Approved: January 22, 2003

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil, at 9:30 a.m. on January 14, 2003, in Room 123-S of the Capitol.

All members were present:

Committee staff present: Mike Heim, Kansas Legislative Research Department
Jerry Ann Donaldson, Kansas Legislative Research Department
Lisa Montgomery, Office of the Revisor of Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Melissa Wangeman, Secretary of State's Office
Kathy Porter, Office of Judicial Administration

Others attending: see attached list

The Chair presented organizational information which included introducing Senator Barbara Allen as a new member of the Senate Judiciary Committee and Dee Ann Woodson as the new Committee Secretary. He also announced that there would not be Committee meetings on Friday, January 17, and on Monday, January 20. He went over the tentative schedule for the remainder of the week.

The Chair called for bill introductions. Conferee Melissa Wangeman requested introduction of two bills on behalf of the Kansas Bar Association (KBA). The first bill she discussed contains revisions to the Kansas corporation code. She told the Committee that the second bill contained revisions to the Professional Associations Act, which relates to corporations that are formed by licensed professionals for the purpose of providing a professional service (lawyers, doctors, architects, etc.). (Attachment 1) The Chair called for questions and discussion concerning the proposed bills, and called for a motion to introduce both of the bills. Senator Schmidt moved to introduce the bills, Senator Pugh seconded the motion, and the motion carried.

Conferee Wangeman also requested a bill introduction for the Secretary of State's Office containing similar amendments found in the KBA bill, for unincorporated business entities that register with their office. She stated the purpose of the Secretary of State's bill was to duplicate changes within the corporation code for other business entities so that all entities would have uniform and consistent provisions. (Attachment 2) Senator Oleen moved to introduce the bill, Senator Umbarger seconded. Motion carried.

Conferee Kathy Porter, Office of Judicial Administration, requested the introduction of five(5) bills. The first bill regarded writs of execution, the second bill covered Supreme Court and District Court Judicial Nominating Commission statutes, third bill involved the appointment of Clerk of the District Court and Chief Clerk by the Chief Judge, fourth bill related to the age 75 retirement provision, and the fifth bill concerned including mailing addresses on driver's licenses. (Attachment 3) Senator Donovan moved to introduce the five bills, seconded by Senator Schmidt, and the motion carried.

Senator Schmidt requested introduction of three bills. The first bill was based on SB 265 from last session and involved amending the Landlord Tenant Act. Senator Schmidt moved to introduce the bill, seconded by Senator Goodwin. Motion carried.

The second bill requested by Senator Schmidt related to the possession of body armor by felons. Senator Schmidt made a motion to introduce this bill, Senator O'Connor seconded, and the motion carried.

Senator Schmidt requested the third bill regarding criminal background checks for healthcare employees. Senator Schmidt made a motion to introduce the bill, seconded by Senator O'Connor, and the motion carried.

MINUTES OF THE SENATE JUDICIARY COMMITTEE on January 14, 2003 in Room 123-S of the Capitol.

Senator Allen requested a bill be introduced regarding drivers' licenses and other identification cards relating to application requirements; photograph fees, verification of source documents, etc. Senator Allen made a motion to introduce the bill, seconded by Senator Schmidt, and the motion carried.

Chairman Vratil referred Committee members to the 2002 Annual Report on No-Call from the Office of the Attorney General. He directed their attention to the end of the report where the Attorney General makes recommendations for several legislative changes, mainly clean-up recommendations. He asked the members to look over the recommendations for discussion at a later meeting in regard to possibly having legislation drafted and introduced to make those recommended changes by the Attorney General. (Attachment 4)

The Chair asked the staff from Legislative Research to give a review of the report from the Special Committee on Judiciary. Jerry Ann Donaldson briefed the Committee members on the Medicaid Fraud section. General questions and discussion followed with concern expressed about SRS not providing adequate guidance and direction to the SUR unit staff within Blue Cross (now EDS). Chairman Vratil said that he and the Committee Secretary would arrange for a presentation on this subject, and would contact Barb Hinton from Legislative Post Audit and Robert Day from SRS for a briefing sometime early in the session. (Attachment 5)

Jerry Ann Donaldson continued with her review of the Interim Committee Report for sections regarding Licensure of Private Security Guards and Drug Courts. Chairman Vratil explained that the Committee decided that there was no compelling need to have state regulations of private security guards, and that it was best to leave it to the local cities and counties at this time. In regard to the Drug Courts, Chairman Vratil communicated that the Committee authorized introduction of a bill, with no recommendation, proposed by the Sentencing Commission. Upon request, Barbara Tombs, Kansas Sentencing Commission, explained that the bill was being drafted and what it was proposing. After brief discussion by Committee members, the Chair stated that this issue would be one of the major issue during the session and that this discussion would be continued at the next meeting.

