

Approved

Date: 3/27/02

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Senator Vratil at 9:41 a.m. on March 26, 2002 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

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

Conferees appearing before the committee:

Chuck Stones, Kansas Bankers Association (KBA)
Matt Goddard, Heartland Community Bankers Association (HCBA)
Don McNeely, Kansas Automobile Dealers Association (KADA)
Representative Deena Horst

Others attending: see attached list

The minutes of the March 25th, 2002 meeting were approved on a motion by Senator Schmidt, seconded by Senator Donovan. Carried.

Final action:

Sub HB 2487—uniform commercial code; re: transactions

HB 2709—uniform commercial code; re: secured transactions

Following review of the bill by the Chair and discussion, Senator Adkins made a motion to direct that a floor amendment be prepared to amend Sub HB 2487 into HB 2709, Senator Goodwin seconded. Carried. The Committee took no action on the bill.

HB 2802—Kansas law enforcement training fund; increasing county and municipal court fees

Senator Goodwin discussed a proposed amendment by the Kansas Judicial Council which would raise docket fees in the criminal, civil and probate area one dollar in each case and fifty cents per case in traffic (attachment 1) Following discussion, Senator Goodwin moved to amend HB 2802 as proposed by the KJC, Senator Vratil seconded. Carried. Following further discussion, Senator Adkins moved to pass the bill out favorably as amended, Senator Donovan seconded. Carried.

Hearing on:

Sub HB 2979—vehicles; storage fees; notice to lien holders

Conferee Stones testified in support of Sub HB 2979, a bill which he stated would “provide that whenever anyone has storage fees that have gone unpaid for 30 days, that person shall provide notice to the owner of the vehicle and any lienholders.” He detailed the requirements of the bill and discussed penalties for failing to meet the requirements. He further discussed two balloon amendments to the bill. (attachment 2)

Conferee Goddard testified in support of Sub HB 2979. He stated that the bill is “designed to protect lenders from being liable for large fees when a borrower abandons a vehicle and it is then stored or otherwise safeguarded by someone else.” He briefly discussed the bill’s requirements and penalties. (attachment 3)

Conferee McNeely testified in support of Sub HB 2979. He briefly reiterated the previous conferees statements. (attachment 4)

Following Pat Barnes’s (KADA) clarification of certain language in the KBA’s balloon amendment, Senator O’Connor moved to recommend Sub HB 2979 favorably as amended in the balloon and by striking the words “by agreement” on pg 1, 1 28 of the bill, Senator Schmidt seconded. Carried.

HB 2399—offender registration

Conferee Representative Horst testified in support of HB 2399, a bill which would require juveniles who commit sexual offense crimes, to be registered with the KBI under the Offender Registration Act. She stated that the intent of the bill is to give judges another option when sentencing juvenile sex offenders. She presented testimony on behalf of a constituent whose family was a victim of this type of crime. (attachment 5) She referenced written testimony from this constituent. (attachment 6) Following discussion, the Chair directed staff to prepare a balloon amendment to give judges discretion to order juvenile sex offenders to register.

The meeting adjourned at 10:24. The next meeting is March 27th, 2002.

March 26, 2001

PROPOSED AMENDMENTS TO 2002 HB 2802

The Judicial Council has long provided service to the Legislature, especially the Judiciary Committees. In the past, the Judicial Council has written the Probate Code, the Civil Code, the Criminal Code, the Code for Criminal Procedure, the Code for Care of Children, the Juvenile Offender's Code, the Administrative Procedure Act, Act for Judicial Review of Agency Actions, the Municipal Court Code, Care and Treatment Act for Mentally Ill Persons, Care and Treatment Act for Persons with an Alcohol or Substance Abuse Problem, the Guardianship and Conservatorship Act, Parentage Act, revised Divorce Code, Simplified Administration Act, Informal Administration Act, Adoption and Relinquishment Act, Protection from Abuse Act and the Code of Procedure for Limited Actions. The Council monitors these codes for possible changes and has also drafted scores of other legislative proposals.

In addition, the Council has drafted numerous court rules including the Uniform District Court Rules and the Rules for Appellate Procedure for the Court of Appeals. The Council has conducted numerous studies over the years including judicial redistricting (three times), court unification, statewide delivery of legal services to indigent defendants, expansion of the court of appeals, governmental immunity, comparative fault and many others. The Judicial Council also publishes and supplements yearly the *Pattern Instructions for Kansas-Criminal 3d*, *Pattern Instructions for Kansas-Civil 3d*, *Kansas Municipal Court Manual* and the *Kansas Judicial Council Probate Forms*.

Currently, the Judicial Council has before the Legislature a number of minor pieces of legislation and the Kansas Uniform Trust Code and a revision of the Kansas Guardianship and Conservatorship Act. In the near future, the Judicial Council expects to propose to the Legislature a revision of the Juvenile Offender Code, a revision of the Child in Need of Care Code and a new Kansas Power of Attorney Act. Unfortunately the Governor's most recent budget recommendations removes all SGF funding for the Judicial Council in FY 2003.

The proposed amendment to HB 2802 raises docket fees in the criminal, civil (both chapter 60 and 61) and the probate areas one dollar in each case and fifty cents per case in traffic. These are the areas in which the Judicial Council most frequently works. This will raise approximately \$280,000 which would replace the State General Fund portion of the Judicial Council's budget for 2003 and several years thereafter.

Current Judicial Council budget for FY 2003 is approximately \$325,000, of which approximately \$86,000 is attributable to the Publications Fee Fund and the remainder is attributable to the State General Fund. A Legislative proviso this year will allow utilization of approximately 40,000 additional dollars from the fee fund to replace state general revenue fund monies.

