Approved: May 3, 2006
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Vice Chairman Terry Bruce at 9:36 A.M. on January 26, 2006, in Room 123-S of the Capitol.

All members were present.
John Vratil arrived, 9:38 a.m.

Committee staff present:
Mike Heim, Kansas Legislative Research Department
Helen Pedigo, Office of Revisor of Statutes
Karen Clowers, Committee Secretary

Conferees appearing before the committee:
Melissa Wangeman, Legal Counsel, Deputy Assistant Secretary of State
Kathleen Olsen, Kansas Bankers Association
Major Mark Goodloe, Kansas Highway Patrol
Karen Whitman, Shawnee County Assistant District Attorney
Richard Howard, Manager, Office of Quality Improvement, KDHE
Dennis and Linda Beaver
James G. Keller, Deputy General Counsel, Department of Revenue

Others attending:
See attached list.

Bill Introductions
Senator Schmidt introduced three bills. The first concerning children in need relating to reports of alleged abuse or neglect. The second addressed changes to K.S.A. 8-1608 regarding leaving the scene of an accident and the third addressed changes to K.S.A. 8-1602 regarding failure to report an accident. Senator Haley moved, Senator Donovan seconded, to introduce all three bills. Motion carried.

Chairman Vratil arrived and assumed Chair of the meeting.

Final Action on **HB 2352–Revised Kansas code for care of children**
Senator Vratil called for final action on **HB 2352**. The Chairman distributed a balloon amendment reflecting agreed changes following the public hearing between Conferee Judge Graber and members of the Judicial Council Advisory Committee (Attachment 1). He also indicated a letter from Conferee Rick Levy concerning a question by Senator O'Connor regarding instances in the bill where parties were treated differently than interested parties (Attachment 2). Mr. Levy's reply indicated that in the instances he reviewed the vast majority of the times when both were mentioned together, both were treated equally. However, he suggested three minor amendments to clarify language he encountered during his review. All of the amendments suggested by the Judicial Council Advisory Committee, Judge Graber and Rick Levy have been included in a balloon amendment distributed to the committee. The Chairman also indicated that the revisors had inadvertently left out (Adoption and Safe Families Act) language on adoptions and foster children and he suggested that it be added to the bill even though SRS (Social and Rehabilitation Services)indicated that while it is not essential it does clarify matters.

Following discussion, Senator Bruce moved, Senator Goodwin seconded, to adopt the balloon amendments presented today including the ASFA language. Motion carried.

Senator Bruce moved, Senator Goodwin seconded, to adopt the balloon amendments proposed by the Judicial Council at the time of the hearing. Motion carried.

Senator Bruce moved, Senator Goodwin seconded, to favorably recommend the bill as amended. Motion carried.

The hearing on **SB 352--Uniform commercial code; filing of financing statements** was opened.
Melissa Wangeman spoke as a proponent (Attachment 3). She indicated that the purpose of SB 352 is to correct a technical drafting error in Revised Article Nine of the Uniform Commercial Code which causes

unintentional consequences by causing a shortened period of time by which to file statements in order to comply with the new law. Enactment of **SB 352** will clarify rule 9-705 as it applies to those financing statements failing to meet the new requirements of Revised Article Nine.

Kathy Olsen, a proponent, provided a balloon amendment containing alternative language based on Nebraska's legislation (Attachment 4). She feels the suggested language more clearly identifies to the practitioner which filings are potentially affected and provides a clear cut safe harbor for those filings.

There being no further conferees, the Chairman closed the hearing on **SB 352**.

The hearing on **SB 341--DUI excessive blood or breath-alcohol concentration, penalties** was opened.

Major Mark Goodloe appeared as a proponent indicating support for the intent of **SB 341** but was concerned that the proposed penalties may be less for offenders who refuse to take an evidentiary test showing an actual Blood Alcohol Content (BAC) (Attachment 5). Offenders who refuse to submit to testing, which would make prosecution more difficult. Another concern was the possibility of an increase in the number of individuals attempting to litigate, resulting in greater likelihood to contest a BAC and increased court time for law enforcement officers.

Karen Whitman spoke as a proponent and stated while the intent of SB 341 is commendable she had concerns with the bill (Attachment 6). First, she suggested the addition of Aggravated Involuntary Manslaughter while DUI. This would provide for the enhancement of a person's criminal history if they had been convicted of a number of DUI's prior to the offense involving the death. The second suggestion would remove the courts' discretion in requiring drug and alcohol treatment as part of a person's parole and have all DUI convictions require such treatment. Third, regarding enhancement of penalty when a child under the age of 14 is in the vehicle be assessed for each child in the vehicle.

Richard Howard spoke in support of the bill (Attachment 7). Kansas Department of Health and Environment (KDHE) provides support for Kansas Law Enforcement Agencies through the Division of Health and Environmental Laboratories. They are responsible for recommending breath alcohol instruments, instrument and calibration standards, and performance checks for the instruments. KDHE also provides training for law enforcement officers to ensure testing is performed accurately. He indicated that as the severity of penalty increases, so will the desire to avoid conviction for the offense, resulting in an increase in court cases which will have a direct impact upon the demand for court testimony by KDHE. He is seeking additional funding for expenses incurred as a result of this legislation.

Dennis Beaver testified in favor of the bill in hopes to reduce deaths caused by drunk drivers (Attachment 8).

James Keller testified as neutral indicating that the Department of Revenue has concerns with the present language of the bill (Attachment 9). These include:

- Amending K.S.A. 8-1014 to require alternative actions for test results over .16 should include corresponding notice changes in K.S.A. 8-1001 (f)
- The bill provides an incentive to refuse testing for individuals having prior occurrences
- No clear indication on the impact for drivers under the age of 21
- The bill will require changes to several forms used by the Division of Motor Vehicles
- Conviction abstracts will need to include alcohol levels and will test results greater than .16 require a separate finding by the Court
- Increased cost to administer the Kansas Implied Consent Law

Written testimony in support of **SB 341** was submitted by:

Randy Rogers, President, Kansas Sheriff's Association (Attachment 10)
Terry Roberts, Executive Director, Kansas State Nurses Association (Attachment 11)
Lillian Spencer, Executive Director, Mothers Against Drunk Driving (Attachment 12)

The Chairman closed the public hearing on **SB 341**.

The meeting adjourned at 10:33 a.m. The next scheduled meeting is January 30, 2006.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1/26/06

NAME	REPRESENTING
Ron Seeber	Hein Law Firm
Randy M. Hearrell	Judicial Council
Richard Levy	Judicial Council
Leolina [illegible]	[illegible] KY
Karen Smart	MADD
Dennis & Linda Beaver	Victim
Karen Wittman	Shawnee County DA's Office
Michael White	KCDAA
Jim Clark	KBA
Pete Bodyk	KDOT
[illegible]	NHTSA
Michelle Reese	KSNA
[illegible]	KACIL
[illegible]	KDHE
[illegible]	KDHE
Richard E. Howard	KDHE
Tom Palace	PMCA of KS

PROPOSED AMENDMENT
Judicial Council
January 25, 2006

Senate Judiciary
1-26-06
Attachment 1

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2005

HOUSE BILL No. 2352

By Committee on Judiciary

2-8

12 AN ACT creating the revised Kansas code for care of children; amending
13 K.S.A. 5-512, 28-170a, 38-140, 38-538, 38-1604, 38-1608, 38-1664, 38-
14 1813, 39-754, 39-756, 39-756a, 39-1305, 59-2129, 65-516, 65-6205, 72-
15 962, 72-1113, 72-53,106, 72-5427 and 75-7025 and K.S.A. ~~2004~~ Supp.
16 20-164, 20-302b, 20-319, 21-3604, 21-3612, 21-3721, 21-3843, 23-605,
17 28-170, 28-172b, 39-709, 44-817, ~~59-3059, 59-3060, 60-452a, 60-460,~~
18 ~~60-1610,~~ 65-1626, ~~75-4319,~~ 75-4332, 75-7023 and 76-729 and repeal-
19 ing the existing sections; also repealing K.S.A. 38-1501, 38-1504, 38-
20 1505a, 38-1510, 38-1511, 38-1512, 38-1513, 38-1513a, 38-1514, 38-
21 1515, 38-1516, 38-1517, 38-1518, 38-1519, 38-1520, 38-1521,
22 38-1522b, 38-1523, 38-1523a, 38-1524, 38-1525, 38-1526, 38-1527, 38-
23 1528, 38-1529, 38-1530, 38-1531, 38-1532, 38-1533, 38-1534, 38-1535,
24 38-1536, 38-1537, 38-1541, 38-1542, 38-1543, 38-1544, 38-1545, 38-
25 1546, 38-1551, 38-1552, 38-1553, 38-1554, 38-1555, 38-1556, 38-1557,
26 38-1558, 38-1559, 38-1561, 38-1562, 38-1563, 38-1564, 38-1565, 38-
27 1566, 38-1567, 38-1568, 38-1569, 38-1570, 38-1581, 38-1582, 38-1584,
28 38-1585, 38-1586, 38-1587, 38-1591, 38-1592, 38-1593, 38-1594, 38-
29 1595, 38-1596, 38-1597, 38-1598, 38-1599 and 38-15,100 and K.S.A.
30 ~~2004~~ Supp. 38-1502, 38-1503, 38-1505, 38-1522, 38-1552a, 38-1583,
31 38-15,101 ~~and 75-4319~~.
32
33 *Be it enacted by the Legislature of the State of Kansas:*
34 New Section 1. Sections 1 through 78 and amendments thereto,
35 K.S.A. ~~2004~~ Supp. 38-1505b and 38-1505c, and amendments thereto, and
36 K.S.A. 38-1506, 38-1507 and 38-1508, and amendments thereto, shall be
37 known as and may be cited as the revised Kansas code for care of children.
38 (a) Proceedings pursuant to this code shall be civil in nature and all pro-
39 ceedings, orders, judgments and decrees shall be deemed to be pursuant
40 to the parental power of the state. (b) The code shall be liberally con-
41 strued to carry out the policies of the state which are to:
42 ~~(a)~~ (1) Consider the safety and welfare of a child to be paramount in
43 all proceedings under the code;

59-3059, 59-3060, 60-452a, 60-460, 60-1610,

72-962,

[2005

and

child. The judge of the court in which the case is pending shall consult with the judge of the proposed receiving court prior to transfer of the case. If the judges do not agree that the case should be transferred or if a hearing is requested, a hearing shall be held on the desirability of the transfer, with notice to parties or interested parties, the secretary and the proposed receiving court. If the judge of the transferring court orders the case transferred, the order of transfer shall include findings stating why the case is being transferred and, if available, the names and addresses of all interested parties to whom the receiving court should provide notice of any further proceedings. The receiving court shall accept the case. ~~Any judge transferring any case to another court shall transmit a complete record thereof~~ and, upon receipt of the record, the receiving court shall assume jurisdiction as if the proceedings were originally filed in that court. The transferring judge, if an adjudicatory hearing has been held, shall also transmit recommendations as to disposition. The court may return the case to the court where it originated if the child is not present in the receiving county or, the receiving county is not the residence of the child's parent or parents.

