#### MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 p.m. on March 15, 2004 in Room 313-S of the Capitol.

All members were present except:

Representative Dan Williams- excused

Committee staff present:

Jill Wolters, Revisor of Statutes Diana Lee, Revisor of Statues Jerry Ann Donaldson, Kansas Legislative Research Department Cindy O'Neal, Secretary

# SB 317 - eliminating the requirement subpoenaed business records be held indefinitely by the clerk of the district court.

A balloon was provided to the committee with technical amendments proposed by the Revisor. (<u>Attachment 1</u>) Representative Patterson made the motion to adopt the balloon. Representative Owens seconded the motion. The motion carried.

Representative Jack made the motion to amend in the provisions of **HB 2655 - civil procedure for limited** actions. Representative Pauls seconded the motion. The motion carried.

Representative Loyd made the motion to amend in the provisions of **HB 2565 - clarifying amendments to the civil liability worthless check statute**. Representative Owens seconded the motion. The motion carried.

Representative Patterson made the motion to report SB 317 favorably for passage, as amended. Representative Jack seconded the motion. The motion carried.

# SB 256 - victim compensation for residents who are victims of crimes committed outside the United States

A balloon was provided making it clear that the provisions would not apply to those who are members of the United States Armed Forces while on active duty and included some technical amendments. (Attachment 2) Representative Pauls made the motion to adopt the balloon. Representative Yoder seconded the motion. The motion carried.

Representative Long-Mast made the motion to make the bill retroactive by adding "death occurring after January 1, 2001." Representative Goering seconded the motion. The motion carried.

Representative Long-Mast made the motion to report SB 256 favorably for passage, as amended. Representative Davis seconded the motion. The motion carried.

## SB 436 - statute of limitations on childhood sexual abuse extended to 30 years.

The committee felt that the current statute of limitations was working fine and didn't believe that it needed to be extended. They viewed Kansas as one of the more liberal states in the country with the tolling provision of three years after the person "has knowledge" that the act has happened. Therefore, they suggested that no action be taken on the bill.

## HB 2614 - counties may pay district magistrate judges supplemental salary

Representative Patterson made the motion to report **HB 2614** favorably for passage. Representative Owens seconded the motion.

Representative Patterson made the substitute motion to amend the provisions of **HB 2614** into **SB 354**. Representative Long-Mast seconded the motion. With permission of the second Representative Patterson withdrew his substitute motion. The original motion carried.

## CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on March 15, 2004 in Room 313-S of the Capitol.

## SB 460 - taxpayer identification cannot be used to obtain drivers' licenses or other identification cards

Representative Long-Mast made the motion to report SB 460 favorably for passage and be place on the Consent Calendar. Representative Owens seconded the motion.

Representative Klein made the substitute motion to strike Section 2 of the bill. Representative Rehorn seconded the motion. The motion carried.

Representative Yoder made the motion to report **SB** 460 favorably for passage, as amended. Representative Newton seconded the motion. The motion carried.

## SB 423 - wage garnishment; assignment of account

<u>Representative Swenson made the motion to table the bill. Representative Long-Mast seconded the motion.</u> The motion carried.

## SB 298 - creation of docket fee for garnishments

A balloon was provided which address issues the committee and conferees had with Senate amendments. (Attachment 3)

Representative Jack made the motion to table the bill. Representative Swenson seconded the motion. The motion carried.

The committee meeting adjourned. The next meeting was scheduled for March 16, 2004.

Revisor request

March 12, 2004

Section of 2004

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### SENATE BILL No. 317

By Committee on Judiciary

1-20

AN ACT concerning civil procedure, relating to business records subpoenaed by a party; amending K.S.A. 2003 Supp. 60-245a and repealing the existing section.

