

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:33 A.M. on January 30, 2006, in Room 123-S of the Capitol.

All members were present except:

Donald Betts - excused
Phil Journey arrived, 9:37 a.m.
Dwayne Umbarger arrived, 9:38 a.m.
Barbara Allen arrived, 9:40 a.m.
David Haley arrived, 10:00 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:

Senator Phil Journey
Eric K. Rucker, Chief of Staff, Senior Deputy Attorney General
Edward P. Cross, Executive Vice President, Kansas Independent Oil and Gas Association
Kathy Olsen, Kansas Bankers Association
Kathy Sachs, Deputy Assistant Secretary of State, Electronic Government Services
Marilyn L. Nichols, Register of Deeds, Shawnee County

Others attending:

See attached list.

Bill Introductions

Mark Stafford, Kansas Board of Healing Arts, requested the introduction of a bill authorizing criminal background checks. Senator Goodwin moved, Senator Donovan seconded, to introduce as a committee bill. Motion carried.

Final Action on SB 261—Revised Kansas code for care of children

The Chairman indicated copies of letters from the Judicial Council (Attachment 1) and the Office of Judicial Administration (Attachment 2) requesting amendments to **SB 261**. The first amendment was regarding jury trials in Section 57. Senator Bruce moved, Senator Schmidt seconded, to amend line 21, page 50 by striking the word “shall” and inserting the word “may”. Motion carried.

The second proposed amendment pertained to Section 35. Senator Bruce moved, Senator Schmidt seconded, page 36, line 35, add a sub-subsection which reads “due to the risk the juvenile presents to public safety”. Motion carried.

A third amendment was requested to address Section 70(b) pertaining to limits on good time credits. The amendment was proposed by Mr. Ron Paschal, and is supported by Judge Burgess, Presiding Judge, Sedgwick County District Court (Attachment 3). It is opposed by the Juvenile Justice Authority, they feel that this will disrupt their system and create morale problems with the inmates. Following discussion Senator Journey moved, to amend page 68, line 31-32, to limit good time credit to 30% of the offenders sentence and to make it only prospective, not retroactive. Motion died for lack of a second.

Senator Journey moved to amend page 68, line 31-32, to limit good time credit to 15% of the offenders sentence and to make it only prospective, not retroactive. Senator Bruce seconded. Motion carried.

A balloon amendment was presented from the Judicial Council containing several technical changes (Attachment 4). Senator Bruce moved, Senator Umbarger seconded, to adopt the balloon amendment **SB 261**. Motion carried.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:33 A.M. on January 30, 2006, in Room 123-S of the Capitol.

Senator Journey moved, Senator Donovan seconded, to favorably recommend **SB 261** as amended. Motion carried.

The hearing on **SB 221--Mentally ill persons subject to involuntary commitment not allowed to possess a firearm; certification of restoration** was opened.

Senator Phil Journey spoke as a proponent (Attachment 5). He stated that the effect of this bill would require the courts report to the Kansas Bureau of Investigation (KBI) the commitment of an individual found to be a danger to themselves or others. It would also require the KBI to notify the Federal Bureau of Investigation of the court's finding to alert background checks for the purchase of firearms. It is currently a violation of Federal law for incompetent individuals to possess firearms or to transfer firearms to an incompetent person. Most states prohibit firearms for reason on mental illness. The Senator also noted that some dates within the bill would need to be amended.

Eric Rucker spoke in support of **SB 221** agreeing with Senator Journey's testimony (Attachment 6).

Written testimony in support of **SB 221** was submitted by Michael Hammond, Association of Community Mental Health Centers of Kansas, Inc. (Attachment 7)

There being no further conferees, the Chairman closed the hearing on **SB 221**.

The hearing on **SB 336--Uniform Real Property Electronic Recording Act** was opened.

The Chairman briefed the committee on the bill.

Ed Cross spoke as a proponent stating that **SB 336** will help counties with huge volumes of recordings deal with volume issues (Attachment 8). He noted contentious issues surrounding formatting and content of recorded instruments are ongoing and many counties are not structured to work with electronic documents. For these reasons, paper filings must be retained and whatever special format standards may come to be required for electronic filing should not be imposed on paper filings too. The oil and gas industry is supportive of the structure of the Commission to be formed to develop these standards which in addition to Register of Deeds, will include representatives from various industries and professions that work with recording issues.

Kathy Olsen spoke in support of **SB 336** and stressed the importance of maintaining reliable real estate records (Attachment 9). She stated that this bill does not implement electronic filing, only the idea of electronic filing.

Kathy Sachs testified in support of the bill but has concerns regarding the Uniform Electronic Transactions Act (Attachment 10). The Secretary of State's office has promulgated rules and regulations for electronic notarization and respectfully requested to be included in the Commission created by this bill.

Marilyn Nichols testified in a neutral position but stated several concerns including commission members and establishing standards (Attachment 11).

There being no further conferees, the hearing on **SB 336** was closed.

Final action **SB 336--Uniform Real Property Electronic Recording Act**

Following discussion of testimony, Senator Goodwin moved, Senator Bruce seconded, to amend page 2, following line 42 to add a representative from the Kansas Secretary of State's office and increase the number of Commission members to 13. Motion carried.

Senator Journey moved, Senator Donovan seconded, to recommend **SB 336** favorably as amended. Motion carried.

