

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on March 19, 2003, in Room 123-S of the Capitol.

All members were present except: Senator Donovan (E)
Senator Pugh (E)

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

Conferees appearing before the committee:

Bill Henry, Kansas Credit Union Association
Kathy Olsen, Kansas Bankers Association
Doug Smith, Kansas Credit Attorneys Association
Arlene Clayton, Citizen
Representative Jan Pauls
Kyle Smith, Kansas Bureau of Investigation
Keith Schroeder, Reno County District Attorney
Tom Drees, Ellis County Attorney
Paul Morrison, Johnson County District Attorney (written only)
Trista Curzydlo, Kansas Bar Association

Others attending: see attached list

HB 2297 - Garnishment; release of funds if no order to pay issued

Chairman Vratil opened the hearing on **HB 2297**. Bill Henry, Director of Government Affairs for the Kansas Credit Union Association, appeared before the Committee in support of **HB 2297**. The bill corrects a current problem for credit unions that receive a garnishment on the funds of a member, but never receive an order to pay the subject funds to the court. This bill would allow the financial institution to release the funds within a specified time if no order to pay the court was received by the financial institution. (Attachment 1)

Senator O'Connor asked for clarification of the garnishment process. The Chair explained the procedure with respect to garnishment and said that it requires an "Order to Pay In". He said the purpose of this bill is to clarify any doubt which occurs if an "Order to Pay In" is not presented to the judge for signature. Mr. Henry commented that the period of this procedure runs from six months to a year.

The Chair commented that he had a problem with the way the House amended the bill because he thought they created an ambiguity. Mr. Henry agreed and said the language beginning in line 28, page 1, says, "If, after 60 days following such receipt, no order to pay the court has been received, the garnishee shall release the funds..". He stated there could be reasons for a notice being missed, and suggested that the language would be better if it said "may release" instead of "shall release" because a vagueness exists here.

Chairman Vratil explained that the ambiguity he was talking about regarded that under current Kansas law the Order of Garnishment issued by the Court attaches upon service on the garnishee. The language added by the House says, "the Order of Garnishment pursuant to this section shall attach to such property if an Order to Pay the Court is served within 60 days." He said that implies that the Order of Garnishment doesn't attach when it is served on the garnishee". Discussion continued on this issue and the confusing language in the previous statute. The Chairman stated that he had requested the Revisor to rewrite sections 1 and 2 in this bill so that it would be simplified and straight forward.

Kathy Olsen, Kansas Bankers Association (KBA), testified in support of **HB 2297**. She stated that in drafting the bill KBA was trying to provide a solution that after a period of time, the garnishee could unfreeze the account, thereby releasing the funds to the owner. Ms. Olsen explained that the House Committee's amendment makes it clear that ownership does not transfer unless the garnishing creditor

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE on March 19, 2003 in Room 123-S of the Capitol.

gets the order to pay served within 60 days of receipt of the answer by the garnishee. She said KBA was willing to work with the collection industry to establish a time period that all parties believe to be a reasonable period of time. She added that there was some suggested changes attached to her written testimony. (Attachment 2)

Doug Smith, Kansas Credit Attorneys Association (KCAA), testified in support of **HB 2297**. He stated that KCAA has been working with the KBA on the language of this bill since its introduction, and KCAA supports KBA's amendments. He said KCAA has two concerns, one of which is the 60-day time frame which is not adequate, and asks that the Committee extend that period to 6 months. Mr. Smith explained the second change would be to delete the following language, contained on page 1, lines 25-29 and page 1, line 43 and continued on the top of page 2, lines 1-3: "*An order of garnishment pursuant to this section shall attach to such property if an order to pay the court is served within 60 days of receipt of the answer of the garnishee by the court.*" (Attachment 3)

Arlene Clayton appeared before the Committee to testify as a private citizen who has been a victim of garnishment in Saline County. She shared with the Committee her experiences of being garnished, and was working towards rectifying the burden of frivolous garnishments. (no written testimony submitted)

The Chair closed the hearing on **HB 2297**.

HB 2375 - Criminal procedure; preliminary examination, evidence, chain of custody

Chairman Vratil opened the hearing on **HB 2375**. Representative Janice Pauls testified in support of **HB 2375**, and explained that the bill will save time and expense for the prosecutors in the state when presenting evidence regarding physical evidence involved in a criminal preliminary examination. She said the bill provides that evidence may be introduced without actual testimony from all individuals involved in the chain of custody, and would be similar to that presently used in presenting lab reports in preliminary hearings. (Attachment 4)

Kyle Smith, KBI, testified in support of **HB 2375** which could save a lot of time and money at no cost to constitutional protections. He explained what the 'chain of custody' is in the trial process, and stated that real issues, if any, concerning the chain of custody could still be explored during suppression hearings or trial. He stated that the passage of **HB 2375** would allow officers to be out on the street protecting the public rather than waiting to testify, and would allow forensic scientists to spend more time on the bench and speed justice. He added that the bill would save the state and counties money by reducing continuances and save court, attorney, scientist and evidence custodian time. (Attachment 5)

Keith Schroeder, Reno County District Attorney, appeared in support of **HB 2375**. He said that the number of cases filed on adult criminal matters has doubled in Reno County over the past 15 years, and the number of drug related prosecutions has doubled over the past 4 years. He added that this year they are on a pace to double that number again. Mr. Schroeder stated that as the drug prosecutions rise, so do the demands on prosecutors and law enforcement agencies, and the defense bar has learned to recognize that the prosecution has limited time and resources. The amended **HB 2375** does not solely address drug prosecution concerns, and it will have an impact on many other types of prosecutions. He urged the Committee to pass the amended **HB 2375** as it will not infringe upon a criminal defendant's due process rights and it will free up valuable assets and time for the court system. (Attachment 6)

Tom Drees, Ellis County Attorney, testified in support of **HB 2375**, and submitted in his written testimony suggested changes in lines 20 and 22 regarding law enforcement officers and all persons who collected the evidence. (Attachment 7)

Paul Morrison, Johnson County District Attorney, submitted written testimony in support of **HB 2375**. (Attachment 8)

After brief Committee discussion and questions, the Chair called upon the only opponent to testify. Trista Curzydlo, Kansas Bar Association, spoke in opposition to **HB 2375**, and said the KBA Board of Governors is concerned that if this bill were enacted it would limit the ability of a defendant to contest the

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE on March 19, 2003 in Room 123-S of the Capitol.

chain of custody in a preliminary hearing. She added that KBA's Board of Governors feels feel this bill inappropriately limits the ability of a defendant to mount a proper defense. (Attachment 9)

Following discussion and questions, the Chair closed the hearing on **HB 2375**.