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

Section 1. K.S.A. 2003 Supp. 60-245a is hereby amended to read as follows: 60-245a. (a) As used in this section:

- (1) "Business" means any kind of business, profession, occupation, calling or operation of institutions, whether carried on for profit or not.
- (2) "Business records" means writings made by personnel or staff of a business, or persons acting under their control, which are memoranda or records of acts, conditions or events made in the regular course of business at or about the time of the act, condition or event recorded.
- (b) A subpoena duces tocum which commands the production of business records in an action in which the business is not a party shall inform the person to whom it is directed that the person may serve upon the attorney designated in the subpoena written objection to production of any or all of the business records designated in the subpoena within 14 days after the service of the subpoena or at or before the time for compliance, if the time is less than 14 days after service. If such objection is made, the business records need not be produced except pursuant to an order of the court upon motion with notice to the person to whom the subpoena was directed.

Unless the personal attendance of a custodian of the business records and the production of original business records are required under subsection (d), it is sufficient compliance with a subpoena of business records if a custodian of the business records delivers to the clerk of the court by mail or otherwise a true and correct copy of all the records described in the subpoena and mails a copy of the affidavit accompanying the records to the party or attorney requesting them within 14 days after receipt of the subpoena.

The records described in the subpoena shall be accompanied by the affidavit of a custodian of the records, stating in substance each of the following: (1) The affiant is a duly authorized custodian of the records

House Judiciary Committee Proposed technical amendment

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	Signature of Custodian
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(d) Any party may require the personal attendance of a custodian of business records and the production of original business records by causing a subpoena duces tecum to be issued which contains the following statements in lieu of paragraphs (4), (5), (6), (7) and (8) of the subpoena form described in subsection (c):

The personal attendance of a custodian of business records and the production of original records is required by this subpoena. The procedure for delivering copies of the records to the elerk of the court shall not be deemed sufficient compliance with this subpoena and should be disregarded. A custodian of the records must personally appear with the 33 -original records

(e) Notice of intent to request the issuance of a subpoena pursuant to this section where the attendance of the custodian of the business records is not required shall be given to all parties to the action at least 10 days prior to the issuance thereof by the party requesting issuance of the subpoena. A copy of the proposed subpoena shall also be served upon all parties along with such notice. In the event any party objects to the production of the documents sought by such subpoena prior to its issuance, the subpoena shall not be issued until further order of the court in which the action is pending. If receipt of the records makes the taking of a deposition unnecessary, the party who caused the subpoena for the

Proposed amendment,
Drafted March 10, 2004.

Session of SYRE:

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### SENATE BILL No. 256

By Committee on Ways and Means

3-6

AN ACT concerning crime victims; relating to compensation for residents involving violent crimes committed outside the United States; amending K.S.A. 74-7301 and repealing the existing section.

and 74-7305

sections

Be it enacted by the Legislature of the State of Kinsas.

Section 1. K.S.A. 74-7301 is hereby amended to read as follows: 74-7301. As used in this act:

- (a) "Allowance expense" means reasonable charges incurred for reasonably needed products, services and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training and other remedial treatment and care and for the replacement of items of clothing or bedding which were seized for exidence. Such term includes a total charge not in excess of \$5,000 for expenses in any way related to funeral, tremation or burial, but such term shall not include that portion of a charge for a room in a hospital, clinic, convalescent or musing home or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semi-private accommodations, unless other accommodations are medically required.
- (b) "Board" means the crime victims compensation board established under K.S.A. 74-7303 and amendments thereto.
- (c) "Claimant" means any of the following persons claiming compensation under this act: A victim; a dependent of a deceased victim; a third person other than a collateral source; or an authorized person acting on helialf of any of them
- (d) "Collateral source" means a source of benefits or advantages for economic loss otherwise reparable under this act which the victim or claimant has received, or which is readily available to the victim or claimant, from:
  - (1) The offender:
- (2) the government of the United States or any agency thereof, a state or any of its political subdivisions or an instrumentality or two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this act;
  - (3) social security, medicare and medicaid:
  - (4) state-required temporary nonoccupational disability insurance:

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(5) workers compensation:

(6) wage continuation programs of any employer.

