

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 a.m. on Thursday, March 4, 2004, in Room 123-S of the Capitol.

All members were present except:

Senator David Haley (A)
Senator Derek Schmidt - Arrived 10:00 a.m.
Senator Dwayne Umbarger (E)
Senator Edward Pugh - Arrived 9:40 a.m.

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of the Revisor Statutes
Helen Pedigo, Office of the Revisor Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Rita L. Noll, nominee for Chairperson of Crime Victims Compensation Board
Marilyn Scafe, Chairperson of the Kansas Parole Board
Kyle Smith, Kansas Bureau of Investigation
Randy Hearrell, Kansas Judicial Council
Jim Clark, Kansas Bar Association

Others attending: See attached list.

Confirmation Hearing for Chairperson of the Crime Victims Compensation Board

Chairman Vratil opened the confirmation hearing for Rita Noll as Chairperson of the Crime Victims Compensation Board. Chairman Vratil introduced Ms. Noll to the Committee, and asked members to review the provided information covering the nominee and the subject position. Ms. Noll commented on her career and legal experience. (Attachment 1)

Following brief Committee questions and comments, the Chairman called for discussion and final action on the confirmation of Ms. Noll as Chairperson of the Crime Victims Compensation Board. Senator Goodwin made a motion in favor of confirming Ms. Noll as Chairperson of the Crime Victims Compensation Board, seconded by Senator Donovan, and the motion carried.

SB 528 - Kansas parole board actions

Chairman Vratil opened the hearing on **SB 528**. Marilyn Scafe, Kansas Parole Board, testified in support of the proposed bill. She explained **SB 528** was a technical cleanup bill to KSA 22-3709 which was amended during the 2003 legislative session to reflect the change in the size of the parole board to three members. **SB 528** would clarify that a majority vote is required on all Board decisions. (Attachment 2)

Since there were no Committee questions or other conferees appearing to testify on the proposed bill, the Chairman closed the hearing on **SB 528**.

HB 2542 - Collection of specimens by KBI when convicted of certain crimes

Chairman Vratil opened the hearing on **HB 2542**. Kyle Smith, Kansas Bureau of Investigation (KBI), testified in favor of **HB 2542**, and explained the proposed bill covered an important change needed in the state's DNA data bank statute, KSA 21-2511. He stated that an oversight occurred in the listing of statutes which order a person into custody. The requested change is on line 42 of the proposed legislation. (Attachment 3)

The Chairman closed the hearing on **HB 2542** since there were no other conferees appearing to speak on the bill.

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:30 a.m. on Wednesday, March 4, 2004, in Room 123-S of the Capitol.

HB 2554 - Amendments to the Kansas power of attorney act

Chairman Vratil opened the hearing on **HB 2554**. Randy Hearrell, Kansas Judicial Council, spoke in support of the proposed technical cleanup bill relating to language in Sections 1 through 4. He explained the technical corrections and clarifications requested in **HB 2554**. (Attachment 4)

Jim Clark, Kansas Bar Association (KBA), testified in favor of **HB 2554**, and offered a balloon amendment requested by the Standards for Title Examination Committee of the KBA. He explained the Committee was concerned that title insurance companies, particularly in the Wichita area, do not recognize the change proposed in the bill. The Committee requested the reinsertion of the existing language as an alternative to the proposed language. (Attachment 5)

Mr. Clark stated that the KBA Real Estate, Probate and Trust Section had proposed additional language to allow the spousal consent within the power of attorney itself, without having to create a separate document.

Following Committee discussion and questions, the Chair closed the hearing on **HB 2554**.

Final Action on:

SB 432 - Applicants to be law enforcement officers required to disclose criminal records; KLETC allowed to request any expunged records; KLETC central registry include report on terminated officers

Chairman Vratil called for discussion and final action on **SB 432**. The Chair explained that the bill amends the expungement statutes to make an exception and require disclosure of certain arrest, conviction and diversion records for people who apply to be law enforcement officers.

Senator Pugh expressed concern that the terminated officer would not have access to the report. Senator Pugh made a motion to include the terminated officer having access to the report, and seconded by Senator Allen. The Chair requested the Revisor to draft appropriate language covering Senator Pugh's proposed amendment to **SB 432**. The Chair called for a vote on the proposed amendment. The motion carried.

Senator Schmidt made a motion to recommend SB 432 favorably for passage as amended, and seconded by Senator O'Connor, and the motion carried.

HB 2293 - Sheriff's fee for service of process

Chairman Vratil called for discussion and final action on **HB 2293**. He explained that a balloon amendment was submitted by the Kansas Sheriff's Association and Kansas Credit Attorneys Association. The Chair said the balloon reflected the agreement between several interested parties. The balloon changes the fees that could be charged from \$10 in the original bill to \$5, deletes the \$10 for each additional person so the fee would be \$5 no matter how many people were served, and deletes the \$1 fee for return if not found, and deletes the reference to the Sheriff's ability to charge for miles actually and necessarily traveled, indicates that when service is unsuccessful that no fee will be charged for a subsequent attempt, and includes some technical cleanups. (Attachment 6)

Senator Schmidt made a motion to adopt the balloon amendment, seconded by Senator O'Connor, and the motion carried.

Following Committee discussion, Senator Schmidt moved to pass the bill out favorably as amended, seconded by Senator O'Connor, and the motion carried.

HB 2525 - Increasing severity levels on criminal use of explosives

Chairman Vratil called for discussion and final action on **HB 2525**. He explained the bill, and referred Committee members to the Fiscal Note referencing a minimal bed space impact. (Attachment 7)

Senator O'Connor reminded the Committee there was a proposed amendment submitted by the State Fire Marshal's office to clarify other explosive devices that could be constructed which are destructive and

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:30 a.m. on Wednesday, March 4, 2004, in Room 123-S of the Capitol.

dangerous. The language change would incorporate other potential materials used to make explosive devices. (Attachment 8)

Senator O'Connor moved to amend **HB 2525** as requested by the State Fire Marshall, seconded by Senator Goodwin, and the motion carried.

Senator Pugh made a motion to pass **HB 2525** out favorably as amended, seconded by Senator Oleen, and the motion carried.

HB 2347 - Kansas uniform securities act

Chairman Vratil called for discussion and final action on **HB 2347**. The Chair explained the bill, and said there were some technical amendments. He clarified that there was a difference of opinion between the Kansas Bar Association (KBA) and the Securities Commission's office. The KBA wanted to amend the bill to take it back to the original language. The result would be to eliminate certain powers of the Securities Commissioner which the Securities Commission does not want to lose. He added that the Kansas Cooperative Council also had a proposed amendment. (Attachment 9)

Rick Fleming, Kansas Securities Commission, stated an agreement had been worked out with the Cooperative Council and the new language as proposed would offer the same protection. The main concern was in Section 6 (8) changing the word cooperative "instruments" to "securities" relating to persons who are not members within the meaning of KSA 17-1606 and amendments thereto.

Senator Schmidt moved to adopt the amendment proposed by the Kansas Cooperative Council, seconded by Senator Goodwin, and the motion carried.