Upon a judge ordering a transfer of venue, the clerk shall transmit the contents of the official file and a complete copy of the social file to the court to which venue is transferred

New Sec. 5. (a) *Appointment of guardian ad litem and attorney for child; duties.* Upon the filing of a petition, the court shall appoint an attorney to serve as guardian *ad litem* for a child who is the subject of proceedings under this code. The guardian *ad litem* shall make an independent investigation of the facts upon which the petition is based and shall appear for and represent the best interests of the child. When the child's position is not consistent with the determination of the guardian *ad litem* as to the child's best interests, the guardian *ad litem* shall inform the court of the disagreement. The guardian *ad litem* or the child may request the court to appoint a second attorney to serve as attorney for the child, and the court, on good cause shown, may appoint such second attorney. The attorney for the child shall allow the child and the guardian *ad litem* to communicate with one another but may require such communications to occur in the attorney's presence.

(b) *Attorney for parent or custodian.* A parent of a child alleged or adjudged to be a child in need of care may be represented by an attorney, in connection with all proceedings under this code.

(1) If at any stage of the proceedings a parent desires but is financially unable to employ an attorney, the court shall appoint an attorney for the parent. It shall not be necessary to appoint an attorney to represent a parent who fails or refuses to attend the hearing after having been properly served with process in accordance with section 32, and amendments thereto. A parent or custodian who is not a minor, a mentally ill person or a disabled person may waive counsel either in writing or on the record.

(2) The court shall appoint an attorney for a parent who is a minor,

1 be citizen review boards in judicial districts, or portions of such districts.
2 (b) The chief judge of the judicial district, or another judge desig-
3 nated by the chief judge, shall appoint three to seven citizens from the
4 community to serve on each citizen review board. Such members shall
5 represent the various socioeconomic and ethnic groups of the judicial
6 district, and shall have a special interest in children. Such judge may also
7 appoint alternates when necessary.
8 (c) The term of appointment shall be two years and members may
9 be reappointed.
10 (d) Members shall serve without compensation but may be reim-
11 bursed for mileage for out-of-county reviews.
12 (e) Each citizen review board shall meet quarterly and may meet
13 monthly if the number of cases to review requires such meetings.
14 (f) Members and alternates appointed to citizen review boards shall
15 receive at least six hours of training before reviewing a case.
16 New Sec. 8. (a) The citizen review board shall have the duty, au-
17 thority and power to:
18 (1) Review each case of a child who is the subject of a child in need
19 of care petition or who has been adjudicated a child in need of care,
20 receive verbal information from all persons with pertinent knowledge of
21 the case and have access to materials contained in the court's files on the
22 case;
23 (2) determine the progress which has been made to acquire a per-
24 manent home for the child in need of care;
25 (3) suggest an alternative case goal if progress has been insufficient;
26 and
27 (4) make recommendations to the judge regarding further actions on
28 the case.
29 (b) The initial review by the citizen review board may take place any
30 time after a petition is filed for a child in need of care. A review shall
31 occur within six months after the initial disposition hearing.
32 (c) The citizen review board will review each referred case at least
33 once each year.
34 (d) The judge shall consider the citizen review board recommenda-
35 tions in making an authorized dispositional order pursuant to section 50,
36 and amendments thereto, and may incorporate the citizen review board's
37 recommendations into an order in lieu of the six-month review hearing.
38 (e) Three members of the citizen review board shall be present to
39 review a case.
40 (f) The court shall provide a place for the reviews to be held. The
41 citizen review board members shall travel to the county of the family
42 residence of the child being reviewed to hold the review.
43 New Sec. 9. It shall be the duty of the county or district attorney or

referred to them

7-1

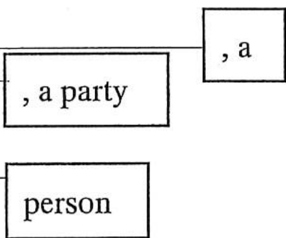
the county or district attorney's designee to prepare and file the petition alleging a child to be a child in need of care, and to appear at the hearing on the petition and to present evidence as necessary, at all stages of the proceedings, that will aid the court in making appropriate decisions. The county or district attorney or the county or district attorney's designee shall also have the other duties required by this code. **Pursuant to a written agreement between the secretary and the county or district attorney, the attorneys for the secretary may perform the duties of the county or district attorney after disposition has been determined by the court.**

New Sec. 10. (a) *Docket fee.* The docket fee for proceedings under this code, if one is assessed as provided in this section, shall be $25. Only one docket fee shall be assessed in each case.

(b) *Expenses.* The expenses for proceedings under this code, including fees and mileage allowed witnesses and fees and expenses approved by the court for appointed attorneys, shall be paid by the board of county commissioners from the general fund of the county.

(c) *Assessment of docket fee and expenses.* (1) *Docket fee.* The docket fee may be assessed or waived by the court conducting the initial dispositional hearing and the docket fee may be assessed against the complaining witness or person initiating the proceedings or a party or interested party other than the state, a political subdivision of the state, an agency of the state or of a political subdivision of the state, or a person acting in the capacity of an employee of the state or of a political subdivision of the state. Any docket fee received shall be remitted to the state treasurer pursuant to K.S.A. 20-362, and amendments thereto.

(2) *Expenses.* Expenses may be assessed against the complaining witness ~~or~~ person initiating the proceedings or an interested party, other than the state, a political subdivision of the state, an agency of the state or of a political subdivision of the state or a person acting in the capacity of an employee of the state or of a political subdivision of the state. When expenses are recovered from a ~~party~~ against whom they have been assessed the general fund of the county shall be reimbursed in the amount of the recovery. If it appears to the court in any proceedings under this code that expenses were unreasonably incurred at the request of any party the court may assess that portion of the expenses against the party.



(d) *Cases in which venue is transferred.* If venue is transferred from one county to another, the court from which the case is transferred shall send to the receiving court a statement of expenses paid from the general fund of the sending county. If the receiving court collects any of the expenses owed in the case, the receiving court shall pay to the sending court an amount proportional to the sending court's share of the total expenses owed to both counties. The expenses of the sending county shall

1-5

1 (5) Any health care provider who in good faith renders hospital, med-
2 ical, surgical, mental or dental care or treatment to any child or discloses
3 protected health information as authorized by this section shall not be
4 liable in any civil or criminal action for failure to obtain consent of a
5 parent.
6 (6) Nothing in this section shall be construed to mean that any person
7 shall be relieved of legal responsibility to provide care and support for a
8 child.
9 (b) *Care and treatment requiring court action.* If it is brought to the
10 court's attention, while the court is exercising jurisdiction over the person
11 of a child under this code, that the child may be a mentally ill person as
12 defined in K.S.A. ~~2004 Supp.~~ 59-2946, and amendments thereto, or a
13 person with an alcohol or substance abuse problem as defined in K.S.A.
14 ~~2004 Supp.~~ 59-29b46, and amendments thereto, the court may:
15 (1) Direct or authorize the county or district attorney or the person
16 supplying the information to file the petition provided for in K.S.A. ~~2004~~
17 ~~Supp.~~ 59-2957, and amendments thereto, and proceed to hear and de-
18 termine the issues raised by the application as provided in the care and
19 treatment act for mentally ill persons or the petition provided for in K.S.A.
20 ~~2004 Supp.~~ 59-29b57, and amendments thereto, and proceed to hear and
21 determine the issues raised by the application as provided in the care and
22 treatment act for persons with an alcohol or substance abuse problem; or
23 (2) authorize that the child seek voluntary admission to a treatment
24 facility as provided in K.S.A. ~~2004 Supp.~~ 59-2949, and amendments
25 thereto, or K.S.A ~~2004 Supp~~ 59-29b49, and amendments thereto.
26 The application to determine whether the child is a mentally ill person
27 or a person with an alcohol or substance abuse problem may be filed in
28 the same proceedings as the petition alleging the child to be a child in
29 need of care, or may be brought in separate proceedings. In either event,
30 the court may enter an order staying any further proceedings under this
31 code until all proceedings have been concluded under the care and treat-
32 ment act for mentally ill persons or the care and treatment act for persons
33 with an alcohol or substance abuse problem.
34 New Sec. 13. (a) When the court has granted legal custody of a child
35 in a hearing under the code to an agency, association or individual, the
36 custodian or an agent designated by the custodian shall have authority to
37 make educational decisions for the child if the parents of the child are
38 unknown or unavailable. When the custodian of the child is the secretary,
39 and the parents of the child are unknown or unavailable, and the child
40 appears to be an exceptional child who requires special education, the
41 secretary shall immediately notify the state board of education, or a des-
42 ignee of the state board, and the school district in which the child is
43 residing that the child is in need of an education advocate. As soon as

As used in this section, a parent is unavailable if: (1) Repeated attempts have been made to contact the parent to provide notice of an IEP meeting and secure the parent's participation and such attempts have been unsuccessful;
(2) having been provided actual notice of an IEP meeting, the parent has failed or refused to attend and participate in the meeting; or
(3) the parent's whereabouts are unknown so that notice of an IEP meeting cannot be given to the parent.

1 address."
2 (b) *Motions.* Motions may be made orally or in writing. The motion
3 shall state with particularity the grounds for the motion and shall state
4 the relief or order sought.
5 New Sec. 30. (a) Upon the filing of a petition under this code the
6 court shall proceed by one of the following methods:
7 (1) The court shall issue summons pursuant to section 31, and
8 amendments thereto, setting the matter for hearing within 30 days of the
9 date the petition is filed. The summons, with a copy of the petition at-
10 tached, shall be served pursuant to section 32, and amendments thereto.
11 (2) If the child has been taken into protective custody under the pro-
12 visions of section 37, and amendments thereto, and a temporary custody
13 hearing is held as required by section 38, and amendments thereto, a
14 copy of the petition shall be served at the hearing on each party and
15 interested party in attendance and a record of service made a part of the
16 proceedings. The court shall announce the time of the next hearing. Pro-
17 cess shall be served on any party or interested party not at the temporary
18 custody hearing pursuant to subsection (a)(1). Upon the written request
19 of the petitioner or the county or district attorney, separate or additional
20 summons shall be issued to any party and interested party.
21 (b) If the petition requests custody to the secretary, the court shall
22 cause a copy of the petition to be provided to the secretary upon filing.

(c) The court shall not enter an order removing a child from the custody of a parent pursuant to this section unless the court first finds probable cause that: (1) (A) The child is likely to sustain harm if not immediately removed from the home;
(B) allowing the child to remain in home is contrary to the welfare of the child; or
(C) immediate placement of the child is in the best interest of the child; and
(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety to the child.