The meeting adjourned at 10:30 a.m. The next scheduled meeting is January 31, 2006.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1/30/06

NAME	REPRESENTING
John M. Pearce	Judicial Council
Rob Mey	6D
Ed Cross	KIOGA
Al Isomaggio	Fredrick Connelly
Lindsey Douglas	Hein Law Firm
Jeff Bottinborg	State Farm Insurance
Mark Stafford	Healing Arts
Mark Gleeson	OJA
Natalie Aiken	Kansas Sentencing Comm.
Brenda Harmon	" " "
Marilyn Nichols	Shawnee Co. Register of Deeds
Charlotte Shawver	Riley Co. Reg. of Deeds
Kathy Sachs	SOS
Kathy Olson	Ks Bankers Assn.
Jesse Bourjois	SOS
Matt Goddard	Heartland Community Bankers Assn.
Melissa Newton-Blume	KDOR - Pvd
Michael White	KeDAA

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1-30-06

NAME	REPRESENTING
Lisa Mendoza	JJA
Don Jordan	JJA
Jim CLARK	KBA
Rick Rubeo	AG
Whitney Damsen	KS Bar Assn.



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MARIAN L. CLINKENBEARD
ADMINISTRATIVE ASSISTANT

January 25, 2006

Sen. John Vratil
Statehouse - 281 E
Topeka, Kansas

Re: 2006 SB 261

Dear John,

At the conclusion of the Senate Judiciary Committee hearing on SB 261, the Revised Juvenile Offender Code, you asked me to provide you with a written response to your question as to whether the amendments proposed to SB 261 are acceptable to the Judicial Council.

Because there was not time to call a meeting of the JO/CINC Advisory Committee to discuss the proposed amendments, I spoke with several of the members and they have no objection to the proposed amendments and I agree.

Specifically the amendments are:

1. Both Mark Gleeson and Ron Paschal proposed amending section 57, relating to jury trials, by striking "shall" and inserting "may".
2. Mr. Gleeson suggested that in proposed section 35, a new subsection (b)(5) be inserted to read as follows: "(5) due to the risk the juvenile presents to public safety".
3. In proposed section 70(b), Mr. Paschal requested a limit be placed on the percentage of the placement sentence that can be good time credits. (The Council has no dog in this fight.)

Very Truly Yours,

Handwritten signature of Randy M. Hearrell in black ink.
Randy M. Hearrell

Senate Judiciary
1-30-06
Attachment 1



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 SW 10th
Topeka, Kansas 66612-1507

(785) 296-2256

January 24, 2006

To: Senator Vratil, Chairman, Senate Judiciary Committee

From: Mark Gleeson, Office of Judicial Administration

Re: SB 261 Balloon amendment for New Section 35 (b)

The Judicial Branch requests that a balloon amendment be included in SB 261, New Section 35 (b). The attached amendment would include a fifth option for the court to choose from when determining if reasonable efforts to prevent the removal of the juvenile are not necessary.

Please feel free to call if you have any questions. (785) 291-3224.

MG:mr
Attachment

Senate Judiciary
1-30-06
Attachment 2

1 (b) When a juvenile has been in foster care and has been placed at
2 home or allowed a trial home visit for a period of six months or more and
3 is again removed from the home, the court shall again make a determi-
4 nation pursuant to subsection (a).

5 New Sec. 35. (a) The court, in the first warrant or order authorizing
6 or requiring removal of the juvenile from the juvenile's home, shall de-
7 termine whether reasonable efforts were made to maintain the family
8 unit and prevent unnecessary removal of the juvenile from the home and
9 enter its determination in the warrant or order.

10 (1) If the juvenile is in the custody of the commissioner, the com-
11 missioner shall prepare a report for the court documenting such reason-
12 able efforts.

13 (2) If the juvenile is in the custody of the secretary of social and
14 rehabilitation services under the Kansas code for the care of children, the
15 secretary shall prepare a report for the court documenting such reason-
16 able efforts.

17 (3) In all other cases, the person preparing the predisposition report
18 shall include documentation of such reasonable efforts in the report.

19 (b) If the court determines that reasonable efforts to maintain the
20 family unit and prevent unnecessary removal of a juvenile were not made,
21 the court shall determine whether such reasonable efforts were unnec-
22 essary because:

23 (1) A court of competent jurisdiction has determined that the parent
24 has subjected the juvenile to aggravated circumstances;

25 (2) a court of competent jurisdiction has determined that the parent
26 has been convicted of a murder of another child of the parent; voluntary
27 manslaughter of another child of the parent; aiding or abetting, attempt-
28 ing, conspiring or soliciting to commit such a murder or such a voluntary
29 manslaughter; or a felony assault that results in serious bodily injury to
30 the juvenile or another child of the parent;

31 (3) the parental rights of the parent with respect to a sibling have
32 been terminated involuntarily; ~~or~~

33 (4) an emergency exists requiring protection of the juvenile and ef-
34 forts to maintain the family unit and prevent unnecessary removal of the
35 juvenile from the home were not possible. or

(5) due to the risk the juvenile presents to public safety

36 (c) Nothing in this section shall be construed to prohibit the court
37 from issuing a warrant or entering an order authorizing or requiring re-
38 moval of the juvenile from the home for the safety of the community.

39 (d) When the juvenile has been in foster care and has been placed at
40 home or allowed a trial home visit for a period of six months or more and
41 is again removed from the home, the court shall again make a determi-
42 nation pursuant to subsections (a) and (b).