Senator Schmidt made a motion to adopt the technical amendments by the Revisor concerning adding and deleting commas on pages 5 and 8, seconded by Senator Donovan, and the motion carried.

Chairman announced that meeting time had elapsed, and the Committee would continue to work **HB 2347** at the next scheduled meeting. He requested staff to contact John McCabe or Michelle Clayton, Uniform Law Commissioners in Chicago, to get additional information regarding the Statute of Limitations issue.

Chairman Vratil adjourned the meeting at 10:30 a.m. The next scheduled meeting is Monday, March 8, 2004.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Thurs., March 4, 2004

NAME	REPRESENTING
WITA NOU	Crime V. Compensation Bd
Frank Henderson Jr	" " "
Thyllis Gaudreau	" " "
Elizabeth Cimer	OJA
Jeff Bottenberg	Kansas Sheriff's Assn
Joan Deahl	an Individual
John Deahl	" "
Ruth Anne French	Planned Parenthood
Rick Fleming	Securities Commission
Jim CHARK	KBA
Kyle Smith	KBI
Gregory M. Harvill	KDJC
JEREMY S BARCLAY	KDOC
Marilyn Sente	KPB
Doug Smith	Ks. Credit Attorneys Association



PHILL KLINE
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General
CRIME VICTIMS COMPENSATION BOARD

120 S.W. 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
PHONE: (785) 296-2359 FAX: (785) 296-0652

GLENDAL. CAFER, CHAIR
LOUIS JOHNSON
PAULA S. SALAZAR

February 17, 2004

Pat Saville
Secretary of the Senate
360 East
State Capitol
Topeka, Kansas 66612

Dear Ms. Saville:

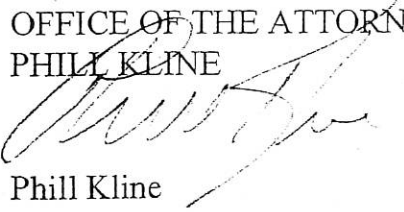
By this letter I am hereby submitting for confirmation by the Senate, the appointment of Rita Noll as Chairperson of the Crime Victims Compensation Board. This appointment is pursuant to K.S.A. 74-7303 and replaces the current chairperson, Glenda L. Cafer. Said term is effective March 16, 2004 and will expire March 15, 2008.

Ms. Noll, a life-long Kansan, is an excellent attorney who has devoted her legal career to public service. I am extremely pleased that she is willing to chair this Board which has such a significant function in the lives of crime victims in Kansas. Her dedication, commitment and expertise will be an asset to the Board and serve the citizens of Kansas well.

Thank you for your consideration of this request. If you have questions please contact the executive director of the Board, Frank Henderson, Jr.

Very truly yours,

OFFICE OF THE ATTORNEY GENERAL
PHILL KLINE


Phill Kline
Attorney General

cc: Judy Glasglow

Encl.

Senate Judiciary

3-4-04
Attachment 1

Senate Confirmation Information Summary
Prepared and Submitted to the Senate Confirmations Oversight Committee

Appointee: Rita L. Noll

Appointment date: 03-16

Position: Chairperson, Crime Victims Compensation Term of 4 years Term expires: 03-15-08

Statutory Authority: K.S.A. _____

> Statutory geographic representation requirement/restriction of entire entity (indicate any that apply):

- Congressional District
- County _____; Size requirement if any _____
- Other, specify _____

> Statutory political party affiliation requirement/restriction of entire entity:

No more than 2 members from the same political party.

> Statutory industry/occupation requirement/restriction of entire entity (specify):

 N/A

Composition:

Member Name	County of Residence	Cong. Dist.	Party	Occupation Industry	Term expires
*Glenda Cafer	Shawnee	2nd	R	Attorney	3-15-04
Louis Johnson	Wyandotte	3rd	I	Law Enforcement	3-15-06
Sue Salazar	Sedgwick	4th	I	Licensed Psychologist	3-15-05
Rita Noll	Morris	1st	R	Attorney	3-15-08
Appointee (named above)					

* Incumbent who will be succeeded by this appointee.

Prepared by: Frank S. Henderson, Jr.

Title: Executive Director, CVCB



PHILL KLINE
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State of Kansas

Office of the Attorney General
CRIME VICTIMS COMPENSATION BOARD

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GLENDAL. CAFER, CHAIR
LOUIS JOHNSON
PAULA S. SALAZAR

SENATE CONFIRMATION QUESTIONNAIRE

Please complete and return this form to the Office of the Attorney General. Attach additional sheets if necessary.

Name: Rita L. Noll

Home Address: 1563 S. 700 Road

City, State, Zip: Council Grove, KS 66846

Business Address: 300 SW 8th St. 2nd Floor

City, State Zip: Topeka, KS 66603

Home Phone: 620-767-6039 Business Phone: 785-291-3407

Date of Birth: 4-1-59 Place of Birth: Atchison, KS

SSN: 495-64-3827 KS Driver License: K00-49-1654

Party Affiliation: Republican KBI Check: NA In Progress Complete

Appointed as: Chairperson of the Crime Victims Compensation Board

Appointment Date: March 16, 2004 Expiration Date: March 15, 2008

Term Length: 4 (four) years Statutory Authority: K.S.A. 74-7303

Salary: \$35 per day Predecessor: Glenda L. Cafer

Statutory Requirements: Must be regularly admitted to practice law in Kansas

BACKGROUND

1. List high school, college, or other education institutions attended along with the date attended and degree conferred.

Education Institution	Dates	Degree
Atchison Co. Community High School	- Graduation May 1977	
Washburn University	(1977-1981)	BA History & Pol. Science
Washburn Univ. School of Law	(1981-1984)	JD

2. List memberships in business, trade and professional organizations for the past 10 years.

Organization	Dates
Kansas Bar Assoc.	1984 to date
KS Women Attorneys Assoc.	1994 to date
Topeka Women Attys Assoc.	1984 to date
KS Assoc of Defense Counsel	2001 to date

3. List any public offices you have been elected or appointed to, along with the dates of service.

N/A

Office Held	Dates

4. List any positions held with a foreign, federal or local government entity along with the dates of service.

N/A

Position	Government Entity	Dates

5. List any lobbying activities you have been involved in during the past five years. This includes activities as a registered lobbyist activities for which you were compensated.

N/A

Group	Compensation (yes/no)	Dates

6. List experience or interest which qualifies you for the position to which you have been appointed.

Opportunity for professional & community service.

7. Summarize business and professional experience.

1984-1986 Law Clerk, Kansas Court of Appeals
1986-1990 Office of the Attorney General, Ass't AG, Civil Division
1990-1995 KS Insurance Dept.; Health Care Stabilization Fund - Atty
1995-present. Health Care Stabilization Fund, Chief Attorney

8. List any service in the United State military. Include dates of service, branch, date and type of discharge received.

N/A

Branch

Discharge

Dates

9. Provide details of any arrest, charge or questioning by a federal, state or other law enforcement authority for violation of any federal, state, county or municipal law, regulation or ordinance (excluding traffic violations for which a fine of \$100 or less was imposed).