23 New Sec. 31. (a) *Persons to be served.* The summons and a copy of
24 the petition shall be served on:
25 (1) The child alleged to be a child in need of care by serving the
26 guardian *ad litem* appointed for the child;
27 (2) the parents or parent having legal custody or who may be ordered
28 to pay child support by the court;
29 (3) the person with whom the child is residing; and
30 (4) any other person designated by the county or district attorney.
31 (b) A copy of the petition and notice of hearing shall be mailed by
32 first class mail to the child's grandparents with whom the child does not
33 reside.
34 New Sec. 32. Summons, notice of hearings and other process may
35 be served by one of the following methods:
36 (a) *Personal and residence service.* Personal and residence service is
37 completed by service in substantial compliance with the provisions of
38 K.S.A. 60-303, and amendments thereto. Personal service upon an indi-
39 vidual outside the state shall be made in substantial compliance with the
40 applicable provisions of K.S.A. 60-308, and amendments thereto.
41 (b) *Service by return receipt delivery.* Service by return receipt de-
42 livery is completed upon mailing or sending only in accordance with the
43 provisions of subsection (c) of K.S.A. 60-303, and amendments thereto.

1 protective custody, the court may place the child in the protective custody
2 of:
3 (A) A parent or other person having custody of the child and may
4 enter a restraining order pursuant to subsection (e);
5 (B) a person, other than the parent or other person having custody,
6 who shall not be required to be licensed under article 5 of chapter 65 of
7 the Kansas Statutes Annotated, and amendments thereto;
8 (C) a youth residential facility;
9 (D) a shelter facility; or
10 (E) the secretary.
11 (2) If the secretary presents the court with a plan to provide services
12 to a child or family which the court finds will assure the safety of the
13 child, the court may only place the child in the protective custody of the
14 secretary until the court finds the services are in place. The court shall
15 have the authority to require any person or entity agreeing to participate
16 in the plan to perform as set out in the plan. When the child is placed in
17 the protective custody of the secretary, the secretary shall have the dis-
18 cretionary authority to place the child with a parent or to make other
19 suitable placement for the child. When circumstances require, a child
20 may be placed in a juvenile detention facility or other secure facility pur-
21 suant to an order of protective custody for a period of not to exceed 24
22 hours, excluding Saturdays, Sundays and legal holidays.
23 (d) The order of protective custody shall be served pursuant to sub-
24 section (a) of section 32, and amendments thereto, on the child's parents
25 and any other person having legal custody of the child. The order shall
26 prohibit the removal of the child from the court's jurisdiction without the
27 court's permission.
28 (e) If the court issues an order of protective custody, the court may
29 also enter an order restraining any alleged perpetrator of physical, sexual,
30 mental or emotional abuse of the child from residing in the child's home;
31 visiting, contacting, harassing or intimidating the child, other family mem-
32 ber or witness; or attempting to visit, contact, harass or intimidate the
33 child, other family member or witness. Such restraining order shall be
34 served by personal service pursuant to subsection (a) of section 32, and
35 amendments thereto, on any alleged perpetrator to whom the order is
36 directed.
37 (f) (1) The court shall not enter an order removing a child from the
38 custody of a parent pursuant to this section unless the court first finds
39 probable cause that:
40 (A) The child is likely to sustain harm if not immediately removed
41 from the home;
42 (B) allowing the child to remain in the home is contrary to the welfare
43 of the child; and

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1 ~~(C) reasonable efforts have been made to maintain the family unit~~
2 ~~and prevent the unnecessary removal of the child from the child's home~~
3 ~~or that an emergency exists which threatens the safety of the child.~~
4 ~~(2)~~ Such findings shall be included in any order entered by the court.
5 If the child is placed in the custody of the secretary, the court shall provide
6 the secretary with a written copy of any orders entered upon making the
7 order.

The court shall not enter an order removing a child from the custody of a parent pursuant to this section unless the court first finds probable cause that: (1) (A) The child is likely to sustain harm if not immediately removed from the home;
(B) allowing the child to remain in home is contrary to the welfare of the child; or
(C) immediate placement of the child is in the best interest of the child; and
(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety to the child.

8 New Sec. 38. (a) Upon notice and hearing, the court may issue an
9 order directing who shall have temporary custody and may modify the
10 order during the pendency of the proceedings as will best serve the child's
11 welfare.
12 (b) A hearing pursuant to this section shall be held within 72 hours,
13 excluding Saturdays, Sundays and legal holidays, following a child having
14 been taken into protective custody.
15 (c) Whenever it is determined that a temporary custody hearing is
16 required, the court shall immediately set the time and place for the hear-
17 ing. Notice of a temporary custody hearing shall be given to all parties
18 and interested parties.
19 (d) Notice of the temporary custody hearing shall be given at least
20 24 hours prior to the hearing. The court may continue the hearing to
21 afford the 24 hours prior notice or, with the consent of the party or
22 interested party, proceed with the hearing at the designated time. If an
23 order of temporary custody is entered and the parent or other person
24 having custody of the child has not been notified of the hearing, did not
25 appear or waive appearance and requests a rehearing, the court shall
26 rehear the matter without unnecessary delay.
27 (e) Oral notice may be used for giving notice of a temporary custody
28 hearing where there is insufficient time to give written notice. Oral notice
29 is completed upon filing a certificate of oral notice.
30 (f) The court may enter an order of temporary custody after deter-
31 mining that the: (1) Child is dangerous to self or to others; (2) Child is
32 not likely to be available within the jurisdiction of the court for future
33 proceedings; or (3) health or welfare of the child may be endangered
34 without further care.
35 (g) (1) Whenever the court determines the necessity for an order of
36 temporary custody the court may place the child in the temporary custody
37 of:
38 (A) A parent or other person having custody of the child and may
39 enter a restraining order pursuant to subsection (h);
40 (B) a person, other than the parent or other person having custody,
41 who shall not be required to be licensed under article 5 of chapter 65 of
42 the Kansas Statutes Annotated, and amendments thereto;
43 (C) a youth residential facility;

shall be confined to an adjacent room or behind a screen or mirror that permits such person to see and hear the child during the child's testimony, but does not permit the child to see or hear such person.

(f) If the testimony of a child is taken as provided by subsection (d), the child shall not be compelled to testify in court during the proceeding.

(g)(1) Any objection ~~by any party to the proceeding~~ to a recording under subsection (d)(2) that such proceeding is inadmissible must be made by written motion filed with the court at least seven days before the commencement of the adjudicatory hearing. An objection under this subsection shall specify the portion of the recording which is objectionable and the reasons for the objection. Failure to file an objection within the time provided by this subsection shall constitute waiver of the right to object to the admissibility of the recording unless the court, in its discretion, determines otherwise.

(2) The provisions of this subsection shall not apply to any objection to admissibility for the reason that the recording has been materially altered.

New Sec. 45. The petitioner must prove by clear and convincing evidence that the child is a child in need of care.

New Sec. 46. (a) If the court finds that the child is not a child in need of care, the court shall enter an order dismissing the proceedings.

(b) If the court finds that the child is a child in need of care, the court shall enter an order adjudicating the child to be a child in need of care and may proceed to enter other orders as authorized by this code.

(c) A finding that a child subject to this code is a child in need of care shall be entered without undue delay. If the child has been removed from the child's home, an order of adjudication shall be entered as soon as practicable but not more than 60 days from the date of removal unless an order of informal supervision has been entered.

New Sec. 47. (a) Before placement pursuant to this code of a child with a person other than the child's parent, the secretary, the court or the court services officer, at the direction of the court, may convene a conference of persons determined by the court, the secretary or the court services officer to have a potential interest in determining a placement which is in the best interests of the child. Such persons shall be given any information relevant to the determination of the placement of the child, including the needs of the child and any other information that would be helpful in making a placement in the best interests of the child. After presentation of the information, such persons shall be permitted to discuss and recommend to the secretary or the court services officer the person or persons with whom it would be in the child's best interest to be placed. Unless the secretary or the court services officer determines that there is good cause to place the child with a person other than as

1 recommended, the child shall be placed in accordance with the
2 recommendations.
3 (b) A person participating in a conference pursuant to this section
4 shall have immunity from any civil liability that might otherwise be in-
5 curred or imposed as a result of the person's participation.
6 New Sec. 48. (a) At a dispositional hearing, the court shall receive
7 testimony and other relevant information with regard to the safety and
8 well being of the child and may enter orders regarding:
9 (1) Case planning which sets forth the responsibilities and timelines
10 necessary to achieve permanency for the child; and
11 (2) custody of the child.
12 (b) An order of disposition may be entered at the time of the adju-
13 dication if notice has been provided pursuant to section 49, and amend-
14 ments thereto, but shall be entered within 30 days following adjudication,
15 unless delayed for good cause shown.
16 (c) If the dispositional hearing meets the requirements of section 60,
17 and amendments thereto, the dispositional hearing may serve as a per-
18 manency hearing.
19 New Sec 49. (a) ~~The~~ court shall require notice of the time and place
20 of the dispositional hearing be given to the parties.
21 (b) The court shall require notice and opportunity to be heard as to
22 proposals for living arrangements for the child, the services to be provided
23 the child and the child's family, and the proposed permanency goal for
24 the child to the following:
25 (1) The child's foster parent or parents or permanent custodian pro-
26 viding care for the child;
27 (2) preadoptive parents for the child, if any;
28 (3) the child's grandparents at their last known addresses or if no
29 grandparent is living or if no living grandparent's address is known, to the
30 closest relative of each of the child's parents whose address is known;
31 (4) the person having custody of the child; and
32 (5) upon request, by any person having close emotional ties with the
33 child and who is deemed by the court to be essential to the deliberations
34 before the court.
35 (c) The notice required by this subsection shall be given by first class
36 mail, not less than 10 business days before the hearing.
37 (d) Individuals receiving notice pursuant to subsection (b) shall not
38 be made a party or interested party to the action solely on the basis of
39 this notice and opportunity to be heard. Opportunity to be heard shall be
40 at a time and in a manner determined by the court and does not confer
41 an entitlement to appear in person.
42 (e) The provisions of this subsection shall not require additional no-
43 tice to any person otherwise receiving notice of the hearing pursuant to

Unless waived by the persons entitled to notice, the

1 section 34, and amendments thereto.
2 New Sec. 50. (a) *Considerations.* Prior to entering an order of dis-
3 position, the court shall give consideration to:
4 (1) The child's physical, mental and emotional condition;
5 (2) the child's need for assistance;
6 (3) the manner in which the parent participated in the abuse, neglect
7 or abandonment of the child;
8 (4) any relevant information from the intake and assessment process;
9 and
10 (5) the evidence received at the dispositional hearing.
11 (b) *Placement with a parent.* The court may place the child in the
12 custody of either of the child's parents subject to terms and conditions
13 which the court prescribes to assure the proper care and protection of
14 the child, including, but not limited to:
15 (1) Supervision of the child and the parent by a court services officer;
16 (2) participation by the child and the parent in available programs
17 operated by an appropriate individual or agency; and
18 (3) any special treatment or care which the child needs for the child's
19 physical, mental or emotional health and safety.
20 (c) *Removal of a child from custody of a parent.* ~~The court may enter~~
21 ~~an order removing a child from the custody of a parent pursuant to this~~
22 ~~section if the court finds from the evidence:~~
23 ~~(1) That reasonable efforts have been made to maintain the family~~
24 ~~unit and prevent the unnecessary removal of the child from the child's~~
25 ~~home or that an emergency exists that threatens the safety of the child;~~
26 ~~and~~
27 ~~(2) that allowing the child to remain in the home is contrary to the~~
28 ~~welfare of the child and that the child is likely to sustain harm if not~~
29 ~~immediately removed from the home.~~

The court shall not enter an order removing a child from the custody of a parent pursuant to this section unless the court first finds probable cause that: (1) (A) The child is likely to sustain harm if not immediately removed from the home;
(B) allowing the child to remain in home is contrary to the welfare of the child; or
(C) immediate placement of the child is in the best interest of the child; and
(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety to the child.

