

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on March 6, 2006 in Room 313-S of the Capitol.

All members were present except:

Kevin Yoder- excused
Marti Crow - excused
Michael Peterson- excused
Mike Kiegerl- excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Randy Hearrell, Kansas Judicial Council
Jane Hrabik, Clerk of the District Court, Twentieth Judicial District
Bob Nickleson, Kansas Judicial Council

Chairman O'Neal opened the hearing on **SB 40 - probate code; notice to surviving spouse; responsibility shifted from court to administrator, executor, petitioner or attorney representing such person.**

Randy Hearrell, Kansas Judicial Council, explained that the bill amends the probate statute dealing with notice to a surviving spouse regarding the spouse's elective share rights to require the notice be given by the administrator, executor, petitioner, rather than by the court. (Attachment 1)

Jane Hrabik, Clerk of the District Court, Twentieth Judicial District, appeared in support of the bill because it takes the responsibility of who sends the notice statement along with the copy of the will to another party instead of the court. (Attachment 2)

The hearing on **SB 40** was closed.

The hearing on **SB 354 - guardians and conservators, reports and accounting,** was opened.

Randy Hearrell, Kansas Judicial Council, appeared as the sponsor of the bill which amends the statute dealing with guardians and conservators to add the requirement that a voluntary conservatorship must file an annual report and accounting. (Attachment 3)

The hearing on **SB 354** was closed.

The hearing on **SB 355 - probate code; appeals,** was opened.

Bob Nickleson, Kansas Judicial Council, explained that the bill would clarify statutes dealing with appeals under Chapter 59 of the Kansas Statutes, including appeals from district magistrate judges to district judges and appeals from district court to appellate judges. These appeals may be taken up no later than 10 days from any final order involving Chapter 59 cases. Appeals from a district magistrate judge involving a decedent's estate may be taken no later than 30 days from the entry of the order. The bill would also raise the amount of a claim from \$500 to \$5,000 where any interested party is allowed to request the transfer of a case to a district court judge when the magistrate judge is scheduled to hear the case. (Attachment 4)

The hearing on **SB 355** was closed.

The hearing on **SB 550 - prescribing certain duties on judicial council to provide certain legal documents,** was opened.

Randy Hearrell, Kansas Judicial Council, stated that the proposed bill removes forms relating to the enforcement of county codes and resolutions, notices under the Eminent Domain Protection Act, and consent to medical care forms in Chapter 38 dealing with minors from the statute. It would become the responsibility of the Judicial Council to develop new forms and place them online. (Attachment 5)

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on March 6, 2006 in Room 313-S of the Capitol.

The hearing on SB 550 was closed.

SB 40 - probate code; notice to surviving spouse; responsibility shifted from court to administrator, executor, petitioner or attorney representing such person

Representative Owens made the motion to report SB 40 favorably for passage with the correct spelling of "waved" in line 31. Representative Davis seconded the motion. The motion carried.

SB 354 - guardians and conservators, reports and accounting

Representative Loyd made the motion to report SB 354 favorably for passage, and because of its non-controversial nature, be placed on the consent calendar. Representative Owens seconded the motion. The motion carried.

SB 550 - prescribing certain duties on judicial council to provide certain legal documents

Representative Pauls made the motion to report SB 550 favorably for passage, and because of its non-controversial nature, be placed on the consent calendar. Representative Kinzer seconded the motion. The motion carried.

SB 355 - probate code; appeals

Representative Loyd made the motion to report SB 355 favorably for passage. Representative Owens seconded the motion.

Representative Pauls made a substitute motion that there would be a presumption that the trial was on the record unless upon motion by any party the court determines the appeal should be de novo. The motion was seconded. The motion carried.

Representative Loyd made the motion to report SB 355 favorably for passage, as amended. Representative Owens seconded the motion. The motion carried.

SB 25 - terrorism & illegal use of weapons of mass destruction

Jill Wolters provided the committee with a balloon which would clarify the proposals in SB 25. (Attachment 6)

Representative Davis made the motion to adopt the balloon. Representative Watkins seconded the motion. The motion carried.

Representative Davis made the motion to report SB 25 favorably for passage, as amended. Representative Watkins seconded the motion. The motion carried.

SB 297 - sale of beer & wine by the drink on the state fairgrounds during the Kansas State Fair

Representative Roth made the motion to report SB 297 favorably for passage. Representative Watkins seconded the motion. The motion carried.

Committee minutes from January 26, 30 & 31 were distributed via e-mail. If no changes are requested by March 10th they will stand approved.

The committee meeting adjourned at 4:45 p.m. The next meeting was scheduled for Tuesday, March 7 at 3:30 p.m. in room 313-S.



KANSAS JUDICIAL COUNCIL

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MEMORANDUM

TO: House Judiciary Committee

FROM: Kansas Judicial Council - Randy M. Hearrell

DATE: March 6, 2006

RE: 2005 SB 40 Relating to Notice of Elective Share Rights of Surviving Spouse

In 2005, the Office of Judicial Administration, at the request of the court clerks, introduced SB 40. SB 40 amends K.S.A. 59-2233 to provide that the notice which informs the surviving spouse of his or her elective share rights shall be given by the administrator, executor, petitioner or attorney, rather than by the court. The Judicial Council was requested by Senate Judiciary Chair Vratil to study Senate Bill 40.

The Judicial Council Probate Law Advisory Committee reviewed SB 40 and agrees with the clerk's concept that the notice should be given by the administrator, executor, petitioner or affiant, rather than by the court. However, the Judicial Council proposed amendments to the bill, which were adopted by the Senate Judiciary Committee, that accomplished the purpose of the bill using slightly different language.

In addition to amendment of existing K.S.A. 59-2233, the Committee proposed, and the Senate adopted, a new subsection (b) which addresses a different issue. In the situation in which the surviving spouse is the administrator, executor, petitioner or affiant the new subsection allows the surviving spouse to acknowledge by pleading or affidavit that he or she is aware of elective share rights and eliminates the necessity of the surviving spouse sending the elective share notice to themselves.