43 New Sec. 36. Upon the filing of a complaint under this code, the

DISTRICT COURT
EIGHTEENTH JUDICIAL DISTRICT
JUVENILE DEPARTMENT
WICHITA, KANSAS
67211

JAMES L. BURGESS
PRESIDING JUDGE

Re: SB 261

January 27, 2006

Dear Chairman and Members of the Committee:

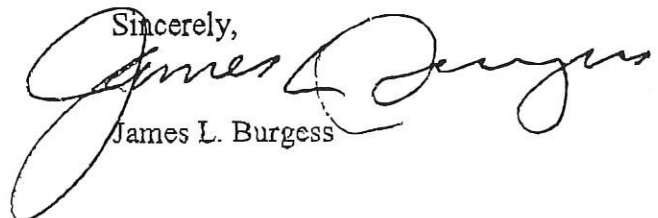
Attached hereto is a memo I wrote some time ago concerning the history of the matrix for juvenile offenders and the effect of good time credits on the basic principals on which the matrix is based. I was part of the group that developed the Juvenile Justice Reform Act and in specific, the matrix.

The bottom line is that at the time the matrix was developed there were two views that needed to be reconciled. On one side were the juvenile authorities that were concerned that commitments to the then Youth Centers were being excessively and inappropriately ordered. On the other side was the concern that that juveniles being sent to the Youth Centers were being released at the discretion of the juvenile offender authorities after extraordinarily short periods of time. The result was the matrix.

The basic principle behind the matrix is that juveniles will only be sent to a juvenile correctional facility after community resources have been utilized and failed or the juvenile's history or seriousness of their offense merits placement at a juvenile correctional facility. The corollary is that if a juvenile is sent to a juvenile correctional facility that they will stay there a know amount of time. The practice of awarding highly variable and exceeding large amounts of good time credit frustrates the very principles on which the matrix is based and threatens the confidence the courts and the public have in juvenile offender sentencing laws.

In my mind, there should be no award of good time credits. However, a limited amount of good time credit, such as the 15% limitation proposed, would be satisfactory to motivate juveniles at juvenile correctional facilities to maintain their best behavior while at the facility.

Sincerely,



James L. Burgess

Senate Judiciary

1-30-06
Attachment 3

THE MATRIX

Prior to the Juvenile Justice Reform Act (JJRA), discussions had been going on for years about the direct commitment of juveniles to the youth centers. Those who operated the youth centers argued that the wrong types of juveniles were being sent to the youth centers. They argued that there were too many kids with just misdemeanors being sent there. Those ordering these juveniles to the youth centers argued that in most cases the misdemeanor was only part of all kinds of other behavior.

Those that were ordering juveniles to youth center were upset that juveniles being sent to youth centers were being released in very short periods of time. In some cases that period was as little as 45 days. The argument was that a placement at a youth center was supposed to be the ultimate sanction available but the juveniles often preferred a direct commitment because they knew they would be getting out quickly. The response was that too many juveniles were being sent to youth centers and that due to capacity issues one juvenile had to leave the youth center for every one going in.

These matters were thoroughly discussed when the JJRA was being considered and several determinations were made. First was that there would be more efforts to keep kids in their communities and out of youth centers. This was consistent with one of the fundamental precepts of the creation of JJA in that local communities would have more control over their juveniles and that the state would direct funds and assistance to communities to reach that goal. The corollary to the commitment by communities to keeping control of their juveniles was that when placement at a state facility became necessary, the placement would be for a sufficient amount of time to have a reasonable chance to affect real change in the juvenile. Thus, the creation of the matrix.

The matrix was created to meet two specific needs. To satisfy one side of the argument, the matrix established criteria that must be met before a juvenile could be sent to JCF. This would prevent the haphazard or otherwise inappropriate use of this limited resource. On the flip side, the matrix would guarantee that if a juvenile would be sent to a JCF that the person would be there for an appropriate amount of time.

In establishing the minimums and maximums for confinement and conditional release, the superintendents of the youth centers and other professionals were consulted. There was significant discussion about what types of cases were most appropriate for placement at a youth center. The question was then asked, how long would you need to have a juvenile in custody to have a chance to really effect their behavior if they came to the facility with those types of offenses and/or history. In every discussion, there was never any consideration of a juvenile spending any less time than the minimum sentence that was ordered.

By granting any good time credit at all, you are getting away from certain basic premises of the JJRA and most certainly the basic premise of the creation of the matrix. One of the reasons the matrix was created was to give the state some control over the population at JCF's. By giving extensive good time credits, they are getting a "second bite of the apple." JCF's have control of both the front door and the back door of the facilities. In some respects, we are right back where we were prior to the JJRA. Courts are sentencing juveniles to JCF's with the expectation that they will be there for a proper amount of time, and just like the late 1990's, those time frames are being manipulated by agencies outside the court and without apparent recognition of why minimum terms of confinement were established by means of the matrix.