30 (d) *Custody of a child removed from the custody of a parent.* If the
31 court has made the findings required by subsection (c), the court shall
32 enter an order awarding custody to a relative of the child or to a person
33 with whom the child has close emotional ties, to any other suitable person,
34 to a shelter facility, to a youth residential facility or to the secretary. Cus-
35 tody awarded under this subsection shall continue until further order of
36 the court.
37 (1) When custody is awarded to the secretary, the secretary shall con-
38 sider any placement recommendation by the court and notify the court
39 of the placement or proposed placement of the child within 10 days of
40 the order awarding custody.
41 (A) After providing the parties or interested parties notice and op-
42 portunity to be heard, the court may determine whether the secretary's
43 placement or proposed placement is contrary to the welfare or in the best

1 dispositional hearing and no permanency plan is made a part of the record
2 of the hearing, a written permanency plan shall be prepared pursuant to
3 section 58, and amendments thereto.
4 New Sec. 53. (a) Except as provided in section 54, and amendments
5 thereto, if a child has been in the same foster home or shelter facility for
6 six months or longer, or has been placed by the secretary in the home of
7 a parent or relative, the secretary shall give written notice of any plan to
8 move the child to a different placement. The notice shall be given to: (1)
9 The court having jurisdiction over the child; (2) each parent whose ad-
10 dress is available; (3) the foster parent or custodian from whose home or
11 shelter facility it is proposed to remove the child; (4) the child, if 12 or
12 more years of age; and (5) the child's guardian *ad litem*.
13 (b) The notice shall state the placement to which the secretary plans
14 to transfer the child and the reason for the proposed action. The notice
15 shall be mailed by first class mail 30 days in advance of the planned
16 transfer, except that the secretary shall not be required to wait 30 days
17 to transfer the child if all persons enumerated in subsection (a) (2)
18 through (5) consent in writing to the transfer.
19 (c) Within 10 days after receipt of the notice, any person receiving
20 notice as provided above may request, either orally or in writing, that the
21 court conduct a hearing to determine whether or not the change in place-
22 ment is in the best interests of the child concerned. When the request
23 has been received, the court shall schedule a hearing and immediately
24 notify the secretary of the request and the time and date the matter will
25 be heard. The court shall give notice of the hearing to persons enumer-
26 ated in subsection (a) (2) through (5). The secretary shall not change the
27 placement of the child unless the change is approved by the court.
28 (d) When, after the notice set out above, a child in the custody of the
29 secretary is removed from the home of a parent after having been placed
30 in the home of a parent for a period of six months or longer, the secretary
31 shall request a finding:
32 (1) That reasonable efforts have been made to maintain the family
33 unit and prevent the unnecessary removal of the child from the child's
34 home or that an emergency exists which threatens the safety of the child;
35 and
36 (2) that allowing the child to remain in the home is contrary to the
37 welfare of the child and that the child is likely to sustain harm if not
38 immediately removed from the home.

that: (1) (A) The child is likely to sustain harm if not immediately removed from the home;
(B) allowing the child to remain in home is contrary to the welfare of the child; or
(C) immediate placement of the child is in the best interest of the child; and
(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety to the child

39 (e) The secretary shall present to the court in writing the efforts to
40 maintain the family unit and prevent the unnecessary removal of the child
41 from the child's home. In making the findings, the court may rely on
42 documentation submitted by the secretary or may set the date for a hear-
43 ing on the matter. If the secretary requests such finding, the court, not

1-13

1 more than 45 days from the date of the request, shall provide the secretary
2 with a written copy of the findings by the court for the purpose of doc-
3 umenting these orders.
4 New Sec. 54. (a) When an emergency exists requiring immediate action
5 to assure the safety and protection of the child or the secretary is notified
6 that the foster parents or shelter facility refuse to allow the child to re-
7 main, the secretary may transfer the child to another foster home or
8 shelter facility without prior court approval. The secretary shall notify the
9 court of the action at the earliest practical time. When the child is re-
10 moved from the home of a parent after having been placed in the home
11 for a period of six months or longer, the secretary shall present to the
12 court in writing the specific nature of the emergency and reasons why it
13 is contrary to the welfare of the child to remain in the placement and
14 request a finding by the court whether remaining in the home is contrary
15 to the welfare of the child. If the court enters an order the court shall
16 make a finding as to whether an emergency exists. The court shall provide
17 the secretary with a copy of the order. In making the finding, the court
18 may rely on documentation submitted by the secretary or may set the
19 date for a hearing on the matter. If the secretary requests such a finding,
20 the court shall provide the secretary with a written copy of the finding by
21 the court not more than 45 days from the date of the request.

(b) The court shall not enter an order removing a child from the custody of a parent pursuant to this section unless the court first finds probable cause that: (1) (A) The child is likely to sustain harm if not immediately removed from the home;
(B) allowing the child to remain in home is contrary to the welfare of the child; or
(C) immediate placement of the child is in the best interest of the child; and
(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety to the child.

22 New Sec. 55. (a) *Valid court order.* During proceedings under this
23 code, the court may enter an order directing a child who is the subject
24 of the proceedings to remain in a present or future placement if:
25 (1) The child and the child's guardian *ad litem* are present in court
26 when the order is entered;
27 (2) the court finds that the child has been adjudicated a child in need
28 of care pursuant to subsections (d)(6), (d)(7), (d)(8), (d)(9), (d)(10) or
29 (d)(12) of section 2, and amendments thereto, and that the child is not
30 likely to be available within the jurisdiction of the court for future
31 proceedings;
32 (3) the child and the guardian *ad litem* receive oral and written notice
33 of the consequences of violation of the order; and
34 (4) a copy of the written notice is filed in the official case file.
35 (b) *Application.* Any person may file a verified application for deter-
36 mination that a child has violated an order entered pursuant to subsection
37 (a) and for an order authorizing holding the child in a secure facility or
38 juvenile detention facility. The application shall state the applicant's belief
39 that the child has violated the order entered pursuant to subsection (a)
40 without good cause and the specific facts supporting the allegation.
41 (c) *Ex parte order.* After reviewing the application filed pursuant to
42 subsection (b), the court may enter an *ex parte* order directing that the
43 child be taken into custody and held in a secure facility or juvenile de-

1 and amendments thereto.
2 (d) Any person, city or county or agency thereof or medical care fa-
3 cility taking physical custody of an infant surrendered pursuant to this
4 section shall perform any act necessary to protect the physical health or
5 safety of the infant, and shall be immune from liability for any injury to
6 the infant that may result therefrom.
7 (e) Upon request, all medical records of the infant shall be made
8 available to the department of social and rehabilitation services and given
9 to the person awarded custody of such infant. The medical facility pro-
10 viding such records shall be immune from liability for such records
11 release.
12 New Sec. 78. (a) In addition to all actions concerning a child in need
13 of care commenced on or after January 1, 2006, this code also applies to
14 proceedings commenced before January 1, 2006, unless the court finds
15 that application of a particular provision of the code would substantially
16 interfere with the effective conduct of judicial proceedings or prejudice
17 the rights of a party, in which case the particular provision of this code
18 does not apply and the previous code applies.
19 (b) If a right is acquired, extinguished or barred upon the expiration
20 of a prescribed period that has commenced to run under any other statute
21 before January 1, 2006, that statute continues to apply to the right, even
22 if it has been repealed or superceded.
23 Sec. 79. K.S.A. 5-512 is hereby amended to read as follows: 5-512.
24 (a) All verbal or written information transmitted between any party to a
25 dispute and a neutral person conducting a proceeding under the dispute
26 resolution act or the staff of an approved program shall be confidential
27 communications. No admission, representation or statement made in the
28 proceeding shall be admissible as evidence or subject to discovery. A
29 neutral person conducting a proceeding under the dispute resolution act
30 shall not be subject to process requiring the disclosure of any matter
31 discussed during the proceedings unless all the parties consent to a
32 waiver. Any party and the neutral person conducting the proceeding,
33 participating in the proceeding has a privilege in any action to refuse to
34 disclose, and to prevent a witness from disclosing, any communication
35 made in the course of the proceeding. The privilege may be claimed by
36 the party or the neutral person or anyone the party or the neutral person
37 authorized to claim the privilege.
38 (b) The confidentiality and privilege requirements of this section shall
39 not apply to:
40 (1) Information that is reasonably necessary to allow investigation of
41 or action for ethical violations against the neutral person conducting the
42 proceeding or for the defense of the neutral person or staff of an approved
43 program conducting the proceeding in an action against the neutral per-

or an interested party

custody or residency of any child as against the other parent, regardless of the age of the child, and there shall be no presumption that it is in the best interests of any infant or young child to give custody or residency to the mother.

(4) *Types of legal custodial arrangements.* Subject to the provisions of this article, the court may make any order relating to custodial arrangements which is in the best interests of the child. The order shall provide one of the following legal custody arrangements, in the order of preference:

(A) *Joint legal custody.* The court may order the joint legal custody of a child with both parties. In that event, the parties shall have equal rights to make decisions in the best interests of the child.

(B) *Sole legal custody.* The court may order the sole legal custody of a child with one of the parties when the court finds that it is not in the best interests of the child that both of the parties have equal rights to make decisions pertaining to the child. If the court does not order joint legal custody, the court shall include on the record specific findings of fact upon which the order for sole legal custody is based. The award of sole legal custody to one parent shall not deprive the other parent of access to information regarding the child unless the court shall so order, stating the reasons for that determination.

(5) *Types of residential arrangements.* After making a determination of the legal custodial arrangements, the court shall determine the residency of the child from the following options, which arrangement the court must find to be in the best interest of the child. The parties shall submit to the court either an agreed parenting plan or, in the case of dispute, proposed parenting plans for the court's consideration. Such options are:

(A) *Residency.* The court may order a residential arrangement in which the child resides with one or both parents on a basis consistent with the best interests of the child.