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Type of Fee	Filings or Terminations	% of Cases Docket Fees Collected	Adjusted Filings or Terminations	Current Fee	Proposed Increase	Proposed Total	Amount Raised From Increase
Civil							
Chapter 60 Limited Action <=\$500	21,167	98%	20,744	\$101.00	\$1.00	\$102.00	\$20,744
>\$500 or <=\$5,000	120,391	98%	117,983	\$26.00	\$1.00	\$27.00	\$64,891
>\$5,000 or <=\$10,000		55%	64,891	\$46.00	\$1.00	\$47.00	\$47,193
Small Claims		40%	47,193	\$76.00	\$1.00	\$77.00	\$5,899
	12,263	5%	5,899				
		98%	12,018	\$26.00	\$1.00	\$27.00	\$6,610
		55%	6,610	\$46.00	\$1.00	\$47.00	\$5,408
Domestic Relations Post Decree Motion	33,188	45%	5,408	\$101.00	\$1.00	\$102.00	\$24,891
Hearings in Aid of Execution	11,732	75%	24,891	\$20.00	\$0.00	\$20.00	\$0
	87,880	1.0 motion per decree	11,732	\$0.00	\$0.00	\$5.00	\$0
	judgments	5% of total limited hearings	6,020				
Criminal							
Felony	18,026	16%	2,884	\$146.00	\$1.00	\$147.00	\$2,163
Misdemeanor	23,909	38%	9,085	\$111.00	\$1.00	\$112.00	\$6,814
Expungements	500	100%	500	\$0.00	\$1.00	\$1.00	\$500
Criminal Probation Fee							
Felony	13,000	20%	2,600	\$50.00	\$1.00	\$51.00	\$0
Probation	14,500	35%	5,075	\$25.00	\$1.00	\$26.00	\$0
Probate							
Treatment of Mentally Ill							
Treatment of Alcohol or Drug Determination of Descent	2,336	25%	584	\$24.50	\$1.00	\$25.50	\$584
Guardianship	1,272	98%	1,247	\$39.50	\$1.00	\$40.50	\$1,247
Conservatorship	600	40%	240	\$59.50	\$1.00	\$60.50	\$240
	467	60%	280	\$59.50	\$1.00	\$60.50	\$280
Guardianship and Conservatorship	1,010	50%	505	\$59.50	\$1.00	\$60.50	\$505
Annual Reports	7,800	100%	7,800	\$0.00	\$0.00	\$0.00	\$0
Annual Accounting of Conservatorship over \$10,000	3,500	30%	1,050	\$0.00	\$0.00	\$0.00	\$0
Closing Conservatorship							
under \$10,000	1,000	100%	1,000	\$0.00	\$0.00	\$0.00	\$0
over \$10,000	1,000	100%	1,000	\$0.00	\$0.00	\$0.00	\$0
Trusteeship	146	98%	143	\$59.50	\$1.00	\$60.50	\$143
Probate of an Estate or a Will	4,374	100%	4,374	\$99.50	\$1.00	\$100.50	\$4,374

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Type of Fee	Filings or Terminations	% of Cases Docket Fees Collected	Adjusted Filings or Terminations	Current Fee	Proposed Increase	Proposed Total	Amount Raised From Increase
Other Costs and Fees							
Performance Bonds							
Delinquent Personal Property Tax							
Hospital Lien							
Intent to Perform							
Mechanic's Lien							
Oil and Gas Mechanic's Lien							
Pending Action Lien							
Total	3,435	100%	3,435	\$5.00	\$0.00	\$5.00	\$0
Employment Security Tax Warrant							
Sales and Compensating Tax Warrant							
State Tax Warrant							
Motor Carrier Lien							
Total	4,812	100%	4,812	\$15.00	\$0.00	\$20.00	\$0
Marriage License	21,689	100%	21,689	\$50.00	\$0.00	\$50.00	\$0
Driver's License	14,336	100%	14,336	\$50.00	\$0.00	\$50.00	\$0
Traffic	188,468	92%	173,391	\$54.00	\$0.50	\$54.50	\$86,695
Fish and Game	3,884	83%	3,224	\$54.00	\$0.00	\$54.00	\$0
TOTAL FEES COLLECTED							<u>\$279,181</u>

PROPOSED AMENDMENT TO H.B. 2802

Section 6. There is hereby established in the state treasury the Judicial Council Fund.

(b) All expenditures from the Judicial Council Fund shall be made in accordance with appropriation acts and upon warrants of the director of accounts and reports issued pursuant to expenditures approved by the Chairman of the Kansas Judicial Council or by a person or persons designated by the Chairman of the Kansas Judicial Council.

Sec. 7. K.S.A. 8-2107 is hereby amended to read as follows:

8-2107. Appearance bond; offenses for which bond may be required; deposit of driver's license; suspension of license for failure to appear; penalties for filing for replacement license; cash bond, credit card or arrest bond certificate; amount of and procedure for giving bond; forfeiture of bond; court costs; application to nonresident violator compact. (a) (1)

Notwithstanding any other provisions of the uniform act regulating traffic on highways, when a person is stopped by a police officer for any of the offenses described in subsection (d) and such person is not immediately taken before a judge of the district court, the police officer may require the person stopped, subject to the provisions of subsection (c), to deposit with the officer a valid Kansas driver's license in exchange for a receipt therefor issued by such police officer, the form of which shall be approved by the division of vehicles. Such receipt shall be recognized as a valid temporary Kansas driver's license authorizing the operation of a motor vehicle by the person stopped until the date of the hearing stated on the receipt. The driver's license and a written copy of the notice to appear shall be delivered by the police officer to the court having jurisdiction of the offense charged as soon as reasonably possible. If the hearing on such charge is continued for any reason, the judge may note on the receipt the date to which such hearing has been continued and such receipt shall be recognized as a valid temporary Kansas driver's license until such date, but in no event shall such receipt be recognized as a valid Kansas driver's license for a period longer than 30 days from the date set for the original hearing. Any person who has deposited a driver's license with a police officer under this subsection (a) shall have such license returned upon final determination of the charge against such person.

(2) In the event the person stopped deposits a valid Kansas driver's license with the police officer and fails to appear in the district court on the date set for appearance, or any continuance thereof, and in any event within 30 days from the date set for the original hearing, the court shall forward such person's driver's license to the division of vehicles with an appropriate explanation attached thereto. Upon receipt of such person's driver's license, the division shall suspend such person's privilege to operate a motor vehicle in this state until such person appears before the court having jurisdiction of the offense charged, the court makes a final disposition thereof and notice of such disposition is given by the court to the division. No new or replacement license shall be issued to any such person until such notice of disposition has been received by the division. The provisions of K.S.A. 8-256, and amendments thereto, limiting the suspension of a license to one year, shall not apply to suspensions for failure to appear as provided in this subsection (a).

