Indian Nations, if the Governor and the tribes are both willing to enter into such agreements.

SB 384 may or may not be necessary legislation. There are two schools of thought as to whether the Governor has the power to enter into agreements with Native American Tribes without this statutory authority. I believe the authority does exist for such agreements, especially as such agreements might relate to issues which involve Executive Branch implementation of legislative enactments or matters within the Governor's executive discretion. Enactment of this legislation, even if not necessary, will never-the-less not cause any harm, and would certainly clear up any ambiguity on this issue.

However, what is missing from this legislation is any procedure for legislative input into the particular agreements between the Governor and the Tribes which, according to case

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law, cannot be accomplished without legislative authority. *Kansas ex. rel. Stephan v. Finney*, 251 Kan. 559 (1992) held that the Governor could not legally enter into a binding agreement with Native American Tribes for a gaming contract "in the absence of an appropriate delegation of power by the Kansas Legislature or legislative approval of the compact."

Although this case was specifically applicable to Indian Gaming under the Indian Gaming Regulatory Act (IGRA), the ruling would seem to prohibit the Governor entering into binding agreements having legislative effect without specific authority or legislative approval of the agreement.

Therefore, if the Indian Nations are going to enter into a binding agreement with the Governor or issues such as a tax compact, legislative approval may be necessary. There is a legislative process for gaming compacts, but there is no statutory authority or process for approval of non-gaming agreements between the Indian Nations and the State of Kansas when such agreements would involve the exercise of legislative functions.

We recommend that SB 384 be amended by adding a process for review by the legislature of agreements which otherwise risk being non-binding pursuant to the interpretation set out in *Kansas ex. rel. Stephan v. Finney*. I have attached balloon amendments to accomplish that, based upon language that Natalie Haag and I had discussed with regards to SB 76 last session.

These amendments follow very closely the statutory process in the gaming compact procedure, but with elimination of those provisions not applicable to non-gaming agreements.

After the compact has been negotiated by the Governor, it is submitted to the Joint Committee on State-Tribal Relations, and may receive subsequent action by the full legislature. The legislature may suggest modifications to the agreement to the Governor, but can only approve or reject what ultimately is submitted for approval by the Governor.

Currently, the Tribes are in the midst of discussions with the State of Kansas regarding tax issues. We hope that these discussions, if successful, will lead to meetings on other issues in the future that will improve the relationship between the State and the Tribes.

We urge your favorable recommendation on SB 384.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

SENATE BILL No. 384

By Joint Committee on State-Tribal Relations

1-14

AN ACT concerning agreements with Native American Indian tribes.

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

Section 1. (a) As used in this section:

(1) "Gaming compact" means a gaming compact as defined by K.S.A. 46-2301, and amendments thereto.

(2) "Native American Indian tribes" mean federally-recognized Native American Indian tribes.

(b) In addition to any authority granted by law, the governor, or the governor's designee, is hereby authorized to negotiate and execute agreements with Native American Indian tribes on behalf of the state of Kansas.

(c) The provisions of this section shall not be construed as authorizing the governor to enter into a gaming compact pursuant to this section.

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

New Section 2. (a) For negotiated agreements pursuant to this act that would require legislative approval by virtue of the provisions of such agreement effecting changes in existing statutes or changes which would otherwise constitute an unconstitutional delegation of legislative authority, the legislature shall review such agreements pursuant to this section. At the conclusion of negotiations, the governor shall submit the proposed agreement to the joint committee on state-tribal relations for the committee's recommendations as to approval or modification of the proposed agreement.

(b) If the joint committee recommends modification of a proposed agreement submitted by the governor, the governor or the governor's representatives may resume negotiations in accordance with the joint committee's recommendations and the modified proposed agreement shall be submitted to the joint committee in the same manner as the original proposed agreement.

(c) (1) If the legislature is in session when the joint committee votes to recommend approval or rejection of a proposed agreement or votes to make no recommendation on a proposed agreement, as authorized by this section, the joint committee shall introduce in each house of the legislature, within five days after the joint committee's vote, a resolution approving or rejecting the proposed agreement as submitted by the governor. Each resolution shall be accompanied by the report of the joint committee recommending that the resolution be adopted or not be adopted or reporting the resolution without recommendation. If, within 30 days after introduction of the resolutions, a majority of the members of each house votes to adopt the resolution introduced in such house, the proposed agreement shall be considered to have been approved by the legislature and the governor is authorized to execute the agreement on behalf of the state. Each house of the legislature shall vote on the resolution introduced in such house within 30 days after introduction unless the other house has already voted against adoption of the resolution introduced in such other house.

(2) If the legislature is not in session when the joint committee votes to recommend approval or rejection of a proposed agreement or votes to make no recommendation on a proposed agreement, as authorized by this section, the joint committee shall notify the legislative coordinating council of the joint committee's action within five days after such action. If, within 60 days after receiving such notice, the legislative coordinating council votes, by a vote of five members of the council, to approve the proposed agreement, the agreement shall be considered to have been approved by the legislative coordinating council and the governor is authorized to execute the agreement on behalf of the state.

(3) Neither the legislature nor the legislative coordinating council has the authority to amend or otherwise modify any proposed agreement.

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January 23, 2002

COPY

John Vratil, Chairman  
Senate Judiciary Committee  
300 SW 10th  
Topeka, Kansas 66612-1504

Re: Senate Bill No. 383 (Interlocal Cooperation Act) and Senate Bill No. 384  
(Agreements with Native American Indian Tribes).

Ladies and Gentlemen:

The Kickapoo Tribe of Indians of the Kickapoo Reservation of Kansas ("Kickapoo Tribe") supports the passage of both Senate Bills No. 383 and 384. These bills facilitate government to government relationships, and we urge the committee to support the same.

I am directing our Tribes' lobbyist, Whitney Damron to deliver as many copies of this letter as necessary to your committee. If additional information is requested, I can be available to appear before the committee to testify. Thank you for your consideration.

Respectfully yours,

Bobbi Darnell, Chairperson  
Kickapoo Tribe in Kansas

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