(B) *Divided residency.* In an exceptional case, the court may order a residential arrangement in which one or more children reside with each parent and have parenting time with the other.

(C) *Nonparental residency.* If during the proceedings the court determines that there is probable cause to believe that the child is a child in need of care as defined by subsections ~~(a)(1), (2) or (3) of K.S.A. 38-1502~~ *(d)(1), (d)(2) or (d)(3) of section 2,* and amendments thereto or that neither parent is fit to have residency, the court may award temporary residency of the child to a grandparent, aunt, uncle or adult sibling, or, another person or agency if the court finds ~~the award of custody to such person or agency is in the best interests of the child~~. In making such a residency order, the court shall give preference, to the extent that the

by written order that: (1) (a) The child is likely to sustain harm if not immediately removed from the home;
(b) allowing the child to remain in home is contrary to the welfare of the child; or
(c) immediate placement of the child is in the best interest of the child; and
(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety to the child

1 ciliary residence was established in the state for the purpose of accepting,
2 upon recruitment by an employer, or retaining, upon transfer required
3 by an employer, a position of full-time employment at a place of employ-
4 ment in Kansas, but the domiciliary residence of whom was not timely
5 enough established to meet the residence duration requirement of sub-
6 section (a), and who are not otherwise eligible for authorization to pay an
7 amount equal to resident fees under this subsection; and
8 (8) persons who have graduated from a high school accredited by the
9 state board of education within six months of enrollment and who, at the
10 time of graduation from such a high school or while enrolled and in at-
11 tendance at such a high school prior to graduation therefrom, were de-
12 pendents of a person in military service within the state; if the person,
13 whose dependent is eligible for authorization to pay an amount equal to
14 resident fees under this provision, does not establish domiciliary resi-
15 dence in the state upon retirement from military service, eligibility of the
16 dependent for authorization to pay an amount equal to resident fees shall
17 lapse.
18 (c) As used in this section:
19 (1) "Parents" means and includes natural parents, adoptive parents,
20 stepparents, guardians and custodians.
21 (2) "Guardian" has the meaning ascribed thereto by K.S.A. ~~2004~~
22 ~~Supp.~~ 59-3051, and amendments thereto.
23 (3) "Custodian" means a person, agency or association granted legal
24 custody of a minor under the *revised* Kansas code for care of children.
25 (4) "Domiciliary resident" means a person who has present and fixed
26 residence in Kansas where the person intends to remain for an indefinite
27 period and to which the person intends to return following absence.
28 (5) "Full-time employment" means employment requiring at least
29 1,500 hours of work per year.
30 Sec. 121. K.S.A. 5-512, 28-170a, 38-140, 38-538, 38-1501, 38-1504,
31 38-1505a, 38-1510, 38-1511, 38-1512, 38-1513, 38-1513a, 38-1514, 38-
32 1515, 38-1516, 38-1517, 38-1518, 38-1519, 38-1520, 38-1521, 38-1522b,
33 38-1523, 38-1523a, 38-1524, 38-1525, 38-1526, 38-1527, 38-1528, 38-
34 1529, 38-1530, 38-1531, 38-1532, 38-1533, 38-1534, 38-1535, 38-1536,
35 38-1537, 38-1541, 38-1542, 38-1543, 38-1544, 38-1545, 38-1546, 38-
36 1551, 38-1552, 38-1553, 38-1554, 38-1555, 38-1556, 38-1557, 38-1558,
37 38-1559, 38-1561, 38-1562, 38-1563, 38-1564, 38-1565, 38-1566, 38-
38 1567, 38-1568, 38-1569, 38-1570, 38-1581, 38-1582, 38-1584, 38-1585,
39 38-1586, 38-1587, 38-1591, 38-1592, 38-1593, 38-1594, 38-1595, 38-
40 1596, 38-1597, 38-1598, 38-1599, 38-15,100, 38-1604, 38-1608, 38-1664,
41 38-1813, 39-754, 39-756, 39-756a, 39-1305, 59-2129, 65-516, 65-6205,
42 ~~72-962,~~ 72-1113, 72-53,106, 72-5427 and 75-7025 and K.S.A. ~~2004~~ Supp.
43 20-164, 20-302b, 20-319, 21-3604, 21-3612, 21-3721, 21-3843, 23-605,

59-3059, 59-3060, 60-452a, 60-460, 60-1610,

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1 28-170, 28-172b, 38-1502, 38-1503, 38-1505, 38-1522, 38-1552a, 38-
2 1583, 38-15,101, 39-709, 44-817, ~~59-3059, 59-3060, 60-452a, 60-460, 60-~~
3 ~~1610,~~ 65-1626, ~~75-4319, 75-4319b,~~ 75-4332, 75-7023 and 76-729 are
4 hereby repealed.
5 Sec. 122. This act shall take effect and be in force from and after
6 ~~January 1, 2006, and~~ it's publication in the statute book.

72-962,

The University of Kansas

School of Law

January 18, 2006

Senator John Vratil, Chair
Senate Judiciary Committee
Kansas Senate

Dear Senator Vratil:

It was a pleasure to appear before the Judiciary Committee earlier today and I greatly appreciated the opportunity to present HB 2352 on behalf of the Judicial Council and the Juvenile Offender/Child in Need of Care Advisory Committee. As you will recall, Senator O'Connor inquired during my testimony about the instances in the bill where parties were treated differently than interested parties, and I promised to provide a list and explanations concerning those instances. This letter is to provide you with that information for distribution to other members of the committee.

Using the bill posted to the Legislature's Website, I conducted a search for the term "party" and the term "parties," which appear literally hundreds of times in the bill. I reviewed only those instances that fell within the Revised Code for the Care of Children (sections 1-78), not the conforming amendments to other statutory provisions, where the distinction between parties and interested parties would not apply. Of those instances I reviewed, the vast majority of times the parties and interested parties were mentioned together and there was no difference in treatment.

Aside from the provisions defining the parties and interested parties and their rights, I found nine instances where the word "party" or "parties" appeared without an accompanying reference to "interested party" or "interested parties." I apologize if I somehow missed one. Each of these instances is discussed in the memorandum that follows.

Sincerely,

Richard E. Levy
Professor of Law

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Differential Treatment of Parties and Interested Parties in HB 2352
Prepared for the Senate Judiciary Committee

by
Richard E. Levy
January 18, 2006

The term "party" (or parties) appears many times in HB 2352, usually accompanied by the term "interested party" (or interested parties). In my review of sections 1-78 of the bill, which constitute the Revised Code for the Care of Children, I found the following nine instances in which the term "party" (or parties) was used without the term "interested party" (or interested parties):

1. Section 10(c)(2), p. 11: This provision concerns the assessment of penalties by the court. Its language was carried forward with out change from prior law, even though other provisions of that section were changed to conform to the bill's treatment of parties and interested parties. I have prepared suggested revisions to this provision that would place parties and interested parties on equal terms:

> (2) Expenses. Expenses may be assessed against the complaining witness or person initiating the proceedings or an party or interested party, other than the state, a political subdivision of the state, an agency of the state or of a political subdivision of the state or a person acting in the capacity of an employee of the state or of a political subdivision of the state. When expenses are recovered from a partyperson against whom they have been assessed the general fund of the county shall be reimbursed in the amount of the recovery. If it appears to the court in any proceedings under this code that expenses were unreasonably incurred at the request of any party or interested party the court may assess that portion of the expenses against the party or interested party.

2. Section 39(b), p. 35: This section concerns orders of informal supervision, a consensual alternative to adjudication that puts the proceedings on hold while services and oversight are provided in an effort to solve problems without an adjudication. Subsection (b) concerns the length of informal supervision, which may remain in force for six months and may extended for another six months after a hearing. The committee added language providing that if the child under such an order is in the home of a parent, the court may extend the order for an additional year, but not if a party objects. The committee thought that interested parties should not have a veto power over the continuation of an order of informal supervision which leaves the child with a parent if the parties and the judge all agree that it should continue.

3. Section 42(b)(1), p. 36: This section concerns attendance at proceedings under the code. Subsection (b) covers the dispositional phase, specifying that the parties, interested parties and certain other persons may attend. Paragraph (1) provides that additional persons may be permitted to attend with the consent of the parties or by court order. The committee did not consider it appropriate to give interested parties the right to veto attendance by a person even though all the parties agreed to his or her attendance. Interested parties could, however, request that the court exclude that person pursuant to paragraph (2), which authorizes such an exclusion if the court determines that the attendance of such a person would not be in the best interests of the child.

4. Section 43(b)(5), p. 37: This use of the term "parties" is in an admonition given to a person stipulating to or making no contest statements concerning allegations in the petition. It does not have any effect on the rights of parties or interested parties.

5. Section 44(d), (e)(2), & (g)(1), p. 38-39: These provisions concern special procedures for taking evidence from young victims of sexual abuse by close circuit television or video recording.

- Subsection (d) provides for a motion from "any party" but does not include any interested party. The committee did not believe it necessary to permit interested parties to make such motions, since such a motion is likely to be made by one of the parties if it is in the interests of the child to do so.

- Paragraph (e)(2) limits the questioning of the child to the attorneys for the parties. Given the traumatic nature of such questioning, the committee thought that limiting the number of attorneys conducting the questioning would minimize the harm it causes. The committee also doubted that further questioning by the attorneys for the interested parties would not be likely to elicit much additional information.

- Paragraph (g)(1) requires objections by a party to the admissibility of recorded testimony to be made in accordance with certain procedural requirements and was carried forward without change from existing K.S.A. 38-1559(d)(1). The phrase "any party to a proceeding" (in line 6 on page 39) is unnecessary and should be deleted.

6. Section 49, p.40: This provision concerns the notice to be provided at the dispositional phase of the proceedings. Subsection (a) directs that notice must be given to the parties and subsection (b) provides that notice shall also be given to other specified persons, the list of which encompasses the field of persons who might be interested parties. The committee decided to list these persons separately because they might not have moved to become interested parties during the adjudicatory phase. Their lack of participation in the adjudicatory phases should not foreclose their right to notice at the dispositional phase, during which they may have distinctive interests and during which their participation might be beneficial to the child.

7. Section 62(a), p. 52: This provision requires that, upon the motion of a party, a proceeding for termination of parental rights must be transferred from a magistrate to a district judge. The committee believed that if the parties were satisfied with proceedings before a magistrate, an interested party should not have the right to force transfer of the case.

8. Section 74(f)(5), p. 63: This section concerns the registration of child support orders issued under the code. Once registration occurs, the support case becomes a separate action. Paragraph (f)(5) refers to the parties to the child support action and does not affect the rights of interested parties under the code.