(b) No person shall apply for a replacement or new driver's license prior to the return of such person's original license which has been deposited in lieu of bond under this section. Violation of this subsection (b) is a class C misdemeanor. The division may suspend such person's driver's license for a period of not to exceed one year from the date the division receives notice of the disposition of the person's charge as provided in subsection (a).

(c) (1) In lieu of depositing a valid Kansas driver's license with the stopping police officer as provided in subsection (a), the person stopped may elect to give bond in the amount specified in subsection (d) for the offense for which the person was stopped. When such person does not have a valid Kansas driver's license, such person shall give such bond. Such bond shall be subject to forfeiture if the person stopped does not appear at the court and at the time specified in the written

notice provided for in K.S.A. 8-2106, and amendments thereto.

(2) Such bond may be a cash bond, a bank card draft from any valid and unexpired credit card approved by the division of vehicles or superintendent of the Kansas highway patrol or a guaranteed arrest bond certificate issued by either a surety company authorized to transact such business in this state or an automobile club authorized to transact business in this state by the commissioner of insurance. If any of the approved bank card issuers redeem the bank card draft at a discounted rate, such discount shall be charged against the amount designated as the fine for the offense. If such bond is not forfeited, the amount of the bond less the discount rate shall be reimbursed to the person providing the bond by the use of a bank card draft. Any such guaranteed arrest bond certificate shall be signed by the person to whom it is issued and shall contain a printed statement that such surety company or automobile club guarantees the appearance of such person and will, in the event of failure of such person to appear in court at the time of trial, pay any fine or forfeiture imposed on such person not to exceed an amount to be stated on such certificate.

(3) Such cash bond shall be taken in the following manner: The police officer shall furnish the person stopped a stamped envelope addressed to the judge or clerk of the court named in the written notice to appear and the person shall place in such envelope the amount of the bond, and in the presence of the police officer shall deposit the same in the United States mail. After such cash payment, the person stopped need not sign the written notice to appear, but the police officer shall note the amount of the bond mailed on the notice to appear form and shall give a copy of such form to the person. If the person stopped furnishes the police officer with a guaranteed arrest bond certificate or bank card draft, the police officer shall give such person a receipt therefor and shall

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note the amount of the bond on the notice to appear form and give a copy of such form to the person stopped. Such person need not sign the written notice to appear, and the police officer shall present the notice to appear and the guaranteed arrest bond certificate or bank card draft to the court having jurisdiction of the offense charged as soon as reasonably possible.

(d) The offenses for which appearance bonds may be required as provided in subsection (c) and the amounts thereof shall be as follows:

On and after July 1, 1996:

Reckless driving	\$82
Driving when privilege is canceled, suspended or revoked	82
Failure to comply with lawful order of officer	57
Registration violation (registered for 12,000 pounds or less)	52
Registration violation (registered for more than 12,000 pounds)	92
No driver's license for the class of vehicle operated or violation of restrictions	52
Spilling load on highway	52

Overload:

Gross weight of vehicle or
combination of vehicles an amount equal to the fine

plus docket fee

to be imposed if convicted

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Gross weight upon any axle or

tandem, triple or quad axles.....an amount equal to the fine

plus docket fee

to be imposed if convicted

Failure to obtain proper registration, clearance or to have current certification as required by K.S.A. 66-1324, and amendments thereto 272

Insufficient liability insurance for motor carriers pursuant to K.S.A. 66-1,128 or 66-1314, and amendments thereto 122

Failure to obtain interstate motor fuel tax authorization pursuant to K.S.A. 79-34,122, and amendments thereto 122

Improper equipment (glass or fire extinguishers) 52

No authority as private, contract or common carrier 122

No current driver's daily log 52

Invalid or no physical examination card 52

Transporting open container of alcoholic liquor or cereal malt beverage accessible while vehicle in motion 223

(e) In the event of forfeiture of any bond under this section, \$54 of the amount forfeited shall be

regarded as a docket fee in any court having jurisdiction over the violation of state law.

(f) None of the provisions of this section shall be construed to conflict with the provisions of the nonresident violator compact.

(g) When a person is stopped by a police officer for any traffic infraction and the person is a resident of a state which is not a member of the nonresident violator compact, K.S.A. 8-1219 *et seq.*, and amendments thereto, or the person is licensed to drive under the laws of a foreign country, the police officer may require a bond as provided for under subsection (c). The bond shall be in the amount specified in the uniform fine schedule in subsection (c) of K.S.A. 8-2118, and amendments thereto, plus ~~\$54~~ \$54.50 which shall be regarded as a docket fee in any court having jurisdiction over the violation of state law.

(h) When a person is stopped by a police officer for failure to provide proof of financial security pursuant to K.S.A. 40-3104, and amendments thereto, and the person is a resident of another state or the person is licensed to drive under the laws of a foreign country, the police officer may require a bond as provided for under subsection (c). The bond shall be in the amount of ~~\$54~~ \$54.50, plus ~~\$54~~ \$54.50 which shall be regarded as a docket fee in any court having jurisdiction over the violation of state law.

Sec. 8. K.S.A. 2001 Supp. 20-367 is hereby amended to read as follows:

20-367. Disposition of docket fees. Of the remittance of the balance of docket fees received by the state treasurer from clerks of the district court pursuant to subsection (f) of K.S.A. 20-362, and amendments thereto, the state treasurer shall deposit and credit to the access to justice fund, a sum equal to ~~6.05%~~ **5.96%** of the remittances of docket fees; to the juvenile detention facilities fund, a sum equal to ~~3.36%~~ **3.31%** of the remittances of docket fees; to the judicial branch education fund, the state treasurer shall deposit and credit a sum equal to ~~2.58%~~ **2.54%** of the remittances of docket fees; to the crime victims assistance fund, the state treasurer shall deposit and credit a sum equal to ~~.69%~~ **.68%** of the remittances of the docket fees; to the protection from abuse fund, the state treasurer shall deposit and credit a sum equal to ~~2.07%~~ **2.04%** of the remittances of the docket fees; to the judiciary technology fund, the state treasurer shall deposit and credit a sum equal to ~~5.23%~~ **5.15%** of the remittances of docket fees; to the dispute resolution fund, the state treasurer shall deposit and credit a sum equal to ~~.43%~~ **.42%** of the remittances of docket fees; to the Kansas juvenile delinquency prevention trust fund, the state treasurer shall deposit and credit a sum equal to ~~1.53%~~ **1.51%** of the remittances of docket fees; to the permanent families account in the family and children investment fund, the state treasurer shall deposit and credit a sum equal to .25% of the remittances of docket fees; to the trauma fund, a sum equal to ~~1.81%~~ **1.78%** of the remittance of docket fees **to the Judicial Council Fund, a sum equal to 1.54% of the remittances of docket fees**; and to the judicial branch nonjudicial salary initiative fund, the state treasurer shall deposit and credit a sum equal to ~~21.97%~~ **21.63%** of the remittance of docket fees. The balance remaining of the remittances of docket fees shall be deposited and credited to the state general fund.

