

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman John Vratil upon adjournment of the Senate at 10:05 a.m. on March 21, 2003, in Room 531-N of the Capitol.

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

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

Others attending: see attached list

**Final action on:**

**HB 2090 - Scope of agency relationship for inmate work crews defined**

Chairman Vratil reviewed HB 2909, and explained the purpose of the bill. He said there were no suggested amendments offered on the bill.

Senator O'Connor moved to recommend HB 2909 favorably, seconded by Senator Schmidt, and the motion carried.

**HB 2314 - Kansas juvenile correctional complex**

Chairman Vratil reviewed HB 2314, and stated it was in the nature of a technical amendment. He said there were no amendments suggested, and no fiscal note on this bill.

Senator Goodwin moved to recommend HB 2314 favorably, seconded by Senator Schmidt, and the motion carried.

**HB 2138 - Forensic examinations; certification procedures**

Chairman Vratil reviewed HB 2138, and said there were no recommended amendments or fiscal note on this bill.

Senator O'Connor moved to recommend HB 2138 favorably, seconded by Senator Schmidt, and the motion carried.

**HB 2165- Civil liability for worthless checks, definition of giving a worthless check**

Chairman Vratil reviewed HB 2165, and brief discussion took place on why the original language was included in the statutes.

Senator O'Connor moved to recommend HB 2165 be passed out favorably, and seconded by Senator Oleen for discussion purposes. Committee discussion followed, with the Chairman explaining that this language was originally included in the statute because some courts would not prosecute a worthless check charge when the check was given in payment of a pre-existing debt. It was noted that writing a worthless check is an attempt to defraud. After further discussion, the Chair called for a vote on the motion. The motion was defeated.

**Sub HB 2294 - Construction defects; contractors right to cure prior to filing a civil action; criminal penalties**

Chairman Vratil reviewed HB 2294.

Senator O'Connor moved to recommend HB 2294 favorably, and seconded by Senator Goodwin. After brief discussion, the Chair called for a vote on the motion. The motion carried.

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

Chairman Vratil reviewed HB 2294, and Senator Schmidt commented that Mr. Drees, Ellis County Attorney, had provided the Committee with recommended amendments during the hearing. He stated that he believed those amendments were necessary to solve the problems and concerns Mr. Drees raised during the hearing. Senator Schmidt had visited with Mr. Drees about the amendments.

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MINUTES OF THE SENATE JUDICIARY COMMITTEE on March 21, 2003 in Room 531-N of the Capitol.

Senator Schmidt made a motion to adopt two sections of Mr. Drees' suggested amendments which included under "B" to correct language within the bill: (1) Line 20 should read as follows: "...evidence seized by law enforcement officers shall be admissible into evidence in the preliminary..."; and (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...". (Attachment 1) The motion was seconded by Senator O'Connor.

Following discussion, the Chair called for a vote on the motion to amend. The motion carried.

Senator Schmidt made a motion to pass **HB 2375** out favorably as amended, seconded by Senator O'Connor, and the motion failed.

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

Chairman Vratil reviewed **HB 2032**. He explained that the interested parties had gotten together and worked out acceptable language in the form of a balloon amendment attached to a cover letter from James McLean, Special Assistant to the Secretary/Director, Division of Public Affairs, Kansas Department of Transportation. Chairman Vratil said the parties involved with drafting the language were the Kansas League of Municipalities, the Kansas Judicial Council, and the City of Olathe. (Attachment 2)

The Chairman clarified the proposed amendments which started on page 2, beginning on line 23, which he said would essentially return the language to the way it was before the House amended it. The Chairman added that it would say, "*The only issue to be determined therein shall be the compensation required by K.S.A. 26-513 and amendments thereto.*". He explained that the relocation expenses are covered by the amendments on page 3, which deals with an award of relocation expenses and would require relocation expenses to be paid pursuant to an administrative procedure in all cases where the land owner whose property is being taken is forced to relocate to a different location. He added that it makes no difference whether federal funds are involved in the project or not.

Senator Goodwin made a motion to amend the bill as indicated in the balloon provided by Mr. McLean, seconded by Senator Gilstrap, and the motion to amend carried.

Senator Gilstrap moved to recommend the bill favorably as amended, seconded by Senator O'Connor, and the motion carried.