Meeting adjourned at 10:30 a.m. The next scheduled meeting is January 15, 2003.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Jan. 14, 2003

NAME	REPRESENTING
Christina Collins	KMS
Melissa Wangemann	Sec of State
Whitney Damron	KS Bar Association
Robert Choromanski	KTLA
KEITH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
[illegible]	KSC
[illegible]	KADC
Mike Hayden	Ks. Gov't. Consulting
Stuart Little	Ks Comm. Corrections Ass.
Julie Hein	Hein Law Firm
Becky Mann	Hein Law Firm
Sheila Walker	Kansas DMV
Kathy Porter	Judicial Branch
Sandra Jacquot	League of Kansas Municipalities

MEMO

TO: SENATE JUDICIARY COMMITTEE

FROM: KANSAS BAR ASSOCIATION

DATE: 14 JANUARY 2003

RE: BILL INTRODUCTIONS
CORPORATE CODE REVISION
PROFESSIONAL ASSOCIATIONS ACT REVISION

The Kansas Bar Association requests the introduction of two bills.

The first bill contains revisions to the Kansas corporate code, which has not seen substantial revisions since its enactment in 1972.

The second bill contains revisions to the Professional Associations Act, which relates to corporations that are formed by licensed professionals for the purpose of providing a professional service (lawyers, doctors, architects, etc).

Senate Judiciary
1-14-03
Attachment 1-1

RON THORNBURGH
Secretary of State

Memorial Hall, 1st Floor
120 S.W. 10th Avenue
Topeka, KS 66612-1594
(785) 296-4564

STATE OF KANSAS

MEMO

TO: SENATE JUDICIARY COMMITTEE

FROM: MELISSA WANGEMANN, LEGAL COUNSEL

DATE: 14 JANUARY 2003

RE: BILL INTRODUCTION

The Kansas Bar Association and the Secretary of State worked jointly over the last two years to update the Kansas corporate code, and the KBA is proposing a bill containing revisions to the corporate code.

The Secretary of State requests the introduction of a bill containing similar amendments found in the KBA corporate rewrite bill, for unincorporated business entities that register with our office. The purpose of the Secretary of State's bill is to duplicate changes within the corporate bill for other business entities so that all entities will have uniform and consistent provisions.

Senate Judiciary
1-14-03
Attachment 2-1

State of Kansas
Office of Judicial Administration
Kansas Judicial Center
301 SW 10th
Topeka, Kansas 66612-1507
(785) 296-2256

Senate Judiciary Committee

Tuesday, January 14, 2003

Bills Requested for Introduction in the 2003 Legislative Session

The Office of Judicial Administration requests the introduction of the following bills during the 2003 legislative session.

1. *Writs of Execution.* The Kansas Association of District Court Clerks and Administrators (KADCCA) requests the introduction of a bill amending K.S.A. 60-2401, which concerns the issuance of writs of execution and orders of sale. Under current law, the clerk of the district court both issues and signs writs of execution and orders of sale. The KADCCA Legislative Committee would like to amend the law to clarify that the clerk of the district court issues the writ of execution or order of sale, but the judge must sign the order.

The use of writs of execution and orders of sale touches upon judgment debtors' property rights, and the KADCCA Legislative Committee feels as though it is most appropriate that a judge sign the order that effectuates the seizure or sale of property.

2. *Supreme Court and District Court Judicial Nominating Commission Statutes.* 1996 House Bill 2506 would have clarified and updated several provisions relating to district court judicial nominating commissions. Other provisions were amended into the bill, and it was not enacted into law. In 2002, 1996 House Bill 2506 was re-introduced, with the inclusion of provisions relating to the Supreme Court Judicial Nominating Commission as Senate Bill 544. The Clerk of the Supreme Court requests the introduction of a bill including the provisions of 2002 SB 544.

3. *Appointment of Clerk of the District Court and Chief Clerk by the Chief Judge.* Currently, K.S.A. 20-343 provides that the chief judge is to appoint the clerk of the district court and designate one clerk as the chief clerk, with the approval of a majority of the other district judges of the judicial district. The suggested amendment would allow the chief judge to make these appointments in consultation with the other district judges, but would not require the approval of the majority of the judges.

Senate Judiciary
1-14-03
Attachment 3-1

The current statutory language could make the clerk selection process difficult under some scenarios. One example might be a district in which there are three district judges, including the chief judge. Although the chief judge and one other district judge might agree as to the appointment of a clerk or chief clerk, the selection process could run into difficulties if the remaining district judge disagrees with that selection. To comply with the statute in a three-judge district, it would appear that both district judges would have to agree with the chief judge, because one of two district judges does not constitute a majority of the other district judges of the judicial district. Stated differently, one district judge could effectively block the agreed-upon decision of the chief judge and the other district judge.

4. *Age 75 Retirement Provision.* The 2001 and 2002 Legislature re-considered 2000 House Bill 2372, which as introduced would have amended the retirement age for judges to age 75 from the current age 70, or the end of the term during which the judge attains the age of 70. The bill has been amended by committees several times in recent years to apply only to appellate justices and judges and to remove all reference to a retirement age. The version we are requesting would apply to all judges and would specify retirement on or before the judge's 75th birthday.

5. *Including Mailing Addresses on Driver's Licenses.* Although not an issue for residents of urban areas and some rural areas, some rural areas use a 911 system address in addition to the postal address. However, in many cases the post office will not deliver mail to the 911 system address, resulting in a problem with returned jury notices when the names of potential jurors are pulled from the drivers' license lists. The requested amendment would ensure that the mailing address, as well as the 911 system address, is included on driver's licenses.