Sec. 9. K.S.A. 28-172a is hereby amended to read as follows:

28-172a. Court costs, fees and charges; sheriff fees or mileage for serving papers prohibited; appearance bond for certain parking violations. (a) Except as otherwise provided in this section, whenever the prosecuting witness or defendant is adjudged to pay the costs in a criminal proceeding in any county, a docket fee shall be taxed as follows:

On and after July 1, 1998:

Murder or manslaughter	\$164.50 <u>165.50</u>
Other felony	146.00 <u>147.00</u>
Misdemeanor	111.00 <u>112.00</u>
Forfeited recognizance	62.50 <u>63.50</u>
Appeals from other courts	62.50 <u>63.50</u>

(b) (1) Except as provided in paragraph (2), in actions involving the violation of any of the laws of this state regulating traffic on highways (including those listed in subsection (c) of K.S.A. 8-2118, and amendments thereto), a cigarette or tobacco infraction, any act declared a crime pursuant to the statutes contained in chapter 32 of Kansas Statutes Annotated and amendments thereto or any act declared a crime pursuant to the statutes contained in article 8 of chapter 82a of the Kansas Statutes Annotated, and amendments thereto, whenever the prosecuting witness or defendant is adjudged to

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pay the costs in the action, a docket fee of ~~\$54~~ \$55 shall be charged. When an action is disposed of under subsections (a) and (b) of K.S.A. 8-2118 or subsection (f) of K.S.A. 79-3393, and amendments thereto, whether by mail or in person, the docket fee to be paid as court costs shall be ~~\$54~~ \$55.

(2) In actions involving the violation of a moving traffic violation under K.S.A. 8-2118, and amendments thereto, as defined by rules and regulations adopted under K.S.A. 8-249, and amendments thereto, whenever the prosecuting witness or defendant is adjudged to pay the costs in the action, a docket fee of ~~\$54~~ \$55 shall be charged. When an action is disposed of under subsection (a) and (b) of K.S.A. 8-2118, and amendments thereto, whether by mail or in person, the docket fee to be paid as court costs shall be ~~\$54~~ \$55.

(c) If a conviction is on more than one count, the docket fee shall be the highest one applicable to any one of the counts. The prosecuting witness or defendant, if assessed the costs, shall pay only one fee. Multiple defendants shall each pay one fee.

(d) Statutory charges for law library funds, the law enforcement training center fund, the prosecuting attorneys' training fund, the juvenile detention facilities fund, the judicial branch education fund, the emergency medical services operating fund and the judiciary technology fund shall be paid from the docket fee; the family violence and child abuse and neglect assistance and prevention fund fee shall be paid from criminal proceedings docket fees. All other fees and expenses to be assessed as additional court costs shall be approved by the court, unless specifically fixed by statute. Additional fees shall include, but are not limited to, fees for Kansas bureau of investigation forensic or laboratory analyses, fees for detention facility processing pursuant to K.S.A. 2000 Supp. 12-16,119, and amendments thereto, fees for the sexual assault evidence collection kit, fees for conducting an

examination of a sexual assault victim, fees for service of process outside the state, witness fees, fees for transcripts and depositions, costs from other courts, doctors' fees and examination and evaluation fees. No sheriff in this state shall charge any district court of this state a fee or mileage for serving any paper or process.

(e) In each case charging a violation of the laws relating to parking of motor vehicles on the statehouse grounds or other state-owned or operated property in Shawnee county, Kansas, as specified in K.S.A. 75-4510a, and amendments thereto, or as specified in K.S.A. 75-4508, and amendments thereto, the clerk shall tax a fee of \$2 which shall constitute the entire costs in the case, except that witness fees, mileage and expenses incurred in serving a warrant shall be in addition to the fee. Appearance bond for a parking violation of K.S.A. 75-4508 or 75-4510a, and amendments thereto, shall be \$3, unless a warrant is issued. The judge may order the bond forfeited upon the defendant's failure to appear, and \$2 of any bond so forfeited shall be regarded as court costs.

Sec. 10. K.S.A. 2001 Supp. 59-104 is hereby amended to read as follows:

59-104. Docket fees and court costs. (a) *Docket fee.* Except as otherwise provided by law, no case shall be filed or docketed in the district court under the provisions of chapter 59 of the Kansas Statutes Annotated or of articles 40 and 52 of chapter 65 of the Kansas Statutes Annotated without payment of an appropriate docket fee as follows:

Treatment of mentally ill	\$24.50 <u>25.50</u>
Treatment of alcoholism or drug abuse	24.50 <u>25.50</u>
Determination of descent of property	39.50 <u>40.50</u>
Termination of life estate	39.50 <u>40.50</u>
Termination of joint tenancy	39.50 <u>40.50</u>
Refusal to grant letters of administration	39.50 <u>40.50</u>
Adoption	39.50 <u>40.50</u>
Filing a will and affidavit under K.S.A. 59-618a	39.50 <u>40.50</u>
Guardianship	59.50 <u>60.50</u>
Conservatorship	59.50 <u>60.50</u>
Trusteeship	59.50 <u>60.50</u>
Combined guardianship and conservatorship	59.50 <u>60.50</u>

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Certified probate proceedings under K.S.A. 59-213, and amendments thereto	14.50 <u>15.50</u>
Decrees in probate from another state	99.50 <u>100.50</u>
Probate of an estate or of a will	99.50 <u>100.50</u>
Civil commitment under K.S.A. 59-29a01 et seq	24.50 <u>25.50</u>

(b) *Poverty affidavit in lieu of docket fee and exemptions.* The provisions of subsection (b) of K.S.A. 60-2001 and K.S.A. 60-2005, and amendments thereto, shall apply to probate docket fees prescribed by this section.