9. Section 78(a), p. 65: This provision is the effective date provision which also specifies that code will be applied on proceedings commenced before its effective date unless doing so would prejudice the rights of a party. This provision should be amended to read "the rights of a party or an interested party" (p. 65, line 17), because the omission of interested parties from this provision appears to have been inadvertent and because interested parties is the term used under the current law.

RON THORNBURGH
Secretary of State

Memorial Hall, 1st Floor
120 S.W. 10th Avenue
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(785) 296-4564

TESTIMONY OF THE SECRETARY OF STATE TO THE SENATE JUDICIARY COMMITTEE ON SB 352

JANUARY 26, 2006

Mr. Chairman and Members of the Committee:

The Secretary of State appreciates the opportunity to appear today to brief the committee and answer questions relating to SB 352, a bill requested by our office and the Kansas Bankers Association.

The purpose of SB 352 is to correct a drafting error in Revised Article Nine of the Uniform Commercial Code. Revised Article Nine (RA9) was drafted by the National Conference of Commissioners on Uniform State Laws, and governs secured transactions. The Act was codified into Kansas law with an effective date of July 1, 2001.

BACKGROUND INFORMATION

Pursuant to Article Nine, a financing statement is filed with the Secretary of State to provide notice to the public of a security interest in collateral. These filings are legally significant because they establish priority among competing claims; first to file wins.

Financing statements filed under both old Article Nine and new Article Nine are effective for five years. Both the old law and the new law allow for a continuation beyond five years, which is effected by filing a continuation statement with the Secretary of State within six months of the lapse date of the financing statement (the lapse date is the date that the five-year time period expires).

PROBLEM UNDER REVISED ARTICLE NINE

Revised Article Nine contains transition rules, which govern the transition from old Article Nine to new Article Nine. One such rule, 9-705, creates a five-year transition period in which filings under old law can become compliant with new law. From July 1, 2001 to July 1, 2006 filers can correct their financing statements (and thus preserve their security interest) by making amendments to comply with new requirements of RA9.

Unfortunately this rule causes unintended consequences to those filings that do not require an amendment in order to comply with the new law. Those filings that were correct under old law and are correct under the new law are unintentionally harmed by 9-705 because the rule reduces

Senate Judiciary
1-26-06
Attachment 3

their continuation window. Most are expecting a six-month window, and yet their window may be reduced to as little as one day under 9-705. Thus, some filers may miss the limited window, causing them to lose their security interest.

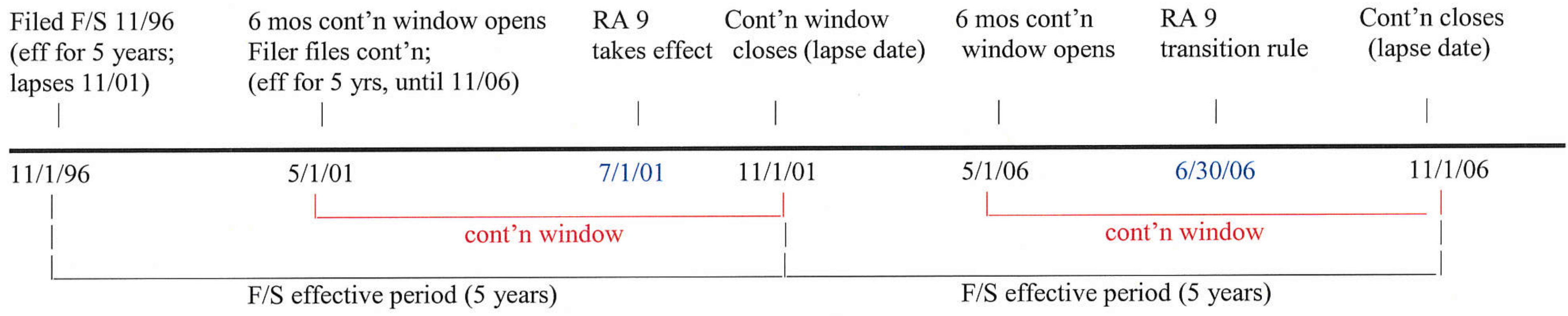
The attached time line illustrates the glitch in the new law:

- A financing statement is filed under old law on November 1, 1996. The financing statement is good for 5 years—until November 1, 2001.
- The financing statement may be continued by filing a continuation statement within 6 months of November 1, 2001; thus, it may be filed from May 1, 2001 to November 1, 2001.
- The filer files the continuation early within the window—before RA9 takes effect on July 1, 2001. Thus, the filing is under the old law.
- Another 5 years passes and another continuation is necessary. RA9 is now in effect, and the transition rule given in 9-705 is in effect. The rule says any pre-RA9 financing statement lapses on the earlier of: 1) its lapse date (which would be November 1, 2006) or 2) June 30, 2006. Thus, the financing statement will lapse on June 30, 2006.
- The filer can file the continuation from May 1, 2006 to June 30, 2006. His usual 6 month window is reduced to 2 months.

The amendment proposed in SB 352 clarifies that 9-705 applies only to those financing statements failing to meet the new requirements of RA9. Any financing statement that is correct under both old and new law retains its full five-year effective period and its full six-month continuation window.

I appreciate the opportunity to appear today and would be happy to answer questions.

Melissa A. Wangemann, Legal Counsel
Deputy Assistant Secretary of State



UCC 9-705 Transition Rule (codified at K.S.A. 84-9-705):
F/S ceases to be effective at the earlier of:

a) time the F/S would have ceased to be effective under law of jurisdiction in which it is filed (lapse date) or
b) June 30, 2006

January 26, 2006

To: Senate Judiciary Committee

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: SB 352: Amending Article 9 of the Uniform Commercial Code

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today in support of **SB 352**, which amends K.S.A. 84-9-705, a provision of the Uniform Commercial Code, Article 9. The proposed amendment is the result of a joint effort between the Kansas Bankers Association and the Office of the Secretary of State to address a "glitch" in the transition rule found in this section.

The National Conference on Uniform State Laws (NCUSL) promoted a virtual re-write of Article 9 of the UCC several years ago, and Kansas adopted that recommendation in the 2001 legislative session. As a part of the orderly transition from "old" Article 9 to "revised" Article 9, the law granted the filers of financing statements (a/k/a UCCs) a period of five years within which all UCCs on file must be in compliance with "revised" Article 9 rules. That deadline is now fast approaching – June 30, 2006.

This summer, the Secretary of State's office shared with us, that the drafters of "revised" Article 9 have become concerned that some UCC filers will have a shortened period of time by which to continue their financing statements by the June 30th deadline. We met several times to determine what filings were, in fact, potentially affected, and to discuss the best way in which to handle this problem.

Since the drafting of SB 352, the KBA has learned that Nebraska is also in the process of attempting to cure this glitch with legislation. We believe that their proposal more clearly identifies to the practioner, which filings were potentially affected by the "glitch" and more importantly, provides a clear-cut safe harbor for those filings.

For these reasons, and in the interest of remaining "uniform" with our neighbors to the North, we would propose that the attached balloon be adopted as a better alternative for addressing this technical and confusing matter.

We have respectfully requested that the bill become effective upon publication in the *Kansas Register*, so as to bring clarification to all lenders as soon as possible. Thank you and we hope that the Committee will act favorably on **SB 352** as amended.

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Kansas Banker's Association
proposed amendment
January 26, 2006

Session of 2006

SENATE BILL No. 352

By Committee on Judiciary

1-11

9 AN ACT concerning the uniform commercial code; relating to secured
10 transactions; amending K.S.A. 2005 Supp. 84-9-705 and repealing the
11 existing section.
12
13 *Be it enacted by the Legislature of the State of Kansas:*
14 Section 1. K.S.A. 2005 Supp. 84-9-705 is hereby amended to read as
15 follows: 84-9-705. (a) **Pre-effective date action; one-year perfection**
16 **period unless reperfected.** If action, other than the filing of a financing
17 statement, is taken before this act takes effect and the action would have
18 resulted in priority of a security interest over the rights of a person that
19 becomes a lien creditor had the security interest become enforceable
20 before this act takes effect, the action is effective to perfect a security
21 interest that attaches under this act within one year after this act takes
22 effect. An attached security interest becomes unperfected one year after
23 this act takes effect unless the security interest becomes a perfected se-
24 curity interest under this act before the expiration of that period.
25 (b) **Pre-effective date filing.** The filing of a financing statement
26 before this act takes effect is effective to perfect a security interest to the
27 extent the filing would satisfy the applicable requirements for perfection
28 under this act.
29 (c) **Pre-effective date filing in jurisdiction formerly governing**
30 **perfection.** This act does not render ineffective an effective financing
31 statement that, before this act takes effect, is filed and satisfies the ap-
32 plicable requirements for perfection under the law of the jurisdiction
33 governing perfection as provided in K.S.A. 84-9-103 prior to the effective
34 date of this act. However, except as otherwise provided in subsections (d)
35 and (e) [and (f)] and K.S.A. 2005 Supp. 84-9-706, and amendments thereto, ~~the~~ ~~a~~
36 financing statement ~~that requires an amendment to be filed to satisfy the~~
37 ~~applicable requirements for perfection under the uniform commercial~~
38 ~~code, secured transactions, article 9 of chapter 84 of the Kansas Statutes~~
39 ~~Annotated, and amendments thereto,~~ ceases to be effective at the earlier
40 of:
41 (1) The time the financing statement would have ceased to be effec-
42 tive under the law of the jurisdiction in which it is filed; or
43 (2) June 30, 2006, *unless such amendment is filed on or before June*

1 *30, 2006.*
2 (d) **Continuation statement.** The filing of a continuation statement
3 after this act takes effect does not continue the effectiveness of the fi-
4 nancing statement filed before this act takes effect. However, upon the
5 timely filing of a continuation statement after this act takes effect and in
6 accordance with the law of the jurisdiction governing perfection as pro-
7 vided in part 3, the effectiveness of a financing statement filed in the
8 same office in that jurisdiction before this act takes effect continues for
9 the period provided by the law of that jurisdiction.
10 (e) **Application of subsection (c)(2) to transmitting utility fi-**
11 **nancing statement.** Subsection (c)(2) applies to a financing statement
12 that, before this act takes effect, is filed against a transmitting utility and
13 satisfies the applicable requirements for perfection under the law of the
14 jurisdiction governing perfection as provided in K.S.A. 84-9-103 prior to
15 the effective date of this act only to the extent that part 3 provides that
16 the law of a jurisdiction other than the jurisdiction in which the financing
17 statement is filed governs perfection of a security interest in collateral
18 covered by the financing statement.

(f) Subsection (c)(2) does not apply to a financing statement that was filed in the proper place in the state before July 1, 2001, pursuant to K.S.A. 84-9-401, as such section existed immediately before July 1, 2001, and for which the proper place of filing in the state was not changed pursuant to K.S.A. 84-9-501, as such section existed on July 1, 2001.