KP:mr

2002 ANNUAL REPORT ON NO-CALL

Consumer Protection & Antitrust Division

Office of Attorney General Carla J. Stovall

(Submitted pursuant to the Kansas No-Call Act, 2002 Session Laws, ch. 179, §1-2)

Senate Judiciary
1-14-03
Attachment 4-1

State of Kansas
Office of the Attorney General
CONSUMER PROTECTION/ANTITRUST DIVISION
120 S.W. 10TH AVENUE, 2ND FLOOR, TOPEKA, KANSAS 66612-1597
PHONE: (785) 296-3751 FAX: 291-3699

CARLA J. STOVALL
ATTORNEY GENERAL

CONSUMER HOTLINE
1-800-432-2310

January 13, 2003

TO: Chairman John Vratil, Senate Judiciary Committee
Chairman Carl Holmes, House Utilities Committee

I am pleased to provide to you the 2002 Annual Report on No-Call of the Consumer Protection/Antitrust Division of the Office of Attorney General pursuant to the Kansas No-Call Act (2002 Session Laws, ch. 179, § 1-2).

IMPLEMENTATION

Following the passage of the No-Call Act, the Office of Attorney General commenced negotiations with the Direct Marketing Association (DMA), seeking to conclude negotiations in time to implement the law on July 1, 2002. On July 5, 2002, negotiations with the DMA were terminated, due primarily to the DMA's refusal to meet the 30-day registration deadline required by the No-Call Act. Prior to terminating negotiations and taking bids from other vendors pursuant to the Act, my office conferred with each member of the Conference Committee for the No-Call legislation. I have attached a Chronology of Negotiations with DMA and supporting documentation for your review.

A contract was subsequently reached with GovConnect, Inc., to maintain the Kansas No-Call list on August 7, 2002. The one-year contract provides free consumer registration by phone and internet. For comparison, the DMA would only agree to provide free written registration, would have charged $5.00 for internet registration, and would not have provided any phone registration. Consumer registration was implemented on August 12, 2002, with a deadline of September 23, 2002, to be included on the first list published on October 1, 2002.

The contract with GovConnect provides telephone solicitors access to the list via email or CD. The cost to access the list is as follows:

- complete list with electronic distribution (e-mail), $359
- complete list with distribution on CD-Rom, $399
- one area code with electronic distribution, $149 (add $149 for each additional area code)
- one area code with distribution on CD-Rom, $189 (add $189 for each additional area code)

For comparison, the DMA proposed to charge $465 annually for access to the Kansas No-Call list. On October 23, 2002, an amendment to the contract with GovConnect was agreed upon, providing a discounted rate to telephone solicitors desiring to purchase multiple copies by electronic distribution on behalf of independent contractors/agents that sell the telephone solicitor's products or services.

CONSUMER REGISTRATION

The first quarterly No-Call list was published on October 1, 2002. The registration period for that first list commenced on August 12, 2002, and ended on September 23, 2002. In those six weeks, 397,697 Kansas residential telephone numbers were registered on the Kansas No-Call list. A total of 467,929 Kansas residential telephone numbers were registered by the December 23, 2002, deadline for the January 1, 2003, No-Call list.

REQUESTS FOR DATABASE

464 individual telephone solicitors have purchased copies of the Kansas No-Call list. In addition, one company bought 324 copies of the list for independent agents of the company under the multiple purchase discounted rate. As a result, 788 telephone solicitors have access to the database. GovConnect received a total of $166,774 in revenue from sales of the list in 2002.

NUMBER OF COMPLAINTS RECEIVED

The October 1, 2002, No-Call list became enforceable on November 1, 2002. In November and December, 2002, the Consumer Protection/Antitrust Division received 2,295 No-Call complaints. Of those complaints, 203 were closed in 2002 as not in violation of the Kansas No-Call Act. Charitable, political and polling calls are not covered by the Act. Debt collection calls, calls made in response to the express request of the consumer, and calls made to a consumer with an established business relationship with the telephone solicitor are exempted under the Act.

As we predicted, the number of complaints reduced as companies were notified by my office and consumers that they were violating the law. In November, we averaged over 84 complaints each work day. In December, that number had reduced by over one-half to approximately 37 complaints per work day. It is anticipated the No-Call Unit can be reduced from it's current staff of one attorney, two investigators, and one temporary office assistant, to one attorney and one investigator within the next six months. Over time, even these two remaining positions will be able to start handling other consumer protection matters as the investigative and enforcement activity decreases.

ENFORCEMENT ACTION

As a matter of enforcement policy, the No-Call unit calls the telephone solicitor within a day of obtaining or ascertaining the telephone number of the telephone solicitor to advise the solicitor a complaint had been received. At that time, the telephone solicitor is advised orally to cease and desist making calls in violation of the Kansas No-Call Act. Written cease and desist letters are also sent shortly after obtaining address information for the telephone solicitor. These two notification methods are intended to give the telephone solicitor more than sufficient notice that it is in violation of the Act. This accomplishes an important goal of the unit, to encourage compliance and help telephone solicitors avoid additional violations and civil penalties. The decrease in complaints from November to December indicates our efforts have been successful.

My office has set a threshold of three complaints before a telephone solicitor is required to pay a civil penalty for violations of the No-Call Act. Once a supplier has four or more complaints, however, a recommendation is made to prosecute the violations.