SENATE BILL No. 261

By Committee on Judiciary

2-11

From Judicial Council

Approved 12/2/05

Senate Judiciary
1-30-06
Attachment 4

9 AN ACT concerning juvenile offenders; enacting the revised Kansas ju-
 10 venile justice code; amending K.S.A. 8-237, 8-2117, 12-16,119, 21-
 11 4633, 28-170a, 38-140, 38-1518, 39-754, 39-756, 39-756a, 39-1305, 65-
 12 516, 65-6001, 74-7335, 74-8810, 75-5229, 75-7025, 75-7026, 75-7028,
 13 76-3203 and 76-3204 and K.S.A. ~~2004~~ Supp. 20-167, 20-302b, 21-2511,
 14 21-3413, 21-3520, 21-3612, 21-3809, 21-3810, 22-2805, 22-4701, 28-
 15 170, 28-172b, 28-176, 39-709, 39-970, 41-727, 60-460, 65-1626, 65-
 16 5117, 74-5344, 75-3728e, 75-4362, 75-5206, 75-5220, 75-6102, 75-
 17 7023, 75-7024, 76-172, 76-381, 76-12a25 and 76-3205 and repealing
 18 the existing sections; also repealing K.S.A. 38-1601, 38-1603, 38-1604,
 19 38-1605, 38-1606, 38-1606a, 38-1607, 38-1608, 38-1610, 38-1612, 38-
 20 1613, 38-1614, 38-1615, 38-1616, 38-1617, 38-1618, 38-1621, 38-1622,
 21 38-1623, 38-1624, 38-1625, 38-1626, 38-1627, 38-1628, 38-1629, 38-
 22 1630, 38-1631, 38-1632, 38-1633, 38-1634, 38-1636, 38-1637, 38-1638,
 23 38-1639, 38-1640, 38-1641, 38-1651, 38-1652, 38-1653, 38-1654, 38-
 24 1655, 38-1656, 38-1657, 38-1658, 38-1661, 38-1662, 38-1663, 38-1664,
 25 38-1666, 38-1667, 38-1668, 38-1671, 38-1673, 38-1674, 38-1675, 38-
 26 1676, 38-1677, 38-1681, 38-1682, 38-1683, 38-1684, 38-1685, 38-1691,
 27 38-16,111, 38-16,116, 38-16,117, 38-16,118, 38-16,119, 38-16,120, 38-
 28 16,126, 38-16,127, 38-16,128, 38-16,129, 38-16,131, 38-16,132, 38-
 29 16,133, 38-1812 and 38-1813 and K.S.A. ~~2004~~ Supp. 38-1602, 38-1609,
 30 38-1611, 38-1635, 38-1665, 38-1692, 38-16,134 and 38-1635.

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31
 32 *Be it enacted by the Legislature of the State of Kansas:*
 33 New Section 1. This act shall be known and may be cited as the
 34 revised Kansas juvenile justice code. The primary goals of the juvenile
 35 justice code are to promote public safety, hold juvenile offenders ac-
 36 countable for their behavior and improve their ability to live more pro-
 37 ductively and responsibly in the community. To accomplish these goals,
 38 juvenile justice policies developed pursuant to the revised Kansas juvenile
 39 justice code shall be designed to: (a) Protect public safety; (b) recognize
 40 that the ultimate solutions to juvenile crime lie in the strengthening of
 41 families and educational institutions, the involvement of the community
 42 and the implementation of effective prevention and early intervention
 3 programs; (c) be community based to the greatest extent possible; (d) be

New Sec. 19. (a) The court shall order child support unless good cause is shown why such support should not be ordered.

~~(b) In determining the amount of a child support order under the revised Kansas juvenile justice code: (1) The court shall apply the Kansas child support guidelines adopted pursuant to K.S.A. 20-165, and amendments thereto; or (2) if the county or district attorney determines that: (A) A parent will contest the amount of support resulting from application of the guidelines; (B) the parent is or may be entitled to an adjustment pursuant to the guidelines; and (C) it is in the juvenile's best interests to resolve the support issue promptly and with minimal hostility, the county or district attorney may enter into a stipulation with the parent as to the amount of child support for that parent. Except for good cause or as otherwise provided in K.S.A. 38-16,119, and amendments thereto, a stipulation under this subsection shall be binding upon the court and all parties. The criteria for application of this subsection shall be incorporated into the journal entry or judgment form.~~

the

Strike

(b)

~~(c) If necessary to carry out the intent of this section, the court may refer the matter to the secretary of social and rehabilitation services for child support enforcement.~~

New Sec. 20. When child support is ordered pursuant to the revised Kansas juvenile justice code, a separate journal entry or judgment form shall be made for each parent ordered to pay child support. The journal entry or judgment form shall be entitled:

"In the matter of _____ and _____"
(obligee's name) (obligor's name)

and shall contain no reference to the official file or social file in the case except the facts necessary to establish personal jurisdiction over the parent, the name and date of birth of each child and findings of fact and conclusions of law directly related to the child support obligation. If the court issues an income withholding order for the parent, the order shall be captioned in the same manner.

New Sec. 21. (a) A party entitled to receive child support under an order issued pursuant to the revised Kansas juvenile justice code may file with the clerk of the district court in the county in which the judgment was rendered the original child support order and the original income withholding order, if any. If the original child support or income withholding order is unavailable for any reason, a certified or authenticated copy of the order may be substituted. The clerk of the district court shall number the child support order as a case filed under chapter 60 of the Kansas Statutes Annotated, and amendments thereto, and enter the numbering of the case on the appearance docket of the case. Registration of a child support order under this section shall be without cost or docket fee.

COMMENT

The authority of the county or district attorney to determine child support is removed from the Code. The Committee is of the opinion that the court should apply child support guidelines to determine the amount of child support.