N/A

10. List and provide details of any interests that may present a conflict of interest for this position.

(none)

11. Are you delinquent on payment for taxes or loans due any governmental entity?

Yes

No.

If yes, explain

I, Rita L Noll, declare that this questionnaire is true, correct and complete to the best of my knowledge.

Rita L Noll

Signature

February 13, 2004

Date

Marilyn Scafe
Chairperson

Larry D. Woodward
Vice Chairperson

Paul Feleciano
Member



KANSAS PAROLE BOARD
LONDON STATE OFFICE BUILDING
900 SW JACKSON STREET, 4TH FLOOR
TOPEKA, KANSAS 66612-1236
(785) 296-3469

Colene Seidel
Administrator

MEMORANDUM

TO: Senator John Vratil, Chairman
Senate Judiciary Committee

FROM: Marilyn Scafe, Chair *MS*
Kansas Parole Board

RE: SB 528

DATE: March 4, 2004

The Kansas Parole Board was downsized to three members during the legislative session of 2003. When K.S.A. 22-3709 was amended to reflect the changes, the statute no longer explained required votes for the board's decisions. It was the intention of the legislature and the Governor's office that all actions referred to in K.S.A. 22-3709 would require a majority vote of the members of the board. Therefore, the board is submitting this bill to clarify our voting requirements. This will not further impact any board procedure and is current practice.

Senate Judiciary

3-4-04
Attachment 2



Kansas Bureau of Investigation

Larry Welch
Director

Phill Kline
Attorney General

TESTIMONY
BEFORE THE SENATE JUDICIARY COMMITTEE
KYLE G. SMITH
KANSAS BUREAU OF INVESTIGATION
IN SUPPORT OF HB 2542
March 4, 2004

Mr. Chairman and Members of the Committee:

I appear today on a small, but important change needed in our DNA databank statute, K.S.A. 21-2511. As you know, since 1991 criminals convicted of certain specified crimes are required to provide biological samples to the KBI so that their DNA can be placed in a databank and searched by law enforcement for matches to other cases. Persons who were already in custody on those crimes when the law went into effect were also required to provide biological exemplars. However, there was an oversight in not catching a change in the listing of statutes, which order a person into custody.

When the DNA databank law was written in 1991, there was only one version of the sentencing statute and persons sentenced for qualifying crimes under it, K.S.A. 21-4603, were required to register. The sentencing guidelines passed in 1992 which required that there be two versions of that sentencing statute K.S.A. 21-4603, continued for persons committing crimes before the guidelines went into effect July 1, 1993, and another version was created (K.S.A. 21-4603d) for those persons committing crimes after that date. K.S.A. 21-4603d was never added to the DNA databank act and some bright defense attorney caught the oversight of this last year. While the appellate courts are still wrestling with the issue, it seems only prudent that we correct the oversight since there is no logical reason for a rapist who committed his crime in July 1993 to not be in the databank while another who committed it in June of 1993 would be included.

I am sorry that this is a bit technical and to take your valuable time on correcting an oversight. I would be happy to try and answer any questions.

Senate Judiciary

3-4-04
Attachment 3

**JUDICIAL COUNCIL TESTIMONY
ON 2004 HB 2554 - MARCH 4, 2004**

Comment to Section 1 -- Subsections (b), (c) and (d) are amended to use the term "disabled," which is a defined term.

The new language at the end of subsection (b) is an effort to facilitate transactions with governmental agencies and large corporations who frequently require specific power of attorney forms and are reluctant to accept any other forms. This amendment may eliminate the problem that often results when such entities require the execution of their propriety form after the principal is disabled.

Subsection (f)(10) is rewritten to accomplish the same objective as the subsection it is amending. That is to provide a procedure to allow the principal's attorney in fact to consent to alienation of the principal's homestead if proper procedures are followed. The stricken language was taken from the title standards and was not as clearly stated as the new language which was drafted by the Probate Law Advisory Committee with the assistance of representatives of the Bar Association. We are told that this title standard is being rewritten.

It is also unclear from the current (f)(10) whether or not the power of attorney is to serve as a joint consent or is to authorize the attorney in fact to enter into a joint consent on behalf of the principal. The amendment clarifies that the latter is the case.

Subsection (f)(13) is a new subsection under the list of powers that may be authorized by the power of attorney if specifically authorized. The amendment allows the principal to include specific language in the power of attorney to delegate to the attorney in fact the authority to pay reasonable and ordinary expenses incurred for the funeral and burial or other disposition of the body of the principal. Such expenses are the first obligation most families want paid and constitute a first class claim against the estate. This amendment will facilitate the payment of these amounts and possibly eliminate the need for estate proceedings in some small estates.

Comment to Section 2 -- Subsection (b) is amended by striking reference to the uniform custodial trust law, which has not been enacted in Kansas, and inserting reference to K.S.A. 9-1607 from the Kansas Banking Code, and by adding reference to a state or national bank or trust company.

Comment to Section 3 -- Subsection (b)(1) is amended by inserting reference to subsection 5(f)(13) of K.S.A. 58-654 which is the proposed amendment that will allow the payment of burial or funeral expenses.

Comment to Section 4 -- The stricken language in subsection (f) contains a reference to a section of the Missouri law which was not enacted by Kansas. This is a technical correction.

Subsection (i) is amended by striking "attorney in fact" and inserting "principal" in lieu thereof. This is a technical correction.

Senate Judiciary
3-4-04
Attachment 4



**KANSAS BAR
ASSOCIATION**

1200 SW Harrison St.
PO Box 1037
Topeka, Kansas 66601-1037
Phone: (785) 234-5696
Fax: (785) 234-3813
E-mail: info@ksbar.org
Website: www.ksbar.org

Testimony Presented in Support of

HOUSE BILL NO. 2554

Presented by Jim Clark, Legislative Counsel for the Kansas Bar Association
To the Senate Judiciary Committee on March 4, 2004

The Kansas Bar Association appears in support of House Bill 2554. We would commend the Judicial Council for the time and effort put into this fine-tuning of the Kansas Power of Attorney Act.

Unfortunately, at a recent meeting, the venerable Standards for Title Examination Committee of the KBA noticed the proposed changes in Section 1 of the bill, specifically at page 4, beginning with line 1. The concern of the Committee is that title insurance companies, particularly in the Wichita area, do not recognize the proposed change in the bill. Consequently, it is the desire of the Committee to reinsert the existing language as an alternative to the proposed language, as illustrated in KBA Amendment #1 (attached).

In a totally separate meeting, by a totally separate body, the KBA Real Estate, Probate and Trust Section has proposed additional language on page 4, beginning at line 17, as illustrated in KBA Amendment #2 (also attached). The effect of this amendment would allow the spousal consent within the power of attorney itself, without having to create a separate document.

The Kansas Bar Association regrets the inconvenience resulting from the delay in bringing these matters to the attention of both the Legislature as well as the Judicial Council. But it is our hope that the Senate Judiciary Committee will consider the request on merits and amend the proposed language into the bill.

Thank you for your consideration.