**HB 2035 - Children in need of care; right to counsel**

Chairman Vratil reviewed **HB 2035**, and distributed an amendment he had requested staff to prepare. He explained that this amendment would return the bill to the form originally introduced by the Judicial Council. He stated that it was his belief that the House amendments emasculate the purpose of this bill. Chairman Vratil recalled that Professor Sheila Reynolds testified at the Senate hearing about what happens when a guardian *ad litem* is appointed to represent a minor child in a court case, and the guardian *ad litem* and minor child have a disagreement as to what is in the best interest of the child. He said that the guardian *ad litem* then has a conflict. Professor Reynolds suggested there might be a need for the judge to appoint a second attorney to represent the child when there is a conflict between the child and the guardian *ad litem*. The Chairman reiterated that the purpose of this bill was to give the judge the authority to appoint a second attorney if good cause were shown to the judge for the appointment. The Chairman explained the House took out the language described, and changed it to require the guardian *ad litem* to advise the judge of the conflict, but then the House didn't say what should happen after that. (Attachment 3)

Committee discussion followed. Senator Oleen made a motion to adopt the balloon amendment, seconded by Senator Schmidt, and the motion to amend carried.

Senator Goodwin moved to pass **HB 2035** out favorably as amended, seconded by Senator Oleen, and the motion carried.

Chairman Vratil called the Committee's attention to **HB 2308**, and said it was a bill he did not intend on

CONTINUATION SHEET

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working this session. He stated it was a bill requested by the Joint Committee on Corrections and Juvenile Justice, but was suggesting that the bill be used as a vehicle to correct a problem that has come to his attention recently. The Chairman distributed copies of letters from Senate President Dave Kerr to Attorney General Phill Kline bringing this problem to the attention of the Attorney General, and Attorney General Kline's response to Senator Kerr in which he agreed with Senator Kerr's concerns. (Attachments 4 and 5)

After distributing copies of the proposed amendment (Attachment 6), the Chairman called upon Brad Smoot, representing the Kansas University Alumni Association. Mr. Smoot explained that this is a records question and concerns public universities and colleges and their related associations. K.S.A. 21-3904 could be interpreted to prohibit the use of student directory information by state colleges and universities and their affiliated support organizations which may offer students and alumni certain goods or services. Mr. Smoot said this was also an attempt to change the penalty to civil sanctions in accordance with other sections of the open records law instead of the criminal penalties that are currently in this statute.

After discussion, Senator Umbarger made a conceptual motion to change the language in the proposed amendment to **HB 2308** to make it applicable in addition to the Regent's institutions, Washburn University, community colleges and the vocational schools. The motion was seconded by Senator Oleen, and the motion carried.

Senator O'Connor made a motion to delete all existing language in **HB 2308**, add the proposed amendment that the Committee had in writing in front of them with the addition of Senator Umbarger's conceptual amendment, and to recommend it as a substitute bill for **HB 2308**. The motion was seconded by Senator Schmidt, and the motion carried.

The meeting was adjourned at 11:05 a.m. The next scheduled meeting is March 24, 2003.





**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.

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\* 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

3-21-03  
Attachment 1-1

*Schmidt's  
Amendment*

a) **22-2902a. Preliminary examination; admissibility of report of forensic examiner.** At 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)

## 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:**

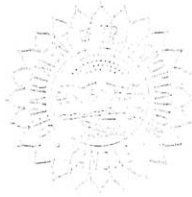
- 36 months for felonies classified in Severity Levels 1 – 4
- 24 months for felonies classified in Severity Level 5 – 6
- 12 months for felonies classified in Severity Levels 7 - 10

**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

<b>LEGEND</b>
Presumptive Probation
Border Box
Presumptive Imprisonment

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  
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Topeka, Kansas 66612-1568  
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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  
3-21-03  
Attachment 2-1



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, to read 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.

2-4

## HOUSE BILL No. 2035

By Committee on Corrections and Juvenile Justice

1-17

9 AN ACT concerning children in need of care; relating to the right to  
10 counsel; amending K.S.A. 2002 Supp. 38-1505 and repealing the ex-  
11isting section.