1 to the proceeding. The court, upon the court's own motion or the motion
 2 of the commissioner or any party, shall set the matter for hearing and
 3 may issue a warrant pursuant to section 42, and amendments thereto.
 4 Upon receipt of the motion, the court shall fix a time and place for hearing
 5 and provide notice to the movant and to the current custodian and place-
 6 ment of the juvenile offender and to each party to the proceeding. Except
 7 as set out in subsection (b), if the court finds ~~at the hearing~~ that the
 8 juvenile offender violated a condition of probation or placement, the court
 9 may extend or modify the terms of probation or placement or enter an-
 10 other sentence pursuant to section 61, and amendments thereto, except
 11 that a child support order which has been registered under section 21,
 12 and amendments thereto, may only be modified pursuant to section 21,
 13 and amendments thereto.

Strike
by a preponderance of the evidence

COMMENT

The change clarifies that the standard of proof for determining if a juvenile offender has violated a condition of probation or placement is a preponderance of the evidence, which is the same standard that applies in adult proceedings.

14 (b) The court shall enter an order removing custody from a parent
 15 only upon finding: (1) Reasonable efforts have been made to maintain a
 16 juvenile in such juvenile's family or an emergency exists making reason-
 17 able efforts unnecessary; and (2) it is contrary to the welfare of the ju-
 18 venile to remain at home. The court shall state the basis of each finding
 19 in writing.

20 New Sec. 69. (a) For the purpose of committing juvenile offenders
 21 to a juvenile correctional facility, the following placements shall be ap-
 22 plied by the judge in felony or misdemeanor cases. If used, the court shall
 23 establish a specific term of commitment as specified in this subsection,
 24 unless the judge conducts a departure hearing and finds substantial and
 25 compelling reasons to impose a departure sentence as provided in section
 26 71, and amendments thereto.

27 (1) *Violent Offenders.* (A) The violent offender I is defined as an
 28 offender adjudicated as a juvenile offender for an offense which, if com-
 29 mitted by an adult, would constitute an off-grid felony. Offenders in this
 30 category may be committed to a juvenile correctional facility for a mini-
 31 mum term of 60 months and up to a maximum term of the offender
 32 reaching the age of 22 years, six months. The aftercare term for this
 33 offender is set at a minimum term of six months and up to a maximum
 34 term of the offender reaching the age of 23 years.

35 (B) The violent offender II is defined as an offender adjudicated as
 36 a juvenile offender for an offense which, if committed by an adult, would
 37 constitute a nondrug level 1, 2 or 3 felony. Offenders in this category may
 38 be committed to a juvenile correctional facility for a minimum term of
 39 24 months and up to a maximum term of the offender reaching the age
 40 22 years, six months. The aftercare term for this offender is set at a min-
 41 imum term of six months and up to a maximum term of the offender
 42 reaching the age of 23 years.

43 (2) *Serious Offenders.* (A) The serious offender I is defined as an

4-4

1 follows: 76-3205. (a) There is hereby established, as a separate institution,
2 the Kansas juvenile correctional complex. Any reference in the laws of
3 this state to a juvenile correctional facility or institution as defined in
4 ~~K.S.A. 38-1602~~ section 2, and amendments thereto, shall be construed as
5 also referring to the Kansas juvenile correctional complex.

6 (b) The commissioner of juvenile justice shall have the management
7 and control of the Kansas juvenile correctional complex.

8 (c) The superintendent of the Kansas juvenile correctional complex
9 shall remit all moneys received by or for the superintendent from charges
10 and other operations of such institution to the state treasurer in accord-
11 ance with the provisions of K.S.A. 75-4215, and amendments thereto.
12 Upon receipt of each such remittance, the state treasurer shall deposit
13 the entire amount in the state treasury to the credit of the Kansas juvenile
14 correctional complex fee fund. All expenditures from such fund shall be
15 made in accordance with appropriation acts upon warrants of the director
16 of accounts and reports issued pursuant to vouchers approved by such
17 superintendent or by a person or persons designated by the superinten-
18 dent.

19 Sec. 140. K.S.A. 8-237, 8-2117, 12-16,119, 21-4633, 28-170a, 38-140,
20 38-1518, 38-1601, 38-1603, 38-1604, 38-1605, 38-1606, 38-1606a, 38-
21 1607, 38-1608, 38-1610, 38-1612, 38-1613, 38-1614, 38-1615, 38-1616,
22 38-1617, 38-1618, 38-1621, 38-1622, 38-1623, 38-1624, 38-1625, 38-
23 1626, 38-1627, 38-1628, 38-1629, 38-1630, 38-1631, 38-1632, 38-1633,
24 38-1634, 38-1636, 38-1637, 38-1638, 38-1639, 38-1640, 38-1641, 38-
25 1651, 38-1652, 38-1653, 38-1654, 38-1655, 38-1656, 38-1657, 38-1658,
26 38-1661, 38-1662, 38-1663, 38-1664, 38-1666, 38-1667, 38-1668, 38-
27 1671, 38-1673, 38-1674, 38-1675, 38-1676, 38-1677, 38-1681, 38-1682,
28 38-1683, 38-1684, 38-1685, 38-1691, 38-16,111, 38-16,116, 38-16,117,
29 38-16,118, 38-16,119, 38-16,120, 38-16,126, 38-16,127, 38-16,128, 38-
30 16,129, 38-16,131, 38-16,132, 38-16,133, 38-1812, 38-1813, 39-754, 39-
31 756, 39-756a, 39-1305, 65-516, 65-6001, 74-7335, 74-8810, 75-5229, 75-
32 7025, 75-7026, 75-7028, 76-3203 and 76-3204 and K.S.A. ~~2004~~ Supp.
33 20-167, 20-302b, 21-2511, 21-3413, 21-3520, 21-3612, 21-3809, 21-3810,
34 22-2805, 22-4701, 28-170, 28-172b, 28-176, 38-1602, 38-1609, 38-1611,
35 38-1635, 38-1665, 38-1692, 38-16,134, 38-1635, 39-709, 39-970, 41-727,
36 60-460, 65-1626, 65-5117 74-5344, 75-3728e, 75-4362, 75-5206, 75-5220
37 75-6102, 75-7023, 75-7024, 76-172, 76-381, 76-12a25 and 76-3205 are
38 hereby repealed.