19 (g) ~~(f)~~ **Application of Part 5.** A financing statement that includes a fi-
20 nancing statement filed before this act takes effect and a continuation
21 statement filed after this act takes effect is effective only to the extent
22 that it satisfies the requirements of part 5 for an initial financing
23 statement.
24 Sec. 2. K.S.A. 2005 Supp. 84-9-705 is hereby repealed.
25 Sec. 3. This act shall take effect and be in force from and after its
26 publication in the Kansas register.

KANSAS

WILLIAM R. SECK, SUPERINTENDENT

KANSAS HIGHWAY PATROL

KATHLEEN SEBELIUS, GOVERNOR

Testimony on SB 341
to
Senate Judiciary Committee

Presented by
Mark Goodloe

Presented by
Colonel William R. Seck
Superintendent, Kansas Highway Patrol

January 26, 2006

Good morning, Mr. Chairman and members of the committee. My name is Colonel William Seck, and on behalf of the Kansas Highway Patrol, I appear before you today to comment on Senate Bill 341.

While the Patrol fully supports the intent of changes found in SB 341, we are concerned with its current version.

SB 341 attempts to strengthen current DUI laws by doubling penalties for individuals convicted of having a blood alcohol content of .16 or greater. It is the Patrols interpretation that proposed penalties may be less (depending on individual occurrence rates) for offenders who refuse to take an evidentiary test showing an actual Blood Alcohol Content or BAC level. Our concern is that offenders will soon discover these loopholes and refuse to submit to testing, which would make prosecution more difficult.

One of our other concerns is that if a subject completes an evidentiary test and the test results are greater than .16, we could possibly see an increase in the number of individuals attempting to litigate. The defense team will have a greater likelihood to contest a BAC over .16 in hopes to find a flaw or discrepancy in the case leading to a dismissal or a "not guilty" verdict. This could also increase court time for law enforcement officers making DUI arrests.

The Kansas Highway Patrol has a zero tolerance for impaired driving and appreciates the intent of SB 341. However, the Patrol recommends the committee take a closer look at exactly what the penalties are at each occurrence level and to make changes to SB 341 to ensure we aren't encouraging offenders to refuse evidentiary tests or to challenge charges simply because test results put them over the .16 threshold. I appreciate the opportunity to address you today, and I or one of my staff will be happy to answer any questions you may have.

###

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January 26, 2006

Chairman Vratil & Members of the Senate Judiciary Committee:

Good Morning! My name is Karen Wittman. I am a Senior Assistant District Attorney in Shawnee County under District Attorney Robert Hecht. I am the attorney in charge of all traffic related offenses including DUI and all alcohol related fatalities.

SB 341 is a step in the right direction to enhance the penalties for drunk drivers. However, there are three points I wish to bring to this committee's attention which requires further consideration.

1. New Section 1 Aggravated Involuntary Manslaughter while DUI

Involuntary Manslaughter while DUI without the aggravating feature currently is a Level 4 Person Felony. To determine criminal history, if a person is convicted of this offense, each prior adult conviction or juvenile adjudication for DUI shall count as a person felony for criminal history purposes.

This bill would not allow for enhancement of a person's criminal history if they had been convicted of a number of DUI's prior to the offense involving the death.

EXAMPLE

A person who has had three prior convictions for DUI and has a 0.15 blood alcohol level at the time he commits Involuntary Manslaughter while DUI would have a criminal history of "A" because of the prior DUI's. His sentence range would be 172-162-154 months.

A person who has three prior convictions for DUI and has a 0.18 blood alcohol level at the time he commits Aggravated Involuntary Manslaughter while DUI would have a criminal history of "I" and his sentencing range would be 123-117-109 months.

My suggestion would be to change K.S.A. 21-4711(c)(2) to include the new crime of Aggravated Involuntary Manslaughter while DUI. This would allow for the person in the above example with a number of DUI's and a blood alcohol level of 0.18 to have a criminal history of "A" and a sentencing range of 493-467-442 months.

2. K.S.A. 8-1567(f)(1) removing the courts discretion in requiring treatment as a part of person's parole.

The bill suggest removing the language "The court may also require as a condition of parole that such person enter into and complete a treatment program for alcohol and drug abuse as provided by K.S.A. 8-1008 and amendments thereto." This pertains only to a person who is being sentenced on a 3rd conviction for DUI.

My suggestion would require any DUI should allow the court the discretion to require treatment for alcohol and drug abuse!!!

3. K.S.A. 8-1567(h) Enhancement of penalty when a child under the age of 14 is in the vehicle.

At the present time, there is an enhancement for a child being present in the vehicle. The present law and this law does not take into account when there may be more than one child under the age of 14 in the vehicle.

EXAMPLE

Under existing law--A person is convicted of DUI and has a 6 year old in the vehicle at the time of the offense. The penalty is enhanced by 30 days.

Under existing law-A person is convicted of DUI and has a 3 year old and 6 year old in the vehicle at the time of the offense. The penalty is enhanced by 30 days.

Under new law- A person is convicted of DUI with a blood alcohol level of 0.18 and has a 3 year old, 6 year old and 9 year old in the vehicle at the time of the offense. The penalty is enhanced by 60 days.

My suggestion would be to make the enhancement be assessed for **each** child in the vehicle.

K A N S A S

RODERICK L. BREMBY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF HEALTH AND ENVIRONMENT

Testimony on SB 341

To

Senate Judiciary Committee

By
Richard Howard
Manager, Office of Quality Improvement

Kansas Department of Health and Environment

January 26, 2006

Mr. Chairman and members of the committee, thank you for the opportunity to testify in favor of Senate Bill No. 341, which provides penalties for the crime of aggravated involuntary manslaughter while driving under the influence of an excessive concentration of alcohol or drugs. The provisions of this bill apply to persons determined to have an excessive concentration of blood or breath alcohol. A blood or breath alcohol concentration of 0.08 or greater is currently considered the legal limit regarding intoxication. This bill provides for penalties applicable to individuals having a blood or breath alcohol concentration of 0.16 or greater. This establishes a second concentration of concern to be considered by the courts.

The Kansas Department of Health and Environment (KDHE) provides support for Kansas Law Enforcement Agencies through the breath alcohol testing program. The Division of Health and Environmental Laboratories has responsibility for recommending breath alcohol instruments to be used by law enforcement agencies, providing instruments and calibration standards, and providing performance checks for the instruments. The KDHE provides training for law enforcement officers to ensure testing is performed in accordance with the recommended testing procedures, manufacturer's recommendations for operation of the instrument and applicable statutes and regulations.

Kansas has taken an aggressive stance toward decreasing the incidence of driving under the influence of alcohol violations. The provisions of this bill will strengthen the severity of the penalties that may be imposed upon those that choose to ignore the potential consequences of their actions in regard to driving under the influence of alcohol.

OFFICE OF THE SECRETARY
CURTIS STATE OFFICE BUILDING, 1000 SW JACKSON ST., STE. 540, TOPEKA, KS 66612-1368
Voice 785-296-0461 Fax 785-368-6368 http://www.kdhe.state.ks.us

Senate Judiciary
1-26-06
Attachment 7

The KDHE also recognizes that as the severity of penalty increases, so does the desire to avoid conviction for the offense. Persons charged with driving under the influence with a blood or breath alcohol concentration equal to or greater than 0.16, twice the legal limit, will have greater motivation to seek to avoid conviction and/or limit the penalty by challenging the test results in a court of law. This action will have a direct impact upon the demand for court testimony by KDHE employees working in the breath alcohol program. The agency acknowledges the responsibility for providing this service, but seeks to ensure funding for the additional expenses that will be incurred as a result of enforcement of this legislation. We would like to work with the Revisor's Office to work out appropriate language that would address this issue.

Thank you for your consideration of this request. I would be happy to answer any questions you many have.

Casey Ray Beaver
Born: November 6, 1976
Murdered by a drunk driver on August 4, 2000
http://www.remembercasey.com

Testimony of Dennis and Linda Beaver
Parents of Casey Ray Beaver
In Support of Senate Bill 341
January 24, 2006

Thank you Mr. Chairman and members of this Judicial Committee for allowing us the opportunity to speak to you today in support of better sanctions for high-BAC drivers. My wife, Linda and I are the parents of Casey Ray Beaver.

Our hearts have been shattered into a million jagged pieces that will **NEVER** fit together the same again. This is what happened to change our world forever.

Casey was a December 1999 graduate from Kansas University. Casey was an outstanding student and had a great future ahead of him. Casey had been accepted to the Illinois College of Optometry and was to start classes on August 14, 2000. Casey had so much to offer this world. He had no chance that evening on August 4, 2000. In a six-vehicle automobile crash, 6 miles south of Neosho, Missouri on U.S. 71 Highway. Casey, 23, and two of his friends were on their way to Noel, Missouri to float the Elk River, when a Mercury Cougar driven by Vencen Gilmete, Neosho, crossed the centerline. Mr. Gilmete and Casey were pronounced dead at the scene. Soon after Casey's funeral, we began to find out more and more about the car wreck and Vencen Gilmete, the drunk driver who caused the wreck that took Casey's life. Gilmete had **eight** prior convictions since 1994 for driving while intoxicated and **seven** convictions for driving with a suspended/revoked license. He was incarcerated in February of 1999 for felony DUI, yet he was released only four months later. He had not been a licensed driver for seven years, yet he was still on the road. On the road that night of August 4, 2000, at 9:35 PM Gillmete made the decision to drive while intoxicated, Gillmete's had a BAC of .268, Casey's was .0. Casey was the innocent victim. Casey paid the ultimate price - his life. Casey had every right to be on the highway that night, you have every right to be on the highway, your kids have every right, we shouldn't have to worry about randomly being picked off.

Linda and I have decided since we have been given this life sentence of excruciating pain, we will implement this time in a positive way by getting tougher DUI laws and making sure the current ones are being enforced. Today, we are asking for your help. We support better sanctions for high-BAC drivers.

We support this bill although we believe taking away the drivers' license of offenders at this level for longer period of time does not work. Just look at Gilmete he wasn't eligible for license reinstatement until 2009, yet he was still driving on August 4th 2000. Until you make the penalty harsher than the risk they will continue to drink and drive. They will continue to put innocent victims like our son in danger. They will continue to put you and your family in danger.

In the 2003 legislative session Linda and I stood before you and "Casey's Law" SB33, vehicular impoundment,

Senate Judiciary
1-26-06
Attachment 8

In t[illegible]003 legislative session Linda and I stood before you and "Casey's Law" SB33, vehicular impou[illegible]ent, was passed. This is what should be used for these habitual offenders. Linda and I stand before you once again and ask from the bottom of our heart, please take a stand on the most violent crime - drunk driving.

Let's all work together to make our highways safe and reduce this fatality count of 16,694 a year (148 in Kansas) of innocent victims of this violent crime.

Thank you.