House Judiciary

Date 3-6-06

Attachment # 1

March 6, 2006

To: House Judiciary Committee

**Senate Bill 40
Notice to Surviving Spouse**

Thank you for allowing me as a representative of the Kansas Association of District Court Clerks and Administrators to speak to you today concerning Senate Bill 40 relating to the Notice to Surviving Spouse in K.S.A. 59-2233.

Our purpose is to change the responsibility as to who sends the notice statement along with a copy of the will. We believe the responsibility should be the administrator filing on behalf of his or her client as they are representing the surviving spouse and have the necessary information to follow through with this notice.

Therefore, we are requesting that K.S.A. 59-618a be amended as written in the bill.

Thank you for your time and allowing us to appear before you today. I will be happy to answer any questions that you may have regarding this bill.

Jane Hrabik
Clerk of the District Court
Twentieth Judicial District
Rice County, Kansas

House Judiciary

Date 3-6-06

Attachment # 2



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MEMORANDUM

TO: House Judiciary Committee

FROM: Kansas Judicial Council - Randy M. Hearrell

DATE: March 6, 2006

RE: 2006 SB 354 Relating to Guardians and Conservators

K.S.A. 59-3083 is the section of the Act for Obtaining a Guardian or Conservator or Both that relates to the duty of a guardian or conservator to file annual reports and accountings. This covers conservators for adults with impairments, for minors, for minors with impairments, for persons adjudged impaired in another state and for ancillary conservatorships.

What is not covered in the statute, and needs to be, is reference to K.S.A. 59-3057 which is the statute relating to the appointment of a voluntary conservator. This amendment corrects an omission in the act. With this amendment the act provides that voluntary conservators are subject to the same duty to file annual reports and accountings as all other conservators.

SB 354 was on the consent calendar in the senate.

House Judiciary

Date 3-6-06

Attachment # 3



KANSAS JUDICIAL COUNCIL

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MEMORANDUM

TO: House Judiciary Committee
FROM: Kansas Judicial Council
DATE: March 6, 2006
RE: 2006 SB 355

The proposed amendments in SB 355 were drafted in response to issues raised by members of the Judicial Council Guardianship and Conservatorship Advisory Committee regarding appeals in cases under Chapter 59 of the Kansas Statutes Annotated. One issue is that certain appellants, like proposed wards or conservatees, are not in a position to get a bond and perfect an appeal. Another issue raised is that stays pending appeal are not appropriate in certain cases, such as a guardianship in which the proposed ward needs personal protection or where care and treatment is required.

The Committee discussed various ways of addressing these concerns, debating whether to propose a minor "patch" or a more thorough revision. Important to these discussions was the unanimous agreement that, as currently written, the applicability of K.S.A. 59-2401 is unclear. The statute originally dealt with appeals from probate court to district court. That language was amended in 1976 following court unification in Kansas. As it stands now, it is not clear whether the statutory language applies to appeals from magistrate to district court, district court to appellate court, or both. See *Matter of Estate of Winslow*, 21 Kan.App.2d 691, 906 P.2d 182 (1995). The Committee discussed how this lack of clarity has led to the application of K.S.A. 59-2407 to appeals from district court, when such appeals should be governed by K.S.A. 60-2101 *et seq.* See *In the Matter of the Adoption of Baby Boy N*, 19 Kan.App.2d 574, 874 P.2d 680 (1994).

In determining the structure of the proposed amendments, the Committee reviewed how appeals are handled in other chapters of the Kansas Statutes Annotated. The Committee specifically looked at Chapter 38 and incorporated some of that chapter's direct method of separately handling appeals from magistrate judges to district court and clearly stating that appeals from district court are governed by Article 21 of Chapter 60 of the Kansas Statutes Annotated. The Committee also separated cases involving a decedent's estate from other cases arising under other articles of Chapter 59.

The following are the Committee's comments to the proposed amendments in the bill:

House Judiciary

Date 3-6-06

Attachment # 4

Comment to Section 1.

This proposed statute is new and is intended to apply to appeals in all cases arising under Chapter 59, other than cases involving a decedent's estate. The Committee determined that these cases require separate treatment with shorter time frames and quicker resolution. As in the proposed changes to K.S.A. 59-2401, there are separate provisions for appeals from magistrate judges [subsection (a)] and appeals from district court [subsection (b)]. The list of proceedings is different because magistrate judges do not have jurisdiction to hear cases under the sexually violent predator act (K.S.A. 59-29a01 et seq. and amendments thereto).

Comment to Section 2.

The proposed changes to the statute's title and subsection (a) achieve two objectives. The new language makes it clear that this particular section applies only to appeals from a magistrate judge to a district judge and only to cases involving decedent's estates. The dollar amount in subsection (6) was raised from \$500 to \$5,000 on the rationale that K.S.A. 59-2237(c), which has also been increased over the years (from \$200 to \$1,500 in 1987 and then to \$5,000 in 2000), allows payment by an executor or administrator of amounts up to \$5,000 without a hearing. Payments made pursuant to K.S.A. 59-2237(c) are part of the final accounting and are reviewable by the court and interested parties at that time. The court's approval of a final accounting would be appealable pursuant to subsections (11), (12) or (21) of K.S.A. 59-2401 as amended above.

Deleted subsection (b) dealt with the requirement of appeal bonds, which is now covered in new subsection (d) below. Deleted subsection (c), which dealt with the applicability of chapter 60, has been modified and now appears as subsection (b), which clarifies that chapter 60 governs all appeals from district court to an appellate court.

New subsection (c) leaves orders in place pending appeals, although if warranted, the court has discretion to modify the situation by issuing temporary orders. The Committee believes this allows the court to ensure that no party loses necessary protections when an appeal is filed.

New subsection (d) replaces the language relating to bonds of former subsection (b) and now includes judgments within the bonding provisions.

Comment to Section 3.

As in K.S.A. 59-2401(a)(6), the dollar amount in subsection (3) was raised from \$500 to \$5,000 on the rationale that K.S.A. 59-2237(c), which has also been raised over the years (from \$200 to \$1,500 in 1987 and then to \$5,000 in 2000), allows payment by an executor or administrator of amounts up to \$5,000 without a hearing.

Comment to Section 4.