Senate Judiciary
3-4-04
Attachment **5**

1 (10) to alienate the homestead without the joint consent of husband
 2 and wife when that relationship exists, if the power of attorney specifically:
 3 Gives the attorney in fact the power to sell, transfer and convey the home-
 4 stead in question; gives the legal description and street address of the
 5 property; and states that by the execution of the power of attorney it is
 6 the intention of the parties that the act shall constitute the joint consent
 7 required by Article 15, Section 9 of the Kansas Constitution and the
 8 power of attorney is executed by both the husband and wife in the same
 9 instrument give consent on behalf of the principal to the sale, gift, transfer,
 10 mortgage or other alienation of the principal's homestead or interest
 11 therein if:

12 (A) The principal's spouse, personally or through such spouse's at-
 13 torney in fact, has also consented to such alienation;

14 (B) the power of attorney specifically describes the homestead by ref-
 15 erence to a legal description and the street address of the property; and

16 (C) the principal's spouse, by addendum to the power of attorney duly
 17 acknowledged by the spouse, has stated such spouse's consent that the
 18 attorney in fact may alienate the interests, in whole or in part, of the
 19 principal in the described homestead and, further, the spouse agrees that
 20 the consent of the attorney in fact will constitute the consent of the prin-
 21 cipal required by Article 15, Section 9 of the Kansas Constitution. Nothing
 22 herein shall be construed as a limitation or abridgement of the right of
 23 the spouse of the principal to consent or withhold such spouse's consent
 24 to the alienation of the spouse's homestead, or any rights therein, under
 25 Article 15, section 9 of the Kansas Constitution;

26 (11) to designate one or more substitute or successor or additional
 27 attorneys in fact; or

28 (12) to delegate any or all powers granted in a power of attorney
 29 pursuant to subsection (a) of K.S.A. 2003 Supp. 58-660, and amendments
 30 thereto; or

31 (13) to pay reasonable expenses incurred for the funeral and burial
 32 or other disposition of the body of the principal.

33 (g) No power of attorney, whether or not it delegates general powers,
 34 may delegate or grant power or authority to an attorney in fact to do or
 35 carry out any of the following actions for the principal:

36 (1) To make, publish, declare, amend or revoke a will for the
 37 principal;

38 (2) to make, execute, modify or revoke a declaration under K.S.A. 65-
 39 28,101 *et seq.*, and amendments thereto, for the principal or to make,
 40 execute, modify or revoke a do not resuscitate directive under K.S.A. 65-
 41 4941, and amendments thereto, for the principal or to make, execute,
 42 modify or revoke a durable power of attorney for health care decisions
 43 pursuant to K.S.A. 58-625, *et seq.*, and amendments thereto, for the

(a) alienate the homestead without the joint consent of husband and wife when that relationship exists, if the power of attorney specifically: Gives the attorney in fact the power to sell, transfer and convey the homestead in question; gives the legal description and street address of the property; and states that by the execution of the power of attorney it is the intention of the parties that the act shall constitute the joint consent required by Article 15, Section 9 of the Kansas Constitution and the power of attorney is executed by both the husband and wife in the same instrument; or

(b)

H. 1

1 (10) to alienate the homestead without the joint consent of husband
 2 and wife when that relationship exists, if the power of attorney specifically:
 3 Gives the attorney in fact the power to sell, transfer and convey the home-
 4 stead in question, gives the legal description and street address of the
 5 property, and states that by the execution of the power of attorney it is
 6 the intention of the parties that the act shall constitute the joint consent
 7 required by Article 15, Section 9 of the Kansas Constitution and the
 8 power of attorney is executed by both the husband and wife in the same
 9 instrument give consent on behalf of the principal to the sale, gift, transfer,
 10 mortgage or other alienation of the principal's homestead or interest
 11 therein if:

12 (A) The principal's spouse, personally or through such spouse's at-
 13 torney in fact, has also consented to such alienation;

14 (B) the power of attorney specifically describes the homestead by ref-
 15 erence to a legal description and the street address of the property; and

16 (C) the principal's spouse, by addendum to the power of attorney duly
 17 acknowledged by the spouse has stated such spouse's consent that the
 18 attorney in fact may alienate the interests, in whole or in part, of the
 19 principal in the described homestead and, further, the spouse agrees that
 20 the consent of the attorney in fact will constitute the consent of the prin-
 21 cipal required by Article 15, Section 9 of the Kansas Constitution. Nothing
 22 herein shall be construed as a limitation or abridgement of the right of
 23 the spouse of the principal to consent or withhold such spouse's consent
 24 to the alienation of the spouse's homestead, or any rights therein, under
 25 Article 15, section 9 of the Kansas Constitution;

or in the power of
 attorney,

26 (11) to designate one or more substitute or successor or additional
 27 attorneys in fact; ~~or~~

28 (12) to delegate any or all powers granted in a power of attorney
 29 pursuant to subsection (a) of K.S.A. 2003 Supp. 58-660, and amendments
 30 thereto; or

31 (13) to pay reasonable expenses incurred for the funeral and burial
 32 or other disposition of the body of the principal.

33 (g) No power of attorney, whether or not it delegates general powers,
 34 may delegate or grant power or authority to an attorney in fact to do or
 35 carry out any of the following actions for the principal:

36 (1) To make, publish, declare, amend or revoke a will for the
 37 principal;

38 (2) to make, execute, modify or revoke a declaration under K.S.A. 65-
 39 28,101 *et seq.*, and amendments thereto, for the principal or to make,
 40 execute, modify or revoke a do not resuscitate directive under K.S.A. 65-
 41 4941, and amendments thereto, for the principal or to make, execute,
 42 modify or revoke a durable power of attorney for health care decisions
 43 pursuant to K.S.A. 58-625, *et seq.*, and amendments thereto, for the

As Amended by House Committee

Session of 2003

HOUSE BILL No. 2293

By Committee on Judiciary

10. AN ACT concerning fees for services by sheriffs: amending K.S.A. 28-
11. 110, **and** 28-170 and ~~28-172a~~ and K.S.A. ~~[2002]~~ Supp. 60-2001 and 60-
12. 2003 and repealing the existing sections _____ 2003
13.