STATE REVENUES RECEIVED

To date, no revenues have been received. Investigations have been completed on 21 companies with four or more complaints filed against them (319 violations in total) and authorization given to negotiate or sue. I anticipate at least $185,000 will be received from these 21 companies. Verbal agreements to settle have been reached with three of the 21 telephone solicitors for a total of $17,000 in penalties and fees. An additional 27 telephone solicitors with over 4 complaints filed against them individually (over 1,000 potential violations in total) are still being investigated, most of which should result in prosecution. Finally, 143 telephone solicitors have 3 or less complaints, which will not result in prosecution under my enforcement policy unless additional complaints are received. Sufficient revenues are anticipated from the above cases to pay the cost of the No-Call unit, provided the new administration maintains the enforcement policy implemented by this administration.

LEGISLATIVE CHANGES

Without fully discussing each issue, I have listed below several amendments to the No-Call Act that should be considered this session.

- Amend the Act to allow the transfer of registrations on the Kansas No-Call list to the FTC No-Call list. The FTC is planning to implement a national No-Call law, without preempting the protections currently provided in state No-Call laws such as the Kansas No-Call Act. Although current provisions in the Kansas No-Call Act allow the Attorney General to "designate the list established by the federal trade commission as the Kansas No-Call list", there is no provision authorizing the transfer of the information on the Kansas No-Call list

currently maintained by our vendor. Without such a provision, consumers would be required to re-register on the FTC No-Call list.

- Allow the registration of cell phone numbers to the list. Since consumers typically have to pay for incoming calls, they should be allowed to prevent telemarketing calls to their cell phones by registering on the No-Call list.

- Clarify that the consumer registration information (name, address, and phone number) on the Kansas No-Call list is not an open record. While I believe this is the intent of the current law, it should be made clear.

- Address the issue of access to the No-Call list by independent agents and contractors affiliated with a particular company. The law currently requires each telephone solicitor to access the list, pay the fee, and sign a subscription agreement. Since independent agents and contractors are separate legal entities, for which the company they are associated with denies liability, my office has interpreted the current law to require each independent agent or contractor to purchase the list. Alternatively, the company can buy multiple copies at a discounted rate if each independent agent will execute an individual subscription agreement. However, I would urge the legislature to confer with our vendor before potentially cutting off their revenue stream. Failing to confer with the vendor could result in the vendor refusing to renew the contract, which was for a one year period out of deference to an incoming administration.

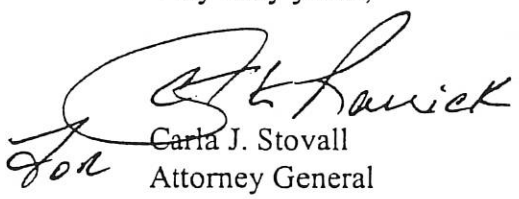
- Access to the list by list scrubbers or list brokers should be addressed. The Act currently provides access to the list by telephone solicitors only. There is a legitimate industry willing to provide list scrubbing services for telephone solicitors, and accommodation should be made. However, until the FTC list is implemented, I would again urge the legislature to confer with our vendor before making changes that could cut off their revenue stream.

CONCLUSION

It has been a top priority of my office to protect Kansas consumers from deceptive and unconscionable business practices through a combination of firm, yet fair, enforcement of consumer laws and effective consumer education efforts. I supported the passage of the Kansas No-Call Act, and urge the Kansas legislature to resist any efforts to exempt specific industries from the requirements of the Act. As the registration numbers indicate, this privacy law is overwhelmingly supported by Kansans and the current protections should be preserved.

If Deputy Attorney General Steve Rarrick or I can answer any questions regarding the Kansas No-Call Act, please feel free to contact us.

Very truly yours,



Carla J. Stovall
Attorney General

CJS:CSR

Special Committee on Judiciary

MEDICAID FRAUD

CONCLUSIONS AND RECOMMENDATIONS

The Committee concludes that no credible evidence of substantial Medicaid fraud was presented. The Committee, therefore recommends no action be taken at this time.

Proposed Legislation: None

BACKGROUND

The topic of False or Fraudulent Medicaid Claims and Their Impact on the State—Enforcement Issues was assigned to the 2002 Special Committee on Judiciary. As the result of a January 2002 Legislative Post Audit Report entitled *"Medicaid Cost Containment: Controlling Fraud and Abuse,"* 2002 SB 535 was drafted, dealing with the issue of Medicaid fraud. Subsequently, the Chairman of the standing Senate Judiciary Committee requested an in-depth examination of the matter for interim study.

COMMITTEE ACTIVITIES

During the deliberation on the topic of Medicaid fraud, the Committee heard from several individuals including Senator Derek Schmidt who requested the bill draft; Barb Hinton, Legislative Post Auditor; John Campbell, Senior Deputy Attorney General; Jerry Slaughter representing the Kansas Medical Society; Tom Bell with the Kansas Hospital Association; Robert Day, Department of Social and Rehabilitation Services (SRS); and Robert Eye an attorney from the Kansas Trial Lawyers Association.