The restrictive phrase was added to the beginning of this subsection to allow the judge to have the discretion to try the case on the record as provided in proposed K.S.A. 59-2401a(a).

The Committee determined that the last paragraph of this section is not necessary. Jury trial rights are established within each code, and the provision regarding advisory juries and referees is not consistent with modern practice and can safely be omitted.

Comment to Section 5.

K.S.A. 59-2407 was repealed because it is no longer necessary due to the provisions in proposed K.S.A. 59-2401(c).

SECTIONS NOT AMENDED

Several sections of the existing statutes contained in Chapter 59, Article 24 are not proposed to be amended. They are included with this testimony to provide the Committee with a complete picture of how the sections work together.

59-2402. District magistrate judges; certification of questions outside judge's jurisdiction. In any proceeding pending in the district court before a district magistrate judge, when it appears that a decision upon any question of which such judge does not have jurisdiction is necessary to a full determination of the proceeding, such question shall be submitted to the chief judge. The chief judge may assign the entire case to a district judge or may assign just the question to a district judge for determination, after which the case may be reassigned to the district magistrate judge.

59-2402b. Same; assignment of case or specific issue. Upon the filing of such request the chief judge may assign the case in its entirety to a district judge or only for a determination of the specific issues raised. If the chief judge assigns only for determination of specific issues, the case may be reassigned to the district magistrate judge. The determination of issues shall be as on appeal as provided in K.S.A. 59-2408 and amendments thereto.

59-2402d. Transfer of trust estates from district magistrate judge. When a trust estate is created by a will admitted to probate by order of any district magistrate judge of this state, any beneficiary or the trustee of such trust estate may at any time file a petition requesting the transfer of such trust estate to the chief judge for assignment to a district judge. Notice shall be given as ordered by the court, if notice is found by the court to be necessary. Upon the filing of such request, the district magistrate judge shall transfer the file in the estate, or so much thereof as may be necessary for a proper administration of the trust estate, to the chief judge. Appeals from judgments and orders of a district judge made pursuant to this section may be taken as appeals in other civil cases.

59-2403. Venue. An appeal taken from any order, judgment, decree or decision (other than one determining or refusing to determine venue or changing or refusing to change venue) made by a district magistrate judge before a change of venue shall be taken to a district judge of the county to which the change was made.

59-2404. Appeals from district magistrate judges; appeal not abridged by failure to defend. The right of appeal from any order, judgment, decree or decision of a district magistrate judge in an action pursuant to this chapter shall not be denied nor abridged for failure of the party appealing to present his or her defenses to or to appear before the district magistrate judge.

59-2409. Remanding appealed case to district magistrate judge. Upon determination of an appeal from an order, judgment, decree or decision of a district magistrate judge, the judge determining such appeal may remand the case to the district magistrate judge, who shall proceed in accordance therewith.



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MEMORANDUM

TO: House Judiciary Committee

FROM: Kansas Judicial Council - Randy M. Hearrell

DATE: March 6, 2006

RE: 2006 SB 550

The Judicial Council has undertaken a project to remove legal forms from the statute books, make the forms available on the internet and include the forms in a publication entitled *Kansas Legal Forms*. Last year the Legislature passed SB 258 which removed legal forms from K.S.A. Chapters 48-64. Recently volumes 4 and 4A of the Kansas Statutes Annotated were published without the forms. In June of 2005 the Judicial Council posted updated versions of the removed forms on its website.

The Judicial Council recognizes that legal forms which appear in the statute books are often not kept up to date and also present a difficult printing task for the Revisor of Statutes. The Council has experience preparing and making available forms as directed by statute.

Examples of the forms the Judicial Council prepares may be found on the Council website in such areas as small claims, protection from abuse, protection from stalking, chapter 61 garnishment, and chapter 61 garnishment.

Senate Bill 550 removes forms relating to enforcement of county codes and resolutions, notice under the Eminent Domain Procedure Act, and consent to medical care for minors from the statutes.

House Judiciary

Date 3-6-06
Attachment # 5

As Amended by Senate Committee

Session of 2005

SENATE BILL No. 25

By Joint Committee on Kansas Security

1-10

10 AN ACT concerning crimes, criminal procedure and punishment; relat-
11 ing to terrorism and illegal use of weapons of mass destruction; amend-
12 ing K.S.A. 21-3301, **21-3302, 21-3303** and 22-2515 and K.S.A. 2004
13 Supp. 21-3106, 21-4706, ~~22-3101 and 60-4104~~ and repealing the ex-
14 isting sections.

.

and 60-4104

2005

and

15
16 *Be it enacted by the Legislature of the State of Kansas:*
17 New Section 1. (a) Terrorism is the commission of, the attempt to
18 commit or the conspiracy to commit any felony with the intent to intimid-
19 ate or coerce the civilian population, influence government policy by
20 intimidation or coercion or to affect the operation of any unit of
21 government.
22 (b) Terrorism is an off-grid person felony ~~and the sentence for ter-~~
23 ~~rorism shall not be subject to statutory provisions for suspended sentence,~~
24 ~~community work service or probation.~~
25 (c) The provisions of subsection ~~(d)~~ (c) of K.S.A. 21-3301, and
26 amendments thereto, shall not apply to a violation of attempting to com-
27 mit the crime of terrorism pursuant to this section. **The provisions of**
28 **subsection (c) of K.S.A. 21-3302, and amendments thereto, shall not**
29 **apply to a violation of conspiracy to commit the crime of terrorism**
30 **pursuant to this section. The provisions of subsection (d) of K.S.A.**
31 **21-3303, and amendments thereto, shall not apply to a violation of**
32 **criminal solicitation to commit the crime of terrorism pursuant to**
33 **this section.**

34 New Sec. 2. (a) The illegal use of weapons of mass destruction is:
35 (1) Intentionally, knowingly and without lawful authority, developing,
36 producing, stockpiling, transferring, acquiring, retaining or possessing
37 any:
38 (A) Biological agent, toxin or delivery system for use as a weapon;
39 (B) chemical weapon; or
40 (C) nuclear materials or nuclear byproduct materials for use as a
41 weapon;
42 (2) knowingly assisting a foreign state or any organization to do any
43 such activities as specified in paragraph (1); or

House Judiciary
Date 3-6-06
Attachment # 6

1 (3) attempting, threatening or conspiring to do any such activities as
2 specified in paragraph (1) or (2).