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

15. Section 1. K.S.A. 28-110 is hereby amended to read as follows: 28-

16. 110. The sheriffs of each county in the state shall charge ~~for the services~~ _____ the following fees
17. required by law to be performed by them ~~[the following fees:~~

18. Serving or executing and returning any writ, process, order or notice, ~~or~~ _____ [Delete

19. ~~tax warrant~~, including a copy of the same, whenever a copy is required

20. by law, except as otherwise provided, for the first person \$1.00 ~~\$10.00~~ _____ [\$5.00

21. ~~For each additional person~~50 ~~10.00~~ _____ [Delete

22. Serving warrants and making return thereof 1.00

23. Making arrests as law enforcement officer 1.00

24. Serving order of attachment, arrest or replevin and returning same 2.00

25. Making levy under execution 2.00

26. Appraisal of property 2.00

27. Return of "no property found" 2.00

28. ~~Return of "not found" each person~~ 1.00 _____ [Delete

29. Approving and returning undertaking bond or recognizance 1.00

30. Advertising property for sale 2.00

31. Offering for sale or selling property..... 2.50

32. Taking inventory of personal property, each day 10.00

33. Sheriff's deed and acknowledgment, to be paid out of the proceeds of the

34. sale of real estate conveyed..... 5.00

35. Issuing certificates of sale and recording same 2.00

36. Summoning talesman, each50

37. The sheriff shall charge, for witnesses whose attendance is procured un-

38. der attachment and who are unable to pay their fare, actual expenses and

39. mileage in an amount set in accordance with K.S.A. 75-3203a, and amend-

40. ments thereto, and rules and regulations adopted pursuant thereto. ~~The~~ _____ [Delete

41. ~~sheriff shall charge, for miles actually and necessarily traveled each way~~

42. ~~in serving or endeavoring to serve any writ, process, order, venire, notice~~

43. ~~or tax warrant, mileage in an amount set in accordance with K.S.A. 75-~~

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1. ~~§203a, and amendments thereto, and rules and regulations adopted pur-~~
2. ~~suant thereto. No mileage shall be charged when the distance does not~~
3. ~~exceed one mile. All fees provided by this section, except those expressly~~
4. ~~given to the sheriff, are to be paid into the county general fund. If the~~ [, process, order or notice

5. writ contains the names of more than one person, no ~~mileage~~ shall be [fee
6. taxed or allowed and no person shall be required to pay any ~~mileage~~ unless
7. at the time of making returns the sheriff makes and files with the returns,
8. or as a part thereof, a statement showing the ~~distance actually and nec-~~ [Delete

9. ~~essarily traveled in making service on the first person named by the sheriff~~
10. ~~and the distance actually and necessarily traveled from the place of mak-~~ [Delete
11. ~~ing the first service to the place of making service on the second person~~

12. named by the sheriff and so on for each person served. If more than one
13. process is served in the same case or on the same person, not requiring
14. more than one journey from the office, the sheriff shall charge ~~mileage~~ [a fee

15. for one service only. If more than one process for the same person, or in
16. the same case, is issued and is in the hands of the sheriff at one time, it
17. shall be the duty of the sheriff to make service of the processes, if possible,
18. on the one trip. Except as provided by K.S.A. 19-269, and amendments
19. thereto, the sheriff shall be reimbursed for the necessary transportation
20. and board expenses incurred while serving under requisition made by the
21. governor. [Where service is not affected or timely return made pursuant
to K.S.A. 60-312 or K.S.A. 61-3005, no fee shall be taxed or
allowed on subsequent alias, writ, process, order or notice as
required to effect service and the return of service.

22. Sec. 2. K.S.A. 28-170 is hereby amended to read as follows: 28-170.
23. The docket fee prescribed by K.S.A. 60-2001 and amendments thereto
24. ~~and the service of process fee~~ shall be the only costs assessed for services [and the fees for service of process,

25. of the clerk of the district court and the sheriff in any case filed under
26. chapter 60 of the Kansas Statutes Annotated. ~~For services in other matters~~ [or chapter 61
27. in which no other fee is prescribed by statute, the following fees shall be [, except that no fee shall be charged for an action filed under
28. charged and collected by the clerk. Only one fee shall be charged for each K.S.A. 60-3101 et seq., and under K.S.A. 60-31a01 et seq.,
29. bond, lien or judgment: and amendments thereto.

30. For filing, entering and releasing a bond, mechanic's lien, notice of
31. intent to perform, personal property tax judgment or any judgment
32. on which execution process cannot be issued..... \$5

33. For filing, entering and releasing a judgment of a court of this state
34. on which execution or other process can be issued 15

35. For a certificate, or for copying or certifying any paper or writ, such
36. fee as shall be prescribed by the district court.

37. The fees for entries, certificates and other papers required in
38. naturalization cases shall be those prescribed by the federal government
39. and, when collected, shall be disbursed as prescribed by the federal gov-
40. ernment. The clerk of the court shall remit to the state treasurer at least
41. monthly all moneys received from fees prescribed by subsection (a) or
42. or received for any services performed which may be required by law.
43. The state treasurer shall deposit the remittance in the state treasury and

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1. credit the entire amount to the state general fund.
2. (c) In actions pursuant to the Kansas code for care of children (K.S.A.
3. 38-1501 *et seq.* and amendments thereto), the Kansas juvenile justice
4. code (K.S.A. 38-1601 *et seq.* and amendments thereto), the act for treat-
5. ment of alcoholism (K.S.A. 65-4001 *et seq.* and amendments thereto), the
6. act for treatment of drug abuse (K.S.A. 65-5201 *et seq.* and amendments
7. thereto) or the care and treatment act for mentally ill persons (K.S.A.
8. ~~2000~~ Supp. 59-2945 *et seq.* and amendments thereto), the clerk shall

2003

9. charge an additional fee of \$1 which shall be deducted from the docket
10. fee and credited to the prosecuting attorneys' training fund as provided
11. in K.S.A. 28-170a and amendments thereto.

12. (d) In actions pursuant to the Kansas code for care of children (K.S.A.
13. 38-1501 *et seq.* and amendments thereto), the Kansas juvenile justice
14. code (K.S.A. 38-1601 *et seq.* and amendments thereto), the act for treat-
15. ment of alcoholism (K.S.A. 65-4001 *et seq.* and amendments thereto), the
16. act for treatment of drug abuse (K.S.A. 65-5201 *et seq.* and amendments
17. thereto) or the care and treatment act for mentally ill persons (K.S.A.

18. ~~2000~~ Supp. 59-2945 *et seq.* and amendments thereto), the clerk shall
19. charge an additional fee of \$.50 which shall be deducted from the docket
20. fee and credited to the indigents' defense services fund as provided in
21. K.S.A. 28-172b and amendments thereto.

22. ~~Sec. 3, K.S.A. 28-172a is hereby amended to read as follows: 28-~~
23. ~~172a. (a) Except as otherwise provided in this section, whenever the pros-~~
24. ~~ecuting witness or defendant is adjudged to pay the costs in a criminal~~
25. ~~proceeding in any county, a docket fee shall be taxed as follows:~~

26. On and after July 1, 1998:

27. Murder or manslaughter.....	\$164.50
28. Other felony.....	146.00
29. Misdemeanor.....	111.00
30. Forfeited recognizance.....	62.50
31. Appeals from other courts.....	62.50

32. (b) (1) ~~Except as provided in paragraph (2), in actions involving the~~
33. ~~violation of any of the laws of this state regulating traffic on highways~~
34. ~~(including those listed in subsection (e) of K.S.A. 8-2118, and amend-~~
35. ~~ments thereto), a cigarette or tobacco infraction, any act declared a crime~~
36. ~~pursuant to the statutes contained in chapter 32 of Kansas Statutes An-~~
37. ~~notated and amendments thereto or any act declared a crime pursuant~~
38. ~~to the statutes contained in article 8 of chapter 82a of the Kansas Statutes~~
39. ~~Annotated, and amendments thereto, whenever the prosecuting witness~~
40. ~~or defendant is adjudged to pay the costs in the action, a docket fee of~~
41. ~~\$54 shall be charged. When an action is disposed of under subsections~~
42. ~~and (b) of K.S.A. 8-2118 or subsection (f) of K.S.A. 79-3393, and~~
43. ~~amendments thereto, whether by mail or in person, the docket fee to be~~

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1. paid as court costs shall be \$54.