The Committee heard from the requestor of the bill who is also on the Legislative Post Audit Committee about his reason for having SB 535 drafted, which was to focus on false claims. The bill would create a civil penalty for knowingly defrauding the Medicaid program by submitting false claims or receiving benefits from a fraudulent or inadvertent Medicaid claim.

The Committee reviewed the Legislative Post Audit Report which cited a national statistic that indicates that 10 percent of all Medicare and Medicaid payments are fraudulent. Common types of fraudulent or abusive practices that were identified include the following:

- Billing for phantom patient visits;
- Billing for goods or services that were not provided, inflating the prices for goods or services that were provided, or billing for them twice;
- Billing for used or old items as new;
- Billing for more hours than there are in a day;
- Billing for medically unnecessary services;

- Paying kickbacks in exchange for referrals;

- Concealing ownership of related companies; and

- Falsifying credentials.

Although Legislative Post Audit did not request SB 535, the report did make several observations and recommendations including the following:

- SRS had, at the time of the report, contracted with Blue Cross/Blue Shield of Kansas as its fiscal agent to process Medicaid claims as well as other procedures designed to ferret out potential fraudulent or abusive claims or practices. As of July 1, 2002, SRS is utilizing Electronic Data Systems (EDS) as its fiscal agent.

- The federal government requires every state to have a surveillance and utilization review (SUR) unit set up to help uncover potential fraud and abuse in the Medicaid program.

- The Attorney General's Medicaid Fraud and Abuse Division investigates and prosecutes claims of fraud and abuse on a referral basis.

- The effectiveness of the SUR unit's endeavors to identify Medicaid fraud and abuse in Kansas is questionable.

- SRS has not provided adequate guidance and direction to the SUR unit staff within Blue Cross (now EDS).

- The Attorney General's Medicaid Fraud and Abuse Division is significantly underutilized.

- Assessing the extent to which fraud and abuse is occurring in Kansas would involve a great deal of effort, but the auditors believe the effort would be worthwhile.

The Committee reviewed the comments on behalf of the Attorney General's Office which expressed some disagreement with the statistical numbers cited in the Legislative Post Audit Report. In addition, it was brought out that the Attorney General's Office only deals with provider fraud. There has been a lack of evidence to suggest that large numbers of providers are committing fraud. Recipient fraud falls under the control of SRS.

In addition, the Committee heard testimony from the Kansas Medical Society that indicated a state-level False Claims Act is unnecessary since there exists adequate laws on the books at both the state and federal level to investigate and prosecute fraud in Medicaid programs. Kansas has the Medicaid Fraud Control Act at KSA 21-3844, *et seq.*, and federally there is the authority under Title IX of the Social Security Act penalizing those who submit false claims or indulge in fraudulent activity involving Medicaid programs. Other federal laws were cited as additional mechanisms to control Medicaid fraud and abuse. Additionally, it was noted that the network of physicians who provide Medicaid services is in danger of unraveling.

Additional information the Committee took under review included comments that addressed the adequacy of the Legislative Post Audit Report. Other material questioned the popularly held assessment that up to 10 percent of all medical claims are fraudulent. A lack

of proof was cited as the reason for doubt for such a claim. Additionally, concern was stated about the chilling effect SB 535 would have. Suggestions offered to the Committee include a two step approach as follows:

- Develop methods that avoid unnecessary payments;
- Develop methods to recover moneys that have been inappropriately paid; and
- Include a whistle blower provision to the bill.

Conclusions and Recommendations

The Committee concludes that no credible evidence of substantial medicaid fraud was presented. The Committee, therefore recommends no action be taken at this time.

Background Investigations of Persons Prior to Their Licensure as Bail Bondsmen (SB 599)

Conclusions and Recommendations

The Committee concludes that no action should be taken on this topic, dealing with the licensure and regulation of private or pocket bondsmen. The Committee felt there was no evidence presented to the Committee to indicate a change in the law was necessary.

Proposed Legislation: None

Background

This topic called for a study of the need for background investigations of persons prior to their licensure as private or pocket bail bondsmen (SB 599).

The topic was suggested for interim study by the Chairman of the Senate Judiciary Committee as a result of a hearing on SB 599 during the 2002 Legislative Session.

KSA 22-2806 currently requires private bondsmen by affidavit to describe the property by which the surety proposes to pledge, the number and amounts of other bonds undischarged, and other liabilities. The appearance bond and the sureties may be approved by a judge of the district court or the sheriff.

SB 599 would have amended KSA 22-2806 as follows:

- Require the affidavit be filed with the chief judge of each judicial district and include, among other things that the person has not been convicted of a felony or misdemeanor involving moral turpitude;
- Submit a license fee of $250 plus an added $100 investigation fee and a complete set of fingerprints;

- Submit proof of errors and omissions liability insurance of at least $500,000;

- Submit a financial statement showing a net worth of at least $50,000; and

- Deposit not less than $20,000 with the district court—in no case could bonds be written which exceeded ten times the amount of the deposit.

COMMITTEE ACTIVITY

The Committee held a hearing at its September meeting on this topic. Conferees included: the director of the agents division of the Kansas Insurance Department; the chief judge of the 10th Judicial District; a representative of the Office of Judicial Administration; a representative of the American Bail Coalition; a representative of the American Surety Company; and six private or pocket bondsmen.