Final action on:

HB 2032 - Eminent domain; interested parties; appeals; relocation assistance

Chairman Vratil reviewed **HB 2032**, and distributed a letter from James McLean, on behalf of KDOT. The letter indicates that the interested parties have gotten together and agreed on proposed amendments to **HB 2032**. Mr. McLean said the parties that worked together in drafting the language were KDOT, Kansas League of Municipalities, the Kansas Judicial Council, and the City of Olathe. (Attachment 10)

The Chair explained there were two concerns expressed during the hearing. On page 2, lines 23 through 27, were deleted by the House. The balloon amendment would propose to put language back in the bill indicating that the only issue to be determined upon an appeal of the appraiser's award, is for the compensation for the land that is being condemned.

The Chair explained that the second amendment that KDOT was proposing relates to the relocation award, and add new section 3 and new section 4. He said the difference between the two is that new section 3 deals with those cases where federal financial assistance is available in which the relocation award is required by federal law. He added that Section 4 deals with those cases where there is no federal funding involved, but the purpose of this bill is to require a relocation award in those cases as well. The purpose of sections 3 and 4 is to make that process a separate administrative process outside the confines of the eminent domain proceedings.

Committee questions and discussion continued. The Chairman announced that he would give Committee members time to study these proposed amendments, and will not take final action on this bill today.

The meeting adjourned at 10:37 a.m. The next scheduled meeting is March 20, 2003.

Testimony for the Senate Judiciary Committee
March 19, 2003

Chairman Vratil, members of the committee, I am Bill Henry, director of government affairs for the Kansas Credit Union Association, and I appear before you today to voice our association's support for the passage of HB 2297.

The bill corrects a current problem for our credit unions who receive a garnishment on the funds of a member but then never receive an order to pay the court the subject funds.

HB 2297 allows the financial institution to release the funds within a specified time if no order to pay the court has been received by the financial institution.

I would be happy to respond to questions the committee may have.

Bill Henry

Kansas Credit Union
Association

Senate Judiciary

3-19-03
Attachment 1-1



March 19, 2003

To: Senate Committee on Judiciary

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: HB 2297: Non-wage Garnishments

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today in support of **HB 2297**, relating to non-wage garnishments. As originally drafted, this bill would amend both Chapter 60 and Chapter 61, to provide that if the garnishee does not receive an order to pay after a certain period of time, the garnishee may release the funds.

This bill was designed to address the situation where a garnishment has been sent to the garnishee, the garnishee has frozen the funds and sent its answer to the court, but the garnishee never receives an order to pay.

This does actually happen with some frequency. We have had bankers call our office from time to time, with one banker having had an account frozen for almost a year. They call to ask whether there is a time certain after which they can release the funds as it is their belief that either the garnishing creditor has gotten repaid by other means, or the case is stale.

Our solution was to provide that after a period of time, the garnishee could unfreeze the account, thereby releasing the funds to the owner. If a case is still pending, surely the garnishing creditor will renew a request for a garnishment order and not rely on one that was filed two months before.

The House Judiciary Committee added language to address a concern with determining when the ownership of the funds actually transferred from the owner of the account to the garnishing creditor (Lines 25-28). As you can see, the Committee's amendment makes it clear that ownership does not transfer unless the garnishing creditor gets the order to pay served within 60 days of receipt of the answer by the garnishee.

HB 2297: Garnishments

March 19, 2003

Page Two

The House Committee further amended the bill by changing the "may" to "shall" on line 30. It was not our intent to place a further burden on the garnishee by requiring the garnishee to closely monitor garnished accounts and to require the garnishee to release the funds on the 60th day. We would ask the Senate Committee to amend the bill by changing the "shall" back to "may" on line 30, or in the alternative to consider the amendatory language that is attached to my testimony. This language would put the burden on the judgment debtor (owner of the account) to obtain a release of the funds from the court. The judgment debtor could then bring the court-ordered release to the garnishee.

In reference to the time period, we drafted the bill with a time period of 60 days, but we are very willing to work with the collection industry to establish what all parties believe to be a reasonable period of time.

In conclusion, we respectfully ask that the Committee see the need for this legislation and so act favorably on the passage of **HB 2297**.

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4 HOUSE BILL No. 2297

5 By Committee on Judiciary

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8 2-11
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10 AN ACT concerning civil procedure; relating to garnishment; amending
11 K.S.A. 2002 Supp. 60-739 and 61-3512 and repealing the existing
12 sections.
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14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 2002 Supp. 60-739 is hereby amended to read as
16 follows: 60-739. If the garnishment is to attach property other than earn-
17 ings of the judgment debtor, after 10 days following receipt of the answer
18 of the garnishee by the court, and no reply to the answer has been filed,
19 the court shall direct the garnishee to pay to the court such amount that
20 the garnishee is holding as indicated by the answer, or such lesser amount
21 if the circumstances warrant. If the garnishee is holding property other
22 than money, the provisions of K.S.A. 60-701 *et seq.*, and amendments
23 thereto, relating to attachment shall be applicable. If through garnish-
24 ment, the claim is overpaid to the court, the court shall promptly refund
25 to the judgment debtor any such overpayment. **An order of garnish-**
26 **ment pursuant to this section shall attach to such property if an**
27 **order to pay the court is served within 60 days of receipt of the**
28 **answer of the garnishee by the court. If, after 60 days following such**
29 **receipt of the answer of the garnishee by the court, no order to pay the**
30 **court has been received, the garnishee may shall release the funds, credits**
31 **or indebtedness that had been withheld pursuant to the order of**
32 **garnishment.**

33 Sec. 2. K.S.A. 2002 Supp. 61-3512 is hereby amended to read as
34 follows: 61-3512. If the garnishment is to attach property other than earn-
35 ings of the judgment debtor, after 10 days following receipt of the answer
36 of the garnishee by the court, and no reply to the answer has been filed,
37 the court shall direct the garnishee to pay to the court such amount that
38 the garnishee is holding as indicated by the answer, or such lesser amount
39 if the circumstances warrant. If the garnishee is holding property other
40 than money, the provisions of K.S.A. 2002 Supp. 61-3501, and amend-
41 ments thereto, relating to attachment shall be applicable. If through gar-
42 nishment, the claim is overpaid to the court, the court shall promptly
43 refund to the judgment debtor any such overpayment. **An order of gar-**

**filed, the judgment debtor shall request from
the court, an order to release the funds, credit
or indebtedness that had been withheld pursuar
to the order of garnishment.**

1 nishment pursuant to this section shall attach to such property if
 2 an order to pay the court is served within 60 days of receipt of the
 3 answer of the garnishee by the court. If, after 60 days following such
 4 receipt of the answer of the garnishee by the court, no order to pay the
 5 court has been received, the garnishee may ~~shall~~ release the funds, credits
 6 or indebtedness that had been withheld pursuant to the order of
 7 garnishment.