3 (b) ~~Illegal use of weapons of mass destruction is an off-grid person
4 felony and the sentence for illegal use of weapons of mass destruction
5 shall not be subject to the statutory provisions for suspended sentence,
6 community work service or probation.~~

7 (c) The provisions of subsection ~~(d)~~ (c) of K.S.A. 21-3301, and
8 amendments thereto, shall not apply to a violation of attempting to com-
9 mit the crime of illegal use of weapons of mass destruction pursuant to
10 this section. ***The provisions of subsection (c) of K.S.A. 21-3302, and
11 amendments thereto, shall not apply to a violation of conspiracy to
12 commit the crime of illegal use of weapons of mass destruction pur-
13 suant to this section. The provisions of subsection (d) of K.S.A. 21-
14 3303, and amendments thereto, shall not apply to a violation of
15 criminal solicitation to commit the crime of illegal use of weapons
16 of mass destruction pursuant to this section.***

17 (d) The following shall not be prohibited under the provisions of this
18 section:

19 (1) Any peaceful purpose related to an industrial, agricultural, re-
20 search, medical or pharmaceutical activity or other activity;

21 (2) any purpose directly related to protection against toxic chemicals
22 and to protection against chemical weapons;

23 (3) any military purpose of the United States that is not connected
24 with the use of a chemical weapon or that is not dependent on the use
25 of the toxic or poisonous properties of the chemical weapon to cause
26 death or other harm;

27 (4) any law enforcement purpose, including any domestic riot control
28 purpose and including imposition of capital punishment; or

29 (5) any individual self-defense device, including those using a pepper
30 spray or chemical mace.

31 (e) As used in this section:

32 (1) "Biological agent" means any microorganism, virus, infectious
33 substance or biological product that may be engineered as a result of
34 biotechnology, or any naturally occurring or bioengineered component of
35 any such microorganism, virus, infectious substance, or biological prod-
36 uct, capable of causing:

37 (A) Death, disease or other biological malfunction in a human, an
38 animal, a plant or another living organism;

39 (B) deterioration of food, water, equipment, supplies or material of
40 any kind; or

41 (C) deleterious alteration of the environment;

42 (2) "chemical weapon" means the following together or separately:

43 (A) A toxic chemical and its precursors, except where intended for a

- 1 purpose not prohibited under this section, as long as the type and quantity
2 is consistent with such a purpose;
- 3 (B) a munition or device, specifically designed to cause death or other
4 harm through toxic properties of those toxic chemicals specified in sub-
5 paragraph (A), which would be released as a result of the employment of
6 such munition or device; or
- 7 (C) any equipment specifically designed for use directly in connection
8 with the employment of munitions or devices specified in subparagraph
9 (B);
- 10 (3) “key component of a binary or multicomponent chemical system”
11 means the precursor which plays the most important role in determining
12 the toxic properties of the final product and reacts rapidly with other
13 chemicals in the binary or multicomponent system;
- 14 (4) “delivery system” means:
- 15 (A) Any apparatus, equipment, device or means of delivery specifi-
16 cally designed to deliver or disseminate a biological agent, toxin or vector;
17 or
- 18 (B) any vector;
- 19 (5) “for use as a weapon” does not include the development, pro-
20 duction, transfer, acquisition, retention or possession of any biological
21 agent, toxin or delivery system for prophylactic, protective or other peace-
22 ful purposes;
- 23 (6) “nuclear material” means material containing any:
- 24 (A) Plutonium;
- 25 (B) uranium not in the form of ore or ore residue that contains the
26 mixture of isotopes as occurring in nature;
- 27 (C) enriched uranium, defined as uranium that contains the isotope
28 233 or 235 or both in such amount that the abundance ratio of the sum
29 of those isotopes to the isotope 238 is greater than the ratio of the isotope
30 235 to the isotope 238 occurring in nature; or
- 31 (D) uranium 233;
- 32 (7) “nuclear byproduct material” means any material containing any
33 radioactive isotope created through an irradiation process in the operation
34 of a nuclear reactor or accelerator;
- 35 (8) “precursor” means any chemical reactant which takes part at any
36 stage in the production by whatever method of a toxic chemical. The term
37 includes any key component of a binary or multicomponent chemical
38 system;
- 39 (9) “toxic chemical” means any chemical which through its chemical
40 action on life processes can cause death, temporary incapacitation or per-
41 manent harm to humans or animals. The term includes all such chemicals,
42 regardless of their origin or of their method of production, and regardless
43 of whether they are produced in facilities, in munitions or elsewhere;

6-4

1 (10) "toxin" means the toxic material of plants, animals, microorgan-
2 isms, viruses, fungi, or infectious substances, or a recombinant molecule,
3 whatever its origin or method of production, including:

4 (A) Any poisonous substance or biological product that may be en-
5 gineered as a result of biotechnology produced by a living organism; or

6 (B) any poisonous isomer or biological product, homolog or derivative
7 of such a substance; and

8 (11) "vector" means a living organism or molecule, including a re-
9 combinant molecule, or biological product that may be engineered as a
10 result of biotechnology, capable of carrying a biological agent or toxin to
11 a host.

12 New Sec. 3. (a) It is unlawful for any person knowingly or intention-
13 ally to receive or acquire property, or engage in transactions involving
14 property, for the purpose of committing or furthering the commission of
15 any violation of section 1 or section 2, and amendments thereto. The
16 provisions of this subsection do not apply to any transaction between an
17 individual and that individual's counsel necessary to preserve that indi-
18 vidual's right to representation, as guaranteed by section 10 of the bill of
19 rights of the constitution of the state of Kansas and by the sixth amend-
20 ment to the United States constitution. This exception does not create
21 any presumption against or prohibition of the right of the state to seek
22 and obtain forfeiture of any proceeds derived from a violation of section
23 1 or section 2, and amendments thereto.

24 (b) It is unlawful for any person knowingly or intentionally to give,
25 sell, transfer, trade, invest, conceal, transport or maintain an interest in
26 or otherwise make available any property which that person knows is
27 intended to be used for the purpose of committing or furthering the
28 commission of any violation of section 1 or section 2, and amendments
29 thereto.