The Kansas Insurance Department representative explained that insurance company bondsmen are insurance agents regulated by the Kansas Insurance Department whereas private or pocket bondsmen are regulated by the district court or by sheriffs. He noted that insurance bondsmen must have an errors and omissions liability insurance requirement. A five-year experience factor is required before coverage may be obtained. He said the Insurance Department occasionally receives complaints about private bondsmen which they have no authority to deal with.

The chief judge of the 10th Judicial District explained the procedure used in his judicial district to regulate private or pocket bondsmen as well as what is required of insurance bondsmen. He noted if any outstanding judgement is not paid within ten days, the bonding company is pulled off the approved bondsmen list.

The representative of the American Bail Coalition supported SB 599 but said that amendments to SB 599 were in the process of being developed to try and deal with some of the objections to the bill. He said legislation was needed to protect the state from abuses that can occur. This same representative appeared at the final meeting of the Special Committee and withdrew his request for legislation due to the unwillingness of the property bond group to attempt to draft legislation to deal with the potential insolvency of some pocket bondsmen and due to the lack of enthusiasm for legislation expressed by members of the Special Committee.

The representative of the American Surety Company said legislation should be directed toward the Viking Bail Bond Company where the assets of a person not involved in the bail bond business are being used to secure multiple bonds written by others involved in the bail bond business.

The six private or pocket bondsmen all opposed any changes in the current law. Several said the proposed bill was an effort to drive pocket bondsmen out of business. They testified that the problems in the bail bond business have actually been caused by insurance companies who have gone bankrupt, not by pocket bondsmen.

A Johnson County bondsman submitted a letter from an assistant district attorney from Johnson County

which stated the problems he had encountered over the past ten years had always been with bail bonding companies underwritten by national insurance companies.

A representative of the Office of Judicial Administration conducted an e-mail survey of each district court clerk and district court administrator in Kansas, asking for their input and experiences with property bond forfeitures in response to a request from the Special Committee. The representative reported back that it appeared that the most significant forfeiture issue Kansas district courts have dealt with in recent memory had been the bankruptcy filing by AmWest Bond Company, which resulted in unpaid bond forfeitures in several courts across the state. The representative reported that, in short, not a single district court in the state responded with an account of a case where a bail bond has been forfeited and the property bondsman did not pay the forfeiture.

Conclusions and Recommendations

The Committee concludes that no action should be taken on the topic dealing with the licensure and regulation of private or pocket bondsmen. The Committee felt there was no evidence presented to the Committee to indicate a change in the law was necessary. The Committee encourages the Office of Judicial Administration and district judges to continue to monitor all bondsmen to insure problems do not arise.

Rights of a Natural Father in an Adoption Situation (SB 585; HB 2911) Establishment of a Putative Father Registry (SB 485)

Conclusions and Recommendations

The Committee believes that the putative father issue must be looked at in the broader context of the state's adoption law, parentage law, and other related laws. For this reason, the Committee encourages the 2003 Legislature to thoroughly review the Uniform Parentage Act 2000. The Committee notes that further amendments to this Uniform Act will likely be recommended. The Committee also invites adoption attorneys to make suggestions to the 2003 Legislature in regard to rights of natural fathers.

Proposed Legislation: None

Background

This study called for a review of the rights of natural fathers in adoption situations and the establishment of a putative father registry.

The study was recommended by the

Chairman of the Senate Judiciary Committee, on behalf of that committee, following a hearing during the 2002 Session on SB 585 which would have established a putative father registry.

SB 585 would have created a registry for putative fathers within the Department of Social and Rehabilitation Services (SRS). The purpose of the registry would have been to create a means to notify fathers or possible fathers about terminations of parental rights and child support actions. The bill would have entitled any presumed father that complied with the requirements of the registry to be notified about parental rights terminations.

The registry would have included the names and addresses of any person found by a court to be the father of a child born out of wedlock or any person who has filed a claim of paternity. To be entitled to notification under SB 585, the putative father would have had to submit the registration form within 72 hours of the child's birth. A putative father could have also provided information to the registry before the child's birth. When a putative father registered and filed a paternity claim, SRS would have had to notify the mother within three days and the registration would have obligated the putative father to make support payments and contribute to pregnancy related medical expenses. SRS would not have been required to disclose privileged or confidential records within the putative father registry, except as specified within SB 585.

SRS would have had to make registration forms available through SRS area offices, the Department of Health and Environment, the Department of Corrections, the clerk of each district court, and each local health department. SRS also would have been required to produce a notice to inform the public about the registry and post it in each district court clerk's office, driver's license examination stations, each local health department, and each county clerk's office.

SB 585 would have permitted specific types of people to make written requests to search the registry for a match between a child and a registered putative father. These individuals would have included SRS employees, employees of adoption agencies, prospective adoptive parents or their attorney, the mother of the child, or a person involved in an action related to the Uniform Interstate Family Support Act. SRS would have had to complete the search of the registry within five days of receiving the written request. SRS also would have had to furnish a copy of a putative father's registration form upon written request from the following:

- The putative father;
- The mother whose name appears on the registration form;
- The child who was the subject of the registration who has reached the age of 18;
- A prospective adoptive parent;
- A licensed child placing agency;
- A court presiding over an adoption;
- A representative of the Child Support Enforcement Program within SRS; or
- A representative of SRS involved in an adoption proceeding.