12  
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2002 Supp. 38-1505 is hereby amended to read as  
15 follows: 38-1505. (a) *Appointment of guardian ad litem; duties.* Upon the  
16 filing of a petition the court shall appoint a person who is an attorney to  
17 serve as guardian *ad litem* for a child who is the subject of proceedings  
18 under this code. The guardian *ad litem* shall make an independent in-  
19 vestigation of the facts upon which the petition is based and shall appear  
20 for and represent the ~~child~~ *best interests of the child. When the child's*  
21 *position is not consistent with the determination of the guardian ad litem*  
22 *as to the child's best interest, the guardian ad litem shall inform the court*  
23 *of the disagreement. The guardian ad litem or the child may request the*  
24 *court to appoint a second attorney to serve as attorney for the child, and*  
25 *the court, on good cause shown, may appoint such second attorney. The*  
26 *attorney for the child shall allow the child and the guardian ad litem to*  
27 *communicate with one another but may require such communications to*  
28 *occur in the attorney's presence.*

29 (b) *Attorney for parent or custodian.* A parent or custodian of a child  
30 alleged or adjudged to be a child in need of care may be represented by  
31 an attorney, other than the guardian ad litem or a second attorney, as  
32 provided in subsection (a) appointed for the child in connection with all  
33 proceedings under this code. If at any stage of the proceedings a parent  
34 desires but is financially unable to employ an attorney, the court shall  
35 appoint an attorney for the parent. It shall not be necessary to appoint  
36 an attorney to represent a parent who fails or refuses to attend the hearing  
37 after having been properly served with process in accordance with K.S.A.  
38 38-1534 and amendments thereto. A parent or custodian who is not a  
39 minor, a mentally ill person as defined in K.S.A. 2002 Supp. 59-2946 and  
40 amendments thereto or a disabled person as defined in K.S.A. 77-201  
41 and amendments thereto may waive counsel either in writing or on the  
42 record.

43 (c) *Attorney for parent who is a minor, mentally ill or disabled.* The

1 court shall appoint an attorney for a parent who is a minor, a mentally ill  
2 person as defined in K.S.A. 2002 Supp. 59-2946 and amendments thereto  
3 or a disabled person as defined in K.S.A. 77-201 and amendments thereto,  
4 unless the court determines that there is an attorney retained who will  
5 appear and represent the interests of the person in the proceedings under  
6 this code.

7 (d) *Continuation of representation.* A guardian *ad litem* appointed ~~for~~  
8 *to represent the best interests of a child or a second attorney as provided*  
9 *in subsection (a) appointed for a child* or an attorney appointed for a  
10 parent or custodian shall continue to represent the client at all subsequent  
11 hearings in proceedings under this code, including any appellate pro-  
12 ceedings, unless relieved by the court upon a showing of good cause or  
13 upon transfer of venue.

14 (e) *Fees for counsel.* A guardian *ad litem*, *second attorney appointed*  
15 *pursuant to subsection (a)* or attorney appointed for parties to proceed-  
16 ings under this section shall be allowed a reasonable fee for their services,  
17 which may be assessed as an expense in the proceedings as provided in  
18 K.S.A. 38-1511 and amendments thereto.

19 Sec. 2. K.S.A. 2002 Supp. 38-1505 is hereby repealed.

20 Sec. 3. This act shall take effect and be in force from and after its  
21 publication in the statute book.



# KANSAS STATE SENATE



**DAVE KERR**  
SENATOR, RENO COUNTY  
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## COMMITTEE ASSIGNMENTS

CHAIRMAN:  
INTERSTATE COOPERATION  
LEGISLATIVE COORDINATING COUNCIL  
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PENSIONS, INVESTMENTS & BENEFITS

**PRESIDENT**

March 13, 2003

The Honorable Phill Kline  
Attorney General  
2<sup>nd</sup> Floor, Memorial Hall  
120 SW 10<sup>th</sup> Avenue  
Topeka, KS 66612-1597

Subject: K.S.A. 21-3914

Dear General Kline:

It has recently come to my attention that the above-referenced statute could be interpreted to prohibit the use of student directory information by state colleges and universities and their affiliated support organizations which may be offering students and alumni certain goods or services. For years, before and after the enactment of this statute, state institutions and their alumni organizations have offered students and alumni various types of goods and services, including class rings, license plates, year books, alumni association memberships and the like. Some institutions have been offering life and health insurance. I do not believe this law was ever intended to deny students and alumni of public institutions access to information regarding the sale of these types of goods or services which, I might add, would be available to students of private colleges and universities.