30 (c) It is unlawful for any person knowingly or intentionally to direct,
31 plan, organize, initiate, finance, manage, supervise or facilitate the trans-
32 portation or transfer of property known to be for the purpose of com-
33 mitting or furthering the commission of section 1 or section 2, and amend-
34 ments thereto.

35 (d) It is unlawful for any person knowingly or intentionally to conduct
36 a financial transaction involving property for the purpose of committing
37 or furthering the commission of any violation of section 1 or section 2,
38 and amendments thereto, when the transaction is designed in whole or
39 in part to conceal or disguise the nature, location, source, ownership or
40 control of the property known to be for the purpose of committing or
41 furthering the commission of any violation of section 1 or section 2, and
42 amendments thereto, or to avoid a transaction reporting requirement un-
43 der state or federal law.

1 (e) A person who violates this section is guilty of a severity level 1,
2 person felony.

3 (f) As used in this section:

4 (1) "Property" means anything of value, and includes any interest in
5 property, including any benefit, privilege, claim or right with respect to
6 anything of value, whether real or personal, tangible or intangible;

7 (2) "transaction" includes a purchase, sale, trade, loan, pledge, in-
8 vestment, gift, transfer, transmission, delivery, deposit, withdrawal, pay-
9 ment, transfer between accounts, exchange of currency, extension of
10 credit, purchase, or sale of any monetary instrument, use of a safe deposit
11 box, or any other acquisition or disposition of property whatever means
12 effected.

13 Sec. 4. ~~K.S.A. 2004 Supp. 21-3106 is hereby amended to read as~~
14 ~~follows: 21-3106. (1) A prosecution for murder, terrorism or illegal use of~~
15 ~~weapons of mass destruction may be commenced at any time.~~

16 (2) ~~Except as provided by subsections (7) and (9), a prosecution for~~
17 ~~any of the following crimes must be commenced within five years after~~
18 ~~its commission if the victim is less than 16 years of age: (a) Indecent~~
19 ~~liberties with a child as defined in K.S.A. 21-3503 and amendments~~
20 ~~thereto; (b) aggravated indecent liberties with a child as defined in K.S.A.~~
21 ~~21-3504 and amendments thereto; (c) enticement of a child as defined in~~
22 ~~K.S.A. 21-3509 and amendments thereto; (d) indecent solicitation of a~~
23 ~~child as defined in K.S.A. 21-3510 and amendments thereto; (e) aggra-~~
24 ~~vated indecent solicitation of a child as defined in K.S.A. 21-3511 and~~
25 ~~amendments thereto; (f) sexual exploitation of a child as defined in K.S.A.~~
26 ~~21-3516 and amendments thereto; or (g) aggravated incest as defined in~~
27 ~~K.S.A. 21-3603 and amendments thereto.~~

28 (3) ~~Except as provided in subsection (9), a prosecution for any crime~~
29 ~~must be commenced within 10 years after its commission if the victim is~~
30 ~~the Kansas public employees retirement system.~~

31 (4) ~~Except as provided by subsections (7) and (9), a prosecution for~~
32 ~~rape, as defined in K.S.A. 21-3502 and amendments thereto, or aggra-~~
33 ~~vated criminal sodomy, as defined in K.S.A. 21-3506 and amendments~~
34 ~~thereto, must be commenced within five years after its commission.~~

35 (5) ~~Except as provided in subsection (9), a prosecution for any crime~~
36 ~~found in the Kansas medicaid fraud control act must be commenced~~
37 ~~within five years after its commission.~~

38 (6) ~~Except as provided by subsection (9), a prosecution for the crime~~
39 ~~of arson, as defined in K.S.A. 21-3718 and amendments thereto, or ag-~~
40 ~~gravated arson, as defined in K.S.A. 21-3719 and amendments thereto,~~
41 ~~must be commenced within five years after its commission.~~

42 (7) (a) ~~Except as provided in subsection (9), a prosecution for any~~
43 ~~offense provided in subsection (2) or a sexually violent offense as defined~~

1 in K.S.A. 22-3717, and amendments thereto, must be commenced within
2 the limitation of time provided by the law pertaining to such offense or
3 one year from the date on which the identity of the suspect is conclusively
4 established by DNA testing, whichever is later.

5 (b) For purposes of this section, "DNA" means deoxyribonucleic
6 acid.

7 (8) Except as provided by subsection (9), a prosecution for any crime
8 not governed by subsections (1), (2), (3), (4), (5), (6) and (7) must be
9 commenced within two years after it is committed.

10 (9) The period within which a prosecution must be commenced shall
11 not include any period in which:

12 (a) The accused is absent from the state;

13 (b) the accused is concealed within the state so that process cannot
14 be served upon the accused;

15 (c) the fact of the crime is concealed;

16 (d) a prosecution is pending against the defendant for the same con-
17 duct, even if the indictment or information which commences the pros-
18 ecution is quashed or the proceedings thereon are set aside, or are re-
19 versed on appeal;

20 (e) an administrative agency is restrained by court order from inves-
21 tigating or otherwise proceeding on a matter before it as to any criminal
22 conduct defined as a violation of any of the provisions of article 41 of
23 chapter 25 and article 2 of chapter 46 of the Kansas Statutes Annotated
24 which may be discovered as a result thereof regardless of who obtains
25 the order of restraint; or

26 (f) whether or not the fact of the crime is concealed by the active act
27 or conduct of the accused, there is substantially competent evidence to
28 believe two or more of the following factors are present: (i) The victim
29 was a child under 15 years of age at the time of the crime; (ii) the victim
30 was of such age or intelligence that the victim was unable to determine
31 that the acts constituted a crime; (iii) the victim was prevented by a parent
32 or other legal authority from making known to law enforcement author-
33 ities the fact of the crime whether or not the parent or other legal au-
34 thority is the accused; and (iv) there is substantially competent expert
35 testimony indicating the victim psychologically repressed such witness'
36 memory of the fact of the crime, and in the expert's professional opinion
37 the recall of such memory is accurate and free of undue manipulation;
38 and substantial corroborating evidence can be produced in support of the
39 allegations contained in the complaint or information but in no event may
40 a prosecution be commenced as provided in this section later than the
41 date the victim turns 28 years of age. Corroborating evidence may in-
42 clude, but is not limited to, evidence the defendant committed similar
43 acts against other persons or evidence of contemporaneous physical man-

1 ifestations of the crime. "Parent or other legal authority" shall include
2 but not be limited to natural and stepparents, grandparents, aunts, uncles
3 or siblings.