8 Sec. 3. K.S.A. 2002 Supp. 60-739 and 61-3512 are hereby repealed.

9 Sec. 4. This act shall take effect and be in force from and after its
 10 publication in the statute book.

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**filed, the judgment debtor shall request from
 the court, an order to release the funds, credit
 or indebtedness that had been withheld pursua
 to the order of garnishment.**

REMARKS CONCERNING HOUSE BILL NO. 2297

SENATE JUDICIARY COMMITTEE

MARCH 19, 2003

Thank you for giving me the opportunity to present remarks on House Bill No. 2297 on behalf of the Kansas Credit Attorneys Association (KCAA), which is a statewide organization of attorneys, whose practice includes considerable collection work.

We have been working with the Kansas Bankers Association since this legislation was introduced and support the amendments they have offered on House Bill No. 2297. However, we have two concerns and suggest that this Committee adopt the attached balloon amendments to House Bill No. 2297.

We believe that the 60-day time frame contained in the bill is not adequate and ask that the Committee extend that period to 6 months. Since Kansas courts deal with a tremendous volume of paper each and every day it is possible that an order to pay may not reach a bank in a timely manner. This extended time will prevent the unintended release of garnished funds. We have worked with the KBA on this issue and believe that they support this replacement language. We planned to offer this modification in the House Judiciary Committee, but the House Committee worked the bill before we could submit the amendment. Chairman O'Neal urged our groups (KBA and KCAA) to make the change in this Senate Committee because the House of Representatives was running up against the deadline for consideration of bills.

The next change we would like to offer is to delete the following language, contained on page 1, lines 25-29 and page 1, line 43 and continued on the top of page 2, lines 1-3.

"An order of garnishment pursuant to this section shall attach to such property if an order to pay the court is served within 60 days of receipt of the answer of the garnishee by the court."

KCAA believes that once a garnishment is served and the funds are attached, the creditor has an interest in the account's funds. The language in question could provide a debtor the opportunity to withdraw the funds once an order of garnishment has been issued, but prior to an order to pay the court being served. We understand the intent of this language, as drafted by the House Committee, was to establish when ownership of the funds changes. We respectfully disagree with the House Committee on this matter. Ownership isn't really the issue, but who has a legal interest in the funds. Upon service of a garnishment order, a first and prior lien is established and a creditor maintains a valid claim against the garnished funds. Our members deem this to be an important issue and believe this position is well established in Bankruptcy and State courts.

We ask for your favorable action on adoption of these balloon amendments. Thank you again for your time and consideration.

Douglas E. Smith
Kansas Credit Attorneys Association

Senate Judiciary
3-19-03
Attachment 3-1

HOUSE BILL No. 2297

By Committee on Judiciary

2-11

AN ACT concerning civil procedure; relating to garnishment; amending K.S.A. 2002 Supp. 60-739 and 61-3512 and repealing the existing sections.

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

Section 1. K.S.A. 2002 Supp. 60-739 is hereby amended to read as follows: 60-739. If the garnishment is to attach property other than earnings of the judgment debtor, after 10 days following receipt of the answer of the garnishee by the court, and no reply to the answer has been filed, the court shall direct the garnishee to pay to the court such amount that the garnishee is holding as indicated by the answer, or such lesser amount if the circumstances warrant. If the garnishee is holding property other than money, the provisions of K.S.A. 60-701 et seq., and amendments thereto, relating to attachment shall be applicable. If through garnishment, the claim is overpaid to the court, the court shall promptly refund to the judgment debtor any such overpayment. ~~An order of garnishment pursuant to this section shall attach to such property if an order to pay the court is served within 60 days of receipt of the answer of the garnishee by the court.~~ *If, after 60 days following such receipt of the answer of the garnishee by the court, no order to pay the court has been received, the garnishee may shall release the funds, credits or indebtedness that had been withheld pursuant to the order of garnishment.*

delete

6 months

Sec. 2. K.S.A. 2002 Supp. 61-3512 is hereby amended to read as follows: 61-3512. If the garnishment is to attach property other than earnings of the judgment debtor, after 10 days following receipt of the answer of the garnishee by the court, and no reply to the answer has been filed, the court shall direct the garnishee to pay to the court such amount that the garnishee is holding as indicated by the answer, or such lesser amount if the circumstances warrant. If the garnishee is holding property other than money, the provisions of K.S.A. 2002 Supp. 61-3501, and amendments thereto, relating to attachment shall be applicable. If through garnishment, the claim is overpaid to the court, the court shall promptly refund to the judgment debtor any such overpayment. ~~An order of gar-~~

delete

1 ~~nishment pursuant to this section shall attach to such property if~~
 2 ~~an order to pay the court is served within 60 days of receipt of the~~
 3 ~~answer of the garnishee by the court.~~ *If, after 60 days following such*
 4 *receipt of the answer of the garnishee by the court, no order to pay the*
 5 *court has been received, the garnishee may shall release the funds, credits*
 6 *or indebtedness that had been withheld pursuant to the order of*
 7 *garnishment.*

6 months

8 Sec. 3. K.S.A. 2002 Supp. 60-739 and 61-3512 are hereby repealed.

9 Sec. 4. This act shall take effect and be in force from and after its
10 publication in the statute book.

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RANKING MINORITY MEMBER:
 JUDICIARY

MEMBER:
 HOUSE RULES AND JOURNAL
 TRANSPORTATION
 JOINT HOUSE AND SENATE COMMITTEE
 ON JUVENILE JUSTICE AND CORRECTIONS
 OVERSIGHT
 JOINT HOUSE AND SENATE COMMITTEE
 ON ADMINISTRATIVE RULES AND
 REGULATIONS
 JOINT HOUSE AND SENATE COMMITTEE
 ON REDISTRICTING

KANSAS SENTENCING COMMISSION



TOPEKA

HOUSE OF REPRESENTATIVES

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**Testimony before the
 Senate Judiciary Committee
 Regarding
 House Bill 2375
 on
 March 19, 2003**

Mr. Chairman and Members of the Committee.