Would you please advise as to whether your office would agree that the above interpretation is correct. If you agree that these common practices might fall within the scope of K.S.A. 21-3914, would you have any objection to an amendment to the law to exempt such activities?

I have also noticed that this section imposes criminal penalties. The open records act, of which this was a part, is generally enforced with civil sanctions. Apparently, no one has ever been prosecuted under this statute, I wonder if it might be better to enforce this provision as we do other sections of the open records law. Would you have any objection to enforcing this statute with the civil penalties of the open records law in lieu of the current provision?

Senate Judiciary

3-21-03  
Attachment 4-1

The Honorable Phill Kline  
March 13, 2003  
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Thank you for reviewing this matter and I look forward to hearing from you at your earliest convenience.

Sincerely,

A handwritten signature in cursive script that reads "Dave Kerr".

Dave Kerr  
Senate President

DK:sk

cc: Julene Miller  
Theresa Nuckolls



State of Kansas  
Office of the Attorney General

PHILL KLINE  
ATTORNEY GENERAL

March 19, 2003

The Honorable Dave Kerr  
Senate President  
Capitol, Room 359-E  
Topeka, KS 66612

Subject: K.S.A. 21-3914

Dear President Kerr:

We are in receipt of your letter regarding interpretation of the above referenced statute. Kansas Attorneys General have had numerous occasions to review this particular statute over the last twenty years. For the sake of brevity, we need not cite the legislative history or prior interpretations. Instead, the plain wording of this statute requires us to agree with your interpretation.

We would also agree that this result is probably an unintended consequence. There appears to be little public policy reason for denying students of public institutions of higher learning the same access to goods and services available to the private college and university attendees simply because their names and addresses were taken from a public school directory. Therefore, we would encourage the legislature to remedy this problem. My preference is that persons listed in public records be given ample opportunity to remove themselves from such lists.

I would also agree with a proposal to impose civil rather than criminal penalties. Our office and those of county and district attorneys should be busy prosecuting serious criminal offenses. In addition, the statute appears to be somewhat vague, causing numerous requests for Attorney General opinions regarding its application. Moreover, since the burden of proof is much higher in criminal cases than it is in civil cases, busy prosecutors might be less apt to chase violators of this act under current law than they would if it were enforced civilly. Indeed, these factors may explain why this act does not appear to have ever been applied in a court of law.

I trust that this responds to your inquiry and if we might provide additional assistance in this or other matters, please do not hesitate to contact me.

Sincerely,

Phill Kline  
Attorney General

Senate Judiciary

3-21-03

Attachment 5-1

PROPOSED AMENDMENT  
to HOUSE BILL 2308

On page 1, strike all in lines 9 through 43; strike all on pages 2 and 3;

AN ACT concerning the use of names derived from public records; repealing K.S.A. 21-3914.

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

Section 1. (a) No person shall knowingly sell, give or receive, for the purpose of selling or offering for sale any property or service to persons listed therein, any list of names and addresses contained in or derived from public records except:

(1) Lists of names and addresses from public records of the division of vehicles obtained under K.S.A. 74-2012, and amendments thereto;

(2) lists of names and addresses of persons licensed, registered or issued certificates or permits to practice a profession or vocation may be sold or given to, and received by, an organization of persons who practice that profession or vocation for membership, informational or other purposes related to the practice of the profession or vocation;

(3) lists of names and addresses of persons applying for examination for licenses, registrations, certificates or permits to practice a profession or vocation shall be sold or given to, and received by, organizations providing professional or vocational educational materials or courses to such persons for the sole purpose of providing such persons with information relating to the availability of such materials or courses;

(4) lists of names, addresses and other information from voter registration lists may be compiled, used, given, received, sold or purchased by any person, as defined in K.S.A. 21-3110 and amendments thereto, solely for political campaign or election purposes;

(5) Lists of names and addresses from the public records of the state educational institutions, as defined in K.S.A. 76-711, and amendments thereto, may be given to, and received and disseminated by their separately incorporated 501(c)(3)

affiliates and supporting organizations for use in the furtherance of the purposes and programs of such state educational institutions, and their separately incorporated 501(c)(3) affiliates and supporting organizations; and

(6) to the extent otherwise authorized by law.

(b) Violation of the provisions of this act shall make such person subject to civil penalties under K.S.A. 45-223, and amendments thereto.

Sec. 2. K.S.A. 21-3914 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.