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

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

14. (d) Statutory charges for law library funds, the law enforcement train-
15. ing center fund, the prosecuting attorneys' training fund, the juvenile
16. detention facilities fund, the judicial branch education fund, the emer-
17. gency medical services operating fund and the judiciary technology fund
18. shall be paid from the docket fee; the family violence and child abuse and
19. neglect assistance and prevention fund fee shall be paid from criminal
20. proceedings docket fees. All other fees and expenses to be assessed as
21. additional court costs shall be approved by the court, unless specifically
22. fixed by statute. Additional fees shall include, but are not limited to, fees
23. for Kansas bureau of investigation forensic or laboratory analyses, fees for
24. detention facility processing pursuant to K.S.A. 12-16,119, and amend-
25. ments thereto, fees for the sexual assault evidence collection kit, fees for
26. conducting an examination of a sexual assault victim, fees for service of
27. process outside the state, witness fees, fees for transcripts and deposi-
28. tions, costs from other courts, doctors' fees and examination and evalu-
29. ation fees. No sheriff in this state shall charge any district court of this
30. state a fee or mileage for serving any paper or process.

31. (e) In each case charging a violation of the laws relating to parking
32. of motor vehicles on the statehouse grounds or other state-owned or
33. operated property in Shawnee county, Kansas, as specified in K.S.A. 75-
34. 4510a, and amendments thereto, or as specified in K.S.A. 75-4508, and
35. amendments thereto, the clerk shall tax a fee of \$2 which shall constitute
36. the entire costs in the case, except that witness fees, mileage and expenses
37. incurred in serving a warrant shall be in addition to the fee. Appearance
38. bond for a parking violation of K.S.A. 75-4508 or 75-4510a, and amend-
39. ments thereto, shall be \$3, unless a warrant is issued. The judge may
40. order the bond forfeited upon the defendant's failure to appear, and \$2
41. of any bond so forfeited shall be regarded as court costs.

42. Sec. 4. 3. K.S.A. 2002 Supp. 60-2001 is hereby amended to read as
43. follows: 60-2001. (a) Docket fee. Except as otherwise provided by law, no

Strike all on page 5

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1. ~~county general fund; and~~
 2. ~~(2) Five dollars shall be remitted to the state treasurer in ac-~~
 3. ~~cordance with the provisions of K.S.A. 75-4215, and amendments~~
 4. ~~thereto. Upon receipt of each such remittance, the state treasurer~~
 5. ~~shall deposit the entire amount in the state treasury to the credit~~
 6. ~~of the district court administration of service of process fee fund~~
 7. ~~which is hereby created. Expenditures from such fund shall be~~
 8. ~~made upon warrants of the director of accounts and reports issued~~
 9. ~~pursuant to vouchers approved by the chief judge of the judicial~~
 10. ~~district where such county is located and used for the expenses~~
 11. ~~incurred in administering the collection of the service of process~~
 12. ~~fee. The board of county commissioners shall provide adequate~~
 13. ~~funding for the clerk of the district court's office and such funds~~
 14. ~~shall not be used to supplant or reduce the amount of moneys~~
 15. ~~received by the clerk of the district court's office from the county~~
 16. ~~general fund. The docket fee shall be disbursed in accordance with~~
 17. ~~K.S.A. 20-362 and amendments thereto.~~

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

28. Sec. 5. 4. K.S.A. ~~[2002]~~ Supp. 60-2003 is hereby amended to read as
 29. follows: 60-2003. Items which may be included in the taxation of costs
 30. are:

- 31. (1) The docket fee as provided for by K.S.A. 60-2001, and amend-
 32. ments thereto.
- 33. (2) The mileage, fees, and other allowable expenses of the sheriff ~~or~~
 34. other officer ~~incurred in the service of process outside of this state or in~~
 35. effecting any of the provisional remedies authorized by this chapter.
- 36. (3) Publisher's charges in effecting any publication of notices author-
 37. ized by law.
- 38. (4) Statutory fees and mileage of witnesses attending court or the
 39. taking of depositions used as evidence.
- 40. (5) Reporter's or stenographic charges for the taking of depositions
 41. used as evidence.
- 42. (6) The postage fees incurred pursuant to K.S.A. 60-303 or subsec-
 43. tion (e) of K.S.A. 60-308, and amendments thereto.

Insert Sec. 3. K.S.A. 2003 Supp. 60-2001
 is hereby amended to read as follows: [see attached]

2003

[,
 [or private process server

Sec. 3. K.S.A. 2003 Supp. 60-2001 is hereby amended to read as follows: 60-2001. (a) Docket fee. Except as otherwise provided by law, no case shall be filed or docketed in the district court, whether original or appealed, without payment of a docket fee in the amount of \$106 during the period commencing July 1, 2003, and ending June 30, 2005, and \$105 on or after July 1, 2005, to the clerk of the district court.

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

(2) Form of affidavit. The affidavit provided for in this subsection shall be in the following form and attached to the petition:

State of Kansas, _____ County.

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

(c) Disposition of ~~docket fee. The docket fee~~ fees. The docket fees and the fees for service of process shall be the only costs assessed in each case for services of the clerk of the district court and the sheriff. For every person to be served by the sheriff, the persons requesting service of process shall provide proper payment to the clerk and the clerk of the district court shall forward the service of process fee to the sheriff in accordance with K.S.A. 28-110, and amendments thereto. The service of process fee, if paid by check or money order, shall be made payable to the sheriff. Such service of process fee shall be submitted by the sheriff at least monthly to the county treasurer for deposit in the county treasury and credited to the county general fund. The docket fee shall be disbursed in accordance with K.S.A. 20-362 and amendments thereto.

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

1. (7) Alternative dispute resolution fees shall include fees, expenses
2. and other costs arising from mediation, conciliation, arbitration, settle-
3. ment conferences or other alternative dispute resolution means, whether
4. or not such means were successful in resolving the matter or matters in
5. dispute, which the court shall have ordered or to which the parties have
6. agreed.

7. ~~(8) The mileage and fees of a private process server incurred in the~~ [Delete
8. ~~service of process or in effecting any of the provisional remedies author-~~
9. ~~ized by this chapter.~~

10. (9) Such other charges as are by statute authorized to be taxed as [(8)
11. costs.

12. Sec. 6: 5. K.S.A. 28-110; and 28-170 and 28-172a and K.S.A. [2002] 2003
13. Supp. 60-2001 and 60-2003 are hereby repealed.