2005

39 Sec. 141. This act shall take effect and be in force from and after
40 ~~July 1, 2006~~, and its publication in the statute book.

January 1, 2007

SENATOR PHILLIP B. JOURNEY

STATE SENATOR, 26TH DISTRICT
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TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS

MEMBER: SPECIAL CLAIMS AGAINST THE STATE
(JOINT), CHAIR
HEALTH CARE STRATEGIES
JUDICIARY
PUBLIC HEALTH AND WELFARE
TRANSPORTATION

CORRECTIONS AND JUVENILE JUSTICE
OVERSIGHT (JOINT)

Testimony in Support of Senate Bill 221
Presented by State Senator Phillip B. Journey, 26th District
On January 18, 2006, for the Senate Judiciary Committee the
Hon. John Vratil, Chair

First, I would like to thank the committee for allowing me to testify in support of Senate Bill 221. Senate Bill 221 amends K.S.A. 21-4203, 21-4204, 59-2948, 59-2966, and 59-2974. The effect of this legislation would be to have the court report to the Kansas Bureau of Investigation the commitment of an individual found by the court to be a danger to themselves or others since July 1, 1998. Section 1 needs to be amended to correct my originally optimistic estimation of enactment from 2005 on lines 15 and 23 to 2006. The Bill also requires the Kansas Bureau of Investigation to notify the Federal Bureau of Investigation of the court's finding so that individual will no longer be able to clear a national instant background check for the purchase of a firearm. Notice is given to counsel for the proposed patient. While not perfect, notice by the attorney to the last known address is appropriate. Even I am not entirely comfortable with this section and in the alternative the criminal sanctions could be made to apply to involuntary committals after the effective date of the act. Section 2 of the bill provides a due process hearing for the restoration of the right to possess a firearm. Section 3 creates a new crime for knowingly transferring a firearm to a person who has been subject to an involuntary commitment. Violation of the section is a class A misdemeanor. Section 4 also creates the new crime of possession of a firearm after being declared incompetent which like being convicted of possession by a felon is a severity level eight non-person felony.

It is currently a violation of Federal criminal statute for a mentally incompetent individual to possess a firearm and a violation of Federal criminal statute to transfer a firearm in a mentally incompetent individual. Federal penalties for these crimes are substantially more severe than those proposed in Senate Bill 221. These Federal prohibitions have been the law of the United States of America since enactment of the 1968 Gun Control Act.

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Twenty-two states have a database containing prohibitory mental illness records that are submitted by the courts or treatment facilities. Two other states (Alabama, Ohio) are developing a database. The records are maintained by a statewide agency or a mental health department. A variety of dispositions are recorded in these databases, with mental hospital commitments being the most common. The 22 states are: Arizona, California, Connecticut, Delaware, Georgia, Hawaii, Illinois, Louisiana, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Utah, Virginia, Washington, and Wisconsin.

In addition, 23 states report that prohibitory mental illness dispositions may be found within the central repository's criminal history records. Insanity and incompetent to stand trial findings are the most prevalent dispositions in state criminal records. In a few states, an agency conducting a background check may obtain data directly from a local court or mental health facility.

Between July 1, 2003 and June 30, 2004, Alabama and Ohio enacted laws that require courts to transmit involuntary commitment records to a state agency for use in firearm background checks. Virginia began sending mental health records to the NICS on a real-time basis in December 2003. Tennessee's checking agency began receiving court dispositions in June 2004.

Most states prohibit firearms for reason of mental illness. Those that do NOT are Alaska, Colorado, Idaho, Kansas, Kentucky, Louisiana, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, South Dakota, Tennessee, Texas, Vermont, and Wyoming. Let's take Kansas off that list.

Respectfully submitted

A handwritten signature in cursive script that reads "Phillip B. Journey". The signature is written in black ink and is positioned below the text "Respectfully submitted".

Phillip B. Journey

BEFORE THE SENATE JUDICIARY COMMITTEE
TESTIMONY OF ERIC K. RUCKER
CHIEF OF STAFF, OFFICE OF THE ATTORNEY GENERAL
RE: SENATE BILL 221
January 17, 2006

Chairman Vratil and members of the committee:

Thank you for allowing me to appear before you today on behalf of Kansas Attorney General Phill Kline in support of Senate Bill 221.