(c) *Disposition of docket fee.* Statutory charges for the law library and for the prosecuting attorneys' training fund shall be paid from the docket fee. The remainder of the docket fee shall be paid to the state treasurer in accordance with K.S.A. 20-362, and amendments thereto.

(d) *Additional court costs.* Other fees and expenses to be assessed as additional court costs shall be approved by the court, unless specifically fixed by statute. Other fees shall include, but not be limited to, witness fees, appraiser fees, fees for service of process outside the state, fees for depositions, transcripts and publication of legal notice, executor or administrator fees, attorney fees, court costs from other courts and any other fees and expenses required by statute. All additional court costs shall be taxed and billed against the parties or estate as directed by the court. No sheriff in this state shall charge any district court in this state a fee or mileage for serving any paper or process.

Sec. 11. K.S.A. 2001 Supp. 60-2001 is hereby amended to read as follows:

60-2001. Docket fee; additional costs; certain sheriff's charges prohibited. (a) *Docket fee.*

Except as otherwise provided by law, no case shall be filed or docketed in the district court, whether original or appealed, without payment of a docket fee in the amount of ~~\$101~~ **\$102** to the clerk of the district court.

(b) *Poverty affidavit in lieu of docket fee.* (1) *Effect.* In any case where a plaintiff by reason of poverty is unable to pay a docket fee, and an affidavit so stating is filed, no fee will be required. An inmate in the custody of the secretary of corrections may file a poverty affidavit only if the inmate attaches a statement disclosing the average account balance, or the total deposits, whichever is less, in the inmate's trust fund for each month in (A) the six-month period preceding the filing of the action; or (B) the current period of incarceration, whichever is shorter. Such statement shall be certified by the secretary. On receipt of the affidavit and attached statement, the court shall determine the initial fee to be assessed for filing the action and in no event shall the court require an inmate to pay less than \$3. The secretary of corrections is hereby authorized to disburse money from the inmate's account to pay the costs as determined by the court. If the inmate has a zero balance in such inmate's account, the secretary shall debit such account in the amount of \$3 per filing fee as established by the court until money is credited to the account to pay such docket fee. Any initial filing fees assessed pursuant to this subsection shall not prevent the court, pursuant to subsection (d), from taxing that individual for the remainder of the amount required under subsection (a) or this subsection.

(2) *Form of affidavit.* The affidavit provided for in this subsection shall be in the following form and

attached to the petition:

State of Kansas, _____ County.

In the district court of the county: I do solemnly swear that the claim set forth in the petition herein is just, and I do further swear that, by reason of my poverty, I am unable to pay a docket fee.

(c) *Disposition of docket fee.* The docket fee shall be the only costs assessed in each case for services of the clerk of the district court and the sheriff. The docket fee shall be disbursed in accordance with K.S.A. 20-362 and amendments thereto.

(d) *Additional court costs.* Other fees and expenses to be assessed as additional court costs shall be approved by the court, unless specifically fixed by statute. Other fees shall include, but not be limited to, witness fees, appraiser fees, fees for service of process outside the state, fees for depositions, alternative dispute resolution fees, transcripts and publication, attorney fees, court costs from other courts and any other fees and expenses required by statute. All additional court costs shall be taxed and billed against the parties as directed by the court. No sheriff in this state shall charge any district court in this state a fee or mileage for serving any paper or process.

Sec. 12. K.S.A. 2001 Supp. 61-2704 is hereby amended to read as follows:

61-2704. Commencement of action; fees and costs; limit on number of claims. (a) An action seeking the recovery of a small claim shall be considered to have been commenced at the time a person files a written statement of the person's small claim with the clerk of the court if, within 90 days after the small claim is filed, service of process is obtained or the first publication is made for service by publication. Otherwise, the action is deemed commenced at the time of service of process or first publication. An entry of appearance shall have the same effect as service.

(b) Upon the filing of a plaintiff's small claim, the clerk of the court shall require from the plaintiff a docket fee of ~~\$26~~ **\$27**, if the claim does not exceed \$500; or ~~\$46~~ **\$47**, if the claim exceeds \$500; unless for good cause shown the judge waives the fee. The docket fee shall be the only costs required in an action seeking recovery of a small claim. No person may file more than 10 small claims under this act in the same court during any calendar year.

Sec. 13. K.S.A. 2001 Supp. 61-4001 is hereby amended to read as follows:

61-4001. Court fees; poverty affidavit. (a) Docket fee. No case shall be filed or docketed pursuant to the code of civil procedure for limited actions without the payment of a docket fee in the amount of ~~\$26~~ \$27, if the amount in controversy or claimed does not exceed \$500; ~~\$46~~ \$47, if the amount in controversy or claimed exceeds \$500 but does not exceed \$5,000; or ~~\$76~~ \$77 if the amount in controversy or claimed exceeds \$5,000. If judgment is rendered for the plaintiff, the court also may enter judgment for the plaintiff for the amount of the docket fee paid by the plaintiff.

(b) Poverty affidavit; additional court costs. The provisions of subsections (b), (c) and (d) of K.S.A. 60-2001, and amendments thereto, shall be applicable to lawsuits brought under the code of civil procedure for limited actions.



The Kansas Bankers Association

To: Senate Judiciary Committee

From: Chuck Stones, Senior Vice President

Re: Sub for HB 2979: Providing Notice of Storage Fees

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today in support of HB 2979. With the help of the Kansas Automobile Dealers Association, we have attempted to respond to a problem experienced by some vehicle lenders.

This issue was brought to our attention by a member bank that had made a loan secured by a vehicle. The vehicle had been taken to a vehicle dealer for repairs. However, the repairs were never completed and the dealer put the vehicle in storage. The owner of the vehicle not only failed to pick up the vehicle, but also discontinued payment on the loan. The bank called the note, but was unable to locate the vehicle. Four months later, by chance, the bank discovered the location of the vehicle. By that time over \$1,700 in storage fees had been incurred. In order to take possession of the vehicle, the bank was forced to pay the storage fees.

HB 2979 would provide that whenever anyone has storage fees that have gone unpaid for 30 days, that person shall provide notice to the owner of the vehicle and any lienholders that are either known to the person in possession of the vehicle or that are identified by verification with the Division of Vehicles. The notice will be sent by certified mail. There is an exception to the notice requirement for those owners or lienholders who have prior notice or actual knowledge that storage fees could be charged or are being charged.