HB 2375 was introduced to save time and expense for the prosecutors in the state in presenting evidence regarding physical evidence involved in a criminal preliminary examination. The bill provides that evidence may be introduced without actual testimony from all individuals involved in the chain of custody. The proceeding will be similar to that presently used since 1982 in presenting lab reports in preliminary hearings.

Because the right to a preliminary hearing is a statutory right, no constitutional due process rights are affected by this bill. Because the accused does not have a constitutional right to confront witnesses, hearsay testimony is allowed.

Kyle Smith from the K.B.I., and Keith Schroeder, Reno County District Attorney will also testify, and are prepared to answer any procedural questions.

Thank for your attention.

Respectfully submitted,

Janice L. Pauls
 Rep. Janice L. Pauls
 District 102

JLP/cjc

Senate Judiciary
3-19-03
 Attachment 4-1



Kansas Bureau of Investigation

Larry Welch
Director

Testimony in Support of HB 2375

Kyle G. Smith
Director of Public and Governmental Affairs
Kansas Bureau of Investigation
Before the Senate Judiciary Committee
March 19, 2003

Phill Kline
Attorney General

Chairman Vratil and members of the Committee,

On behalf of the Kansas Bureau of Investigation I am here today in support of HB 2375, a bill which could save a lot of time and money at no cost to constitutional protections.

Preliminary examinations are designed by statute to verify that there is probably cause to believe a felony has been committed and that the right person is charged. Probable cause is a fairly low standard of proof, frequently described by the courts as a practical, common sense decision whether, given all the circumstances there is a fair probability that the crime occurred. Probable cause is determined everyday by courts based on hearsay statements in an affidavit for arrest or search warrants.

It is important to note that these preliminary hearings are an additional statutory safeguard to all of the constitutional protections. In other words, there is no constitutional right to a preliminary hearing – it is something extra the legislature has added to the process and so can prescribe how it is conducted.

'Chain of custody' refers to providing at trial evidence about everyone who had access to the evidence from when it was seized until analyzed or brought to the hearing. This can be crucial at times when there is a question of tampering, but is normally a boring parade of witnesses who only acknowledge their signatures and testify the evidence wasn't tampered with while in their custody.

Unfortunately, cases are frequently continued due to the unavailability of one or more of the members of this parade. Continuances delay justice, frustrate victims and witnesses, and waste valuable court time and resources. Cases aren't normally dismissed at this stage, as jeopardy hasn't attached, so dismissal would only result in the charges being filed again; an even bigger waste of court and attorneys time.

This bill would allow physical evidence to be admitted without requiring the parade of witnesses establishing the chain of custody, but only at preliminary hearing. Real issues, if any, concerning the chain of custody could still be explored during suppression hearings or trial.

Senate Judiciary
3-19-03
Attachment 5-1

Passage of HB 2375 would allow officers to be out on the street protecting the public rather than waiting to testify, would allow forensic scientists to spend more time on the bench and speed justice. This bill will save the state and counties money by reducing continuances and save court, attorney, scientist and evidence custodian time.

I would be happy to stand for any questions.

**KANSAS BUREAU OF INVESTIGATION FORENSIC LABORATORY
EVIDENCE CUSTODY RECEIPT**

Contributing Agency/Address <u>KBI</u> <u>1620 Tyler</u> <u>Topeka, KS</u> Phone: <u>785-296-8200</u>		Nature of Offense <u>Sale Controlled Substance</u>		KBI Case Number <u>003-4682</u>	
Send Report To: <u>Kyle Smith</u>		Victim <u>State of Kansas</u> Last First Middle		Sex: <input type="checkbox"/> Male <input type="checkbox"/> Female	
Agency Case # <u>4682</u>		County of Offense <u>Lyon</u>		Race: <input type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> Indian <input type="checkbox"/> Hispanic <input type="checkbox"/> Asian <input type="checkbox"/> Unknown <input type="checkbox"/> Other	
Agency ORI <u>001</u>		Suspect <u>Doc John (MNU)</u> Last First Middle		Sex: <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	
		DOB: <u>unknown</u>		Race: <input checked="" type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> Indian <input type="checkbox"/> Hispanic <input type="checkbox"/> Asian <input type="checkbox"/> Unknown <input type="checkbox"/> Other	
		SSN/ID: <u>unknown</u>			
FOR ADDITIONAL SUSPECTS AND VICTIMS, USE CASE SYNOPSIS AREA ON THE BACK SIDE OF THIS FORM.					

Exhibit Number	Number of Items	EXHIBIT DESCRIPTION	Requested Examination
<u>Q1</u>	<u>1</u>	<u>Baggie containing white powder</u>	<u>Chemistry - controlled substance Fingerprints</u>

IF CHARGES ARE FILED UNDER THE ILLEGAL DRUG TAX STAMP LAW, WEIGHING OR COUNTING MUST BE REQUESTED.

Previous evidence submitted in this case? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Brief Case Synopsis (See Back) <input type="checkbox"/> Yes <input type="checkbox"/> No	
Do any of the items submitted present a safety or a health hazard? (If answer is yes, describe hazard in case synopsis.) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Date Collected <u>3/18/03</u>	Printed or Typed Name of Collector <u>Kyle G. Smith</u>	Written Signature of Collector <u>[Signature]</u>	

SUBMIT ORIGINAL ONLY
ALL REQUESTED INFORMATION MUST BE LEGIBLE

53

DISTRICT ATTORNEY

Keith E. Schroeder

DEPUTY DISTRICT ATTORNEY

Thomas R. Stanton

ASSISTANT DISTRICT ATTORNEYS

Linda L. Blackburn

F. Terry Bruce

Benjamin J. Fisher

Faith A.J. Maughan



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March 18, 2003

Senate Judiciary Committee

Kansas State Legislature

RE: Testimony in support of Amended House Bill No. 2375

Dear Members of the Committee,

I was elected by my constituents to be the District Attorney of the 27th Judicial District, Reno County, Kansas, and took office on January 8, 2001. I began working in the District Attorney's Office (then County Attorney's Office) on August 1, 1989. I have personally prosecuted 124 jury trials and hundreds of preliminary hearings.

The number of cases filed on adult criminal matters has doubled in Reno County over the past 15 years. The number of drug related prosecutions has doubled over the past 4 years. Attached to this testimony are graphs depicting these statistics.