(7) proceeds of a contract of insurance payable to the victim for loss which the victim sustained because of the criminally injurious conduct.

(8) a contract providing prepaid hospital and other health care services or benefits for disability.

(e) "Criminally injurious conduct" means conduct that (1) (A) Occurs or is attempted in this state or occurs to a person whose domicile is in Kansas who is the victim of a violent crime which occurs in another state, possession, or territory of the United States of America may make an application for compensation if:

(i) The crimes would be compensable had it occurred in the state of Kayese and

45 (ii) the places the crimes occurred are states, possessions or territories of the United States of America not having eligible crime victim compensation programs;

(B) poses a substantial threat or personal injury or death; and

(C) either is punishable by fine, imprisonment or death or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state; or

(2) is an act of terrorism, as defined in 18 U.S.C. 2331, or a violent crime that posed a substantial threat or caused personal injury or death, committed outside of the United States against a person whose domicile is in Kansas.

Such term shall not include concluct arising out of the ownership, maintenance or use of a motor vehicle, except for violations of K.S.A. 8-1567 and amendments thereto, or violations of municipal ordinances prohibiting the acts prohibited by that statute, or violations of K.S.A. 8-1602, 21-3404, 21-3405 and 21-3414 and amendments thereto or when such conduct was intended to cause personal injury or death.

(b) "Dependent" means a natural person wholly or partially dependent upon the victim for care or support, and includes a child of the victim born after the victim's death.

(g) "Dependent's economic loss" means loss after decedent's death of contributions of things of economic value to the decedent's dependents, not including services they would have received from the decedent if the decedent had not suffered the fatal injury, loss expenses of the dependents avoided by reason of decedent's death.

(h) "Dependent's replacement services loss" means loss reasonably incurred by dependents after decedent's death in obtaining ordinary and necessary services in lieu of those the elected would have performed for their benefit if the decedent had not suffered the fatal injury, less , except that criminally injurious conduct does not include any conduct resulting in injury or death sustained as a member of the United States Armed Forces while serving on active duty (amendment proposed by Frank Henderson, Crime Victims Compensation Board)

expenses of the dependents avoided by reason of decedent's death and not subtracted in calculating dependent's economic loss.

(i) "Economic loss" means economic detriment consisting only of allowable expense, work loss, replacement services loss and, if injury causes death, dependent's economic loss and dependent's replacement service loss. Noneconomic detriment is not loss, but economic detriment is loss although caused by pain and suffering or physical impairment.

(i) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment and morpermiary damage.

(ii) "Replacement services loss" means expenses reasonably incurred.

(k) "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income, but for the benefit of selfor family, if such person had not been injured.

(1) "Work loss" means loss of income from work the injured person would have performed if such person had not been injured, and expenses reasonably incurred by such person in obtaining services in lieu of those the person would have performed for income, reduced by any income from substitute work actually performed by such person or by income such person would have carned in available appropriate substitute work that the person was capable of performing but unreasonably tailed to undertake.

(iii) "Victim" means a person who suffers personal injury or death as a result of (1) Criminally injurious conduct; (2) the good faith effort of any person to prevent criminally injurious conduct; μ(3) the good faith effort of any person to apprehend a person suspected of engaging in criminally injurious conduct; or (1) an act of terrorism, as defined in 18-11-5 (-2331; committed outside of the United States.

(technical amendment)

—Sec. 2 KSA 74-7301 #Increby repealed

See 3. This act shall take effect and be in lorer from and after its and 74-7503 are publication in the statute book

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<sup>\*</sup> insert Sec. 2. - see attachment

<sup>\*</sup> renumber subsequent sections accordingly

#### ATTACHMENT:

Sec. 2. K.S.A. 74-7305 is hereby amended to read as follows: 74-7305. (a) An application for compensation shall be made in the manner and form prescribed by the board.