The penalty for not providing such notice is that the person in possession of the vehicle would be precluded from charging storage fees until the notice is sent.

We believe that notification to the lienholder is that a vehicle has been left unattended benefits all parties involved. The chances that the repairs and storage fees on the vehicle will be paid increase tremendously the sooner the lienholder is notified as the lienholder knows that the vehicle's value steadily decreases as time passes and the costs of obtaining the vehicle increase.

We have also exempted those parties governed by other statutes, namely those involved in the towing business (KSA 8-1103) and the salvage business. (KSA 58-208)

We respectfully request that the Committee act favorably on our substitute language, incorporating it as a substitute bill for HB 2979.

*5/11/02
3-26-02
att 2*

Substitute for HOUSE BILL No. 2979

By Committee on Judiciary

2-27

AN ACT concerning vehicles; relating to storage fees; requiring notice to lienholders.

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

Section 1. (a) Whenever any person, while lawfully in possession of a vehicle, renders any service or otherwise charges a fee for the protection, storage or safekeeping of such vehicle and such storage fees remain unpaid for 30 days, that person shall provide notice to the owner and the lienholder of record of such vehicle if:

have accumulated

(1) The name and address of the owner and lienholder of record are known to the person in possession of such vehicle; or

(2) the person in possession of such vehicle can ascertain by verification from the division of vehicles the name and address of the owner and any lienholders of record.

(b) Notice shall be mailed by certified mail to the owner and any such lienholder of record identified. Failure to give such notice shall stop the imposition of storage fees until the notice provisions described in this section are complied with. Notice shall not be required if such owner and lienholder of record have prior notice or actual knowledge by agreement or otherwise that such fees could be charged or imposed or were in fact being charged or imposed.

to be given to an owner or to a lienholder of record who has

(c) The provisions of this section shall not apply to storage fees governed by K.S.A. 8-1103 [and 58-208], and amendments thereto.

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



Matthew S. Goddard, Vice President

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Topeka, Kansas 66603
Office (785) 232-8215 • Fax (785) 232-9320
mgoddard@hcbankers.com

To: Senate Judiciary Committee
From: Matthew Goddard
Heartland Community Bankers Association
Date: March 26, 2002
Re: Substitute for House Bill 2979

The Heartland Community Bankers Association appreciates the opportunity to appear before the Senate Committee on Judiciary to express our support for Substitute for House Bill 2979.

Substitute for HB 2979 is designed to protect lenders from being liable for large fees when a borrower abandons a vehicle and it is then stored or otherwise safeguarded by someone else. The bill requires that the party who has the vehicle in their possession and who is charging a storage fee provide notice to the lienholder of the vehicle if the storage fees remain unpaid for 30 days. Failure to provide such notice stops the imposition of storage fees until notice is provided.

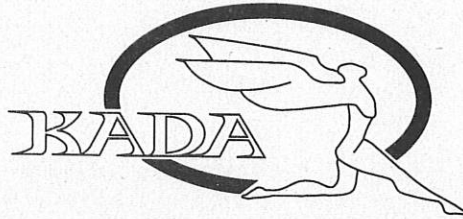
HCBA believes that someone who stores a vehicle is entitled to the applicable storage fees. However, the storage fees should not be allowed to accumulate indefinitely. If someone has not made an effort to retrieve a vehicle after 30 days, it would seem safe to assume the person may not be returning to claim the car. Notifying the lienholder at that point will allow the lender to know where the vehicle is and also to pay whatever amount is owed to the person holding the vehicle so that the vehicle may be claimed.

In an automobile loan, the vehicle serves as collateral. As storage fees are assessed on a vehicle, the net value of the collateral is diminished. If an automobile is damaged and placed into storage, several months of storage fees could reduce the net value of the vehicle to almost nothing. Ultimately, it is Kansas consumers who pay higher interest rates or face stricter underwriting when this happens.

We respectfully request that the Senate Committee on Judiciary recommend Substitute for HB 2979 favorable for passage.

Thank you.

*Sen Jud
3-26-02
att 3*



KANSAS AUTOMOBILE DEALERS ASSOCIATION

TO: The Honorable John Vratil, Chairman
And Members of The Senate Judiciary Committee

FROM: Mr. Don McNeely, President
Kansas Automobile Dealers Association

RE: Substitute for HB 2979 – An Act Related to Liens;
Concerning Storage Fees on Vehicles; Requiring Notice to
Lienholders.

DATE: March 26, 2002

Good morning, Chairman Vratil and Members of the Senate Judiciary Committee. My name is Don McNeely and I am President of the Kansas Automobile Dealers Association, which represents the franchised new car and truck dealers in Kansas, as well as the franchised new motorcycle and recreational vehicle dealers. On behalf of KADA, I am pleased to present this testimony in support of Substitute for HB 2979, and the proposed clarifying amendments offered by the Kansas Bankers Association.

KADA has appreciated the opportunity to work with KBA over the last several months on this matter, which impacts both our industries. It is our belief that the Substitute for HB 2979 and the proposed clarifying amendments adequately addresses both of our concerns as they relate to the situation where an individual or entity essentially abandons their motor vehicle in the care and custody of one of our members after the completion of an approved or contracted repair of the motor vehicle, with no intention of satisfying the debt incurred for such repair.

On behalf of the Kansas Automobile Dealers Association, I thank you for your consideration of our comments in support of the Substitute for HB 2979 and the Kansas Bankers Association's proposed clarifying amendments.

800 S.W. Jackson, Suite 1110 • Topeka, KS 66612

Telephone (785) 233-6456 • Fax (785) 233-1462

*Sn. Jud
3/26/02
att 4*

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TOPEKA

HOUSE OF
REPRESENTATIVES

TESTIMONY FOR HB 2399

COMMITTEE ASSIGNMENTS
CHAIRMAN: eGOVERNMENT
MEMBER: HIGHER EDUCATION
K-12 EDUCATION
KANSAS FUTURES
FISCAL OVERSIGHT
JOINT COMMITTEE ON ARTS
AND CULTURAL RESOURCES

Chairman Vratil and Judiciary Committee Members, thank you for agreeing to hear testimony on HB 2399.

The intent of HB 2399 is to give judges another option when sentencing juvenile sex offenders. It is my understanding that today, a judge can require an adjudicated juvenile sex offender to register under the Kansas Offender Registration Act (KORA) ONLY when the juvenile offender AGREES to be registered in lieu of some other punishment.