COMMITTEE ACTIVITY

The Committee held a hearing in October on the two topics. Conferees included the sponsor of SB 585, Senator Emler; a Washburn University Law School professor; the Chief Judge of the 10th Judicial District of Johnson County; a Topeka adoption attorney; and two fathers of adopted children. Written testimony was also submitted by a Wichita adoption attorney.

The Chief Judge from the 10th Judicial District provided background information on termination of parental rights and the rights of natural fathers in adoption situations.

The Washburn University law school professor encouraged the Committee to review the Uniform Parentage Act 2000 promulgated by the National Conference of Commissioners on Uniform State Laws. She said that she was not sure a putative father registry was necessary but noted that the Uniform Law includes the establishment of a putative father registry.

The Topeka adoption attorney said a putative father registry would just add another layer of procedure to the current system. He proposed amendments to the current law (KSA 59-2136(h)(4)) dealing with termination of a father's parental rights to further clarify the finding of lack of financial support during pregnancy to include where the father failed to provide support continuously from six weeks of gestational age to the time of the child's birth, and to include the presumption that any person engaging in sexual intercourse shall be presumed to have knowledge that a pregnancy may occur. Further, incarceration in jail shall not constitute reasonable cause for failure to provide reasonable financial support.

The Wichita adoption attorney, by letter, said a putative father registry was cumbersome and unnecessary. He suggested amendments to the existing termination of parental rights law (KSA 59-2136(e)) to require notice ten days prior to a hearing. He suggested KSA 59-2116 be amended, to confirm that a birth father can sign his consent within six months prior to the delivery of his child. He suggested an amendment to KSA 59-2136(b) dealing with stepparent adoptions to permit termination for unfitness. Finally, he suggested KSA 59-2131 be amended to require hospitals to honor notarized powers of attorney signed by the birth mother directing custody to the adoptive parents.

The two adoptive fathers supported the putative father registry concept contained in SB 585. One father said Oklahoma law places the burden on the biological father to find out if a pregnancy occurred. One said the birth father had been hard to find to give notice of the adoption proceeding. The other father said the birth father had been uninvolved throughout the biological mother's pregnancy, but showed up at the adoption hearing and wanted to exercise his rights as the father.

CONCLUSIONS AND RECOMMENDATIONS

The Committee believes that the putative father issue must be looked at in the broader context of the state's adoption law, parentage law, and other related laws. For this reason, the Committee encourages the 2003 Legislature to thoroughly review the

Uniform Parentage Act 2000. The Committee notes that further amendments to this Uniform Act will likely be recommended. The Committee also invites adoption attorneys to make suggestions to the 2003 Legislature in this area.

LICENSURE OF PRIVATE SECURITY GUARDS

CONCLUSIONS AND RECOMMENDATIONS

The Committee expressed concern about the lack of a statewide uniform regulation regarding licensure of security guards and the lack of training for the service that security guards provide. The Committee encourages local units of government to consider adoption of rules and regulations regarding private security guards.

Proposed Legislation: None

BACKGROUND

SB 456 from the 2002 Session was drafted to establish new statewide regulation and licensing requirements for private security guards. SB 456, which was patterned after Kansas statutes governing private detectives, would have established new statewide regulatory and licensing requirements for private security guards and private security agencies. The bill would have required individuals to make applications to the Attorney General if they wish to be licensed in Kansas as a private security guard or private security agency. The Attorney General would have been authorized to charge and collect fees, including an application fee for the initial application forms and materials. The Attorney General also would have been authorized to issue firearm permits and certify training for these permits. The fiscal note on the bill indicated that the exact fiscal effect was not available. The cost of basic staff, including a director, an investigator, and a clerical employee was estimated at approximately $150,000 to $200,000. Similar measures were proposed in 2000 and 2001. The Chairman of the standing Senate Judiciary Committee requested an interim study of SB 456.

COMMITTEE ACTIVITIES

The Committee heard testimony from Randy Listron, the president of a private security guard corporation; Mary Feighny, Assistant Attorney General; Victor Poleka, representative of a nationwide security agency; and Kyle Smith, Kansas Bureau of Investigation.

The Committee reviewed comments regarding the need for SB 456 for those security type individuals who can carry weapons and perform duties similar to law enforcement personnel. Current training was cited as inadequate to cover the types of situations a private security guard could be expected to encounter.

In addition, the Committee reviewed information that the bill would preclude cities and counties from regulating private security guards. Additional information suggested the Committee

take a look at proposed legislation offered by the International Association of Security Industry Regulators Model Legislation.

Conclusions and Recommendations

The Committee expressed concern about the lack of a statewide, uniform regulation regarding licensure of security guards and the lack of training for the service that security guards provide. The Committee encourages local units of government to consider adoption of rules and regulations regarding private security guards.

Drug Courts

Conclusions and Recommendations

The Committee acknowledges the value of drug courts as an alternative to incarceration since they will save the state money in the end. The Committee further encourages the courts to consider looking for federal funds to aid in the implementation of drug programs.

The Committee concludes that the Sentencing Commission has performed at a meritorious level in providing projections and recommendations regarding alternative sanctions for drug offenders as well as prison population issues. The Committee authorizes, with no recommendation, the introduction of a bill proposed by the Sentencing Commission, including any retroactivity provisions.