Missing Casey Every Second,

Dennis, Linda & Aaron Beaver
1425 North Second Street, Atchison, KS 66002
Home: 913-367-1670
atbeav@charter.net

Remember: If you have a valid driver's license-you have the privilege to drive. If you are of legal age-you have a right to drink. When you drink then drive you violate our rights. Casey had a right to feel safe driving on August 4, 2000.

Remember Casey Ray Beaver to keep others from suffering the death or injury of a loved one to a drunken driver.
http://www.remembercasey.com

Thank you for assisting us with this very important issue that came to us
NOT by our choice, but by the **fatal choice** of a drunk driver.

KANSAS

JOAN WAGNON, SECRETARY

DEPARTMENT OF REVENUE
LEGAL SERVICES

KATHLEEN SEBELIUS, GOVERNOR

TESTIMONY

TO: Senate Judiciary Committee, Chair John Vratil
Members of the Senate Judiciary Committee

FROM: James G. Keller
Deputy General Counsel
Kansas Department of Revenue

DATE: January 26, 2005

RE: Senate Bill 341

Chairman Vratil and members of the Senate Judiciary Committee, thank you for the opportunity to provide testimony today on Senate Bill 341.

The Kansas Department of Revenue understands the intent of this legislation to propose harsher sanctions for those individuals who achieve an alcohol level of double the current .08 standard and then choose to drive. Those individuals, particularly repeat offenders who drive after excessive alcohol consumption, are worthy of special attention.

As the administrative agency charged with administering drivers' license suspensions, the Department of Revenue does have some concerns with the present language of this bill.

1. Failure to Include Notice Changes in K.S.A. 8-1001(f)

   This bill would amend K.S.A. 8-1014 to add language requiring the Division of Vehicles to take different action for a test failure with a test result of .16 or greater than it would for a test failure under .16.

   However, this bill does not contain language amending the notice provisions contained in K.S.A. 8-1001(f). For example, a person with two prior alcohol-related occurrences would be told by the officer that a test result of .08 or greater will result in a driver's license suspension for one year, although Section 2 of this bill would actually require a lifetime revocation. If the length of driver's license suspension or revocation in K.S.A. 8-

1014 is changed, there should be a corresponding change in the notice language in K.S.A. 8-1001(f)

2. Incentive for Test Refusals

Under K.S.A. 8-1014(a)(3) a person who has third occurrence test refusal receives a three year suspension of driving privileges. A fourth occurrence test refusal requires a ten year suspension. Under this bill, a third or subsequent occurrence test failure with an alcohol content of .16 or greater results in a lifetime revocation of driving privileges.

Obviously, a person with two or three prior occurrences who has consumed an excessive amount of alcohol receives a shorter driver's license sanction as a result of refusing the test, than from submitting to it. This legislation actually provides an incentive to refuse testing as to those individuals who have either two or three prior occurrences. The resulting absence of a test result may negatively impact the criminal DUI prosecution.

3. Impact on Driver Under 21

It is not clear what the impact of this bill would be as to a driver under the age of 21. Part of the confusion actually comes from the existing language in K.S.A. 8-1014(c). Since this bill amends K.S.A. 8-1014, it might be an opportunity to eliminate that confusion.

Present K.S.A. 8-1014(c) provides for a one year driver's license suspension for a person under 21 who either fails a test or is convicted of DUI. It does not provide for a restriction of driving privileges after the suspension period is completed. The language could be clarified to reflect that the one year suspension in K.S.A. 8-1014(c) applies only for a first occurrence test failure for a person under 21. For a second or subsequent test failure by a person under the age of 21, the normal sanctions for a test failure in K.S.A. 8-1014(b)(2) or (3) or those for a .16 or greater test result under Section 2(a)(2) through (5) of this bill.

4. Administrative Changes

This bill will require that the Division revise several forms used to administer the Kansas Implied Consent Law. A new code will have to be developed to record administrative actions and DUI convictions which involve an alcohol content of .16 or greater.

5. Identification of Test Result by Convicting Court

The abstract of conviction sent by courts to the Division of Vehicles will need to be revised to include the level of alcohol. It also is not clear whether the test result of .16 has to be a separate finding by the Court. An administrative test failure requires a completed test result to indicate a test failure. A test which is not completed is considered to be a test refusal, even if the incomplete result indicates an amount over .08. It is unclear what should happen if the person is convicted of a violation of K.S.A. 8-1567(a)(3) and there was an incomplete test result greater than .16 (a .18 deficient sample, for instance).

6. Cost to Administer

This bill will increase the cost to administer the Kansas Implied Consent Law. The substantial increase in sanctions, particularly as to those who have prior occurrences will it make it more likely that persons who either fail or refuse a test will request administrative hearings and pursue appeals to the district court to avoid the serious sanctions set out in this bill and generally to avoid accumulating prior offenses which may cause more serious consequences in the future. Additional personnel may be needed to carry out this legislation.

Attention should be given to fine-tuning this bill before enactment to address these concerns. Thank you for your consideration.

Kansas Sheriffs Association
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To: Senate Judiciary Committee
Re: SB 341

Dear Committee Members,

The Kansas Sheriff's Association supports legislative efforts to increase the penalties for DUI's in which the Blood Alcohol level exceeds .16.

This bill would greatly increase the penalties for those individuals who have an excessively high Blood Alcohol Level. Those individuals that are arrested who have a BAC of .16 or greater are normally involved in traffic accidents, reported to be driving on the wrong side of the roadways, etc.

These individuals pose a great risk to the safety of the thousands of innocent drivers on the roadways in Kansas.

We would urge this committee to pass SB341.

Sincerely,

Randy L. Rogers
Legislative Chair
Kansas Sheriff's Association

Senate Judiciary
1-26-06
Attachment 10

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PRESIDENT

THE VOICE AND VISION OF NURSING IN KANSAS

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S.B. 341 Driving Under the Influence, Increased Penalties

Written Testimony in Support January 26, 2006

Senator Vratil and members of the Senate Judiciary Committee, on behalf of the Kansas State Nurses Association we would like to support S.B. 341 which makes a stronger public policy statement aimed at reducing the incidence of drunk driving in our state.

This legislation is important for the following reasons:

- It will remove habitual DUI offenders and heavy drinkers from Kansas roadways and provide safer driving conditions for all Kansans and others who use our streets, roads and highways.
- On an average day in Kansas, six persons die or are injured in alcohol-related crashes, and 50 are arrested for DUI.
- It will help to decrease the number of fatalities and injuries in Kansas that are suffered at the hands of DUI offenders; in 2004, there were 3,321 alcohol-related crashes in Kansas that killed 117 people (an average of one person every three days) and injured 2,005 (an average of five persons each day).
- Kansas law enforcement officers wrote more than 18,000 citations for DUI and approximately half of those tickets cited drivers who had blood or breath alcohol concentrations (BAC) of .16 and higher.
- Pain and loss ripples out from each DUI incident, indiscriminately striking spouse, child, sibling, friend, employer and co-worker. Every Kansan is affected as alcohol-related crashes cost us nearly $1.44 billion annually in lost productivity, medical costs, property damage, and other direct expenditures.

Also, we respectfully suggest that the committee consider further enhancements to this bill by making all penalties mandatory and restricting the judicial system from dismissing any charges and/or allowing plea bargaining for repeat offenders.

Thank you for this opportunity.

Senate Judiciary
1-26-06
Attachment 11

MADD

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Testimony of Lillian Spencer
Heartland Executive Director
Mothers Against Drunk Driving
In Support of Senate Bill 341
January 20, 2006

Thank you Mr. Chairman and members of the committee for holding this important hearing and for the opportunity to submit testimony to you today in support of better sanctions for high-BAC drivers. I am Lillian Spencer, Executive Director of Mothers Against Drunk Driving in Kansas and Missouri.

The nation has made significant progress in reducing alcohol-related fatalities in the past twenty years. However, we have a long way to go. In 2004, an alarming 17,694 people were killed in alcohol-related crashes, representing 39 percent of total killed in traffic crashes. Kansas lost 148 people to drunk driving in 2004, representing 32 percent of the 461 killed in all traffic crashes. While this is lower than the national average, this is still 148 families who have to receive the visit from an officer telling them their loved one will not be returning home. We should not stop until this is zero.

A large part of the problem is high-BAC drivers. Drivers who have .15 BAC or greater are at least 382 times more likely to be involved in a fatal crash than a non-drinking driver. They constitute the bulk of the drunk driving fatalities – over half all alcohol-related traffic deaths involved someone with a BAC of .15 or higher. These offenders haven't just had one drink too many – we know that it takes a 170-pound man at least four drinks in a one-hour period to get to a .08 BAC level. Do the math for double the BAC and you can see that those at high-BACs are not social drinkers.

Taking away drivers' licenses of those who offend at this level for longer periods of time makes sense. As a person's BAC goes up, so does the likelihood that they will recommit DUIs and to have an underlying problem with alcohol.

These types of sanctions work. A study of enhanced sanctions for high-BAC drivers in Minnesota found that offenders who received enhanced sanctions as a result of their high BAC had lower rates of recidivism than those who had slightly lower BACs and did not receive enhanced sanctions. This means that the enhanced sanctions worked – that some high-BAC offenders didn't recommit DUIs because of the enhanced sanctions.

While we support the bill as a whole, one concern we have is the removal of treatment on the third offender for all offenders. Over 70 percent of all DUI offenders have alcohol abuse problems and 10 to 50 percent are alcohol dependent. This is generally higher among repeat offenders and this is a population that is unlikely to change without treating the underlying issues with alcohol. For example, even those who have had serious injuries from drunk driving are unlikely to change—over half of crash survivors who were drinking drivers said one year after their crash that they had driven impaired at least once.

Mandatory assessment and treatment of DUI offenders address substance abuse problems. A comprehensive educational program of education, treatment, and some form of follow-up monitoring has been shown to decrease repeat offenses by seven to nine percent. Clearly, part of the solution to drunk driving is to solve an underlying substance abuse problem and we hope that would apply to all third offenders (at least), instead of just those whose third offense is a high-BAC offense.

The bottom line is this: once someone reaches a .15 BAC level they are extremely dangerous and potentially deadly to themselves and the motoring public. Maintaining a stronger license suspension law for these offenders will save lives and prevent injuries, and I urge this committee to consider adding them to our law. Thank you.

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2003 BREATH ALCOHOL TESTING

-During 2003, approximately 14,283 breath alcohol tests were administered to drinking drivers by law enforcement officials throughout Kansas.

-Approximately 44.5% (6,355) of drivers tested, recorded BAC levels of .15 or greater.

-More than 4,000 drinking drivers tested with a BAC of .15 or greater, fell within the threshold of .15 - .19 BAC.

-Drinking drivers with a BAC of .15 or greater accounted for 847 alcohol-related crashes, 8 fatality crashes, 3,477 incidences of erratic driving and 2,035 other violations.

-Approximately 2,580 individuals refused to submit to a breath test during 2003.

Source: KDHE-Breath Alcohol Program