On November 23, 1999, a 16 year old who resides in Saline County plead guilty to aggravated indecent liberties that had been taken with his 6 year-old female cousin. As you will see within portions of court documents that have been included with the father's testimony, the judge felt that he wasn't able to provide as much assurance for the safety of the public as he would like.

As you can imagine the family of the young girl was traumatized by this event and dealt only internally with it, accepting the sentence until they saw their nephew not complying with the sentence and basically saying "Yes, I did it but what's the big deal?" [For example, the adjudicated juvenile evidently, according to the young girl's father, repeatedly sought out girls younger than 16, even though his sentence forbade him to be in their company.] In addition, when a newspaper article appeared regarding the death of a young girl who was killed by a young man who, as a juvenile, had been adjudicated for sex offenses, this family decided it was important to ask me to seek a change in the law. As explained earlier, this change in statute, is intended to allow judges to include in their sentencing order for adjudicated juveniles, if warranted, registration under the Kansas Offender Registration Act.

*5/27/02
3-26-02
att 5*

Thank you again for taking time to hear testimony on the change to the statutes as is proposed by HB 2399. I respectfully ask for your strong consideration of this change so parents of young children have an opportunity to be aware of those youth who may desire to do physical harm to their children. It also seems fitting to place the judge in charge of the decision of whether registration under the Kansas Offender Registration Act (KORA) is appropriate, not the juvenile sex offender.

Bill No. 2399

My 6-year-old daughter was sexually molested. To make this experience even more traumatic and difficult to comprehend – the molester was my 16-year-old nephew. To complicate matters even more, the molestations took place at the home of my mother – grandmother to both children.

Uriah plead guilty to aggravated indecent liberties and was found guilty of a 3rd degree felony. He was place on one year of intensive probation, 3 years of sex offender counseling and as part of his probation he was to have no contact with my little girl or any other female under the age of 16.

While Uriah was on probation he would visit my mother's home while my daughter was there visiting as well. (This was, of course, unbeknownst to his mother or myself). One of us would drive by and see his truck there. We would immediately take our daughter from the grandmother's home. Uriah would not make a move to leave. He knew he was in violation of his probation but it didn't seem to matter to him.

One day at my place of employment, a co-worker started a conversation with me and basically wanted to know "what Uriah's problem was." She explained that her 14-year old daughter had repeatedly turned down Uriah's requests for a date. He would not leave this young lady alone. (It was at this point I told my co-worker what Uriah had done to my daughter and warned her to be sure her own child stayed away from him.) According to my co-worker Uriah continued to bother her daughter and would not accept no for an answer. This harassment apparently didn't stop until this 14-year-old girl

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told him that she was aware of what he had done to his cousin. Uriah apparently became very upset and directed this girl not to tell anyone and that it "was all a big lie". It was at this point he stopped requesting dates from her. Apparently to this convicted felon, a date with a 14 year old girl was somehow not in violation of his probation.

In addition to Uriah's blatant disregard for the previous 2 components of his probation he also applied for and received a deer-hunting permit. (So much for a convicted felon not owning/operating a firearm.)

Shortly after much of this occurred, Uriah and his family petitioned the court for early release from his probation. According to his court – appointed counselor he was completely ready to be released. If I hadn't been there to notify the court about the above breeches of his probation, Uriah would have gone scott free. The only consequences at this point would have been the conviction which – apparently – no one under normal circumstances would ever know about. During this hearing, the judge continued the probation, and sternly warned Uriah and his family of the seriousness of his original offense and the serious nature of breaking his probation.

Next came the hearing regarding our request the Uriah be listed on the KBI sex offender list. The Judge told us that he had done extensive research and learned that the law only allow judicated individuals to be placed on the list if they agree to do so as part of their sentencing or pea bargain. The Judges hands were tied. Since our offender hadn't agree – we learned that he wouldn't be listed.

My nephew clearly has little regard for the law. Apparently for him, and I suppose others like him, the real punishment is in what his peers and others think about him.

As parents, we protect our children from strangers and those we believe to be potentially dangerous. How many think to protect ourselves from our son's or daughter's friends from school? It is insidious to think some uninformed folks out there would innocently allow their son to invite Uriah over to spend the night (like regular folks do). What if the family has young children?

Even further, Uriah has been allowed to attend the same school as our child. (It is a consolidated K-12). Despite our best attempts to have him removed. If we hadn't informed the school authorities of Uriah's conviction they would have never known not only to watch over our child but all of the others as well.

Juvenile sex offenders need to be registered. Uriah needs to be registered. It is just one more small way for us to protect our kids.

Mike Jensen
Mike Jensen
5694 E K4144
DYP SUM KS. 67448
Phone 785 536 4620

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IN THE DISTRICT COURT OF SALINE COUNTY, KANSAS
28TH JUDICIAL DISTRICT
STATE OF KANSAS

IN THE MATTER OF:

CASE NO. —

— —
TRANSCRIPT

This matter came on for hearing before the HONORABLE JEROME P.
HELLMER, District Court Judge, at Salina, Kansas on January 18, 2001.

APPEARANCES:

The Petitioner:

Kristin Heck
Asst. Saline Co. Atty.
300 West Ash
Salina, Kansas 67401

The Respondent:

Karen Black
2035 E. Iron
Salina, Kansas 67401

6-4

Underlined portions refer to the

subje^e of
HB 2399

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THE COURT: Would you like to have at seat
at counsel table, Mr. Jensen? Not to preclude
counsel from responding. This matter
commenced in this phase on October 13 of
2000, when the State had requested Mr.
~~Name Deleted~~ be registered as sexual offender. At
that time, because as I have previously stated,
we are bound to follow the Legislative
enactment's. I asked the attorneys to brief this
question, and that's a very common process,
where the attorneys are required to find out
what the law really is. The Statute is on the
books. I don't think anyone disagrees that the
Sexual Predator Act which is embodied in 22-
4901 et. seq., in which I have again copied and
again reviewed, is clearly on the books. The
question became, what is the jurisdiction or the
right of the Court to enforce that Act, when it
involves a juvenile offender? And, so hence,
the question comes back to the attorneys. The
State of Kansas, you've asked the Court to do
this, please provide me with some legal
reasons, some justification as to why I have the
authority to do that. Miss Black, on the other
hand of course, as defense counsel, doing her