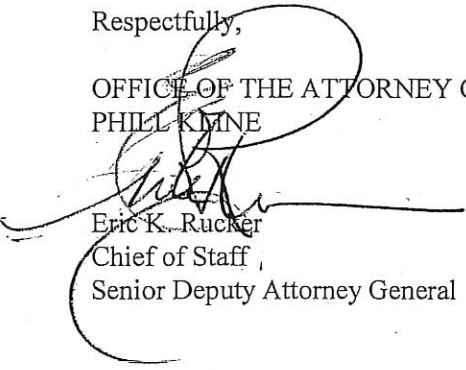
In very basic terms, S.B. 221 seeks to keep firearms out of the hands of individuals who have been proven to be suffering from mental illness to the extent that these individuals are a danger to themselves or others. The bill would make it illegal under Kansas law for a person who has been involuntarily committed to possess a firearm, and it would make it illegal for someone to knowingly give or sell a firearm to a person who has been involuntarily committed. Please note that S.B. 221 also contains specific language that would permit a person who has been involuntarily committed, but whom later recovers from the mental condition that led to the involuntary commitment, to go before the court and have the person's rights to possess a firearm reinstated.

S.B. 221 amends current Kansas law to require district courts to make the Kansas Bureau of Investigation aware of all new involuntary commitments cases and then goes on to require the K.B.I. to forward that information to the Federal Bureau of Investigation. While some of the dates contained within the bill will need to be updated, the bill seeks to have all information on involuntary commitments since 1998 forwarded to the K.B.I., and then on to the federal database.

S.B. 221 proposes common sense legislation intended to protect individuals who may not have the mental capacity to protect themselves or the capacity to prevent themselves from harming others. I encourage the committee to give favorable consideration to S. B. 221 and to recommend the bill favorably for passage.

Respectfully,

OFFICE OF THE ATTORNEY GENERAL
PHILL KLINE



Eric K. Rucker
Chief of Staff,
Senior Deputy Attorney General



Association of Community Mental Health Centers of Kansas, Inc.

720 SW Jackson, Suite 203, Topeka, KS 66603
Telephone (785) 234-4773 Fax (785) 234-3189
Web Site: www.acmhck.org

Michael J. Hammond
Executive Director

January 17, 2006

The Honorable John Vratil
Chairman, Senate Judiciary Committee
Kansas Statehouse, 300 SW 10th Street
Topeka, KS 66612

Dear Senator Vratil:

On behalf of the Association of Community Mental Health Centers of Kansas (ACMHCK), Inc., which represents the 29 Community Mental Health Centers (CMHCs) and affiliates in Kansas, thank you for the opportunity to provide some information and concerns on Senate Bill 221. The CMHCs, as the publicly funded mental health system for community based services, are the safety net for those in need of mental health services.

Senate Bill 221, if passed, would allow that any individual who was committed to a state institution for mental illness and treatment would no longer be eligible to own a firearm, except by order of a court to restore that privilege to the individual.

In drafting the language of the bill, there are several things that may not have been considered or understood about the implications of such a change for those individuals impacted by this piece of legislation. I would like to bring those items to your attention, so that you may review and discuss them prior to your deliberations on a desired action on Senate Bill 221.

The Association has strong reservations with this proposal without consideration for the mental health needs of this vulnerable population.

Please consider the following questions and issues in your deliberations.

- ✓ This bill proposes placing on the national crime data base the fact that a person has a mental illness and that they have been involuntarily committed to a state institution. This criminalizes mental illness.
- ✓ This further adds to the stigma of mental illness. This would damage the efforts of the past 40 years to reduce the stigma about mental illness.
- ✓ Upon release of an individual from a state institution, the physicians at that institution would

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Letter to Senator Vratil
January 1, 2006
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have determined if the individual is not a danger to themselves or others, and whether or not there will be conditions placed on their release. This law assumes that all individuals released from a state institution are a danger to themselves and others.

- ✓ Only if firearms are a concern upon release of the individual from the institution should that be part of the conditional release into outpatient services for the person. Even at that point, the client should not be regarded as a criminal.
- ✓ Does any data exist that proves individuals treated under a care and treatment order are any more potentially violent than society at large?
- ✓ Senate Bill 221 is discriminatory. It treats involuntary commitment as if it were a "criminal conviction". It would create the impression that all people with a mental illness are violent. This is simply not the fact.
- ✓ If legislation such as this is to be considered it should be backed by the research about violence and the mentally ill.
- ✓ Perhaps applying it to persons with a history of violence would make sense if applied to everyone, i.e. domestic violence perpetrators, etc. but not ONLY individuals committed for psychiatric treatment.

Thank you for allowing us to express these concerns to you. If you have further questions, please feel free to call on me at (785) 234-4774.

Sincerely,



Michael J. Hammond
Executive Director

cc: Executive Directors
Sheli Sweeney, Policy Analyst



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Testimony to the Senate Judiciary Committee

Edward P. Cross, Executive Vice President
Kansas Independent Oil & Gas Association

January 23, 2006

Good Morning Chairman Vratil and members of the committee. I am Edward Cross, Executive Vice President of the Kansas Independent Oil & Gas Association (KIOGA). KIOGA is an 850+ member organization representing the interests of independent oil and gas producers in Kansas. I present testimony today in support of Senate Bill 336 but want to emphasize some concerns and be on record voicing these concerns.

Senate Bill 336 will help counties with huge volumes of recordings to deal with volume issues. We want to emphasize our support and underscore the language in the bill that states that Register of Deeds MAY accept electronic filings but SHALL continue to accept paper filings. The bill states that electronic and paper filings are required to be in the same index, but the bill does not say the index has to be the paper one. Register of Deeds are permitted to convert paper filings to electronic format, but this cannot be allowed to be reason to impose electronic formatting standards onto paper filings. Any new formatting standards must be addressed on their own merits. Contentious issues surrounding formatting and content of recorded instruments are ongoing. This bill should not be a backdoor way those issues. SB 336 is a good measure that will help those counties with huge volumes of recordings. For good reasons, the general public and industries in a larger number of counties deal in paper recordings and are not structured to work in electronic documents. For these reasons and more, paper filings must be retained and whatever special format standards may come to be required for electronic filing should not be imposed on paper filings too.