Prosecution of drug cases is strangling prosecutor's offices throughout Kansas. For example, Reno County prosecuted 2 cases relating to clandestine methamphetamine laboratories in 1998. The number has doubled every year thereafter. Last year, we prosecuted 95 cases related to clandestine methamphetamine laboratories. This year we are on a pace to double that number again.

As the drug prosecutions rise, so do the demands on prosecutors and law enforcement agencies. The defense bar has learned to recognize that the prosecution has limited time and resources. Demanding an evidentiary preliminary hearing is a common tactic used to force the prosecutor to plea bargain the case. In particular, prosecutions of clandestine methamphetamine laboratories place unique burdens on the criminal justice system not seen 15 years ago. Most of the prosecutions relating to meth labs involve multiple co-defendants. Each defendant has separate counsel, each requires separate discovery, each tends to file separate pretrial motions and multiple defendant preliminary hearings demand an incredible amount of time of overburdened district courts.

It has become a common tactic for defense attorneys to refuse to stipulate to any witness's testimony. The State is put in the position of issuing subpoenas and scheduling witnesses for preliminary hearings. Once defense counsel observes all witnesses are present, the defendant more often than not decides to waive his/her preliminary hearing. While refusing to stipulate to the chain of custody on drugs and laboratory reports before the hearing is scheduled, often the defendant changes his/her mind when the evidence custodian is observed to be present.

Senate Judiciary

3-19-03Attachment 6-1

The Evidence Custodian for Reno County's law enforcement agencies is Ron Moore, a retired officer of the Hutchinson Police Department. On average, he receives 50 to 60 subpoenas a month to testify regarding information that already exists on the evidence custody receipt associated with physical evidence or laboratory reports. Rarely is he actually required to testify. Instead, he sits on benches outside the doors of the Reno County District Court for hours on any given day while prosecutors, defense attorneys and defendants make last minute decisions about the future of the case. He has become a professional witness. He does not have sufficient time to do the duties of the Evidence Custodian because he is constantly subpoenaed to testify at preliminary hearings.

Amended House Bill No. 2375 is designed to stop this problem. It essentially permits an evidence custody receipt to be admitted as hearsay evidence at a preliminary hearing without requiring an evidence custodian or business records custodian to lay a foundation for its admission.

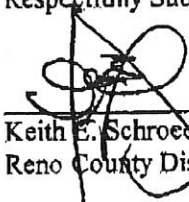
Amended House Bill No. 2375 does not solely address drug prosecution concerns. It will have an impact on many other types of prosecutions. No longer will every witness who touched a piece of physical evidence be required to testify as to his/her conduct at a preliminary hearing before the item of physical evidence or related forensic report can be admitted for consideration by the court. No longer will the prosecution be in the position of calling an officer who picked the handgun up off the ground, the officer who took the handgun from the first officer, the officer who placed the handgun in a trunk after receiving it from the second officer, the fourth officer who took it from the trunk and placed it into the evidence locker, a fifth officer who handled a bullet found lodged in a doorway, and the evidence custodian who transported the firearm and bullet to the K.B.I. laboratory for ballistics analysis. Amended House Bill No. 2375 will save overtime expenses for law enforcement agencies and unnecessary witness fees for courts. It will save time and free up needed assets for law enforcement agencies and courts.

The Legislature previously addressed a similar issue when it made forensic laboratory reports admissible hearsay evidence at a preliminary hearing, under K.S.A. 22-2902a. This saved the expense and inconvenience of requiring the laboratory technician to testify at a preliminary hearing. Likewise, Amended House Bill No. 2375 does the same thing for evidence custodians and evidence custody receipts.

The right to a preliminary hearing is purely statutory, therefore general Constitutional privileges or requirements of constitutional due process are not mandatory. At a preliminary hearing, the accused does not have the Constitutional right to confront witnesses. The Constitution does not forbid the States from authorizing the use of hearsay evidence in determining probable cause at a preliminary hearing. Thus, statutes such as K.S.A. 22-2902a (forensic laboratory reports admissible hearsay at a preliminary hearing) and K.S.A. 22-2902 (hearsay statements of children less than 13 years of age admissible at preliminary hearing) have been enacted.

Amended House Bill No. 2375 will not infringe upon a criminal defendant's due process rights and it will free up valuable assets and time for the court system. I wholeheartedly support its passage.