4 (10) An offense is committed either when every element occurs, or,
5 if a legislative purpose to prohibit a continuing offense plainly appears,
6 at the time when the course of conduct or the defendant's complicity
7 therein is terminated. Time starts to run on the day after the offense is
8 committed.

9 (11) A prosecution is commenced when a complaint or information
10 is filed, or an indictment returned, and a warrant thereon is delivered to
11 the sheriff or other officer for execution. No such prosecution shall be
12 deemed to have been commenced if the warrant so issued is not executed
13 without unreasonable delay.

KSA 2005 Supp. 21-3106 [see attached]

14 Sec. 5. K.S.A. 21-3301 is hereby amended to read as follows: 21-
15 3301. (a) An attempt is any overt act toward the perpetration of a crime
16 done by a person who intends to commit such crime but fails in the
17 perpetration thereof or is prevented or intercepted in executing such
18 crime.

19 (b) It shall not be a defense to a charge of attempt that the circum-
20 stances under which the act was performed or the means employed or
21 the act itself were such that the commission of the crime was not possible.

22 (c) An attempt to commit an off-grid felony shall be ranked at non-
23 drug severity level 1. An attempt to commit any other nondrug felony
24 shall be ranked on the nondrug scale at two severity levels below the
25 appropriate level for the underlying or completed crime. The lowest se-
26 verity level for an attempt to commit a nondrug felony shall be level 10.
27 **The provisions of this subsection shall not apply to a violation of**
28 **attempting to commit the crime of terrorism pursuant to section 1,**
29 **and amendments thereto, or of illegal use of weapons of mass de-**
30 **struction pursuant to section 2, and amendments thereto.**

31 (d) An attempt to commit a felony which prescribes a sentence on
32 the drug grid shall reduce the prison term prescribed in the drug grid
33 block for an underlying or completed crime by six months. ~~The provisions~~
34 ~~of this subsection shall not apply to a violation of attempting to commit~~
35 ~~the crime of terrorism pursuant to section 1, and amendments thereto, or~~
36 ~~of illegal use of weapons of mass destruction pursuant to section 2, and~~
37 ~~amendments thereto.~~

38 (e) An attempt to commit a class A person misdemeanor is a class B
39 person misdemeanor. An attempt to commit a class A nonperson mis-
40 demeanor is a class B nonperson misdemeanor.

41 (f) An attempt to commit a class B or C misdemeanor is a class C
42 misdemeanor.

43 Sec. 6. K.S.A. 21-3302 is hereby amended to read as follows:

Sec. 4. K.S.A. 2005 Supp. 21-3106 is hereby amendment to read as follows: 21-3106. (1) A prosecution for murder, terrorism or illegal use of weapons of mass destruction may be commenced at any time.

(2) Except as provided in subsection (5), a prosecution for any crime must be commenced within 10 years after its commission if the victim is the Kansas public employees retirement system.

(3) (a) Except as provided in subsection (5), a prosecution for a sexually violent offense as defined in K.S.A. 22-3717, and amendments thereto, must be commenced within the limitation of time provided by the law pertaining to such offense or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later.

(b) For purposes of this section, "DNA" means deoxyribonucleic acid.

(4) Except as provided by subsection (5), a prosecution for any crime, as defined in K.S.A. 21-3105, and amendments thereto, not governed by subsections (1), (2) or (3) must be commenced within five years after it is committed.

(5) The period within which a prosecution must be commenced shall not include any period in which:

(a) The accused is absent from the state;

(b) the accused is concealed within the state so that process cannot be served upon the accused;

(c) the fact of the crime is concealed;

(d) a prosecution is pending against the defendant for the same conduct, even if the indictment or information which commences the prosecution is quashed or the proceedings thereon are set aside, or are reversed on appeal;

(e) an administrative agency is restrained by court order from investigating or otherwise proceeding on a matter before it as to any criminal conduct defined as a violation of any of the provisions of article 41 of chapter 25 and article 2 of chapter 46 of the Kansas Statutes Annotated which may be discovered as a result thereof regardless of who obtains the order of restraint; or

(f) whether or not the fact of the crime is concealed by the active act or conduct of the accused, there is substantially competent evidence to believe two or more of the following factors are present: (i) The victim was a child under 15 years of age at the time of the crime; (ii) the victim was of such age or intelligence that the victim was unable to determine that the acts constituted a crime; (iii) the victim was prevented by a parent or other legal authority from making known to law enforcement authorities the fact of the crime whether or not the parent or other legal authority is the accused; and (iv) there is substantially competent expert testimony indicating the victim psychologically repressed such witness' memory of the fact of the crime, and in the expert's professional opinion the recall of such memory is accurate and free of undue manipulation, and substantial corroborating evidence can be produced in support of the allegations contained in the complaint or information but in no event may a prosecution be commenced as provided in this section later than the date the victim turns 28 years of age. Corroborating evidence may include, but is not limited to, evidence the defendant committed similar acts against other persons or evidence of contemporaneous physical manifestations of the crime. "Parent or other legal authority" shall include but not be limited to natural and stepparents, grandparents, aunts, uncles or siblings.

(6) An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing offense plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

(7) A prosecution is commenced when a complaint or information is filed, or an indictment returned, and a warrant thereon is delivered to the sheriff or other officer for execution. No such prosecution shall be deemed to have been commenced if the warrant so issued is not executed without unreasonable delay.