14. Sec. 7: 6. This act shall take effect and be in force from and after its
15. publication in the statute book.

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6-7



KANSAS

KANSAS SENTENCING COMMISSION

Honorable Ernest L. Johnson, Chairman
District Attorney Paul Morrison, Vice Chairman
Patricia Ann Biggs, Executive Director

KATHLEEN SEBELIUS, GOVERNOR

MEMORANDUM

To: Duane A. Goossen, Director of the Budget
ATTN: Konnie Leffler

From: Patricia Biggs, Executive Director

Date: January 27, 2004

RE: Fiscal Note on HB 2525

SUMMARY OF BILL:

AN ACT concerning crimes and punishment; relating to criminal use of explosives; amending K.S.A. 2003 Supp. 21-3731 and repealing the existing section.

This proposed bill might have some impact upon the Kansas Sentencing Guidelines Act (KSGA).

This Bill would change the violation of 21-3731 (a) to a severity level 6, person felony and a violation of 21-3731 (b) (2) to a severity level 5, person felony.

Section 1 of this Bill amends K.S.A. 2003 Supp. 21-3731. **Criminal Use of Explosives.**

- (a) Criminal use of explosives is the possession, manufacture or transportation of commercial explosives, chemical compounds that form the explosives;... or any completed explosives devices commonly known as pipe bombs or molotov cocktails. This does not include class "c" fireworks legally obtained and transferred commercial explosives by licensed individuals and ammunition and commercially available loading powders and products used as ammunition.
- (b) (1) Criminal use of explosives defined in subsection (a) is a severity level 6, person felony.
(2) Criminal use of explosives defined in subsection (a) if: (A) the possession, manufacture or transportation is intended to be used to commit a crime or is delivered to another person with the knowledge that the other person intends to use it to commit a crime; (B) a public safety officer is put at risk to defuse the explosive; or (C) the explosive is put into a building where there is another human being, is a severity level 5, person felony.

IMPACT ON KANSAS SENTENCING COMMISSION:

Based on the current duties of the Kansas Sentencing Commission, the changes proposed in this bill will have no effect on the following:

1. The current operation or responsibilities of the Commission.
2. The current budget of the Commission.

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3-4-04
Attachment 7

700 SW Jackson Street, Suite 501, Topeka, KS

Voice 785-296-0923 Fax 785-296-0927 <http://www.accessl>

3. The current staffing and operating expenditure levels of the Commission.
4. The long-range fiscal estimates of the Commission.

IMPACT ON PRISON ADMISSIONS:

- Increase by an estimated: 1 in FY 2005, 2 in FY 2014
- Potential to increase but cannot quantify
- Decrease by an estimated:
- Potential to decrease but cannot quantify
- Remain the same

Note:

- The impact on prison admissions is based on FY 2003 prison and probation sentences. During FY 2003, six offenders were convicted of the crime of criminal use of explosives and sentenced to probation. Of these six:
 - five were classified as severity level 8 person felons and one was classified as a severity level 10 person felon.
 - The average underlying prison sentence for these six offenders is eight months.
- During FY 2003, two offenders convicted of the crime of criminal use of explosives violated their probation conditions.
 - One was under severity level 6 and sentenced to prison for 26 months.
 - One was under severity level 8 and was continued on probation.
- The increase in severity levels for criminal use of explosives will result in one additional prison admission by the year 2005 and 2 additional admissions by the year 2014. The details for the prison admission impact are contained in the table below.
- This impact assumes no increase in the prevalence, enforcement, or prosecution for criminal use of explosives beyond the one point five percent annual average growth rate assumed in the model.

Prison Admission Impact Assessment

JUNE OF EACH YEAR	CURRENT ADMISSION POLICY WITH NO CHANGE (PRE-HB 2525)	ADMISSIONS WITH SEVERITY LEVELS INCREASED (HB 2525 APPLIED)	ADDITIONAL ADMISSION(S)
2005	1	2	1
2006	1	3	2
2007	1	3	2
2008	1	3	2
2009	1	3	2
2010	1	3	2
2011	1	3	2
2012	1	3	2
2013	1	3	2
2014	1	3	2

IMPACT ON OFFENDER POPULATION LEVELS:

have impact on offender population as noted below

have the potential to impact offender population as noted below. **1 by 2005; 4 by 2014**

have minimal or no impact on offender population

have impact but cannot be quantified with data available.

Note:

The additional prison beds required are the result of an increase in the number of prison admissions (indicated in the table above) and an increase in the length of stay in prison for these offenders. Presented below are the assumptions, data findings, and prison bed impact for the changes proposed in this bill.

Key Assumptions:

- The target offenders as defined in this bill include any person who engages in criminal use of explosives.
- The impact on prison admissions is based on sentencing data from FY 2003 and includes both probation and prison sentences.
- The percentage of target inmate sentences served in prison is assumed to be 85 percent, which is consistent with the official projections released in September 2003 and Revised in November 2003.
- Increasing the severity levels for criminal use of explosives will increase the underlying prison sentence.
- Projected admission to prison is assumed to increase by an annual average of one point five percent. Bed space impacts are in relation to the baseline forecast produced in September 2003 and Revised in November 2003 by the Kansas Sentencing Commission.
- The severity level of criminal use of explosives defined in subsection (a) is to be raised from a severity level 8, person felony to a severity level 6, person felony.
 - It is assumed that the average underlying prison sentences from severity level 8 to severity level 6 will increase the length of sentences by 16 months.
 - It is assumed that a person convicted of the crime under severity level 6 will receive a probation sentence.
- The severity level of criminal use of explosives defined in subsection (a) (A), (B) or (C) increases from a severity level 6, person felony to a severity level 5, person felony.
 - It is assumed that the average underlying prison sentences from severity level 6 to severity level 5 will increase the length of sentences by 19 months.
 - It is assumed that a person convicted of the crime under severity level 5 will be sentenced to prison.

Findings:

- During FY 2003, six offenders convicted of the crime of criminal use of explosives were sentenced on probation.
 - Of this number, five offenders were classified as severity level 8, person felons and one was classified as severity level 10, person felon. The average length of underlying prison sentence for the six offenders is 8 months.
- During FY 2003, two offenders violated their probation conditions.
 - One was under severity level 6 and sentenced to prison with a 26 month sentence.
 - One was under severity level 8 and was continued on probation.

- The increase of the severity levels of criminal use of explosives will result in one additional prison admission by the year 2005 and 2 additional admissions by the year 2014.
- The impact of this bill will result in one additional prison bed by the year 2005 and 4 additional beds by the 2014.

Prison Bed Space Impact Assessment

June of Each Year	Current Beds Needed - No Policy Change	Severity Levels Increase - Number of Beds Needed	Additional Prison Beds
2005	1	2	1
2006	2	5	3
2007	2	5	3
2008	2	6	4
2009	2	5	3
2010	2	4	2
2011	2	6	4
2012	2	6	4
2013	2	6	4
2014	2	6	4

SUMMARY OF HB 2525 IMPACT:

- The impact of this bill will result in 1 additional prison admission by FY 2005 and 2 additional admissions by FY 2014.
- The impact of this bill will also result in the need for 1 additional prison bed by FY 2005 and 4 additional prison beds by FY 2014.