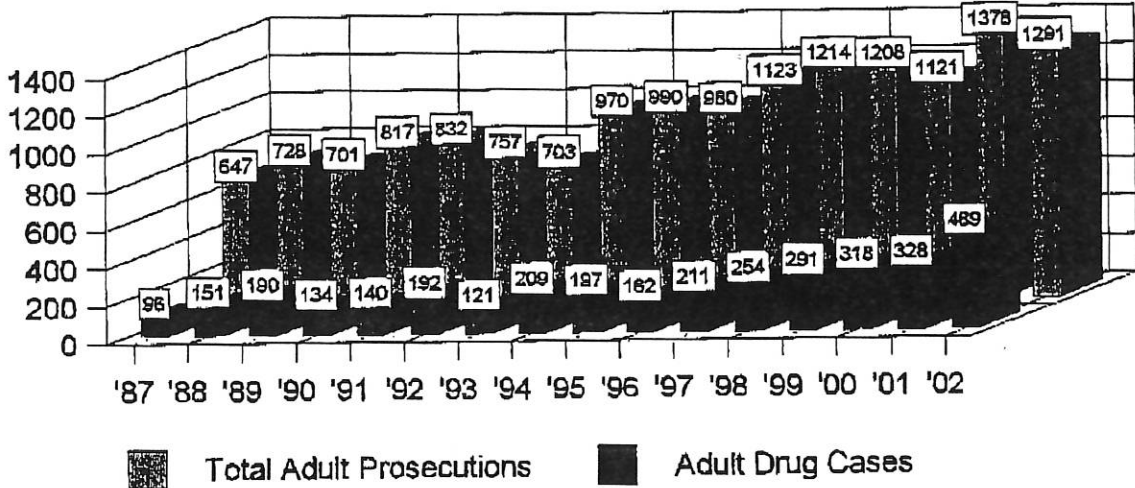
Respectfully Submitted,



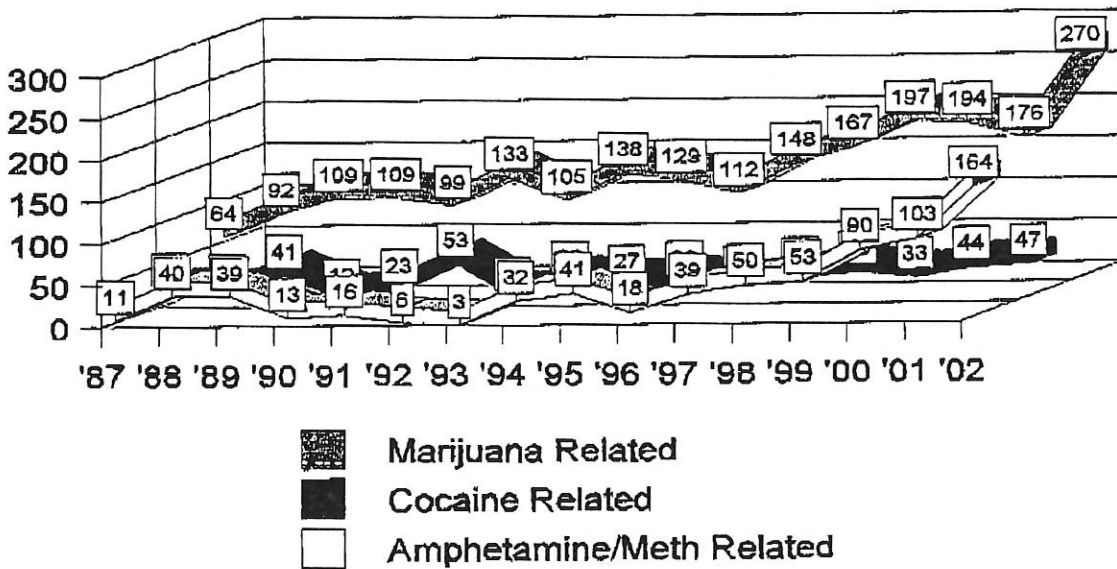
Keith E. Schroeder
Reno County District Attorney

Reno County Prosecution Statistics

Statistics Based On Cases In Which Drug Charges Were Primary Charges Filed



Trends By Most Common Drugs



6-3

TESTIMONY SUPPORTING 2003 HOUSE BILL 2375:
"Evidence Chain of Custody at Preliminary Hearing"
by Thomas J. Drees*

I. Current Statute K.S.A. 22-2902a allows for admissibility of forensic tests without the forensic examiner being present. However, it does not alleviate requirement for chain of custody evidence which could require multiple witnesses to testify when and how they handled the item that was tested. H.B. 2375 in its present form would eliminate the necessity of Law Enforcement Officers testifying but not other lay witnesses involved. For example, doctors and nurses who collected various samples during the Rape Kit collection process following a sexual assault report.

II. Suggested modifications to H.B. 2375

A. Make the language in H.B. 2375 a subparagraph(b) in K.S.A. 22-2902a, with existing language to be(a). See attached copy of K.S.A. 22-2902a.

B. Correction of language within Bill.

1. Line 20 should read as follows:

" . . .evidence was seized by law enforcement officers shall be admissible into evidence in the preliminary . . ."

2. Line 22 should read as follows:

" . . .all persons who collected the evidence which gave rise to the forensic test, law enforcement officers who seized said evidence, evidence custodians and forensic examiners. . ."

III. Future helpful legislation regarding preliminary hearings. A change to the preliminary hearing statute that would allow the Court to accept all "reliable" hearsay testimony at preliminary hearing would be beneficial to victims, prosecutors, and help speed up the court system by reducing the number of non-necessary witnesses at preliminary hearings.

* Thomas J. Drees - Biographical Information:

Kansas County and District Attorneys Association Board of Directors - 1999 to present;
Northwest Kansas Community Corrections governing board - 1996 to present;
Ellis County Attorney - 1997 to present;
Trego County Attorney - 1997 to 2000;
Assistant Ellis County Attorney - 1989 to 1996;
Juris Doctorate Degree, University of Kansas School of Law - 1989.
Address - 1204 Fort, Hays, KS 67601
Phone - (785) 628-9405

Senate Judiciary
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22-2902a. Preliminary examination; admissibility of report of forensic examiner.

- a) any preliminary examination in which the results of a forensic examination, analysis, comparison or identification prepared by the Kansas bureau of investigation, the federal bureau of investigation, the bureau of alcohol, tobacco and firearms of the United States department of the treasury, the state secretary of health and environment, the sheriff's department of Johnson, Shawnee or Sedgwick county, the police department of the cities of Overland Park, Topeka or Wichita, the Sedgwick county regional forensic science center, the drug enforcement administration, the air force of the United States, the navy of the United States, the army of the United States, the Missouri southern state college regional crime laboratory, Bethany medical center, inc. located in Kansas City, Kansas, the Kansas City, Kansas community college forensic laboratory or the Kansas City, Missouri regional crime laboratory are to be introduced as evidence, the report, or a copy of the report, of the findings of the forensic examiner shall be admissible into evidence in the preliminary examination in the same manner and with the same force and effect as if the forensic examiner who performed such examination, analysis, comparison or identification and prepared the report thereon had testified in person.

b) (NEW LANGUAGE)

7-3

SENTENCING RANGE - NONDRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level ↓	3+ Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	Misdemeanor 2+	Misdemeanor 1 No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

Probation Terms are:

- 36 months recommended for felonies classified in Severity Levels 1 – 5
- 24 months recommended for felonies classified in Severity Levels 6 – 7
- 18 months (up to) for felonies classified in Severity Level 8
- 12 months (up to) for felonies classified in Severity Levels 9 - 10

Postrelease terms are:

- 36 months for felonies classified in Severity Levels 1 – 4
- 24 months for felonies classified in Severity Level 5 – 6
- 12 months for felonies classified in Severity Levels 7 - 10

Postrelease for felonies committed before 4/20/95

- 24 months for felonies classified in Severity Levels 1 - 6
- 12 months for felonies classified in Severity Level 7 - 10

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

Senate Judiciary Committee Members

Testimony in Support of House Bill 2375

Paul J. Morrison, District Attorney of the 10th Judicial District

March 18, 2003

Representative Pauls has made me aware of this bill and was kind enough to provide me a copy earlier this week. As a prosecutor who has handled many preliminary hearings over the years, I can tell you that it is most unusual to actually have to put an evidence custodian on to testify at the hearing. Nonetheless, because the current statutes do not allow for it, we still have to call them only to find defense counsel usually stipulates to their testimony once they show up. As you can imagine, this causes great inconvenience and expense for the police agencies who are the custodians of this evidence. The change in the statute is a wonderful idea and will not, in my opinion, impede on any rights of the defendant to have a fair hearing. I would sincerely appreciate your consideration of this bill.