1 **21-3302. (a) A conspiracy is an agreement with another person to**
 2 **commit a crime or to assist in committing a crime. No person may**
 3 **be convicted of a conspiracy unless an overt act in furtherance of**
 4 **such conspiracy is alleged and proved to have been committed by**
 5 **such person or by a co-conspirator.**

6 **(b) It shall be a defense to a charge of conspiracy that the ac-**
 7 **cused voluntarily and in good faith withdrew from the conspiracy,**
 8 **and communicated the fact of such withdrawal to one or more of**
 9 **the accused person's co-conspirators, before any overt act in fur-**
 10 **therance of the conspiracy was committed by the accused or by a**
 11 **co-conspirator.**

12 **(c) Conspiracy to commit an off-grid felony shall be ranked at**
 13 **nondrug severity level 2. Conspiracy to commit any other nondrug**
 14 **felony shall be ranked on the nondrug scale at two severity levels**
 15 **below the appropriate level for the underlying or completed crime.**
 16 **The lowest severity level for conspiracy to commit a nondrug felony**
 17 **shall be level 10. The provisions of this subsection shall not apply to a**
 18 **violation of conspiracy to commit the crime of terrorism pursuant to sec-**
 19 **tion 1, and amendments thereto, or of illegal use of weapons of mass**
 20 **destruction pursuant to section 2, and amendments thereto.**

21 **(d) Conspiracy to commit a felony which prescribes a sentence**
 22 **on the drug grid shall reduce the prison term prescribed in the drug**
 23 **grid block for an underlying or completed crime by six months.**

24 **(e) A conspiracy to commit a misdemeanor is a class C**
 25 **misdemeanor.**

26 **Sec. 7. K.S.A. 21-3303 is hereby amended to read as follows:**

27 **21-3303. (a) Criminal solicitation is commanding, encouraging or**
 28 **requesting another person to commit a felony, attempt to commit a**
 29 **felony or aid and abet in the commission or attempted commission**
 30 **of a felony for the purpose of promoting or facilitating the felony.**

31 **(b) It is immaterial under subsection (a) that the actor fails to**
 32 **communicate with the person solicited to commit a felony if the**
 33 **person's conduct was designed to effect a communication.**

34 **(c) It is an affirmative defense that the actor, after soliciting**
 35 **another person to commit a felony, persuaded that person not to do**
 36 **so or otherwise prevented the commission of the felony, under cir-**
 37 **cumstances manifesting a complete and voluntary renunciation of**
 38 **the actor's criminal purposes.**

39 **(d) Criminal solicitation to commit an off-grid felony shall be**
 40 **ranked at nondrug severity level 3. Criminal solicitation to commit**
 41 **any other nondrug felony shall be ranked on the nondrug scale at**
 42 **three severity levels below the appropriate level for the underlying**
 43 **or completed crime. The lowest severity level for criminal sollicita-**

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1 **tion to commit a nondrug felony shall be level 10.** *The provisions of*
2 *this subsection shall not apply to a violation of criminal solicitation to*
3 *commit the crime of terrorism pursuant to section 1, and amendments*
4 *thereto, or of illegal use of weapons of mass destruction pursuant to section*
5 *2, and amendments thereto.*

6 (e) **Criminal solicitation to commit a felony which prescribes a**
7 **sentence on the drug grid shall reduce the prison term prescribed**
8 **in the drug grid block for an underlying or completed crime by six**
9 **months.**

10 Sec. 6 8. K.S.A. ~~2004~~ Supp. 21-4706 is hereby amended to read as
11 follows: 21-4706. (a) For crimes committed on or after July 1, 1993, the
12 sentences of imprisonment shall represent the time a person shall actually
13 serve, subject to a reduction of up to 15% of the primary sentence for
14 good time as authorized by law.

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15 (b) The sentencing court shall pronounce sentence in all felony cases.

16 (c) Violations of K.S.A. 21-3401, 21-3439 and 21-3801 and amend-
17 ments thereto *and sections 1 and 2, and amendments thereto,* are off-grid
18 crimes for the purpose of sentencing. Except as otherwise provided by
19 K.S.A. 21-4622 through 21-4627, and 21-4629 through 21-4631, and
20 amendments thereto, the sentence shall be imprisonment for life.

and shall not be subject to statutory provisions for suspended sentence, community service or probation

21 Sec. 7 9. K.S.A. 22-2515 is hereby amended to read as follows: 22-
22 2515. (a) An *ex parte* order authorizing the interception of a wire, oral or
23 electronic communication may be issued by a judge of competent juris-
24 diction. The attorney general, district attorney or county attorney may
25 make an application to any judge of competent jurisdiction for an order
26 authorizing the interception of a wire, oral or electronic communication
27 by an investigative or law enforcement officer and agency having respon-
28 sibility for the investigation of the offense regarding which the application
29 is made, when such interception may provide evidence of the commission
30 of any of the following offenses:

- 31 (1) Any crime directly and immediately affecting the safety of a hu-
32 man life which is a felony;
- 33 (2) murder;
- 34 (3) kidnapping;
- 35 (4) treason;
- 36 (5) sedition;
- 37 (6) racketeering;
- 38 (7) commercial bribery;
- 39 (8) robbery;
- 40 (9) theft, if the offense would constitute a felony;
- 41 (10) bribery;
- 42 (11) any violation of the uniform controlled substances act, if the
43 offense would constitute a felony;