Proposed Legislation: None

Background

For the 2002 Special Committee on Judiciary, the assigned topic, Drug Court and Alternative Sanctions for Drug Offenders, came about as the result of a request from the Chairman of the standing Committee on Judiciary. In addition, the Special Committee on Judiciary held hearings on this issue during the 2001 Interim.

Committee Activities

The Committee heard from state Senator Lana Oleen; Barbara Tombs, Executive Director, Kansas Sentencing Commission; Jared Holroyd, Shawnee County Drug Court Coordinator; Katie Kleim, Shawnee County Drug Court Prosecutor; Aaron Zarchan, Wichita Drug Court Prosecutor; Diana Collins, President of Kansas Court Services; and Vonda Dullan, Department of Social and Rehabilitation Services.

During deliberations the Committee reviewed information provided by Senator Oleen that indicated a recent study of the Jackson County (Kansas City, Missouri) drug court released in April of 2001, found:

- 94 percent of Jackson County drug court graduates between 1995-1999 had not been arrested for similar crimes through 1999; and

- The Jackson County drug court spent $2,500 per addict, but each "graduate" who stayed drug free for three years saved an estimated $30,000 per offender in welfare, crime, and prison costs.

Further, a recent report of the White House Office of National Drug Control Policy details the economic damage that illegal drugs inflict on the U.S. economy. The report projected a loss of $160 billion in productivity due to drug-related incarceration, illness/death, and work hours missed. Health costs for drug abuse have increased 37 percent in the past decade; crime costs have increased 64 percent.

The conferee also outlined how other states have addressed the challenge of the situations described above. Washington state legislators have drafted legislation to allow non-violent drug offenders the choice of completing a drug court treatment program or face conviction and a possible prison term. In addition, this approach reduces sentences for certain manufacture, delivery, or drug possession offenses. Any prison savings will go toward a newly created criminal justice treatment account. Wyoming has recently passed a law that provides treatment instead of incarceration for certain drug offenses. Programs are set up to offer early intervention and make treatment available at the community level. Funding comes from $25 million in tobacco settlement moneys. Connecticut legislators have given the courts the discretion to depart from mandatory minimum sentences for drug offenses. The conferee recommends a multi-faceted approach beginning with an assessment of the current sentencing grid, enhancing community resource programs, and financing the costs associated with the reform.

The Committee reviewed information which contained an overview of the prison population. Included in the presentation was specific material on drug crimes covering:

- Sentences due to drug crimes have increased from 98 beds to 2,000 beds;

- D1 severity level on the drug grid has had a 6.2 percent admission rate this year. It is anticipated that this increase will triple in ten years; and

- D4, which is the lowest drug severity level showed a 157-bed use.

Suggested changes to the drug grid that is calculated to save 400 to 800 prison beds include the following:

- All drug possession convictions would be sentenced as a level D4 classification;

- Boarder boxes on D4 would be replaced with probation boxes;

- If one unsuccessfully discharges or voluntarily quits a required treatment program, the offender would be subject to the entire underlying prison sentence;

- Regardless of the treatment assessed, the offender would be subject to a mandatory period of treatment;

- Core treatment programs should be available in every judicial jurisdiction;

- Courts should handle the most serious offenders; and

- There should be a family component incorporated as a support service.

The recent case *State v. Frazier* No. 86,741 decided March 5, 2002, was cited as a measure that could possibly save bed spaces.

The Committee reviewed information concerning the Shawnee County Drug Court which deals only with felony offenders. Mandates of the program were outlined for the Committee. For example, of the 17 offenders currently in the program, approximately half are employed at or below the poverty level. Each offender is required to pay $5 a week to the treatment provider. A lack of funding has kept the program from expanding. An examination of the Wichita Drug Court system, which accepts only those drug cases that involve misdemeanor crimes, revealed that of the 700 individuals who apply for the program, only 300-450 offenders per year are accepted. The success rate of the program is high. During 2001, the cost of the program was $125,000.

The Committee reviewed comments on behalf of Kansas Court Services Officers that expressed concern over funding.

The Committee also heard from Roger Werholtz, Acting Secretary of Corrections, on the current prison capacity, projected prison bed demands and the cost of building additional prisons, staffing costs, and cost per inmate.

The Committee discussed the various issues surrounding drug courts including the following:

- The issues of funding and the possibility of setting up drug courts on a pilot project basis with the aid of federal funding;

- The merits of both the Shawnee County Project development as well as the Sedgwick County Program; and

- The concept that drug courts can be a worthy alternative to incarceration for certain possessory only drug offenders and will be cost effective in the long run.

CONCLUSIONS AND RECOMMENDATIONS

The Committee acknowledges the value of drug courts as an alternative to incarceration since they will save the state money in the end. The Committee further encourages the courts to consider looking for federal funds to aid in the implementation of drug programs.

The Committee concludes that the Sentencing Commission has performed at a meritorious level in providing projections and recommendations regarding alternative sanctions for drug offenders as well as prison population issues. The Committee authorizes, with no recommendation, the introduction of a bill proposed by the Sentencing Commission, including any retroactivity provisions.