(b) Compensation may not be awarded unless an application has been filed with the board within two years of the reporting of the incident to law enforcement officials if the victim was less than 16 years of age and the injury or death is the result of any of the following crimes: (1) Indecent liberties with a child as defined in K.S.A. 21-3503 and amendments thereto; (2) aggravated indecent liberties with a child as defined in K.S.A. 21-3504 and amendments thereto; (3) aggravated criminal sodomy as defined in K.S.A. 21-3506 and amendments thereto; (4) enticement of a child as defined in K.S.A. 21-3509 and amendments thereto; (5) indecent solicitation of a child as defined in K.S.A. 21-3510 and amendments thereto; (6) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511 and amendments thereto; (7) sexual exploitation of a child as defined in K.S.A. 21-3516 and amendments thereto; or (8) aggravated incest as defined in K.S.A. 21-3603 and amendments thereto. Compensation for mental health counseling may be awarded, if a claim is filed within two years of testimony, to a claimant who is, or will be, required to testify in a sexually violent predator commitment, pursuant to article 29a of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, of an offender who victimized the claimant or the victim on whose behalf the claim is made. For all other incidents of criminally injurious conduct, compensation may not be awarded unless the claim has been filed with the board within two years after the injury or death upon which the claim is based, unless a claimant whose eligibility for compensation arises out of a violent crime that posed a substantial threat or caused personal injury or death committed outside the United States against a person whose domicile is in Kansas makes a claim for compensation within 30 days of the effective date of this act. Compensation may not be awarded to a claimant who was the offender or an accomplice of the offender and may not be awarded to another person if the award would unjustly benefit the offender or accomplice.

- (c) Compensation otherwise payable to a claimant shall be diminished:
- (1) To the extent, if any, that the economic loss upon which the claimant's claim is based is recouped from other persons, including collateral sources; and
- (2) to the extent, if any, that the board deems reasonable because of the contributory misconduct of the claimant or of a victim through whom the claimant claims.
- (d) Compensation may be awarded only if the board finds that unless the claimant is awarded compensation the claimant will suffer financial stress as the result of economic loss otherwise reparable. A claimant suffers financial stress only if the claimant cannot maintain the claimant's customary level of health, safety and education for self and dependents without undue financial hardship. In making its determination of financial stress, the board shall consider all relevant factors, including:
  - (1) The number of claimant's dependents;
  - (2) the usual living expenses of the claimant and the claimant's family;
  - (3) the special needs of the claimant and the claimant's dependents;
  - (4) the claimant's income and potential earning capacity; and
  - (5) the claimant's resources.
- (e) Compensation may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within 72 hours after its occurrence or the board finds there was good cause for the failure to report within that time.
  - (f) The board, upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement

agencies, may deny, withdraw or reduce an award of compensation.

- (g) Except in K.S.A. 21-3602 or 21-3603 or cases of sex offenses established in article 35 of chapter 21, of the Kansas Statutes Annotated, and amendments thereto, compensation may not be awarded if the economic loss is less than \$100.
- (h) Compensation for work loss, replacement services loss, dependent's economic loss and dependent's replacement service loss may not exceed \$400 per week or actual loss, whichever is less.
- (i) Compensation payable to a victim and to all other claimants sustaining economic loss because of injury to or death of that victim may not exceed \$25,000 in the aggregate.

As Amended by Senate Committee

Session of 2004

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#### SENATE BILL No. 298

By Special Committee on Judiciary

1-9

AN ACT concerning civil procedure; relating to docket fees; amending K.S.A. 2003 Supp. 60-729 and 61-3502 and repealing the existing section sections.

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

Section 1. K.S.A. 2003 Supp. 60-729 is hereby amended to read as follows: 60-729. (a) Garnishment is a procedure whereby the wages, money or intangible property of a person can be seized or attached pursuant to an order of garnishment issued by the court under the conditions set forth in the order.