Senate Judiciary

3-19-03Attachment 8-1



**KANSAS BAR
ASSOCIATION**

1200 SW Harrison St.
P.O. Box 1037
Topeka, Kansas 66601-1037
Telephone (785) 234-5696
FAX (785) 234-3813
www.ksbar.org

March 19, 2003

TO: Chairman Vratil and Members of the Senate Judiciary Committee
FROM: Trista Beadles Curzydlo, KBA Lobbyist
RE: House Bill 2375

Chairman Vratil and Members of the Committee:

My name is Trista Beadles Curzydlo and I am here today representing the Kansas Bar Association. The KBA is a diverse organization with more than 6,000 members, including judges, prosecutors, plaintiffs' attorneys, defense attorneys, and many others.

I want to thank you for the opportunity to appear before you today in opposition to HB 2375. The KBA Board of Governors is concerned that HB 2375 if enacted would limit the ability of a defendant to contest the chain of custody in a preliminary hearing. The ability of a defendant to appropriately represent himself or herself requires that they be able to confront an individual presenting testimony against them. HB 2375 provides that a completed evidence custody receipt can replace a law enforcement officer, evidence custodian or forensic examiner in the establishment of a chain of custody in a preliminary hearing. This inappropriately limits the ability of a defendant to mount a proper defense.

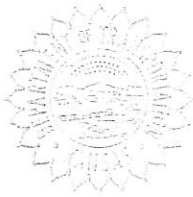
I thank you for your consideration of this issue and welcome any questions that you may have.

Senate Judiciary

3-19-03

Attachment 9-1

STATE OF KANSAS



KANSAS DEPARTMENT OF TRANSPORTATION
SPECIAL ASSISTANT TO THE SECRETARY/DIVISION OF PUBLIC AFFAIRS

Kathleen Sebelius
Governor
Deb Miller
Secretary of Transportation

Docking State Office Building
915 SW Harrison, Rm. 730E
Topeka, Kansas 66612-1568
Ph. (785) 296-3276 FAX (785) 296-1095
TTY (785) 296-3585

James M. McLean
Director

March 12, 2003

The Honorable John Vratil, Chairman
Senate Judiciary Committee
State Capitol Building, Room 255-E
Topeka, Kansas 66612

Dear Mr. Chairman:

The changes proposed in the attached balloon satisfy the Kansas Department of Transportation's (KDOT's) concerns about House Bill 2032.

Vicky Johnson, KDOT's Acting General Counsel, worked with the Kansas League of Municipalities, the Kansas Judicial Council, and the city of Olathe on the draft language. She tells me that each of the entities supports the proposed changes.

We appreciate your willingness to address what the agency believes are some serious flaws in the House version of the bill. I will follow-up by phone to find out when you plan to work the bill and if you desire Vicky to appear and help walk the committee through the balloon.

Sincerely,

A handwritten signature in black ink, appearing to read "James M. McLean".

James M. McLean
Special Assistant to the Secretary/
Director, Division of Public Affairs

Attachment

Senate Judiciary
3-19-01
Attachment 10-1

HOUSE BILL No. 2032

By Committee on Judiciary

1-17

10 AN ACT concerning real property; relating to eminent domain; concern-
11 ing relocation costs; amending K.S.A. 26-506, **and** 26-508 ~~and 58-3502~~
12 and repealing the existing sections, ~~also repealing K.S.A. 58-3505.~~

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

15 Section 1. K.S.A. 26-506 is hereby amended to read as follows: 26-
16 506. (a) *Notice, time, place and manner of hearing.* The appraisers shall,
17 after they have been sworn, and instructed by the judge, make their ap-
18 praisal and assessment of damages, by actual view of the lands to be taken
19 and of the tracts of which they are a part, and by hearing of oral or written
20 testimony from the plaintiff and each interested party as named in K.S.A.
21 26-502, *and amendments thereto, appearing in person or by an attorney.*
22 Such testimony shall be given at a public hearing held in the county where
23 the action is pending at a time and place fixed by the appraisers. Notice
24 of the hearing shall be mailed at least ~~ten (10)~~ 10 days in advance thereof
25 to the plaintiff and to each party named in the petition if their address is
26 known or can with reasonable diligence be ascertained, and by one pub-
27 lication in a newspaper of general circulation in each county where the
28 lands are situated at least ~~ten (10)~~ 10 days in advance of the hearing. In
29 case of failure to meet on the day designated in the notice, the appraisers
30 may meet on the following day without further notice, ~~but in~~ *In* case of
31 failure to meet on either of ~~said such~~ days, a new notice shall be required.
32 A hearing begun pursuant to proper notice may be continued or ad-
33 journed from day to day and from place to place until the hearing with
34 respect to all properties involved in the action has been concluded.

35 (b) *Form of notice.* The notice of hearing shall be in substantially the
36 following form:

37 In the District Court of _____ County, Kansas.
38 _____ Plaintiff, vs. _____ Defendant.

39 Notice is hereby given that the undersigned appraisers appointed by the court, will,
40 in accordance with the provisions of ~~this act~~ K.S.A. 26-501 *et seq., and amendments thereto,*
41 hold a public hearing on all matters pertaining to their appraisal of compensation
42 and the assessment of damages for the taking of the lands or interests therein sought to be
43 taken by the plaintiff in the above entitled matter covering the following described lands

1 (description of lands). Such hearing will commence at _____ o'clock ____M. on the ____
2 day of _____, 19 (year)____ at _____, or on the following day without further
3 notice, and may be continued thereafter from day to day or place to place until the same is
4 concluded with respect to all properties involved in the action. Any party may appear in
5 person or by an attorney and may present either oral or written testimony by the landowner
6 or other witnesses at such hearing.

7 You are further notified that the court has set the _____ day of _____, 19 (year)____,
8 for the filing of the awards of these appraisers with the clerk of the court, and any party
9 dissatisfied with the award may appeal therefrom as by law permitted within thirty 30 days
10 from the day of filing.

11 _____ Appraisers.