K A N S A S

JOSEPH P. ODLE
FIRE MARSHAL

OFFICE OF THE KANSAS STATE FIRE MARSHAL

KATHLEEN SEBELIUS
GOVERNOR

TESTIMONY ON HB 2525 SENATE JUDICIARY COMMITTEE

CONCERNING INCREASING SEVERITY LEVELS OF THE CRIMINAL USE OF EXPLOSIVES STATUTE

Date: March 3, 2004

By: Rose Rozmiarek
Chief of Investigations
Deputy State Fire Marshal

The office of the State Fire Marshal stands as a proponent of HB 2525. The legal use of commercial explosives have had an important place in our society in the areas of construction, development, and agricultural. We license all users, blasters, and storage facilities in the State of Kansas as well as Class 'B' fireworks. We do not want to restrict the legal use of these materials. But when these materials get into the hands of persons who are not properly trained or have criminal intentions the result can be devastating.

Explosives are deadly materials in the hands of the wrong people. Explosives are still and will remain the weapon on choice for terrorist, domestic and international. We have in the last few years tried and still are strengthening our explosive licensing statutes and regulations to assure the explosive materials are not getting into the wrong hands. We will be introducing more legislation this year addressing this issue. The Kansas State Fire Marshal's Office has also obtained federal grant money to assist in improving our licensing and information availability on explosives in the State of Kansas.

Increasing the severity level of the criminal use of explosives will only send a message to the persons who intend to commit this act that due to the devastating impact of the material or devise has, they will be punished properly.

We would also propose a language amendment to this bill to clarify other explosive devises that are being constructed and are very dangerous and destructive. People, including teenagers are constructing explosive devises from, what is known as common Class 'C', 1.4 fireworks. These fireworks are the type you can purchases during the forth

of July for kids to celebrate the holiday. One type of device law enforcement agencies in Kansas as well as across the nation are seeing is what is referred to as 'sparkler bombs'. These devices utilize sparklers taped together in confinement and once lit can have a devastating effect. We had one in July of 2002 move a 350 pound monument off of its pedestal. They can go off in the kids hand and cause major debilitating injuries.

We ask that you consider this language change to incorporate other potential materials that are being used to make explosive devices.

We encourage passage of this bill with the additional language change.

HOUSE BILL No. 2525

By Representative O'Neal

1-15

AN ACT concerning crimes and punishment; relating to criminal use of explosives; amending K.S.A. 2003 Supp. 21-3731 and repealing the existing section.

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

Section 1. K.S.A. 2003 Supp. 21-3731 is hereby amended to read as follows: 21-3731. (a) Criminal use of explosives is the possession, manufacture or transportation of commercial explosives; chemical compounds that form explosives; incendiary or explosive material, liquid or solid; detonators; blasting caps; military explosive fuse assemblies; squibs; electric match or functional improvised fuse assemblies; or any completed explosive devices commonly known as pipe bombs or molotov cocktails. For purposes of this section, explosives shall not include ~~class "c" fireworks,~~ legally obtained and transferred commercial explosives by licensed individuals, ~~and~~ ammunition, ~~and~~ commercially available loading powders and products used as ammunition, *and class "c" 1.4 fireworks unless the class "c" 1.4 fireworks are used for a purpose not intended by manufacturers of class "c" 1.4 fireworks.*

(b) (1) Criminal use of explosives as defined in subsection (a) is a severity level ~~6~~, person felony.

(2) Criminal use of explosives as defined in subsection (a) if: (A) The possession, manufacture or transportation is intended to be used to commit a crime or is delivered to another with knowledge that such other intends to use such substance to commit a crime; (B) a public safety officer is placed at risk to defuse such explosive; or (C) the explosive is introduced into a building in which there is another human being, is a severity level ~~6~~ 5, person felony.

Sec. 2. K.S.A. 2003 Supp. 21-3731 is hereby repealed.

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



**Leslie Kaufman, Director
Governmental Relations
Kansas Cooperative Council**

**Senate Judiciary Committee
March 3, 2004**

HB 2437 – Uniform Securities Act.

Chairman Vratil and members of the Senate Judiciary Committee. Thank you for the opportunity to appear today on behalf of the Kansas Cooperative Council (Council/KCC) regarding HB 2347, the Uniform Securities Act. I am Leslie Kaufman and I serve the Council as Director of Government Relations. The Council has a membership of 186 cooperative businesses. Together, they have a combined membership of nearly 200,000 Kansans.

At this point, the Council does not have an overall position on the bill, but there is one provision, which would change current law regarding cooperative instruments and negatively impact our co-op members. For us, the effect of this change came to light following the hearing earlier this year in House Judiciary Committee and our interest in this issue really centers on farmer cooperatives. It is clear that there was no intention to do any harm to the manner in which cooperatives are doing business in Kansas, but the language in the bill as it currently exists, will have negative impacts, no matter how unintentional.

We were able to raise our concern with Section 6 (8) (page 11, lines 11-16) as the House Committee worked the bill. We were unable to work out the precise language needed to address our issues, and not pose additional concerns for the Securities Commissioner's office, prior to the bill moving out of Committee and the House of Representatives. The Council, with the understanding of the House Judiciary Committee and the Commissioner's staff, did agree to allow the bill to move out of the House so as to not stall the process in the chamber of origin, with the caveat that we would work with the Commissioner's staff to develop a proposed solution to present on the Senate side.

The Council has spent a great deal of time working on language, and we believe the attached proposal will alleviate our concerns with the current language. Several

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versions for rewording paragraph (8) have gone back and forth between Commission staff and our General Counsel. We are satisfied with the language and it is our hope the Commissioner's staff will not find it objectionable.

Under the language originally proposed in HB 2347, if an out-of-state cooperative was organized under certain other state's governing statutes, they would have been able to recruit patron and "non-patron members" across the entire state of Kansas. Their ability to accept "non-patron members", regardless of county of residence, would give them an advantage in raising capital that Kansas cooperatives do not have. The possibility of out-of-state entities organizing as a "co-op", but being afforded a business advantage in this state that domestic cooperatives do not have is quite concerning to us.

The proposed new language (see attachment) will prevent this possibility from occurring. It allows our cooperative members to keep what we have now. The language will allow the issuance of instruments to members intrastate, and to any person intrastate but subject to the possible regulation of issues to non-members.

We appreciate the opportunity to share our concerns with you. We do respectfully request that you replace current Section 6 (8) with our suggested language or a mutually agreeable equivalent. Thank you for your consideration and we stand ready to work with you and the Securities Commissioner to remedy this concern.

**Kansas Cooperative Council
Proposed Amendment – HB 2347**

In HB 2347 as Amended by House Committee

Strike all of Section 6 (8) on page 11, lines 11-16 and replace with:

(8) Any stock or other security evidencing membership or ownership in, evidencing the right to patronize, issued in lieu of a cash patronage dividend by, or representing a debt of a cooperative organized under K.S.A. 17-1601 et seq., and amendments thereto, but the administrator, by rule or order, may require the filing of a notice and place conditions upon the exemption for sales of instruments to persons who are not members within the meaning of K.S.A. 17-1606, and amendments thereto.