- (b) Except as otherwise provided by law, no ease shall be filed or docketed garnishment shall be issued under article 7 of Chapter 60 of the Kansas Statutes Annotated, and amendments thereto, without payment of the appropriate docket fee of \$5. The docket fee shall be paid to the clerk of the district court for remittance to the state treasurer, The state treasurer shall deposit and credit the fees to the state general judicial branch fund.
- Sec. 2. K.S.A. 2003 Supp. 61-3502 is hereby amended to read as follows: 61-3502. (a) Garnishment is a procedure whereby the wages, money or intangible property of a person can be seized or attached pursuant to an order of garnishment issued by the court under the conditions set forth in the order.
- (b) Except as otherwise provided by law, no garnishment shall be issued under article 35 of chapter 61 of the Kansas Statutes Annotated, and amendments thereto, without payment of the appropriate docket fee of \$5. The docket fee shall be paid to the clerk of the district court for remittance to the state treasurer The state treasurer shall deposit and eredit the fees to the judicial branch fund:

Now Sec. 3. There is hereby created the judicial branch fund. The state treasurer shall deposit moneys, in accordance with K.S.A. 2003 Supp. 60 729 and 61 3502, and amendments thereto, to the judicial branch fund. All expenditures from the judicial branch fund shall be made in accordance with appropriation acts upon warrante of the director of accounts and reports issued pursuant to vouchers

AN ACT concerning civil procedure; relating to docket fees; amending K.S.A. 2003 Supp. 60-729, and 61-3502 and 20-367 and repealing the existing section sections.

for disbursement in accordance with K.S.A. 20-362 and amendments thereto.

for disbursement in accordance with K.S.A. 20-362 and amendments thereto.

Section 3 - See next page

Section 3. K.S.A. 2003 Supp. 20-367 is hereby amended to read as follows: 20-367. (a) On and after July 1, 2003, through June 30, 2005, Of the remittance of the balance of docket fees received by the state treasurer from clerks of the district court pursuant to subsection (f) of K.S.A. 20-362, and amendments thereto, the state treasurer shall deposit and credit to the access to justice fund, a sum equal to 5.90% 7.73% of the remittances of docket fees; to the juvenile detention facilities fund, a sum equal to 3.27% 3.21% of the remittances of docket fees; to the judicial branch education fund, the state treasurer shall deposit and credit a sum equal to 2.52% 2.47% of the remittances of docket fees; to the crime victims assistance fund, the state treasurer shall deposit and credit a sum equal to .67% .66% of the remittances of the docket fees; to the protection from abuse fund, the state treasurer shall deposit and credit a sum equal to 3.22% 3.16% of the remittances of the docket fees; to the judiciary technology fund, the state treasurer shall deposit and credit a sum equal to 5.10% 5.00% of the remittances of docket fees; to the dispute resolution fund, the state treasurer shall deposit and credit a sum equal to .41% .40% of the remittances of docket fees; to the Kansas juvenile delinquency prevention trust fund, the state treasurer shall deposit and credit a sum equal to 1.49% 1.46% of the remittances of docket fees; to the permanent families account in the family and children investment fund, the state treasurer shall deposit and credit a sum equal to .25% .24% of the remittances of docket fees; to the trauma fund, a sum equal to 1.77% 1.73% of the remittance of docket fees; to the judicial council fund, a sum equal to 1.33% 1.30% of the remittance of docket fees; and to the judicial branch nonjudicial salary initiative fund, the state treasurer shall deposit and credit a sum equal to 21.41% 21.00% of the remittance of docket fees. The balance remaining of the remittances of docket fees shall be deposited and credited to the state general fund.