- 1 (12) commercial gambling;
- 2 (13) sports bribery;
- 3 (14) tampering with a sports contest;
- 4 (15) aggravated escape;
- 5 (16) aggravated failure to appear;
- 6 (17) arson; ~~or~~
- 7 (18) *terrorism*;
- 8 (19) *illegal use of weapons of mass destruction*; or
- 9 ~~(18)~~ (20) any conspiracy to commit any of the foregoing offenses.
- 10 (b) Any investigative or law enforcement officer who, by any means
- 11 authorized by this act or by chapter 119 of title 18 of the United States
- 12 code, has obtained knowledge of the contents of any wire, oral or elec-
- 13 tronic communication, or evidence derived therefrom, may disclose such
- 14 contents to another investigative or law enforcement officer to the extent
- 15 that such disclosure is appropriate to the proper performance of the of-
- 16 ficial duties of the officer making or receiving the disclosure.
- 17 (c) Any investigative or law enforcement officer who, by any means
- 18 authorized by this act or by chapter 119 of title 18 of the United States
- 19 code, has obtained knowledge of the contents of any wire, oral or elec-
- 20 tronic communication, or evidence derived therefrom, may use such con-
- 21 tents to the extent such use is appropriate to the proper performance of
- 22 such officer's official duties.
- 23 (d) Any person who has received, by any means authorized by this
- 24 act or by chapter 119 of title 18 of the United States code or by a like
- 25 statute of any other state, any information concerning a wire, oral or
- 26 electronic communication, or evidence derived therefrom, intercepted in
- 27 accordance with the provisions of this act, may disclose the contents of
- 28 such communication or such derivative evidence while giving testimony
- 29 under oath or affirmation in any criminal proceeding in any court, or
- 30 before any grand jury, of this state or of the United States or of any other
- 31 state.
- 32 (e) No otherwise privileged wire, oral or electronic communication
- 33 intercepted in accordance with, or in violation of, the provisions of this
- 34 act or of chapter 119 of title 18 of the United States code shall lose its
- 35 privileged character.
- 36 (f) When an investigative or law enforcement officer, while engaged
- 37 in intercepting wire, oral or electronic communications in the manner
- 38 authorized by this act, intercepts wire, oral or electronic communications
- 39 relating to offenses other than those specified in the order authorizing
- 40 the interception of the wire, oral or electronic communication, the con-
- 41 tents thereof and evidence derived therefrom may be disclosed or used
- 42 as provided in subsections (b) and (c) of this section. Such contents and
- 43 evidence derived therefrom may be used under subsection (d) of this

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1 section when authorized or approved by a judge of competent jurisdic-
2 tion, where such judge finds on subsequent application, made as soon as
3 practicable, that the contents were otherwise intercepted in accordance
4 with the provisions of this act, or with chapter 119 of title 18 of the United
5 States code.

6 Sec. ~~8-10~~. K.S.A. ~~2004~~ Supp. 22-3101 is hereby amended to read as
7 follows: 22-3101. (1) If the attorney general, an assistant attorney general,
8 the county attorney or the district attorney of any county is informed or
9 has knowledge of any alleged violation of the laws of Kansas, such person
10 may apply to a district judge to conduct an inquisition. An application for
11 an inquisition shall be in writing, verified under oath, setting forth the
12 alleged violation of law. Upon the filing of the application, the judge with
13 whom it is filed, on the written praecipe of such attorney, shall issue a
14 subpoena for the witnesses named in such praecipe commanding them
15 to appear and testify concerning the matters under investigation. Such
16 subpoenas shall be served and returned as subpoenas for witnesses in
17 criminal cases in the district court.

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18 (2) If the attorney general, assistant attorney general, county attorney
19 or district attorney, or in the absence of the county or district attorney a
20 designated assistant county or district attorney, is informed or has knowl-
21 edge of any alleged violation in this state pertaining to *terrorism, illegal*
22 *use of weapons of mass destruction, gambling, intoxicating liquors, crim-*
23 *inal syndicalism, racketeering, bribery, tampering with a sports contest,*
24 *narcotic or dangerous drugs or any violation of any law where the accused*
25 *is a fugitive from justice, such attorney shall be authorized to issue sub-*
26 *poenas for such persons as such attorney has any reason to believe or has*
27 *any information relating thereto or knowledge thereof, to appear before*
28 *such attorney at a time and place to be designated in the subpoena and*
29 *testify concerning any such violation. For such purposes, any prosecuting*
30 *attorney shall be authorized to administer oaths. If an assistant county or*
31 *district attorney is designated by the county or district attorney for the*
32 *purposes of this subsection, such designation shall be filed with the chief*
33 *judge of such judicial district.*

34 (3) Each witness shall be sworn to make true answers to all questions
35 propounded to such witness touching the matters under investigation.
36 The testimony of each witness shall be reduced to writing and signed by
37 the witness. Any person who disobeys a subpoena issued for such ap-
38 pearance or refuses to be sworn as a witness or answer any proper ques-
39 tion propounded during the inquisition, may be adjudged in contempt of
40 court and punished by fine and imprisonment.

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41 Sec. ~~9~~ **11**. K.S.A. ~~2004~~ Supp. 60-4104 is hereby amended to read as
42 follows: 60-4104. Conduct and offenses giving rise to forfeiture under this
43 act, whether or not there is a prosecution or conviction related to the

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1 offense, are:

2 (a) All offenses which statutorily and specifically authorize forfeiture;

3 (b) violations of the uniform controlled substances act, K.S.A. 65-
4 4101 et seq., and amendments thereto;

5 (c) theft which is classified as a felony violation pursuant to K.S.A.
6 21-3701, and amendments thereto, in which the property taken was
7 livestock;

8 (d) unlawful discharge of a firearm, K.S.A. 21-4219, and amendments
9 thereto;

10 (e) money laundering, K.S.A. 65-4142, and amendments thereto;

11 (f) gambling, K.S.A. 21-4303, and amendments thereto, and com-
12 mercial gambling, K.S.A. 21-4304, and amendments thereto;

13 (g) counterfeiting, K.S.A. ~~2004~~ Supp. 21-3763, and amendments
14 thereto;

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15 (h) an act or omission occurring outside this state, which would be a
16 violation in the place of occurrence and would be described in this section
17 if the act occurred in this state, whether or not it is prosecuted in any
18 state;

19 (i) an act or omission committed in furtherance of any act or omission
20 described in this section including any inchoate or preparatory offense,
21 whether or not there is a prosecution or conviction related to the act or
22 omission;

23 (j) any solicitation or conspiracy to commit any act or omission de-
24 scribed in this section, whether or not there is a prosecution or conviction
25 related to the act or omission; or

26 (k) *furtherance of terrorism or illegal use of weapons of mass destruc-*
27 *tion, section 3, and amendments thereto.*

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28 Sec. ~~10~~ **12**. K.S.A. 21-3301, **21-3302**, **21-3303** and 22-2515 and
29 K.S.A. ~~2004~~ Supp. 21-3106, 21-4706, ~~22-3101~~ and ~~60-4104~~ are hereby
30 repealed.

and 60-4104

and

31 Sec. ~~11~~ **13**. This act shall take effect and be in force from and after
32 its publication in the statute book.

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