1 result of a very serious sexual offense under
2 the Juvenile Code. The Court simply signed off
3 on that journal entry. It was sent to the Kansas
4 Bureau of Investigation. The Kansas Bureau of
5 Investigation, however, sent to the Court a
6 letter indicating that, "An initial offender
7 registration from your Office has been
8 received. After the initial processing was
9 completed, the journal entry received, it was
10 determined that the individual is not required to
11 register in the State of Kansas." "The juvenile
12 was convicted as juvenile and no information
13 could be found indicating that he has to
14 register as an offender." The KBI has taken the
15 position that, quite frankly, they cannot register
16 juveniles. Which was the primary thrust of the
17 argument of the State of Kansas. The troubling
18 aspects of this case for the Court are, that, and
19 Mr. Jensen has said it quite well today, in spite
20 of his obvious discomfort of being here, and
21 having to recite these events over his
22 daughter's violation again. That you folks were
23 family at one point, trusted family. You were a
24 godfather, apparently, to Mr. *Name deleted* and I did
25 not know that. You would have trusted this

1 young man and the rest of his family to the
2 umpped degree, as they would have you.

3 Tragically, a act that is criminal in nature, not
4 just wrong, happened, and Mr. ^{Name} Deleted is the
5 person who ended up being adjudicated of that.

6 The Court has publicly recognized that Mr.

7 ^{Name} Deleted, had he been eighteen at the time of
8 the offense, violated the laws --- the criminal
9 laws of the State of Kansas. That, in and of
10 itself, was the public vindication of your
11 daughter being truly the victim, having had no
12 part in this and having no wrong doing in this.

13 You are right, Mr. Jensen, we can't simply take
14 the eraser and wipe the chalk from the board
15 and assume that your daughter won't have any
16 other feelings, thoughts, or responses, as a
17 result of that. We can believe that with
18 appropriate therapy and treatment, that it can
19 be overcome and can be dealt with. That is a
20 burden, of course, that should not have been
21 placed on this little child. She had no wrong
22 doing. She is the victim in this case. From
23 that juncture, it would appear, that the system
24 has recognized that a wrong has been done,
25 but we won't call it a crime. The Legislature

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has defined the Juvenile Offender Code,
under 38-1601 to be a civil code. And the
Court and counsel have struggled in the recent
years with where this has gone from the
Legislature. On the one hand, we say this is a
civil case, and we have two areas of the law
that we deal with, one being civil, one being
criminal. I would venture to say, that most of
us lay people would look at this and say, "Civil
has to do with property or money, it has to do
with items, or maybe a car accident." "Criminal
has to do with somebody killing someone,
hurting someone, stealing something,
something really bad that we all say shouldn't
happen." The Legislature says that if you are
under the age of eighteen, it's a civil issue.
And while we recognize that the behavior of
children can be bad and can be wrong, we stop
short of calling it criminal, and we call it civil.
And we ask the court systems to deal with the
young people in some fashion that, hopefully,
will defer future behavior. Will bring about an
opportunity for the person to be punished for
their wrongdoing. And, to somehow
compensate the victim for the wrong done to

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the victim. However, what the system has left
us with, is a determination that under the
statute, once I find, because we don't style this
as we would if Mr ^{Name} ~~deleted~~ were eighteen.
Every other case, as you know at the other end
of the hall we have murder trial going right
now, it's the State of Kansas versus so-and-so.
In this courtroom, it's always, In The Matter Of.
A clear definitional difference between crime
and civil wrongdoing. In the other courtroom,
we go beyond a reasonable doubt. We have
beyond a reasonable doubt in this courtroom.
We have constitutional guarantees in the adult
courtroom. We have some constitutional
guarantees in this courtroom, but not all. We
have no right to speedy trial. We have no right
to jury trial in this particular arena. It can be
discretionary with the Court on a jury trial, but
it's not required, nor can I be appealed if I
decide not to. We do not enter a finding of
guilty in this courtroom, we find an
adjudication. We accept the statement of the
victim ---- or the perpetrator and say, we
accept your statement that you did this, we
know adjudicate you. It's not surprising that

1 daughter cries. My daughter comes to me.
2 How do I answer her questions? How do I
3 comfort her? What do I say? And to that, Mr.
4 Jensen, I'm a father and a grandfather and I
5 may wear a robe, but I don't have those
6 answers. A counselor may, a professional may,
7 but I certainly don't. After very carefully
8 considering all of the matters before the Court
9 and all of the evidence that's been presented,
10 as well as the law that has been presented, and
11 the individual research of the Court, I find I do
12 not have the ability, at this point in time, to
13 register Mr. ^{Name} ~~deleted~~ as a sex offender. Not
14 that I don't somewhat agree with Mr. Jensen
15 that it might have a salutatory effect. That,
16 quite frankly, if we all had to wear a public
17 symbol of our wrong doing for a period of time,
18 we would all less likely, probably, venture into
19 that behavior again. But that's not the code I
20 have before me and that's not what I can do
21 legally. And, again, if I just simply wanted to
22 listen to the very rational arguments of the
23 victim's father, this case would have been
24 decided a long time ago. You'd have been
25 registered and we would have been done. And,

1 as a matter of fact, apparently someone else
2 thought that was good deal in the other case
3 and did it, and the KBI says I can't do it. I
4 don't know where that case is going to go. It
5 may very well be on appeal at some point in
6 time, but that's where it is now. The
7 determination of the Court, Mr ^{Name} ~~deleted~~ does
8 not in any way minimize the wrong doing. Does
9 not minimize the decision of the Court by
10 accepting your adjudication that, if you were
11 eighteen, you would have committed a crime.
12 It does not take away the pain and I've also
13 been made aware by counsel, that there are
14 other underlying issues that have been visited
15 upon you. Quite frankly, I can't do anything
16 about that. It's a public record. And so if
17 others wish to expose you to that, I'm afraid
18 that's just a price that ends up being paid. And
19 maybe that's the sad substitute for a Court not
20 having the jurisdiction to do what otherwise
21 someone thinks might be the best thing to
22 cause you from not doing that. The positive
23 side is, Mr. Gusditus says, you are treatable,
24 you are savable, and with that treatment and
25 with that continued work on your part, there is