(b) On and after July 1, 2005, of the remittance of the balance of docket fees received by the state treasurer from elerks of the district court pursuant to subsection (f) of K.S.A. 20-362, and amendments thereto, the state treasurer shall deposit and credit to the access to justice fund, a sum equal to 5.98% of the remittances of docket fees; to the juvenile detention facilities fund, a sum equal to 3.32% of the remittances of docket fees; to the judicial branch education fund, the state treasurer shall deposit and credit a sum equal to 2.55% of the remittances of docket fees; to the erime victims assistance fund, the state treasurer shall deposit and credit a sum equal to .68% of the remittances of the docket fees; to the protection from abuse fund, the state treasurer shall deposit and credit a sum equal to 3.26% of the remittances of the docket fees; to the judiciary technology fund, the state treasurer shall deposit and credit a sum equal to 5.17% of the remittances of docket fees; to the dispute resolution fund, the state treasurer shall deposit and credit a sum equal to .42% of the remittances of docket fees; to the Kansas juvenile delinquency prevention trust fund, the state treasurer shall deposit and credit a sum equal to 1.51% of the remittances of docket fees; to the permanent families account in the family and children investment fund, the state treasurer shall deposit and eredit a sum equal to .25% of the remittances of docket fees; to the trauma fund, a sum equal to 1.79% of the remittance of docket fees; and to the judicial branch nonjudicial salary initiative fund, the state treasurer shall deposit and credit a sum equal to 21.70% of the remittance of docket fees. The balance remaining of the remittances of docket fees shall be denosited and credited to the state general fund.

approved by the chief justice of the supreme court or by a person
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or persons designated by the chief justice.
Children to the contract of th

- Sec. 2 4. K.S.A. 2003 Supp. 60-729 is and 61-3502 are hereby repealed.
- Sec. 35. This act shall take effect and be in force from and after its publication in the statute book.

Sec. 2 4. K.S.A 2003 Supp. 60-729, is *and* 61-3502, and 20-367 are hereby repealed.

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	T	FY 2004 Estimale ;		FY 2005 Estimate	Additional \$	Proposed FY 2005
The second of th	Clerk's Fees	\$19,227,069		\$19,748,376	\$390,000	20,138,376
Fund	Current %	Current Estimate	-}	Y 2005 Estimate	Proposed %	Proposed Estimate
T CITY			T	-		\$
Judicial Council Fund	1.33%	\$255,720.02	18	262,653.40	1.30%	\$ 261,798.89
Access to Justice	i 5.90%	\$1,134,397.07	\$	1,165,154.18	7.73%	\$ 1,556,696.46
Juvenile Detention Facilities	3.27%	\$628,725.16	\$	645,771.90	3.21%	\$ 646,441.87
Protection from Abuse	3.22%	\$619,111.62	\$	635,897.71	3.16%	\$ 636,372.68
Crime Victims Assistance	0.87%	\$128,821.36	\$	132,314.12	0.66%	\$ 132,913.28
Dispute Resolution	0.41%	\$78,830.98	\$	80,968.34	0.40%	
Judicial Branch Education	2.52%	\$484,522.14	\$	497,659.08	2.47%	\$ 497,417.89
Judiciary Technology	5.10%	\$980,580.52	18	1,007,167.18	5.00%	\$ 1,006,918.80
Kansas Juvenile Deliquency Prevention	1.49%	\$286,483.33	\$	294,250.80	1.46%	\$ . 294,020.29
Permanent Families Account	0.25%	\$48,067.67	\$	49,370.94	0.24%	\$ 48,332.10
Trauma Fund	1.77%	\$340,319.12	1\$	349,546.26	1.73%	\$ 348,393.90
Judicial Branch Nonjudicial Salary Initiative Fund	21.41%	\$4,116,515.47	\$	4,228,127.30	21.00%	\$ 4,229,058.96
State General Fund	52.66%	\$10,124,974.54	\$	10,399,494.80	51.64%	\$ 10,399,457.37
CHILD CO. IN. MICH.	100.00%	\$19,227,069.00	\$	19,748,376.00	100.00%	\$ 20,138,376.00