The oil and gas industry is also supportive of the structure of the committee to be formed to develop the standards. In addition to Register of Deeds, the committee draws representatives from various industries and professions that work with recording issues. We are happy that the oil and gas industry will have a representative on the committee.

Thank you for listening to our concerns. We are supportive of SB 336. Thank you for your time and consideration. I stand for questions.

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January 24, 2006

To: Senate Committee on Judiciary

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: SB 336: Uniform Real Property Electronic Recording Act

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to present written testimony regarding **SB 336**. While our members are watching the progress of this bill with great interest, we did not feel that our testimony would introduce any new arguments for or against the bill.

As you know, URPERA was drafted to specifically authorize a recorder, at the recorder's option, to accept electronic documents for recording and to index and store those documents. The proposal is to take effect upon publication in the statute book, which will be July 1st of this year.

While we believe that the electronic filing and storage of such data is inevitably the way of the future, we also respect the importance of maintaining reliable real estate records. These records are vital in establishing the chain of title of ownership on a certain piece of property. In addition, they help protect the owner's interest in property by providing a reliable record of the current ownership. Finally, accurate mortgage records are important in ensuring the perfection of a security interest in a piece of property.

For these reasons, we urge the committee to proceed with caution and to advocate for a delayed effective date for this act to allow those who will be developing the statewide standards, as well as those who will be implementing those standards adequate time within which to do so. In addition, a delay in effective date will allow those people and entities who are filers of these documents, adequate time within which to become familiar with the requirements of electronic filing and thus reduce the amount of mistakes made by these filers.

With documents so very important to real estate transactions, there is much danger in rushing into such a dramatic change. Thank you for allowing the KBA to testify on this most important matter.



RON THORNBURGH
Secretary of State

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120 S.W. 10th Avenue
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(785) 296-4564

STATE OF KANSAS

TESTIMONY OF THE SECRETARY OF STATE
TO THE JUDICIARY COMMITTEE
ON THE UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

January 24, 2006

Mr. Chairman and Members of the Committee:

The Secretary of State appreciates the opportunity to offer testimony regarding the Uniform Real Property Electronic Recording ACT (URPERA). We support the concepts set out in this bill, but have some concerns about the detail.

Another uniform act from NCCUSL, the Uniform Electronic Transactions Act (UETA), is codified at K.S.A. 16-1601 et seq. The definitions set out in SB. 336 are redundant to definitions in UETA with only minor variations.

Kansas' version of UETA assigns the task of developing procedures for electronic notarizations to the Secretary of State by rule and regulation (see K.S.A. 16-1611). Our office has promulgated rules and regulations outlining the requirements for electronic notarizations. Since most filings covered in SB. 336 require notarization, we respectfully request to be included in the Electronic Recording Commission created by this bill.

Thank you for your time. I would be glad to answer any questions regarding my testimony.

Kathy Sachs, Deputy Assistant Secretary of State
Electronic Government Services

Amendment to SB 336, Section 5

New (10): a representative of the Kansas secretary of state's office.

*Kathy Sack's amendment
January 30, 2006*

KANSAS REGISTER OF DEEDS ASSOCIATION

Marilyn L. Nichols
Shawnee County Register of Deeds
700 SE 7th Street, Room 108
Topeka, Kansas 66603-3932

TESTIMONY OF THE KANSAS REGISTER OF DEEDS ASSOCIATION
TO THE SENATE COMMITTEE ON JUDICIARY

SB 336

January 23, 2006

Distinguished Members of the Committee:

I am here as the Register of Deeds for Shawnee County as well as on behalf of the Kansas Register of Deeds Association. I thank you for the opportunity that allows me to offer this testimony before you today.

Our understanding of the intent of this bill is to create uniformity regarding electronic recordings in the Register of Deeds' Offices across the state of Kansas. At this point in the legislative process we are offering "neutral" testimony and have included several concerns about some particular points and language in SB 336 as currently proposed.

The Register of Deeds Association has consistently supported the concept of uniformity among our offices in procedures and adaptations of Kansas Statutes. Therefore, in theory we are again supporting the concept of a Uniform Electronic Recording Act. We acknowledge the necessity of technological advances that need to be implemented to move toward "paperless" transactions. We do wish to call to your attention to questions and certain items that are of concern to us.

- 1.) The members appointed to the recording commission should have a *minimum of three Registers of Deeds.*
- 2.) Paper standards being added to this legislation that has not been agreed upon within the Register of Deeds Association.
- 3.) Are the standards and regulations regarding electronic signatures already in place enough to cover the regulations for fully acknowledged signatures as required on a paper document?
- 4.) A member of the Notary Division of the Secretary of State's Office should be a member of this recording commission.
- 5.) What other entities have been involved in setting the standards across the nation other than PRIA? (Property Records Industry Association)

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- 6.) Any portion of this legislation becoming mandatory.
- 7.) Why is the construction industry being allowed to set standards for electronic recordings?

The Register of Deeds Association expects to be involved in every step toward this electronic recording act and any all mandates that will arise from said legislation.

I thank you for your time and attention to this important matter and would be happy to stand for any questions.