12 Sec. 2. K.S.A. 26-508 is hereby amended to read as follows: 26-508.
13 If the plaintiff, or any defendant, is dissatisfied with the award of the
14 appraisers, ~~he may, such party,~~ within ~~thirty (30)~~ 30 days after the filing
15 of the appraisers' report, may appeal from the award by filing a written
16 notice of appeal with the clerk of the district court and paying the docket
17 fee of a new court action. In the event any parties shall perfect an appeal,
18 copies of such notice of appeal shall be mailed to all parties affected by
19 such appeal, within three (3) days after the date of the perfection thereof.
20 An appeal by the plaintiff or any defendant shall bring the issue of dam-
21 ages to all interest interests in the tract before the court for trial de novo.
22 The appeal shall be docketed as a new civil action and tried as any other
23 civil action. ~~Provided, however,~~ The only issue to be determined therein
24 shall be that of just compensation to be paid for the land or right therein
25 taken at the time of the taking and for any other damages allowable by
26 law ~~the compensation required by K.S.A. 26-513, and amendments~~
27 ~~thereto.~~

“The only issue to be determined therein shall be the compensation required by K.S.A. 26-513 and amendments thereto.”

28 ~~Sec. 3. K.S.A. 58-3502 is hereby amended to read as follows: 58-~~
29 ~~3502. Whenever any program or project is undertaken by the state of~~
30 ~~Kansas, any agency or political subdivision thereof, under which federal~~
31 ~~financial assistance will be available to pay all or part of the cost of such~~
32 ~~program by reason of a grant from or contract or agreement with the~~
33 ~~federal government, and any condemning authority which program or~~
34 ~~project will result in the displacement of any person by acquisition of real~~
35 ~~property, or by the direct result of building code enforcement activities,~~
36 ~~rehabilitation or demolition programs, the state, agency, or political sub-~~
37 ~~division may condemning authority shall:~~

38 ~~(1) Provide fair and reasonable relocation payments and assistance to~~
39 ~~or for displaced persons as are required under sections 202, 203 and 204~~
40 ~~of the federal act;~~

41 ~~(2) Provide relocation assistance programs offering to displaced per-~~
42 ~~sons and others occupying property immediately adjacent to the real~~
43 ~~property acquired, the services described in section 205 of the federal act~~

1 on the conditions prescribed therein;

2 ~~(3) In acquiring the real property be guided to the greatest extent~~
3 ~~practicable under state law by the land acquisition policies in section 301~~
4 ~~and the provisions of section 302 of the federal act;~~

5 ~~(4) Pay or reimburse property owners for necessary expenses as spec-~~
6 ~~ified in sections 303 and 304 of the federal act;~~

7 ~~(5) Share costs of providing payments and assistance with the federal~~
8 ~~government in the manner and to the extent required by sections 211 (a)~~
9 ~~and (b) of the federal act; and~~

10 ~~(6) Appoint such officers, enter into such contracts, utilize federal~~
11 ~~funds for planning and providing comparable replacement housing, and~~
12 ~~take such other actions as may be necessary to comply with the conditions~~
13 ~~and requirements of the federal act.~~

14 ~~New Sec. 3. (a) Except as provided in article 35 of chapter 58~~
15 ~~of the Kansas Statutes Annotated, and amendments thereto, when-~~
16 ~~ever any program or project is undertaken by any plaintiff who~~
17 ~~exercises the power of eminent domain which program or project~~
18 ~~will result in the displacement of any person by acquisition of real~~
19 ~~property, such plaintiff shall provide fair and reasonable reloca-~~
20 ~~tion payments and assistance to or for displaced persons.~~

21 ~~(b) Fair and reasonable relocation payments and assistance to~~
22 ~~or for displaced persons as provided under sections 202, 203, 204,~~
23 ~~301, 302, 303 and 304 of the federal uniform relocation assistance~~
24 ~~and real property acquisition policies act of 1970, and amendments~~
25 ~~thereto, shall be deemed fair and reasonable relocation payments~~
26 ~~and assistance pursuant to this section.~~

27 ~~(c) This section shall be part of and supplemental to the emi-~~
28 ~~nent domain procedure act.~~

29 ~~Sec. 4. K.S.A. 26-506; and 26-508, 58-3502 and 58-3505 are hereby~~
30 ~~repealed.~~

31 ~~Sec. 6. This act shall take effect and be in force from and after its~~
32 ~~publication in the statute book.~~

New Sec. 3. K.S.A. 58-3502 is hereby amended as follows: 58-3502. Whenever any program or project is undertaken by the state of Kansas, any agency or political subdivision thereof, under which federal financial assistance will be available to pay all or part of the cost of such program by reason of a grant from or contract or agreement with the federal government, and which program or project will result in the displacement of any person by acquisition of real property, or by the direct result of building code enforcement activities, rehabilitation or demolition programs, the state, agency, or political subdivision shall:

(1) Provide fair and reasonable relocation payments and assistance to or for displaced persons as are required under sections 202, 203 and 204 of the federal act;

(2) Provide relocation assistance programs offering to displaced persons and others occupying property immediately adjacent to the real property acquired, the services described in section 205 of the federal act on the conditions prescribed therein;

(3) In acquiring the real property be guided to the greatest extent practicable under state law by the land acquisition policies in section 301 and the provisions of section 302 of the federal act;

(4) Pay or reimburse property owners for necessary expenses as specified in sections 303 and 304 of the federal act;

(5) Share costs of providing payments and assistance with the federal government in the manner and to the extent required by sections 211(a) and (b) of the federal act, and

(6) Appoint such officers, enter into such contracts, utilize federal funds for planning and providing comparable replacement housing, and take such other actions as may be necessary to comply with the conditions and requirements of the federal act.

New Sec. 4. The following language shall be added to article 35 of chapter 58 of the Kansas Statutes Annotated, and amendments thereto, as K.S.A. 58-3502a: Whenever federal funding is not involved, and real property is acquired by any condemning authority through negotiation in advance of a condemnation action or through a condemnation action, and which acquisition will result in the displacement of any person, the condemning authority shall:

(1) Provide the displaced person (as defined in the uniform relocation assistance and real property acquisition policies act of 1970), fair and reasonable relocation payments and assistance to or for displaced persons.

(2) Fair and reasonable relocation payments and assistance to or for displaced persons as provided under sections 202, 203, and 204 of the federal uniform relocation assistance and real property acquisition act of 1970, and amendments thereto, shall be deemed fair and reasonable relocation payments and assistance pursuant to this section.

(3) Nothing in this section shall preclude the voluntary negotiation of fair and reasonable relocation payments and assistance between the displaced person and condemning authority. If such negotiations lead to agreement between the displaced person and the condemning authority that agreement shall be deemed fair and reasonable.

New Sec. 5. K.S.A. 26-506, 26-508, 58-3502 and 58-3505 are hereby repealed.

10-4